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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez

Addendum

Follow-up to the recommendations made by the Special Rapporteur visits to China, Denmark, Equatorial Guinea, Georgia, Greece, Indonesia, Jamaica, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, Papua New Guinea, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan*

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Contents

Introduction

1. This document contains information provided by States, and other stakeholders, including National Human Rights Institutions and non-governmental organizations (NGOs), relating to the follow-up measures to the recommendations of the Special Rapporteur and his predecessors made after conducting country visits. In paragraph 5 d) of its resolution 16/23 on torture and other cruel, inhuman or degrading treatment or punishment of March 2011, the Human Rights Council urged States "To ensure appropriate follow-up to the recommendations and conclusions of the Special Rapporteur." The report submitted to the fifty-ninth session of the Commission (E/CN.4/2003/68, para. 18), indicated that Governments of States to which visits have been carried out would regularly be reminded of the observations and recommendations made by the Special Rapporteur after such visits. Information would be requested on the consideration given to the recommendations, the steps taken to implement them, and any constraints that may prevent their implementation. Information from NGOs and other interested parties regarding measures taken in follow up to his recommendations would be welcome as well.

2. The Special Rapporteur follows the format of the follow-up report which was modified in 2008 with the aim of rendering it more reader-friendly and of facilitating the identification of concrete steps taken in response to the specific recommendations and their results. For this reason, follow-up tables have been created for each State visited by the mandate holders in the past ten years. The tables contain the recommendations of the Special Rapporteur and his predecessors, a brief description of the situation when the country visit was undertaken, an overview of steps taken in previous years and included in previous follow-up reports and measures taken in the current year on the basis of information gathered by the Special Rapporteur, from governmental and non-governmental sources.

3. By letter dated 22 November 2011, the Special Rapporteur submitted to the respective Governments for their consideration and comments the information on follow-up measures he had gathered. Letters were sent to the following States: China (People's Republic of), Denmark, Equatorial Guinea, Georgia, Greece, Indonesia, Jamaica, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, Papua New Guinea, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan. The Special Rapporteur is grateful for the information received.

4. Owing to restrictions, the Special Rapporteur has been obliged to reduce the details of responses; attention has been given to reflect information that specifically addresses the recommendations, and which has not been previously reported.

5. The Special Rapporteur notes that invitation to the Special Rapporteur to conduct follow-up country visits constitutes a good practice that should be replicated.

China

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to China in November 2005 (E/CN.4/2006/6/Add.6, para. 82)

6. On 22 November 2011, the Special Rapporteur sent the table below to the Government of China requesting information and comments on the follow-up measures taken with regard to implementation of the recommendations. The Special Rapporteur regrets that the Government has not responded to his request. He looks forward to receiving information on China's efforts to follow-up to the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

7. The Special Rapporteur remains concerned about the reports of excessive use and length of pre-trial detention, the lack of guarantees to challenge the lawfulness of detention and the continuing allegations about the use of forced labour as a corrective measures, ill-treatment of suspects in police custody, and harassment of lawyers and human rights defenders. He reiterates that the period of holding detainees in police custody should not exceed 48 hours, and that no detainee should be subjected to unsupervised contact with investigators. He regrets not having received information on the application of non-custodial measures and looks forward to receiving information on the use of alternative measures for non-violent or minor offences.

8. The Special Rapporteur expresses serious concern about the proposed amendments to China's Criminal Law Procedure, which is currently being considered by the National People's Congress, as it would permit the legalization of secret detention. He urges the Government to refrain from introducing the proposed amendment to China's Criminal Law Procedure as it will represent a major obstacle to its efforts to preventing torture and ill-treatment. The Special Rapporteur reminds the Government that detention in secret places facilitates the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.

9. The Special Rapporteur calls upon the Government to ensure that torture is defined as a serious crime as a matter of priority in accordance with Article 1 of the Convention against Torture, sanctioned with penalties commensurate with the gravity of torture and ensure that any statement which is established to have been made as a result of torture is explicitly excluded and is not invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.[1] This exclusionary rule is fundamental for upholding the absolute and non-derogable nature of the prohibition of torture by providing a disincentive to use torture.[2] It is imperative to ensure the inadmissibility of any extrajudicial statement that is not freely and promptly ratified before a court of law, and a specific prohibition of the use of extrajudicial statements even as "inferences" or "presumptions".

10. The Special Rapporteur calls upon the Government to consider ratifying the Optional Protocol to the CAT (OPCAT), establish an independent and effective complaints procedure for victims of torture, and make a declaration under article 22 of the CAT providing the Committee against Torture with the competence to receive and consider individual complaints.

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[1] See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15.

[2] A/HRC/16/52, para. 52

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a) The crime of torture should be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.	No explicit definition of torture in domestic legislation; the existing legislation relevant to the prohibition and criminalization of torture did not satisfy the requirements of art.1 and 4 of CAT; in particular, it lacked the following elements: - mental torture; - the direct or indirect involvement of a public official or another person acting in an official capacity; and - Infliction of the act for a specific purpose. The penalization of acts of torture was stipulated in art. 247 and 248 of the Criminal Law (CL), however a number of other regulations permit exceptions (see infra Rec c)).	***Non-governmental sources:*** It is reported that despite the introduction of new categories of offences relating to torture by the SPP, the definition of torture and the prohibition and criminalization of torture in Chinese law do not satisfy the requirements of Art. 1 and 4 CAT. It is reported that by including only a list of situations amounting to torture and ill-treatment, other torture methods risk to fall outside the law. Reportedly, in practice, the punishment against perpetrators of torture is very light in comparison to the gravity of the crime. It is alleged that it is still common that perpetrators of torture escape criminal punishment or any punishment at all. Reportedly, Chinese law, while criminalising torture, still fails to do so under a definition which conforms with international standards, in particular Article 1(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). Chinese law remains inadequate in three ways: Reportedly, the types of pain and suffering included within criminal law provisions for torture and other ill-treatment are insufficiently comprehensive and do not include mental pain and suffering. Articles 247 and 248 of the Chinese Criminal Code refer only the use of force or physical abuse. A definition in line with the Convention against Torture would capture the common practice, on the part of the Chinese authorities, of resorting to inflicting severe mental anguish on individuals held in detention. It is alleged that there has been frequent documentation of such treatment against human rights defenders, lawyers, and other political activists through threats and punishment of their family members, including house arrest, harassment, and infringement of rights of the wives and children of Chen Guangcheng and Liu	

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		Xiaobo, among others. It is alleged that the Government campaign of "transformation" of Falun Gong practitioners in detention, aimed at forcing them to submit and renounce their beliefs, and similar efforts to coerce Tibetans to denounce the Dalai Lama, are allegedly core features of the Government's campaign against those groups they perceive as subversive, and should also be viewed as a form of mental torture. Reportedly, the range of the purposes of torture is restrictive. Chinese laws and regulations refer most often to torture for the purpose of coercing a confession or collecting information, as in Article 43 of the Criminal Procedure Law which prohibits the extortion of confessions or obtaining evidence through torture. This reportedly does not extend to the use of torture for other purposes including "coercing him or a third person" which in the Chinese context would cover practices such as coercing an individual to abandon his or her beliefs, religious or otherwise, nor for "any other reason based on discrimination of any kind." It is alleged that this would, for instance, exclude the mental and physical torture aimed at coercing individual detainees to renounce their faith or denounce their religious leaders, such as the "transformation" of Falun Gong practitioners in detention, or coercion of Tibetan detainees to denounce the Dalai Lama. According to testimonies received by NGOs, the mental torture associated with this process is, for some individuals, worse than the physical torture they may have to endure. Reportedly, provisions criminalising torture and other ill-treatment in Chinese law are restrictive in that they do not include temporary or quasi-governmental actors or non-governmental actors operating with the complicity, consent or acquiescence of a public official. This reportedly precludes the expanding use	

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		of such personnel to inflict torture and other ill-treatment, including through the use of inmates to torture individuals in detention and the use of quasi-governmental personnel to beat up and intimidate human rights activists outside of detention. **Government:** In 2006, the Ministry of Justice issued regulations prohibiting torture and ill-treatment by specific categories of public officials, such as "Six prohibitions for prison guards", "Six prohibitions for Re-education Through Labour" (RTL), etc. - In the Regulations on Case-Filing Standards in Cases of Rights Infringement through Dereliction of Duty, the Supreme People's Procuratorate (SPP) lists several acts amounting to the crime of coercing a confession, such as beatings, binding, prolonged use of cold, hunger, exposure or scorching to abuse detainees, severely injuring suspects or leading a suspect to commit serious self-injury or directly or indirectly ordering others to use torture for the purpose of extracting a confession.	
b) All allegations of torture and ill-treatment should be promptly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.	According to Article 18 of the Criminal Procedure Law (CPL), the SPP is the mechanism responsible for investigating and prosecuting crimes committed by State functionaries. The Procurators are also mandated to monitor the police and prisons and exercise oversight functions. In his dual function of prosecution and monitoring the SPP is not an independent authority, as its primary interest is vested in	**Government:** The National Human Right Action Plan 2009-10 (NHRA) foresees the establishment and improvement of supervisory mechanisms for law enforcement and administration of justice by establishing responsibility and accountability systems. ***Non-governmental sources:*** It is reported that as of 2009, the Government rejects the release of concrete data about enforcement efforts and increased transparency in the criminal justice system. Reportedly, in most cases no effective investigations were conducted in torture cases documented by human rights organizations. It is alleged that if investigations were initiated, they failed to meet the	

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	convicting suspects as charged.	requirements of promptness, effectiveness and impartiality. The police, SPP and courts are reportedly not independent and remain under the supervision of the Chinese Communist Party, including through "Politics and Law Commissions".	
c) Any public official indicted for abuse of torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty pending trial, and prosecuted.	The Public Security Organs' Regulations on Pursuing Responsibility for Policemen's Errors in Implementing the Law and other regulations stipulated that "responsibility for 'errors', including forcing confessions or testimony will not be pursued where the law is unclear or judicial interpretations inconsistent" and allowed for a number of exceptions.	***Non-governmental sources:*** Perpetrators of torture are reportedly rarely suspended, indicted or held legally accountable. While there are reports of some public officials being prosecuted as a result of allegations of torture, such cases tend to be in high profile cases that have received considerable media attention. Reportedly, allegations of torture arising in politically sensitive cases seldom result in adequate investigation or prosecution. It is reported that individuals from politically targeted groups, including Uighurs, Tibetans, Falun Gong, democracy activists and human rights defenders, who allege torture or other ill-treatment in police custody or detention, are rarely able to pursue their case, and the authorities rarely open investigations into the allegations or bring the accused to justice.	
d) The declaration should be made with respect to art. 22 CAT recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the CAT.	No declaration has yet been made to recognize individual complaint procedure.	***Non-governmental sources:*** Reportedly, Chinese authorities have provided no public indication that they are engaged in serious discussion concerning making a declaration with respect to article 22 of the Convention against Torture, or that they have a plan for moving in this direction. The ability of the Committee against Torture to receive and consider communications regarding the cases of individuals who have suffered torture or other ill-treatment is critical given the weak mechanisms within China for individuals to pursue allegations of such violations.	
e)Those legally arrested should not be held in	The CPL gave public security organs broad discretion to	***Non-governmental sources:*** Reportedly, China's Criminal Procedure Law continues to allow the police	

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facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant or pre-trial detention, which normally should not exceed a period of 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators is permitted;	detain suspects for long periods in custody without judicial review. Coercive summoning (Juchuan) could be extended for up to 48 hours and the period of examination following formal arrest (Daibu) and prior to submitting the case to the Public Procuratorate for approval could take up to 7 days, and up to 30 days for suspects of organised crimes (Art. 69). Detention for the purpose of criminal investigation (Juliu) was generally possible for up to 14 days and could be prolonged for up to 37 days (Art. 61). Criminal detainees are held in detention centres (Juliusuo) under the jurisdiction of the Public Security Bureau (PSB).	and public security agents to hold suspects for long periods in custody without judicial review and under the supervision of the same authorities – the People's Procuratorate – responsible for preparing cases for prosecution. Suspects may be held up to seven days before the police submit a request to the People's Procuratorate for approval of their arrest. In the case of a "major suspect involved in crimes committed from one place to another, repeatedly, or in a gang", the time allowed for submitting a request for approval of arrest may reportedly be extended to 30 days. The People's Procuratorate then has seven days from the time of receiving the written request for approval of arrest to decide on the request. It is alleged that after arrest, criminal suspects may be held for up to two months for investigation, and in "complex cases" this may be extended for an additional month, with the approval of the People's Procuratorate at the next higher level. In "particularly grave and complex cases" the Supreme People's Procuratorate must submit a report to the standing committee of the National People's Congress for approval of postponing the hearing of the case. Other types of "grave" cases may also be extended for two months. Others factors, including if the criminal suspect did not provide his or her real identity, and if the police discover an additional crime which the suspect is believed to have committed, allow the authorities to extend the period of detention. - It is reported that this situation creates a conflict of interest as the same authorities are responsible for interrogating suspects and gathering evidence in support of prosecutions and also for monitoring places of detention and the conduct of police and public officials. - Reportedly, regulations recently issued by the Supreme People's Procuratorate and Ministry of Public Security may enhance the utility of the	

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		procuratorate's approval of arrest as a mechanism to prevent torture.[3] The regulations oblige the procuratorate to hear and question suspects directly when making the assessment in five circumstances, including when the suspect asks to be heard, is underage, or there are clues or evidence that torture or other unlawful means were used during initial police investigations. Previously such direct hearings could only take place in major cases where the evidence against the suspect was questionable. - It is reported that in practice individuals are often held in police detention for periods longer than allowed for by law prior to and following arrest. It is reported that during this time, which in some cases may last in excess of a year and for some many years, individuals may not be able to hire a lawyer, may not have access to their family, and with family members not even being informed of their whereabouts. - Amendments to the State Compensation Law adopted in April 2010, to take effect in December 2010 also provide (Article 17) that those illegally detained or detained beyond the time limits stipulated in the Criminal Procedure Law and subsequently are not prosecuted or are acquitted, have the right to compensation. - It is reported that in the last few years numerous cases of death in custody as well as the numerous miscarriages of justice resulting from confessions coerced through torture and other ill-treatment were reported in the Chinese media, leading to a public outcry within the country. This reportedly led the Supreme People's Procuratorate and the Ministry of Public Security to carry out an inspection campaign	

[3] Supreme People's Procuratorate, Ministry of Public Security, "Regulations on Questioning Criminal Suspects in the Approval of Arrest Phase". Issued on 31 August 2010, effective from 1 October 2010. Available at http://florasapio.blogspot.com "Criminal suspects – hearing - arrest approval".

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		dealing with the regulation and law enforcement of detention facilities throughout China. In April 2009, the SPP stated that there had been 15 unexplained deaths in custody to date that year. - Reportedly, there are dozens of reports of deaths in custody received by NGOs – many from politically sensitive groups including Uighurs, Falun Gong, Tibetans, and petitioners -- suggest that the cases reported on by the media and acknowledged by the authorities are likely to be only a small proportion of the total. - The above-mentioned amendments to the State Compensation Law include measures aimed at strengthening the legal framework to address deaths in custody. Previously, the burden of proof that the death had been caused by "negligence" rested on the family that lodged the complaint. Now the revised law requires compensation to be paid if an individual in detention is found dead or incapacitated and the detention centre or prison fails to provide evidence that the death was not caused by "negligence" on the part of the authorities. ***Non-governmental sources 2009:*** It is reported that as of 2009, no steps had been taken to change the CPL and stop the practice of excessive periods of pre-trial detention. ***Non-governmental sources 2008:*** It is reported that extensive time periods specified for summons, formal arrest by the police, approval of the arrest by the procuratorate, and special arrangements for some categories of suspects remained in force. It is alleged that suspects could still be held legally in police custody for up to 37 days prior to approval by the procuratorate.	
f) Recourse to pre-trial detention in the Criminal Procedures Law should be restricted, particularly for	Upon approval by the procuratorate, suspects could be held for up to a total of seven months in investigative	***Non-governmental sources:*** Reportedly, pre-trial detention continued to be applied excessively and for prolonged periods; in cases involving State Secrets, detention could be indefinite. During the pre-trial	

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non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased.	detention by the police (Daibu), which could be extended by the procuratorate for up to six and a half months or, in the case of the discovery of new crimes, indefinitely.	phase, suspects remained in detention centres under the authority of the PSB. **Government 2008*:*** The SPP placed extended detention in criminal cases within the sphere of oversight of the people's supervisors, which led to a reduction of the use of extended pre-trial detention.	
g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus.	China's domestic legislation did not provide for habeas corpus or any other legal recourse to challenge arrest and pre-trial detention before an independent court.	**Government:** Under the NHRA, effective steps shall be taken to guarantee the lawful, timely and impartial trial of all cases. ***Non-governmental sources:*** Reportedly, no steps to guarantee prompt judicial review before an independent judicial authority of the lawfulness of the arrest have been taken. It is alleged that the courts are not independent and remain politically controlled. The use of administrative detention at the discretion of the police and without legal procedure, such as house arrest and detention in 'black sites' remain widespread. It is alleged that the use of black jails was systematically applied against petitioners during the Olympic Games and its preparations.	
h) Confessions made without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence. Video and audio taping of all persons present during proceedings in interrogation rooms should	- Article 43 of the CPL prohibited the extortion of confessions by torture or the threat of torture, but not the use of confessions extracted through torture as evidence before courts. - The Supreme People's Court held in 1999 that evidence and	***Non-governmental sources:*** It is reported that on 25 June 2010, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued two regulations regarding evidence in criminal cases; one dealing with the exclusion of confessions extracted through torture, and the other dealing with the exclusion of illegal evidence in capital cases which came into force from 1 July 2010.[4] These regulations have been	

[4]"The regulations are "Rules Concerning Questions About Exclusion of Illegal Evidence in Handling Criminal Cases", and "Rules Concerning Questions About Examining and Judging Evidence in Death Penalty Cases." (According to the 13 June Notice from the various ministries

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be expanded throughout the country.	confessions obtained through torture could not form the basis of a criminal charge, however it did not exclude their admissibility in judicial proceedings. - The Government has acknowledged the pervasiveness of torture for the purpose of extracting confession and the SPP announced in 2005 that eliminating confession through torture was among its priorities. - Piloting systems of audio and video recording in interrogation rooms had been started.	interpreted by international and Chinese legal scholars as marking a positive step in that they underscore the seriousness with which national-level authorities view the problem of illegally obtained evidence. However, given past history the real test will be the effective implementation of the new regulations by local courts. - It should be noted that the regulations cover evidentiary rules within formal criminal proceedings only, and not within the many forms of administrative detention. - Also of concern is the absence of clear standards for the assessment of evidence. Article 6 provides that if a defendant or his or her defence counsel allege that the defendant's pre-trial confession was obtained illegally "the court shall request that he or she provide relevant leads or evidence with respect to the alleged illegal obtaining of evidence, such as the person(s), time, place, manner, and content.". It reportedly does not specify which of these are necessary and/or sufficient for the court to make a determination for the defendant's claim. Article 7 is similarly unclear regarding the nature of the evidence that is necessary and/or sufficient for a prosecutor to provide to show the court that a confession was in fact obtained legally. - Of further concern is the length of time by which a prosecutor may delay a trial for further investigation or in order to obtain additional evidence to demonstrate that a confession was obtained legally. The articles in question, articles 7, 8 and 9, do not specify time limits for such postponement. Moreover, the court is required to agree to such a postponement requested by the prosecutor. If the defence makes a	

introducing the regulations, the Death Penalty rules may also be used as a reference in handling other criminal justice cases). The Dui Hua Foundation has translated these into English at Http://www.duihua.org/hrjournal/evidence/evidence.htm

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		similar request for postponement, the court has discretion to agree "if it deems it necessary". (Article 9). - The conditions under which the appeals court, or court of second instance, is required to investigate a defendant's claim that a pre-trial confession was obtained illegally also appear limited. Article 12 provides for courts of second instance to investigate a defendant's claim, but it is only obliged to do so if the court of first instance did not investigate the allegation and used the confession as the basis of the conviction. This may conflict with China's Criminal Procedure Law which requires courts of second instance to conduct a full review of all facts.[5] - The Rules concerning Death Penalty cases stipulate that "only evidence that has been examined and verified to be true through an investigation process in court involving presentation, identification and cross examination may be used as a basis for conviction and determining sentence"(Article 4). However, it appears such scrutiny will not apply to evidence collected using "special investigative measures" (shanggui, opaque methods employed in counter-terrorism, state security, or other "complex cases"). Under Article 35, such evidence may serve as a basis for conviction "if the court has verified it to be true" which it must do without revealing the methods employed by the special investigators. This is in direct contravention of the legal principle that statements obtained by torture must be rejected as evidence on principled grounds, irrespective of the aspect of reliability. The Rules concerning Death Penalty cases reinforce	

[5] Article 186 of the CPL states "A People's Court of second instance shall conduct a complete review of the facts determined and the application of the law in the judgement of first instance and shall not be limited by the scope of appeal or protest."

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		that neither a defendant's declaration obtained through illegal means such as coercing confession, nor witness statements obtained through violence, threats and other illegal means may serve as the basis for conviction (articles 19 and 12). - It is alleged that in practice, Criminal Law Article 306, and other administrative sanctions impose significant additional constraints on lawyers considering mounting a defence based on allegations of torture. Article 306 provides criminal liability and imprisonment of up to seven years for defence counsel who coerce or entice witnesses to "change testimony in defiance of facts or give false testimony", a charge which has been made against defence lawyers who allege that evidence used by the prosecution was obtained through torture, thus deterring the pursuit of such allegations. ***Non-governmental sources 2009:*** Reportedly, there is no right to access a lawyer before the initial interrogation. It is reported that the use of evidence obtained through torture remains admissible and is still being used in judicial proceedings. The police reportedly retain full control over the recording and the disposal of the video material which has led to videotapes in alleged torture cases to go "missing". **Government:** Art. 96 of the CPL provided for access to a lawyer after initial interrogations. In 2006, the Public Order Administration Punishment Law of the National People's Congress Standing Committee Article entered into force, which prohibited the use of evidence obtained by torture as the basis of a criminal charge (art. 75). The same year the SPP announced the nationwide implementation of audio-video recording of interrogations of criminal suspects in the procuratorates by the end of 2007.	
i) Judges and prosecutors	While Chinese law and prison	**Government:** Under the NHRA, a system of	

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should routinely inquire of persons brought from police custody how they have been treated and in any case of doubt (and even in the absence of a formal complaint from the defendant), order an independent medical examination.	detention regulations cover medical care for detainees quite comprehensively, none of the provisions establish the prisoners' rights to independent medical examinations.	conducting a physical examination of detainees before and after the interrogation shall be established and promoted. ***Non-governmental sources:*** Reportedly, no significant steps have been taken since the visit. - The right to access to medical care provided for by law is reportedly denied for many human rights defenders as a form of punishment. Courts have been reported to frequently ignore torture allegations by defendants.	
j) The reform of the CPL should conform to fair trial provisions, as guaranteed in art. 14 of ICCPR, including the following: - the right to remain silent and the privilege against self-incrimination; - the effective exclusion of evidence extracted through torture; - the presumption of innocence; - timely notice of reasons for detention or arrest; - prompt external review of detention or arrest; - timely access to counsel; - adequate time and facilities to prepare a defence; appearance and cross-examination of witnesses; and - Ensuring the independence and impartiality of the judiciary.	- The CPL was not in conformity with international fair trial standards (e.g. it did not provide for the right to remain silent and privilege against self-incrimination); - The Rules on the Handling of Criminal Cases by Public Security Authorities permitted exceptions to the 24 hours time period for family notification; - Extensive periods of police custody permitted by law, no independent judicial review of arrest and detention; - Article 96 of the CPL provides for access to a lawyer only after the first interrogation; - Lack of independence of the judiciary; - Presumption of innocence not respected; and - Access to a lawyer and the right to defence was severely limited.	**Government:** According to the NHRA, the State encourages the revision and abolition of laws, regulations and regulatory documents inconsistent with the Lawyers Law to guarantee the right to legal counsel. ***Non-governmental sources:*** It is alleged that there continue to be numerous ways in which China's CPL, police, procuratorates and court practices fail to conform with international fair trial standards, and recent legal and regulatory amendments fail to address many of these failings. Reportedly: - There have been no legal amendments, enacted or proposed, that would guarantee the right to remain silent; - There have been no legal amendments, enacted or proposed, that would grant to suspects a presumption of innocence, or that places the burden of proof on the prosecution; - Right to counsel remains restricted: - Suspects are not allowed to meet with their lawyer until after their first interrogation by police; - Lawyers still need to give notice to the police before meeting with their clients and the police have up to 48 hours to make the necessary arrangements; - In "serious and complicated" cases, a meeting with counsel may take place up to five days after an application is made;	

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		- Police retain the discretion to be present during meetings between lawyers and their clients, according to "necessity and circumstances"; - In cases involving "state secrets", the CPL requires that the appointment of a lawyer and meetings between lawyers and clients are approved by the "investigative organ"; - The revised State Secrets Law (SSL) from 2010 fails to make provisions for the right of defendants suspected of a "state secrets" crime to access their lawyer.[6] - In more than a dozen cases investigated by NGOs, Falun Gong practitioners were either told they were not allowed to hire a legal counsel of their choice due to the nature of their case, or were not permitted access to their chosen or appointed lawyer without permission of the police or security organs. Lawyers who represent, or seek to represent Falun Gong practitioners, have come under intense harassment and intimidation by the authorities, and two had their licences permanently revoked in 2010 after walking out in protest at irregularities during a trial of a Falun Gong practitioner. - In many other politically sensitive cases investigated by NGOs lawyers are intimidated and harassed, pressurized not to represent politically sensitive groups such as Tibetans, Uighurs and Falun Gong practitioners and prevented from seeing their clients or accessing necessary documents to mount a full defence. While the revised CPL of 1997 provides that People's Courts are to "exercise judicial power independently in accordance with law", the proceedings of local courts are routinely interfered with by local political	

[6] The Standing Committee of the National People's Congress adopted revisions to the State Secrets Law on April 29, 2010.

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		authorities, seriously compromising judicial independence. ***Non-governmental sources 2009:*** It is reported that the unconditional right of confidential access to a lawyer after initial interrogation (Lawyers Law) makes an exception for cases involving State secrets. The law contradicts the broad restrictions of legal counsel in the CPL. It is alleged that the vague concept of State Secret was used extensively and arbitrarily to deny access to legal representation, access to case files and to hold trials in camera.	
(k)The power to order or approve arrest and supervision of the police and detention facilities of the procurators should be transferred to independent courts	There is no provision under Chinese law for individuals to be brought promptly before an independent judicial authority to assess the lawfulness of the detention. Decisions over an extension of custody and pre-trial detention rested with the Public Procuratorate.	***Non-governmental sources 2008:*** Reportedly, the Public Procuratorate remains in charge of decisions over extending police custody and pre-trial detention.	
l) Art. 306 of the Criminal Law, according to which any lawyer who counsels a client to repudiate a forced confession, for example, could risk prosecution, should be abolished.	Together with art. 38 of the CPL, which made "interfering with the proceedings before judicial organs" an offence, article 306 of the CL could be invoked to harass, intimidate and sanction lawyers.	***Non-governmental sources:*** Art. 37 was added to the newly amended Lawyers Law stating that lawyers are not legally responsible when acting on behalf of their clients or speaking for a defendant. Reportedly, this does not apply to lawyers "whose speech endangers the national security, or who maliciously slanders others and seriously disturbs the order of the court". It is reported that Art. 306 CL and 38 CPL continue to be used to intimidate lawyers and impede their efforts to defend clients and take on sensitive cases. - The repression and harassment of lawyers who take on "sensitive" cases has reportedly increased. In May 09, 18 lawyers, handling some of the most important human rights cases in 2008, lost their licenses. By the end of August, six cases of attacks on lawyers or their involvement in "accidents" were reported. Several	

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		lawyers have been targeted, detained and convicted (e.g. for 'tax evasion').	
m) The OPCAT should be ratified, and a truly independent monitoring mechanism be established – where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal – to visit all places where persons are deprived of their liberty throughout the country.			
n) Systematic training programmes and awareness-raising campaigns on the principles of the CAT for the public at large, public security personnel, legal professionals and the judiciary.		***Non-governmental sources:*** It is reported that the previously conducted 'in-house' education campaigns have not yielded appreciable results in the past. China has not fulfilled the obligation to widely educate its employees and citizens about human rights and the prohibition of torture. It has furthermore blocked access of civil society actors to information and human rights training courses. Websites reporting on human rights violations are reportedly blocked, censored or closed down by the authorities.	
o) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.	The Law on State Compensation guaranteed the right to compensation for losses suffered through infringements of civil rights by any State organ or functionary, but it contained an exception clause for criminal cases where confessions were "intentionally fabricated" or other "evidence of guilt" was falsified.	**Government:** According to the NHRA, the economic compensation, legal remedies and rehabilitation to victims shall be improved. ***Non-governmental sources:*** It is reported that most victims of torture have not received any compensation or only small amounts.	
p) Death row prisoners	At the Beijing Municipality	***Non-governmental sources:*** Reportedly, death row	

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should not be subjected to additional punishment such as being handcuffed and shackled.	Detention Centre, death row prisoners awaiting appeal were handcuffed and shackled with leg irons for 24 hours a day and in all circumstances.	prisoners were denied final farewell visits by their families.	
q) The restoration of Supreme People's Court (SPC) review for all death sentences should be utilized as an opportunity to publish national statistics on the application of the death penalty.	The SPC restored its power of review in October 2005.	***Non-governmental sources***: It is reported that China continues to refuse to release national statistics on the application of the death penalty classifying such information as "state secrets". It is estimated that there have reportedly been more than 5,000 executions in 2008. Other observers estimate that death sentences were reduced by half since the review was returned to the SPC. In the absence of public statistics, it is impossible to verify the accuracy of such numbers. The appeal process in death penalty cases remains closed to outside observers. - Plans to implement the full audio-visual recording of appellate court proceedings in death penalty cases were announced.	
r) The scope of the death penalty should be reduced, e.g. by abolishing it for economic and non-violent crimes.	Chinese law provided for the death penalty in relation to a wide range of offences that did not reach the international standard of "most serious crimes"; among the more than 60 capital offences, there were many economic and other non-violent crimes.	***Non-governmental sources:*** The SPC was reportedly working on a judicial interpretation of "the most serious and vile" crimes, for which the death penalty should be applied exclusively. ***Non-governmental sources 2009:*** It is reported that the number of capital offences remains the same. It is alleged that the Government still executes persons for non-violent, political crimes and there are no indications that the practice may change.	
s) Political crimes that leave large discretion to law enforcement and prosecution authorities such as "endangering national security", "subverting State power", "undermining the unity of the country",	The replacement of the crimes "counter-revolution" and "hooliganism" in 1997 with vaguely defined crimes in the CL left their application open to abuse, particularly against the peaceful exercise of the fundamental freedoms of	***Non-governmental sources:*** It is reported that China's use of a set of crimes that fall under the broad category of "endangering state security" has risen dramatically in the last couple of years, in a trend that goes sharply against the recommendation by the Special Rapporteur. - It is reported that according to the 2009 China law Yearbook, 1,712 individuals were arrested and 1,407 indicted for crimes related to "endangering state	

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"supplying of State secrets to individuals abroad" etc. should be abolished.	religion, speech and assembly.	security" in 2008, up from 742 arrested and 619 indicted in 2007. It is reported that on July 13, China's SPC issued detailed statistics regarding the handling of various categories of criminal offenses. According to these statistics the number of first-instance trials concluded involving "endangering state security (ESS) rose to around 760 in 2009, from around 460 in 2008.[7] The SPC report also stated that the proportion of individuals charged with "endangering state security" crimes that received heavy sentences—defined as a prison term of five years or more, life imprisonment, or a death sentence (including suspended death sentence) rose by 20 percent in 2009. - Concern is raised in particular regarding the impact of the increased use of "endangering State security" and other political crimes to charge and convict ethnic minorities for alleged "splittist" activities, particularly in the context of the unrest in both the Tibet Autonomous Region and the XUAR in 2008 and 2009. According to information published in the Xinjiang Yearbook, from 1998 to 2003, more than half of all trials involving the charge of "endangering state security" were adjudicated in the XUAR. - According to the report of the president of the XUAR Higher People's Court in January 2010, there was an increase from 268 in 2008 to 437 cases of "endangering state security" adjudicated in the XUAR, an increase of 63%. Sentences of at least 10 years in prison, life imprisonment or the death penalty had reportedly been imposed on 255 individuals.[8]	

[7] This category includes crimes such as "subversion", "illegally providing state secrets to overseas entities", "splittism", and espionage.

[8] For information about Uighurs and other ethnic minorities charged and sentenced for crimes of "endangering state security", see Uighur journalist detained, risks torture (Index: ASA 17/060/2009, 30 October 2009, available online at: http://www.amnesty.org/en/library/info/ASA17/060/2009/en); Tibetan film-maker may face unfair trial, Dhondup Wangchen (Index: ASA

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		- Reportedly, there has also been significant use of the charge of "inciting subversion of state power" against human rights defenders involved in peaceful advocacy and active use of legal avenues for redress of violations including torture and ill treatment.[9] ***Non-governmental sources 2009:*** It is reported that the Government has taken no steps towards the abolition of political crimes. It is alleged that many people are still detained and sentenced for crimes such as "endangering state security" (ESS). It is reported that the specific targeting of human rights lawyers has increased (see supra, recommendation j). In addition, political prisoners face discrimination in the sentence reduction and parole process. While a 1997 notice by the SPC prescribes to handle their cases "strictly", notices issued by municipal and provincial high courts have shown to prohibit parole for ESS prisoners. According to an analysis of Government information released in its human rights dialogues, the rate of sentence reduction for ESS prisoners is roughly 50% lower than for other prisoners.	
t) All persons who have been sentenced for the peaceful exercise of freedom of speech, assembly, association and religion, on	Despite the revision of the CL in 1997, political dissidents sentenced before 1997 continued to serve long prison sentences for "hooliganism"	***Non-governmental sources:*** Reportedly, no steps have been taken to release prisoners sentenced for the non-violent exercise of their rights.	

17/033/2009,17 July 2009, available online at: http://www.amnesty.org/en/library/info/ASA17/033/2009/en); Uighur website editor at risk of torture (Index: ASA 17/056/2009, 30 September 2009, available online at: http://www.amnesty.org/en/library/info/ASA17/056/2009/en).

[9] For further reference regarding human rights defenders detained and charged on charges of China must ensure adequate care for activist: Hu Jia (Index: ASA 17/013/2010, 12 April 2010, available online at: http://www.amnesty.org/en/library/info/ASA17/013/2010/en); Chinese democracy activist detained: Liu Xianbin (Index: ASA 17/028/2010, 5 July 2010, available online at: http://www.amnesty.org/en/library/info/ASA17/028/2010/en); Fear of Torture and Other Ill-Treatment: Tan Zuoren (m) (Index: ASA 17/014/2009, 2 April 2009, available online at: http://www.amnesty.org/en/library/info/ASA17/014/2009/en).

Recommendation (E/CN.4/2006/6/Add.6)	*Situation in during visit in 2005 (See E/CN.4/2006/6/Add.6)*	*Steps taken in previous years (See A/HRC/4/33/Add.2, A/HRC/7/3/Add.2, A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
the basis of vaguely defined political crimes, both before and after the 1997 reform of the CL, should be released.	and other non-violent offences After the 1997 changes, political dissidents, journalists, writers, lawyers, human rights defenders, Falun gong practitioners and members of the Tibetan and Uighur ethnic, linguistic and religious minorities continued to be prosecuted for peacefully exercising their human rights on the basis of vaguely defined crimes and sentenced to long prison terms.		
u) "Re-education through Labour" and similar forms of forced re-education in prisons, pre-trial detention centres and psychiatric hospitals should be abolished.	RTL and other forms of administrative detention had been used for many years against political groups, Falun Gong practitioners and human rights defenders, accused of politically deviant and dissident behaviour, disturbance of the social order or similar petty offences. Some of these measures of re-education through coercion, humiliation and punishment were aimed at altering the personality of detainees up to the point of breaking their will.	***Non-governmental sources:*** The discussions on RTL in the National People's Congress have not yielded official results. However, the available statistical data suggest that the use of RTL is declining, partly due to the sending of drug-related offenders to "coercive quarantine for drug rehabilitation (CQDR)", a new form of administrative detention for drug addicts initiated under the new Drug Prohibition Law (effective 1 June 08). Concerns over the treatment of drug users and persons with HIV/AIDS in administrative detention have been raised.	
v) Any decision regarding deprivation of liberty must be made by a judicial and not administrative organ.	RTL and other forms of forced re-education in administrative detention were solely based on administrative regulations and decisions without judicial control over the deprivation of	***Non-governmental sources:*** It is reported that punitive administrative detention and RTL continue to be used to supplement formal criminal sanctions, without judicial oversight or access to a judge. In addition, the increasing use of house arrests and alleged black detention sites places detainees outside	

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	liberty.	both the judicial and administrative oversight mechanisms.	
w) The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including the UNOHCHR, for assistance in the follow-up to the above recommendations.			

Denmark

Follow-up Report to the Recommendations made by the Special Rapporteur on Torture (Manfred Nowak) in the report of his visit to Denmark from 2 March to 9 May 2008 (UN Doc. A/HRC/10/44/Add.2)

11. By letter dated 22 November 2011, the Special Rapporteur sent the table below to the Government of Denmark, requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations. The Special Rapporteur regrets that the Government has not responded to his request. He looks forward to receiving information on Denmark's efforts to follow-up to the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

12. The Special Rapporteur takes note of Denmark's responses provided to the recommendations[10] made in the course of its Universal Periodic Review on 2 May 2011. The Special Rapporteur trusts that the definition of torture, as covered by the existing provisions of the Danish Criminal Code, is in full conformity with the Convention against Torture, by which torture is defined as a serious crime, sanctioned with penalties commensurate with the gravity of torture.

13. On the issue of the continued practice of solitary confinement, the Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and psychological adverse effects on individuals regardless of their specific conditions. He defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.[11]

14. The Special Rapporteur encourages the authorities to ensure that detained persons held in solitary confinement are afforded genuine opportunities to challenge both the nature of their confinement and its underlying justification through the courts of law. This requires a right to appeal all final decisions by prison authorities and administrative bodies to an independent judicial body empowered to review both the legality of the nature of the confinement and its underlying justification. Thereafter, detained persons must have the opportunity to appeal these judgements to the highest authority in the State and, after exhaustion of domestic remedies, seek review by regional or universal human rights bodies.[12]

15. The Special Rapporteur welcomes the implementation by the Danish Parliament of the Directive 2008/115/EF of the European Parliament and the Council on common standards and procedures in Member States for returning third-country nationals illegally staying in member States, which sets an absolute limit to the length of detention of foreigners pending deportation. He expresses concern about the reports indicating that many asylum seekers continue to remain detained in Ellebæk for long periods of time and in excess of the 6-month period prescribed in the EU Directive 2008/115/EF. The Special Rapporteur is concerned that many of those individuals who are victims of trafficking, mentally ill or torture victims, are reportedly subjected to unduly long waiting periods and are allegedly held in solitary confinement.

[10] A/HRC/18/4/Add.1, 13 September 2011.
[11] A/66/2685 August 2011, para. 79.
[12] A/66/268, 5 August 2011, para 98.

16. On the issue of diplomatic assurances, the Special Rapporteur welcomes the June 2011 decision of the High Court of Denmark, upholding the decision of Hillerød Court not to permit extradition on the grounds that diplomatic assurances. He further welcomes Denmark's assurances that pursuant to section 31 in the Danish Aliens Act a foreigner may not be returned to a country where he/she will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the foreigner will not be protected against being sent on to such a country. The safeguard against refoulement is absolute.[13]

17. The Special Rapporteur notes that the Government did not accept the UPR recommendation to assess in an open and transparent manner the consequences of flights conducted over Danish territory.[14] He reiterates his previous recommendation to ensure that investigations into alleged CIA rendition flights using airports in Denmark including Greenland are carried out in an inclusive and transparent manner.

[13] A/HRC/18/4/Add.1, footnote 96.

[14] A/HRC/18/4/Add.1, recommendation 106.132.

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years and (See A/HRC/13/39/Add.6; A/HRC/16/52/Add.2A)*	*Information received in the reporting period*
(a) Incorporate a specific crime of torture in the criminal law.	Section 157 (a) of the Criminal Code referred to torture as aggravating circumstance in relation to existing crimes and increased the maximum penalties for such acts.	**Government:** The Committee on Criminal Law has thoroughly assessed the need for the adoption of a specific provision on the crime of torture in Danish criminal law. It did not recommend this mainly due to the fact that all acts considered to be covered by Art. 1 CAT, are covered by existing provisions of Danish criminal law. The current legislation – including the provision in Section 157 (a) of the Criminal Code is a sufficient and adequate response to the need to criminalize torture. ***Non-governmental sources:*** The Minister of Justice re-affirmed that the position of the Government, expressed in para 157 (a) of the Danish Criminal Code, considering torture as an aggravating circumstance, but not as a specific crime, remains unchanged. **Government:** The status has not changed.	***Non-governmental sources:*** The situation remains unchanged. Several politicians have expressed an interest in working for the inclusion of a specific crime of torture in the Danish criminal law. On 1 July 2011, Denmark formally communicated to the Working Group of the UPR that it had accepted the UPR recommendation to ensure that all acts of torture are specific offences under its criminal law. Denmark considers that all acts of torture are cirminalized in the Danish Criminal Code, thus implying that there is no need for a specific crime of torture in the criminal code.
(b) Further reduce the use of solitary confinement, based on the unequivocal evidence of its negative mental health effects upon detainees.	Solitary confinement of remand prisoners on the basis of a court decision was used to isolate suspects during criminal investigations in pre-trial detention, whereas administrative solitary confinement (reduced or total exclusion from association with other detainees) may be imposed on remand and convicted prisoners on the basis	***Non-governmental sources:*** In 2009, there was no new legislation concerning solitary confinement. The statistics for 2008 were not available. **Government:** A report from the Danish Director of Public Prosecutions from 31 October 2008 shows that there has been a significant decrease in the use of solitary confinement of remand prisoners in 2007 compared to previous years. The total number of days remand prisoners were in solitary confinement was 13.838 in 2006 and	***Non-governmental sources:*** Reportedly, administrative solitary confinement imposed on remand prisoners and convicted prisoners cannot be appealed to independent judicial review, but only appealed administratively to the Prison Directorate and ultimately the Minister of Justice. In addition, there is no upper limit to the extent of this measure, nor is the person subjected to this measure entitled to access to the information that

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years and (See A/HRC/13/39/Add.6; A/HRC/16/52/Add.2A)*	*Information received in the reporting period*
	of an administrative decision by the prison authorities as a punishment for disciplinary infractions; Solitary confinement of remand prisoners based on a court decision was strictly restricted to situations where there are specific reasons to presume that the accused will impede the prosecution of the case; Administration of Justice Act contains no provisions according to which solitary confinement can be imposed following a court decision, the decision to exclude a prisoner from association with others is to be made after having presented the case to the legal staff of the Chief Constable's office; Instances where pre-trial detainees reported that the police used the threat of extending solitary confinement to coerce detainees to cooperate in an investigation.	7.189 in 2007, a decrease of 48%.[15] A report from the Danish Prison and Probation Service shows that the number of solitary confinements imposed as punishment for disciplinary infractions has decreased from 715 persons in 2006 to 631 persons in 2007.[16] ***Non-governmental sources:*** No new legislation has been adopted regarding solitary confinement since 2007. - On 30 March 2010, the Ministry of Justice received a report from the Director of Public Prosecutions on the use of solitary confinement in 2008, according to which: i. The total number of cases of solitary confinement has increased 20% from 273 cases in 2007 to 327 cases in 2008, while the average duration of solitary confinement decreased from 27 days in 2007 to 21 days in 2008. ii. Four persons under the age of 18 were placed in solitary confinement. iii. Solitary confinement was used in 5,3% of all instances of pre-trial detention. In approximately 91% of the cases it was used in relation to serious criminal offences. - On 1 June 2010, the amendment of the Criminal Code lowering the age of criminal liability from 15 years to 14 years, could potentially impact on the use of solitary	forms the basis for the decision. The measure can be imposed on prisoners on suspicion that they are pressuring or threatening other inmates, but evidence to substantiate such suspicions does not have to be presented or procured.

[15] Anvendelsen af varetægtsfængsling i isolation i 2007, Rigsadvokaten, journal no. RA-2007-120-0037, available in Danish at http://www.justitsministeriet.dk/fileadmin/downloads/Pressemeddelelser2008/redegoerelse_isolation.pdf (20.08.2009)

[16] Statistik 2007, Kriminalforsorgen [*Danish Prison and Probation Service*], available in Danish at: http://www.kriminalforsorgen.dk/publika/Statistik%202007/html/default.htm (20.08.2009)

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years and (See A/HRC/13/39/Add.6; A/HRC/16/52/Add.2A)*	*Information received in the reporting period*
		confinement of persons under the age of 18 years. - Although the Government acknowledged the need to decrease the number and duration of solitary confinement, it continues to use solitary confinement to secure the criminal investigation in serious offences, such as organized crime, gang crime, severe drug crime and terrorism. **Government:** According to the report of the Danish Ministry of Justice from June 2009[17], from 2004 to 2007, there has been some decrease in the use of solitary confinement of remand prisoners with significant decrease registered during the period of 2006-2007 and an increase in the number of remand prisoners in solitary confinement registered in the period of 2007-2008. The average length of solitary confinement has decreased in recent years. The total number of days remand prisoners were held in solitary confinement was 13.838 in 2006, 7.189 in 2007 and 6.910 in 2008. In 2008, the total number of days remand prisoners were in solitary confinement was the lowest since the registration started in 2001. A report from the Danish Prison and Probation Service[18] shows that the number of persons excluded from association with other detainees was 715 in 2006 and 631 in 2007. 704 persons were excluded from	

[17] Statistik om isolationsfængsling, juni 2009, Justitsministeriets Forskningskontor [Ministry of Justice], available in Danish at: http://www.justitsministeriet.dk/fileadmin/downloads/Forskning_og_dokumentation/Isolationsrapport%202008.pdf

[18] Statistik 2009, Kriminalforsorgen [Danish Prison and Probation Service], available in Danish at: http://www.kriminalforsorgen.dk/Admin/Public/Download.aspx?file=Files/Filer/Statistik/Statistik_2009.pdf

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years and (See A/HRC/13/39/Add.6; A/HRC/16/52/Add.2A)*	*Information received in the reporting period*
		association with other detainees in 2008 and in 2009 the number increased to 788. The Danish Ministry of Justice is currently reviewing the recommendations issued by a working group under the Danish Prison and Probation Service in 2010 on limiting the use and duration of exclusion from association with other detainees.	
(c) set an absolute limit to the length of detention of foreigners pending deportation, and review the practice of habeas corpus under section 37 of the Aliens Act.		***Non-governmental sources:*** There was no amendment to the Aliens Act concerning a maximum limit to the length of deprivation of liberty for foreigners pending deportation. A bill amending the Aliens Act was adopted in Dec.08. The bill states that, unless there are particular reasons against it, the Danish authorities should instruct illegal immigrants who cannot be deported to take residence at asylum centre Sandholm and report to the local police at specific times.[19] **Government:** By 5 November 2009, 45 aliens were detained in Ellebæk of which 18 were waiting to be returned or deported. 31 aliens who had been expelled and who are awaiting an effectuation of the decision of expulsion were remanded in custody. Furthermore, the National Commissioner of Police, Aliens Department, took over 27 cases of aliens who have been detained or remanded in custody in order to be deported from the local police districts. In a majority of these 58 cases, detention will therefore only be for a short period of time. The Directive 2008/115/EF of the EU	***Non-governmental sources:*** On 22 March 2011, the Danish Parliament implemented Directive 2008/115/EF of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals. This included time limits for detention (six months and an additional 12 months where there may be lack of cooperation by the third-country national or delays in obtaining the necessary documentation from third countries, in line with the EU Directive rules). Many asylum seekers continue to remain detained in Ellebæk for long periods of time and longer than the 6-month period prescribed in the EU Directive 20080/115/EF. Reportedly, many of those individuals are victims of trafficking, mentally ill or torture survivors. It is alleged that in addition to being held in solitary confinement, they are handcuffed and

[19] Act no. 1397 of 27.12.2008 om ændring af udlændingeloven [Act amending the Aliens Act]; available in Danish at: https://www.retsinformation.dk/Forms/R0710.aspx?id=122943 (20.08.2009)

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		Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals establishes rules concerning the maximum length of detention. According to article 15 (5), each member state shall set a limited period of detention, which may not exceed six months. According to article 15 (6) member states may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where, regardless of all their reasonable efforts, the removal operation is likely to last longer owing to: - a lack of cooperation by the third-country national concerned, or - delays in obtaining the necessary documentation from third countries. Denmark decided to implement the directive on an intergovernmental basis and informed the Council thereof. The necessary changes to the Danish Aliens Act are expected to be proposed to Parliament in 2010. ***Non-governmental sources:*** Although the Aliens Act was amended twice in 2009, no absolute time limit has been established for the length of detention for foreigners pending expulsion. - The envisaged amendments of the Aliens Act pursuant to EU Directive 2008/115/EF (on common standards and procedures in Member States for returning illegally staying third-country nations) have not yet been proposed to Parliament. **Government:** By November 2010, 56 aliens	are subjected to body searches.

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		were detained in Ellebæk, of which 27 were waiting to be returned or deported. 21 aliens, who had been expelled and are awaiting an effectuation of the expulsion decision, were remanded in custody.	
(d) Give greater attention to the rehabilitation of victims of human trafficking in Denmark.	A Centre for Human Trafficking to coordinate action was created; An "Action Plan to Combat Trafficking in Human Beings 2007-2010" built upon the experience of earlier plans of action; Section 262a of the Criminal Code criminalizes trafficking in human beings, pursuant to the 2007-2010 plan of action, on 1 August 2007, an amendment to the Danish Aliens Act came into force, which provided for the so-called "assisted voluntary return programme", which entails improvements over the existing regime on trafficking; Despite greater attention to victims, in the opinion of the Special Rapporteur the efforts were not sufficiently victim-centered; the efforts appeared to be aimed less at the rehabilitation of victims of trafficking in Denmark than at repatriating them to their	***Non-governmental sources:*** In May 2008 a meeting place for foreign prostitutes was set in Copenhagen with the purpose of establishing contact with potential victims of trafficking. Social workers are employed at the centre and a health clinic with doctors and nurses were set up too. At the centre, the women receive health services, courses in contraception, language courses, counsel concerning rights and opportunities, etc.[20] **Government:** Health care services are being provided to potential victims of trafficking in prostitution in the established drop-in-centre in Copenhagen and through special agreements with two major hospitals. Similar arrangements are being developed in areas outside the capital. Access to lawyers and legal advice in the reflection period has been extended. The Danish Centre for Human Trafficking draws on the expertise of lawyers specialized in human rights and immigration law to assist victims in cases concerning questions of residence, family reunification, asylum, deportation, work permits and integration. Additional funding has been allocated to services provided by specially trained personnel to support individual victims	

[20] Statusrapport for 2007-2009 (June 2009), Den tværministerielle arbejdsgruppe til bekæmpelse af menneskehandel [Crossministerial working group for the elimination of human trafficking]. Available in Danish at: http://www.lige.dk/files/PDF/Handel/status_handel_juni2009.pdf

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	countries of origin.	socially, psychologically and practically during the reflection period. Legal counselling is offered to potential victims of trafficking through outreach work. The range of protected accommodation in the reflection period has been expanded. Victims of trafficking can be accommodated in a crisis centre exclusively targeted to them, a crisis centre for victims of domestic violence, a women's crisis centre housing female asylum seekers and trafficked women under the Danish Red Cross, as well as a range of general asylum centres offering various possibilities for support and education. The national action plan to combat trafficking includes all victims and is monitored by the Danish Centre for Human Trafficking and discussed regularly in various coordination meetings at all levels. Special attention is given to children who are potentially trafficked. A screening is being carried out among unaccompanied minors and mechanisms are put in place for trafficked children. Trafficking for labour exploitation gets special attention for the Centre for Human Trafficking in 2009 /2010. Different research projects are in plan. In relation to the Danish Au Pair-agreement it cannot be concluded that trafficking of human beings is taking place.[21] There are indications of exploitation both in the recruiting phase and during the time with the host families but not to a degree amounting to human	

[21] The report is not finalised yet.

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		trafficking. ***Non-governmental sources:*** The report issued by the inter-ministerial working group for combating human trafficking in June 2010, specifies the steps undertaken to implement the government's plan of action for the period of 2007-2010. The types of support provided to victims include, inter alia, services such as medical, psychological and dental treatment, legal and social services. **Government:** General awareness raising campaign is planned to take place in the end of 2010 and early 2011 to enhance the knowledge on trafficking among the general public. Through workshops, seminars and public debate settings, the campaign also aims at reaching professionals working with trafficking or in some way interacting with victims of trafficking. Furthermore, victims of trafficking from both EU-countries and non EU-countries shall have targeted information about their rights and the possibilities for assistance available to them in Denmark. According to the evaluation carried out among 1004 persons following the public awareness raising campaign in 2006, 1/3 answered that they had fairly good knowledge about trafficking, 1/3 responded that they had bad knowledge of the topic, and 1/3 indicated that they had neither a bad nor good knowledge of the topic. A new survey carried out in 2009 among 1261 persons showed that 82% had heard about trafficking in women, 22% had heard about trafficking in children to Denmark, 9% had heard about trafficking in men to Denmark, 15% had never heard about the topic, and	

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		2% did not know. Furthermore, the investigation showed that 66% would notify the police if they knew about a case of trafficking.	
(e) Ensure that, where arrangements exist for male and female detainees to be accommodated in the same premises, the decision of a woman to be placed together with men is based on her completely free and informed decision, and scrupulously monitor appropriate safeguards to prevent abuse.	Practice of accommodating male and female detainees in the same premises, based on the principle of normalization; while in most places such arrangements were voluntary, this was not the case in Nuuk Prison in Greenland.	**Government:** Special attention will be paid to the placement of female inmates in connection with the establishment of the new institution in Nuuk, which is planned to open in 2013. According to the Chief Governor of Institutions in Greenland, no cases of violence or sexual abuse of women have been registered in the existing institution in Nuuk even though close relationships are sometimes formed between female and male inmates. In addition, nothing indicates that the women form relationships with male inmates for protection purposes. Staff will continue their awareness of the female inmates and of the need to intervene if there are any signs of imbalance in the relationship or problems between male and female inmates. **Government:** The Director of the Prison and Probation Services in Greenland has reported that there have been no changes in the situation concerning female detainees in Nuuk Prison. The practice of the prison and Probation Service to place inmates-male or female-as close to home as possible, implies that women serving a sentence in Greenland will be placed in units together with male inmates. The Director of the Prison and Probation Service in Greenland has been instructed to monitor the situation closely, and should problems related to placing female inmates together with male inmates arise, the Prison and Probation Service will	

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		seek to change the current practice. - Unforeseen events during the planning process have delayed the opening of the new institution in Nuuk until late 2015. The conditions of female detainees in the new institution will be at the centre of attention. - According to Copenhagen Prisons, male inmates are rarely placed in women's unit. As of 2010, a new unit in the Herstedvester Institution was only for female inmates. The female inmates have the possibility to work and study together with male inmates if they wish to, however in the new unit it is possible to choose to work and engage in activities during leisure time without the presence of male inmates. - A research project focusing on female inmates was concluded in November 2010 and will form the basis for an assessment on how to improve the conditions for female inmates.	
(f) Refrain from the use of diplomatic assurances as a means of returning suspected terrorists to countries known for practicing torture.	The Government considered to employ diplomatic assurances to return suspected terrorists to countries known for their practice of torture; Memorandum of Understanding between the Ministry of Defence of Afghanistan and the Ministry of Defence of Denmark of 8 June 2005 concerning the transfer of persons between the Danish contingent of the International Security Assistance Force and the Afghan authorities.	***Non-governmental sources:*** According to Bill No. L 209 of 28 April 2009 on administrative expulsion, etc. adopted on 28 May 2009, diplomatic assurances can be used in concrete cases. Individual assessment will be made in each case and in light of Denmark's international obligations. **Government:** Danish legislation contains no provisions on diplomatic assurances, and this device has not been applied by Denmark. The white book upon which Act No 209 of 28 May 09 on administrative expulsion was based, states that "…it cannot be denied, that it is possible to apply diplomatic assurances without violating international law, but the possibility is	***Non-governmental sources:*** In June 2011, the High Court upheld the decision of Hillerød Court not to permit his extradition on the grounds that diplomatic assurances from the central Government were in fact inconsequential and ineffective since the central Government did not have control over the conditions and practices of the prison system in West-Bengali. On 1 July 2011, Denmark formally communicated to the Working Group of the UPR indicating that it had accepted the UPR recommendation to strictly observe the principle of *non-refoulement* and not to resort to diplomatic

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		limited." The white book lists a number of restrictions and strict preconditions in this respect. ***Non-governmental sources:*** On 1 September 2010, at an open consultation in the Parliament's Legal Affairs Committee, the Minister for Refugees, Immigrants and Integration re-affirmed the government's decision to use diplomatic assurances if this is considered to be safe in each individual case. On 9 April 2010, the Danish Ministry of Justice decided to extradite a Danish citizen for prosecution in India. The decision was taken on the basis of the Indian authorities' acceptance of several conditions, including: i. That capital punishment may not be executed for the criminal offense, ii. That the enforcement of the sentence shall be based on the principle of conversion on the sentence; and that iii. That the detention shall be in accordance with the UN Standard Minimum Rules for the treatment of prisoners. **Government:** The information provided by the NGO, refers to the consultation of the Minister for Refugee, Immigration and Integration Affairs in the Parliament on 1 September 2010 (see column 3). With respect to the information on decision to extradite a Danish citizen to India, the ruling of the court against the extradition has been subsequently appealed to the High Court of Eastern Denmark.	assurances to circumvent it.
(g) Ensure that investigations into alleged CIA rendition	A Danish documentary broadcast on 30 January 2008	**Government:** The Governmental report on secret CIA-Rendition flights in Denmark,	***Non-governmental sources:*** It is reported that the investigation into the

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flights using Danish and Greenlandic airports are carried out in an inclusive and transparent manner.	alleged that Danish and Greenlandic airports (e.g. Narsarsuaq) were used by the CIA to transport prisoners as part of its renditions programme. An inter-ministerial working group had been established to investigate these allegations.	Greenland and the Faroese Islands, written by the Inter-ministerial Working Group, was released the 23 October 2008. There is no basis to conclude that the Government bears (co-)responsibility for illegal activities of the CIA or other foreign authorities. The existing Danish control regimes are adequate to ensure that the relevant authorities have the necessary possibilities to intervene should the authorities receive concrete knowledge of any rendition flight heading towards or being in Danish, Greenlandic or Faroese airspace.[22] In connection with the publication of the report on Secret CIA-flights in Denmark, Greenland and Faroe Islands on the 23 Oct. 08, the Government endorsed the recommendations made by the Inter-ministerial Working Group and immediately initiated the implementation process of the recommendations. In accordance with the recommendations, the Government informed the US of the Danish position and law in relation to renditions, through a note verbal of 27 Oct. 08. In the note, it strongly condemned the use of extraordinary renditions. Just prior to the publication of the report the Danish Government received on the 22 October a future guarantee from the US underlining that no rendition will take place through the airspace or territory of the Kingdom of	alleged CIA rendition flights was not carried out with the inclusion of independent experts and civil society to ensure a fully inclusive and transparent process. It is alleged that *Wikileaks* has reportedly made a number of documents public underlining the double sided dispositions of the Danish Government into the alleged CIA rendition flights. Reportedly, in a released correspondence between the American embassy in Denmark and the US State Department, the Danish Government has reportedly stressed the importance of resolving the issue on the rendition flights in the most agreeable manner, while the Government in the Danish media has reportedly portrayed anger and frustration over not being able to get straight answer from the American authorities on the rendition flights. [23] On 1 July 2011, Denmark rejected the UPR recommendation to assess the flights that were conducted over Danish territory and landings that took place in the context of the CIA extradition program. Reportedly, during the recent election campaign in Denmark, the three opposition parties ensured that they would conduct an open and transparent investigation into the use of Danish

[22] The report is available in Danish (English Summary at page 99) at http://www.um.dk/NR/rdonlyres/7325C86F-F9DA-4329-8B16-B3F135BDC24F/0/CIA.pdf (20.08.2009).

[23] http://www.demotix.com/news/553359/rendition-flights-debate-wikileaks

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		Denmark by or on behalf of any US authorities without the prior explicit permission of Danish authorities. The Government will actively engage in discussions at regional or international level on the question of a common definition of civilian state aircrafts and whether the existing rules on supervision with foreign intelligences, supervision of flights and immunity provide an adequate protection against human rights violations. ***Non-governmental sources:*** No independent investigation has been conducted. - On 23 October 2008, the inter-ministerial working group issued a report on the investigation into the secret CIA-Rendition flights in Denmark, Greenland and the Faroe Islands. Three journalists complained to the Ombudsman about not being granted access to information to documents exchanged within the working group. On 18 March 2010, the Ombudsman issued an opinion, stating that "the so-called CIA working group, which has investigated the alleged CIA-flights in Danish airspace, cannot be considered as an independent authority", and requested reconsideration of the request. **Government:** Since 2005, the Government has consistently stated that no governmental authority possessed information on CIA over flights or stopovers in Denmark, Greenland and on Faroe Islands. The Government has	airspace in the course of the CIA rendition program as part of a larger investigation into the Danish participation in the Iraq war and the war on terror.[24]

[24] http://politiken.dk/politik/ECE1382711/villy-soevndal-snublede-i-sin-egen-udenrigspolitik/

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		on several occasions discussed the matter with the USA and clearly indicated that Denmark do not accept the use of Danish Greenlandic and Faroese airspace nor airports for flights and stopovers, which are not in accordance with international law. By Government's decision and in light of the new information about the landing of an aircraft in Narsarsuaq and the possible linkage between these aircrafts and the CIA, the Interministerial Working Group for the Compilation of the Report Concerning Secret CIA Flights in Denmark, Greenland and on Faroe Islands (The CIA Working Group) was established to investigate all prior information on alleged CIA flights in Denmark, Greenland and the Faroe Islands and to report on examination of the existing information. The report also contains information concerning events outside of Denmark, which are of importance to the case. The working group concluded that based on the existing information it has not been possible to confirm or deny the "CIA's Danish Connection". On the basis of the working group's conclusions , the CIA Working Group recommended that the Government informs the USA that any kind of renditions through Danish Greenlandic and Faroese airspaces without the explicit permission of the Danish authorities will be an unacceptable violation of Danish sovereignty; inform the USA that Denmark disapproves extrajudicial renditions, which take place outside the realm of the relevant national and international law; consistently at any given opportunity rejects all means which violate the rights of the detainee,	

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		including secret detentions, indefinite detention, as well as the use of torture and other cruel, inhuman and degrading treatment.	
(h) Continue to promote and support international and national efforts relating to rehabilitation for victims of torture.	Initiatives at the Human Rights Council and the General Assembly, efforts on the implementation of the European Union's foreign policy guidelines on torture in third countries and a long history of generous support to civil society both at home and abroad, particularly in the area of rehabilitation for victims of torture.	***Non-governmental sources:*** On 25 June 2009, several organizations appealed to the Minister of Integration and Asylum Affairs, arguing that rejected asylum seekers from Iraq should be issued a humanitarian residence permit. The organizations encouraged the Government to observe the recommendations from UNHCR not to forcibly deport rejected asylum seekers who had been in Denmark for a long period of time to certain parts of Iraq. In total, 282 persons, including women, children and especially victims of torture, who might not be able to receive the proper treatment in their home of origin, given the current situation in Iraq, await deportation.[25] In August 2009, a group of 18 rejected male asylum seekers who had occupied a church in Copenhagen were arrested by the police with the aim of deporting them to Iraq. This caused public debate. The detention of possible victims of torture with the aim of deportation was criticized by a former member of CAT. **Government:** Denmark is continuing its active international policy against torture, and sponsored several res. Both at the GA and at the HRC. All rejected Iraqi asylum seekers have had	***Non-governmental sources:*** It is reported that the previous conditions of granting humanitarian residence permit by the Ministry for Refugee, Immigration and Integration Affairs to persons who suffer from a physical or a mental illness, and who, among others, cannot receive the necessary medical treatment in their home country, is no longer a fair and correct account of the practices pursuant to a new proposal for an amendment made in March 2010, called L187 [26] in which the Government modified the requirement to obtain a humanitarian residence permit by stating that the treatment must be *not at all* available in the country of origin. This condition was emphasised in the explanatory comments to the bill. As such, the personal circumstances of the individual; neither his or her financial resources nor the distance he or she resides from the appropriate medical facilities, are taken into consideration. In 2010, the Government amended the rules on acquisition of permanent residence (Aliens Act no 572/2010) to allow well-integrated immigrants to acquire a permanent residence permit after 4 years. The law does not specify

[25] The document is available in Danish at: http://www.rct.dk/sitecore/content/Root/Home/Link_menu/News/2009/Rejected_Iraqis0609.aspx

[26] Adopted on 25 May 2010, and entering into force on 1 August 2010.

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		their cases thoroughly reviewed by the refugee authorities based on a factual and individual assessment of all relevant information. The Refugee Appeals Board shall stay updated and informed about the general situation in the countries from which Denmark receives asylum-seekers, and the board has an extensive collection of background information which includes – but is not limited to – recommendations and guidelines from UNHCR. Iraqi asylum-seekers who have had their cases reviewed by the refugee authorities also have the opportunity to apply for a residence permit on humanitarian grounds. According to the Danish Aliens Act, Section 9 b, subsection 1, a residence permit on humanitarian grounds can be granted to a foreign national who is registered by the Immigration Service as an asylum seeker in Denmark. The applicant must be in such a situation that significant humanitarian considerations warrant a residence permit. The Parliament decided that humanitarian residence permits should be the exception, not the rule. Applications for a residence permit on humanitarian grounds are considered by the Ministry of Refugee, Immigration and Integration Affairs. The Ministry conducts a factual assessment of each individual application. In making this individual assessment, the Ministry places importance on the applicant's personal situation. According to the Ministry's practice, a humanitarian residence permit may be granted to persons who suffer from a physical or a mental illness of a very serious nature, who cannot receive the necessary medical treatment in their home country, as well as persons who, upon return to a home	the conditions or situations that entitle the applicants to dispensation, such as severe physical impairment or mental illness, due to severe trauma (torture) as is the case with the legislation on acquisition of citizenship. According to a circular on naturalization (no 61/2008), persons suffering from post-traumatic stress syndrome (PTSD) are explicitly excluded from obtaining a dispensation, even if the condition is chronic and documented by a certificate issued by a medical doctor. Reportedly, the tightening of the rules on citizenship and permanent residence has in some instances made the situation for torture survivors, who are undergoing rehabilitation very difficult, due to the uncertainty of their legal status. Reportedly, an increasing number of torture survivors in Denmark have had to forego rehabilitation due to extreme poverty. This is due to the fact that many torture survivors receive the so-called starting allowance, which was introduced in 2002 with the purpose of increasing the incentives for refugees and immigrants to seek employment (Act on Active Social Policy 2002). The starting allowance amounts to 650 EUR per month, while the regular unemployment benefit, cash allowance, amounts to 1.320 EUR. Reportedly, living on such a small amount does not

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		country with difficult living conditions, will be at risk of developing or experiencing a worsening of a severe disability. According to the practice of the Ministry, there is a possibility of granting a residence permit on humanitarian grounds based on the applicant's long stay in Denmark. Section 9 b, subsection 1, of the Danish Aliens Act does not allow for granting humanitarian residence permits to groups of persons, as it is granted on the basis of a concrete assessment of a case. The Ministry's ruling regarding a humanitarian residence permit is final and cannot be appealed. If an asylum seeker receives a final rejection, he/she must leave Denmark immediately, but will be granted adequate time to prepare for departure. In this connection, authorities will show due consideration to a rejected asylum seeker who is suffering from acute illness, is in an advanced stage of pregnancy, or has given birth shortly before the final ruling. If a rejected asylum seeker refuses to leave Denmark voluntarily, it is the responsibility of the police to ensure his/her departure. In general asylum seekers are at any time during the asylum procedure offered treatment. Newly arrived asylum seekers are offered an appointment with a Danish Red Cross nurse. Asylum seekers who have been subjected to torture receive consultations with a psychologist or psychiatrist and receive physiotherapy. In some cases the Danish Immigration Service has to approve the treatment. ***Non-governmental sources:*** Denmark has	allow for payment of transport fees to and from rehabilitation centres. Whereas some torture survivors have been able to have their transport fees reimbursed by the Danish Regional authorities, those not covered by these rules must instead seek reimbursement from their local municipality, who in some instances have not granted reimbursement. This means that, reportedly, a number of torture survivors are unable to receive treatment.

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		ratified the Convention on the rights of Persons with Disabilities (CRPD), but is yet to accede to its Optional Protocol. -Denmark lacks a genuine specialization in the area of rehabilitation in the health care system and does not promote development of basic and higher education of health professionals with regard to rehabilitation. Moreover, since the introduction of municipal reform in 2007, rehabilitation has been delegated to municipalities, where expertise is often lacking. **Government:** Medical competence is an integral part of the medical specialty rheumatology. Medical doctors undergoing specialization in rheumatology need to acquire and demonstrate specific skills in treating patients in need of rehabilitation. - The number of medical specialists in rheumatology is expected to increase by more than 50% until 2030, thus significantly increasing the availability of skilled medical practitioners in the Danish health care system. Municipalities are responsible for providing the appropriate and necessary rehabilitation services to people in need of assistance. In recent years, the central authorities have launched a number of initiatives to support the municipalities in providing effective rehabilitation services locally, such as allocating ½ billion Danish kroner for services to people with chronic disease. The following paragraphs should be inserted between the phrase “According to the practice of the Ministry, there is a possibility of granting a residence permit on	

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		humanitarian grounds based on the applicant's long stay in Denmark" and the phrase "Section 9 b, subsequent 1, of the Danish Aliens Act does not allow for granting humanitarian residence permits to groups of persons, as it is granted on the basis of a concrete assessment of a case": "The fact that a person claims to have been exposed to torture cannot, according to the Ministry's practice, lead to the granting of a humanitarian residence permit. However, seriously mental or physical illness as a result of torture can form the basis for a humanitarian residence permit. The Ministry's practice regarding humanitarian residence permit based on a combination of a serious illness and torture is restrictive."	
(i)The Special Rapporteur recommends, as a priority for the Greenland Home Rule Government, that it develop and implement an adequately resourced plan of action against domestic violence in Greenland in cooperation with actors with relevant experience, such as the Ministry of Welfare and Gender Equality.	High incidence of assault and sexual offences against women in Greenland: a study by the National Institute for Public Health showed that 60 per cent of women in Greenland aged 18 to 24 were victims of assaults or threats; a third of whom were victims of aggravated assaults. 34 per cent of these women were victims of sexual assaults; 12.5 per cent already when they were children. Among female victims, 58 per cent claimed that the offender was their husband or live-in partner. The Home Rule Government had committed to elaborating a "National strategy for prevention of rape, sexual harassment and assaults".	***Non-governmental sources***: According to an inquiry into the matter, in February 2009 a draft [National Strategi for sundhedsfremme og forebyggelse af vold og seksuelle overgreb] was expected "soon". **Government:** The multi-faceted approach in the National Action Plan to combat domestic violence 2005-08 and the former action plan will continue as 35 million Danish kroner has been allocated to a new National Strategy to combat violence in intimate relations 2009-12. This strategy is currently being developed and the two main ambitions are to fully integrate the specific initiatives on partner violence in the existing support system and to improve prevention of partner violence at all levels. The national strategy will ensure a continued focus on this problem, including among the public. ***Non-governmental sources:*** On 1 September 2010, the Danish Minister of	

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years and (See A/HRC/13/39/Add.6; A/HRC/16/52/Add.2A)*	*Information received in the reporting period*
		Justice informed the Parliament about the Greenland Home Rule Government's intention to develop a strategy for prevention of sexual violence and rape. **Government:** Within the framework of "A safe Childhood 2010", several initiatives are in progress, including: - with a view of increasing the competence of the personnel at the crises centres, the personnel has started attending 6 training courses scheduled for 2010-2012. - In 2010, the Government of Greenland increased the grants for the crises centres substantially. - To address the widespread problem of violence among adolescents, the Ministry of Social Affairs is exploring the possibilities of cooperation with an NGO or foundation. -In 2011, the Government of Greenland will pass the Children and Youth Strategy to the Parliament for its approval. The strategy includes such issues as failure of child care, violence and addiction. -A range of initiatives have already been implemented under the public health programme "Inuuneritta", one of the focus areas of which is preventing violence and promoting sexual health: - From 2009, educational courses called "Ready to raise a child" have been provided for all pregnant women and their husbands with a focus on preventing violence in the family. - All 9th grade pupils are taught subject on family planning which includes, among others, debates on violence in relationships	

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years and (See A/HRC/13/39/Add.6; A/HRC/16/52/Add.2A)*	*Information received in the reporting period*
		and violence against children. From 2009, all pupils are obliged to take care of a "Real-Care-baby-dolls" for 48 hours. - In 2011, a project on preventing unhealthy parenting will be implemented in all municipalities. An action plan for all families "at risk" is developed. Participants are offered treatment against abuse of alcohol and drugs, and are given courses about violence and the role of parents. -At the community level, the focus on sexual health within the framework of Community-Based Participatory Research projects is on how to minimize sexual abuse against children. - Educational local public health consultants lead and run local projects on violence and child abuse in all cities. - Financial support was allocated to screen certain plays that provoke human suffering and are related to the consequences of domestic violence, suicide and sexual abuse. - An anonymous phone-line operating for 2 hours per day has been established for children and youth. - As a result of close cooperation between the public health programme and municipalities and schools, an initiative on crime prevention and violence among youth has been launched among children of 8th grade, offering them a weekly course called "Conversation instead of violence". These courses are offered by the police, held during school hours and include other initiatives that involve parents.	

Guinea Ecuatorial

Seguimiento a las recomendaciones del Relator Especial (Manfred Nowak) en su informe relativo a su visita a Guinea Ecuatorial del 9 al 18 de noviembre de 2008 (A/HRC/13/39/Add.4)

18. El 22 de noviembre de 2011, el Relator Especial envió la tabla que se encuentra a continuación al Gobierno de Guinea Ecuatorial solicitando información y comentarios sobre las medidas adoptadas con respecto a la aplicación de sus recomendaciones El Relator Especial lamenta que el Gobierno no haya proporcionado una respuesta a su solicitud. Él espera recibir información en cuanto a sus esfuerzos para aplicar las recomendaciones, e informa de su disposición a ayudar al Estado en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

19. El Relator Especial lamenta que el Gobierno no haya proporcionado información sobre el tema de la detención en secreto y le exhorta a hacerlo lo antes posible. Además, lamenta que la pena de muerte siga en vigor y reitera su preocupación al respecto.

20. Con relación a las condiciones de detención, el Relator Especial nota su preocupación sobre la falta de separación de mujeres y hombres así como de menores de edad y adultos, y por la falta de un sistema adecuado para el registro de las detenciones; el uso de aislamiento y otros medios de limitar el movimiento de los reclusos durante períodos prolongados. Considera recomendable que el Estado proporcione información a este respecto. Sin embargo, el Relator Especial toma nota sobre la rehabilitación y modernización de la cárcel pública de Malabo y Beta, y exhorta al Gobierno a seguir con esta labor en los demás centros de detención. Considera además un paso positivo el convenio firmado entre el Gobierno y el Comité Internacional de la Cruz Roja (CICR) que facilita visitas periódicas de los delegados del CIRCR a los centros penitenciarios ecuatoguineanos para verificar las condiciones físicas y psicológicas de los detenidos así como el trato que se les da.

21. El Relator Especial toma reitera su recomendación de otorgar a los inmigrantes detenidos todos los derechos de las personas privadas de libertad reconocidos en los instrumentos internacionales, incluido el derecho a ponerse en contacto con sus representaciones consulares.

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
(76) El Relator Especial considera que para que Guinea Ecuatorial cumpla sus obligaciones en virtud del derecho internacional y su Constitución es indispensable realizar una amplia reforma institucional y legal para crear órganos de aplicación de la ley basados en el estado de derecho, una judicatura independiente y mecanismos eficaces de supervisión y rendición de cuentas. Solo si se adoptan estas medidas podrá aplicarse la Ley Nº 6/2006 que, en principio, constituye una buena base para prevenir y luchar eficazmente contra la tortura.	***Fuentes no gubernamentales***: De manera general, no ha habido cambios institucionales significativos que permitan esperar una evolución positiva en el país. En la sesión parlamentaria de marzo 2009 se estudió y aprobó el proyecto de reforma de la Ley Orgánica del Poder Judicial, que aporta algunos cambios en la administración de la Justicia, aunque sigue sin haber independencia entre los diferentes poderes del Estado. **Gobierno:** Las disposiciones legales en materia de derechos humanos reconocen la responsabilidad del estado por los daños y perjuicios que pudiera sufrir un ciudadano como consecuencia del funcionamiento normal o anormal de las instituciones y órganos del Estados En materia de protección de los derechos del ciudadano, se ha creado un mecanismo no jurisdiccional (que incluye el Departamento Encargado del Sector Social y Derechos Humanos adscrito a la Presidencia del Gobierno, la Comisión Nacional de Derechos Humanos de la Cámara de los Representantes del pueblo y el Centro para la Promoción de Derechos Humanos). El Gobierno aprobó la ley n° 6/2006	

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
	sobre la prevención y sanción de la tortura cuyo objetivo esencial es prevenir, prohibir y castigar con carácter permanente los actos de tortura y armonizar por consiguiente la legislación nacional con el Derecho Internacional. La ley prohíbe la tortura y todos los tratos o penas crueles, inhumanas o degradantes cometidos por funcionario público u otra persona actuando en ejercicio de funciones oficiales o por instigación o con el consentimiento o aquiescencia de tal funcionario o persona. Establece la responsabilidad civil del Estado para el resarcimiento de todos los daños y perjuicios resultantes de este crimen contra la humanidad, ya sea contra la victima o sus derechohabientes. La ley prevé una pena de prisión menor de seis meses y un día a seis años de privación de libertad, multa de trescientos mil F.Cfa. e inhabilitación para el desempeño de cualquier cargo, empleo o comisión publica por dos tantos del lapso de privación de libertad impuesta en sentencia. La ley también es preventiva pues prevé que el Gobierno llevará a cabo programas de orientación y asistencia de la población con la finalidad de vigilar la exacta observancia de las garantías individuales. Guinea Ecuatorial también ha adherido y ratificado (en Octubre de 2002), la	

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
	Convención Internacional contra la Tortura y Otros Tratos o Penas Crueles o Degradantes, formulando dos reservas (no acepta la competencia del Comité contra la Tortura, ni se siente obligado por el art. 30. par. 1: procedimiento de solución de controversias y aceptación de la jurisdicción de la Corte Internacional de Justicia). La Republica de Guinea tiene la voluntad política firme e inequívoca de erradicar la tortura de su territorio así como la de la integración en el ordenamiento jurídico ecuatoguineano de los instrumentos internacionales en la materia.	
(a) Aplicar las recomendaciones que figuran en el informe del Grupo de Trabajo sobre la Detención Arbitraria sobre su visita a Guinea Ecuatorial (A/HRC/7/4/Add.3, párr. 100). En particular, el Gobierno debería, con carácter urgente, poner fin a la detención en secreto; revisar el marco legal penal del país, con miras a aplicar las normas mínimas internacionales, incluida la introducción de un procedimiento eficaz de hábeas corpus; reformar la judicatura para hacerla independiente; y permitir el funcionamiento independiente de las organizaciones de la sociedad civil.	***Fuentes no gubernamentales:*** No solo se siguen practicando detenciones secretas sino que se ejecuta a los secuestrados en países vecinos y detenidos en secreto en Guinea Ecuatorial. El 21 de agosto fueron ejecutados media hora después de leerse la sentencia condenatoria cuatro ciudadanos ecuatoguineanos después de un juicio sumario. Los cuatro habrían sido secuestrados en Nigeria, llevados clandestinamente a Guinea Ecuatorial en enero 2010 y detenidos en Black Beach, donde sufrieron torturas y malos tratos. Las autoridades guineanas nunca reconocieron su presencia en Black	

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
	Beach. Existe una Ley de Habeas Corpus en Guinea Ecuatorial que nadie respeta (como pasa con todas las leyes del país). **Gobierno**: La ley del Poder Judicial (5/2009) establece un nuevo organigrama para el Poder Judicial, con una Corte Suprema de Justicia, Audiencias Provinciales, Juzgados de Vigilancia Penitenciaria; Magistratura de trabajo, Juzgado de familia y tutelares de menores, Juzgados de Primera Instancia, Juzgados de Instrucción, Tribunales de lo tradicional y Juzgados de Paz. La misma ley también prevé el recurso de casación contra las sentencias de la jurisdicción militar. El Tribunal Constitucional ocupa un lugar crucial en tanto que controlador del respeto, en el marco de cualquier proceso judicial, gubernativo o administrativo, de las exigencias constitucionales en materia de derechos humanos y libertades publicas. El artículo 218 establece la sumisión funcional de las fuerzas del orden público de la policía judicial a los órganos del Poder Judicial y del Ministerio Público. El Gobierno prevé la adopción de una nueva ley penitenciaria que regulará el	

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
	funcionamiento de los Juzgados de Vigilancia Penitenciaria (creados por Ley del poder Judicial 5/09), encargados de asegurar y controlar el cumplimiento de las penas. A estos juzgados compete controlar las penas privativas de libertad, el control jurisdiccional de la potestad disciplinaria de las autoridades penitenciarias y el amparo de los derechos y beneficios de los reclusos. Ello supondrá el sometimiento a revisión y el control jurisdiccional del conjunto de las actuaciones que puedan darse en el cumplimiento de las penas.	
(b) Separar a las mujeres de los hombres en todos los lugares de detención.	Las mujeres no estaban separadas de los hombres adultos en las prisiones ni en los lugares de detención de la policía y la gendarmería. ***Fuentes no gubernamentales:*** Esta práctica no se ha reformado.	
(c) Tener en cuenta la recomendación m) del Grupo de Trabajo de que introduzca un sistema de justicia juvenil y asegure la estricta separación entre menores y adultos	No había separación alguna entre adultos y menores de edad.	
(d) Introducir un sistema de registro adecuado de las detenciones policiales (en cierto modo, los registros de la gendarmería pueden servir de ejemplo) y establecer un sistema de registro adecuado en las prisiones.		
(e) Formular un reglamento transparente que permita visitas	Las políticas de visita variaban entre lugares de detención, desde políticas	

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familiares regulares en todos los lugares de detención	muy permisivas hasta la prohibición de las mismas.	
(f) Reducir al mínimo la utilización del régimen de aislamiento10 y se abstenga de usar grilletes y demás medios de limitación de los movimientos.	Se utilizaba el aislamiento durante períodos prolongados de hasta cuatro años y los detenidos llevaban grilletes en los tobillos prácticamente todo el tiempo.	
(g) Mejorar las condiciones de los centros de detención de la policía y la gendarmería, en particular proporcionando comida y agua potable, y asegurando que los detenidos tengan acceso a atención médica, inodoros e instalaciones sanitarias.	El Relator observó hacinamiento, celdas en condiciones deplorables, húmedas y sucias, en algunos casos en una obscuridad total, sin acceso a alimentos ni agua suficiente, sin acceso médico, y sin la posibilidad en algunos casos de ducharse o hacer ejercicio. **Gobierno:** el Gobierno ha rehabilitado y modernizado la cárcel pública de Malabo, y está rehabilitando la de Beta a fin de que la pena privativa de libertad se desarrolle en un marco de respeto a la dignidad y a la preservación de la salud de los penados. El Gobierno también firmó un convenio con el Comité Internacional de la Cruz Roja por el cual sus delegados visitan periódicamente todos los centros penitenciarios ecuatoguineanos con el objeto de verificar las condiciones físicas y psicológicas de los detenidos así como el trato que se les da. En materia de prevención de la tortura, la Ley contra la Tortura prevé la profesionalización de los cuerpos	Gobierno: el Gobierno ha rehabilitado y modernizado la cárcel pública de Malabo, y está rehabilitando la de Beta a fin de que la pena privativa de libertad se desarrolle en un marco de respeto a la dignidad y a la preservación de la salud de los penados. El Gobierno también firmó un convenio con el Comité Internacional de la Cruz Roja por el cual sus delegados visitan periódicamente todos los centros penitenciarios ecuatoguineanos con el objeto de verificar las condiciones físicas y psicológicas de los detenidos así como el trato que se les da. En materia de prevención de la tortura, la Ley contra la Tortura prevé la profesionalización de los cuerpos policiales y otros uniformados, así como la de los servicios que participen en la custodia y tratamiento de toda persona sometida a arresto, detención o prisión.

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
	policiales y otros uniformados, así como la de los servicios que participen en la custodia y tratamiento de toda persona sometida a arresto, detención o prisión.	
(h) De conformidad con las conclusiones del Grupo de Trabajo evitar, cuando sea posible, detener a los extranjeros y otorgue a los inmigrantes detenidos todos los derechos de las personas privadas de libertad reconocidos en los instrumentos internacionales, incluido el derecho a ponerse en contacto con sus representaciones consulares.	Las condiciones eran aún peores que las de los ecuatoguineanos, con poco o ningún acceso a alimentos y agua, y limitadas posibilidades para establecer contacto con los representantes consulares de sus países. ***Fuentes no gubernamentales***: Un Proyecto de Ley Reguladora del Derecho de Extranjería en Guinea Ecuatorial fue estudiado y aprobado en las sesiones parlamentarias del 16 de marzo de 2010. Sin embargo la situación real de los extranjeros no ha cambiado. Gobierno: Existe la ley 1/2004, de 14 de septiembre, sobre el tráfico ilícito de emigrantes y trata de personas. En general, la legislación prevé igual tratamiento y acceso a la jurisdicción de las personas físicas y la prohibición de discriminación.	
(i) Abstenerse de practicar la detención en secreto y los secuestros en los países vecinos.	El Relator Especial recibió varias alegaciones. ***Fuentes no gubernamentales:*** Esta práctica sigue en vigor.	
(j) Abolir la pena de muerte.	Establecida en la Constitución y en el Código Penal. ***Fuentes no gubernamentales:*** La pena de muerte sigue en vigor en	

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
	Guinea Ecuatorial, como lo indicó el Gobierno durante la revisión bajo el Examen Periódico Universal. El Presidente Obiang lo confirmó en su discurso del 1º de septiembre de 2010 en el Parlamento.	
(77) Por lo que hace a la comunidad internacional, el Relator Especial observa que, a raíz del descubrimiento de reservas considerables de petróleo en el territorio de Guinea Ecuatorial, muchas empresas transnacionales están operando en el país. Asimismo, varios donantes bilaterales y multilaterales están ejecutando programas de asistencia técnica, también en las esferas del mantenimiento del orden y la administración de justicia. El Relator Especial invita a los actores de la comunidad internacional presentes en el país a que tengan en cuenta que el Relator Especial ha constatado que la policía practica la tortura sistemáticamente, y velen por que, en sus actividades e iniciativas conjuntas, no sean cómplices de violaciones de la prohibición de la tortura y los malos tratos.	***Fuentes no gubernamentales***: Algunas empresas transnacionales subvencionan becas de estudios para los hijos de grandes dirigentes y emplean a agentes del régimen y rechazan el empleo de personas no deseadas.	

Georgia

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Georgia in February 2005
(E/CN.4/2006/6/Add.3, paras. 60-62)

22. By letter dated 22 November 2011, the Special Rapporteur sent the table below to the Government of Georgia, requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations. He expresses his gratitude to the Government for providing detailed information on steps taken during the reporting period.

23. The Special Rapporteur takes note of the report of the Working Group on Arbitrary Detention following the country visit to Georgia from 15 to 24 June 2011, and the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), on its visit to Georgia carried out from 5 to 15 February 2010.

24. The Special Rapporteur is encouraged by efforts made by the Government to reduce the risk of ill-treatment and excessive use of force by the police at the time of apprehension, interrogation and transfer of detainees. He calls upon the Government to strengthen the procedural safeguards during the arrest, interrogation and transfer of detainees by inter alia ensuring proper registration of suspects at the time of apprehension and access to a lawyer of their choice.

25. The Special Rapporteur welcomes the Action Plan for the Prevention of Torture and other Cruel or Degrading Treatment or Punishment in Georgia and the objectives set therein for the period of 2011-2013, takes note of the establishment of Inter-Agency Coordinating Council Combating Ill-treatment (The Council), its new Strategy on Fight against Ill-treatment and looks forward to receiving its respective Action Plan and Evaluation Report for 2010-2011.

26. The Special Rapporteur remains concerned about the low number of initiated criminal prosecutions of cases of torture and other ill-treatment allegedly committed by public officials implicated in colluding on, or ignoring evidence of, torture or ill-treatment and expresses concern that their names have neither been disclosed to the public nor to the Public Defender. The Special Rapporteur highlights the importance of ensuring public acknowledgment of the plight of the victims, including the facts and acceptance of responsibility and public apology.

27. It is imperative to expedite prompt, impartial and thorough investigations into allegations of torture and cruel, inhuman or degrading treatment or punishment and launch timely prosecutions and conclude them without delay, where the evidence warrants it. [27]

28. The Special Rapporteur received reports indicating that detainees refrain from filing complaints out of fear of reprisal. There is no protection afforded by the State to victims of torture. He calls on the Government to introduce independent, effective and accessible complaints mechanisms within all places of detention by installing telephone hotlines or confidential complaints boxes and ensure that complainants do not suffer any reprisal.

[27] See also para 98.e A/HRC/19/57/Add.2, 27 January 2012. Report of the Working Group on Arbitrary Detention, Mission to Georgia.

29. The Special Rapporteur notes with appreciation the measures envisaged under the new Code on Imprisonment of October 2010, to address the issues pertinent to prison overcrowding, and encourages the Government to further improve the effectiveness of existing alternatives to pre-trial detention and consider the introduction of new alternatives through encouraging the use of non-custodial measures such as bail, reporting to a police station, or house arrest.

30. The Special Rapporteur calls on the Government to take steps to ensure that medical staff in places of detention is independent, by transferring them from the Ministry of Corrections and Legal Assistance to the Ministry of Health and provide training for the forensic medical services in the medical investigation of torture and other forms of ill-treatment.

31. The Special Rapporteur received reports indicating that the NPM has reportedly been unable to oversee all places of detention comprehensively. The Special Rapporteur calls upon the Government to ensure budgetary allocations and equip it with sufficient human and other resources to ensure its effective functioning in accordance with the OPCAT.

Recommendations (E/CN.4/2006/6/Add.3)	*Situation during visit (See: E/CN.4/2006/6/Add.3)*	*Steps taken in previous years (See: A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
Anti-torture Action Plan and criminal justice reform.		The Anti-Torture Action Plan was adopted on 12 June 2008 by Presidential Decree 301; On 13 December 2008, the President of Georgia signed Decree No. 591 creating the Criminal Justice Reform Inter-Agency Coordinating Council. Its main objectives are: To elaborate relevant recommendations regarding the Criminal Justice Reform in line with the principles of the rule of law and the protection of human rights; To review and periodically revise the existing Criminal Justice Reform Strategy; To coordinate intergovernmental activities in the elaboration of the Criminal Justice Reform Strategy; and To elaborate proposals and recommendations regarding issues related to penal reform, probation, juvenile justice and legal aid. The members of the Council are high level governmental representatives (deputy ministers and heads of relevant services); members of the Judiciary, and the Public Defender of Georgia. Membership is open to representatives of international organizations and non-governmental organizations, as well as to criminal justice system experts. ***Non-governmental sources:*** The Strategy of Criminal Justice System	**Government:** The Code of Administrative Offences envisages administrative detention as a sanction for violation of relevant provisions of the respective Code. Article 32 defines that administrative detention shall be applied to only as a last resort in cases explicitly defined by the Code for the term of up to 90 days. Only judge of relevant city (district court) is entitled to sentence person to an administrative detention. In 2011, the Parliament of Georgia has prepared new draft Code on Administrative Offences, with a view to ensuring its greater conformity with international human rights standards. The team of experts revised existing Draft Code in line with the proposed recommendations. The draft Code will be submitted for further expertise to the Council of Europe in the upcoming weeks. ***Non-governmental sources:*** Reportedly, the maximum period of punishment for an administrative offence has increased with three months. Since the Code of Imprisonment does not apply to detention in temporary police isolators, administrative detainees seem to be practically deprived of any legal safeguards and rights, such as regular contact with the outside world. In addition,

Recommendations (E/CN.4/2006/6/Add.3)	*Situation during visit (See: E/CN.4/2006/6/Add.3)*	*Steps taken in previous years (See: A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		Reform was approved by the Parliament and the Government. The Government elaborated and approved the Action Plan for the Implementation of the Criminal Justice Reforms but most goals set by the strategy paper have not been achieved. **Government:** Regarding the Anti-torture Action Plan, two Working Groups have been established: one related to public awareness measures and a second one for the preparation of the new Action Plan envisaged for the next 2-3 years. The revised Criminal Justice Reform Strategy incorporates a specific chapter on juvenile justice and on probation. The Criminal Justice Reform Inter-Agency Council ('the Council') has created four Working Groups (juvenile justice, penal system reform, probation and legal aid) which are to elaborate recommendations and conduct field studies in order to adapt the Strategy and the Action Plan of the Criminal Justice Reform. - The Council has entrusted its secretariat to monitor the implementation of the Strategy and the related Action Plans on a permanent basis. The respective reports prepared by the Secretariat will be publicly available. - A draft Code on Imprisonment was elaborated, which (1) provides for a complaint procedure for prisoners (draft article 99); (2) provides that a complaint related to the allegation of torture or	the possibility to lodge an appeal against an order of administrative detention is not duly followed and implemented in practice; and compensation for illegally imposed detention has reportedly never been awarded.

Recommendations (E/CN.4/2006/6/Add.3)	*Situation during visit (See: E/CN.4/2006/6/Add.3)*	*Steps taken in previous years (See: A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		inhuman or degrading treatment is a case of special importance, which has to be immediately reviewed; (3) establishes a mechanism for disciplinary proceedings within the penitentiary institution, which can be appealed before an court of ordinary jurisdiction; (4) considers the possibility of a twice a year short-term leave from a semi-closed custodial establishment; and (5) introduces Parole boards/Commissions for conditional release.	
(a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill treatment by public officials will not be tolerated and will be subject to prosecution.	No equivocal condemnation of torture.	Prosecution Service and police publish information regularly; A Manual containing clearer guidelines on the modalities of the use of force and subjecting the use of force to a stricter review has been elaborated. Impunity for perpetrators of killings of seven detainees and physical injury of at least 17 during suppression of a riot. **Government**: In 2009, investigations were initiated in 11 allegations of torture under Article 144 para. 1 (Torture) of the Criminal Code that were allegedly committed by public officials. Two of these cases were closed, while the others are in progress. Two investigations are ongoing into the allegations of ill-treatment under Article 144 para. 3 (Degrading or Inhumane Treatment) of the Criminal Code allegedly committed by the public officials/servants.	**Government*:*** The Inter-agency Coordinating Council against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Ill-treatment Council) established in 2007 has elaborated first Action Plan and monitored its two year of implementation. In 2010, the Council adopted a new Strategy on Fight against Ill-treatment and its respective Action Plan. The new Strategy prioritizes development of effective complaint procedure for persons deprived of liberty; development of prompt, impartial and effective investigation of all allegations of ill-treatment; protection, compensation and rehabilitation of victims of ill-treatment; improvement of internal and external monitoring systems for early detection and prevention of ill-treatment in detention facilities, capacity building of relevant state and other institutions. The evaluation report for 2010-2011 will be published at Council's website both in Georgian and in English languages. During the Reporting period Council

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			closely cooperated with the Council of Europe (CoE) Committee on the Prevention of Torture and the CoE regional Project "Combating Ill-treatment and Impunity". According to the Report to the Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture or inhuman and degrading treatment or punishment from 5 to 15 February 2010, no cases of torture have been revealed during the committee's examination. In addition, the CPT has also noted 80% decrease in number of ill-treatment cases from the police in course of last five years. The Criminal Justice Reform (CJR) Inter-Agency Coordination Council, which was created in 2008, continues its activities in the criminal justice sphere. The Government periodically drafts progress reports on the implementation of the reforms within the framework of the criminal justice reform strategy and action plans. The progress reports are published on the webpage of the Ministry of Justice of Georgia. The information about the ongoing reforms is publicly available at the Council's website. Within the framework of the Criminal Justice reform the following legislative acts were adopted: the new Criminal Procedure Code of Georgia, New Imprisonment Code, the Juvenile Justice Prevention Strategy and the Prison Overcrowding Concept. Currently, the CJR Council works on the revision of the existing

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			Criminal Code of Georgia and adoption of the new Code on Administrative Offences. In 2011, investigation was commenced in relation to approximately 10 cases of ill-treatment in the penitentiary establishment No. 8 in Gldani, No. 15 in Ksani and Medical Establishment No. 18 in Gldani. Investigations in these cases are ongoing. On 4 March 2011, the Prosecutor's Office of Georgia commenced investigation on the suicide case of the prisoner Z.O. based on Article 115 of the Criminal Code of Georgia. The investigation is currently underway. In cooperation with Public Defenders Office the adapted versions of the lists of procedural rights for persons with administrative and criminal charges has been elaborated and translated into English, Russian, Azeri and Armenian languages. Since March 2011, these lists in five languages (including Georgian) are provided in all temporary detention isolators, displayed in the form of posters at visible places (at cells, rooms of investigation) and corresponding version is handed to each detainee upon apprehension. The list also contains Hot lines of General Inspection which is in charge of revealing and sanctioning any violation of ethics and discipline in the Ministry, as well as any fact of poor professional performance and wrongdoing

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			by the police officers. ***Non-governmental sources:*** Due to recent police reforms and increased professionalization, noticeable improvements have been achieved in relation to eradicating torture during police interrogations and police detention. Reportedly, there are persistent accounts of torture and other forms of ill-treatment of detainees within the penitentiary system. The ill-treatment consists mostly of beatings, but also of other forms of humiliation, such as insults and provocations. In addition, "telefono" (slamming the ears with both hands) and the hanging upside-down are reportedly used as torture methods in prison. Newly arrived detainees are reportedly subjected to a "welcoming beating" after being transferred to prison. According to some sources, there was an average of one fatal beating per year in prison. In late March 2011, one detainee had reportedly died of his severe wounds inflicted on him by prison guards in Gldani Prison No. 8. Reportedly, the situation of torture and ill-treatment vary between different facilities. The facilities most often referred to in this connection are Gldani Prison No. 8 and Prison No. 15 in Ksani. Both the administration of prisons and the prison guards are allegedly involved in abuses of detainees. In addition, special task forces, both at the central penitentiary department in the Ministry of Corrections and Legal

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			Assistance (MCLA) and in the prisons, are refereed to repeatedly in connection with ill-treatment of prisoners. Despite prisoners' complaints alleging torture and inhuman or degrading treatment, criminal cases are reportedly launched under Art. 333 of the Criminal Code (CC) (exceeding official powers) instead of Article 144.1 (torture) and Art. 144.3 (inhuman or degrading treatment) of the CC.
(b) Judges and prosecutors routinely ask persons brought from police custody how they have been treated, and even in the absence of a formal complaint from the defendant, order an independent medical examination.	Not in place.	CPC para. 73(f) states that a medical examination is an absolute right that can neither be denied nor restricted. Article 73(f) refers to medical expertise (needed for the determination of important factual circumstances of a case), which is subject to a court decision; Article 922 of the Law on Imprisonment of 23 June 2005 requires a medical examination after every transfer; CPC article 263, provides that, if information recorded upon routine medical examination shows that a prisoner has injuries, the prosecutor can initiate a preliminary investigation, even in the absence of allegations from the detainee; Internal Guidelines of the Prosecutor General regarding Preliminary Investigation into allegations of torture, inhuman and degrading treatment of 7	***Non-governmental sources:*** The newly introduced adversarial system has reportedly brought about an increased indifference of the judiciary *vis-à-vis* complaints or signs of ill-treatment of defendants before court. Reportedly, there were deficiencies both in law and in practice regarding the crucial role of the judiciary in combating torture, including in relation to shifting the burden of proof and the inadmissibility of evidence obtained by torture. Under the current legal system, full medical examinations are reportedly no longer mandatory at the time of entry to the penitentiary but only take place upon request; persons entering prison are only screened for obvious injuries or diseases. The medical staff at prisons is employed by the MCLA and is reportedly under considerable pressure of the prison administration; thus, their ability to do their work independently is seriously challenged.

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		October 2005 require the automatic opening of a case if reports on torture are received and fix maximum delays for preliminary investigations.	Under the new Criminal Procedure Code (CPC) in force since October 2010, the right of a defendant envisaged under Art 75 (f) of the old Code remained unchanged. The new CPC does not envisage obligation of a judge to ask a defendant about physical injuries even if the injuries are visible. Only Art. 212 of the new CPC provides that the judge before approving a plea bargaining shall make sure that the defendant was not subjected to torture, inhuman and/or degrading treatment. In majority of administrative cases brought before the court, the detainees suffered from numerous visible injuries as a result of being beaten up by police, however, the judges examining their cases under the Code of administrative Offences, never inquired about the reasons of those physical injuries. Even when lawyers ask judges to indicate in the protocol that the detainees had physical injuries, reportedly in none of those cases was investigation launched on the basis of this information. Similarly, in several criminal cases, even when the defendants indicated in the court that the confession was extracted by torture and ill-treatment, no investigation was initiated and judges did not inquire further details. Reportedly, neither the current CPC nor the Code of Administrative Offences envisage obligation of a judge to inquire

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			and /or inform the investigative authorities if a defendant and /or detainee has physical injuries.
(c) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that which is investigating or prosecuting the case against the alleged victim.	No mechanism to conduct such investigations independently.	Human Rights Protection Units exist in the Office of the Prosecutor General and the Ministry of the Interior; however they are not independent; both agencies also have General Inspection Units in charge of ensuring internal discipline (see below); According to CPC article 62, any crime committed by a policeman shall be investigated by the Investigative Unit of the Prosecution Service; therefore, investigating officials are not from the same service as those who are subject of the investigation; A Decree of the Penitentiary Department of 7 August 2006 requires every member of the Special Task Force to have identification insignia consisting of four numbers on his/her uniform; Ministerial Order of 19 February 2007 para. 1 requires heads of territorial and structural units to ensure that every person in their subordination, who carries out investigative activities in connection with a specific criminal case and has direct access to detainees, shall be identifiable; the Ministry of Internal Affairs of Georgia is seeking to improve the system of identification, e.g. through unifying the identification numbers. ***Non-governmental sources:*** Prisoners of	**Government:** According to the new Code on Imprisonment, in case of violation of the human rights of inmates, the convict/pre-trial has the right to file a complaint against the staff of the penitentiary establishment. A pre-trial/convict's lawyer, legal representative or close relative has the right to file a complaint as well, if they have a reasonable doubt about violation of an inmate's rights or if health condition of an inmate does not allow him/her to file a complaint personally. An inmate is also authorized to file a confidential complaint. The complaint boxes are placed in every penitentiary establishment, and are accessible for all inmates. According to the Code on Imprisonment, complaints on torture, inhuman and degrading treatment are considered as a special case and shall be reviewed immediately with due respect of confidentiality. In 2010 and 2011, the Penitentiary Department of MCLA proactively published and distributed 40, 000 and 50, 000 complain forms and envelopes for the prisoners that also included information about their rights and procedure for filing a complaint. The investigative jurisdiction of the Prosecutor's Office extends to all crimes if they are committed by public officials. In

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		Gldani Prison are subject to systematic beatings. Cases where excessive force had allegedly been used, and which led to death in custody were not investigated. **Government:** In 2008, preliminary investigations were initiated under article 118 of the Criminal Code ('Less serious damage to health on purpose'), in 21 cases of allegations at Gldani prison, of which 5 were closed and 16 cases are ongoing. In one case, a preliminary investigation was opened under article 333 of the Criminal Code ('Exceeding Official Powers'). In 2009, preliminary investigations were initiated in 18 cases under article 118, of which 5 were closed, while 13 cases are still ongoing. Preliminary investigations were initiated in one case under article 333 of the Criminal Code.	addition, for the interest of justice, the Chief Prosecutor of Georgia has the authority, on ad-hoc basis, to re-allocate investigation of the criminal case from one prosecutorial jurisdiction to the other, excluding any bias in investigation of the ill-treatment case by the prosecution against public officials. Under Article 100 of the Criminal Procedure Code, investigator or prosecutor are required to promptly initiate investigation once they receive information regarding the crime. In 2011, investigation was commenced in 23 cases under Article 144.1 (torture), out of which in 6 cases investigation was halted and 3 cases reached prosecution. During the same period, out of 5 investigations commenced under Article 144.3 (inhuman and degrading treatment or punishment); 2 investigations were halted and 1 case reached prosecution. ***Non-governmental sources***: Reportedly, no investigation has been carried out into the allegations of ill-treatment by the police of participants of the peaceful demonstration of 15 June 2009. Despite numerous complaints submitted to the prosecutor's office about cases of ill-treatment while in detention and afterwards, no investigation has been carried out. Several police officers have reportedly been given disciplinary penalties envisaged under the Police Code

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			of Ethics; however, the names of those subjected to disciplinary penalties have never been disclosed to the public and to the office of the Public Defender. Reportedly, 83 cases of ill-treatment by the police had been reported in 2009; none of which had allegedly happened in isolators, but during arrest, interrogations and transfer of detainees. Investigations and prosecutions into allegations of torture are reportedly neither effective nor prompt. Allegations of ill-treatment are frequently ignored and victims not questioned. One apparent obstacle to prompt and effective investigations seems to lie in timely obtaining forensic evidence of the alleged ill-treatment. The Forensic Bureau, which has formerly been under the Ministry of Justice, has recently become an independent legal entity. However, reportedly the Bureau only has old equipment at its disposal; its doctors are well trained but under a lot of pressure from the prosecutors. Furthermore, access to an independent forensic examination is almost impossible to obtain. There is also lack of skills to investigate cases of ill-treatment, inconclusive medical evidence and lengthy forensic examinations. Prosecutors have their own investigators at their disposal or can in certain cases use

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			the services of the police. The police and the prosecution are perceived by many stakeholders as not independent. The new CPC does not regulate the jurisdiction of the investigative bodies over investigating the crime. It is now regulated under Article 2 of the Decree # 178 of the Ministry of Justice, dated 29 September 2010, which is mostly similar to what was stated in Art 62 of the old CPC. However, in practice there are cases, when this requirement is not fulfilled. Crimes, which might involve responsibility of a police officer, to certain extent (most important investigative measures are conducted), if not fully, is investigated by the investigators of Ministry of Interior, the same Ministry to which the police subordinates. Reportedly, prisoners reporting ill-treatment in penitentiary institutions to the NPM members usually refuse to apply for opening investigation on those facts, as they allegedly do not want to have problems with the prison administration. According to non-governmental sources, in 2008 five cases under Art 144.1 of the CC (torture) were examined by the first instance court and nine under Art 144.3 (inhuman and degrading treatment). In 2009, no cases have been examined by the national courts under Art 144.1, and only one case was examined under Art 144.3.

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(d) Plea bargain agreements entered into by accused persons are without prejudice to criminal proceedings they may institute against allegations of torture and other ill-treatment.		Amendments to the CC along with Internal Guidelines of the Prosecutor General regarding Preliminary Investigation into allegations of torture, inhuman and degrading treatment adopted on 7 October 2005 introduced a number of safeguards, notably supervision by a judge and presence of a defence lawyer; The guidelines also provide that no plea agreements should be used with respect to victims of torture and/or with respect to persons accused of torture, threat to torture and inhumane and degrading treatment. No legal-administrative act regulating plea agreement proceedings exists within the Office of the Prosecutor General; however, the Prosecutor has issued Internal Guidelines of a recommendatory character as an authoritative guideline for prosecutors in accordance with recommendations by international experts.	**Government:** The new Criminal Procedure Code (CPC), 2010, is based on a number of fundamental principles, such as the independence of judiciary, adversarial proceedings and the jury trials. It provides several important safeguards against torture and ill-treatment, upholds the impermissibility to influence the freedom of the will of a person by means of torture, violence, cruel treatment, as well as by means of affecting the memory or mental state of a person (Article 4.2.). Under Article 100 of the CPC, investigator or prosecutor are required to promptly initiate investigation once they receive information regarding the crime. At the same time, Georgian legal framework ensures independent and effective investigation into the facts of torture and ill-treatment if committed by the policeman. Under the new CPC, it is prohibited to enter into plea agreement which limits the defendant's constitutionally guaranteed right to request prosecution of relevant people in cases of torture and inhuman or degrading treatment (Article 210.5.). Before approving plea agreement, the court must get confirmation from the defendant that torture, inhuman or degrading treatment was not exercised on the defendant from the police or other law enforcement agency. The judge must in addition inform the defendant that should the defendant decide to file a complaint about being subjected to torture, inhuman

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			or degrading treatment, this will not hold up the plea agreement which was concluded in compliance with the law (Article 212.4.) ***Non-governmental sources:*** Detainees are often afraid to complain about alleged torture and ill-treatment out of fear of reprisals, negative consequences for their possibility to enter into a plea bargaining agreement or reverse effects on parole. Reportedly, retaliation for complaints of torture and ill-treatment by prison staff takes various forms, including in many cases, persons complaining of abuses being put under a stricter regime or threatened that their situation was going to be worsened in case they complained. The impediments to complain were reportedly graver in the prison system. The practice of plea bargaining in Georgia, where some 80% of all convictions are reportedly plea bargained and the acquittal rate stands at the extremely low rate of 0.01%, has an adverse effect on the launching of complaints in case of ill-treatment by the police.
(e) Forensic medical services be under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly	Forensic services were part of the police/penitentiary services.	On 31 October 2008 the Parliament of Georgia adopted the Law on a Legal Entity of Public Law "Levan Samkharauli National Bureau of Judicial Expertise", which entered into force on 1 January 2009 and creates the National Bureau as an independent legal entity of public law, rather than an institutional part of the	**Government:** According to Article 38, paragraphs 2 and 9 of the new CPC, the medical examination is guaranteed for every individual upon arrest or detention. According to Article 144 (1) of the Code, the medical expertise may be requested by the party of the case, if the possible outcomes of the expertise are important

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on expert forensic evidence for judicial purposes.		Ministry of Justice. The President of Georgia shall appoint the head of the National Bureau, who shall present the statute of the National Bureau to the Government for approval; Fees for forensic expertise are defined by governmental decree; as a legal entity of public law, the National Bureau is entitled to carry out remunerated activities as noted in its statute. **Government:** No special license requirement is envisaged for forensic medical expertise services. Under the present legislation, forensic expertise can be carried out by a medical institution with a relevant medical license. Any person having completed higher medical education and owning a state certificate in forensic medicine can work as a forensic expert. There is a right to conduct alternative forensic medical expertise on one's own expenses. - Several forensic expertise bureaus exist in the country, including one public legal entity and other private ones.	for the resolution of the case. The judicial expertise is being carried out by the "Levan Samkharauli National Bureau of Judicial Expertise" which is an independent legal entity of public law. Action Plan for 2011-2013 on combating ill-treatment stipulates activities for enhancement of professionalism of Samkharauli Medical Forensic Agency staff in accordance with the Istanbul Protocol.
(f) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted.	None	Article 183 CPC provides that a suspect can be suspended from duty by a judge if some pre-conditions are fulfilled. Para. 1(4) of the Anti-Torture Action Plan aims at the implementation of the rule that any public official charged with abuse or torture shall be suspended from duty.	**Government:** In relation to the case of ill-treatment of a prisoner R.P. in the Penitentiary Establishment No. 2 in Kutaisi, the prosecutor's office commenced investigation based on Article 144.3 (b) and 333 (b). In course of investigation, two employees were suspended from duty. On 22 August 2011, two Kutaisi Penitentiary Establishment

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			employees were prosecuted for this case and the case had been submitted to the Court for hearing on merits.
(g) Victims receive substantial compensation and adequate medical treatment and rehabilitation.	No mechanism in place	CPC article 30(1) provides that a person harmed by any crime can attach a civil action for compensation to a criminal case with CPC article 33(4) containing a safeguard ensuring the protection of the best interests of the victims; CPC article 33(4), which provides that the failure to identify the perpetrator is not a hindrance for a victim to bring an action before the civil courts on the basis of state liability, came into force on 1 January 2007; CPC articles 219-229 deal with compensation for damages sustained as a result of illegal actions by law-enforcement organs. Campaigns aimed to raise awareness are foreseen by para. 5(3) of the Anti-Torture Action Plan; the latter also contains detailed provisions on adequate medical treatment and rehabilitation. ***Non-governmental sources:*** The major goal of the criminal justice reform is to create conditions for the rehabilitation and re-integration of convicts, an aim set by article 39 of the Criminal Code of Georgia. At the moment, no measures are in place to ensure such re-integration. **Government:** In 2009, compensation was granted to a torture victim in one case. In	**Government:** Supporting inmates' resocialization process is among the top priorities of the MCLA. For this purpose, various rehabilitation programs are being actively implemented within the penitentiary and probation system, including: a. Preparation for release program b. Psychiatric health program c. Employment opportunities for prisoners d. Contact with outside world e. Education f. Community Service Victims of ill-treatment/excessive use of force have enforceable right to compensation for non-pecuniary damages. Article 92 of the CPC foresees opportunity to initiate civil/administrative procedure to request a compensation for damages suffered during the criminal proceedings or as a result of an unlawful court decision. In 2009, compensation was granted to one victim of ill-treatment from law-enforcement authorities. ***Non-governmental sources:*** Under the new CPC, Art 92 deals with the compensation for damages.

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		2008, the victim applied to the Administrative Chamber of the Tbilisi City Court, which accorded the person in 9000 GEL (approx. 5280 USD). Rehabilitation programmes are provided by a non-profit, non-governmental organization, which offers professional medical, social and psychological services to the victims and their family members. Activities are conducted in centre's facilities and through outreach programmes.	
(h) Necessary measures be taken to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards (e.g. the Basic Principles on the Independence of the Judiciary). Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings.	Not respected in practice.	Reform in line with the Criminal Law Reform Strategy and the Government's Action Plan to be completed in early 2009. Its guiding principles are: Strengthened independence and impartiality of the judiciary; Improve social guarantees for judges as well as non-judicial staff in the judiciary; improved training for both categories; Systemic reorganization of the judiciary ensuring effectiveness and efficiency of the whole judicial process; Development of infrastructure for the judiciary including construction of new buildings and the provision of necessary technical equipment; and Reform of established court/case management systems. Constitutional amendments were introduced in December 2007 to minimize the authority of the President in the judicial system; the High Council of Justice appoints and dismisses judges; the	**Government**: Under the 11.07.2007 N 5279 amendment to the Law of Georgia on the Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, article 2 was reformulated to provide more specific grounds for disciplinary proceedings against judges. Special measures have been undertaken for strengthening guarantees of impartiality and independence of judges. ***Non-governmental sources:*** 1. Formation of the High Council of Justice: reportedly, politicization of the High Council members appointed by the President and the Parliament is not excluded; only the head of the Supreme Court of Georgia (the SC) can nominate judges for the membership to the High Council of Justice. Although, the judges to be nominated by the head of the SC are elected by the Assembly of Judges, in the

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		Chairman of the Supreme Court of Georgia chairs the meetings of the High Council; 2007 Law on the "Rules of Communication with Judges of General Courts of Georgia"; Revision of the Code of Judicial Ethics to ensure compliance with the European Standards of Judges' Ethical Behaviour adopted by the Conference of Judges on 20 October 2007; A competitive selection process for judges is conducted periodically by the High Council of Justice; training improved, salaries raised; Illegal decisions by judges were decriminalized by law; amendments to the Law on "Disciplinary administration of justice and disciplinary responsibilities of judges of common courts of Georgia" of 19 July 2007 make explicit that wrongful interpretation of the law based on intimate convictions of the judge cannot form the basis for disciplinary proceedings and the judge cannot be prosecuted for such conduct; On 10 October 2008, amendments to the Constitution of Georgia merged the Prosecution Service with the Ministry of Justice; a new Law on the Prosecution Service, adopted on 21 October 2008, incorporated the prosecution service in the Ministry of Justice; the Chief Prosecutor is nominated by the Minister of Justice and appointed by the President.	assembly those judges can only be nominated by the Head of the SC. 2. Under the new system, the procedure of appointment of judges is vague; members of the High Council of Justice appointed by the President and the Parliament can veto any candidate for being appointed as a judge. 3. After the reform, new mechanism of transfer of judges from one court to another is actively used in practice; in other words, a judge from the first instance court in Tbilisi can be transferred without any justification and time-limit to any other district, city and/or appellate court in any other region of the country. This mechanism is frequently used as punishment and/or reward. 4. Reportedly, there is no objective criteria set by the law for giving benefits to judges, which leads to the subjective decisions taken in this regard. 5. Grounds for disciplinary responsibilities under the law are too broad, which might lead to subjecting judges to disciplinary sanctions for a minor misdoing; this is particularly striking because the procedure of disciplinary responsibility of the judges is secret and cannot be disclosed to anyone; after the reform no one is familiar with the details of its implementation in practice.

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(j) Non-violent offenders be removed from confinement in pre-trial detention facilities, subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding, and should occasion arise, for execution of the judgement) (i) and Recourse to pre-trial detention in the Criminal Procedure Code be restricted, particularly for non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased.		The Prosecutor General issued Internal Guidelines dated 26 January 2007 promoting the application of non-custodial measures in particular bail; CPC article 159 holds that detention as a measure of restraint as a rule is not used towards seriously ill persons, minors, persons over a certain age (women 60 and men 65), women who are 12 or more weeks pregnant or have a baby (of up to one year), and also towards persons who have committed a crime out of negligence. ***Non-governmental sources:*** The prison population is steadily increasing. There are too many people on probation per probation officer, which limits the supervisory function of the probation service to the formal registration procedure. **Government:** The number of persons in pre-trial detention amounts to 2.912. In the first nine months of 2009, the percentage of the cases in which pre-trial detention was applied was between 42 and 52 %. The percentage of cases in which bail was granted varied between 28 and 43 %. The percentage for custodial bail granted varied between 11 and 17 %. In 0,4 to 2,3 % of all cases, a personal guarantee was recognized as sufficient. - Regarding the reform of the probation service, a separate Strategy and an Action	**Government:** The Code on Imprisonment, apart from easing the legal status of inmates, has considerably refined the mechanism of early conditional release, making it much more flexible, efficient and transparent. New Code on Imprisonment established Early Conditional Release Councils (ECHR Councils) within the MCLA, ECR Councils review issues in relation to early conditional release, commutation of the remaining term of a sentence into a less grave punishment and substitution of the remaining term of a sentence into a Community Service. There are three ECR Councils; two for adults and one specializing on juveniles. Each Council consists of 5 members: representatives from the MCLA, the National Probation Agency, local non-governmental organization, the High Council of Justice and a local municipality. Due to creation of ECR Councils, the number of conditionally released convicts has increased by 4% in 2011 in comparison to 2010. The Probation Agency has established the Probation Early Release System at the end of 2011. This council is modelled based on the ECR Councils within Penitentiary. It has recently held the first meeting and released 270 probationers. ***Non-governmental sources:*** The new

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		Plan were elaborated. Work continues on the assessment and further development of the legislation related to the probation system. In August 2009, the Probation Service introduced a dactyloscopy system improving tracking and registration process. This allows probation officers to focus on social work and individual rehabilitative schemes. Efforts are being undertaken to create employment opportunities in different firms for the probationers. In addition, probationers receive regular classes on foreign languages and in computer programmes.	CPC does not have any provision similar to the Art 159 of the old CPC. According to Art 205 of the current CPC, detention, as a preventive measure can be used exclusively in cases where it is the only means: a) to prevent risk of absconding and obstruction of justice by the defendant; b) to prevent obstruction in obtaining evidence; c) to prevent further commission of a crime by the defendant . Similar approach is guaranteed under Art 198 of the CPC. Although there are six forms of restrictive measures envisaged under Art 199 of the new CPC, reportedly, according to the statistical data of the Supreme Court of Georgia, the percentage of using restrictive measure other than bail and detention has been less than 2 % in 2009, and less than 1 % in 2010, in comparison to 47.3 % bail and 51.1 % detention in 2009, and 45.1 % bail and 54,2 % detention in 2010.
(n) Confinement in detention not exceed the official capacity (l); Existing institutions be refurbished to meet basic minimum standards (m); and new remand centres be built with sufficient accommodation for the anticipated population to the extent that the use of non-custodial measures will not eliminate the overcrowding problem.	Severe overcrowding; very poor conditions.	Financial resources allocated have drastically increased and considerable refurbishment programs are underway, funded from the State budget; The outsourcing of food provision has already produced tangible results and allows providing special diets for those prisoners who need it. Many prison facilities underwent substantial reconstruction to bring them in line with international standards and the Action Plan for the Reform of the Penitentiary System for 2007-2010	**Government:** Penitentiary Reform Strategy as well as Concept on Addressing Prison Overcrowding stresses importance to increase use of pre and post-trial alternatives such as diversion among adults and juveniles, use of non-custodial measures and community service as a sanction. The new Code on Imprisonment of Georgia that entered into force on 1 October 2010, represents a step forward for overall reform of the penitentiary

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		foresees further refurbishment; The official capacity of the prisons as of 26 January 2009 has been determined by Decree No. 24 of the Minister of Justice of Georgia (see appendix 2, table 1); The Medical Monitoring Unit of the General Inspection supervises the activities of the medical services of penitentiary establishments, as well as the conditions of detention and leads actions aimed at combating HIV/AIDS, tuberculosis and other illnesses; Employment and educational programs have been gradually introduced , libraries improved. **Government:** The Ministry of Correction and Legal Assistance (MCLA) adopted a Penitentiary Strategy and an Action Plan which focus on the implementation of the draft Code on Imprisonment and measures tackling prison overcrowding. In addition, measures are being taken regarding the food supply (outsourcing of food supply; establishment of shops in all penitentiary institutions that provide a possibility for prisoners to buy additional food and hygiene items). In addition, new medical departments administering and monitoring the healthcare system were set up at penitentiary establishments (primary healthcare units have been set up and equipped with modern equipment including dentist cabinets in all 16 penitentiary establishments; 2 modern	system by setting prisons standards and rights of detainees. It addresses the issues pertinent to prison overcrowding, development of strong conditional release system (release on parole), wider application of the alternatives to pre-trial detention, promotion of the community work and development of the proper infrastructure. MCLA is carrying out infrastructural reforms in order to improve inmates' living conditions. In the framework of these reforms, three new penitentiary establishments were opened and some were renovated in 2010. In 2011, living conditions of 80% of inmates are commensurate with European standards. Mother and Child Unit was built in the territory of the penitentiary establishment for women in 2010 which created better living conditions for every child born in the penitentiary establishment while their mothers are serving their sentence. One of the main priorities of the MCLA is to broaden the access of inmates to medical care. Nowadays, each penitentiary establishment has its own medical unit, operating 24/7. The medical service involves a full-service dental facility comprising of dental therapy, surgery and orthopaedics, as well as consultations of psychiatrists and psychologists. In

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		hospitals within the penitentiary system provide medical treatment to convicts). Furthermore, a healthcare strategy for the Penitentiary System is being developed. MCLA is working on new educational programmes for both juvenile and adult inmates. A general education curriculum was elaborated for juvenile inmates by the Ministry of Education and Science. In 2009, three inmates successfully passed the National Unified Entry Exams and were enrolled in higher educational institutions. Vocational programmes such as language and computer classes continue to take place at penitentiary institutions.	addition, there is a special medical facility for convicted inmates, where almost all types of surgeries may be performed. All inmates have a full medical control while entering in the penitentiary establishment. The medical examination is also mandatory when inmate is transferred from one penitentiary establishment to another before allocation to the concrete cell. ***Non-governmental sources:*** In certain establishments prisoners reportedly complain about the food ration and quality of meal. Despite the reform undertaken in the healthcare system of penitentiary institutions, inadequate medical treatment of prisoners remains the most serious problem in almost all establishments. Prisoners reportedly complain about delayed medical treatment and delayed transfer to the medical institutions. Requirements of the new Code of Imprisonment about routine medical check-ups, medical examination after being transferred from one establishment to another and/or when entering the prison establishment (Art 75(5), 76 and 120) is still not fulfilled in any of the establishments. For these purposes the establishments still use approximately one week quarantine regime for the new prisoners before assigning them to the cell. The conditions in some facilities are

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			reportedly dreadful. On a more positive note, the newly appointed Minister of Health, Labour and Social Affairs has made reforms and the refurbishment of hospitals his priority. Reportedly, overcrowding, lack of health care and cases of deaths in custody continue to persist.
(k) and Pre-trial and convicted prisoners be strictly separated.	Several cases where they were not separated	Article 19 of the Law on Imprisonment establishes different types of regimes in the same penitentiary facility, but requires strict separation of the various categories.	**Government:** The Code on Imprisonment of Georgia establishes the rule of strict separation of pre-trial and convicted inmates. Accused person are placed in the pre-trial detention, unless otherwise provided by the Georgian legislation and/or in case of existence of establishments of mixed type. In letter case, accused persons shall be isolated from convicted persons in the mixed type establishment, at least with separated living space." The strict separation of pre-trial and convicted inmates is guaranteed in all penitentiary establishments. ***Non-governmental sources:*** Although under Art 9(2) of the new Code on Imprisonment, pre-trial and convicted prisoners shall be separated in mixed penitentiary establishments, in #8 mixed prison establishment in Gldani, which is the only establishment confining the pre-trial prisoners, convicted prisoners are reportedly mixed with the pre-trial prisoners.
(o) In accordance with the Optional Protocol to the		2005: accession to the Optional Protocol to the Convention against Torture	**Government:** In 2009, the Public Defender was designated as a National

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Convention against Torture, establish a truly independent monitoring mechanism.		(OPCAT). In summer 2006 monitoring councils for psychiatric hospitals and orphanages were set up under the Public Defender's office; In December 2008, the Ministry of Justice presented a draft proposal regarding the designation of the Public Defender of Georgia as national preventive mechanism (NPM) in accordance with OPCAT. Article 93 of the Law on Imprisonment refers to Local Monitoring Commissions and the criteria for the appointment of the Members; Ministry of Justice Decree No. 2190 sets out the corresponding rules; Local Monitoring Commissions may enter a penitentiary institution at any time without prior notification of the prison administration to conduct monitoring, receive complaints etc. On the basis of a 2004 Memorandum of Understanding between the Ministry of Interior and the Public Defender, representatives of NGOs authorized by the Ombudsman can enter temporary detention facilities without prior notice; although the possibility of sending reports to the Prosecutor's office is provided, this has not been done in more than three years. ***Non-governmental sources***: There are no independent monitoring systems in place. The Local Monitoring Commissions cannot be considered independent since	Preventive Mechanism and relevant amendments to the Organic Law on Public Defender have been made. The Public Defender established Preventive and Monitoring Unit within the Office which is mandated to carry the functions of the national preventive mechanism, i.e., visit and monitor all places of deprivation of liberty in Georgia. The prevention and Monitoring unit under the Public Defender conducts monitoring of temporary detention cells, penitentiary institutions, military detention cells, child care institutions, psychiatric institutions, homes for the elderly. The Prevention and Monitoring team has elaborated monitoring methodologies for all types of institutions separately which serve as a guideline for the monitoring. ***Non-governmental sources***: Despite the commendable work of the Public Defender and the NPM, there is room for improvement of the system. The NPM is reportedly unable to monitor all places of detention comprehensively, given the reported number of some 24.000 detainees held within the prison system alone. The creation of the NPM has reportedly been used as an excuse to abandon public oversight in places of detention. Although it is generally admitted that there have been problems with the functioning of these committees, their complete abolition

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		their members are recruited and appointed by the Ministry of Justice. Several NGOs have been deprived of the possibility to have their representatives in these commissions. **Government:** The 1996 Organic Law of the Public Defender of Georgia was amended by Parliament on 16 July 2009 and now provides for the following: (1) The Office of the Public Defender (PDO) was officially designated as a National Preventive Mechanism (article 31 (1)), being expressly obliged to cooperate with all relevant international human rights bodies/institutions in line with the NPM mandate and creation of the National Preventive Group (article 31 (3)); (2) Adequate resources to be provided for carrying out its mandate (article 31 (2)); (3) Unimpeded access to all places of detention, access to relevant information and right to conduct private interviews (article 19 (1) and (2)); Confidentiality criteria: respect towards confidential/private data of detainees (article 19 (3)); (4) Expertise and professionalism of the members of the National Preventive Group; (article 191 (2)); (5) Right to make recommendations, including the presentation of the NPM report before the Parliament of Georgia (article 21); and (6) Privileges for the members of the National Preventive Group: they have a right withhold giving	had a number of adverse effects to the prevention of torture and ill-treatment. The former relative transparency of the Georgian prison system has been abandoned and human rights defenders reportedly no longer have any first-hand information of the situation of detainees but only get this information through defence lawyers. According to the legal provisions establishing the NPM, the Public Defender can be assisted by a group of civil society experts, the so-called "Special Preventive Group", in carrying out the NPM mandate. The current Public Defender has established a roster of 22 civil society experts after issuing an open call for applications. However, the legal provisions relating to the inclusion of civil society experts in the NPM were reportedly criticized due to the lack of clarity. On the one hand, the terminology "can be assisted" leaves the door open to a lot of discretion for the Public Defender and could, in principle, be interpreted in a manner that civil society experts are completely excluded from the NPM; on the other hand, the selection of civil society members was not considered to have been entirely transparent and objective.

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		testimony concerning the facts that were provided to them during the accomplishment of their functions; (article 191 (5)). The Office of the Public Defender has been provided with additional financial resources to cover respective NPM expenses. The Office has recently opened a call for the selection of experts for the National Preventive Mechanism.	
(p) All investigative law enforcement bodies establish effective procedures for internal monitoring and disciplining of the behaviour of their agents, with a view to eliminating practices of torture and ill-treatment.		Law enforcement agencies, namely the Ministries of Justice and Interior and the Prosecution Service, have so-called "General Inspections", responsible for supervising the performance of their personnel and investigating misconduct; On 19 June 2006, the Code of Ethics for Prosecutors was approved by Order No. 5 of the Prosecutor General; A Code of Police Ethics for the Ministry of Internal Affairs signed by the Minister of Interior on 5 January 2007 and entered into force; The Human Rights Unit within the Ministry of Internal Affairs of Georgia conducts random and unscheduled checks in temporary detention isolators including the register, complaints, allegations of mistreatment, etc.; steps to ensure more transparency of the activities of the Unit were taken; The Prisoner's Rights Protection Unit within the penitentiary system conducts visits, providing on the spot legal consultations; the Medical Supervision	**Government:** The special department of the MCLA – the General Inspection – is in charge of internal monitoring within the Ministry and its subordinate entities. The General Inspection ensures discipline and legitimacy, detects facts of violations of citizens' constitutional rights and legal interests, official misconduct and other illegal activities of their agents. It has also the obligation to identify the facts related to the allegations and to conduct investigation in the appropriate way. In 2011, Human Rights Unit was created within the General Inspection which has been specifically trained in order to enhance the monitoring process of penitentiary establishments. This unit efficiently ensures the total conformity of inmates' nutrition, living and sanitary conditions, as well as the level of medical services with internationally recognized human rights standards. Human Rights Unit at the Office of Chief

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		Unit checks the health conditions of prisoners.	Prosecutor of Georgia was placed at the Department for the Supervision of Prosecution. Apart from the overall monitoring over prosecution and supervision of the compliance with national and international human rights standards, the Department is also tasked with statistical and analytical activities within the prosecution system of Georgia. The Human Rights Unit continues to monitor and respond to the notifications regarding the alleged violations of human rights in the organs of the Prosecution Services, detention facilities and isolators, as well as to identify and respond to the facts of torture, inhuman, cruel and degrading treatment or punishment. The Unit considers recommendations of the national and international human rights institutions and takes responsive measures. ***Non-governmental sources:*** A human rights unit established at the General Prosecutor's Office was reportedly mandated to monitor and supervise human rights related criminal cases. Reportedly, it does not have the competence and/or capacities to effectively supervise torture-related criminal cases, such as ordering a prompt forensic medical examination or ordering referral to a prosecutor different from the one investigating the criminal case against the defendant.
(q) Law enforcement recruits undergo an extensive and		The curriculum of the Police Academy of the Ministry of Internal Affaires contains	**Government:** On 13 May 2011, one year long Program on Crowd Management for

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thorough training curriculum, which incorporates human rights education throughout, including on effective interrogation techniques, the use of police equipment, and existing officers should undergo continuing education.		an extensive tactical training course, a course on local legislation, as well as one on international human rights law; issues covered include the legal framework for the use of force; the use of coercive force by police; the human rights law course puts special emphasis on the right to life; Numerous training programs were held at the Probation and Prison Training Centre and the Prosecution Training Centre (established in 2005 respectively 2006) with support from international organizations. During this course students also acquire the necessary negotiation skills for managing critical situations and for ensuring that coercive force is used as a last resort. Use of special means and firearms – practical training for prospective policemen for legitimate and effective use of special means. At the end of the course a practical exam is held, where unsuccessful students are unable to graduate from the academy. **Government:** Several series of trainings for prosecutors, judges, members of the police force and employees of the Ministry of Corrections and Legal Assistance on issues related to the fight against torture and other cruel, inhuman or degrading treatment were conducted in 2008 and 2009.	the staff of the Ministry of Internal Affairs was concluded. 175 police officers were trained during given Program. In cooperation with Public Defenders' Office, Training for Trainers (ToT) on the issues of discrimination are planned jointed and will resume in 2012.

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Improve conditions of detention in the territories of Abkhazia and South Ossetia			
Abolish the death penalty in Abkhazia		The death penalty in Abkhazia is still used; one persons remains on death row.	

Greece

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Greece from 10 to 20 October 2010 (A/HRC/16/52/Add.4)

32. On 22 November 2011, the Special Rapporteur sent the table below to the Government of Greece requesting information and comments on the follow-up measures taken with regard to the implementation of his predecessor's recommendations. He expresses his gratitude to the Government for providing detailed information on the implementation of the recommendations issued in this report.

33. The Special Rapporteur takes note of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), on the visit to Greece carried out from 19 to 27 January 2011.

34. He recognises the challenges faced by the Government in copying with the influx of irregular migrants in recent years and welcomes the open acknowledgment by the authorities of the structural deficiencies in Greece's detention policy of irregular migrants. The Special Rapporteur believes that while many of the problems are caused by a lack of financial resources, some important steps could be taken that are not resource-dependent, to redress the current situation. The Special Rapporteur calls upon the Government to ensure that the migrants and refugees are offered adequate screening and reception centres, in humane conditions, operated by civil authorities.

35. The Special Rapporteur received reports indicating that despite the repeated assurances of the Government and the ongoing reforms, the situation of migrants, including unaccompanied migrant children, remains unchanged and in some instances has further deteriorated in terms of severe overcrowding, unhygienic conditions and poor health-care provision. The Special Rapporteur calls upon the Government to take measures to improve the treatment and standards of care of irregular migrants and refugees held in detention facilities, including legislative provisions to ensure that those arrested while trying to enter or leave the country on false documents are not detained for a prolonged period; that all persons deprived of their liberty are registered from the very moment of their detention and ensure that law enforcement officials keep accurate registers and custody records, and that pre-trial detainees are separated from convicted prisoners, and juveniles are separated from adults in all detention facilities.

36. The Special Rapporteur welcomes the adoption of law 3907/2011 of 18 January 2011, establishing reception centers and an independent asylum service. He urges the Government to pass the draft directive that will process the backlog of first instance asylum cases and to ensure a speedy transition to the implementation of the pending draft law on refugees and asylum seekers. He takes note of the draft new Penal Code submitted to the Minister of Justice, Transparency and Human Rights and of the initiative to reform the criminal and criminal procedure law aimed at decriminalizing certain offences and reducing prison sentences and applying non-custodial measures.

37. The Special Rapporteur welcomes Law 3938/2011 establishing, within the Ministry of Citizen's Protection, an Office responsible for collecting, recording and investigating complaints of acts of torture and ill-treatment. He urges the Government to establish independent mechanism for the investigation of allegations of torture and other forms of ill-treatment by police officers under a different authority than the Ministry of Citizen's Protection and to ensure that the police detention is subject to rigid time limits and judicial review by a court.

38. The Special Rapporteur welcomes the commencement of the ratification process of the OPCAT and encourages the Government to establish an independent and effective national preventive mechanism mandated to carry visits to all places of detention.

39. Finally, the Special Rapporteur expresses concern about reports of inhumane and degrading treatment, including routine sedation, the use of cage beds to their and other abuse of children and adults with disabilities residing at the Children's Care Center of Lechaina in Ilias Prefecture in Greece. He calls upon the authorities to conclude the investigations into the reported death of three people at the center, launch public prosecutions without delay, where the evidence warrants it and make the names of perpetrators known to public.

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Refugee and Asylum System		
(a) Promptly enact new legislation based on the Government's adoption of the "Greek Action Plan on Migration Management".	The Government openly acknowledged the severe problems regarding the detention of aliens and has adopted a "Greek Action Plan on Migration Management". At the points of entry to the country, 'Screening Centres' will be established where aliens are to be held for no longer than 15 days for their identification and registration.	***Non-governmental sources:*** The Greek Government has repeatedly stated intention to overhaul its asylum system and to treat all migrants in a humane manner. Its efforts to bring its laws in line with international human rights and refugee rights standards and engagement in a wide consultation process with civil society groups prior to these reforms are encouraging. The Government has adopted a legislative change with the adoption of presidential decree 114/2010, that reinstated the appeals procedure for asylum seekers, almost all of whom have been routinely rejected in poorly conducted first-instance interviews. The law 3907/2011, adopted on 18 January 2011, will establish first reception centers and an asylum service independent of the police.
(b) Continue to work in close consultation with UNCHR so that its asylum system is in line with international standards.		
(c) Undertake measures so that the police, currently under the Ministry of Citizen's Protection, shall no longer have responsibility for the refugee status determination procedure.	The asylum procedure has collapsed and refugees are denied access to any meaningful refugee determination procedure. The foreseen legal amendments by the draft Presidential Decree on the procedure to grant refugee status or subsidiary protection to third-country nationals and stateless persons, that was signed by the Minister of Citizen's Protection on 24 September	

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	2010, is to be welcomed. A new timeframe for the issuance of asylum decisions-the accelerated process takes three months and the normal process six months. The asylum procedure will be handed over to Refugee Committees comprised of qualified civil authorities. In the meantime, there was supposed to be a procedure in place to deal with the transitional period in between the old and new system, however, this transitional period has been stalled for over one year.	
(d) All law enforcement officials, with the help of UNCHR, need to accept and register asylum claims, so they can be accessed by those who wish to file a claim.		
(e) Bring the responsibility for asylum applications and the asylum procedures under civil authority and reinstall an effective second instance for appeals.	Law 3907 of 26 January 2011, was published in the Government Gazette (A/26 Jan 2011). The law will provide for the establishment of an Asylum Agency and a First Reception Service for Immigrants, as well as for harmonization of the Greek legislation with the provisions of Directive 2008/115/EC on common standards and procedures in Member States for returns of illegally staying third country nationals.	
(f) Ensure that the legislative amendments guarantee that migrants and refugees are offered adequate screening (including efficient procedures		

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
regarding identification and registration) and reception centres, in humane conditions, operated by civil authorities which are provided with the necessary human and financial resources.		
(g) Urge the Council of State to pass the draft directive that will process the backlog of first instance asylum cases currently pending and to ensure a speedy transition to the implementation of the pending draft law on refugee and asylum seekers.	Inclusion of a provision to address the backlog of first instance asylum cases in a Draft Law on the establishment of an office to address incidents of arbitrariness in the Ministry of Citizen Protection. The law is currently being discussed in the Parliament.	
(h) Promptly proceed with the reform of the system of detention of aliens, resorting to detention only as a last resort and if absolutely necessary and proportionate in the individual case. Vulnerable groups, including asylum seekers, unaccompanied minors, families, single women, persons with disabilities should in principle not be detained. Women should always be separated from men and children from adults.	The Special Rapporteur witnesses unaccompanied minors being held with adults in a number of facilities, such as Omonia CID, Feres Border Guard Station as well as Fylakio and Venna Migration Detention Centers. The procedure to identify minors, and assess their age and vulnerability appears to be completely inadequate as many juveniles reported being registered as adults. Male and female detainees were generally found to be separated in the places of detention visited. However, due to the recent influx of aliens over the Greek-Turkish border and the overcrowding of the facilities located in the Evros region, the Special Rapporteur found women detained with men at the	***Non-governmental sources:*** Despite Government's repeated assurances and the ongoing reform process, the situation for migrants, including for unaccompanied migrant children, remains woeful and in some instances has worsened. It is reported that migrants, including vulnerable groups, are held for weeks or months in detention conditions that amount to inhuman and degrading treatment, despite available alternative facilities that would offer adequate conditions. The Children's Care Center, situated in Lechaina (Ilias Prefecture), hosts persons with disabilities, including adults, is in dire conditions. There is insufficient number of doctors and nurses; systematic sedation; and practices such as tying children and adults with development disabilities to their beds to reduce self-harm and the use of wooden cage beds. The care center does not have the required qualified personnel. The residents do not appear to be given regular medical nor rehabilitation services.

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	border guard stations of Feres and Soufli.	There have been reported cases of deaths and alleged abuse in the care centre, including news reports of beatings and two deaths in the span of a few days in March 2011. Reportedly, investigation has been launched by the Prosecutor's Office but no information has been made available on the status of these investigations.
(i) Take measures to improve the treatment and standard of care of irregular migrants and refugees held in all detention facilities, including legislative provisions to ensure that those arrested while trying to enter or leave the country on false documents are not detained for a prolonged period.		***Non-governmental sources:*** Reportedly, at the end of 2010, up to 1,000 documented migrants, who had recently crossed from Turkey into Greece, were held in extremely overcrowded detention conditions that failed to provide minimum hygienic standards for detainees. The number of migrants detained exceeds the capacity limits of some facilities, including in Venna and Fylakio detention centres and Tychero police station detention cells, Feres police station detention cells, and Soufli police station detention cells. Reportedly, guards at detention centers beat or kick detainees for random reasons, including for requesting water and for being late for the headcount.
(j) Enact minimum operating standards for special detention facilities for aliens in compliance with international human rights law.		
(k) Re-negotiate the readmission agreement with Turkey out of concern that Turkey is not complying with minimum standards for the detention of irregular migrants and failing to protect refugees from being summarily returned to Iran, Iraq, or the Syrian Arab Republic.	Since taking office in October 2009, the Government has made the issue of detention of irregular migrants and refugees a priority and is planning a substantive reform of the asylum system and migration management.	

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	The lack of any automatic individual assessment of the Readmission Agreement with Turkey, by Greek police, prosecutors of judges whether citizens of the Islamic Republic of Iran, Iraq or the Syrian Arab Republic face a serious risk of being deported by Turkish authorities to their countries of origin, constitutes a violation of the principle of *non-refoulement.*	
(l) Bring all current legislation in line with the absolute prohibition of refoulement and make sure that the police authorities, prosecutors and judges carry out individual risk assessments in expulsion cases.		
Criminal Justice System		
(m) To combat the severe overcrowding in detention facilities by reforming the criminal and criminal procedure law aimed at decriminalizing certain offences (above all in relation to drug offences) and reducing prison sentences and applying non-custodial measures; Pass into law the Bill pending before the Legal Committee on Reform of the Correction Code to increase the use non-custodial measures such as community service.		**Government:** Law 3904/2010 was passed with favorable arrangements in cases for which smaller sentences are imposed for violation of criminal legislation and with major favorable changes concerning the prerequisites for a prisoner to serve the imposed sentence through social service. The main arrangements are: - prohibition of detention for legal costs or monetary fines up to EUR 3,000; - conversion, as a rule, of custodial sentences ranging from two to three years into monetary fines; - the payment of sentences converted into monetary fines can be made within a period of two to three years or converted into social service; - reinforcement of the institution of

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
		social service which had become obsolete, since joint ministerial decision 19945/14 March 2011 (Government Gazette 563 B/11 April 2011) increased the number of bodies throughout the country that can admit persons for social service to 285; - for sentences of three to five years, of which 1/5 may be redeemed or converted into social service, and prisoners are released; - sensitive prisoner groups (suffering from multiple and terminal diseases, persons with over 80% disability, as well as mother prisoners with children in prison) enjoy a beneficial calculation for the serving of sentences, since one day of stay in a penitentiary facility is calculated as two days of sentence served; - the institution of suspended sentence is extended to all persons with custodial sentences of up to five years, provided that they have not served any custodial sentences of over one year in the past; - house arrest is extended to all persons with custodial sentences, who are over 75 years of age. A draft of the new Penal Code has been submitted to the Minister of Justice, Transparency and Human Rights and the process of consultation will begin immediately to be forwarded to the

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
		Parliament to pass into Law. ***Non-governmental sources:*** Reportedly, although some detention centers are clearly overcrowded to the extent that the well-being and safety of detainees are immediately at risk, the Government does not consider alternatives to detention, nor does it transfer detainees to other facilities. In early 2011, the Samos detention facility for migrants, a newly built center with a capacity of roughly 200 persons stood empty.
(n) Pass into law the Bill pending before the Legal Committee on the Code of Narcotics so that drug users will not be imprisoned.		**Government:** The new Code for Narcotics, that introduces more lenient provisions for drug users, is going to be submitted to the Parliament to pass into Law.
(o) Reform the judicial system to guarantee that pre-trial detainees receive a fair and speedy trial.		
(p) Subject police detention to rigid time limits and judicial review by a court on the legality of the detention, in line with international standards.	It has reportedly been difficult for aliens to challenge their detention as there is no regular automatic judicial review. The absence of interpreters and legal aid was said to make it practically impossible to complain before an administrative court.	
(q) Install an effective and independent mechanism for the investigation of allegations of torture and other forms of ill-treatment by police officers, under a different authority than the Ministry of Citizen's Protection.		
(r) Amend interrogation rules and procedures to allow the use of audio or video-taping, with a view to prevent torture and ill-treatment.		
(s) Transfer the responsibility for health care, including psychological care, in prisons and police detention facilities to the Ministry of		**Government:** The Law 3772/2009 stipulates the inclusion in the National

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
Health.		Health System (NHS) of the special treatment facilities of the Ministry of Justice, Transparency and Human Rights, namely: a) the prisoner psychiatric clinic, b) the prisoner hospital, c) the prisoner detoxification centre of Eleonas-Thiva, and d) two new centres to be put in operation in the future. A special committee has been established for the said arrangement, which will submit proposals for the issuance of a Presidential Decree that will determine the necessary relevant issues. Cooperation takes place with university bodies and non-governmental organizations that can contribute with their scientific staff to the provision of psychiatric and medical services in prisons. Relevant memoranda of association have been already signed with a number of psychiatric clinics.
(t) Have the Ministry of Justice work closely with other relevant Ministries to provide better services in education and reintegration programmes.		
Safeguards and prevention		
(u) Register *all* persons deprived of their liberty from the very moment they are detained.	Due to great number of new arrivals every day and the lack of staff and in particular interpreters, an adequate registration and documentation is often not possible. The main authority in Attica, Petrou Ralli, was so severely understaffed that it had at times accepted asylum claims on only one day of the week and then	**Government:** A special committee is currently evaluating offers for the public call concerning the provision of computers for the Prison Facilities and it is soon expected to present its final proposal to the Financial Service of the Ministry.

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	was not able to register more than around 20 applications.	
(v) Insist that law enforcement officials keep accurate registers and custody records to ensure that every detainee is accounted for and held in an official place of detention.		
(w) Ensure that unrecorded and informal detention of persons in CID be immediately abolished and that those responsible for illegal detention are held accountable.	The Special Rapporteur welcomes the Government's plans to reform the system of detention which foresees to detain asylum-seekers for no longer than 15 days before they are being transferred to open reception centres.	
(x) Ensure that all detainees, including irregular migrants and refugees, have the right, in practice, to contact legal representatives, consular authorities and family members.	There is no system of free legal aid and a general lack of registered lawyers. Many refugees are not informed of the procedures of seeking protection or have claimed that it is not possible for them to make their protection claim heard due to the lack of interpreters. Only in the border guard station in Feres, there were information brochures in different languages on the asylum procedure.	
(y) Ensure that detained aliens are informed about the reasons of their detention and all proceedings concerning their detention are explained in a language they can understand.	The interpreters were reported to be largely unavailable during the interviews making the assessment of a claim practically impossible. The dysfunctional system has created a backlog of more than 52,000 cases to be examined as of August 2010.	
(z) Ensure that all refugees can access protection in Greece and file their asylum claims without any major obstacles, including by providing free legal and interpretation services.	Refugees seeking protection in Greece had no confidence in the asylum procedures and very	

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	often refrain from filing a claim despite a serious fear of being returned to their country of origin. Many aliens were afraid to file an asylum claim in gear of being detained longer as a consequence or being deprived of seeking asylum in another EU member State.	
aa. Perform medical and psychiatric assessments upon detention, so that those suffering from a disability receive medical treatment in line with international minimum standards.	In most detention facilities visited, psychiatric evaluations were not performed on a routine basis. Despite a Ministerial Decision (164484/2009 (GG B 52/2010)) that grants conditional release of detainees suffering from certain illnesses and disabilities, there were several detainees with a condition.	**Government:** The prison administrations observe the procedures stipulated by the provisions of articles 23 and 24 of the Correctional Code in relation to medical examination and interview of new prisoners. They are normally examined by physicians within one day of their admission to prisons and the relevant information is kept in their personal file. For any psychiatric incident that the facility's doctor considers that it should be treated by a doctor outside the prison, the detainee is transferred to the Psychiatric Facility of Korydallos Complex of Prisons Establishments and if it is considered as necessary, an order for transfer to a Psychiatric Hospital is issued immediately. The Ministerial Decision 164484/2009 (GG B 52/2010), it should be noted that the Decision regulates the process of granting of immediate release for the special groups of detainees defined by the provisions of the Article 110A of the Penal Code (HIV positive, or chronic renal failure, or resistant tuberculosis, or cancer in the last stage).

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
		Since 2009, 10 requests for release have been submitted, of which seven have already been granted, one has been rejected, one is pending and one prisoner passed away before the completion of the procedure.
Conditions of detention bb. Ratify and implement OPCAT; establish an independent and effective national preventive mechanism mandated to carry out visits to all places of detention.		**Government:** The ratification process of the OPCAT has commenced. On the other hand, a special committee has been appointed, with a mandate to propose an effective mechanism to conduct independent inspections in the Prison establishments. In the Ministry of Justice, Transparency and Human rights, the Agency of Inspection and control of the Prison Facilities is competent for conducting visits and inspections to all Detention Facilities to ensure they operate under the rule of law.
cc. Separate pre-trial detainees from convicted prisoners in line with Article 10 ICCPR. dd. Separate juveniles from adults in all detention facilities.		***Non-governmental sources***: In Tychero, Feres, and Soufli, single women and mothers with children were detained in the same space with unrelated adult men in overcrowded conditions.
ee. Ensure that detainees are confined in facilities complying with international minimum sanitary and hygienic standards and that they are provided with basic necessities (adequate floor space, bedding, food, water and health care).	The conditions of detention in police stations, Criminal Investigation Departments (CIDs), border guard stations and migration detention cetres were very poor throughout the country. The conditions of detention were	**Government:** Prison administration take care of the strict observance of hygiene rules and the maintenance of facilities, always in compliance with personal hygiene and sanitation rules governing the operation of detention facilities, as well as the relevant instructions of the Ministry of Justice, Transparency and Human Rights.

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	particularly appalling at Venizelos Airport Police Station in Athens. At the CIDs of Omonia, Agiou Panteleimonos and Akropolis in Athens, the conditions of detention were particularly appalling. The border guard stations in Soufli and Feres were facing immense problems due to the mass influx of aliens over the Greek-Turkish border. The situation at the Feres Border Guard Station was particularly severe, holding 123 detainees in a facility designed for 28. Some prisons (Korydallos, Komotini) were hosting three times more prisoners than their maximum capacity. In the two migration detention centres in the Evros region, Fylakio and Venna, the conditions were inadequate to meeting the most basic needs of detainees. A positive example was the Mersidini Migration Detention Centre in Chios, where adequate care was provided to detainees. The detainees were able to access the outside, their cells were clean and well-equipped, and the most basic needs were	The Ministry of Justice, Transparency and Human Rights has elaborated a programme for the construction of new detention facilities in order to increase prison capacity and thereby improve detention conditions. The detention facility of Central Macedonia III (at Nigrita, Serres region) has already been delivered and one ward operates; it now accommodates 118 prisoners, to be increased to 600 in full operation. A 50-person ward has also been delivered at the detention facility of Larissa. Moreover, the delivery and operation of the detention facilities of Drama and Chania (with a capacity of 600 persons each), which have been almost completed, will reduce even more the problem of overcrowding. Finally, a Prisoner Detoxification Centre is being constructed at Kassandra, Halkidiki The full operation of the new detention facilities depends on the ability to hire new staff, which is however, currently restricted by the legislative fiscal constraints. ***Non-governmental sources***: Reportedly, detainees lack adequate medical care and access to outdoor areas. Reportedly, in one of the detention cells of the Tychero police station, migrants had to sleep on cardboard and the concrete floor and remained without access to toilets. Generally, migrants are detained without any consideration of their vulnerability. Unaccompanied children, families with babies, as well as migrants

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	adequately being cared for. The Special Rapporteur welcomes the completion of a new detention facility in Nigeria, Serres, with a capacity of 700, reportedly part of a Greek government plan to construct more detention facilities. It is hoped that the planned constructions in Drama and Chania will be completed as scheduled in 2012. The establishment of a joint committee that visits police detention facilities to verify compliance with terms and conditions relating to hygiene and safety of detainees and the protection of their rights.	who suffer from mental disorders and small children were held behind bars in unacceptable conditions. Reportedly, in April 2010, migrants held in two detention facilities for migrants at Athens old airport Ellinikon, were mostly deprived of natural light, had only once been let into an adjacent courtyard for 15 minutes for the past two months, and were not given any access to the outside yard during the entire winter. Both facilities lacked medical personnel, and items for personal hygiene.
ff. Provide daily outdoor exercise for at least one hour. Convicted prisoners should be provided with opportunities for work, education, recreation and rehabilitation.		**Government:** In the context of the Greek Correctional Code, many prisoners are entitled to work. About 4753 prisoners were working until recently in all prisons. Over 600 additional jobs have been created by Ministerial Decisions. 19 educational, vocational, consulting and psychological support programmes were implemented in 2010 and continued in 2011 in 9 prisons, in association with the Ministry of Education, Lifelong Learning and Religious Affairs, the Prefectural People-s Education Committees, the Social Youth Support Organisation “Arsis” and other bodies (e.g. Greek, English, French

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
		language, computers, mathematics, etc). 11 vocational training programmes are being implemented in 5 prisons in association with the Ministry of Employment and Social Security. The Ministry of Justice, Transparency and Human rights intends to include all prisons of the country in the said programmes. 7 second-hand schools are operating in seven prisons, as well as 2 lower and middle education schools in juvenile detention facilities. In association with the competent Ministry of Education, Lifelong Learning and Religious Affairs, a study is being conducted for the establishment or vocational training departments within prisons.
Impunity gg. Establish accessible and effective complaints mechanisms in *all* places of detention. At a minimum, there should be a mechanism to allow for complaints of torture and ill-treatment, to be promptly and thoroughly investigated by an independent authority and those responsible held accountable including by disciplinary and penal measures as appropriate. Furthermore, complainants must be protected from reprisals.	The lack of an effective complaints mechanism, independent investigation and monitoring create and environment or powerlessness for victims of physical abuse. The Government plans to establish a Bureau within either the Ministry of Citizen's Protection of the Ministry of Interior to examine police misconduct. As of October 2010,	**Government:** With the circular 51282/2 June 2011 of the Special Secretary of the Ministry of Justice, Transparency and Human Rights, the Vaginal Search Register in the country's detention facilities was established. This register records the incident, the name of the doctor who conducted the search, justification of the search, the date and time of the search and explicit reference to the prosecutor's order, on the basis of which it was conducted.

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	a Bill had yet to be submitted to Parliament.	The Special Secretary of the Ministry, by circular 51271/30 May 2011, asked the administrations of the detention facilities to create and regularly update a relevant **Prisoner Injury Register.** This register records injuries identified by medical examination to a. new prisoners, b. persons already detained in prisons, with explicit reference to the type of injury and the reported cause, as well as the date and time of examination. When the reported cause of injury is violence or suspected violence, the administration of the detention facility must notify the Supervising Prosecutor and the General Directorate of Penitentiary Policy of the Ministry of Justice, Transparency and Human rights ***Non-governmental sources:*** Asylum seekers, among them numerous unaccompanied children, who have spent as much as 50 days in squalid conditions, were reportedly discouraged by Greek detention guards from lodging claims. Although the Greek Government has pledged to hold perpetrators of violence accountable, in practice there has been little evidence of meaningful steps towards this goal. There is a continued climate of impunity and widespread reluctance by victims to file complaints due to an absence of a safe complaints mechanisms, insufficient numbers of interpreters, and a lack of trust in authorities. There is no independent complaints

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
		mechanism to allow victims of police abuse, including migrants, to submit a complaint prompting an immediate and impartial investigation. Although the establishment of an office responsible for addressing misconduct within the Ministry of Citizen Protection is a positive measure, its mandate is limited to ruling on the admissibility of complaints. Cases will then be transferred to the relevant disciplinary bodies of the security forces for further investigation.
hh. Establish an accessible system for applicants to file for reparations, in accordance with Law 2311/2009, which provides compensation to victims of intentional violent crimes. ii. Promptly execute judgments rendered by the ECtHR in regard to violations committed by police officers.		
Juveniles		
jj. Detention for unaccompanied minors should be a last resort measure. In order to ensure adequate protection to juveniles, the Ministry of Health and the Ministry of Interior should cooperate closely to ensure that they are placed in separate reception centres.	Unaccompanied minors are systematically held in detention, instead of being held at reception centers under the authority of the Ministry of Health designed exclusively for them. Minors have no possibility to enroll in schools and to receive a proper education. Most of the unaccompanied minors had not been adequately informed about the asylum procedure and their rights, and were generally ignorant about the system.	
kk. Create more places in reception centres so that all unaccompanied minors, including girls, can be hosted.	The reception conditions for asylum-seekers do not meet their most basic needs. There are only 865 reception places available for thousands of asylum seekers.	***Non-governmental sources***: Reportedly, unaccompanied children are often detained for longer periods than adults because of the lack of suitable alternatives. For example, while adult Afghans are released after a few

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	The level of medical and educational services is very low and they receive no financial allowance. As a consequence, many are forced to live on the streets and have to resort to illegal activities to survive.	days as they cannot be deported to Turkey under the Greece-Turkey readmission agreement, some unaccompanied children out of 120 children held in Fylakio detention centre had been held for 40 days and longer. Children are detained because they can only be released once they are assigned a place in a care centre.
Women		
ll. The Special Rapporteur concurs with the CAT recommendation to amend article 137A of the Penal Code on torture so as to explicitly include rape and others forms of sexual violence as a form of torture rather than the phrase "a serious breach of sexual dignity" as found in the existing legislation.	The women held at Venizelos Airport Police Station were held in much better conditions than the men. However, they complained about the lack of cleaning supplies and hygiene products. Many women detained in migration detention centers were even more affected by the appalling conditions of detention and the lack of hygiene as they had to take care for small children. One of the most serious complaints received was the ongoing practice of interbody searches. The Government reported that the practice of "vaginal searches" of female prisoners was abolished in September 2010. The Penitentiary Code (section 23, para. 6) provides the basis on which an inter-body search may	**Government:** No intra body search took place in 2011 in the Prison Establishment of Korydallor.

Recommendations (A/HRC/16/52/Add.4)	*Situation during visit (See: A/HRC/16/52/Add.4)*	*Information received in the reporting period*
	be conducted, which says there must be "reasonable cause" to justify such a search. In Korydallos, the Special Rapporteur found that the practice continued to take place on a regular basis whenever female prisoners were returned to the facility from an outside visit, i.e. to attend court or visit the doctor.	
To the European Union and its member States (a) To fundamentally rethink the EU asylum and migration policy and replace or renegotiate the Dublin II Regulation in view of securing a fairer system of burden sharing which also takes into account legitimate concerns of refugees and irregular migrants. b) to welcome the steps taken by some EU States to halt all returns to Greece under the Dublin II Regulation and urge other States to immediately suspend all returns under the Dublin II Regulation and to proceed with the refugee determination procedure. (c) To provide Greece with substantial financial support and investment to respond to the disproportionate influx of irregular migrants and refugees in order to guarantee their reception under adequate and human conditions in line with international standards. (d) To provide funding to the financial program of the European Refugee Fund to create a pool of interpreters and psychologists to help reduce the mental stress experienced by refugees as they try to navigate their way through the asylum Procedures. **To United Nations agencies and international organizations** That they encourage UNCHR to continue to work in close consultation with the Government to assist in reforming the asylum system so that it is in line with international standards.		

Indonesia

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Indonesia from 10 to 23 November 2007 (A/HRC/7/3/Add.7)

40. On 22 November 2011, the Special Rapporteur sent the table below to the Government of Indonesia requesting information and comments on follow-up measures taken with regard to the implementation of his predecessor's recommendations. He expresses his gratitude to the Government for providing relevant information on the implementation of the recommendations issued in this report.

41. The Special Rapporteur notes with appreciation the Government's efforts to ensure that all allegations of torture and ill-treatment committed by personnel of the Indonesian National Armed Forces and Indonesian National Police are investigated, and regrets not having received data on the number of complaints of torture and ill-treatment received, including the results of any investigation undertaken in this respect, prosecutions initiated and number of convictions. He commends the Government for undertaking steps to establish various complaints mechanisms, including the Sub-Section of Complaint Services and the Internal Supervision Unit of the Penitentiary and looks forward to receiving statistics with respect to investigations of allegations of torture and efforts to address the quasi-total impunity for security personnel, the police and military, for current as well as past violations.

42. The Special Rapporteur takes note of Law No. 39/1999 and the Regulation of the Commander of the Indonesian National Armed Forces on Acts against Torture and Other Inhuman Treatment in Enforcing the Law in the Indonesian National Armed Forces, and regrets that the draft bills to introduce legal provisions containing a definition and prohibition of torture in line with the Convention have not been adopted. He expresses concern that torture is equated to "maltreatment" in the Criminal Code thus lacking several elements of the definition of torture in article 1 of the Convention against Torture, such as the elements of purpose, mental pain or suffering, and agency. The Special Rapporteur encourages the Government to define torture as a matter of priority in accordance with articles 1 and 4 of the Convention against Torture, with penalties commensurate with the gravity of torture.

43. The Special Rapporteur takes note of the clarification received regarding the provision of the Criminal Procedure Code allowing detainees the right to challenge the validity of detention, and expresses hope that this procedure is effectively used in practice. The Special Rapporteur reiterates his concern that there have been no new developments regarding reducing the time limit for police custody from 61 days to maximum of 48 hours.

44. The Special Rapporteur notes that the Indonesian Constitutional Court has increased the minimum age of criminal responsibility at 12 years old. He encourages the Government to expedite the revision of the Law on Juvenile Justice System and the adoption of a restorative justice system for children in conflict with the law.

45. The Special Rapporteur commends the Government for the efforts made to improve detention conditions, in particular with a view to providing health care, improving the quantity and quality of food, ensuring the separation of minors from adults and of pre-trial prisoners from convicts.

46. Finally, the Special Rapporteur wishes to reiterate the appeal to the Government to make a declaration under article 22 of the CAT providing the UN Committee against Torture with the competence to receive and consider individual complaints. He commends the Government for commencing the ratification process of the OPCAT providing for a National Preventive Mechanism.

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
Impunity			
73. Torture should be defined and criminalized as a matter of priority and as a concrete demonstration of Indonesia's commitment to combat the problem, in accordance with articles 1 and 4 of the Convention against Torture, with penalties commensurate with the gravity of torture.	Indonesia's domestic legal norms did not contain a definition of torture which was in line with the Convention of Torture; Indonesia's Criminal Code referred only to "maltreatment", which lacked several elements of the torture definition, such as the elements of purpose, mental pain or suffering, and agency. Draft bills to rectify these shortcomings had been considered for several years without being adopted; The Criminal Code outlawing inter alia the extraction of a confession stipulated a maximum imprisonment of only four years; Law 39/1999 on Human Rights referred to the prohibition of torture, however lacks an effective mechanism for dealing with individual complaints since it was restricted to cases perpetrated as part of "a broad and systematic attack against civilians".	***Non-governmental sources:*** By 2009 there was no legal provision containing a definition and prohibition of torture in line with the United Nations Convention against Torture (UNCAT). The draft bill to rectify these shortcomings is still pending. Similarly, no amendments have been made with regard to introducing penalties which would be commensurate to the gravity of the crime. Komnas HAM (the National Human Rights Commission) can take up individual complaints; however, it is only mandated to formulate recommendations. **Government:** The revision of the Penal Code is underway. The Ministry of Law and Human Rights, the Supreme Court, the Office of the Attorney General and the Indonesian Parliament are involved in drafting the bill to this effect which will include the definition of torture in accordance with the Convention against Torture. The review of the current system is a lengthy process and the bill will be adopted only when it is passed as a whole. Torture, as stipulated in Article 1, section 4 of Law no. 39/1999 on Human Rights, is defined as "every act conducted intentionally, which causes severe pain or suffering, whether physical or mental, in order to obtain confession or information from somebody or a third person, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any	**Government:** The Regulation of the Commander of the Indonesian National Armed Forces No. 73/IX/2012 from 20 September 2010 on Acts against Torture and Other Inhuman Treatment in Enforcing the Law in the Indonesian National Armed Forces defines torture (Article 1) and provides legal sanction on any violations to such acts (Article 12), as stipulated in the Indonesian Penal Code (Articles 351-355). Torture is equated with maltreatment which shall be punished with imprisonment ranging from 2 to 9 years. Such maltreatment is processed through the Public Court with the investigation by the Police, the prosecution by the Attorney and the trial by the District Court.

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		kind, when such pain or suffering is 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." Law no. 39/1999 provides a broader and more comprehensive scope with regard to the definition of torture.	
74. The declaration should be made with respect to article 22 of the Convention recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.	Indonesia had not made a declaration under article 22 UNCAT.	***Non-governmental sources:*** No declaration has been made under article 22.	
75. The Government should ensure that corporal punishment, independently of the physical suffering it causes, is explicitly criminalized in all parts of the country.	Sharia law, incorporated into the 2005 Aceh Criminal Code, provided for flogging and affected disproportionally women; Corporal punishment was regularly applied in several prisons and openly acknowledged by prison officials; Despite a prohibition of corporal punishment of children, minors and children were at high risk of corporal punishment in their families, schools, and in detention.	***Non-governmental sources:*** In September 2009 the Aceh Legislative Council adopted a new Islamic Criminal Legal Code which imposes severe sentences for consensual extra-marital sexual relations, rape, homosexuality, alcohol consumption and gambling. Among other sanctions, the Code imposes the punishment of stoning to death for adultery for those who are married; 100 cane lashes for adultery committed by those individuals who are unmarried; caning for individuals engaging in sexual activities out of wedlock; although the law is applicable to the population as a whole, in practice women are far more likely to become victims of stoning due to patriarchal and discriminatory practices and policies, as well as biological differences such as	

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		pregnancy. **Government:** After the adoption of Qanun Jinayah by the Aceh House of Representative (DPRA) in September 2009, the provincial government of Aceh submitted an official letter rejecting this Qanun in its present form and requested a revision of the provisions relating to stoning in the above-mentioned law. The Governor of Aceh has not yet signed Qanun Jinayah. His approval is mandatory before a provincial law can be formally enacted (article 23 (1), Law no. 11/2006). Law No. 23/2004 on Domestic Violence ensures that any act of violence against children will be punished by law. The National Action Plan for the Eradication of Violence against Children of 2006, the "Stop Violence Against Children" campaign and various pilot projects conducted by Friendly Schools for Children in several regions further strengthened the implementation of the law.	
76. Officials at the highest level should condemn torture and announce a zero-tolerance policy vis-à-vis any ill-treatment by State officials. The Government should adopt an anti-torture action plan which foresees awareness-raising programmes and training for all stakeholders, including the National Human Rights Commission and civil society representatives, in		***Non-governmental sources:*** To raise human rights awareness, the Chief of the Indonesian Police issued regulation nr. 8/ 2009 concerning the principles of implementation and standards of human rights for the police when on duty. **Government:** The Indonesian National Police Office has adopted Regulation No.8/2009 regarding the implementation of the Principles and Standards of Human Rights in the course of duty for Police Officers. Any officer of the Indonesian	**Government:** The dissemination and simulation of the Regulation No. 73/IX/2012 has been convened in several areas. The Indonesian National Police has further implemented the *Community Policing Strategy* as stipulated in Regulation No, 7/2008 of the Chief of the Indonesian National Police regarding the Basic Guidelines on *Community Policing Strategy* and No. 8/2009 on Implementation of Principles and Standards of Human Rights to the

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
order to lead them to live up to their human rights obligations and fulfil their specific task in the fight against torture.		National Police, who is in breach of human rights principles, will be punished in accordance with Article 60, paragraph 2, of Government Regulation No.2/2003 and regulation No.7/2006 of the Chief of the Indonesian National Police regarding the Enforcement of the Professional Ethics of Police Officers. The Indonesian National Police has further implemented the Community Policing Strategy as stipulated in Regulation No.7/2008 of the Chief of the Indonesian National Police regarding the Basic Guidelines on Community Policing Strategy and Implementation as they apply to the behaviour of Police Officers on duty. Until 2010, the Indonesian National Police will collaborate with the IOM in disseminating information about the regulations which incorporate a human rights aspect for the country's police officers. The effective implementation of these regulations will be beneficial for fostering a violence-free society. The Indonesian National Armed Forces are currently preparing regulations concerning anti-violence course of actions in compliance with the provisions of the Convention against Torture.	behaviour of Police Officers on duty. The Indonesian National Police and the Ministry of Justice and Human Rights, in collaboration with IOM conducted a programme to raise awareness and a training for other stakeholders or the National Action Plans for Human Rights and Community Police in 26 provinces.
77. All allegations of torture and ill-treatment should be promptly and thoroughly investigated ex-officio by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged	There was a lack of adequate mechanisms to investigate allegations of torture and quasi-total impunity for security personnel, especially of the police and military, for current as well as past violations;	***Non-governmental sources***: In 2009 there was still widespread impunity for members of the security forces responsible for serious violations of human rights, including torture, particularly with regard to atrocities committed in East Timor, Papua, Aceh, the Malukus and Kalimantan. A number	**Government:** A proper and comprehensive action, including due process of law, will be taken for every act involving torture or inhuman treatment committed by personnel of the Indonesian National Armed Forces. Similar procedure is also applied to the

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
victim.	Investigating authorities were mostly institutionally linked to suspected perpetrators, and therefore not independent.	of internal and external mechanisms exist in Indonesia to monitor police work, but none of these institutions had the mandate, independence and authority to hold police officers accountable for human rights violations. An independent public complaints board that would guarantee that police officials who violate human rights would be brought to justice and victims receive reparations was still lacking. Komnas Ham can investigate allegations of torture as an independent institution and has the authority to conduct monitoring or inquiries into allegations of torture, but it can only make recommendations.	Indonesian National Police.
78. As a matter of urgent priority, the period of police custody should be reduced to a time limit in line with international standards (maximum of 48 hours); after this period the detainees should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted.	While the Criminal Procedure Code authorized a maximum length of 61 days only in very specific circumstances, the imposition of such a long period was applied as a standard procedure; Detainees remained under exclusive police authority for a period exceeding many times the maximum period permitted under international law, making abuses more likely, and furthermore rendering the detection of torture significantly more difficult since visible traces were likely to have disappeared once the detainee had been released or transferred.	**Government:** Currently, there are no new developments regarding the length of police custody.	**Government:** Detention is regulated by Law No. 8/1981 on Criminal Proceeding Code, particularly Articles 24-29. A warrant of detention or warrant of further detention shall be served on a suspect/an accused who is strongly presumed to have committed an offense based on sufficient evidence. The detention shall meet the following requirements: it shall be preceded by a warrant of detention; a copy of such warrant must be provided to the suspect/the accused person's family; such warrant shall only be valid for at the most 20 days. According to Article 29, Section 1, for the purpose of an examination, the period of detention of a suspect/an accused may be extended on the basis of proper and unavoidable reasons, because: the suspect/accused is suffering from a serious physical/mental disturbances as evidenced by a doctor's certificate, or the case being examined is liable to

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			imprisonment of nine years or more. Article 29, Section 6, ,stipulates that after 60 days period, even though the case in question is still being examined or has not yet been decided, the suspect/accused must have been released from detention by operation of law. The Ministry of Justice and Human Rights, Ministry of Finance, the Indonesian National Police and the Attorney have concluded a MoU dated 9 June on the Management of Penitentiaries which are not managed by the Ministry of Justice and Human Rights.
79. All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.	Whereas the Criminal Procedure Code contains a provision allowing detainees the right to challenge the validity of detention, the Special Rapporteur has received numerous indications that this procedure is not used in practice; Women held in Social Welfare Centres have no access to judicial review of their detention.		**Government:** The *habeas corpus* act procedure in a format of pre-trial hearing is stipulated in Articles 77-83 Law No. 8/1981 on Criminal Proceedings Code. The articles enable the accused/defendant/members of their family to submit a request for an examination of the legality of an arrest/detention. Following such request, within 3 days, the judge shall set the day of the pre-trial hearing. Within 7 days at the latest, the judge must have passed his/her judgment. In the event that the judgment rules that an arrest/detention is illegal, the suspect/defendant must immediately be released. A suspect/an accused shall have the rights to obtain legal assistance from one or more legal counsels during the period of and at every stage of examination. The penitentiary will not detail a

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			suspect/an accused without a warrant.
80. Judges and prosecutors should routinely ask persons arriving from police custody how they have been treated, and if they suspect that they have been subjected to ill-treatment, order an independent medical examination in accordance with the Istanbul Protocol, even in the absence of a formal complaint from the defendant.	Judges and prosecutors did not routinely enquire whether persons had been ill-treated during police custody or initiated any ex-officio investigations; Reports about non-action of judges, prosecutors and other members of the judiciary vis-à-vis allegations of torture; No medical examinations are carried out after transfer of detainees; No forensic examinations are carried out in cases of allegations of abuse.	**Government:** Complete police records on the medical condition of prisoners are essential for transferring prisoners from the offices of the National Police to the Attorney-General's Office. Unless this complete record is produced, state prosecutors will reject the transfer of prisoners since they will be held responsible for any problems relating to prisoners' health.	
81. The maintenance of custody registers should be scrupulously ensured.	Registers were either inexistent or lacked the most important information; Not all persons were registered; Insufficient registers blurred accountability and rendered external scrutiny more difficult. Cases of torture were more easily hidden.	**Government:** Registration has been conducted at each stage of detention. Registration for internal purposes is conducted by the Department of Justice and Human Rights, the Indonesian Armed Forces and the Indonesian National Police. Any actions by police officers, including detention, are registered in registration books B1 to B17, as stipulated in the Book of Technical Guidelines, a Book of Action Guidelines concerning administrative procedures in conducting investigations for criminal acts.	**Government:** The Indonesian National Armed Forces has established four military penitentiaries under the supervision of the Central Military Penitentiary, which also receives regular updated data and report on the detainees.
82. Confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge shall not be	Many allegations of confessions under torture, which were admissible during court proceedings, were received.	**Government**: Investigators in the Criminal Investigation Section of the National Police have been instructed by their superior officers to provide access to the media when interrogating suspects.	**Government:** In accordance with Article 171 Law No. 31/1997 on Military Court, a judge shall not sentence a defendant, except when the judge acquires at least 2 legal evidences and convinces that a

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admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present.		However, as no legal provision exists to strengthen such a procedure, the Indonesian National Police will provide the legal basis through a Regulation of the Chief of the Indonesian National Police concerning Media Coverage during the Interrogation of Suspected Persons. When this regulation comes into effect, any interrogation of suspects which is not carried out with sufficient video and audio taping will not be accepted.	criminal act has taken place and the defendant is guilty of the offense. In every criminal case, an accused/a defendant has the right to obtain legal assistance from a legal counsel in the event that: a. a request is made by the accused/defendant; b. a suspect/an accused is suspected of or accused of having committed a criminal offense which is liable to a 15 year or more imprisonment. In this case, the officer in charge shall be obliged to assign a legal counsel for the accused/defendant (Article 217, Section 1, Law No. 31/1997 on Military Court).
83. Accessible and effective complaints mechanisms should be established. These should be accessible from all over the country and from all places of detention; complaints by detainees should be followed up by independent and thorough investigations, and complainants must be protected against any reprisals. The agencies in charge of conducting investigations, inter alia Probam, should receive targeted training.	No effective and independent complaints mechanism; Torture survivors had no possibility to address their complaints anywhere.	***Non-governmental sources:*** Although there are a number of internal and external mechanisms monitoring police work in 2009, none of these institutions has the mandate, independence and authority to hold police officers accountable for human rights violations. There is no independent public complaints board that would guarantee that police officials who violate human rights are brought to justice and victims receive reparations. Torture survivors, however, have the possibility to address their complaints to Komnas HAM and its regional representatives, which may open inquiries and make recommendations. The Indonesian Police follow up on Komnas HAM's recommendations. **Government**: The Indonesian National Police encourages the general public to make complaints about acts of violence	**Government:** The Indonesian National Armed Forces has established monitoring bodies at the central and district levels to conduct an investigation and a routine examination on every report. With regard to access to complaint mechanism, complaints boxes, as well as online and SMS texting, are available in every penitentiary. In addition, The Sub-Section of Complaint Services and the Internal Supervision Unit of the Penitentiary have been established. The Ministry of Justice and Human Rights has established the Directorate for Community Communication Service aiming at addressing human rights issues. In practice, it closely cooperates with the Committees for the National Action Plan for Human Rights at the national and district levels. The Standard Operation Procedure (SOP) for the Community Communication Service has also been

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		committed by police officers, including establishing Mail Box 777, SMS texting, Cell Phone, the Public Service Centre, the Care Centre for Women and Children and the National Police Commission. The National Commission on Human Rights and National Police Commission are amongst the institutions mandated to deal with cases of torture. The establishment of The Victim and Witness Protection Body has strengthened the existing mechanisms put in place to protect victims and witnesses of torture.	prepared.
84. The Government of Indonesia should expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention.	Indonesia was not party to the OPCAT; The National Human Rights Action Plan (2004-2009) foresaw the ratification of the Optional Protocol to the Convention against Torture in 2008.	***Non-governmental sources:*** In 2009 Indonesia had not yet signed the Optional Protocol. Komnas HAM proposed to the Indonesian Police to give Komnas HAM authority to visit police detention facilities with or without announcement. **Government**: The process of ratification of the OPCAT has not yet been completed. The Government is closely working with other stakeholders to ensure a steady progress on the process of ratification.	**Government:** In line with the ongoing ratification process of the OPCAT, in collaboration with other countries, the Ministry of Justice and Human Rights is establishing a roadmap as an initial step to prepare a training program on Convention against Torture for law enforcement officers. The Indonesian National Armed Forces has stipulated regulations to prevent torture in line with the Regulation of the Commander of the Indonesian National Armed Forces No. 73/IX/2010 dated 20 September 2010 on Acts against Torture and Other Inhuman Treatment in Enforcing the Law in the Indonesian National Armed Forces.
85. The Government of Indonesia should support the National Commission on Human Rights and the National Commission on Violence against Women in their endeavours to become	The National Human Rights Commission and the Police signed a Memorandum of Understanding granting free access to police facilities. However, its visits so far were in reaction to complaints, and no	***Non-governmental sources***: In 2009 the Memorandum of Understanding between Komnas HAM and the Police was scheduled for review, including a proposal by Komnas HAM to open up police facilities to unannounced visits and private interviews with detainees.	**Government:** The Indonesian National Armed Forces fully support the work of the National Committee for Human Rights (*Komnas HAM*) and the National Committee for Women to eradicate torture in accordance with Article 8 of the Regulation No. 73.

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effective players in the fight against torture and provide them with the necessary resources and training to ensure their effective functioning.	unannounced visits to places of detention and/or private interviews with detainees took place; The National Commission on Violence against Women monitors the situation of violence against women in the country, but undertakes visits to places of detention only on an ad hoc basis.	With the aim of strengthening the implementation of its tasks, Komnas HAM has been developing amendments to the Laws on Human Rights (39/1999) and Human Rights Courts (No. 26/2000). **Government:** The Indonesian National Police is currently studying the proposal of Komnas HAM (National Committee for Human Rights) regarding unannounced visits and private interviews, in accordance with a review of the Memorandum of Understanding between the National Committee for Human Rights and the Indonesian National Police.	The Security Unit and the Field Intelligence Unit of the Indonesian National Armed Forces also conducts a strict supervision, particularly in the conflict areas.
Excessive violence			
86. The Special Rapporteur recalls that excessive violence during military and police actions can amount to cruel, inhuman or degrading treatment. The Government of Indonesia should take all steps necessary to stop the use of excessive violence during police and military operations, above all in conflict areas such as Papua and Central Sulawesi.	There were consistent allegations about the use of excessive force by security forces, who routinely engaged in largely indiscriminate village "sweeping" operations in search of alleged independence activists and their supporters, or raids on university boarding houses, using excessive force.	***Non-governmental sources:*** In 2009 the army, police and particularly mobile paramilitary units (Brimob) conducted largely indiscriminate village "sweeping" operations in the Central Highlands of Papua, often using excessive, sometimes lethal force against civilians. Soldiers routinely arrested Papuans without legal authority, transferred them to military barracks and ill-treated them. Prison guards continued to torture inmates inside Abepura prison. **Government:** The security issues in Papua have been addressed based on the prevailing laws and regulations in Indonesia. In addition to the various laws prohibiting the use of torture and ill-treatment in prisons, the government has also adopted a policy to address the demands of prisoners to be supervised by local prison officers from the Papua	**Government:** Military personnel assigned in Papua carry out their duty in accordance with the main duty of the Indonesian National Armed Forces. Any military personnel who commit an act inconsistent with the law will be duly processed before the law. Concerning the case of Abepura, the Indonesian National Police explained that the protestors used violence against the police officers resulting in the death of four officers. The protesters also got hurt in the event. The investigation by the National Committee for Human Rights (*Komnas HAM*) found no evidence of violation of human rights by the personnel of the Indonesian National Police. With regard to the Poso incident in 2007,

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		province.	the Indonesian National Police successfully caught the offenders and seized the weapons for committing the violence. They have been duly processed before the law and most of them have been sentenced to 5 to 15 years of imprisonment. At present, the situation in Poso is more conducive and is back to normalcy. In carrying out their duty, police officers refrain from committing discriminatory acts based on particular religion or ethnic group.
Conditions of detention			
87. The Government of Indonesia should continue efforts to improve detention conditions, in particular with a view to providing health care, treat rather than punish persons with mental disabilities, and improve the quantity and quality of food. The Government, in all detention contexts, should ensure the separation of minors from adults and of pre-trial prisoners from convicts and train and deploy female personnel to women's sections of prisons and custody facilities.	Conditions of detention varied considerably throughout the country, facilities in urban areas were overcrowded, while prisons outside of Java offered enough space; Overcrowded facilities, e.g. Chipinang prison, were confronted with sanitary and health difficulties, corruption, and inter-prisoner violence; Numerous complaints about the quality of food were voiced; Punishment cells as well as new arrival areas were not in line with international standards; Persons with mental disabilities were often held in punishment cells; Convicted and pre-trial detainees were not separated in many	**Government**: The Ministry of Justice and Human Rights made several improvements in detention centres and prison facilities: - the detention centre and prison facilities in Cipinang Prison have been expanded into prisons, temporary detention centres and prisons for detainees charged with narcotic substances, - From 2007 to 2009, Cipinang Prison has conducted reintegration programs for detainees on conditional release, or cuti bersyarat (temporary conditional release). Between 2007 and September 2009, 16.400 prisoners were released. - A MoU was signed with the Ministry of Health on the improvement of sanitation and the development of internal infirmary units equipped with standard treatment facilities in all prisons, which are expected to be implemented in 2010. - Minors/Juvenile prisoners have been	The Ministry of Justice and Human Rights has made several improvements to the detention centre and prison facilities, such as: a. improving the menu by changing the 7-day-variation to 10-day-variation of the menu and providing the calories needed; b. improving the health service for detainees by increasing the budget. The latter, however, is not sufficient to meet the ideal standard health treatment. In addition, the Indonesian National Police has intensified the Center for Coordinated Service in the Police Hospitals as well as Public Hospitals in the areas prone to trafficking in persons. c. Applying gender-friendly system, such as separating female

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	facilities.	separated from regular prisoners. The Ministry of Health and UNICEF have conducted advance research to develop medical centres for minors/juvenile prisoners and are providing guidance on building prisons for juvenile detainees.	detainees from male detainees and allocating female super visors for female and child detainees. The Indonesian National Armed Forces, as well as the Indonesian National Police, has also made several improvement , such as: a. Conducting physical and mental training to detainees by professional personnel; b. Applying gender-friendly system, such as separating female from male detainees and allocating female supervisors for female detainees; c. Applying no child detainee policy, as the Regulation of the Government of Indonesia No. 39/2010 on the Administration of the Soldiers stipulates that the minimum age to be a soldier is 18 years old by the time of inauguration; d. Intensifying specialized education and trainings for officers to deal with victims of violence including trafficking in persons, particularly women and children, and providing a special room for them to submit their complaints to guarantee their safety and security (*Ruang Pelayanan Khusus/RPK).*
88. The Government of Indonesia should ensure that	Corruption was deeply ingrained in the criminal justice system,	***Non-governmental sources***: In 2009 efforts to combat corruption ran the risk	**Government:** The Memorandum of Understanding between the Indonesian

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
the criminal justice system is non-discriminatory at every stage, combat corruption, which disproportionately affects the poor, the vulnerable and minorities, and take effective measures against corruption by public officials responsible for the administration of justice, including judges, prosecutors, police and prison personnel.	leading to discrimination in terms of conditions, notably access to food, sanitary facilities, health care and the possibility to receive visitors; Corruption also impacted the treatment of prisoners, some having alleged to have paid in order not to be subjected to beatings.	of having no actual impact. Pending legislation potentially undermined the effectiveness and even very existence of the Anti-Corruption Commission, e.g. by limiting its mandate to investigative functions and reducing the number of ad-hoc judges to sit on trial panels. **Government:** The President has launched a campaign to combat mafia style networks within the Indonesian justice system making this task a key priority. In December 2009, a Task Force dedicated to the eradication of corruption in general and ensuring justice for all was established.	National Armed Forces and the Anti-Corruption Commission No. 08/TNI-PK/VIII/2005 (KPK) and No. KERMA/3/VIII/2005 dated 10 August 2005 on the Cooperation for the Eradication of the Criminal Act of Corruption has been signed.
Death penalty			
89. The death penalty should be abolished. While it is still applied, the secrecy surrounding the death penalty and executions should stop immediately.	The death sentences were executed.	***Non-governmental sources:*** In 2009 the death penalty continued to be imposed and executed. According to available information, 10 persons were executed in 2008. The October 2009 Islamic Criminal Legal Code in Aceh stipulates stoning to death for adultery for those who are married. In September 2009, the Government agreed to adopt a bill providing the death penalty as possible punishment for leaking state secrets. **Government**: In 2007, during the judicial review of the death penalty, the Constitutional Court ruled that the death penalty was still applicable under the Indonesian Constitution. However, its application has been limited to perpetrators of serious crimes and does	

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		not apply to children or pregnant women.	
Children			
90. The age of criminal responsibility should be raised as a matter of priority. Through further reform of the juvenile justice system, Indonesia should take immediate measures to ensure that deprivation of liberty of minors is used only as a last resort and for the shortest possible period of time and in appropriate conditions. Children in detention should be strictly separated from adults.	Criminal responsibility started in Indonesia at the age of 8; Small children were put in detention facilities and prisons, very often mixed with much older children and adults.	**Government:** Article 16, paragraph 3 of Law No.23/2002 on the Protection of Children states that "any arrest, detention or imprisonment of children shall be applied pursuant to the prevailing laws and regulations and will only be considered as the last resort." Articles 26, 27 and 28 of Law No.3/1997 on Trial Proceedings for Children stipulate that imprisonment, detention and fines applied to children can only be half of the penalties applied to adults. The Supreme Court, the Ministry of Justice and Human Rights, the National Police, the Attorney-General, and the Ministry for the Empowerment of Women and the Protection of Children are carrying out the following measures in close cooperation with other stakeholders: - Expedite the revision of Law No. 3 of 1997 regarding Juvenile Justice System to focus on raising the minimum age of criminal responsibility from 8 years old to 12 years old, and adopt a restorative justice system for children in conflict with the law; - Continue dissemination of the Convention and the Laws on Juvenile Justice and on Child Protection, especially to law enforcement personnel involved in juvenile criminal justice system; - Intensify trainings on juvenile criminal	**Government:** Following the request for a judicial review from the Indonesian Commission for Child Protection, the Indonesian Constitutional Court has decided that the minimum age of a person who can be held legally accountable before the law is 12 years old. a. In March 2012, the Government has proposed a revision to Law No. 3/1997 on Trial Proceedings for Children, which is currently under the discussion in the Parliament. The revision includes: b. Raising the minimum age of a person who can be held legally accountable before the law, from 8 years old to 12 years old; c. Detention and imprisonment are considered as the last resort; d. Changing the term "imprisonment" to "special treatment"; e. The arrangement of a child-friendly justice system; f. The approach of restorative justice for children in conflict with the law. Currently there are 16 child penitentiaries in 16 provinces.

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		justice system for law enforcement personnel; - Develop a data and information system documenting cases of children in conflict with the law; - Develop Women and Child Protection Units (UPPA) in all police office at district levels; - Increase the involvement of public researchers on children in conflict with the law (BAPAS) in the court process; and Develop a child-friendly justice system.	
Women			
91. In consultation with the Commission on Violence against Women, the Government should establish effective mechanisms to enforce the prohibition of violence against women, including in the family and wider community, above all through further awareness-raising within the law-enforcement organs.	The 2004 law banning violence in household and establishing complaints channels was adopted; The lack of awareness among law enforcement agencies and the public, and an insufficient number of appropriate police units to deal with such complaints hamper the implementation of the law.	**Government:** The Government has developed a system for registering and reporting cases of violence against children and the discrimination, harassment, mistreatment and neglect of child victims. This mechanism is in operation through the Women's Empowerment and Child Protection Bureau at the regency/municipality, provincial and national levels. Governmental Decree No 4/2006 on the Conduct of and Cooperation on the Rehabilitation of Victims of Domestic Violence, and Decree No 1/2007 of the Minister for the Empowerment of Women on the Coordination Forum on the Elimination of Domestic Violence, have been issued as guidelines for the implementation of Law No 23/2004. As a follow-up to the Joint Decree of the Minister for the Empowerment of Women, the Minister of Health, the	

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		Minister of Social Affairs, and the National Police, several institutions for the defense and protection of victims of domestic violence have been established, including the Women and Children Service Units in 305 Provincial and District Police Offices; 22 Crisis Centres/Women's Trauma Centres; 20 Integrated Crisis Centres in General Hospitals; and 42 Integrated Service Centres in Police Hospitals. Registration and reports on the action taken in handling acts of violence, exploitation and discrimination against women have been carried out through national surveys as well as through the reporting system in the Service Units since 2007. It is further strengthened by the establishment of reporting and registry facilitation teams in 15 provinces and 242 regencies/districts. In addition, coordinating forums between General Hospitals, Provincial, and District Police Offices, as well as social reintegration and rehabilitation service units have been established in almost half of the country. The National Action Plan on the Elimination of Violence against Women has emphasized the need for prevention, empowerment and rehabilitation efforts for the victims of domestic violence. The enactment of Law No 21/2007 on the Elimination of Trafficking in Persons and the draft Law on the Protection of Domestic Helpers have further strengthened the protection provided to the victims. Media publicity on domestic violence has proved to be a useful tool in raising public awareness among the	

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		general public.	
Recommendation to the international community 92. The Special Rapporteur requests the international community to support the efforts of Indonesia in reforming its criminal law system. In particular, all measures to establish well-resourced and independent national preventive mechanisms in compliance with international standards that cover the entire territory of Indonesia should be treated as a priority and supported with generous financial assistance.			

Jamaica

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Jamaica from 12 to 21 February 2010 (A/HRC/16/52/Add.3) 2010 (A/HRC/16/52/Add.3)

47. By letter dated 22 November 2011, the Special Rapporteur sent the table below to the Government of Jamaica, requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations. The Government of Jamaica responded by providing information on the measures taken with regard to the implementation of the recommendations.

48. The Special Rapporteur takes note of the fact that torture is prohibited under the Charter of Fundamental Rights and Freedoms; however he remains concerned that there remains no definition of torture as a separate offence in the criminal law. [28] The Special Rapporteur welcomes the steps taken to review the Convention against Torture with a view to considering its ratification.

49. The Special Rapporteur expresses concern about the reported cases of torture and ill-treatment by law enforcement bodies, including the reported *de facto* extrajudicial killings by police, and the lack of prompt and thorough investigations launched into allegations of ill-treatment or excessive use of police force and number of convictions held. He calls upon the authorities to ensure prompt and through ex officio investigations for all allegations of ill-treatment or excessive use of police force by clarifying the mandates of the Independent Commission of Investigations (INDECOM) and the Office of the Director of Public Prosecutions with respect to the conduct of investigations and prosecutions.[29]

50. The Special Rapporteur notes that although the Office of the Public Defender is mandated to visit police lock-ups, it has reportedly been facing ongoing difficulties for undertaking preventive visits to places of detention due to recently withdrawn requirement of 48-hour advance notice prior to undertaking the visit and an incident of death threat to ones if its members. He calls upon the Government to establish an effective independent national human rights institution, and provide it with adequate financial and human resources.

51. The Special Rapporteur expresses concern that according to the information received, the detention periods in pre-charge detention have reportedly ranged from three to 25 days, in violation of domestic law. The Special Rapporteur urges the Government to reduce, as a matter of priority, the period of police custody to a maximum of 48 hours; ensure that access to lawyers of the suspect's own choosing is granted from the very moment of apprehension and that no further unsupervised contact with the interrogators or investigators should be permitted.

52. The Special Rapporteur observes that although complaints and allegations of abuse are reportedly sent to the Inspectorate Unit of the Ministry of National Security for investigation, the fact remains that this mechanism is marred by allegations of a lack of independence and ineffectiveness and that the complaints are essentially addressed to the same body alleged to have perpetrated the

[28] See para. 21 of the Concluding observations of the Human Rights Committee, Jamaica, 2011.
[29] See also Concluding observations of the Human Rights Committee, Jamaica, 2011, para. 10.

ill-treatment. The Special Rapporteur looks forward to receiving statistics and information on complaints received by these mechanisms, including the number of individuals prosecuted and convicted, and the reparations awarded to the victims.

53. The Special Rapporteur takes note with appreciation of various bills introduced in 2010 to address the root causes of violent crime and encourages the Government to focus on preventative measures.

54. While the Special Rapporteur notes the efforts to improve the situation in the police lockups at May Pen and Montego Bay police stations, he regrets that they continue to hold remandees. The Special Rapporteur expresses concern that although the conditions at remand and correctional facilities are generally better than in police stations; many prisons remain overcrowded, lacking sanitary facilities. He calls upon the Government to ensure that detention conditions comply with international minimum sanitary and hygienic standards and that detainees are provided with basic necessities, such as bedding, food and health care.

55. The Special Rapporteur regrets that the Government decided not to consider the abolition of the death penalty. He agrees with his predecessor's recommendation on abolishing capital punishment because, under the conditions of its imposition and execution in Jamaica, the practice constitutes cruel, inhuman or degrading treatment or, in some cases, torture.

56. Finally, the Special Rapporteur encourages the Government to reconsider its decision not to re-accede to the First Optional Protocol to the International Covenant on Civil and Political Rights, providing the Committee with the competence to examine individual complaints, with a view to ensuring that the rights of individuals to an effective remedy are strengthened.[30]

[30] See also Concluding observations of the Human Rights Committee, Jamaica, 2011, para 10.

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
Impunity		
(a) Issue a public condemnation of torture and ill-treatment, including excessive use of police force; (b) Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment and the Optional Protocol thereto; providing for regular preventive visits to all places of detention by an independent domestic monitoring body; a declaration should be made with respect to article 22 of the Convention;		**Government:** The Government does not condone or subscribe to the torture, ill-treatment or abuse of its citizens. Statements and public declarations to this effect have been made at various intervals by Government officials. **Government:** Jamaica is reviewing the Convention against Torture with a view to taking a decision on ratification. The Jamaican Constitution, however, expressly prohibits torture, inhuman or degrading punishment or other such treatment. There is, therefore, specific constitutional redress against torture. In addition, there are provisions in the Offences against the Person Act, which criminalize offences such as assault occasioning bodily harm, wounding with intent and unlawful wounding, which comprise elements of the act of torture as defined by the Convention. There is opportunity for visits to be undertaken to places of detention. It is critical, however, that advance notice is given since the police have an obligation to ensure safety and security of visitors, members of the force, prisoners and members of the public as well as an obligation to safeguard judicial processes such identification parades. Representatives of the Office of the Public Defender, for example, can visit police lock-ups and there is a procedure in place, in keeping with the aforementioned obligations Access cannot be facilitated if the procedure is not upheld, as has occurred in the past. ***Non-governmental sources:*** The Government has indicated that it is reviewing the CAT to decide whether or not to ratify it.[31]

[31] Human Rights Council. (11 March 2011). Report of the Working Group on the Universal Periodic Review: Jamaica (Addendum). A/HRC/16/14/Add.1. (p.2paragraph (b)).

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		It is reported that there are on-going difficulties for undertaking preventative visits to places of detention. When in September 2010, the Office of the Public Defender (OPD) attempted to visit the Hunts Bay Police Station in Kingston, OPD personnel were barred from accessing the cells. Initial calls to the Commissioner of Police resulted in the granting of access on the condition that the OPD give 48 hours notice to the station.[32] However, the stipulation was later withdrawn due to public outcry and OPD objections.[33] It is alleged that within a week of the incident at Hunts Bay, another member of the OPD received a death threat that stipulated the inspector would be killed if they came to inspect the Spanish Town police lock-up.[34]
(c) Re-accede to the First Optional Protocol to the International Covenant on Civil and Political Rights, providing for the right to lodge individual complaints to the Human Rights Committee;		**Government:** While Jamaica is not party to the First Optional Protocol, individuals still retain the right to petition an international human rights body through the Inter American Commission on Human Rights (IACHR). The rights considered in a petition to the IACHR under the *American Convention on Human Rights* are analogous to the rights considered by the Human Rights Committee under the ICCPR. The rights listed in the ICCPR are also assured under the *Charter of Fundamental Rights and Freedoms.* Violations of those rights can be upheld in Jamaican courts by way of Constitutional redress.

[32] Public Defender jail probe being met with resistance. (01 Sept 2010). RJR News. Available via http://rjrnewsonline.com/news/local/public-defender-jailprobe-being-met-resistance

[33] Ellington backtracks. (08 Sept. 2010). RJR News. Available via http://rjrnewsonline.com/news/local/ellington-backtracks

[34] Public Defender's representative threatened. (09 Sept. 2010). RJR News. Available via http://rjrnewsonline.com/news/local/public-defenders-representative
threatened.

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		Non-governmental sources: It is reported that the Government has reportedly stated it does not intend to re-accede to the Optional Protocol to the Covenant.[35]
(d) Pay adequate compensation to all successful complainants who lodged an individual communication under the First Optional Protocol to the International Covenant on Civil and Political Rights;		**Government:** When the Government accepts liability in accordance with recommendations of the Human Rights Committee, ex gratia payments are made to petitioners. ***Non-governmental sources:*** People in the territory of Jamaica do not have recourse to seek compensation or individual complaint under the First Optional Protocol, due to the fact that the Government is not a signatory.
(e) Amend domestic penal law to include the crime of torture in full accordance with article 1 of the CAT, and to ensure that it is subject to adequate penalties;	Torture is not defined in criminal legislation in Jamaica, nor is Jamaica a party to the CAT.	**Government:** While torture is not defined in criminal legislation in Jamaica, there is a reference in civil law, i.e., *Section 13(6) of the Charter of Fundamental Rights and Freedoms* provides that "no person shall be subjected to torture or inhuman or degrading treatment or other punishment". *Section 13(7) of the Charter* provides that "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (6) to the extent that the law in question authorizes the infliction of any description of punishment which was lawful in Jamaica immediately before the commencement of the *Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011*". ***Non-governmental sources:*** While the Charter of Fundamental Rights and Freedoms, Section 13(6) now protects any person from torture or inhuman or degrading punishment or other treatment, there remains no clear definition of torture. Further, it is reported that Section 13(7) essentially retains the legality of punishments which constitute torture or inhuman or degrading punishment under the Covenant. In addition, the Offences Against the Person Act, would not, in the view of

[35] See: CCPR Human Rights Committee. (11 July 2011). Replies from the Government of Jamaica to the list of issues to be taken up in connection with theconsideration of the third periodic report of Jamaica. CCPR/C/JAM/Q/3/Add.1. (p. 2, paragraph 5).

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		civil society, protect all victims of torture in the Jamaican context, and does not provide a remedy to individuals who are subject to abuse by state agents which relates not only to acts that cause physical pain but also acts that cause mental suffering to the victim.
(f) Ensure prompt and thorough ex officio investigations for all allegations of ill-treatment or excessive use of police force by an authority that is independent from the investigation and prosecution. Any officer known to be abusive should be removed from custody duties. Heads of police stations and detention facilities should be made aware of their supervisory responsibility.	Many investigations are not prompt or effective, and prosecutions in cases involving the security forces are rare.	**Government:** The Government is committed to the prompt and thorough investigation of all allegations of ill-treatment or excessive use of force by the police force. The procedure governing the removal of officers from frontline duty is contained in the *Police Services Regulations and the Constabulary Force Act.* Officers who are alleged to have committed acts with criminal implications are suspended from the service (i.e. active duty). If it is unclear whether the matter will result in disciplinary action, the officer is assigned to desk duty so that he/she does not interfere with the investigations. This measure remains in effect until the circumstances determine whether disciplinary measures need to be taken. The Independent Commission of Investigations (INDECOM) continues to carry out its investigations of alleged excesses and abuse by agents of the state. It is incorrect to suggest an "ongoing power struggle" between the Office of the Director of Public Prosecutions (ODPP) and INDECOM as the matter of concern related to the legislative provisions accorded to INDECOM and how this may conflict with the Constitutional Provisions related to the powers of the DPP. This matter is the subject of recommendations in INDECOM's Special Report to Parliament made in November 2011, which are to be considered by the Parliament. ***Non-governmental sources:*** The Independent Commission of Investigations (INDECOM) has initiated investigations on cases of excessive use of force. However, as mentioned in (j), there is an on-going power struggle between the Director of Public Prosecutions (DPP) and INDECOM as to which agency has the authority to charge police officers. This is reportedly exacerbated by challenges to investigating and prosecuting

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		police officers. It is reported that the practices of witness intimidation, coercion, and extensive judicial delays are widespread. Reportedly, the Government continues to ignore requests to impose sanctions on official's accused of ill-treatment, and instead leaves them on full-duty whilst investigations are carried out. In some cases, officers are even promoted. Investigations are reportedly relying on the evidence of civilian eye-witnesses as opposed to forensic/scientific evidence. Reportedly, in circumstances where the witnesses are fearful to attend court, there is rarely enough substantial evidence available to convict the officers.
Safeguards and prevention (g) Reduce, as a matter of urgent priority, the period of police custody to a time limit in line with international standards (maximum 48 hours);	Appalling conditions in police custody might be bearable for a maximum of 48 hours, but the fact that detainees remain there for several months or even years amounts to inhuman treatment.	**Government:** Under the *Constabulary Force (Interim Provisions for Arrest and Detention) Act,* a person may be remanded in custody for a period not exceeding seventy-two hours. This may only be done, however, if a Justice of the Peace is satisfied that the arrest or detention of the person is reasonably required in the interest of justice, having regard to such further investigations as may be required. At the expiration of that period of remand, the law requires that the person be taken before a Resident Magistrate. Where a Justice of the Peace is not satisfied that the arrest or detention of the person is reasonably required in the interests of justice, he must order that the detention of the person be released forthwith. The requirement that a Justice of the Peace make a determination in each case provides a safeguard for the protection of the rights of the detainee. The Ministry of Justice is actively sensitizing new and current Justices of the Peace about their responsibility and duty under this Act. The Legal Aid Council has also intensified its drive toward seeking Writs of Habeas Corpus in situations where persons are detained for extended periods without being charged. **Non-governmental sources:** It is reported that the Government has reportedly opted to extend pre-charge detention to 72 hours through the *Constabulary Force (Interim Provisions for Arrest and Detention) Act* (introduced immediately after the State of Emergency in 2010). The Act aims to improve the police force's ability to "catch perpetrators

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		of crime" and reduce the crime rate by temporarily extending the pre-charge detention period from 24 hours to 72 hours for one year (July 2010 – June 2011). As of July 2011, this temporary Act has been extended for an additional year. Even with the time limits imposed by this legislation, according to the Jamaica Constabulary Force's own data, the length of time for people being held in pre-charge detention can range from three (3) to twenty five (25) days, in violation of domestic law and international law.[36] Thus, the detention periods have reportedly been extended without regard to the fact that individuals are disproportionately held in breach of the law for periods longer than that prescribed by Jamaican law. In addition, it is alleged that there is no central register of detainees available to human rights defenders or legal representatives.
(h) Establish accessible and effective complaints mechanisms in all places of detention. Complaints by detainees should be followed up by independent and thorough investigations, and complainants must be protected from reprisals;		**Government:** Allegations of abuse are investigated by an internal Inspectorate. Serious cases or those which would question the actions of the staff are sent to the Inspectorate Unit of the Ministry of National Security for investigation. The Department of Correctional Services is now duty bound to report all cases of serious injury/death of inmates involving staff members to the INDECOM for investigation. In the case of lock-ups, allegations of abuse are recorded and reported to the Senior Commanding Officer, and are investigated by the Jamaica Constabulary Force (JCF). ***Non-governmental sources:*** Reportedly, the Government has not taken any action to adequately address this recommendation. As stated in the Government's response to the Human Rights Committee's List of Issues, complaints of abuse in detention facilities are primarily treated from within

[36] Refer to Table in Annex A. "The Constabulary Force (Interim Provisions for Arrest and Detention) Act 2010. July 2010 – June 2011.

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		the corrections system.[37] However, it is reported that the Government occasionally allows human rights NGOs to visit prisons and prisoners are able to make complaints to the Office of the Public Defender without censorship.[38] However, there is reportedly no system designed to safeguards inmates suffering from mental illness and their ability to make independent complaints.
(i) Ensure that justices of the peace and resident magistrates conduct regular visits to all police lock-ups;	Police lock-ups in Jamaica are used as de facto remand centres, where persons awaiting trial can be held for several months or years, despite current practices worldwide of holding detainees at police lock-ups for up to 48 or maximum 72 hours.	**Government:** As part of the Government's move to place emphasis on restorative justice and conflict prevention, the Minister of Justice has urged Justices of the Peace to be the checks and balances of State abuse and judicial excess. To this end, Justices of the Peace are sensitized by the Ministry of Justice about their duties regarding persons in Police Lock-ups. Resident Magistrates have also been sensitized and have renewed their commitment to making more frequent visits to Police Lack-ups. The JCF maintains a central database of all juveniles in police custody at the national level. In respect of adult inmates, a central register is kept in each police Division and these are available for inspection. ***Non-governmental sources:*** Reportedly, justices of the peace are frequently used for and known to 'rubber stamp' the continued detention of individuals based upon the police version of events without adequately reviewing the legality of the detention. It is reported that the Minister of Justice has recently publicly taken up the issue related to the practice of signing arrest warrants without having reasonable grounds for detention. This issue is compounded by advocates and human rights defenders not having access to a central database stating the names of those detained and the length of the detention.

[37] See: CCPR Human Rights Committee. (11 July 2011). Replies from the Government of Jamaica to the list of issues to be taken up in connection with the consideration of the third periodic report of Jamaica. CCPR/C/JAM/Q/3/Add.1. (p. 21, paragraphs 125-126).

[38] United Kingdom Border Agency (UKBA). (May 2011). Jamaica Country Report.

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
(j) Rapidly bring into force the Independent Commission of Investigation, equipped with sufficient powers and resources to investigate all forms of police misconduct, including allegations of extrajudicial killings, torture and ill-treatment ;	The Bureau of Special Investigations and the Office of Professional Responsibility are institutions within the Jamaican Constabulary Force, while the Police Public Complaints Authority is a State-funded independent body. The Authority and the Bureau of Special Investigations will be replaced by the Independent Commission of Investigation, created under the Independent Commission of Investigation Act (2009). However, there is no clear time frame for when the Commission will start its work.	**Government:** The INDECOM came into effect on 16 August 2010, to investigate abuses by members of the security forces and other state agents. INDECOM operates from three locations: Kingston, Mandeville and Montego Bay. A total of Jamaican USD 200 million was allocated for its operations for the fiscal year 2011/2. INDECOM, in its Special Report to Parliament, has made a number of recommendations for legal reform which are to be considered. ***Non-governmental sources:*** INDECOM commenced operations on 16 August 2010. INDECOM has been provided with resources from the Parliament to employ investigators, a process which has only recently concluded. However, it is reported that since INDECOM commenced their investigatory procedures, it has become evident that their powers to adequately and effectively ensure accountability of police officers have been hampered by the lack of cooperation between INDECOM and the DPP.[39] The Government has reportedly acknowledged that it may need to clarify (and strengthen) the powers granted to INDECOM under the Independent Commission of Investigations Act.
(k) Break the cycle of violence by addressing the root causes of violent crime, including, inter alia, drug trade in firearms, links of criminal gangs to political parties, corruption, poverty and other socio-economic disparities;	The root causes of high level of violence in the country are, among others, the drug trade in firearms, links of criminal gangs to political parties, corruption, poverty and other socio-economic disparities within the country and within cities themselves.	**Government:** The Government of Jamaica remains committed to fighting corruption, dismantling gangs and garrisons in communities and addressing the root causes of violent crimes. The GOJ has adopted a multi-faceted approach to addressing violent crimes in communities through its Community Renewal Programme, which has an initial target of conducting social interventions in one hundred (100) vulnerable and volatile communities over the medium term (3 -5 years). The Government of Jamaica is also undergoing a major modernization of its national security and law enforcement infrastructure to reduce levels of violent crime and transform the national security environment. The Ministry of National

[39] Parliament moves to quell ODPP, INDECOM conflict. (3 June 2011). Jamaica Observer. http://www.jamaicaobserver.com/news/Parliament-moves-to-quell ODPP--INDECOM-conflict_8949848

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		Security has begun to work with other Ministries, Departments and Agencies to develop an inter-departmental Crime Prevention and Community Safety Strategy utilizing a participatory and coherent approach that will result in the implementation of policies designed to prevent crime, reduce violence, particularly youth and gang related violence. A Crime Observatory is also in place and will be expanded. There continues to be a reduction in major crimes, including murder, over the last 2 years. The Government of Jamaica is also currently seeking to have Anti-Gang Legislation passed. Other programmes that have made inroads in communities include the Citizens Security and Justice Programme (CSJP) which is in its second 4-year phase; and the Safe School Programme that places emphasis on addressing violence and their causes in schools. An example of another educational initiative being pursued is the Alternative Secondary Transitional Education Programme (ASTEP), which is designed to provide a safety net for children at the end of the primary level who will require special intensive support and intervention, to successfully advance to the secondary level. The programme focuses on developing the literacy skills of students. The flow of weapons into Jamaica remains a challenge, especially since the country is not a manufacturer of small arms and light weapons. In keeping with the need to ensure that source countries undertake greater responsibility in preventing the illicit traffic of such weapons, a key priority for Jamaica remains increased collaboration with bilateral and regional partners to reduce the availability of illicit firearms and narco-trafficking to Jamaica as well as to facilitate cross-border identification and prosecution of traffickers. Of note is the fact that there is a regional task force on crime and security, which is responsible for law enforcement and national security in Member Countries of the Caribbean Community (CARICOM), and which is complemented by the 2011 CARICOM Declaration on Small Arms and Light Weapons. At the national level, the Government of Jamaica is working to

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		develop a comprehensive National Small Arms Policy which will seek to (a) implement legal and administrative controls to restrict the availability and misuse of firearms, ammunition and explosives and to ensure that they are properly and safely secured; and (b) develop programmes and policies that will address supply, possession and use of illicit firearms at the community level. As part of the National Programme for the Eradication of Poverty (NPEP), the Government addresses the needs of poor households under the Programme of Advancement Through Health and Education (PATH). The PATH is a conditional cash transfer programme which was implemented in 2001 to assist poor households in rural and urban areas in breaking the inter-generational cycle of poverty. While the main beneficiaries of the Programme are children, it also benefits the elderly, persons with disabilities, pregnant and lactating women, and a small number of indigent adults of working age. ***Non-governmental sources:*** It is reported that in 2010, the Government introduced six crime bills[40] to address the current situation of violence in Jamaica. However, instead of focusing on preventative measures, the Anti-Crime Acts focus on crimes that have already been committed and seem intent on correcting perceived or existing flaws in the operations of the police, the courts, and the correctional services. Reportedly, despite many promises very little has been done to concretely break the links of criminal gangs to political parties, to tackle corruption, and poverty. There appears to have been some success in curbing the trade in firearms linked to the smashing of a distribution network emanating in the Police Armoury.[41]
Conditions of detention (l) Ensure that persons deprived of	The conditions at remand and correctional	**Government:** While the Government aims to meet

[40] The six crime bills are in relation to: (1) the Bail Act; (2) the Firearms Act; (3) the Offences Against the Person Act; (4) the Parole Act; (5) the Plea Negotiations and Agreements Act; (6) the Constabulary Force (Interim Provisions for Arrest and Detention) Act.

[41] Jamaica Observer. (11 March 2011). Police Armoury Reopens. Available via http://www.jamaicaobserver.com/news/Police-armoury-reopens_8506026

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
their liberty are confined in facilities where the conditions comply with international minimum sanitary and hygienic standards and that detainees are provided with basic necessities, such as adequate floor space, bedding, food and health care; convicted prisoners should be provided with opportunities for work, education, recreation and rehabilitation activities;	facilities were generally better than in police stations; however, many prisons were found to be overcrowded, lacking sanitary facilities and any meaningful opportunities for education, work and recreation. Corporal punishment was routinely applied in remand and correctional facilities.	international standards, it is severely hampered by a lack of financial resources due to budgetary constraints. The Government is, however, trying to improve conditions with the limited resources that are available and is actively seeking funding for the construction of new prison facilities. In the interim, however, repairs have been affected to a number of cells, dormitories and prison facilities in order to improve the living conditions of inmates. There is also closer monitoring of inmate/staff relationship and enhanced training opportunities for prison staff to reduce the number of incidents of abuse as well as of conflicts between staff and inmates. Inmates are also exposed to education and skills training. The Government will continue to use its best endeavours to address the situation in prisons and lock-ups. This is an area which will require international support and assistance. ***Non-governmental sources:*** While there has been little progress to address the horrendous conditions in the prisons, there has been encouraging progress with rehabilitation programs. Whereas there were previously none, the Commissioner of Corrective Services has now committed to implementing programs in four (4) prisons around the island.[42]
(m) Place persons with mental disabilities, and particularly those suffering from severe mental illness, in a specialized psychiatric institution;	Persons with mental disabilities deprived of their liberty are not held in a separate psychiatric institution, but detained in a special wing of different correctional centres.	**Government:** Mentally ill persons who are detained are not kept in Police Custody but are usually transported to the Bellevue Hospital where they are treated by Mental Health Professionals at that institution. Thereafter, if it is necessary for them to remain in custody, they are taken to the Facilities manned by the Department of Correctional Services (e.g. Horizon Adult Remand Centre and the Fort Augusta Adult Correctional Centre) as these facilities are better equipped to treat mentally ill offenders. At the correctional facilities, persons with mental issues are divided into two groups (a) those which are unfit to plea and are held indefinitely until the court rules on the matter and (b) those that have been sentenced. For those that are unfit to plea, it is a requirement by law that their situation be reviewed frequently. As such, the

[42] Stand Up for Jamaica. (2011).

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		Department of Corrections provides a report to the Court at least each quarter on these individuals. The Court reviews the reports and decides whether to keep them in the facility or release them. As for those that are sentenced, they fall into the normal treatment plan where they see a psychiatrist and psychologist on a regular basis. Allegations of abuse in correctional facilities are investigated by an internal Inspectorate. Serious cases or those which would question the actions of the staff are forwarded to the Inspectorate at the Ministry of National Security. Section 14 (h) (ii) of the Charter speaks to the detention of individuals with mental disorders or addicted to drugs or alcohol where necessary, for his care or treatment or for the prevention of harm to himself or others. Detention is only to last for so long as is needed for that person's care or treatment. It is, therefore, not agreed that this will amount to an indeterminable time which would conflict with that person's right to be free from inhumane treatment. ***Non-governmental sources:*** No progress has been made on this recommendation. Reportedly, the Charter of Rights permits the detention of individuals for psychiatric analysis for an undetermined period, without legislating a scheduled time within which the detention for such purposes should be reviewed. This permits and legalizes the detention of individuals in circumstances that may constitute inhuman and degrading treatment for an indefinite period of time.
(n) Immediately close down the police lockups at May Pen and Montego Bay police stations;		**Government:** Efforts continue to be made to improve the situation and reduce the number of remandees at the mentioned police lockups, including the in case of Montego Bay police station, through the refurbishing and retrofitting of Barnett Street Lockup. ***Non-governmental sources:*** No progress has been made in relation to this recommendation.
Children		

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
(o) Remove all children in conflict with the law from adult detention facilities, and ensure that children in need of care and protection from the State are not held with those in conflict with the law;	With regard to an "uncontrollable child", there is no clear definition or criteria for its identification in the legislation. The wide discretion currently allowed to the judiciary has led to a relatively large number of detentions of children under such orders. The lack of separation of children and juveniles in need of care and protection, uncontrollable juveniles and those in conflict with the law makes it extremely difficult, if not impossible, to address the individual needs of children. The Fort Augusta Correctional Centre for Women and the Horizon Remand Centre for men are adult institutions that also hold children.	**Government*:*** The Government is working to reverse the current practice of the incarceration of children in police lock-ups and to implement measures to protect children in juvenile correctional facilities. There is segregation in detention and prison facilities between juveniles and adults, persons on remand and convicts. Female juveniles at the Fort Augusta prison, for example, are kept in separate dormitories, except for those occasions during the day when they are being exposed to training and educational classes. As a result of the opening of the Metcalfe Street Secure Juvenile Centre, no male juveniles are being housed in any adult facilities under the control of the Department of Correctional Services. The space created by the Metcalfe Street Facility will allow girls on remand to be relocated to the Rio Cobre and St. Andrew remand centres previously occupied by boys. In addition, the Department of Correctional Services will continue to manage the Hill Top Juvenile Correctional Centres for boys and the Diamond Crest Juvenile Correctional Centre for girls. The Government is currently taking steps to prepare a facility for the remand of girls who are in conflict with the law. The Jamaica Constabulary Force continues to provide the Child Development Agency (CDA) with a weekly report of children who are being held in lockups. The Agency's team continues to make the necessary arrangements for children to be removed to a Place of Safety or a pre-approved alternate site. This is typically achieved within 48 hours as required by the Child Care and Protection Act, 2004 (CCPA). As at December 5, 2011, 32 children (30 males, 2 females) were in police custody. This number varies and is not necessarily reflective of children being held in a police lockup for a prolonged period. As at the December 15, 2011, there were forty-five (45) children in conflict with the law who are being housed in the child protection residential system. Efforts are made to monitor these placement to ensure that there is no or very minimal disruption to care delivery to the general children

Recommendation (A/HRC/16/52/Add.3)	*Situation during the visit (A/HRC/16/52/Add.3)*	*Information received in the reporting period*
		population and any related risk factors removed. Over the past five months, the CDA initiated a pilot project designed to separate children with severe behaviour management issues from other children. This pilot is now in place for the Glenhope Place of Safety (severe behaviour management issues) and Homestead Place of Safety (care and protection). The pilot will be reviewed in March 2012 and the findings of which will inform the necessary policy changes and next steps going forward. The term 'uncontrollable' is usually used to refer to instances where a child exhibits or otherwise acts out maladaptive and socially unacceptable behaviours that makes it challenging or difficult for parents or guardian to effectively provide care on their own and which may result in their seeking intervention from third-parties, one of whom is the Jamaican State. This matter will be reviewed as part of a more comprehensive review of the Child Care and Protection Act, which will commence in 2012. Section 8, Subsection 1A of the Child Care and Protection Act 2004, indicates that a child is considered to be in need of care and protection if that child "having no parent or guardian, or having a parent or guardian unfit to exercise care and guardianship, is falling into bad associations, exposed to moral danger, or beyond control". Section 24 of the Child Care and Protection Act 2004 governs the application of judgment on matters which children are deemed "beyond control" herein also referred to as 'uncontrollable', refers as follows: "(Subsection 1) The parent or guardian of a child may bring the child before a juvenile court and where such parent or guardian proves to the court that he is unable to control the child, the court may make an order in respect of the child if satisfied – (a) that it is expedient so to deal with the child, and (b) that the parent or guardian understands the results which will follow from, and consents to the making of, the order. An order under subsection (1) may - (a) be a correctional

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		order; or (b) provide for the child (i) to be committed to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child; or (ii) to be placed for a specified period, not exceeding three years, under the supervision of a probation and after-care officer, a children's officer or of some other person to be selected for the purpose by the Minister." A National Plan of Action for Child Justice (2010-2014) was approved in October 2011. This Plan of Action is a multi-sectorial response to the needs of children in conflict with the law as well as those in need of care and protection. ***Non-governmental sources:*** Despite the Government's assurance that children would be removed from adult detention facilities. It is reported that the reality is that children continue to be held together with adults. The new facility, Metcalfe Street Juvenile Remand Centre for boys, which opened in June 2011, serves the detention of male juveniles only and thus does not effectively address the entirety of children being held in facilities alongside adults. Despite the opening of the new centre, as of 3 September 2011, 28 children remained in police lockups. It is alleged that female juveniles continue to be routinely incarcerated in Fort Augusta and Horizon Remand (adult prisons).
(p) Transfer the responsibility of places of detention for juveniles to the Child Development Agency;		**Government:** After careful assessment by all stakeholders, it was decided that the management of places of detention for juveniles will remain the responsibility of the Department of Corrections. To strengthen service delivery, the Child Development Agency remains an active member of an intersectoral working group, led by the Ministry of National Security, to establish an independent inspectorate to carry out annual audit inspections of Correctional and Remand Centres for both adults and children. The aforementioned National Plan of Action for Child Justice is also expected to treat with the issues affecting children in state of custody.

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		Non-governmental sources: Reportedly, even when the police attempts to have officers from the Child Development Agency (CDA) retrieve children who have been detained, the CDA fails to do so. Reportedly, this thereby "forces" the police to keep them housed with adults in contravention of national legislation. In addition, there continue to be inadequate facilities available for children who are in the State's care and custody. Too often children who are in conflict with the law and children who are in need of care and protection, are detained in the same facilities.
(q) Establish clear guidelines concerning punishments at children's homes, places of safety and correctional facilities, and ensure that its use is recorded in the register;	There was a poor completion of complaint entries in the police registers.	**Government:** The imposition of corporal punishment as part of a sentence is no longer legal. The Courts prohibit its use as part of a sentence for a commission of a crime. Legislative provisions ban its use in early childhood education facilities and places of safety. The Child Care and Protection Act (CCPA) outlaws the use of corporal punishment within a Children's Home, a Place of Safety or by a Fit Person. This is further underscored by the Child Care and Protection (Children's Homes) Regulations, 2007 in Paragraph 19 Sections 1 and 2 which states that "No licensee or member of staff of any children's home shall strike, cuff, slap or use any other form of physical violence towards any child who resides, or is, at the home. No child at a children's home shall be permitted to administer any form of punishment upon any other child." Should any such act occur it is classified and reported to the Child Development Agency's Monitoring Officers as a Critical Incident, and is thereafter investigated and acted upon as is required by law. The CDA continues to stress alternate methods of punishment which do not compromise the safety, well-being and dignity of any child. In an effort to promote the use of alternate methods of punishment, the Agency has developed a protocol "Child Abuse Prevention & Control within Residential Child Care Facilities (RCCF) Handbook" and is making final preparation for its dissemination and staff sensitization.

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		Non-governmental sources: A private members Bill was tabled in October 2010, to effectively repeal the Flogging Regulations Act and the Crime (Prevention of) Act, which condone the acts of flogging and whipping as punishment. The Bills continue to be debated.
Death penalty		
(r) Abolish the death penalty	On 26 November 2008, parliament voted to keep the death penalty. At the time of the visit, six people remained on death row. No death sentence has been executed since 1988, however there is a rise in fatal shootings by the police, which are often alleged to amount to extrajudicial killings, as well as the apparent lack of investigation and accountability of those responsible. The prisoners in death row in the Gibraltar 1 section in the St. Catherine centre were held in isolation.	**Government:** There are no plans by the Government, at this time, to abolish the death penalty. With respect to allegations of extrajudicial killings, the Government is committed to ensuring that all such cases are appropriately investigated. The establishment of the INDECOM is also expected to effectively respond to an investigation allegations of abuse by agents of the State. As regards the issue of the number of persons killed during the operations in West Kingston (73), the circumstances of their death remain the subject of investigation. Emphasis is being placed on enhancing the training being offered to security personnel with a special focus on the fundamentals of ethics, use of force and human rights. Training in the area of human rights is being provided in collaboration with human rights NGOs. The overall objective is to reduce the number of complaints of police excesses and restore public confidence in and support for the police. The Jamaica Defence Force also put in place revised rules of engagement which focus on further reducing the chances of civilian deaths when members of the Force carry out their operations. ***Non-governmental sources***: Reportedly, by the newly entrenched Charter of Fundamental Rights and Freedoms the Government decided to limit the effect of the Pratt and

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		Morgan43 case. The legal position established by Pratt and Morgan prevented death row prisoners from being subjected to inhuman and degrading treatment by reason of: (a) the conditions under which persons sentenced to death are detained pending execution of the sentence; and (b) the length of time which elapses between the date on which the sentence is imposed and the date on which the sentence is executed. It is reported that the failure to ensure that individuals sentenced to death in Jamaica are able to seek the review of their sentence on the basis established by Pratt and Morgan constitutes the entrenchment within Jamaican Law of a provision within the Charter that is wholly inconsistent with the fundamental rights protected under the Covenant. Further, it is reported that the *de facto* executions by police remains unacceptably high, with the number of those killed having increased to 320 in 2010 (not including the 73 confirmed killed during the State of Emergency). Reportedly, this now results in 1 in 5 of all killings in Jamaica occurring at the hands of the police.
78. The Special Rapporteur also recommends that the relevant United Nations bodies, donor Governments and development agencies consider the administration of justice as the highest priority, in particular the fight against violent crime, policing and the penitentiary system.		

[43] Earl Pratt and Ivan Morgan v. The Attorney General for Jamaica et. al. (2 Nov. 1993). Privy Council Appeal No.10 of 993.

Jordan

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Jordan in June 2006 (A/HRC/4/33/Add.3, paras. 72-73)

57. By letter dated 22 November 2011, the Special Rapporteur sent the table below to the Government of Jordan, requesting information and comments on the follow-up measures taken with regard to the implementation of his predecessor's recommendations. The Special Rapporteur regrets that the Government has not responded to his request. He looks forward to receiving information on Jordan's efforts to implement the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

58. The Special Rapporteur notes that although the definition of torture has been included in article 208 of the Criminal Code, no steps have been undertaken to incorporate the prohibition of torture into the Constitution, as recommended by the Committee against Torture (CAT) in 2010.[44]

59. The Special Rapporteur welcomes written and oral instructions issued by the General Intelligence Directorate to its personnel about refraining from using physical abuse, he remains concerned that no public official has ever been prosecuted for having committed torture under article 208 of the Criminal Code, and that only disciplinary sanctions and lenient penalties were imposed on public officials found guilty of abuse or torture. In this connection, he calls on the Government to define the offence of torture in accordance with articles 1 and 4 of the CAT, with penalties commensurate with the gravity of torture and distinct from other crimes.

60. The Special Rapporteur regrets not having received data on the number of complaints of torture and ill-treatment received by the Public Security Directorate and the National Centre for Human Rights (NCHR), including the results of any investigation undertaken in this respect. He urges the Government to ensure the effective and independent functioning of these complaint mechanisms and looks forward to receiving statistical data on the number of complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment.

61. The Special Rapporteur remains concerned about the reported cases of domestic violence against women and strongly encourages the Government to provide women at risk of violence with protection and support without placing them in "protective" custody but housing them in specific victim shelters.

62. Finally, the Special Rapporteur reiterates his recommendation to consider the ratification of the Optional Protocol to the Convention against Torture (OPCAT) and the establishment of a National Preventive Mechanism. He recalls the appeal to the Government to make declaration with respect to article 22 of the CAT, recognizing the competence of the CAT to receive and consider communications from victims of torture.

[44] Concluding observations of the Committee against Torture. (CAT/C/JOR/CO/2), Jordan, 25 May 2010.

Recommendation (A/HRC/4/33/Add.3)	*Situation during visit (A/HRC/4/33/Add.3)*	*Steps taken in previous years (to be found in A/HRC/7/3/Add.2, A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
(a) The absolute prohibition of torture be considered for incorporation into the Constitution.	No specific provision relates to the prohibition of torture, or cruel, inhuman or degrading treatment.	**Government:** The fact that the Jordanian Constitution does not contain a provision on the offence of torture, does not imply that torture is in any way permissible. The absence of such a constitutional provision cannot be legally construed as derogating from the legal obligations laid down in the CAT, nor can it be interpreted as a failing of the Constitution. 1.The Constitution contains general norms which place individual rights and freedoms in a general framework. 2. Torture is defined as a criminal offence in article 208 of the Criminal Code, which was recently amended to include explicit reference to the offence of torture, as was article 49 of the Military Criminal Code. 3. After being published in the Official Gazette, the Convention against Torture has become part of the Jordanian penal legislation. 4.The Constitution guarantees that everyone has the general and absolute right to seek a legal remedy. Under article 256 of the Civil Code, a plaintiff is entitled to seek damages for any injury suffered.	
(b) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted. The message should be spread that torture is an extremely serious crime which will be punished with severe (long-term)	- Implicit societal tolerance for a degree of violence against alleged criminal suspects and convicts. - Though unspoken, many were aware that abuse of suspects and detainees occurs and resigned that little could be done about it. - Little public discussion about the situation of torture.	- HE King Abdullah and the director of the Public Security Directorate (PSD), Lt. Gen Muhammad Mahmud al-'Aitan issued clear instructions that there was to be no torture. - The General Intelligence Directorate (GID) has issued written and oral instructions addressed to all personnel to refrain from abusing any detainee physically, verbally or emotionally, and providing for an increase in penalties for violations. **Government:** Jordanian, Arab and international	

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prison sentences.		non-governmental organizations play a key role in informing society about human rights issues, including the CAT, through seminars, courses, conferences, publications and booklets. The Media Office and Amman FM Radio receive complaints and remarks from citizens and residents in Jordan and guide them in following up their complaints. In addition, operational procedures were carried out to apply the principle of accountability in which those who commit such practices are prosecuted by public prosecutors in their independent judicial capacity in accordance with the Independence of the Judiciary Act and also by investigation panels. ***Non-governmental sources:*** According to the NCHR 2008 annual report, the PSD adopted some effective measures in 2008, including: i) Integrating the Anti-Torture Convention into basic and training curricula, as well as lectures and promotion tests for PSD personnel, particularly those working at CRCs, with the view to entrenching the Convention's provisions and concepts into their thinking and practice; ii) Carrying out investigations regarding complaints of human rights violations, including torture, despite the fact that the results are in general still modest; iii} Showing seriousness in dealing with complaints of torture and ill-treatment and referring some of these complaints to the Police Court.	
(c) The crime of torture be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with	Torture was criminalized in accordance with article 208 of the Penal Code; however, the definition was not consistent	Penal Code Article 208 was amended by temporary law No. 49 of 2007, to incorporate the definition of torture and increase the minimum prison sentence of three months to six months	

Recommendation (A/HRC/4/33/Add.3)	*Situation during visit (A/HRC/4/33/Add.3)*	*Steps taken in previous years (to be found in A/HRC/7/3/Add.2, A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
penalties commensurate with the gravity of torture.	with article 1 of the Convention against Torture.	while restricting alternative and discretionary sentencing. Courts were expressly prohibited from taking into account mitigating circumstances and from imposing suspended sentences. **Government:** Article 208 of the Penal Code criminalizes any acts of torture and imposes punishments for perpetrating torture, inciting its exercise, or approval or acquiescence thereof by any official or any person acting in an official capacity. The penalties imposed on the perpetrator of this crime have been set forth under articles 208/1 and 208/3 of the Penal Code, including imprisonment for six months to three years against exercising any kind of torture to obtain confession of a crime or information in connection thereof. This penalty would be increased to temporary hard labor if the act of torture has led to illness or serious injury. Furthermore, the court may not stop the enforcement of the sentenced punishment in the crimes listed in article 208, and it may not consider extenuating circumstances. Non-governmental sources: The minimum prison sentence regarding article 208 of the penal code is three months to three years' imprisonment, and torture is considered a misdemeanour.	
(d) The special court system within the security services – above all, police and intelligence courts – be abolished, and their jurisdiction be transferred to the ordinary independent public prosecutors and criminal courts.	The special court system did not work effectively. The presumption of innocence was illusory, primacy was placed on obtaining confessions, public officials essentially demonstrated no sense of duty, and assumed no responsibility to investigate human rights violations against suspected	**Government:** Most recently, an amendment to the Public Security Law has been enacted, whereby a civil judge shall be a member of the police court composed of a chairperson and two members (three judges in total). - The claim that the State Security Court accepts "confessions" allegedly obtained under torture while in custody is an unfounded and undocumented allegation. Special courts, including the State Security Court, are legal and	

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	criminals, and the system of internal special courts served only to shield security officials from justice.	based on the Jordanian Constitution. The State Security Court has limited authority over limited criminal offences against the country's security and public order. The litigation procedures of the special courts and the regular courts are similar. Public prosecutors apply the provisions of the articles set forth in the Criminal Proceedings Law No. 9 of 1961. By virtue of article 159 of this law, the court does not accept a proof or evidence that has been obtained under any kind of physical or mental coercion and considers it false and of no legal effect. A complainant has the right to challenge his statement before the prosecutor and court if he believes that it was obtained through physical or mental coercion by the law enforcement unit. The decisions of the special court are subject to appeal before the Court of Cassation, which is classified as a court of merit and court of law, and a trial or any of its stages can be voided if it was proved to be in violation of the Criminal Proceedings Law. - The Court of Cassation handed down a number of rulings annulling the verdicts of these courts because defendants had been put under physical and mental duress during questioning. ***Non-governmental sources:*** There have been some steps to bring perpetrators to justice.	
e) An effective and independent complaints system for torture and abuse leading to criminal investigations be established.	- Article 107 of the Code of Criminal Procedure (CCP), guaranteed every prisoner the right to complain to prison authorities, who have to forward the complaint to the Public Prosecutor. - When allegations of torture	- The PSD established a radio station through which all complaints were directly aired and appropriate solutions sought; and installed complaints boxes in various prisons under the direct supervision of the PSD's Office of Complaints and Human Rights. - The Ministry of Justice created a complaints mechanism and allocated qualified personnel to	

Recommendation (A/HRC/4/33/Add.3)	*Situation during visit (A/HRC/4/33/Add.3)*	*Steps taken in previous years (to be found in A/HRC/7/3/Add.2, A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	against a member of the police were made, the Department of Public Prosecutions had to register it in an investigation report and refer the person to a forensic doctor. - Within the PSD a Complaints and Human Rights Office received complaints against its personnel. - A human rights directorate within the Ministry of Interior was mandated to follow up on general human rights issues and complaints. - The NCHR was tasked with addressing human rights issues through a monitoring mechanism and the examination of complaints related to government institutions.	handle complaints, which enabled the Prosecutor General to monitor the situation in prisons; - The Prosecutor General created a registry for complaints in the Attorney-General's Office; Prisoners can complain to the Ministry of Interior's PSD through Legal Affairs prosecutors who are present all the time in seven prisons: Muwaqqar, Qafqafa, Swaqa, Jweideh men, Jweideh women, al-'Aqaba and Birain. The prison-based prosecutors work closely with officials in the Complaints and Human Rights Office of the PSD, who visit the prisons every two weeks and empty the sealed complaints boxes; - In February 2008 the NCHR was allowed to open an office inside Swaqa prison to receive complaints from prisoners on a weekly basis; However, the NCHR was not allowed access to Swaqa prison during disturbances which occurred in the prison in April 2008. The PSD has reportedly stopped cooperating with the NCHR following its critical reporting of the April 2008 events. **Government:** Under the Jordanian legislation, any person who alleges to be a victim of torture, may seek a judicial remedy and is entitled to request compensation in accordance with article 256 of the Civil Law. - The Office of Grievances and Human Rights in the PSD deals with complaints. Complaints are also received through reporting in person to the Office or submitting the complaint through official and unofficial correspondence. The complaints are then investigated, verified and followed up in an effective, immediate, comprehensive and impartial manner in order to reach a just conclusion.	

Recommendation (A/HRC/4/33/Add.3)	*Situation during visit (A/HRC/4/33/Add.3)*	*Steps taken in previous years (to be found in A/HRC/7/3/Add.2, A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		- Special monitoring and complaints office was set up in the Public Security Department and reports directly to the Director of Public Security. A key aim of the office is to verify that police procedures are correct and are implemented in a legal framework that is fair and just. The functions of the office can be summarized as follows: (a) Receiving complaints from the public about any violations or erroneous practices carried out by public security services personnel; (b) Coordinating with the relevant authorities in regard to these complaints; (c) Investigating complaints in accordance with due process norms and submitting the findings to the Director of Public Security; (d) Receiving reports submitted by complaints offices in police departments and taking the necessary action thereon; (e) Submitting report to the Director of Public Security setting out the complaints received, the action taken and appropriate recommendations; (f) Following up on complaints, resolving them and informing the parties concerned of the outcomes; (g) Producing regular publications for unit chiefs containing information on any wrong practices among their staff; these publications help to raise awareness and offer advice and guidance in line with the directives issued by the Director of Public Security. - Within correctional and rehabilitation centres, the Grievances Office or the public prosecutors are in charge of these complaints and of all legal procedures. Complaint boxes affiliated with this Office were placed in all correctional and rehabilitation centres.	

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		- The NCHR receives complaints concerning human rights violations. The Centre monitors human rights situation and any violation of public freedoms by official bodies. ***Non-governmental source:*** Detainees may file complaints to the NCHR during their visits to detention centres, through their families or the existing hotline. - In April 2009, the NCHR and the PSD signed a Memorandum of Understanding for further cooperation in the field of human rights, including the strengthening of the monitoring role of the NCHR. - The CRC Department at the PSD established a hotline for detainees to file complaints.	
(f) The right to legal counsel be legally guaranteed from the moment of arrest.	The CCP provided that, in the period following the arrest and before being presented to the Public Prosecutor, legal counsel could not be sought.	**Government:** A memorandum of understanding was signed with Jordan Bar Association. Non-governmental sources: In July 2009, the Bar Association signed a Memorandum of Understanding with the PSD to allow lawyers to be present during the investigation period.	
(g) The power to order or approve arrest and supervision of the police and detention facilities of the prosecutors be transferred to independent courts.	Security services were effectively shielded from independent criminal prosecution and judicial scrutiny as abuses by officials of those services were dealt with by a special court system, which lacked independence and impartiality.	The discussion regarding separation of the two authorities was ongoing.	
(h) All detainees be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus	Articles121 to 129 CCP guaranteed the right to habeas corpus. They also held that a detainee could challenge a detention order and any		

Recommendation (A/HRC/4/33/Add.3)	*Situation during visit (A/HRC/4/33/Add.3)*	*Steps taken in previous years (to be found in A/HRC/7/3/Add.2, A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
proceedings.	extension of a detention order before the competent court. However, this mechanism was not effective in practice.		
(i) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol.	It appeared that judges and prosecutors did not ask detainees how they had been treated in police custody.	**Government:** The Ministry of Interior instructed all administrative governors to allow lawyers to attend interrogations of suspects conducted by the administrative governors. - A medical care clinic was established within the detention centre, where two doctors and two nurses are available around the clock, in addition to a dental clinic and a pharmacy. Each detainee is examined by a doctor and given the necessary treatment; a medical file is opened for him and a counselor is made available for psychological consultation. ***Non-governmental sources:*** In general, detainees are not asked, but the NCHR monitors some individual cases.	
(j) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators of investigators should be permitted.	Article 100 CCP stipulates that a police officer who was not satisfied with a testimony should send the person concerned to the Public Prosecutor within 24 hours, who in turn had to question him or her within 24 hours. An individual could bring action for deprivation of liberty against an official who kept him or her in custody for over 24 hours without questioning. However, in practice persons were at times detained longer than 24 hours.		

Recommendation (A/HRC/4/33/Add.3)	*Situation during visit (A/HRC/4/33/Add.3)*	*Steps taken in previous years (to be found in A/HRC/7/3/Add.2, A/HRC/10/44/Add.5 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
(k) The maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time at which the family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer.	On paper, a file regarding each detainee informed about the time of arrival, state of health, details, reason for detention, authority which issued the arrest warrant or verdict, and all details relating to the person's time at the centre. Upon arrival, detainees were to undergo a medical check-up and the police doctor should prepare a medical report, indicating whether there were any traces of torture. If that was the case, a forensic report had to be prepared and judicial authorities were to be notified. However, this process was not effective in practice.	- A register at the GID contained information about any detainee's name, nationality and charge. Another register recorded visitors, and a third register contained medical records. Outside of the GID, detainees did not receive a standard medical examination. - In regular prisons registers generally contained the name of the detainee or prisoner, the nationality and charge, if any; the doctors had medical files of those seeking and receiving medical care, although no entry exam was performed.	
(l) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present.	A confession could be accepted as the only evidence in a case if the court was convinced that it was made voluntarily and willingly (article 159 CCP). The Court of Cassation has overturned a number of convictions on the grounds that security officials had obtained confessions from defendants under torture.	The Court of Cassation has issued several rulings with regard to confessions made as a result of violence: e.g. ruling No. 1513/2003 of 4 May 2006, which held that "statements obtained as a result of violence and coercion cannot be relied upon to convict a defendant". **Government:** Article 159 of the Criminal Procedures Law stipulates that any evidence or statement obtained by physical or mental coercion and in the absence of the public prosecutor is considered void, and of no legal effect. It will not be accepted, unless the prosecution provides evidence of the circumstances, under which it was obtained and the court is convinced that the indicted, suspect or defendant has provided such evidence or statement voluntarily. The defendant	

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		may also dispute, before the public prosecutor and the court, the statement obtained from him by the law enforcement officer on the grounds that it was obtained under pressure or through physical or mental coercion. - The Court of Cassation handed down a number of rulings annulling verdicts of courts, because defendants had been put under physical and mental duress during questioning. Ruling No. 450/2004 of 17/3/2004 states: "If the court concludes that the confession which the defendant made to the police was obtained under circumstances which must cast doubt on its veracity and under the effects of physical duress and torture, then the court is entitled to disregard the confession." Also, ruling No. 1513/2003 of 4/5/2006 stipulates: "Statements obtained as a result of violence or coercion cannot be relied upon to convict defendants." Other similar rulings annulling court verdicts include: No. 820/2003 of 23/11/2003; No. 552/99 of 23/8/1999; No. 256/98 of 19/5/1998; No. 51/98 of 23/3/1998; No. 746/97 of 20/1/1998; No. 327/94 of 22/8/1994; and No. 271/91 of 1/10/1992.	
(m) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.	- No ex officio investigations were undertaken even in the face of serious injuries sustained by a criminal suspect. - Impunity was total.	***Non-governmental sources:*** A prosecutor appointed by the director of the PSD, who is at the same time an official of the PSD, carries out investigations into allegations of torture and ill-treatment against officials and prosecutes them in a police court staffed by judges who are PSD officials appointed by the PSD director as well; - Following encouragements by the international community and HE King Abdullah, the police prosecutor brought charges of "beatings leading to death" against prison guards in Aqaba, who beat a detainee to death in May 2007.	

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		Non-governmental sources: Independent investigations are conducted by the NCHR, but these cases are transferred to the PSD as the NCHR does not have the power to refer cases to court.	
(n) Any public official found responsible for abuse or torture in the Special Rapporteur's report, including the present management of CID and GID, certain police or prison officials involved in torture or ill-treatment, as well as prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty, and prosecuted; on the basis of his own (very limited and short-time investigations) the Special Rapporteur urges the Government to thoroughly investigate all allegations contained in the appendix with a view to bringing the perpetrators to justice.	Security officials referred to examples of disciplinary sanctions as evidence that there was no impunity for isolated acts of ill-treatment not amounting to torture. Examples of sanctions included loss of salary imposed on officers, or dismissals from service.		
(o) Victims of torture and ill-treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, as well as adequate medical treatment and rehabilitation.	Victims of torture could pursue private claims following a court decision in their favour.		
(p) The declaration be made with respect to article 22 of the Convention against Torture recognizing the competence of the	No declaration		.

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Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.			
(q) Non-violent offenders be removed from confinement in pre-trial detention facilities, subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement).		- A committee was created within the Ministry of Interior to consider alternative sentencing measures; - An "Office for Prison Reform" has been mandated to devise strategies and plans to modernize mechanisms to accomplish the goal of combating torture; - A new Reform and Rehabilitation Centre was built in Al-Muqar to address the problem of overcrowding; construction of more new centres is being considered; - Measures were taken to improve the conditions in GID detention; - Inmates working in prisons have been included in social security programmes; ***Non-governmental sources:*** In July 2009, a Committee was set up by the Ministries of Interior, Justice, Health and Social Development, together with the PSD and a representative from the NCHR to study the proposed amendments to the Law of Reform and rehabilitation centres and the Code on Criminal Procedure for the introduction of alternative sanctions and the enforcement of the presence of the judge during the implementation of the sentence.	
(r) Pre-trial and convicted prisoners be strictly separated.	The Government informed the Special Rapporteur that Correction and rehabilitation centres operate on a system	- Two new prisons were opened in 2008; - According to the Ministry of Interior's PSD, on 7 April 2008, authorities began to separate pre-trial and administrative detainees from convicted	

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	based on separation of convicted persons from persons awaiting trial.	prisoners; Qafqafa, Swaqa and Muwaqqar prisons seem to be intended exclusively for convicted prisoners. - Convicts are further segregated according to age, health, crime, and general behaviour. Under article 3(d) of the 2007 Law on the Correction and Rehabilitation Centres, the classification is to be made by a psychiatrist, a general doctor and a social worker. ***Non-governmental sources:*** Pre-trial and convicted detainees are separated.	
(s) The Criminal Procedure Code be amended to ensure that the automatic recourse to pre-trial detention, which is the current de facto general practice, be authorized by a judge strictly only as a measure of last resort, and the use of non-custodial measures, such as bail and recognizance, are increased for non-violent, minor or less serious offences.			
(t) Due to extremely harsh prison conditions and routine practice of torture, the Al-Jafr Correction and Rehabilitation Centre be closed without delay.	Detainees are routinely beaten and subjected to corporal punishment amounting to torture. The isolation and harshness of the desert environment compounds the already severe conditions of the prisoners.	The Government closed Al-Jafr Prison in December 2006. **Government:** Al-Jafr Prison was closed down by order of His Majesty the King on 17 December 2006, and was converted into a vocational training school. In addition, new reform and rehabilitation centres with a capacity to accommodate more than 1000 inmates each are being constructed, one in Muwaqqar that was fitted out and recently began to admit prisoners, and another in Mafraq which is still under construction. The aim is to resolve once and for all the overcrowding problem in some centres and to leave scope for classifying prisoners	

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		according to age group, offence and its gravity.	
(u) Females not sentenced for a crime but detained under the Crime Prevention Law for being at risk of becoming victims of honour crimes be housed in specific victim shelters where they are at liberty but still enjoy safe conditions.	No allegations of ill-treatment were received in the Juweidah (Female) Correction and Rehabilitation Centre. There is a policy of holding females in "protective" detention, under the provisions of the 1954 Crime Prevention Law, because they are at risk of becoming victims of honour crimes.	***Non-governmental sources:*** A victims' centre became operational in 2007, however, not all women in protective custody have been moved to the centre. Furthermore, the centre seeks reconciliation and does not have a mandate to protect the women at risk. **Government:** Protection is provided to potential victims of 'honor killings', or those who are vulnerable to domestic violence, in a safe house called the "Domestic Reconciliation House". Psychological, rehabilitation programmes, vocational trainings, medical and legal assistance is available to victims of domestic violence. - According to the protection houses' regulations, new instructions were issued to allow civil society organizations to establish and run sanctuaries to contribute to promoting the concept of protection in the society, and use the collaborative approach, such as the sanctuary affiliated to the Jordanian Women's Union and the one affiliated to the Jordan River Foundation in raising the level of protection in the society.	
(v) Security personnel shall undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education	None of the directors of prisons, pre-trial or police detention centres had allegedly been aware of any allegations of torture.	- Initiatives within the PSD include: distribution of the Convention against Torture to law enforcement personnel and encouragement of senior officers to bring it to the attention of their subordinates; - Inclusion of CAT in all basic training curricula, lectures and promotion exams for security personnel; - Several programmes and training courses have been implemented in this regard; the Royal Police Academy incorporated some sessions about torture and prisoners' rights in its curriculum.	

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		Non-governmental sources: The NCHR carried out a number of lectures and training courses for law enforcement officials. It produced a manual for detainees on their rights and duties, in cooperation with the PSD, which was distributed in all prisons. It also urged the PSD to issue instructions regarding the prevention of torture.	
(w) Security personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve.			
(x) The Optional Protocol to the Convention against Torture be ratified, and a truly independent monitoring mechanism be established – where the members of the visiting commissions would be appointed for a fixed period of time and not subject to dismissal – to visit all places where persons are deprived of their liberty throughout the country.	No ratification	Visits to detention facilities by the PSD's Office of Complaints and Human Rights, in conjunction with the NCHR and other civil society organizations have been intensified to prevent wrongful acts, to report and to ensure accountability. **Government:** Jordan's decision not to accede to the OPCAT should not be viewed as a lack of commitment to strengthening and enhancing the protection of persons deprived of their liberty. Jordan is determined to enhance the existing mechanisms mandated to undertake periodic visits to places of detention. The non-accession of Jordan to the OPCAT at this stage does not necessarily preclude the possibility to reconsider such position in the future. -A number of bodies such as the Grievances and Human Rights Office of the PSD, the NCHR, ICRC, and some international NGOs have been carrying out regular visits to all investigation and detention centres, as well as rehabilitation facilities to ensure compliance and respect for human rights. A Memorandum of Understanding was signed in	

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		2009, between the PSD and the NCHR for the purpose of facilitating its role in conducting unannounced visits to all rehabilitation centres in the kingdom. Prior to that, a human rights office related to the NCHR was established at Souagha Rehabilitation Centre. Amendments to the law, pertaining to correctional facilities and rehabilitation centres n° 9 of 2004, have been proposed that include provisions on the conditional release system, as well as provision to further facilitate visits and periodic inspection of these centres. The Minister of Justice or his delegates has the power to carry out visits at any given time to correctional facilities to ensure the implementation of court decisions. ***Non-governmental sources***: The Optional Protocol has not been ratified, but the NCHR conducts unannounced visits to places of detention, in cooperation with the PSD, as a preventive measure.	
(y) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security personnel, legal professionals and the judiciary.	The Government informed it promotes human rights concepts through awareness-raising programmes disseminated by the media and recently incorporated these concepts into the academic curricula. In various meetings with government officials the Special Rapporteur found a lack of awareness of the seriousness of torture.	- Training sessions for judges in the Judicial Institute emphasize the need to combat torture in prisons. Prosecutors, together with judges, have been trained by national and international NGOs on the Convention against Torture and on juvenile justice matters; - Several training workshops have been carried out by the National Human Rights Centre. **Government:** The Convention against Torture was disseminated among the members of security forces who were instructed to adhere to its provisions and include its articles in their training courses.	

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		The Grievances and Human Rights Office issued nine circulars that included the Convention against Torture, Police Charter of Honor, legal inspection procedures and cases on the use of force. ***Non-governmental sources:*** The NCRH, the PSD, the Ministry of Justice and the Mizan Law Group for Human Rights are implementing a programme entitled "Karama", aimed at eradicating the use of torture and ill-treatment, and ensuring that such acts are criminalised, investigated, prosecuted and punished, and that victims receive redress, in accordance with Jordan's international legal obligations. The objectives of the project are: i) To strengthen the professional capacity of relevant law enforcement institutions to prevent torture and ill-treatment and to respond appropriately and effectively when such acts occur; ii) To strengthen the professional capacity of state and civil society organizations so as to facilitate that torture and ill-treatment are documented, prosecuted and redressed in accordance with international legal standards; iii) To institutionalise and enhance the cooperation between the state and civil society so as to further the eradication of torture and ill-treatment; and iv) To promote a strengthening of Jordan's national legislation so as to enhance the prevention of torture and ill-treatment and the criminalisation of torture. - The program will run from October 2008 to September 2010, and it is funded by the Danish Ministry of Foreign Affairs.	

Kazakstan

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Kazakhstan from 5 to 13 May 2009 (A/HRC/13/39/Add.3)

63. On 22 November 2011, the Special Rapporteur sent the table below to the Government of Kazakhstan requesting information and comments on the follow-up measures taken with regard to the implementation of his predecessor's recommendations. The Special Rapporteur regrets that the Government has not provided any information with regard to the implementation of the recommendations. He looks forward to receiving information on Kazakhstan's efforts to implement the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

64. The Special Rapporteur welcomes the amendment of the definition of torture in article 141-1 of the Criminal Code; however, he observes that it is not fully in conformity with the definition of torture in article 1 of the Convention against Torture as it does not refer to physical and mental suffering arising from unlawful actions of public officials. In addition, the specific offence of torture is not punishable by appropriate penalties commensurate with the gravity of the offence, as required by article 4, paragraph 2, of the Convention. The Special Rapporteur calls upon the Government to ensure that torture is established as a serious crime, sanctioned with appropriate penalties.

65. The Special Rapporteur questions the effectiveness of the complaints mechanism envisaged in the Manual (Guidelines) of the Office of the Public Prosecutor, as an accessible complaint channel with due guarantee of protection against reprisals. In this connection, he stresses the need to establish an effective and independent mechanism to investigate all allegations of torture and ill-treatment by law enforcement agencies promptly, independently and thoroughly.

66. The Special Rapporteur expresses concern at the reported incidence of violence and excessive use of force by law enforcement officials against participants in the protests held in December 2011 in Mangistau region, allegedly leading to the loss of life of at least 15 persons. He welcomes the Presidential instruction to ensure transparent investigation into the events and launching of internal investigations for alleged abuse of power by law enforcement officials. He regrets not having received any information about the number of judicial or other inquiries carried out in relation to this case.

67. The Special Rapporteur welcomes the consideration by the Parliament of the draft bill introducing amendments in the Criminal Procedure Code to grant access to defence counsel and allow for notification of family members from the moment of actual deprivation of liberty, and expresses hope that this rule will be effectively implemented in practice.

68. The Special Rapporteur looks forward to receiving more information on concrete steps undertaken to implement the Government's plans to strengthen further non-custodial pre- and post- trial measures provided for in the concept of the Legal Policy for 2010-2020.

69. The Special Rapporteur remains concerned that the Law on Refugees is not fully consistent with the provisions implementing the principles of non-refoulement stipulated by article 3 of the Convention. He strongly encourages the Government to adopt a legislation regulating expulsion, deportation and extradition in line with its international obligation under article 3 of the Convention.

70. Finally, the Special Rapporteur urges the Government to finalise the legislation on the National Preventive Mechanism and equip it with sufficient human and other resources.

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
Impunity (para. 80) (a) Publicly condemn torture and ill-treatment and unequivocally state that torture is a serious crime, in order to rebalance the current situation, where criminals are easily deprived of their liberty, often for very long periods, whereas law enforcement officials who break the law receive lenient sentences.	Players in criminal justice system do not denounce cases of torture; Penalties for torture are not commensurate. **Government:** A number of normative-legal acts on combating torture and protecting detainees' rights were adopted, including: - Law of the Republic of Kazakhstan of 10 December 2009, "On amending and supplementing several legal acts with a view of improving the system of execution of punishment and the correctional system"; - Decree No 1039 of the President "On the measures of increasing the effectiveness of the judiciary and law enforcement bodies in the Republic of Kazakhstan"; - Government decree No 71 of February 2010, approving the Government's Plan of Action for 2010-2012 on the implementation of the recommendation of the UN Committee against Torture; - Normative decree No 7 of the Supreme Court of 28 December 2009 "On the administration of criminal and criminal-procedural norms on the issues of personal liberties and freedoms, personal security and dignity, fight against torture and other cruel, inhuman or degrading treatment or punishment"; - The Prosecutor General's decree No 7 of 1 February 2010 about "Instructions on revision of complaints about torture and other illegal methods of ill-treatment of persons involved in criminal proceedings and deprived of their liberty, and their	***Non-governmental sources:*** The authorities introduced a number of measures intended to prevent torture, including widening access to places of detention to independent public monitors and committing publicly to a policy of zero tolerance on torture. During the UPR review in February 2010, the Government delegation reiterated that the Kazakhstani authorities were committed to a policy of zero tolerance on torture, and that they "would not rest until all vestiges of torture had been fully and totally eliminated". However, human rights and prison reform monitors report that the public condemnation of torture has been confined to statements and directives by national entities and officials, such as the Office of the Prosecutor General in the capital Astana, senior officials at the Ministries of Internal Affairs and Justice, the Presidential Administration. At regional and local levels no such public statements have reportedly been made and human rights monitors have expressed serious concern that directives from central national offices are not implemented by regional and local law enforcement forces.

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	prevention"; - Joint order issued by the Minister of Justice (No 30 of 1 February 2010), Minister of Health (No 56 of 29 January 2010), Minister of Internal Affairs (No 41 of 1 February 2010), Chairman of the Committee on National Security (No 15 of 30 January 2010) in consultation with the Prosecutor General (order of 1 February 2010) "On ensuring obligatory participation of forensic experts in the conduct of medical examination of persons who have allegedly sustained physical injuries while in temporary detention facilities, pre-trial detention centres and in the correctional system"; - Joint order of 2 February 2010, issued by the Minister of Justice, Minister of Internal Affairs, Chairman of the Committee on National Security, Chairman of the Agency on Fight Against economic and corruption-related crime "On cooperation of law enforcement bodies and civil society representatives during the review of complaints on torture and other illegal methods used during the interrogation and investigation, as well as criminal investigation of the facts alleging torture and ill-treatment"; - Minister of Justice order No 169 of 21 December 2009, approving the Rules of the organization of educational and professional activities in penitentiary system; - Minister of Justice order No 194 of 28 June 2010 "On approval of Rules for visiting detention centres and pre-trial detention facilities";	

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	-Minister of Justice order No 64 of 25 February 2010 "On approval of the Rules of administration of justice in pre-trial detention centres of the criminal-correctional system of the Republic of Kazakhstan". There are currently projects on: - Draft Bill "On amending and supplementing several legislative acts of the Republic of Kazakhstan on the issues of establishing national preventive mechanisms on the prevention of torture and other cruel and degrading forms of treatment or punishment". The project envisages establishing national preventive mechanisms in places of detention. - Draft Bill "On amending and supplementing several legislative acts with a view of further humanizing criminal legislation and strengthening guarantees of the rule of law in criminal proceedings". The bill provides decriminalization of several elements of crimes of minor and medium gravity, introduction of the definition of torture (article 347-1 of the Criminal Code) in compliance with the Convention against Torture, and alternative jurisdiction under article 347-1 on the investigation of criminal cases on torture allegedly committed by law enforcement bodies; - Draft Bill "On amending and supplementing legislative acts on the issues of probation", providing for the establishment of a national model of probation under the auspices of the	

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	Committee on penal-enforcement system; - Draft order of the Minister of Justice "On amending and supplementing several orders of the Minister of Justice", to ensure absolute prohibition of torture, courteous treatment of detainees, and protection of detainees' rights in accordance with international standards.	
(b) Amend the law to ensure that torture is established as a serious crime, sanctioned with appropriate penalties and fully brought into line with the definition provided for in the Convention against Torture.	Torture is outlawed by article 347-1 of the criminal code, but its definition is more restrictive than the one contained in article 1 CAT, as it limits criminal responsibility to public officials and does not criminalize torture committed by any other person acting in an official capacity or by individuals acting at the instigation or with the consent or acquiescence of public officials. Article 347-1 states that "physical and mental suffering caused as a result of legitimate acts on the part of officials shall not be recognized as torture", with the term of "legitimate acts" as being vague. **Government**: The draft Bill providing amendments in the definition of torture in article 347-1 of the Criminal Code in line with article 1 of the CAT has been submitted to the Parliament on 30 December 2010. Since torture is qualified as a grave crime, there is no need to make amendments in the legislation in terms of the definition of the gravity of crime.	
(c) Introduce complaints channels that are accessible in practice, ensure that any signs of torture are investigated ex officio, and protect complainants against reprisals.	No existing meaningful complaint mechanism. Most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals. There is no independent body mandated to make	***Non-governmental sources:*** Impunity for torture and other ill-treatment by security forces has remained unchallenged. The authorities have reportedly failed to fully and effectively implement Kazakhstan's obligations under the UN Convention against Torture and Other Cruel, Inhuman

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	prompt investigations, and the overwhelming majority of complaints are almost automatically rejected. Staff of the investigation isolators does not consider it their responsibility to detect and address torture or ill-treatment perpetrated by law enforcement agencies. **Government:** Data regarding complaints alleging offences committed by officials of the penitentiary system, received in the past 5 years, is as follows: 2005 - 17; 2006 – 54; 2007 – 219; 2008 – 280; 2009 – 288. Thus, in the past five years, the number of complaints have increased 16.94 times. In 2009, out of 122 registered cases on violations of citizens' constitutional rights, disciplinary measures were applied in relation to 128 employees of law enforcement bodies (including 56 senior officials). In 2008, 2 members of organs of internal affairs were sentenced to various terms of imprisonment with charges of torture. In 2009, 2 cases were filed against members of law enforcement with charges of using torture. In 2010, one employee of the criminal correctional system was charged with using physical force against detainees. 10 employees of the criminal correction facility were charged with exceeding the official power. ***Non-governmental sources:*** Although the Manual (Guidelines) of the Office of the Public Prosecutor, established by an Order of the Prosecutor General of 1 February 2010, provides for complaints mechanisms,	or Degrading Treatment or Punishment, especially with regard to initiating prompt, thorough, independent and impartial investigations into allegations of torture or other ill-treatment. Reportedly, according to the Prosecutor General's office, in 2009, only two allegations of torture by security officers had been confirmed and criminal cases had been opened against the offending officers. It reportedly dismissed as unfounded all allegations of torture by security officers raised by a number of people whose cases had been taken up by non-governmental organisations.

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	it is questionable whether these mechanisms are effective. According to para. 17 of the Guidelines, detainees are asked about their treatment during the interrogation. This provision does not protect a person against torture nor does it provide an effective mechanism to receive information, as the investigator questioning the detainee may be the one involved in executing acts of torture. - In a number of penitentiary institutions, prisoners do not receive outgoing numbers attached to their complaints and complaints are reportedly not transmitted to relevant agencies for further action. In penitentiary institutions in the Karaganda region, detainees have not been able to get an appointment with the head of the penitentiary or with the lawyer. Prisoners who reported ill-treatment are often threatened and intimidated by the prison administration.	
(d) Establish an effective and independent criminal investigation and prosecution mechanism that has no connection to the body investigating or prosecuting the case against the alleged victim.	The dual role played by the prosecutors (endorsing of indictments prepared by the police & monitor compliance by criminal justice bodies and law enforcement officials with the law and to protect the rights of citizens and residents) leads to the paradox situation that torture or ill-treatment are raised at a latter stage of a criminal process, and they have to be processed by the prosecutor's office, the latter, by demanding an investigation, basically admits that it has not fulfilled its monitoring role. Thus, prosecutors tend to ignore grave violations. **Government:** Measures are being	

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	considered to ensure timely and fair investigation of alleged torture by services not belonging to law enforcement agencies, and to relieve them of their official duties for the duration of the investigation and court proceedings (Action Plan of the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by CAT). The project on the draft Bill provides: - Strengthening the coordinating role of the organs of the Prosecutor's office in relation to the law enforcement activities; increasing the role and responsibility of the Prosecutor over the pre-trial procedure in terms of ensuring the lawfulness of criminal proceedings. - Minimizing options for alternative jurisdiction, including attributing to the jurisdiction of the Ministry of Internal Affairs the investigation of criminal cases related to illegal transaction of narcotic and psychotropic substances, and to the relevant bodies of financial police, the investigation of criminal cases in the area of economic and corruption-related crimes while maintaining alternative jurisdiction with national security organs only in cases of accumulation of committed acts. - Delegating the examination of criminal cases with charges of torture allegedly committed by law enforcement agents to another entity authorized to examine the case.	
(e) Allow access to independent medical examinations without the interference or	Medical personnel employed by the Ministry of the Interior and the penitentiary	

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
presence of law enforcement agents or prosecutors at all stages of the criminal process, and provide independent medical check-ups of persons deprived of their liberty, particularly after entry to or transfer between places of detention.	administration lack the independence to take action against colleagues with whom they work on a daily basis. Also, the supervising authority (investigators, prosecutors or penitentiary authorities) may delay the authorization of the medical examination so that injuries deriving from torture are healed by the time the examination takes place. In case of examinations outside the detention facility, the law enforcement officer in charge of the case normally accompanies the detainee and stays with him or her during the examination. **Government:** In February 2010, a joint Ministerial order was approved on the mandatory participation of forensic experts in the conduct of medical examination of persons who sustained physical injuries while in temporary detention facilities, pre-trial detention centres and penitentiary institutions. ***Non-governmental sources***: There have been serious shortages of medication in a number of penitentiary institutions in Karaganda region. Prisoners complained about the lack of adequate treatment and required medication.	
(f) Ensure that future refugee legislation duly takes into account the principle of non-refoulement enshrined in article 3 of the Convention against Torture.	Domestic legislation does not contain provisions implementing the principle of non-refoulement stipulated by article 3 of the Convention against Torture. A refugee law was currently being elaborated. **Government:** A law on refugees was adopted on 4 December 2009. Article 523 of	***Non-governmental sources:*** It is reported that a new law on refugees, which came into force on 1 January 2010, excluded certain categories of asylum-seekers from qualifying for refugee status in Kazakhstan. These included people charged in their country of origin with membership of illegal, unregistered or banned political or religious parties or movements. In practice, this exclusion particularly affected Muslims from Uzbekistan who worshipped in mosques which were not under State control

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	the Criminal Procedural Code has been amended ensuring non-refoulement of refugees where there are substantial grounds to believe that a person would face the danger of being subjected to torture or ill-treatment upon return. ***Non-governmental source***: Although the adoption of the Law on Refugees is an important step, it is not fully consistent with international standards, in particular with regard to the principle of non-refoulement. - Article 12(5) of the law, which provides for the denial of refugee status on the basis of membership of a terrorist, extremist or banned religious organizations or groups, does not elaborate whether the organizations should be banned or considered extremist or terrorist by the country of asylum, country of origin or either. Furthermore, in the absence of a restrictive definition of 'extremist' organization, this provision may be used by the countries of origin to persecute political opponents; whereas inclusion of 'banned religious organizations' may effectively exclude one of the core elements of the refugee definition, which explicitly includes persecution on religious grounds. - There is also a lack of clarity in the Law with respect to safeguards against refoulement in deportation and extradition procedures: under Kazakhstani laws, deportation is regulated by administrative procedures which do not contain same guarantees as a criminal procedure. Under the current law the decision on deportation	or who were members or suspected members of Islamist parties or Islamic movements banned in Uzbekistan, and who had fled the country, fearing persecution for their religious beliefs. The exclusion also affected people of Uighur origin from the Xinjiang Uighur Autonomous Region of China who were charged with or suspected of belonging to separatist movements or parties. The newly-formed State Migration Committee, under the Ministry of Labour, began a review of all cases of those granted refugee status by UNHCR, the UN refugee agency, prior to the State Migration Committee's inception. It revoked the refugee status of many people from Uzbekistan and China, most of whom were awaiting resettlement to a third country. It is reported that a growing numbers of these individuals, as well as other asylum-seekers from Uzbekistan and China, were stopped by police or NSS officers for document checks and arbitrarily detained either for short periods in pre-charge detention facilities or indefinitely in NSS detention facilities pending forcible return to their countries of origin. Reportedly, they had no or limited access to lawyers, UNHCR or their families. It is further reported that in June 2010, NSS officers detained 30 Uzbekistani refugees and asylum-seekers in the city of Almaty with a view to forcibly deporting them to Uzbekistan. Detainees' wives were told that their husbands faced extradition to Uzbekistan on charges of membership of illegal religious or extremist organizations and charges of attempting to overthrow the State. On 8 September 2010 one of the men, Nigmatulla Nabiev, was granted asylum for one year. However, on 13 September 2010, the Almaty deputy prosecutor announced that the General Prosecutor's Office had decided to extradite the remaining 29 men. At least two of the 29 were said to have been extradited to Uzbekistan in September before their appeals against their detentions and the decisions to extradite them had been heard. By the end of

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	is to be delivered by the court within one day under normal circumstances or within 8 hours in cases involving detention. Normally the person is given 'reasonable time' to leave voluntarily (in practice this is restricted to 15 days) and is forcibly deported if they fail to do so. The effective access to legal representation and right of appeal may be hindered by this and by the lack of clear reference in the procedure. There is not enough clarity with regard to the provisions on mandatory medical examination of asylum seekers and refugees and right of entry and stay on the territory of the country, which may serve as grounds for deportation. The recent reported cases of denial of renewal of police registration, following a court decision to reject an asylum claim, is alarming and may lead to risk of deportation, and thus undermine the right of stay on the territory until the delivery of a final decision on asylum claim. - The extradition process in the Law appears to be complicated. Although in principle the persons are entitled to legal representation and appeal, in practice they are not informed of this right and rarely have access to challenge accusations raised by the country of origin. - There is a need for a clear and comprehensive mechanism for admission of asylum seekers at the border, including in situations of mass influxes. Currently the situations of mass influxes are regulated by the Law on States of Emergency, which is not refugee protection sensitive and does not provide for procedural guarantees and	December, the majority of the 29 men's appeals had been turned down. At least two other Uzbekistani asylum-seekers were extradited in October and November 2010. On 9 June 2011, a year after they were originally detained, the Kazakhstani authorities forcibly returned 28 of the ethnic Uzbek men to Uzbekistan, thus violating their obligations under international law and placing the men at real risk of torture. One more ethnic Uzbek man, who was also detained on 9 June 2010, remains in detention in Kazakhstan. All of the 29 asylum-seekers and refugees had lodged appeals against the Prosecutor General's decision in September 2010, to extradite them. These were rejected by a district court in the southern city of Almaty on 15 March 2011. Additionally, in December 2010 the Committee against Torture imposed interim measures to stay extradition pending a review of the merits of a complaint submitted on behalf of the 29 Uzbeks. The government of Kazakhstan subsequently challenged the admissibility of this complaint. In May 2011, the Committee reaffirmed the interim measures, prohibiting Kazakhstan from extraditing these individuals, pending the Committee's review. It is alleged that the 28 forcibly returned men were for the most part held incommunicado in different detention facilities in Uzbekistan. By September 2011, reports emerged that at least 12 of the men have gone on trial in Uzbekistan on charges of terrorism and membership of banned extremist organizations.

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	protection for asylum seekers. - With respect to cessation grounds, the wording of certain cessation clauses in the law (Art. 14 (1(5, 6)) and particularly Art. 14 (2)) are not compliant with the 1951 Convention. This is worrying also considering that Article 15 of the Law does not provide for the right to appeal.	
Safeguards and rehabilitation (para. 81) (a) Register persons deprived of their liberty from the very moment of apprehension, and grant access to lawyers and allow for notification of family members from the moment of actual deprivation of liberty.	The de facto apprehension of a person and delivery to a police station is not recorded, which makes it impossible to establish whether the three hour maximum delay for the first stage of deprivation of liberty is respected. **Government:** The draft Bill introducing amendments in the article 138 of the Criminal Procedural Code, according to which the relatives and representatives of the person deprived of their liberty, without any exceptions, must be notified from the moment of actual deprivation of liberty, is pending before the Majlis of the Parliament. - On 1 August 2008, the judicial sanctioning of arrest was introduced. The person may be held in custody for no more 72 hours without a court authorization. The administration of the temporary detention centre is obliged to immediately pass any complaint of torture or ill-treatment to the public prosecutor. - On 28 December 2009, a normative decree No 7 of the Supreme Court was adopted on the administration of criminal and criminal-procedural norms, providing for obligations of judges and prosecutors to carry out	

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	investigation on the legality of the arrest, including arrest without court authorization. According to the normative decree, the person has to be transferred immediately or within 3 hours after the factual arrest to the investigative body or interrogative officer to decide upon procedural apprehension. The exact time of the factual arrest has to be precisely reflected in the protocol. Non-compliance with these normative conditions will constitute criminal responsibility. - With a view of ensuring judicial supervision over the due process, the Office of the Prosecutor General adopted instructions on the examination of complaints on torture and ill-treatment of persons in detention and their future prevention. ***Non-governmental sources***: Although under article 68 of the Criminal Procedure Code detainees are entitled to inform their relatives "immediately" about their detention and location. It is questionable whether this rule is an effective protective measure against torture. Under the Criminal Procedure Code, the police officer who arrests the suspect is not obliged to grant the suspect access to a phone immediately after the arrest. It is also not clear if the term "immediately" refers to the situation before the suspect is delivered to the police station or after. This means that detainees may not be able to inform their relatives before they are delivered to the police station. The provision regarding the right of the suspect to inform his relatives immediately is in conflict with the provisions of Article 138,	

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	which requires the police to inform relatives within 12 hours and in some exceptional cases within 72 hours. It is upon police's discretion to delay notification, which would be enough to extract confession from the suspect under torture.	
(b)Reduce the period of police custody to a time limit in line with international standards (maximum 48 hours).	Legal limit for police custody is 72 hours, but in practice may last longer, in particular if a person is transferred back and forth between temporary and investigation isolators several times. **Government:** The draft law (see above) providing for the reduction of the time limit for custody to 24 hours, prior to authorization, is currently under the consideration of the Majlis of the Parliament.	
(c) Strengthen the independence of judges and lawyers, ensure that, in practice, evidence obtained by torture may not be invoked as evidence in any proceedings, and that persons convicted on the basis of evidence extracted by torture are acquitted and released, and continue the court monitoring led by the Organization for Security and Cooperation in Europe.	Judges are widely seen as formally present at certain points of the criminal process, but mainly to rubberstamp prosecutorial decisions rather than taking an interest in discovering the truth and meaningfully following up on torture allegations. Lawyers are widely perceived as corrupt, ineffective, "part of the system" and unwilling to defend their clients' rights. In particular, "State lawyers" are widely described as being present only during hearings and the trial and do not enjoy any trust. Lawyers tend to ignore allegations of torture. **Government:** The country is considering measures to ensure the practical application of the principle of adversary court proceedings and absolute independence and	

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	fairness of the judicial power by guaranteeing the division of power (Plan of Action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the CAT). The normative decree of the Supreme Court of 28 December 2009 provides for non-admissibility of evidence obtained by torture or other forms of ill-treatment. Any petition alleging use of torture and ill-treatment made in the course of the judicial examination is subject to registration and criminal investigation.	
(d) Shift the burden of proof to prosecution, to prove beyond reasonable doubt that the confession was not obtained under any kind of duress, and consider video and audiotaping interrogations.	Burden of proof is with the detained person that alleges that he/she has been tortured/ill-treated. **Government**: Video and audio taping of interrogations are foreseen in Article 219 of the Code of Criminal Procedure. A directive on ensuring participation in the verification of allegations and criminal investigation of torture and other illegal methods of inquiry and investigation was approved on 1 February 2010 by the Prosecutor General, according to which a court authorizes an arrest and when the main proceedings are conducted, the prosecution is required to establish whether torture or other forms of ill-treatment were used during the interrogation. ***Non-governmental sources:*** The fact that under the Criminal Procedure Code the suspect is entitled to consult with a lawyer before the first questioning does not always prevent acts of torture and coerced	

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	confessions. First, the person may be tortured and interrogated off the record before his meeting with a lawyer. Second, the suspect may be forced to waive his right to a lawyer unless the participation of the lawyer is mandatory. Third, Kazakh authorities can use so-called "pocket" advocates appointed by the investigator, who cannot are not independent lawyers acting in the best interests of the suspect. Confessions obtained in such circumstances can be considered admissible. It should be noted, however, that the recent Regulatory Resolution of the Supreme Court of the RK No. 7 of 28 December 2009 states that "if the defendant during court hearings claims that he gave his statement under physical or psychological violence of the law enforcement agencies, he was not informed of his right to invite counsel and not to give self-incriminatory statements, and his interrogation was conducted without participation of counsel, the challenged statement should be considered as inadmissible evidence." This is a positive legal rule that should be adopted in the Criminal Procedure Code. Moreover, the wording of the Code should be more explicit and binding by automatically recognizing any statement of a suspect or accused that was given in the course of the pre-trial stages of a criminal case in the absence of defence counsel, including situations where there was a waiver of defence counsel as inadmissible.	
(e) Incorporate the right to reparation for victims of torture and ill-treatment into	There is no legal obligation in Kazakh domestic legislation for financial	

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domestic law, together with clearly set out enforcement mechanisms.	compensation or rehabilitation of torture victims. Article 40 of the criminal procedure code provides for compensation of harm caused as a result of unlawful acts of the body leading or carrying out criminal proceedings; however the list of unlawful acts does not include torture or ill-treatment. Nonetheless, a resolution of the Supreme Court of 9 July 1999 (No. 7) on the practical application of the legislation on the compensation for the harm caused by unlawful actions of the bodies in charge of the criminal process, which serves as a guideline for judges, refers to the "use of violence, cruel and degrading treatment" and lists "arrested, accused and convicted persons" as eligible for compensation. **Government:** The country is considering a mechanism for reparation, compensation and rehabilitation by the state for victims of torture, followed by the recovery of corresponding expenses from those found guilty of torture (draft plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture). -The normative decree No 7 of the Supreme Court of 28 December 2009 has provisions on the rehabilitation of victims of torture, compensation for material and moral damages, as well as for the prevention of torture and holding perpetrators accountable. -Currently, compensation can be sought through the court proceeding by anyone	

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	who alleges to have been subjected to torture.	
Institucional reforms (para. 82) (a) Continue and accelerate reforms of the prosecutor's office, the police and the penitentiary system with a view to transforming them into truly client oriented bodies that operate transparently, including through modernized and demilitarized training.	No effective reforms of the prosecutor's office, the police and the penitentiary system conducted with a view to client orientation and transparency in its operation. **Government:** The concept for the Legal Policy of the Republic of Kazakhstan for 2010-2020 was approved by a Decree of the President of the Republic of Kazakhstan in August 2009. Subsection 2.10 is fully devoted to reforming the penitentiary system. - A working group composed of representatives of all state bodies is tasked with the administrative reform of law enforcement agencies aimed at their demilitarization and bringing them in line with international standards. - On 17 August 2010, the President signed decree 1039 on "Measures to improve the efficiency of the law enforcement and judicial systems in the Republic of Kazakhstan". These measures are designed to modernize the administrative and judicial environment of the country, get rid of soviet-style management, fight corruption in the system and raise its credibility. The key of this ambitious reform programmes lies in its comprehensive implementation, monitoring and assessment. The realization plan of the Concept of Legal Policy for 2010-2020 in the area of criminal-correction system provides a number of measures addressed to :	

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	- creating conditions for a wider application of alternative to deprivation of liberty measures, including exploring the possibility of experimental framework probation services; - respecting the rights and legal interests of persons in places of detention and ensuring their security; - increasing the status and securing social-legal safeguards of the personnel of the criminal-correctional system; -ensuring targeted state policy in the area of re-socialization and adaptation of citizens released from places detention; - bringing the system of execution of justice in line with universally accepted standards. Human rights issues are included in the curriculum of advanced training courses of the Office of the Prosecutor General and the Ministry of Internal Affairs. In 2009, out of 3217 graduated trainees, 1000 studied international human rights standards. The Supreme Court is also organizing various programmes (e.g, conferences, seminars, round tables, etc) in the area of human rights. The human rights Commissioner, in cooperation with international organizations is carrying out various educative projects and seminars for civil servants, the personnel of the penitentiary institutions, social workers and NGOs.	
(b) Transfer temporary detention isolators from the Ministry of the Interior, and investigation isolators from the National Security Committee to the Ministry of Justice and raise the awareness of Ministry of Justice	Temporary detention isolators are under the responsibility of the Ministry of the Interior and investigation isolators under the responsibility of the National Security Committee.	***Non-governmental sources:*** It is reported that according to the Prosecutor General's Office, members of Independent Public Monitoring Commissions had been given unprecedented access to pre-trial detention centres of the National Security Service (NSS); four visits had been carried out in 2009 and eight in 2010. This information has

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staff regarding their role in preventing torture and ill-treatment.	**Government**: According to the decision of the Coordinating Committee of law enforcement bodies, the consideration of transferring investigation isolators from the National Security Committee to the Ministry of Justice is postponed to subsequent consideration by the Coordinating Committee. The postponement was due to the need of financial revision related to the transfer, including the revision of allocated expenses, the registration and inventory of technical conditions of isolators, the remuneration of the personnel and their qualifications.	reportedly been confirmed by members of the Public Monitoring Commissions in July 2010 and again in June 2011. Access to NSS pre-trial detention centres and temporary detention centres under the Ministry of Internal Affairs had in the past been denied to independent monitors as a general rule and when given had been problematic, as opposed to access to places of detention under the Ministry of Justice, which had been much more routine. However, access to NSS and Ministry of Internal Affairs places of detention have reportedly still needed to be negotiated on a case by case basis and have depended on relations at a local level between members of the Public Commissions and heads of regional and local law enforcement offices. It is reported that in July 2011, the President signed a decree authorising the transfer of the prison system back to the authority of the Ministry of Internal Affairs, thereby defeating years of reform efforts by the Ministry of Justice, domestic and international penal reform and human rights organizations. This decree was not publicly discussed and in fact was only disclosed in August, well over a week after its entry into force.
(c) Design the system of execution of punishment in a way that truly aims at rehabilitating and reintegrating offenders, in particular by abolishing restrictive prison rules and regimes, including for persons sentenced to long prison terms, and maximizing contact with the outside world.	The legal framework and penitentiary policies applied have an essentially punitive nature rather than aiming at reintegrating prisoners back into society. Penitentiary reform based on the premises of educational work with convicts and their reintegration was ongoing. **Government:** A reform programme of the penitentiary system is being drafted to bring it in line with international standards. - A draft bill provides decriminalization of crimes that do not present any major public danger, including in the economic area through transferring them to the category of	

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	administrative offences and strengthening the responsibility for committing these offences, including through the inclusion of administrative prejudice, as well as through reevaluating the degree of gravity. The bill also considers broadening alternatives of the execution of punishment.	
(d)Strengthen further non-custodial pre- and post-trial measures, in particular, but not exclusively, in relation to minors, and equip the probation service with sufficient human and other resources.	Prison population well above number in other post-Soviet countries and more than three times the average in Europe. **Government**: The concept of the Legal Policy of the Republic of Kazakhstan for 2010-2020, approved by Decree of the President in August 2009, aims at minimizing citizens' contact with the criminal justice system and to use criminal sanctions more sparingly. - A draft law was prepared on amendments and additions to certain legislative provisions on probation, including establishing a probation service. The draft law considers broadening alternatives of the execution of punishment by introducing fines, community services and restriction of freedom of movement; regulating the exemption order from the criminal liability in cases of reconciliation of parties, when public damage is caused and when the pre-trial custodial measures are established for economic-related crimes of small or average gravity, as well as in cases when the caused damage is voluntarily compensated. - In 2010, a request was made to consider expanding conditions for the execution of non-custodial punishment by adding 1,183 new posts to the staffing of the Inspectorate	

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	and establishing a probation service. - On 31 May 2010, a decree "On the reorganization of the Committee on the State institutions of the criminal-correctional system of the Ministry of Justice of the Republic of Kazakhstan" was adopted with 591 planned inspections throughout 2010 and 592 inspections throughout 2011.	
(e) Design the national preventive mechanism as an independent institution in full compliance with the Paris Principles and equip it with sufficient human and other resources.	No independent and effective national preventive mechanism with the necessary human and other resources with a view to discovering what really happens in places where people are deprived of their liberty. **Government:** The Ministry of Justice established a working group to develop the concept and the relevant bill, with the participation of non-governmental and international organizations. At the end of August 2010, the Ministry of Justice announced that it will submit a bill on torture prevention to the Government in the next couple of months. The content of this bill is not public. - The government is working on two closely connected pieces of legislation: on the implementation of the National Preventive Mechanism (NPM), and on the Ombudsman. The Government aims to adopt its NPM legislation by the end of 2010, however, the coordination and harmonisation of the two legislations, as well as the development of an appropriate timetable for their respective adoptions remains to be addressed. During the second half of 2011, the	

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	Commissioner for human rights, as a member of the NPM "Ombudsman +" model, will submit a proposal to the Republic Commission on human rights requesting financial allocations for the establishment of the NPM.	
(f) Ensure that medical staff in places of detention are truly independent from the organs of justice administration, that is by transferring them from the Ministry of Justice to the Ministry of Health.	Medical personnel employed by the Ministry of Interior and the penitentiary administration lack the independence to take action against colleagues with whom they work on a daily basis. An examination by these staff members can therefore not be considered independent; consequently, it needs to be done by an outside medical expert. **Government:** The medical examination of detainees is carried out by the Ministry of Health experts. The Government does not see any need for establishing an independent service. The national legislation provides a possibility of inviting accredited independent experts in conflicting situations. Currently, there are 20 independent expert organizations registered in the National Association of Medics. According to the Presidential order No 1039 of 17 August 2010, all functions and power of the Ministry of Internal Affairs related to the activities of medical sobriety facilities, except for the function of handing over offenders of public order to the medical sobriety facilities, are transferred to the Ministry of Health.	
Women (para. 83) Appropriate bodies adopt a law on domestic	Criminal and criminal procedure codes	

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violence in full compliance with international standards. The law should not focus on prosecution, but also foresee preventive measures; provide for ex officio investigations of alleged acts of domestic violence and ensure adequate funding for the infrastructure to support victims of domestic violence and trafficking; and create a national database on violence against women.	provide for crimes under which acts of violence against women, including domestic violence, can be prosecuted. Too few efforts have been undertaken to facilitate access to justice for victims. A draft law on combating domestic violence was scheduled for adoption in 2009, which however appears to be focused on the prosecution of acts of domestic violence and neglects prevention and protection of the victims. It foresees no infrastructure to temporarily house and support victims of domestic violence. The draft law requires that any prosecution must be based on the complaint of an individual, which could lead to increased pressure being applied to the complainant if the culprit tries to make her withdraw the complaint. **Government:** A law on the prevention of domestic violence and a law on amendments and additions to certain legislative acts on the prevention of domestic violence were adopted on 4 December 2009. - Respective amendments were made to the Criminal Procedural Code and Code of Administrative Offences. - The law on the prevention of domestic violence establishes a legal and institutional framework of activities of state bodies, entities and citizens to prevent domestic violence and provides for the establishment of a mechanism to prevent and suppress offences in the area of family and domestic relations. -The law provides for the establishment of crisis centres for victims of domestic	

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	violence. In 2008, out of 21697 applications received by some 20 non-governmental crisis centres, 6165 were related to physical violence, 5539 were related to psychological violence, and 556 were related to sexual and other forms of violence. - A comprehensive awareness raising campaign on the prevention of domestic violence is carried out throughout the country. Since 1999, special divisions on the issues of protection of women from domestic violence were established in all regional branches of the Ministry of Internal Affairs. - As a result of measures undertaken, the number of offences related to domestic violence has decreased from 954 in 2008 to 887 in 2009.	
Children (para. 84) (a) Explicitly prohibit by law corporal punishment of children in all settings.	Article 10 of Law 345-II on Child Rights of enunciates a child's right to life, personal liberty and integrity of the dignity and personal life, and sets out the State's obligation to protect children from physical and/or mental violence, cruel, rough or humiliating treatment, sexual abuse and so on. No effective mechanism for combating violence against children seems to be in place. **Government:** The Code of Administrative Offences and the Criminal Code of the Republic of Kazakhstan provide for criminal liability for mistreatment of children, including for not fulfilling responsibilities of mentoring minors, deliberately inflicting body harm to minor,	

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	subjecting them to ill-treatment and torture. In 2009, 35 criminal cases were initiated on cruel and inhuman treatment against minors. - In accordance with the Presidential order of 17 August 2010, temporary isolators, centres for adaptation and rehabilitation of minors are transferred from the Ministry of Interior to the Ministry of Education. - Government started developing a network of services for family support. Due to measures undertaken, the number of children in foster-care organizations for child-orphans and children left without parental care has decreased by 892 children (from 16008 children in 2008, to 15116 in 2009), and the number of neglected and homeless children to 1141 since 2007.	
(b) Raise the age of criminal responsibility and establish a juvenile justice system that puts the best interests of the child at its core, and abolish the use of temporary isolators for minors.	- Criminal responsibility for serious crimes is applicable as of 14 years of age; for other crimes, as of 16. - A "juvenile justice system development concept", approved by the President, foresees the creation, in the period 2009–2011, of a juvenile justice system and, among others, provides for specialized juvenile courts, a juvenile police, specialized legal aid, a specialized service for supervising non-custodial sentences, better coordination mechanisms and the integration of socio-psychological services into the juvenile justice system. - Centres for temporary isolation, adaptation and rehabilitation, which operate under the responsibility of the Ministry of Interior, are designed to detain children younger than 16 years of age suspected of having committed minor offences, housing children who have	

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	lost their parents or legal guardians, or have been picked up in the streets. **Government:** Jointly with the United Nations Children's Fund (UNICEF), work is underway to further develop the juvenile justice system. Two specialized courts have already been set up in Astana and in Almaty, and are operational. The aim is to extend the network of specialised juvenile courts to the provinces. - A draft Bill proposes broadening the basis of the use of non-custodial measures towards minors by not using deprivation of liberty towards first offender minors who committed crime of minor gravity. Under the Criminal Code, deprivation of liberty does not apply to first offender minors who committed crime of minor gravity and first offender minors aged between 14 and 16 who committed crime of average gravity. - There are no temporary isolators for minors in the Republic of Kazakhstan. -There are 18 centres for temporary isolation, adaption and rehabilitation for temporary holding, adaptation and rehabilitation of minors aged between 3 and 18. ***Non-governmental sources:*** There is a demonstrated commitment to the creation of a juvenile justice system that complies with international standards and best practices, including through strong cooperation with the international community; pilot specialized juvenile courts and juvenile police units; the specialized defence team in	

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	Almaty; the humanization of conditions in colonies; and a policy of early release of juvenile prisoners who show signs of rehabilitation. - The 'Juvenile Justice System Development Concept' establishes the basic framework for the future juvenile justice system. The time frame for the creation of this system is 2009–2011. - The caseload of the recently established juvenile courts is low and the courtrooms are new or newly refurbished. The fees paid to attorneys who represent juveniles from poor economic sectors are low, which has an adverse impact on the quality of services provided. The 'Concept' calls for the establishment of specialized legal offices or services for children throughout the country, but at present only one such office exists and there is some uncertainty regarding the willingness of the central Government to commit the resources necessary to establish similar offices nationwide. The resources allocated to the existing juvenile justice institutions are generally sufficient, but the creation of a juvenile justice system along the lines set forth in the 'Concept' will require the allocation of additional funds to establish new services, to replicate existing ones throughout the country and, in general, for planning and training needs.	
(c) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime, the United Nations	*See above* **Government**: A countrywide programme of cooperation aimed at improving the quality of life for children is developed between the	

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
Children's Fund, OHCHR and nongovernmental organizations, to implement these reforms.	Government and UNICEF for the period of 2010-2015. In addition, UNICEF has developed project on "Two-year rolling plan on child welfare: Juvenile justice in Kazakhstan". The programme provides realization of pilot projects on the development of juvenile justice in three regions of the country during the period of 2010-2011, and will be addressed to developing up-to-date legislative basis for the practice with juvenile offenders, victims and witnesses with due consideration of local standards and practices, as well as development of educational programmes on child rights for lawyers and law enforcement bodies.	
Health-care facilities/psychiatric institutions and harm reduction (para. 85)		
(a) Ensure respect for the safeguards available to patients, in particular their right to free and informed consent to treatment in compliance with international standards; change the terminology used to describe disabilities, in particular "idioty"; ratify the Convention on the Rights of Persons with Disabilities; use institutionalization as a last resort; allow for independent monitoring of all institutions; and ensure that all deaths in such institutions are investigated in a transparent manner by an independent body.	- Reported extensive use of tranquilizers, allegations of high number of deaths of patients and of cases of starvation. - Concerns with the procedure for placement in boarding house and the manner in which such placement is reviewed, and the lack of any independent monitoring of the boarding house. Detention for repeat offenders not considered responsible for their acts on the bases of a court judgment, for indefinite periods, until a judge authorizes their release. - Compulsory placement in a medical institution of a person not in pretrial detention for the performance of a judicial psychiatric expert evaluation should only be allowed pursuant to a court decision (article 14 (2) of the criminal procedure code).	

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	- Compulsory placement in a medical institution of a person not in pretrial detention for the performance of a judicial-medical expert evaluation is allowed pursuant to a court decision or on the basis of a sanction by the procurator. No maximum period for such treatment is stipulated by the law, the process lacks transparency and there appears to be no possibility to appeal such a decision. **Government:** Under article 91 of the Code on Public Health and system of health protection, medical assistance is provided following the written or verbal acknowledgment of the patient. The terminology "idiot" is never used in the legislation or in practice to describe disabilities. The Government is undertaking steps to ratify the Convention on the Rights of Persons with Disabilities. - The placement in coercive facilities and specialized institutions are allowed only if authorized by court and only if the person is of serious hazard to herself/himself or to the public. - All cases of death in such institutions are being investigated by the Committee under the auspices of the Ministry of Health; the Police and the office of Prosecutor. - Annual preventive medical inspections and further monitoring are conducted in detention centres with a view of carrying out targeted treatment and efficient follow-up of recovery. New plans are under way for the recovery of patients with a high risk	

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	of medical condition. - Medical interventions and special preventive measures are undertaken among long-term sick and often falling sick and vulnerable persons. The number of cases of tuberculosis has decreased from 767 in 2008 to 643.9 in 2009. The number of registered cases of death was 475 in 2008, 452 in 2009 and 333 for the past 8 months in 2010.	
(b) Initiate harm-reduction programmes for drug users deprived of their liberty, including by providing substitution medication to persons and allowing needle exchange programmes in detention.	No needle exchange programme and drug substitution therapies are available in places of detention. **Government:** A meeting of the Inter-ministerial Working Group on the implementation of harm reduction programmes was planed for the first quarter of 2010. - Since 2008, pilot projects on realizing substitute therapy have been carried out among the population of city Pavlodar and Temirtau. - Introduction of programmes on exchange of single-use needles in correctional facilities and investigation isolators has not been possible. - HIV-positive detainees and detainees diagnosed with AIDS are provided with special therapy. 154 HIV-positive patients are receiving specialized treatment in the facilities of the Penal Enforcement System. Their medical treatment is provided by regional AIDS centres; expenses of their medical care are covered by the Global Fund to Fight AIDS, Tuberculosis and Malaria. Information is available and	

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	disinfectant substances are distributed among detainees in penitentiary institutions.	

Mongolia

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Mongolia in June 2005 (E/CN.4/2006/6/Add.4, para. 55)

71. On 22 November 2011, the Special Rapporteur sent the table below to the Government of Mongolia requesting information and comments on the measures taken with regard to the implementation of the recommendations. The Special Rapporteur regrets that the Government has not provided any information in that regard. He looks forward to receiving information on Mongolia's efforts to implement the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

72. The Special Rapporteur regrets that the definition of torture does not fully comply with the definition in article 1 of the Convention against Torture and calls upon the Government to ensure that torture is defined as a crime and is punishable in a manner proportionate to the gravity of the crime.[45]

73. The Special Rapporteur calls upon the Government to amend the criminal legislation to ensure that the period for holding detainees in police custody does not exceed 48 hours, and that no detainee should be subject to unsupervised contact with the investigator.

74. The Special Rapporteur regrets not having received any update in relation to the supervision of investigations of allegations of torture and other ill-treatment by the Office of the Prosecutor and the National Human Rights Commission of Mongolia (NHRCM). He calls upon the Government to take measures to expedite prompt, impartial and thorough investigations into all allegations of human rights violations committed during the State of Emergency of July 2008, launch timely public prosecutions and conclude them without delay, where the evidence warrants it. He calls upon the Government to recognize the competence of the CAT to receive and consider individual communications.

75. While acknowledging the efforts of the NHRCM in conducting visits to places of detention, the Special Rapporteur reiterates the need to strengthen the functioning and independence of monitoring mechanisms. In this connection, he welcomes the establishment of a Working Group on the ratification of the OPCAT, and urges the Government to ratify the OPCAT and establish a National Preventive Mechanism.

76. The Special Rapporteur looks forward to receiving information in relation to the treatment of death row prisoners in accordance with the Standard Minimum Rules on Treatment of Prisoners. [46] He welcomes the declaration by the President on 14 January 2010, of a moratorium on the death penalty, since in his experience capital punishment is almost always applied in manners to involve cruel, inhuman or degrading treatment or event torture.

[45] Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[46] See also the Concluding Observations of the Human Rights Committee, (CCPR/C/MNG/CO/5), Mongolia, 25 March 2011.

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
(a) Highest authorities declare that impunity must end.	Impunity existed because of a lack of a definition of torture as defined in the CAT, a lack of awareness of international standards, and no effective mechanism for receiving and investigating allegations. There had not been any effective investigations by the procuracy, nor had any law enforcement officials been convicted for torture related offences.	**Government**: Since 2007, of 744 torture-related cases, 14 were investigated, of which 10 cases were acquitted and 1 suspended by the Prosecutor's office. Of the 3 cases brought to court, 2 were acquitted and one convicted. ***Non-governmental sources:*** The culture of impunity persists.	
(b) Criminalisation of torture be in accordance with CAT.	Legislation did not include essential elements; torture was not defined in accordance with article 1 of the Convention. The main provision in the Criminal Code referring to torture, article 100.1, carried a relatively lenient penalty of up to two years' imprisonment.	**Government:** All actions and activities concerning torture are prohibited in the Mongolian constitution and other legislation. Article 16.13 of the Constitution and 10.4 of the Code of Criminal Procedure include the prohibition: "No person shall be subjected to torture or to inhumane, cruel or degrading treatment." Amendments to the Civil Code in February 2008 included the word "torture" and included a new article whereby a crime resulting in the death of a victim shall be punishable by a prison term of 10-15 years. Amendments to the Criminal Code at the same time included more detailed provisions on the crime of torture. ***Non-governmental sources***: Article 251 was amended in 2008 to include the word "imposing torture" and the punishment was increased. However, the article only applies to investigators and inspectors, not all public officials or persons acting in an official	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		capacity, as required by CAT. It also does not include provisions on the attempt to commit torture or complicity or participation in torture. Moreover, the Criminal Procedure Code does not ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, as required by the CAT. There is concern that the draft Assorted Criminal Code of Mongolia currently under consideration does not include safeguards against impunity for human rights violations. Torture is not expressly defined as a crime in the draft Code in accordance with CAT. The draft code would also prohibit investigations and prosecutions of crimes under international law including torture which occurred before the enactment of the Code.	
(c) Detention for up to 48 hours under the control of interrogators or investigators; transfer to a pre -trial facility under a different authority.	Authorities responsible for detention and interrogation are under the jurisdiction of the same Ministry and supervise the same facilities. Detention centres often accommodate a police lock-up, a pre-trial facility and a prison.	**Government**: No relevant amendments were made to the Criminal Code or Criminal Procedure Code.	
(d) Custody registers be scrupulously maintained.		**Government:** In accordance with the revisions of the "by-law of arrest and detention centre" of April 2007, detained persons shall be routinely received at arrest and detention centres in the presence of a police officer that took them there, and a medical examination	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		shall be carried out. Transfers to other arrest and detention centres shall be carried out only with the authorization of a prosecutor. According to Articles 58 and 59 of the Code of Criminal Procedure, a person detained with an arrest order shall be received at the arrest and detention centre in the presence of a police officer and released by order of the chief of the centre by the end of the arrest term, in the absence of a judge's order regarding continued detention. In 2007, 3,268 suspects were received in arrest and detention centres and 2,075 persons were released. In 2008, 3,487 suspects were received in arrest and detention centres and 1,478 persons were released in accordance with the relevant legislation. A control prosecutor exercises supervision of these activities.	
(e) Inadmissibility of confessions as evidence without the presence of a lawyer.	Art. 79.4 CPC, but not implemented in practice.	**Government:** The Government is working on providing all detained persons with a right to advocacy according to the Code of Criminal Procedure. If an investigation is conducted without the presence of a lawyer, it will not be considered as evidence in court proceedings. ***Non-governmental sources:*** Some detainees were tortured and told that if they signed a written confession and there was no evidence to support it, they would be proven innocent. However, these confessions were later used as evidence in court to convict them.	
(f) Judges and prosecutors should ask persons how they have were treated and order independent medical examinations.		**Government**: In case of any doubt over the testimony of the suspect, witnesses, etc., the prosecutor shall initiate an investigation to discover the facts of the case. No cases against public officials regarding torture or ill-treatment were initiated ex officio by judges or prosecutors.	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		Non-governmental sources: According the guidelines for the administration of the CPC, a prosecutor shall visit a detained suspect or accused at least once within 10 days, shall receive information on his\her health condition, and shall include thee results in his report.	
(g) Prompt and thorough investigations by independent authority.	Investigations could not be carried out ex officio.	**Government:** Since 2002, the State General Prosecutor's Office has supervised the investigation of allegations of torture or cruel, inhuman and degrading treatment by police and prosecution authority employees, according to Article 27.2 of the Code of Criminal Procedure. Mongolian citizens are entitled to file petitions and claims to this authority and to the NHRCM. In 2007, seven criminal cases of forced testimony using means such as beatings and pressure were initiated and tried by the Criminal investigation service of the State General Prosecutor's Office. In 2008, only four criminal cases were initiated and tried. ***Non-governmental sources***: A number of complaints addressed to the National Human Rights Commission of Mongolia (NHRCM) and the Office of the Prosecution were reportedly dismissed for lack of evidence, apparently without an investigation being carried out. The Special Investigation Unit, which investigates cases involving officials such as prosecutors, judges and law enforcement officers still lacks capacity and staff with sufficient experience, and has been subject to intimidation by police officers. Through the revision of the CPC adopted on 9 August 2007, articles 26 and 27 clearly defined the boundaries of investigations, which shall be within the competence of the Intelligence Agency, Investigation Authority under the General Prosecutor's Office and Anti-	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		Corruption Agency. The official statistical information received from the Judiciary states that within the last three years, there have been no such cases.	
(h) Immediate suspension from duty of any public official indicted for abuse or torture.	No such cases.	***Non-governmental sources***: Since 2002, only one person has been punished under Article 251 of the Criminal Code for cruel and inhuman treatment.	
(i) Compensation and rehabilitation of victims.	No reference to compensation for torture or ill-treatment in the law.	**Government:** Although there is no specific provision that provides for compensation for torture, the Government states that it shall be responsible for the "removal of detriments" caused by illegal treatment by investigators, prosecutors and judges during criminal procedures, in accordance with the State Supreme Court and Articles 388-397 of the Code of Criminal Procedure. Payments of around 500 million tugrug have been made to over 20 citizens and organizations, and 3.4 billion tugrug has been set aside in the 2009 budget for this purpose. ***Non-governmental sources***: The CPC does not contain provisions on the compensation of persons who have been subjected to torture. Therefore, the court bases its verdict on the CAT.	
(j) Recognize the competence of the CAT to receive and consider individual communications.			
(k) The Criminal Pre-trial detention in custody should not be the general rule, particularly for nonviolent, minor or less serious offences; increase	Pre-trial detention is generally the rule; the maximum period is excessive. CPC specifies in article 69.1 to 69.4 that the term of pre-trial	**Government:** According to an August 2007 amendment to the Code of Criminal Procedure, the Government is working on alternatives to detention, particularly for less serious cases and juveniles. Articles 366.1 and 366.2 of the Code of Criminal Procedure limit pre-trial detention	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
use of non-custodial measures; reduction of maximum period of pre-trial detention; pre-trial detention as a measure of last resort.	confinement ranges from14 days up to 30 months. Suspects under 18 can be detained for up to 18 months (art. 366.4).	for juveniles to only those accused of serious and grave crimes or in special situations, and limits the amount of time juveniles can be detained to a maximum of eight months.	
(l) End special isolation regime.	Some categories of prisoners (those commuted from a death sentence) were held in isolation as part of the special isolation regime at Prison No. 405.	**Government**: The training and social work department of the Court decision execution authority was extended and organized. A program for the socialization of detainees in 2008-2009 was developed, and professional training and production centres have been established in some prisons. 95 detainees have begun professional qualifications. According to recent statistics, 38 persons are imprisoned in Gyandan prison for up to 30 years. ***Non-governmental sources:*** In collaboration with the General Prosecutors Office prisoners were divided based on their crime and reiteration. Surveillance cameras were installed along with the possibility to listen to music and watch television. Moreover, a religious activity room and a gym, in which prisoners have the right practice any sport activity of their preference for 30 minutes, were opened.	
(m) Death row prisoners be detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners.	Death row prisoners were handcuffed and shackled throughout their detention, held in isolation and denied adequate food.	**Government:** 50 detainees have been sentenced, six of whom have had their sentences commuted to life imprisonment. The detainees are provided with rights as stated in the Standard Minimum Rules for the Treatment of Prisoners, and attend foreign language and computer training.	
(n) Moratorium on the death penalty, with a view to its abolition.	It was estimated that 20 – 30 persons were executed per year; but there was	**Government:** It is prohibited to apply the death sentence to women, juveniles and the elderly (over approximately sixty). The Great	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	total secrecy surrounding the death penalty. Article 53 provides for the possibility of persons originally sentenced to death to have their sentences commuted to 30 years' imprisonment upon presidential pardon.	State Hural has committed to decrease the types of cases that can receive the death sentence, and to abolish it in future. A working group has been created to conduct research on the issue. The Government has stated that the death penalty is not a permanent measure, but rather a temporary response to the criminal situation in Mongolia. No statistical data on the number of death sentences carried out is available, pursuant to Article 1(55) of the law on Approving State Secret's list. ***Non-governmental sources***: The Assorted Criminal Code of Mongolia currently under consideration retains the death penalty, although it restricts the number of crimes it can be applied to. Those convicted of premeditated murder or assassination of a state or public figure can still be sentenced to death by shooting under the draft Code.	
(o) Ratification of the OPCAT and creation of an independent monitoring mechanism.	OPCAT not ratified. No provision for systematic independent monitoring; although NHRCM has unrestricted access, visits to prisons by NGOs are restricted and permission is seldom granted.	**Government:** A working group to study the issues relating to the entry of Mongolia to the Optional Protocol to the Convention against Torture was established by the MJHA, and appropriate research is being carried out. ***Non-governmental sources:*** The Minister of Justice and Home Affairs (MJHA) has established a working group to elaborate a study on the OPCAT and on the issue of its ratification. It has met with NGOs to discuss options for a National Preventive Mechanism (NPM). The NHRCM conducts visits, and some NGOs have been able to conduct limited visits to prisons.	
(p) Extensive and thorough training, human rights education, and continuing education for	There was a basic lack of awareness and understanding of the international standards relating to the prohibition	**Government:** A "Methodic instruction for carrying out investigation procedures" has been produced, which sets rules and regulations on the procedures for collecting evidence to prevent illegal methods being used by	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
law enforcement recruits.	of torture among law enforcement officials, prosecutors, lawyers and members of the judiciary. It was reported that three quarters of the existing corps have no human rights training.	investigators. The provision of human rights and the use of special equipment and methods are taught in detail in the basic and officer training courses at the Police Academy and incorporated into official training programs performed by the police organization. ***Non-governmental sources***: The NHRCM includes training for the prevention of torture among law enforcement officers in its human rights education program. In 2009, human rights topics were included in the obligatory curricula for lawyers, in particular on the prevention of torture, court sub-committees, the prosecutor's office, lawyers' association and the notary chamber. The academic programs of the Police Academy and primary courses for cadets and officers now include ensuring human rights and freedoms in cases of use of special tactics, devices and grips.	
(q) Carry out systematic training programmes and awareness-raising campaigns.	Other than the public inquiry on torture initiated by NHRCM, nothing had been done by the Government to publicize or raise awareness of the Convention among the public, law enforcement and legal professionals or the judiciary.	***Non-governmental sources:*** The NHRCM conducted a number of consultative meetings, workshops and conferences involving representatives from the Supreme Court, General Prosecutors Office, Investigation Authority under the GPO, Anti-Corruption Agency, General Police Department, and over 70 NGO representatives. In 2006, with the assistance of the Canada Foundation, the NHRCM elaborated a human rights model program, approved by the Ministry of Education, for the curricula of secondary school and universities providing legal education. Lessons on the basics of human rights are taught in 6th grade and at universities providing legal education. However, no form of training on the prevention and protection from torture and other policy	

Recommendation (E/CN.4/2006/6/Add.4)	*Situation during visit (E/CN.4/2006/6/Add.4)*	*Steps taken in previous years (A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		issues has been conducted by the Government of Mongolia.	

Nepal

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Nepal in September 2005 (E/CN.4/2006/6/Add.5, paras. 33-35)

77. On 22 November 2011, the Special Rapporteur sent the table below to the Government of Nepal requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations made after his predecessor's fact-finding mission in 2005. The Special Rapporteur regrets that the Government has not provided a response to his request. He looks forward to receiving information on Nepal's efforts to follow-up to the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

78. The Special Rapporteur welcomes the inclusion of a definition of torture in the draft Penal Code and the corresponding Sentencing Bill submitted to the Parliamentary secretariat in late January 2011, and expresses hope that the draft bill will be made public. He calls upon the Government to speed up the Parliamentary hearings on the adoption of the draft Penal Code to ensure that torture is defined as a criminal offence punishable in a manner proportionate to the gravity of the crime and that the statute of limitations for the crime of torture is abolished. The Special Rapporteur strongly encourages the Government to ensure that no person convicted for the crime of torture will be entitled to benefit from an act of amnesty.

79. The Special Rapporteur observes that the draft bills for the establishment of the truth and reconciliation commission and the disappearances commission have been pending before the Legislative Committee of the Parliament since early 2011. He calls on the Government to expedite without delay the establishment of these commissions.

80. The Special Rapporteur echoes the concern expressed by the United Nations High Commissioner for Human Rights over the appointment of a Cabinet Minister alleged to have been involved in a case of disappearance.[47] The Special Rapporteur regrets that no action has been taken to date on the 2008 recommendation by the National Human Rights Commission calling on the Government to investigate the case and prosecute the alleged perpetrators. The Special Rapporteur reiterates his previous recommendation to ensure that any public official indicted for abuse or torture, be immediately suspended from duty pending trial, and prosecution. He urges the Government to declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted.

81. The Special Rapporteur welcomes the Supreme Court's decision of 22 September 2011, ordering the Government to review the laws granting quasi-judicial power to Chief District Officers within six months. He remains concerned that the disciplinary sanctions and lenient penalties imposed on public officials for their alleged involvement in torture and ill-treatment contribute to the culture of impunity. He regrets that the Nepal Police Human Rights Unit and the Attorney General's Department, both set up to investigate the allegations of torture, lack independence. The Special Rapporteur observes that the NHRC entrusted with

[47] Nepal: UN concerned over appointment of Cabinet Minister alleged to have committed human rights violations, 5 May 2011. Available at: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10986&LangID=E.

investigating torture allegations and monitoring places of detention, may have not been in a position to carry out systematic visits and give priority to the investigation of torture allegations. He encourages the Government to strengthen the NHRC's capacity as the agency entrusted with investigating torture allegations and monitoring places of detention.

82. The Special Rapporteur received reports regarding holding detainees for prolonged periods and calls upon the police to better respect the maximum period of 24 hours, produce arrested individuals before the judicial authority, and to transfer arrested individuals to a pre-trial facility under a judicial authority, where no unsupervised contact with the interrogators or investigators should be permitted.

83. The Special Rapporteur calls on the Government to ensure timely access to independent medical examination at all stages of the criminal process, in particular when the suspect is placed in a temporary police detention facility, when taken out for any investigative activity, and upon return; and ensure that access to lawyers of the suspect's own choosing is granted from the very moment of apprehension.

84. The Special Rapporteur wishes to reiterate the appeal to the Government to become Party to the Optional Protocol to the Convention against Torture (OPCAT) and designate a national preventive mechanism.

Recommendation (see E/CN.4/2006/6/Add.5)	*Situation during visit (see E/CN.4/2006/6/Add.5)*	*Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
a) Highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill treatment by public officials will not be tolerated and will be prosecuted.	Special Rapporteur was repeatedly told by senior police and military officials that torture was acceptable in some situations.	**Government:** In 2007 the Interim Constitution prohibiting torture was adopted. However, torture was not criminalized in domestic laws. In August 2008, the "Common Minimum Programme" (CMP) was agreed. The 50-point programme - among other commitments - states that the culture of impunity shall end through consolidating law and order. To render the administration and security organs independent and accountable, a Code of Conduct shall be developed for the peoples' realization of security. On several occasions, the Home Minister has made statements in which he has promised to address the lack of public security and absence of the rule of law, and encouraged the police to restore law and order at the earliest opportunity. On 7 September 2008, he gave 15 instructions to the Inspector General of Police to do so. ***Non-governmental sources:*** officials continue to make pubic commitments that impunity must end. For instance, in his statement to the GA on 26 Sep. 08, then PM "Prachanda" stated that, as a democracy, Nepal is fully committed to protect and promote the human rights of its people under all circumstances with constitutional and legal guarantees and implementation of the international human rights instruments to which Nepal is a party. However, the climate of impunity remains firmly entrenched, evidenced by actions such as the withdrawal of criminal charges in 349 cases and the lack of progress in police investigations into past human rights violations. **Government:** The draft bill on Witness Protection is almost finalised.	***Non-governmental sources:*** Despite the general statements pledging its commitment to the rule of law, good governance and human rights, during the UPR in 2011, it is reported that there has been no clear statement affirming the Government's commitment to prosecute acts of torture. Reportedly, torture is still not defined as a crime in law and impunity remains widespread and systematic. During the UPR review in January 2011, the Government promised to address impunity. Reportedly, instead of investigating and prosecuting those responsible for grave human rights violations, consecutive governments have withdrawn cases pending in the courts and tried to grant blanket amnesties. It is reported that the new coalition Government of the Maoists and regional parties from the southern Terai region which came to power in late August 2011, formally agreed to withdraw criminal cases against individuals affiliated with the Maoist party, the Madhesi, Janajati, Tharuhat, Dalit, and Pichadabarga movements, and to declare a general amnesty in cases which could include serious crimes and human rights abuses. Reportedly, to date, not a single

Recommendation (see E/CN.4/2006/6/Add.5)	*Situation during visit (see E/CN.4/2006/6/Add.5)*	*Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		Non-governmental sources: The widespread impunity is partly due to the fact that under the law, Chief District Officers (CDOs) enjoy quasi-judicial power. - The Armed Police Force and the Forestry Department is reportedly involved in illegal arrests, detention and torture of detainees. - On 6 April 2010, a non-governmental organization filed a petition (Writ No W0043) of Public Interest Litigation to challenge the quasi-judicial power of Chief District Officers (CDOs), arguing that a number of laws granting quasi-judicial powers to CDOs' were in breach of article 14 of the International Covenant on Civil and Political Rights (ICCPR). The Case is sub judice before the Supreme Court. - The Police Act provides for disciplinary actions and lenient penalties for police officers involved in torture. - According to the data gathered for the period of 2006-September 2010, there has been a steady decline of around 15 per cent in the alleged cases of tortures of detainees, from around 30 per cent in 2006 to around 15.7 per cent in 2010, though there is a worrying increase over the period from April to June 2010. - In some districts and in relation to some categories of detainees, the percentages are much higher. It has been observed that detainees belonging to certain minority ethnic groups and lower castes face a significantly higher risk of torture than detainees from high castes. It is further consistently reported that juveniles face a higher risk of torture. Custodial torture is reported largely in the southern part of Nepal where the armed groups are active.	person alleged to have committed serious human rights violations during the conflict has been brought to justice in a civilian court. It is reported that the Government has reportedly failed to implement the views of the UN Human Rights Committee in the two cases in which it has been held to have violated its obligations in relation to the prohibition of torture and victims' right to a remedy under the Covenant on Civil and Political Rights (Sharma v Nepal (2008) and Giri v Nepal (2011)). - Reportedly, after 8 postponements of the final hearing in Writ No W0043 challenging the quasi-judicial power of Chief District Officers (CDOs), the Supreme Court on 22 September 2011 ordered the Government to review the quasi-judicial powers vested in Chief District Officers and other administrative officers within six months. - Disciplinary actions taken by police remain rare and disciplinary punishments that are imposed are reportedly inadequate. - It is reported that during the period of July-December 2010, there has been an apparent reversal in the trend

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			of gradual decline in reported torture in the 57 places of detention in 20 districts. Reported torture declined from around 50% in 2001 – 2002 to around 20% in 2009 – 2010. Reportedly, the percentage of torture in detention from January to June 2010 was 15.8%. This increased to 22.5% between July and December 2010. A further increase to 25% was recorded from January to June 2011. - It is alleged that people of Terai origin continue to be found to be more likely to be tortured than hill community people. - Reportedly, juveniles continue to face a higher risk of torture. The percentage of torture recorded during January to June 2011, is 32.8%, an increase of 6.1 % compared to July to December 2010.
b) The crime of torture is defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.	Torture prohibited in Article 14(4) of Constitution (1990). However, torture was not criminalized in domestic legislation.	**Government**: In 2007 the Inter-ministerial consultations on the draft torture bill were underway. The Interim Constitution of January 2007 Art. 26 stipulates: "(1) No person who is detained during investigation or for enquiry or for trial or for any other reason shall be subjected to physical or mental torture, nor any cruel, inhuman or degrading treatment. (2) Actions pursuant to clause (1) shall be punishable by law and any person so treated shall be compensated in accordance with the decision determined by law." Army Act 2006 (amendment of Military Act 1959) Section 62 criminalizes torture and provides for	***Non-governmental sources:*** Reportedly, although the Interim Constitution of 2007 states that any act of torture shall be punishable by law, there is not yet any legal provision that declares torture to be a crime in Nepal. Reportedly, a draft Penal Code, Criminal Procedure Code and Sentencing Bill were submitted to the parliamentary secretariat in late January 2011. However they have yet to be circulated among the members of parliament. The submission to the secretary puts an end to the public

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		investigations by civilian authorities, headed by the Deputy Attorney General. A special court presided by an Appellate Court Judge competent for such crimes. However the law does not contain a definition of torture. ***Non-governmental sources:*** The draft bill criminalizing torture which was the subject of consultations in 2007 has yet to be made public, or tabled before the Parliament for approval. The work of the Ministry of Home Affairs and the Ministry of Law and Justice related to the preparation of the torture bill has not been transparent, which has caused frustration for national and international organizations interested in supporting the criminalization process. A draft bill which would set the framework for the establishment of a truth and reconciliation commission defines mental and physical torture as a serious human rights violation, and has a provision prohibiting amnesty for acts of torture or degrading treatment. The bill has been the subject of public consultations conducted by the Ministry of Peace and Reconstruction (with the support of OHCHR), but has yet to be presented before Parliament. Despite revisions to the Army Act in 2006, there has yet to be a successful criminal prosecution of Nepal Army personnel involved in conflict-related torture. The Nepal Army continues to maintain that the previous Army Act, in effect during the conflict, prevents them from cooperating fully with police investigations into allegations of torture by its personnel during the conflict. The only legislation to redress torture survivors is the 'Torture Compensation Act 1996' of Nepal, which deals only with the compensation of torture.	consultation process. Partly as a result of these consultations, a definition of torture was included into the draft Penal Code. Reportedly, no draft bill to criminalize torture has been made public. - The draft bills for the establishment of the truth and reconciliation commission (TRC) and the disappearances commission were tabled in parliament, but have been pending before the Legislative Committee since early 2011. The Maoist Party's Commitments and Proposal to Government, "Peace Process and Constitution" of 25 August 2011, promised to establish the TRC and Disappearances Commission within one month. - The Torture Compensation Act 1996 remains in force. Its functioning is reportedly highly problematic. Since no centralised documentation of cases filed under the TCA exists, it is difficult to make a comprehensive assessment of these cases. Reportedly an analysis of cases filed since 2003 reveals considerable information about the Act, particularly in terms of judicial decisions reached. Reportedly, 98 cases were filed on behalf of victims under the TCA from 2003 till June 2011. Of these 98 cases,

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		It does not allow for criminal prosecution of the perpetrators involved in torture and other ill-treatment, and contains a limitation clause of 35 days. ***Non-governmental sources 2008***: Art. 26(1) of the Interim Constitution requires the Government to criminalize torture, although the provision has not been included in the legislation. The Government has repeatedly stated that it is drafting a bill, but no progress has been reported. Despite repeated requests, no details of the draft have been made available to the public. The CMP provides for the appointment of a high-level security committee to develop a national security policy and, based on the agreement of 23 Dec. 07 signed with the 7 party alliance (SPA), the creation of a National Peace and Rehabilitation Commission, a High Level Truth and Reconciliation Commission (TRC), a High Level Commission for State Restructuring, a Commission on Disappearances, and a Land Reforms Commission. Beyond the reference to the appointment of a TRC and a Commission on Disappearances, the CMP remained silent in relation to accountability for past human rights abuses. ***Non-governmental sources:*** The practice of impunity in relation to torture and ill-treatment has exacerbated due to the fact that torture is not defined as a crime and no criminal charges can be brought against the perpetrators. - Although article 20 of the Interim Constitution of January 2007 requires criminalization of torture, no such actions have been undertaken. - Article 164 of the draft Penal Code, recently	39 (39.7%) were dismissed at final hearing; 27 (27.5%) were granted compensation; six (6.1%) were withdrawn by the plaintiff; 9 (9.1%) were dismissed during earlier stages of the case, on the basis of, for instance, shortcomings in evidence and 17 (17.3%) remain pending in the courts. Around one fourth of cases filed resulted in compensation being granted, and in 11 cases (11.22%) the courts ordered for departmental action against perpetrators. In two cases, the court ordered the department to give advice to the perpetrators involved in torture, a directive short of disciplinary action. This reportedly demonstrates the extent to which the TCA can be seen to perpetuate cycles of impunity and deny judicial remedy to the majority of victims. Torture has still not been defined as a crime. - The draft Penal Code now provides for five years' imprisonment as the maximum penalty for torture. - Reportedly, the draft provision introduces a limitation period for filing claims of 6 months from the day of incident or from the release of victim from detention.

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		brought before the Cabinet, criminalizes torture. However, it fails to provide a clear definition in line with international standards and fails to impose a minimum punishment for the acts of torture. It also provides a maximum time limit of six months within which victims have to file cases.	
c) Incommunicado detention made illegal, and persons held incommunicado released without delay.	A large number of persons taken involuntarily by security forces were being held incommunicado at unknown locations.	**Government:** Art. 24 (2) of the Interim Constitution provides for immediate access to legal counsel. Section 24 (3) stipulates that detainees ought to be presented before a judge within 24 hours of their arrest. ***Non-governmental sources***: As per 2009, incommunicado detention has reappeared in the recent past in connection with detained individuals accused of belonging to armed groups. OHCHR has documented numerous cases of illegal detention of suspected members of armed groups. Police regularly deny that suspected armed group members are in police custody, and have held individuals incommunicado for multiple days before acknowledging that they are in detention or without granting access to organizations such as OHCHR or the National Human Rights Commission. Police continue to keep inaccurate records of detention in which they falsify the date of arrest. ***Non-governmental sources 2008***: Although incommunicado detention is less common now than during the conflict, unacknowledged detention and failure to observe court orders regarding releases, particularly by the Armed Police Force (APF), continue to occur. There are some cases of incommunicado detention for up to 11 days. **Government:** The police does not possess	***Non-governmental sources:*** According to non-governmental sources, complaints have been received regarding the use of private residents as secret places of detention where people are reportedly severely tortured in Kathmandu. According to Nepal National Weekly, in a special report published on 19 December 2010, police have reportedly continued to rent private houses to interrogate and detain suspects - a practice which started during the conflict. Several of these houses have reportedly been located in Sanepa, Lalitpur. The report further states that in the second house, located in Gairidhara, a team of plainclothes policemen operating under the command of Deputy Superintendent of Police (DSP) Gagat Man Shrestha have been detaining and interrogating suspects, information that was later denied by police spokesman Biguan Raj Sharma. It is alleged that the existence of these "safe houses" is being kept under wraps even among police personnel. Sources within the police justify the practice by claiming they are used to

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		information about any unacknowledged incommunicado detention. Police produces any arrested person before the judicial authority within 24 hours excluding the time required for the transfer. Any person detained for more than 24 hours can seek legal remedies from the courts. Non-governmental sources: Incommunicado detention is not illegal and many detainees are denied the right to meet their relatives or lawyers during the first few days of their arrest.	avoid leaks and prevent the media from "hampering the investigations". It is alleged that suspicions of extortion by the police have been confirmed by individuals detained and forced to pay for their release. Reportedly, the practice of denying detainees access to their relatives or lawyers during the first few days after arrest remains common. Many are reportedly allowed visits only after they have been remanded into custody by the court.
d) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted.	Legislation (2004 Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) and the 1989 Public Security Act (PSA)) effectively provided the police and the military with sweeping powers to detain suspects for preventive reasons, in some cases for up to 12 months; (Section 15 (2) of the State Cases Act requires that arrested persons be produced before the "appropriate authority" within 24 hours, and prohibits any person from being held for a longer period without orders of	**Government**: According to Art. 24 (3) of the Interim Constitution, detainees must be presented before a judge within 24 hours of arrest. ***Non-governmental sources:*** Detainees in police custody continue to be held beyond the 24 hours permitted by law. A lack of accurate record keeping in many prisons and police detention facilities makes it difficult to hold police personnel accountable for these violations. In practice, Art. 24 (3) is not respected. There are some significant gaps in constitutional protection, e.g. with regard to the rights of non-citizens, to liberty and security and provisions permitting derogation from rights during a state of emergency. TADO 2006 – under which many detainees were held without charge under the previous Government – expired at the end of Oct. 06 and has not been renewed. Most detainees held under TADO were gradually released after April 2006.	***Non-governmental sources:*** It is reported that the practice of keeping detainees in police custody beyond the 24 hours permitted by law remains common. During 2011, 47.6% of the detainees interviewed by non-governmental organisation described that they were taken before a judge after the 24 hour deadline had expired. Only 37.3% were taken to court within the required 24 hours. (Others were released.) During this initial period, access to relatives and lawyers is often also restricted. It is during this period that most incidents of torture take place.

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	such authority).	***Non-governmental sources:*** Although the Interim Constitution requires bringing detainees before court within 24 hours, in practice detainees are held under detention for long hours without having access to lawyers or a doctor.	
e) Maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer.	Detainee registers were poorly kept, if at all.	***Non-governmental sources:*** According to the Police Act, the police authorities are obliged to maintain a standardized register. However, the practice of using ad-hoc registers and notebooks instead of standardized diaries still remains a problem. The police generally do not record the actual date of arrest and often adjust the arrest date in order to give the impression of compliance with the 24 hour limitation. OHCHR continues to document instances of APF personnel participating in the detention and interrogation of suspects. In March 06 the Office of the Prime Minister and the Council of Ministers opened the Human Rights Central Registry, whose functions included, inter alia, maintaining a list of detainees throughout the country. National Army, Home Office, APF and NP staff were assigned to the office and were starting to develop a detention database, but by the end of 2006, no data had been entered for the over 7,000 detainees and prisoners officially recognized as being held throughout Nepal. The office never became fully functional and ceased to function shortly after the change of Government in April 06. Detention registers are not systematically updated; the police use two registers: one lists the name of detainees before remand and the other after remand. The lawyers and the public do not have access to registers. As the police are legally entitled to detain a person for 24 hours, they often do not register the	***Non-governmental sources:*** It is reported that the multiple issues identified during 2010 (incomplete and inaccurate registers; lack of access to registers for lawyers; not registering detainees who are released after a short period of time, etc), remain common problems during 2011. Between January and June 2011, there have been reported cases of torture committed by the APF. Reportedly,

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		names of arrested/detained persons immediately. APF does not have clear legal powers to arrest and detain. However, it has become increasingly involved in arrests related to armed groups, and it does not operate or maintain official detention facilities or detention registers. ***Non-governmental sources:*** The registers and detention records are incomplete and often inaccurate, if not deliberately falsified. This shortfall allows for holding detainees for several days without charges. - Lawyers do not have access to police registers. Most commonly, the date of arrest is falsified in an attempt to circumvent the constitutional requirement to bring detainees before a court within 24 hours. - In cases where a detainee is released within a couple of hours or in the first few days after the arrest, records of it are not being kept. - In addition, access to relatives and a lawyer is normally granted only when detainees are brought before the court. **Government:** In every District Office throughout the country there are police officers assigned as "custody management officers" who are responsible to manage custody and records of the detainees. A "Custody Record Form" is used to keep detainee's records. It is mandatory for all responsible police personnel to carry out a physical and health check up before and after detention or release of any person.	one involved a clash between a Muslim community and the APF and in the other case two individuals were tortured by APF from Customs Security checkpoint, Krishna Nagar, Kapilvastu District. Reportedly, "custody management officers" are not specifically focussed on their custody work. They are often found engaged in other work and custody work is not carried in a timely manner. A health check-up of detainees at the time of being taken into detention is now fairly well observed, though it is reported that the manner in which the

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			check-ups are conducted remains problematic. Interviews conducted with detainees by different organisations suggest that health check-ups are just a formality as police routinely take detainees in groups to see a doctor; and doctors simply ask the detainees whether they have any injuries or internal wounds, but fail to physically examine them. Check-ups at the time of release are often not adhered to.
(f) All detained persons be effectively guaranteed the ability to challenge the lawfulness of their detention, e.g. through habeas corpus. Such procedures should function effectively and expeditiously.	The right of habeas corpus was denied by virtue of Article 14 (7) of the Constitution to any person who is arrested or detained by any law providing for preventive detention; Whereas safeguards were contained in preventive detention legislation and the right of the Supreme Court to issue habeas corpus writs with respect to preventive detention; the Special Rapporteur observed that these safeguards were not effective.	***Non-governmental sources:*** The June 07 decision of the Supreme Court has not been implemented. The government has, however, prepared a draft bill to criminalize disappearances and to set up a Commission of Inquiry into Enforced Disappearances. The current draft has been criticized, including by OHCHR, for being inconsistent with international standards in a number of respects. Misrepresentations by police and other state officials, apparently to hide detainees or cover-up the fact that their detention is illegal, continue to present an obstacle to the effective functioning of the habeas corpus remedy. Weak sanctions for perjury and contempt of court are contributing factors in relation to the way in which the authorities respond to habeas corpus petitions. Despite obvious and repeated lies and misinformation from officials in court (including by the Nepal Army during the conflict), no one has ever been prosecuted or otherwise disciplined by the	***Non-governmental sources:*** - Enforced disappearances have not been criminalized, despite the 2007 Supreme Court order for the Government to do so. - It is reported that problems relating to bringing detainees before a court within the 24 hours required by the Constitution remain common. (See also the comments above in relation to recommendation (e) on incommunicado detention). Reportedly, sanctions for perjury and contempt remain weak. Lack of cooperation with the courts and investigating authorities by the Nepal Army and CPN-M in particular are of grave concern.

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		courts for perjury. In June 07, the Supreme Court issued a groundbreaking ruling in relation to disappearances resulting from the conflict, based on the work of its Task Force set up for a group of petitions of habeas corpus. As of Jan. 08, the ruling had yet to be implemented. A credible commission of inquiry had yet to be set up.	
		Non-governmental sources 2008: In 2006 and 2005, 64 and 640 cases of habeas corpus, respectively, were lodged at the Supreme Court. While the denial of detainees' rights to habeas corpus to challenge their detention is not as serious as during the conflict, concerns remain as to delays in bringing detainees before a court within 24 hours as stipulated by the Constitution. **Government:** The Nepal Police respects the rights of detained persons to challenge the lawfulness of their detention. In some instances detained persons were released by the court order.	In April 2011, the Administration of Justice Act was amended to give the powers to hear *habeas corpus* petitions at the district court level. Prior to this, only the Supreme Court and Appellate Courts were empowered to hear such petitions. This is a welcome change which will hopefully assist in the prevention of arbitrary arrest and detention especially in more remote areas.
(g) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms.	1974 Evidence Act declares statements made under torture inadmissible; however torture was systematically practiced to extract confessions.	***Non-governmental sources:*** In many cases lawyers are not present when detainees initially make "confessions", which are often extracted after beatings, threats or other forms of pressure. Police openly admit that they rely heavily on confessions for criminal investigations. Reportedly, some members of the police have even implied that if they did not use force they would not be able to obtain a confession. It is common for defendants to inform courts at the time of committal hearings that they did not give statements voluntarily, at which point such statements are often ruled out as evidence. However, in many other cases this does not happen, or the victim is afraid to allege torture or other ill-	***Non-governmental sources:*** Reportedly, police continue to rely heavily on confessions as the central piece of evidence in most cases. It is alleged that incidents of beatings and ill-treatment during interrogation are widespread and increasing. In addition, it remains very common for detainees to be forced to sign statements without being able to read them.

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		treatment. Judges do not generally restrict the admissibility of evidence obtained during interrogation outside of the presence of a lawyer. Confessions remain the central piece of evidence in most cases. Incidents of beatings and ill-treatment during interrogation are widespread. In addition, it is very common in Nepal for detainees to be forced to sign statements without being able to read them beforehand. Further, although the prosecution carries the burden of ultimately proving a defendant's guilt, each defendant has to "persuade" the court of the "specific fact" that a statement was not freely given. In practice, this means that forced confessions are routinely accepted unless the defendant is able to produce some compelling evidence demonstrating that coercion or torture took place. In other words, Nepali law reverses the burden of proof and expects detainees to prove that they were in fact tortured. There is no provision made for video and audio-taping of proceedings in Nepal.	In the case of *Bahadur Karki v Government of Nepal,* the Supreme Court ruled that an uncorroborated confession is inadmissible at trial (NKP. 2062, Case: Murder, Decision No. 7555 Pg 74), however reportedly, the current draft Criminal Procedure Code does not include a provision enshrining this rule in legislation and judges continue to allow the admissibility of evidence obtained during interrogation outside of the presence of a lawyer.
		Non-governmental sources: Although under the TCA and Evidence Act, forced self-incriminatory statements are inadmissible in court proceedings, police continues to use torture to coerce confessions. Judges rarely ask detainees whether their statements were given freely. In addition, according to Section 28 of the State Cases Act, forced confessions are routinely accepted by the court, unless the defendant is able to submit evidence demonstrating that the statement was produced through torture. Moreover, the law is not clear as to the exact procedure used by courts to establish whether or not a confession was extracted under torture. - There have been no changes in the provisions of	Reportedly, no video and audio-recording of interrogations has been provided for.

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		the law with respect to the use of confessions obtained under coercion. From 2006 to 2007, the District Courts convicted defendants in 72.67 per cent of 4,524 criminal cases, whereas CDOs convicted defendants in 98.27 per cent of 2,516 cases. - In this regard, between October 2009 and June 2010, 13.9% of those charged under the Public Offences Act (1970) and 34.5% of those charged under the Arms, and Ammunition Act (1963), both providing quasi-judicial powers to CDOs, reported torture. **Government:** According to the Nepalese law, the accused person gives statement to the public prosecutor in the court. No statement is admissible as evidence, unless confirmed by the person before the court.	It is reported that in the fiscal year of 2007-2008, the District Courts decided 3,325 criminal cases and CDOs decided 2,723 criminal cases. The District Courts convicted the defendant in 70.89% of the 3,325 criminal cases. The CDOs convicted in no less than 97.94% of cases. In the fiscal year of 2008-2009, the District Courts decided 5,119 criminal cases and CDOs decided 3,072 criminal cases. The District Courts convicted the defendant in 72.20% of the 6,255 criminal cases. The CDOs convicted in no less than 95.25% of cases. On 22 September 2011, the Supreme Court ordered the Government to review the quasi-judicial functions of CDOs and other administrative bodies within six months.
(h) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination.	There was a lack of prosecutions in the face of mounting and credible allegations of torture and other acts of ill-treatment by the police, APF and RNA. There was a lack of confidence in the justice	***Non-governmental sources:*** Art. 135, 3 (C) of the Interim Constitution gives powers to the Attorney General's Office to investigate allegations of inhumane treatment of any person in custody and gives the necessary directions under the Constitution to the relevant authorities to prevent the recurrence of such a situation. In the context of cases brought under the Torture Compensation Act, detainees are increasingly taken for examination at the time of arrest, although there	***Non-governmental sources:*** Reportedly, among the detainees interviewed by non-governmental organisation during the period of January – June 2011, who had been taken to court (whether within 24 hours or later), only 379 (19.4%) detainees stated that they were asked by the judges about torture or other ill-treatment whereas 1,578 (80.6%) stated that they were

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	system and the rule of law on the part of victims and their families.	are concerns regarding the quality of these examinations. Quite commonly doctors underreport injuries as they are concerned for their own security and fear reprisals. Often, junior staff is assigned the task of conducting medical check-ups of detainees brought to the hospital by police. It is also common for the police to insist on staying with the detainee, claiming risk of escape. Detainees are very rarely taken for examination at the time of transfer to the prison or release. OHCHR has been working with the Nepal Police, the National Human Rights Commission and other partners to increase the quality of detainee health examinations and their documentation. Most detainees do not make formal complaints of torture and other ill-treatment when taken before a judge or prosecutor, mostly for fear of reprisals. Although some judges have developed the practice of asking male detainees to remove their shirts and questioning, such practice has not become uniform and in any case is inadequate, particularly with regard to methods which do not leave physical marks, including psychological torture. Judges do not systematically test the voluntary nature of a confession and many confessions extracted under duress are still admitted as evidence. ***Non-governmental sources***: Although it is not strictly required by the Nepal law, some judges ask whether a detainee has been tortured while in custody. - Throughout October 2009 - June 2010, 9.2 per cent of interviewed detainees indicated that judges asked them whether they were subjected to torture during interrogation. This percentage represents	not asked by judges about torture or other ill-treatment. This represents an improvement from 5.5% in the previous period.

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		almost 5 per cent increase compared to results compiled in December 2008-November 2009. - Although the percentage of detainees who have a medical check-up when taken into custody has increased, no medial examination is carried out when releasing detainees. Furthermore, check-ups are just a formality as police routinely take a group of detainees to a doctor, who simply asks whether they have any injuries or internal wounds and fails to physically examine them. - Doctors often fail to provide the court with adequate medical descriptions and are threatened by the police and the CDO if they provide an adequate medical report.	
		Government: Upon receiving complaint about torture, the court may order within three days, physical or mental examination of the victim of torture or ill-treatment. Under Section 5 (3) of the CRT Act, the government provides medical treatment upon necessity. The proceedings for these type of request are carried out pursuant to Summary Proceedings Act 1971 (Section 6 of the CRT Act), requiring the court to deliver a judgment within 90 days.	- The Compensation Relating to Torture (CRT) Act provides that: "the Court *may* order to have the detainee's physical or mental examination within three days". There are many problems with these medical examinations (so-called Physical-Mental Check-ups, PMCs; to be distinguished from the routine medical examinations conducted at the time of detention and release). It is reported that in many cases, the police do not take detainees for PMCs within the stipulated time, arguing there were problems with available transport or other obstacles. Reportedly, there are several cases where doctors have failed to conduct a proper examination. The doctors also often fail to give adequate description of any wounds in the medical report to be submitted to the court, and to give

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			adequate prescriptions for medicines to treat the victims.
(i) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the opinion of the Special Rapporteur, the NHRC might be entrusted with this task.	No ex-officio investigations.	**Government:** No criminal investigations into torture allegations were launched in 2007. However, in one case an internal inquiry found four police officers responsible of torture and imposed minor disciplinary sanctions. Investigations were launched in one prominent case of a death in custody. The Report of the Rayamajhi Commission set up in 2006 to investigate human rights violations, was made public in August 2007. ***Non-governmental sources:*** no visible steps have been taken to hold accountable any individual responsible for serious cases of torture during the conflict. The National Human Rights Commission of Nepal (NHRC) mandated to investigate alleged violations of human rights, rarely sees its recommendations to the Government implemented in practice. In its annual report 2007-08, the NHRC cited this inaction on the part of the Government as one of the major challenges in its work. The "investigations" by the so-called Nepal Police Human Rights Cells, consist of sending a letter detailing the complaint to the relevant District Police Office (DPO), asking it to respond to the allegations. No reports of suspensions of police officers pending the outcome of the investigations were received. The report of the Rayamajhi Commission recommended the prosecution of 31 members of the Nepalese Army, Nepal Police and Armed Police Force, largely in connection with killings which had occurred in the context of the protests, but no action has been taken to initiate prosecutions by the authorities. No one has been	***Non-governmental sources:*** Though the NHRC has powers to visit places of detention, it is reportedly not making any systematic visits. Similarly, it has not prioritized the investigation of complaints of torture. A report entitled "A 10-year analysis of recommendations in cases registered with the NHRC" analysing data between 2000 and 2010, shows that out of a total of 10,507 cases registered during this period, the NHRC made recommendations relating to 386 cases. Only 34 of the 286 recommendations (8.8%) were fully implemented. Among these 34, only one case concerned torture and one illegal detention. 36% of the recommendations have been partially implemented, including 3 torture cases. 55% of recommendations have not been implemented. Reportedly, a number of bodies set up to investigate reports of human rights violations (including torture) lack independence and impartiality and are largely ineffective. These reportedly include the Nepal Police Human Rights Unit (NP HR Unit), the Attorney General's Unit (AG Unit) and the Armed Police Force Human Rights Unit (APF HR Unit). Even in

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		prosecuted for the many cases of serious beatings which occurred in the context of the protests. There have been no independent investigations into the allegations of systematic torture and disappearances in 2003/2004 by the Bhairabnath Battalion, which were documented in OHCHR's May 2006 report. In December 2007, a site was identified where the body of one of the disappeared may have been cremated. A group of Finnish forensic experts visited the country in January 2008 and assisted local experts in the exhumation of some of the remains.	those cases where these bodies make recommendations for "further action", disciplinary action or for compensation - however inadequate - to be granted, reportedly, the authorities often do not act on these recommendations.
		Non-governmental sources: There is no nationwide mechanism to monitor places of detention. A number of bodies, including the Nepal Police Human Rights Unit (NPHRU) and the Attorney General's Department, that were set up to investigate the allegations of torture, lack independence and impartiality. - An 11-member team of Nepali and Finnish forensic experts led by the NHRC, has started exhumations with regard to cases of disappearance in Dhanusha district. - According to the NHRC's annual report, 667 complaints, including 70 cases of torture by security forces were received during the period of 2008-2009 as compared to 1173 complaints, including 104 cases of torture by security forces received between the period of 2007-2008. Only three out of 70 cases have been investigated and granted compensation. Actions against the perpetrators were recommended only in two cases. The annual report does not provide any information on the remaining 67 cases, nor does it provide the reasons of why one case under investigation was dismissed. Of the 677 cases	In September 2010, amid a continuing lack of action by the police to proceed with investigations into the disappearance of five students in Dhanusha, the NHRC initiated the exhumations of the bodies albeit in a fairly ad hoc manner that reportedly fell below international standards of criminal procedure. The procedures in particular lacked respect for the rights of the families of the victims. Four bodies were recovered in September 2010, and a fifth one in February

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		received in 2008-2009, 521 were investigated, four were put on hold and 21 dismissed. Compensation was recommended in 63 cases, and the punishment of perpetrators in 41 cases. By July 2009, the government had implemented none of these recommendations. - In May 2010, in response to concerns raised in relation to the lack of responses for the cases of torture, the Attorney General stated that its department was not entrusted with the investigation of ill-treatment in custody as stated under Section 135 (3) of the Interim Constitution, but rather that it had the power to monitor investigation carried out by police. - The investigations carried out by the Human Rights Unit appear to comprise merely addressing the letter to the relevant DPO and asking to respond to the allegations. Reportedly, there have been no cases in which the Human Rights Unit visited the victims and interviewed them privately to ascertain the veracity of the allegation. There have been serious concerns in relation to the lack of criminal investigation and lack of adequate disciplinary punishment. **Government:** Courts have full authority to carry out investigation into the allegations of torture. The National Human Rights Commission (NHRC) is empowered to conduct necessary inquiry or investigations into the complaint, received from the victim or his/her representatives and forward recommendations to the concerned authority. The NHRC, in performing its functions, may exercise the same powers as the court in terms of calling any person to appear before the court for recording their statement and information or examining them,	2011. There has been no further progress since. As stated above, though the NHRC has powers to visit places of detention, it is not making any systematic visits. Similarly, it has not prioritized the investigation of complaints of torture. A bill to amend the existing NHRC Act only provides the NHRC with access to prisons. Reportedly, it is essential in the light of the increase of torture in police custody as well as the documented practice of using unofficial places of detention such as army camps and private houses (see

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		receiving and examining evidences, and ordering the production of any physical proof. Upon receiving information about serious human rights violations, the NHRC, without prior notice, may conduct a search of any premises, including governmental ones and seize any document and evidences in relation to human rights violations.	above) to detain people that the bill provides the NHRC with access to "any place where people are held captive".
(j) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted.	The 1996 Compensation Relating to Torture Act is not in line with the Convention's requirements for effective remedies.	**Government:** In the period from 1996-07, police has taken departmental action against 21 police personnel in 11 cases for alleged torture, out of which 6 cases led to prosecutions. ***Non-governmental sources:*** the Nepal Army has continued to promote or extend the terms of personnel against whom there are credible allegations. This includes personnel alleged to have been involved directly or by virtue of command responsibility in the violations documented in OHCHR's public reports on disappearances, torture and ill-treatment at the Nepal Army's Maharajgunj Barracks (report published in May 2006) and in Bardiya District (report published in December 2008). In Oct. 08, the CPN-M-led Government recommended the withdrawal of 349 criminal cases (investigations, charges and convictions) of a so-called "political nature". They included cases of gross human rights abuses (murder, attempted murder and rape), the majority from the conflict period. Most cases were against CPN-M members, some of whom were senior members of the Government at the time, raising concerns about ongoing impunity and the de facto provision of amnesties. ***Non-governmental sources:*** There is no	***Non-governmental sources***: Reportedly, there has been a lack of cooperation with investigative authorities and the courts from both the Nepal Army and the UCPN-M. Reportedly, rather than handing over suspects to the courts, the Nepal Army, Nepal Police and UCPN-M have each promoted officers suspected of serious human rights violations to senior positions. For instance, in May 2011, Agni Sapkota, who is named as a suspect in the disappearance of Kumar Lama, was appointed Minister in the Government of Prime Minister Jalanath Khanal. Similarly, in June 2011, Kuber Singh Rana, one of the people whom the NHRC had identified as among those responsible for the disappearances of the five students in Dhanusha District (see above, recommendation i) was promoted to Assistant Inspector General of Police, a very senior Nepal Police position. It is reported that in an interim ruling of 13 July 2011, the Supreme Court held that a recommendation by the NHRC for him to be prosecuted is not sufficient basis to order the suspension of his promotion pending the outcome of the

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		information as to whether any action has been taken against any authorities indicted for abuse or torture. The civilian judicial system has failed to deliver justice as the state authorities themselves fail to observe the court order. In December 2009, a military officer suspected in the torture and murder of a person in custody, was sent on peacekeeping duties and served until he was repatriated on 12 December 2009, after the United Nations was informed of the fact that murder charges were pending against him in the Nepal courts. As of September 2010, none of the four accused in this case have been questioned let alone arrested by the police.	investigations.
		Government: If the court establishes that torture has been inflicted as mentioned in the Act, it may order the concerned person to take action against the governmental employee. As of 2010, judicial actions have been taken against 552 police employees on charges of human rights violations, including torture. An Assistant Sub-Inspector and a Head Constable were immediately suspended from their duties and charged with being allegedly involved in torture and death of a person in Police Custody in Prangbung Police Station. In relation to another person who was allegedly subjected to torture in the Metropolitan Police Circle, Kathmandu and subsequently died on 23 May 2010, one Assistant Sub-Inspector and two Police Constables were immediately suspended from their duties and later charged with having committed torture causing death. They are currently in judicial custody.	It is reported that the information provided by the Government regarding action taken against State officials involved in torture at Prangbung Police Station and at the Metropolitan Police Circle is incomplete. The alleged perpetrators were ultimately acquitted by the courts in both cases.

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(k) Victims of torture and ill-treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.	Since the 1996 Compensation Relating to Torture Act came into force several decisions to award compensation had been taken. Although, in only one case the compensation had been paid.	***Non-governmental sources:*** In 2007, compensation was awarded in a few cases under the Torture Compensation Act, but was always paid to victims or their families, and was not usually accompanied by a proper investigation to establish causes and responsibilities. Compensation packages depend on what the Government can afford. The Government provided Rupees (Rs.) 1,625,000 in financial aid to 12 victims who were recommended by the NHRC. In 2006, compensation awarded by the courts was often not paid out or paid out only after prolonged delays. In the 12-year history of the Torture Compensation Act (TCA), over 200 victims of torture or their relatives have filed compensation cases with the courts. However, only 52 cases have been decided in favour of the victims, and in only seven cases was the money actually paid to the victim. As part of the peace process, the Government announced that reparation would be provided to the victims of the conflict, including torture victims. Chief District Officers (CDOs) were registering names of victims or their relatives. However, the criteria for determining who was eligible and how the measures would be implemented were not clear and concerns had been raised about the need for relief to be fairly and impartially distributed, and to respect the principle of non-discrimination. ***Non-governmental sources***: There are a number of statutory frameworks and transitional procedures providing "interim relief" to "conflict victims". - The Torture Compensation Act, 1996 (TCA) entitles a compensation amount of maximum NRs 100, 000 (US $ 1, 420) to those who were proved to have been victims of torture. Although the TCA	***Non-governmental sources:*** Reportedly, the TCA does not function effectively – see comments above in relation to recommendation (b), and note that of the 98 cases filed by AF from 2003 to June 2011, only (27.5%) were granted compensation. The TRC and Disappearances Commission have not been established. Legislation is pending in parliament. The construction of three additional rehabilitation homes still remains pending. Reportedly, the number of cases of torture investigated by the NHRC is very limited, and compensation has only been recommended in one case. On 6 May 2003, the NHRC took a decision granting compensation of Rs. 50.000/- (USD 650) to a torture victim from Dhading district. On 18 June 2003, the recommendation letter was sent to the Secretariat of the Council of Ministers to implement the decision. On 5 January 2004, the NHRC was informed that the compensation had been paid to the victim.

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		provides that compensation should be handed over within 35 days from the court order, many of these victims have not yet received their compensation or have received a minimum amount of compensation. Reportedly, only one victim has received the maximum amount of compensation from the Government. - There has been considerable delay in putting in place the Disappearances Commission and Truth and Reconciliation Commission provided for under the CPA, bodies which would normally be mandated to provide recommendations on equitable reparation policies. - The Ministry of Peace and Reconstruction has put in place the "interim relief" measures as part of the overall policy set out in the Standards for Economic Assistance and Relief for Conflict Victims, 2008. Despite numerous reports of rape and other forms of sexual violence against women and cases of torture of people suffering post-conflict mental trauma, none of these categories of victims were addressed through the interim relief scheme. There are serious concerns about unfair and unequal distribution. - The recommendations for compensations issued by the NHRC have not been implemented by the Government. **Government:** Nepal enacted Compensation Relating to Torture (CRT) Act, 1996 which provides compensation for inflicting physical or mental torture upon any person in detention in the course if investigation, inquiry or trial. Under Section 5 of the CRT Act, a victim or his family members or his/her legal counsel may, within 35 days from the date of release from his/her detention, file petition of such detention in the District Court.	

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		In addition, the NHRC may order compensation for the victims of human rights violations in accordance with law. According to Section 9(2) of the Act, upon receiving the order for compensation, the Chief District Officer is required to execute the judgment by providing the amount of compensation specified by the court within 35 days. In the court ruling of 10 July 2007 on the case of torture of Manrishi Dhital v. Government of Nepal, the court decided to provide compensation to the applicant.	
(l) The declaration be made with respect to art. 22 of the CAT recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the CAT.	No action taken.		***Non-governmental sources:*** Reportedly, the Government has not made a declaration to recognise the competence of the Committee Against Torture to receive and consider communications from individuals.
(m) The Optional Protocol to the Convention against Torture be ratified and a truly independent monitoring mechanism established to visit all places where persons are deprived of their liberty.	No ratification.	***Non-governmental sources:*** Civil society is continuously lobbying for the ratification of the Optional Protocol.	***Non-governmental sources:*** The Government continues to refuse to ratify the Optional Protocol to the CAT, despite sustained lobbying by civil society.
(n) The appointments to the National Human Rights Commission, in the absence of Parliament, be undertaken through a transparent and broadly consultative process.	A transparent and consultative process in the appointment of commissioners was lacking.	***Non-governmental sources:*** The NHRC remained vacant for 14 months before the Government established the new Commission on Sep. 07. However, as advocated by civil society members and OHCHR, the establishment of the Commission was not based on a transparent and broad consultative process. Although NHRC has been established as a Constitutional body as per the Interim Constitution, the new Human Rights	***Non-governmental sources:*** Concerns remain about the draft NHRC bill, which threatens the independence of the Commission. It is reported that the provisions on membership and appointment to the Commission as they stand in the bill do not guarantee the independence of the NHRC members and ensure that

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		Commission Act is yet to be tabled at the Legislature Parliament. ***Non-governmental sources***: The draft NHRC Bill raises serious concerns over the independence of the Commission, including the narrow formulation of the NHRC`s mandate and procedures for appointment of commissioners.	there are no political appointees. Furthermore, section 30 of the draft bill is extremely concerning as it allows for the powers of the NHRC to be delegated to the Government of Nepal or to "any agency or institution or any person".
(o) The Rome Statute of the International Criminal Court be ratified.	No ratification.	***Non-governmental sources:*** In 2008, the NHRC recommended that the Government ratify the Statute. In Feb. 09, the Min. of Foreign Affairs tabled the issue before the Cabinet, which has yet to consider the proposal. ***Non-governmental sources:*** Although civil society has continuously been lobbying and advocating for the ratification, no ratification process has been put forward.	***Non-governmental sources***: The Rome Statute of the ICC has not been ratified, despite repeated promises by the Government to do so. In January 2011, during the UPR review, the Government stated that it was drafting enabling legislation which would be required for the ratification of the Rome Statute of the Criminal Court.
(p) Police, the armed police and RNA recruits undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education.		***Non-governmental sources:*** The security forces have made commitments to incorporate or expand human rights training as part of their regular training programmes. The Human Rights Cells of each of the security forces have cooperated closely with OHCHR and other international organizations in this regard. OHCHR has been working closely with the Police and APF on a serious of human rights training programmes – including targeted trainings on detention issues such as health examinations for detainees, and the use of force. With the support of OHCHR, the Police produced a 'Human Rights Standing Order' and the APF has produced a Human Rights Pocketbook to be distributed to all personnel These documents address issues of torture and ill-treatment. Both police forces have committed to making these documents an essential	***Non-governmental sources:*** For many years, the various security agencies have repeatedly conducted trainings and announced other measures to build the capacity to uphold human rights. However, the impact of such measures is reportedly questionable.

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		part of police training and deployment. Other regular training and orientation programmes on various aspects of international human rights and humanitarian law have been conducted in partnership with OHCHR and other international organizations for the Army. **Government:** In 2006, the Nepal Army (NA) established a Human Rights Directorate mandated to raise human rights awareness among the armed forces. There is human rights division in each Regional Headquarters and human rights sections at the Brigade level. The NA has been incorporating human rights and international humanitarian law modules in all trainings curricula. A separate training package is also conducted at various Divisions Headquarters and Brigade headquarters periodically.	
(q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security forces personnel, legal professionals and the judiciary.		***Non-governmental sources***: In 2007 the Ministry of Law, Justice and Parliamentary Affairs, the Min. of Foreign Affairs, INSEC (Informal Sector Service Centre) and CIVIT (Rehabilitation Centre for Victims of Torture Nepal) translated CAT-related documents into Nepali; since then copies have been provided to security officers, lawyers and the general public. Several non-government organizations have also drafted an 'alternative bill' criminalizing torture. ***Non-governmental sources:*** Non-state actors provide trainings for judges, lawyers, prosecutors and police. **Government:** There are special package programs (a one-day orientation, three-day training and five-day trainers' training on human rights and law	***Non-governmental sources***: Non-governmental organisations have regularly conducted awareness programs for the public regarding torture. This is done through local FM radio programs. Some non-governmental organisations have worked closely with the Judicial Academy to increase knowledge of the judiciary regarding the prevention and investigation of torture. It is reported that longstanding discussions with the Nepal Police Academy to review the curriculum and incorporate human rights fully in it have not resulted in an agreement to

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		enforcement) developed and implemented by Nepal Police on Human Rights and Law Enforcement at central, regional, zonal and district level on a regular basis. Several trainings have been conducted in cooperation with OHCHR, NHRC and ICRC. Police have incorporated relevant provisions of the Convention against Torture in their training programs on human rights and law enforcement.	date. The value of the ad hoc programs often organized to increase awareness is questioned. UNICEF has been conducting regular trainings both for law enforcement (Police) and judicial authorities on child rights and child sensitive investigative and court procedures. Key child rights issues, including standards for treating juvenile offenders, have been incorporated into the curricula of junior, middle and senior and public prosecutors. In addition, UNICEF is currently negotiating with the Supreme Court and the National Judges Society a free legal aid scheme for children victims and witnesses of crime.
(r) Security forces personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve, and that any concerns raised by OHCHR in respect of individuals or units be taken into consideration.		**Government:** According to the Government, since 15 May 2005, the Army has implemented the policy that those who are found guilty of human rights violations are disqualified from participating in UN peacekeeping missions. However, since impunity for perpetrators of human rights violations is quasi-total, it seems that this type of vetting does not reach many alleged perpetrators. ***Non-governmental sources:*** The NA has not progressed in identifying or punishing those responsible for systematic and serious human rights violations during the conflict. The list of army personnel excluded from peacekeeping missions on the grounds of having violated human rights was virtually the same list included in a November 2007 document provided by the Army to OHCHR.	***Non-governmental sources***: In December 2009, major Niranjan Basnet was returned from peacekeeping duties in Chad after the UN was made aware that charges relating to the murder of a 15-year-old, who was tortured in army custody and whose body was subsequently disposed of illegally, were pending against him before the Kavre District. He was immediately taken under control of the Nepal Army upon arrival in the country and was not handed over to the police, despite orders from the then Prime Minister to do so. As of September 2011, he continues to serve in the army and has not been questioned, let alone arrested

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		Non-governmental sources: There is a need to increase the level of cooperation between the OHCHR and the UN Department of Peacekeeping Operations in order to ensure that members of the Nepalese Army, currently participating in United Nations missions, are not implicated in human rights violations. Furthermore, it is recommended that more stringent vetting of secondees is introduced and a policy of refusing secondees from countries where torture is being regularly practiced is implemented. **Government:** A thorough vetting process is under implementation in police forces during the nomination of their personnel to the United Nations (UN) peacekeeping operations. Since 15 May 2005, the NA has developed and strictly implemented the policy of barring its personnel that was found guilty by the court for human rights violations from participating in UN peacekeeping operations.	by the Kavre police. The Government's assertion that a thorough vetting is in place to bar anyone found guilty of human rights violations by the courts has reportedly not been implemented.
(s) The Special Rapporteur calls on the Maoists to end torture and other cruel, inhuman or degrading treatment or punishment and to stop the practice of involuntary recruitment, in particular of women and children.	The Special Rapporteur also received shocking evidence of torture carried out by the Maoists.	***Non-governmental sources:*** Although the number of abductions, assault, ill-treatment and other abuses by CPN-M dropped significantly immediately after the signing of the CPA and further reduced after April 2008, reports of such abuses by the Young Communist League (YCL)and at local level have continued. ***Non-governmental sources***: Despite the fact that the number of abductions, assaults, ill-treatment and other abuses by CPN-M has dropped after signing the CPA and since April 2008, such abuses continue.	***Non-governmental sources:*** Five cases of torture committed by non-state actors were documented in the period January to June 2011. Two cases were attributed to the Unified CPN-M and YCL (jointly), one to the YCL and ANNFSU (jointly), one to the Youth Force and Yuba Sangh, both sister organizations of the CPN-UML, and one attributed to an unidentified group in the Terai region.
Torture and ill-treatment against women.		***Non-governmental sources:*** Women are continued to be tortured, ill-treated and sexually harassed by the police. For example, during investigations,	***Non-governmental sources:*** The torture and other ill-treatment of women in detention is reportedly on the rise. From January to July 2011, a

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		women report being sexually harassed with abusive language, stripped naked, beaten and threatened with rape. In many cases, male police officers were found to have tortured female detainees. Moreover, during incommunicado detention, women are often sexually abused and then threatened in order not to disclose what happened. **Government:** A national campaign has been launched, declaring 2010 as the year to End Violence Against Women. A special desk has been established in the Prime Minister's Office. The Nepal Police has established Women and Children Service Directorate. A series of training is being implemented on women and children related issues. Special Security plan 2009 also reflects Nepal's commitment to protect people from acts of torture. ***Non-governmental sources:*** According to the data collected, despite some improvement in the treatment of women during investigation and interrogation, women continue to experience torture and/or ill-treatment in detention.	total of 217 female detainees were visited by lawyers. Of them, 32 (14.7%) claimed that they were subjected to torture or ill-treatment. In comparison to the period from July to December 2010, when only 25 women (13.3%) had claimed they were tortured; this represents an increase by 1.7 %. It is alleged that there remain serious problems with the way complaints of violence against women are dealt with by the State. A 35 day statute of limitation applies to the filing of complaints to police (so-called First Information Reports, FIRs) to ensure police investigations in cases of rape. In 2008, the Supreme Court of Nepal passed a directive order for the Government to review the law in order to extend the statute of limitation on rape. The draft Criminal Procedure Code currently under consideration includes a longer limitation period of one year, but as currently drafted does not allow discretion to extend that period. Regarding rape and sexual violence in the community, police officers have shown very little commitment to filing reports. It is reported that in some cases, instead of taking a case to court, the police put pressure on the victim to marry the person who raped her, and then withdraw the charges against him.
Torture and ill-treatment		***Non-governmental sources:*** The widespread	***Non-governmental sources:*** The

Recommendation (see E/CN.4/2006/6/Add.5)	*Situation during visit (see E/CN.4/2006/6/Add.5)*	*Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
against children.		practice of arbitrary detention, torture and other ill-treatment of juveniles in police custody is a major concern;25.5% of juveniles held in police custody in the period from Oct. 08 to June 09 claimed they were tortured or ill-treated – which is higher than for the adult population (18.8%). But this represents a reduction of 3.3% as compared to the period from Jan-Sep. 08. Moreover, the continued detention of juveniles in facilities meant for adults presents grave human rights concerns. Children housed with adult offenders are vulnerable to rape and other abuses. In May 08, the Supreme Court ordered the Government to undertake reforms with regard to the prison system, including improving prison conditions and the situation of children living with prisoners, as well as reforming policies on prison management and administration. The Government states that reform of the prison system is ongoing subject to available resources. ***Non-governmental sources***: Juvenile detainees are subjected to torture more frequently than adults. - In one of its ruling, the Supreme Court decided that the detention of minors in prison was illegal and that child rehabilitation homes should be provided for their stay. These orders have not been implemented partly due to a lack of physical infrastructure and adequate resources. The Government decided to establish three new rehabilitation homes due to the increasing number of juvenile detainees.	torture of juveniles in detention is reportedly on the increase. During January to July 2011, of 588 juveniles visited by lawyers, 42 (7.1%) were girls and 546 (92.9%) were boys. Of them, 193 (32.8%) claimed that they were subjected to torture or other ill-treatment. In comparison, in the period from July to December 2010 the percentage was 26.7%, a 6.1% increase. Reportedly, the percentage of juveniles tortured remains higher than the percentage among the overall population of detainees. In other words, reportedly, police torture children more frequently than adults, and have consistently done so since 2003. It is reported that juvenile offenders continue to be held in police custody beyond the times permitted by law, and in most cases, together with adults. The only reform centre established in the country does not have adequate infrastructure, trained personnel and support services to ensure the safety and well-being of the juveniles and promote their rehabilitation. In addition, pre-trial detention is not limited to exceptional circumstances, efforts to apply alternative measures are insufficient. In 2011, the Government expanded the one existing child correction home at Sanothimi (Bhaktapur). There are plans to open another home in Morang

Recommendation (see E/CN.4/2006/6/Add.5)	*Situation during visit (see E/CN.4/2006/6/Add.5)*	*Measure taken in the recent years (see A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5, A/HRC/16/52/Add.2)*	*Information received in the reporting period*
			district and a third one in Kaski district. The one in Bhaktapur has been extended and has been brought in use, whereas the ones in Kaski and Morang have not started yet due to lack of budget. But, the Juvenile Justice Coordination Committee and Ministry of Women and Children are working with various organizations to get these homes established.

Nigeria

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Nigeria from 4 to 10 March 2007 (A/HRC/7/3/Add.4, para. 75).

85. On 22 November 2011, the Special Rapporteur sent the table below to the Government of Nigeria requesting information and comments on the follow-up measures taken with regard to the implementation of his predecessor's recommendations. The Special Rapporteur regrets that the Government has not provided a response to his request. He looks forward to receiving information on Nigeria's efforts to implement the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

86. The Special Rapporteur calls upon the Government to ensure that, if the absolute prohibition on torture is to be included in the Constitution, it should be set forth both in its preamble and as a binding provision. The Special Rapporteur welcomes the statement made by the Attorney General of the Federation and Minister of Justice in March 2010, confirming the Government's plans to criminalize torture. He urges the Government to ensure that torture is defined and criminalized as a matter of priority, in accordance with articles 1 and 4 of the Convention against Torture, with penalties commensurate with the gravity of torture.

87. The Special Rapporteur echoes the concern raised by the UN High Commissioner for Human Rights about the loss of life during protests over the removal of fuel subsidies,[48] and urges the Government to expedite prompt, impartial and thorough investigations into the events immediately and conclude them without delay, where the evidence warrants it. The Special Rapporteur calls upon the Government to ensure that security forces are trained and act in accordance with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

88. The Special Rapporteur welcomes the statement by the Police Service Commission in June 2010, that the Police Force should stop using torture during interrogations of suspects and encourages the authorities, in particular those responsible for law enforcement activities, to declare unambiguously that they will not tolerate torture or similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for them.

89. The Special Rapporteur takes note of the information that under the Evidence Act, confession extracted under duress or threat cannot be used in court. He observes however that, in practice, confessions obtained under torture are not expressly excluded as evidence in court. He calls upon the Government to guarantee inadmissibility of confessions obtained under torture and ill-treatment, to shift the burden of proof to prosecution, to prove beyond reasonable doubt that a confession was not obtained under any kind of duress; to ensure that all detainees are granted the ability to challenge the lawfulness of the detention before an independent court and that the period of holding detainees in police custody does not exceed 48 hours.

[48] See OHCHR press release: "Pillay urges concerted effort by Nigerian leaders to halt spiralling sectarian violence", 12 January 2012. Available from: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11756&LangID=E

90. The Special Rapporteur encourages the State to abolish all forms of corporal punishment, including Sharia-based punishments which reportedly remain on the statute books in 12 States. While welcoming the measures taken by some State governors to commute death sentences to imprisonment, he regrets that there has not been a general State policy towards abolishing the death penalty *de jure* and releasing those aged over 60 who have been on death row for 10 years or more. He recalls on the Government to abolish the death penalty because, under the conditions in which it is imposed and executed in Nigeria, it amounts to cruel, inhuman or degrading treatment or, or in some cases, torture.

91. The Special Rapporteur notes that in February 2011, the bill on a National Human Rights Commission (NHRC) was signed into law, securing the independence and funding of the NHRC. He looks forward to receiving information about the steps taken to secure the independence of the NHRC. The Special Rapporteur regrets that no steps have been taken to establish effective and independence complaints mechanism for torture, similar to the Economic and Financial Crimes Commission.

92. Finally, the Special Rapporteur encourages the Government to take measures to ensure that the National Committee on Torture mandated to visit places of detention and investigate allegations of torture, is fully equipped with the necessary financial and human resources. He calls on the Government to take measures to ensure the independent and effective functioning of this mechanism in full accordance with the Optional Protocol to the Convention against Torture (OPCAT).

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
(a) The absolute prohibition of torture should be considered for incorporation into the Constitution.	The prohibition of torture and inhuman or degrading treatment is provided in section 34 (1) (a) of the Constitution. However, the 1990 Criminal Code does not contain any provision explicitly prohibiting torture, or any provision for adequate sanctions. Acts amounting to torture may constitute offences such as assault, homicide and rape. Corporal punishment, such as caning, and Sharia penal code punishments of the northern states (i.e. amputation, flogging and stoning to death), remain lawful in Nigeria.	***Non-governmental sources:*** In April 2009, the Attorney General and Minister of Justice of the Federation stated that the Government is planning to prohibit torture. ***Non-governmental sources:*** The Constitution prohibits torture and inhuman and degrading treatment. However, torture has not been included in the criminal and penal codes. - The National Action Plan for the Promotion and Protection of Human Rights in Nigeria 2008-2013 affirms the existing constitutional provisions and includes specific initiatives to promote and protect the rights of all Nigerians.	***Non-governmental sources:*** Article 34 of the 1999 Constitution (as amended) prohibits torture[49], however, no provisions are made for the investigation or prosecution of acts of torture; in addition, the Constitution allows for the death penalty.
(b) The highest authorities, particularly those responsible for law enforcement activities, should declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted. The message should be spread that torture is an extremely serious crime which will be punished with	There was no unequivocal condemnation of torture or its qualification as a serious crime.	***Non-governmental sources:*** There have been some statements on torture by Government officials. The Presidential Committee on Reform of the Nigeria Police Force concluded in April 2008 that there were frequent public complaints about abuses of human rights by the police, including torture. In February 2009, the Assistant Inspector-General of Police in charge of Zone 5, stated on behalf of the Inspector General of Police that police officers should not torture suspects and respect the presumption of innocence. In April 2009, the Attorney general and Minister of	***Non-governmental sources:*** In 2009, the Federal Government set up a Commission on the Prevention of Torture to recommend to the Government how to address torture by State actors. Reportedly, no report was published. In June 2010, the Police Service Commission has reportedly stated that the Police Force should stop using torture during interrogations of suspects (Vanguard, Nigeria: Courts should reject information obtained through torture –

49 34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly -(a) no person shall be subject to torture or to inhuman or degrading treatment;

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
severe (long-term) prison sentences.		Justice of the Federation called on the Nigeria Police Force to stop using torture. ***Non-governmental sources***: There have been some statements Government officials, including by the former Minister of Justice, who indicated that torture would be soon criminalised in the legislation to demonstrate Nigerian Government's commitment to eradicate torture. He also indicated the need to perform a comprehensive review of the criminal justice system. - The former Minister of Foreign Affairs indicated that there was an urgent need to re-orient the Nigerian security agents with proper equipment and skills. - There are consistent reports from persons in detention, former detainees, judges, magistrates, lawyers, human rights defenders and the National Human Rights Commission alleging torture by the police, including juvenile victims. These include beatings with guns, sticks, whips and other tools; mock executions; shootings in the foot or legs; and being hung from the ceiling.	Akinjide).
(c) The crime of torture should be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.	There was no provision specifically criminalizing torture as defined in article 1 of the Convention against Torture. The Convention had not been incorporated into domestic laws, so there are no specific penalties related to acts of torture.	**Government:** The Senate Committee on Judiciary indicated in October 2008 that it intended to pursue the adoption of legislation to specifically criminalize torture. ***Non-governmental sources:*** An NGO drafted a 'Torture prevention and prohibition act' in 2009, which defines torture in accordance with Article 1 of the CAT.	***Non-governmental sources:*** There is no provision in Nigeria's criminal code and penal code specifically criminalizing torture. An NGO coalition has drafted a bill to be known as 'Torture Prevention and Prohibition Act'. The bill defines torture in accordance with Article 1 of the

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		Non-governmental sources: There is no provision specifically criminalising torture. - The National Committee on Torture is currently drafting an anti-torture legislation, using the experiences from other countries around the world. The draft bill identifies the individuals committing the acts and their commanding officers as possible perpetrators. It sets penalties for acts of torture and creates a legal basis to prosecute any public official for torture	Convention against Torture. In March 2010, the Attorney General of the Federation and Minister of Justice affirmed the commitment as stated in April 2009, that the Government is planning to prohibit torture. (Daily Independent, 24 April 2009, "Stop Torturing Nigerians, Aondoakaa Tells Police" and NBF News, 9 March 2010, Government to criminalise torture).
(d) An effective and independent complaints system for torture and abuse leading to criminal investigations should be established, similar to the Economic and Financial Crimes Commission.	Perpetrators were in general not held accountable due to the non-functioning complaint mechanisms and remedies. Victims accepted that impunity was the natural order of things. Attempts to register complaints were often met with intimidation, and investigations lacked independence as they could be conducted by the police themselves. Upon request by the Government, on 5 April 2007, the UN Special Rapporteur forwarded a draft law on the establishment of a torture investigation commission.	**Government:** A draft bill on the establishment of an anti-torture commission was pending in the Senate. Non-governmental sources: In 2009, although the National Human Rights Commission had been receiving complaints about torture and abuse, no cases had been prosecuted. ***Non-governmental sources***: There is a complaints mechanism in place within the Police Force, but most complaints are not processed. A victim may report police misconduct to the Police Complaints Bureau, an internal investigation body established in 2003. In addition, some police stations have human rights desks where complaints may also be filed. However, people have little confidence in the system. - In September 2009, the Nigerian Federal Ministry of Justice established a National Committee on Torture as the National Preventive Mechanism. The Committee is composed of 19 representatives from a	***Non-governmental sources:*** Reportedly, no action has been taken towards implementing this recommendation. The National Human Rights Commission (NHRC) has been receiving complaints of torture and abuse. In February 2011, the National Human Rights Commission Act was signed into law, which secures the independence and funding of the NHRC. The powers of NHRC include the power to visit police stations and detention centres and the power to investigate allegations of human rights violations. Reportedly, the police have refused the NHRC access to suspects. It is reported that the independent fund for the NHRC is yet to be established.

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		wide range of sectors in the field of human rights. The Committee has the power to visit places of detention and to investigate allegations of torture. It intends to publish newsletters with the results of the investigations carried out. - The Committee on Torture is financed through the budget of the Ministry of Justice, which may undermine its independence.	
(e) The right to legal counsel should be legally guaranteed from the moment of arrest.	Section 35 (2) of the Constitution allows a detainee or arrested person to remain silent until consultation with a legal practitioner. However, many detainees cannot afford a lawyer and the vast majority of detainees did not have legal counsel.	**Government:** In 2009 a bill to extend the mandate of the Federal Legal Aid Council (LAC) was pending before the National Assembly for over three years. ***Non-governmental sources:*** As of 2009 the right to legal counsel had been rarely realized in practice, and in many police stations, the police continued to deny suspects' access to a lawyer. In some cases, lawyers had even been threatened with arrest for making inquiries at the police station about their clients. The bill to extend the mandate of the Legal Aid Council (LAC) had been still pending. Some individual states have established public defender bodies within the Ministry of Justice to provide free legal assistance to residents of the state, but they often had limited capacity. ***Non-governmental sources***: The right to legal counsel is guaranteed in the Constitution from the moment of arrest. However, it is rarely put in practice. Many detainees are unable to meet bail conditions and the majority cannot afford a lawyer. The Federal Legal Aid Council has	***Non-governmental sources:*** The right to legal counsel is legally guaranteed from the moment of arrest (Article 35 (1) of the 1999 Nigerian Constitution [as amended]), however, it is rarely realised. In many police stations, the police continue to deny suspects access to a lawyer. The Legal Aid Council continues to have limited capacity. Individual states have established public defender bodies within the Ministry of Justice, to provide free legal assistance to residents of the State. They often have limited capacity.

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		extremely limited capacity and a mandate limited to certain crimes. Public Defender initiatives at the sate level also have a limited capacity.	
(f) The power to order or approve arrest and supervision of the police and detention facilities should be vested solely with independent courts.	Police functions to arrest, detain and investigate suspects for offences were vested in a myriad of law enforcement agencies. Time limits and safeguards regarding imprisonment were frequently not complied with, as the Special Rapporteur found that people were sometimes detained for months under police arrest.	***Non-governmental sources:*** As of 2009 no action had been taken toward implementing this recommendation. ***Non-governmental sources:*** No action has been taken towards implementing this recommendation.	***Non-governmental sources***: Reportedly, no action has been taken towards implementing this recommendation.
(g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.	De facto, the vast majority of detainees did not have the ability to challenge the lawfulness of their detention due to the lack of financial means, the overload of the entire judicial system as well as a climate of fear.	***Non-governmental sources:*** A detainee's power to challenge their detention has been dependent on their financial capacity, and poverty has been restricting the ability of detainees to obtain adequate legal representation. ***Non-governmental sources:*** In practice, the ability of a detainee to challenge the lawfulness of a detention is dependent on their financial capacity. In addition, habeas corpus proceedings can take years and enforced disappearances are frequent.	***Non-governmental sources:*** Although guaranteed in law, in practice, the ability of a detainee to challenge the lawfulness of their detention is dependant on their financial capacity. It is reported that poverty restricts the ability of detainees to obtain adequate legal representation.
(h) Judges and prosecutors should routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance	While in principle empowered to do so, judges and prosecutors did not ex-officio enquire about potential torture and ill-treatment in police custody. Forensic medical examinations which could sustain complaints were non-existent, even in cases of death in police custody.	***Non-governmental sources***: Judges and prosecutors have routinely not asked detainees how they have been treated. ***Non-governmental sources:*** This is not carried out in a routine manner.	***Non-governmental sources:*** Reportedly, this is not carried out as a matter of routine.

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
with the Istanbul Protocol.			
(i) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted.	While legal provisions foresaw that persons arrested or detained be brought before a judge within one or two days, the majority of suspects were deprived of their liberty for longer periods without the required judicial oversight.	***Non-governmental sources:*** As of 2009, following an amendment to the Magistrate Court Law by Lagos State, magistrate courts have been open on Saturdays to ensure suspects can be brought before a court within 24 hours. Despite this, many detainees still had to spend weeks in police detention after their arrest without being seen by a judge. ***Non-governmental sources:*** Detainees are held for extended periods of time due to poor record-keeping and secrecy on the part of the police. Reports are regularly received of persons detained for weeks or months before being presented before a court, despite the constitutional guarantee to be presented before a judge within 48 hours.	***Non-governmental sources:*** It is alleged that extended detention at police stations is common. Reportedly, numerous people awaiting trial spent weeks and in some cases months after their arrest in the police station, without seeing a judge, despite the constitutional guarantee to be brought before a judge within 48 hours.
(j) The maintenance of custody registers should be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time at which the family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer.	The Criminal Code requires the proper maintenance of records of any person in confinement and punishes neglect or deliberate false entries. However, in practice these records were frequently incomplete or inaccurate.	**Government:** Lagos State has implemented a new computerized case tracking system, following cases from arraignment through their conclusion. However, the tracking commences only when a detainee is produced before a court, not at the point of arrest. ***Non-governmental sources:*** In 2009 reports have been received that in some police stations the police registered detainees on a piece of paper for bribery purposes. Once the detainees had paid the so called “police bail”, they were released. ***Non-governmental sources:*** There is no information indicating that custody registers are kept. Detainees held at police	***Non-governmental sources:*** Reportedly, in some police stations the police register detainees on a piece of paper for bribery purposes: once the detainees have paid the so called “police bail”, they are released. It is alleged that heir names are as such not recorded in the custody register.

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		stations often report that none of their details are taken and they are held until their families pay for their release. - Lagos state has introduced a new computerized tracking system, to be launched at the end of 2010. The system will track cases starting when a detainee is produced before a court until the case is concluded.	
(k) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present.	In spite of legal provisions that provide that a confession made by an accused person cannot be used to secure a conviction, Nigeria's criminal justice system relies heavily on confessions. The Special Rapporteur encountered cases in which the courts did not take into account allegations of torture when issuing their verdicts.	**Government:** The new criminal procedures in Lagos State provided for video taping of interrogations; where no video is available, the lawyer should attend the interrogation. Non-governmental sources: Confessions extracted under inducement, threat or promise cannot be used in court under the Evidence Act. However, in practice, confessions are often allowed to be used in court. When allegations of torture arise in court, a trial within a trial is held, but according to information received, the jury generally decide in favour of the police officer. ***Non-governmental sources:*** Under the Evidence Act, confessions extracted under inducement, threat or promise cannot be used in court. In practice however, these confessions are often allowed.	***Non-governmental sources:*** Reportedly, in many police stations suspects are threatened and forced to sign a confessional statement. Under the Evidence Act, confessions extracted under inducement, threat or promise cannot be used in court. In practice however, these confessions are reportedly often allowed to be used in court. When allegations of torture arise in court, a trial within trial is held; however, according to information received, the judiciary tend towards the police officer.
(l) All allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or	Although Nigeria has a number of ways to redress instances of police misconduct, including police internal review, these do not function in practice. Attempts to register complaints could be met with intimidation,	***Non-governmental sources:*** The majority of investigations or disciplinary measures against police officers are conducted internally within the Nigerian Police Force, often informally within a particular station. The 2008 Presidential Committee recommended that "A Public Complaints	***Non-governmental sources:*** This has not been achieved. It is reported that the majority of investigations or disciplinary measures against police officers are conducted internally within the Nigerian Police Force, often informally within a particular station. According to the Nigeria

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
prosecuting the case against the alleged victim.	or investigations lack independence as they could be conducted by the police. No information was provided by the Government on evidence of successful criminal prosecutions of perpetrators of torture, payment of compensation, or statistics on disciplinary sanctions meted out to officers.	Unit should be established under the Police Affairs Office in the Presidency to receive and deal with representations against the Police with powers to investigate and recommend redress and other forms of disciplinary action in all proven cases of neglect, unnecessary use of force, injury, corruption or misconduct." The Federal Government accepted this recommendation in its whitepaper, and gave the Ministry of Police Affairs the mandate to implement it. However, this is not yet in place. ***Non-governmental sources:*** There is no confirmation of any disciplinary measures taken against members of the Nigerian Police Force for acts of torture. In many cases, officers with pending disciplinary matters are sent for training. - There are a number of mechanisms to monitor police behaviour, including the X Squad, the Police Service Commission and the Nigeria Police Council, but none have the sufficient authority or will to hold officers to account. The majority of investigations and disciplinary measures are conducted internally and often informally. - The Police Service Commission ha the authority to appoint, discipline and dismiss all officers except the IGP. It also has the mandate to investigate human rights violations by the police and recommend disciplinary action, but it cannot refer cases for prosecution.	Police Force, disciplinary steps are taken. There is no information suggesting that the proposed 'Public Complaints Unit' was established, as recommended by the 2008 Presidential Committee. The unit was supposed to be established under the Police Affairs Office in the Presidency. The Federal Government accepted this recommendation in its whitepaper.
(m) Any public official found responsible for abuse	Although there are a number of bodies that can accept	***Non-governmental sources:*** In 2009 concerns remained about the culture of	

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
or torture in this report, either directly involved in torture or ill-treatment, as well as implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty, and prosecuted. The Special Rapporteur urges the Government to thoroughly investigate all allegations contained in appendix I to the present report with a view to bringing the perpetrators to justice.	complaints, in reality perpetrators operate in a culture of impunity. The Government could not provide evidence of successful criminal prosecutions of perpetrators of torture or statistics on disciplinary sanctions meted out to officers.	impunity within police institutions. NGOs receive large numbers of complaints related to torture by the police, and concerns remain about the entrenched patterns of extortion, torture, and other forms of ill-treatment, but the Government has made no significant effort to hold members of the security forces accountable for these crimes. ***Non-governmental sources:*** There is no information on any disciplinary measures or prosecutions taken against members of the police on the grounds of torture.	
(n) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, as well as adequate medical treatment and rehabilitation.	The government could not provide evidence of any compensation awarded to the victims.	**Government:** In some cases, courts have awarded compensation to be paid to victims of torture. However, the ordered payments are still pending. Non-governmental sources: There is no information on any compensation awarded or rehabilitation provided by the State to any victim of torture. Non-governmental sources: as of 2009, there had been no reported case of compensation awarded or the state providing rehabilitation to victims of torture.	***Non-governmental sources:*** In several cases, courts have ordered the police to pay damages. There is no information suggesting compensation awarded or rehabilitation provided by the State to any victim of torture or other ill-treatment.
(o) The declaration should be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be	Nigeria has not recognized the competence of the Committee against Torture to receive communications from individuals under article 22 of CAT.	***Non-governmental sources:*** Nigeria has recognized the competence of the National Committee on torture to receive communications from individuals under Article 22 of CAT.	***Non-governmental sources:*** Nigeria has not made declaration with respect to Article 22 of the Convention against Torture recognizing the Competence of the Committee against Torture to receive and consider communications from individuals.

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
victims of a violation of the provisions of the Convention.			
(p) The release of non-violent offenders from confinement in pre-trial detention facilities should be expedited, beginning especially with the most vulnerable groups, such as children and the elderly, and those requiring medical treatment subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement).	The vast majority of detainees are held pending their trial or without charge for as long as 10 years.	**Government:** The Federal Ministry of Justice has embarked on a prison "decongestion" scheme. However, no tangible results in terms of numbers of people held in pre-trial detention have been achieved so far. There is a policy in place focusing especially on the release of members of vulnerable groups. Several states have commuted sentences or released detainees under amnesties. However this is not done in a routine or coordinated manner across the federation. It is dependent on the mercy committees of individual states and the benevolence of the state governor. Non-governmental sources: As of 2009, the impact of the prison decongestant scheme was yet to be observed. ***Non-governmental sources:*** According to the Minister of the Interior, the total prison population is 46.000, of which 30,000 are awaiting trial. - The prison decongestion scheme, established by the Ministry of Justice in 2008 had no visible impact and prisons remain overcrowded. - There is no information regarding a federal policy focusing on the release of detainees belonging to vulnerable groups. - In July 2009, the Lagos State Governor signed the Magistrates' Court Bill into law, which establishes that suspects must be brought to court within 24 hours, and only qualified legal practitioners can	***Non-governmental sources:*** The impact of the Federal Ministry of Justice prison "decongestion" scheme is yet to be observed. There is no information about a federal policy focussing on the release of vulnerable groups. At state level, the Committees of Prerogative of Mercy can recommend the release of prisoners. It is however unclear how these committees decide who to release.

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		prosecute them. - Several states have commuted sentences or released detainees following a pardon.	
(q) Pre-trial detainees and convicted prisoners should be strictly separated.	There was no strict separation of pre-trial and convicted prisoners.	***Non-governmental sources:*** As of 2009, in most prisons visited by NGOs there was still no strict separation of pre-trial and convicted prisoners. ***Non-governmental sources***: These two categories are not strictly separated.	***Non-governmental sources:*** Reportedly, these two categories were not strictly separated.
(r) Detainees under 18 should be separated from adult ones.	Section 419 of the Criminal Procedure Code requires that imprisoned minors shall not be, so far as it is deemed practical, allowed to associate with adult prisoners. However, there was no strict separation of juveniles and adults.	***Non-governmental sources:*** Young children are often detained in the same cell as adult males, partly due to overcrowding. Detainees under 18 are not routinely separated from adults. ***Non-governmental sources:*** Detainees under 18 are not routinely separated, and there are many reports of children as young as 12 held with adults in police and prison detention.	***Non-governmental sources:*** It is reported that detainees under 18 are not routinely separated from adults. Moreover, it is alleged that in some police stations police officers falsely record the age of detainees under the age of 18 as being over the age of 18 in order to bring them to the magistrate court instead of a juvenile court.
(s) Females should be separated from male detainees.	Males and females were separated in most cases.	**Government:** Females are overwhelmingly separated from male detainees. ***Non-governmental sources:*** Female detainees are overwhelmingly separated from male detainees, but concern has been expressed about a prison riot in June 2009 in Enugu prison, where male inmates broke into the female wing and allegedly raped most of the female inmates and some of the female wardens. ***Non-governmental sources:*** Females are separated from male detainees in police stations.	***Non-governmental sources:*** Reportedly, females are separated from male detainees.

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
(t) The Criminal Procedure Code should be amended to ensure that the automatic recourse to pre-trial detention, which is the current de facto general practice, is authorized by a judge strictly as a measure of last resort, and the use of non-custodial measures, such as bail and recognizance, are increased for non-violent, minor or less serious offences	Pre-trial detention was ordered by default.	**Government:** The Criminal Procedure Code of Lagos State has been amended, Ogun State is reviewing its Criminal Procedure Code with a view to amend it and other states have begun preliminary reviews of their criminal procedure codes as well. ***Non-governmental sources:*** A Criminal Law of Lagos State was before the House State Assembly, and other states have begun preliminary reviews of their criminal procedure laws in 2009. ***Non-governmental sources:*** The criminal procedural code of Lagos state has been amended, Ogun state is reviewing its code with a view to amending it, and other states have begun preliminary reviews in this regard. - Most federal justice sector reform bills are still pending before the National Assembly.	***Non-governmental sources***: Reportedly, this has not happened.
(u) Abolish all forms of corporal punishment, including sharia-based punishments.	Corporal punishment, such as caning, as well as sharia penal code punishments of the northern states (i.e. amputation, flogging and stoning to death) were lawful in Nigeria.	***Non-governmental sources:*** Sharia based punishments remain on the statute books in twelve states, including corporal punishment. In many cases, sharia courts failed to conform to international standards of fairness and do not respect due process. ***Non-governmental sources***: Sharia-based punishment remains on the statute books.	***Non-governmental sources:*** Sharia-based punishments remain on the statute books in 12 states.
(v) Abolish the death penalty de jure, commute the sentences of prisoners on death row to imprisonment, and release those aged over 60 who have been on death row for 10 years or more.	Capital punishment was still in the national legislation, but there was a policy not to carry out executions. However, persons continued to be sentenced to death, which led to the steady growth in numbers of	***Non-governmental sources:*** The Minister of Foreign Affairs' statement on the outcome of the UPR in June 2009 indicated that the country had set up a National Committee on the Review of death penalty, and at the meeting of the National Council of State in March and	***Non-governmental sources:*** Death penalty remains on the statute books. While some State governors have commuted sentences, there has not been a general approach to release those over 60 who have been on death row for 10 years or more. Moreover, it is reported that after

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	persons on death row for many years, in inhuman conditions. By letter dated 14 September 2007, the Government stated that it had, as part of the decongestion process, released all prisoners over the age of 60, as well as all prisoners who had served more than 10 years on death row.	June 2009, President Umaru Yaradua appealed to all Governors of Nigeria to review the issues of the large number of condemned people on death row across the country. A number of states have commuted some or all of their death sentences, and the Federal Government commuted 45 death sentences to life imprisonment in 2008. However, other state governments have extended the scope of the death penalty to make kidnapping a capital offence, and there have been allegations that a number of inmates have been executed secretly while in detention, with at least seven executions by hanging in the past two years. In June 2009, several states were considering recommencing executions, particularly in the south-south and south-east regions of Nigeria. ***Non-governmental sources:*** No action has been taken to abolish the death penalty, and there are 824 persons on death row. - The Federal Government has indicated its political will to respect the de facto moratorium, but a formal abolition requires constitutional review. However, a National Death Penalty Moratorium bill is reportedly being drafted. - An execution reportedly took place in early 2010, in spite of the de facto moratorium. - State governors agreed to review all cases of death row and to sign execution warrants as a means of decongesting prisons, which was opposed to by the Federal Government.	a meeting of the National Economic Council (NEC) in June 2010, it was announced that the Council had asked the Nigerian State governors to review all cases of death row inmates and to sign execution warrants as a means of decongesting the country's prisons. In April 2010, a similar decision was taken in a meeting of the Council of States, a meeting of the 36 state governors, chaired by the President of Nigeria.
(w) Establish effective	Nigeria has legislation	**Government:** Several states have adopted	***Non-governmental sources***: A bill is

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
mechanisms to enforce the prohibition of violence against women including traditional practices, such as FGM, and continue awareness-raising campaigns to eradicate such practices, and expedite the adoption of the Violence against Women Bill.	prohibiting discrimination against women in critical areas, such as female genital mutilation and early marriage. However, such practices persisted and enjoyed social acceptance. No effective mechanisms to enforce existing prohibitions were in place.	bills prohibiting domestic violence, including Lagos, Cross Rivers Ebonyi and Jigawa states. CEDAW is yet to be incorporated. However, the Federal Ministry of Women Affairs is working with a coalition of NGOs to represent the CEDAW Domestication Bill to the National Assembly. Non-governmental sources: During the UPR process, Nigeria accepted the recommendations to domesticate CEDAW, to repeal all laws that allow violence and discrimination against women and to continue awareness raising campaigns to eradicate traditional practices as FGM. A bill is pending before the National Assembly. ***Non-governmental sources:*** Violence against women remains pervasive. The authorities consistently failed to exercise due diligence in preventing and addressing sexual violence committed by both state and non-state actors, leading to a culture of impunity. - While some states have adopted legislation to protect women from discrimination and violence, CEDAW is not yet implemented.	pending before the National Assembly. During the UPR review Nigeria accepted the recommendation to domesticate CEDAW, to repeal all laws that allow violence and discrimination against women and to continue awareness raising campaigns to eradicate traditional practices such as FGM. The implementation of these recommendations remained to be seen.
(x) Security personnel shall undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing	Law enforcement is seriously under-resourced and consequently, adequate training is lacking.	**Government:** Some human rights training is offered to senior personnel. Some interrogation technique training is provided, but the extreme lack of investigative equipment and facilities risks rendering any training obsolete. ***Non-governmental sources***: In 2009, the Nigeria Police Force was reviewing their	

Recommendation (A/HRC/7/3/Add.4)	*Situation during visit (A/HRC/7/3/Add.4)*	*Steps taken in previous years (A/HRC/10/44/Add.5, A/HRC/13/39/Add.6 and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
equipment, and that existing personnel receive continuing education.		training curriculum. ***Non-governmental sources***: Human rights education is not incorporated in the current curriculum, although some human rights training is offered to senior personnel. - Police stations lack the resources to investigate complex crimes and although all police stations are obliged to keep records of their work, many do not. - The forensic capacity is poor, there is no database for fingerprints, systematic forensic investigation methodology or sufficient budget for investigations. - The police training facilities are overstretched and under-resourced.	
(y) Security personnel recommended for United Nations, as well as regional, peacekeeping operations should be scrupulously vetted for their suitability to serve.		***Non-governmental sources:*** There is no information on the vetting procedures for security personnel recommended for United Nations and regional peacekeeping operations.	
(z) The Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism should be established - where the members of the visiting commissions would be appointed for a fixed period of time and not subject to dismissal - to carry out unannounced visits to all places where persons are deprived of their liberty	There was no regular or systematic mechanism, or activities related to independent visits to detention facilities.	***Non-governmental sources***: Nigeria ratified the Optional Protocol to the Convention against Torture on 27 July 2009. No independent monitoring mechanism has been established. ***Non-governmental sources:*** The National Committee on Torture was established in September 2009. The Committee assumes the mandate of National Preventive Mechanism.	***Non-governmental sources***: Nigeria signed the Optional Protocol to the Convention against Torture on 27 July 2009. An independent monitoring mechanism has yet to be established.

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throughout the country, to conduct private interviews with detainees and subject them to independent medical examinations.			
(aa) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security personnel, legal professionals and the judiciary.	No such campaigns existed.	***Non-governmental sources:*** In 2009 the National Human Rights Commission started an awareness-raising campaign on torture. Non-governmental sources: The National Committee on torture has organised a number of activities such as a National Public Tribunal on police abuse in the country in June 2010, in close cooperation with the Network on Police Reform in Nigeria.	

Paraguay

Seguimiento a las recomendaciones del Relator Especial (Manfred Nowak) en su informe relativo a su visita a Paraguay del 22 al 29 de noviembre de 2006 (A/HRC/7/3/Add.3)

93. El 22 de noviembre de 2011, el Relator Especial envió la tabla que se encuentra a continuación al Gobierno de Paraguay solicitando información y comentarios sobre las medidas adoptadas con respecto a la aplicación de sus recomendaciones. El Gobierno proporcionó información el 26 de diciembre de 2011. El Relator Especial quisiera agradecer al Gobierno la información proporcionada, invitarle a enviar información sobre todas las recomendaciones emitidas, e informar de su disposición a ayudar al Estado en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

94. El Relator Especial considera positivo que se encuentre ante el Parlamento Nacional el Proyecto de Ley que prevé algunas modificaciones en el Código Penal a fin de tipificar el delito de Tortura según la Convención contra la tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes (CAT). El Relator Especial toma nota de que el Proyecto de Ley ha sido aprobado con modificaciones por la Honorable Cámara de Senadores, en Sesión Ordinaria de fecha 27 de octubre de 2011. Sin embargo manifiesta su preocupación por el hecho de que si bien el proyecto de ley mejora significativamente la definición de tortura, el tipo penal no concuerda totalmente con el artículo 1 de la CAT. El Relator Especial valora los esfuerzos realizados para incluir en el Código Penal Militar el delito de tortura. Al respecto, valora que por Resolución del Ministerio de Defensa Nacional del 24 de junio de 2011 se constituyó una comisión integrada por representantes del Ministerio de Defensa Nacional, Suprema Corte de Justicia Militar, Comando de las Fuerzas Militares, Comando del Ejército, Comando de la Armada, Comando de la Fuerza Aérea y Comando Logístico. Este grupo de profesionales tiene a su cargo el estudio y análisis de las leyes militares vigentes a los fines de su modificación por otra que adecue la legislación militar a principios jurídicos modernos. Al respecto, insta respetuosamente al órgano legislativo a que concluya exitosamente tal proceso.

95. El Relator Especial aplaude que el Estado paraguayo por Ley N° 4.288/11 del 20 de abril de 2011, haya aprobado el denominado Mecanismo Nacional de Prevención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes. Como institución nueva, el "Mecanismo Nacional", es un ente autárquico con personería jurídica de derecho público, creado por esta ley para reforzar y colaborar con la protección de las personas privadas de su libertad contra todo tipo de trato o penas prohibidas.

96. El Relator Especial reconoce que con de fecha 13 de enero de 2011, se creó un nuevo departamento en el Ministerio Público, a cargo de casos de violación de derechos humanos por parte de funcionarios oficiales. Esta Unidad Especializada de Derechos Humanos Es responsable de investigar de manera autónoma casos de tortura y violaciones de derechos humanos. El Relator Especial nota su preocupación por el hecho de que las investigaciones de esta Unidad no se podrán llevar a cabo independientemente de la Policía Nacional e insta al gobierno a dar seguimiento a este tema. El Relator Especial reconoce que el Ministerio, a través de su Unidad Especializada de Derechos Humanos dispone de una estructura organizada que permite dar respuestas específicas, con acciones concretas, dirigidas a perseguir los hechos de tortura.

97. El Relator Especial aplaude el trabajo de la Dirección General de Verdad, Justicia y Reparación, enfatizando los últimos hallazgos obtenidos, y exhorta al Estado a continuar con el apoyo político y financiero necesario a ese órgano.

98. El Relator Especial reconoce que la Defensoría del Pueblo, desde su Dirección General de Verdad, Justicia y Reparación, ha formado una Mesa de Trabajo con la Unidad Especializada de Derechos Humanos del Ministerio Publico, con la que de manera coordinada atiende las denuncias formuladas, de modo de identificar todos los legajos y la información proporcionada que permita iniciar las investigaciones en forma eficiente. El Relator Especial nota que la Defensoría del Pueblo tendría la posibilidad de ser más activa, de visitar más a menudo los lugares de detención y mantener una base de datos de denuncias. El Relator Especial espera que mediante reformas estructurales adecuadas, desarrollo de capacidades del personal y campañas de concientización, pueda llegar a hacerlo en el futuro.

99. El Relator manifiesta su preocupación por la falta de respeto a las garantías procesales de las personas privadas de su libertad, ya que en su mayoría las personas detenidas en comisarías superan el plazo máximo legal establecido por la carencia de infraestructura y medios para alojar a detenidos en condiciones plenas de respeto a su dignidad humana.

100. El Relator Especial nota su preocupación debido a que del total de la población penitenciaria, solo un 28% se encuentra privado de su libertad con base en condena firme y ejecutoriada, mientras que el 72% restante lo está bajo la figura de la prisión preventiva. Invita al Estado a garantizar la separación de presos en prisión preventiva de los convictos, y a los menores de los adultos.

101. El Relator Especial considera que sería recomendable contar con información práctica por parte del Estado relativa a la eficacia jurídica de la prohibición de admitir confesiones realizadas por personas arrestadas sin presencia de un abogado.

Recomendación (A/HRC/7/3/Add.3)	*Situación durante la visita (A/HRC/7/3/Add.3)*	*Medidas tomadas en años anteriores (A/HRC/13/39/Add.6 , A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
(a) Ajustar la definición del Código Penal al artículo 1 de la CAT.	No está en línea con la definición.	2009: El Gobierno declaró que si bien se mantiene la definición de tortura, se debe aplicar la definición contenida en la Convención ya que estos forman parte del derecho positivo nacional desde el momento de su ratificación. Fuentes no gubernamentales: Sigue sin adecuarse al CAT. Gobierno: En lo que respecta a este punto, el Gobierno informó que actualmente se encuentra en el Parlamento Nacional el Proyecto de Ley "Que Modifica los Artículos 236 y 309 del Código Penal", que prevé su debida tipificación acorde a la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, la Convención Interamericana para Prevenir y Sancionar la Tortura y la Convención Interamericana sobre Desaparición Forzada de Personas, además de otros instrumentos de derechos humanos, a fin de garantizar los derechos de las personas, sancionando y erradicando estas prácticas violatorias de derechos humanos. Dicho proyecto, fue presentado a finales del mes de mayo de 2009 y fue girado para su estudio a las siguientes Comisiones de la Honorable Cámara de Senadores: Derechos Humanos; Asuntos Constitucionales, Defensa Nacional y Fuerza Pública; Legislación, Codificación, Justicia y Trabajo; y Equidad, Género y Desarrollo	2011: El Gobierno informó que, en lo atinente la enmienda de los artículos 236 y 309 del Código Penal, de manera a que contemple una tipificación adecuada del delito de tortura y desaparición forzada, en términos compatibles con el artículo I de la Convención, el Proyecto de Ley "QUE MODIFICA LOS ARITCULOS 236 Y 309 DEL CODIGO PENAL", cuenta con media sanción en el Congreso Nacional, habiéndose aprobado con modificaciones por la Honorable Cámara de Senadores, en Sesión ordinaria de fecha 27 de octubre de 20II. A su vez, la Constitución Nacional paraguaya otorga una condición de imprescriptibilidad a este tipo de delitos. La Corte Suprema de Justicia se ha pronunciado sobre este particular, decidiendo que la imprescriptibilidad opera tanto con relación a la acción penal como en la sanción penal. Esto es así, que los Tribunales del país han venido aplicando dicho concepto en sus sentencias judiciales. 2011: Fuentes no gubernamentales: El artículo 5 de la Constitución prohíbe la tortura, los tratos o penas crueles, inhumanos o degradantes. La tortura está a su vez definida en el artículo 309 del Código Penal. Sin embargo, esta tipificación tan limitada excluye fácilmente muchos hechos que serían calificados como tortura de acuerdo con la CAT. De este modo, los defensores de víctimas de hechos que encuadran en la definición internacional de tortura observan que el Ministerio Público procesa hechos de tortura como otros delitos penales, principalmente como “lesión corporal en el ejercicio de las funciones públicas”, o recurre a procedimientos administrativos que no constituyen un recurso

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		Social.	judicial idóneo y efectivo de acuerdo al derecho internacional. Como consecuencia, se imponen penas leves y la víctima no puede beneficiarse de la imprescriptibilidad que establece el Código Penal para el delito de tortura. Esto también explica la falta de condenas por delito de tortura en el Paraguay. En mayo de 2009, se presentó un proyecto de ley para modificar el artículo 236 sobre desapariciones forzadas y el artículo 309 del Código Penal, que aunque recibió Dictamen de aprobación con modificaciones por parte de la Comisión de Derechos Humanos del Senado el 23 de mayo de 2011, todavía se encuentra en trámite. En este sentido, si bien el proyecto de ley mejora significativamente la definición de tortura, sin embargo no concuerda totalmente con el artículo 1 de la CAT y sigue siendo una definición más restringida que la establecida en dicho artículo.
(b) Tipificar la tortura como delito en el Código Penal Militar.	No existe tipificación.	2009: el Gobierno informó de la existencia de un proyecto de modificación del Código Procesal Penal a fin de incluir esa figura. Fuentes no gubernamentales: No se ha tipificado la tortura. Gobierno: Las Fuerzas Armadas se encuentran tomando medidas en este ámbito con la creación de una Comisión que pueda estudiar el Código Penal Militar (ley Nº 843 de 1980), en el cual, pueda incluir dicho cuerpo legal de un tipo penal de conformidad con el Artículo 1 de la Convención contra la	2011: Gobierno: Por Resolución del Ministerio de Defensa Nacional N " 620 del 2 4 de Junio de 2011, se constituye una comisión integrada por representantes del Ministerio de Defensa Nacional, Suprema Corte de Justicia Militar, Comando de las Fuerzas Militares, Comando del ‘Ejercito, Comando de la Armada, Comando de la Fuerza Aérea y Comando Logístico. Este grupo de Profesionales tiene a su cargo el estudio y análisis de las leyes militares vigentes a los fines de su modificación o sustitución por otra adecuando la Legislación militar a principios jurídicos modernos partiendo del principio de que la igualdad para el acceso a la justicia y a la defensa sea la seguridad efectiva de los

Recomendación (A/HRC/7/3/Add.3)	*Situación durante la visita (A/HRC/7/3/Add.3)*	*Medidas tomadas en años anteriores (A/HRC/13/39/Add.6 , A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
		Tortura (Artículo 1. Se entenderá por el término "tortura" todo acto por el cual se inflija intencionadamente a una persona dolores o sufrimientos graves, ya sean físicos o mentales, con el fin de obtener de ella o de un tercero información o una confesión, de castigarla por un acto que haya cometido, o se sospeche que ha cometido, o de intimidar o coaccionar a esa persona o a otras, o por cualquier razón basada en cualquier tipo de discriminación, cuando dichos dolores o sufrimientos sean infligidos por un funcionario público u otra persona en el ejercicio de funciones públicas, a instigación suya, o con su consentimiento o aquiescencia. No se considerarán torturas los dolores o sufrimientos que sean consecuencia únicamente de sanciones legítimas, o que sean inherentes o incidentales a éstas); y que establezca penas acordes con la gravedad de este delito; al efecto cuando se realicé el estudio respectivo, se podrá informar sobre la tipificación penal de crímenes vinculados con la tortura, como la desaparición forzada de personas y la ejecución extrajudicial.	DD.HH. La enmienda del Art. 309 del C.P. tipificando el delito de tortura es un imperativo que la comisión tiene presente. Respecto al "delito de tortura", la comisión interdisciplinaria tiene previsto la tipificación de la misma, aclarando que el CP en si no lo hace, pero si estará previsto en el nuevo CPM. 2011: Fuentes no gubernamentales: El Código Penal Militar aun no contiene el delito de tortura. El Gobierno mencionó en su respuesta al SPT en junio 2010 que se estableció una comisión para estudiar el Código Penal Militar y que actualmente está siendo considerado un proyecto de enmienda que incorpora la definición de tortura de la CAT al Código Penal Militar.
(c) Establecer una autoridad independiente para investigar denuncias de tortura.	No existe ningún mecanismo eficaz e independiente.	2009: El Gobierno informó que el Ministerio Público, a través de sus Agentes Fiscales, es el encargado de investigar la comisión de los hechos punibles. El Ministerio Público es el órgano encargado de investigar denuncias de tortura y actualmente existen tres unidades especializadas en derechos humanos.	2011: El Gobierno informó que el Ministerio Publico es el Órgano encargado de la persecución pública y social. Dentro de dichas atribuciones investiga y lleva adelante las acusas penales que ingresan conforme a denuncias presentadas -o de oficio, en su caso- por personas que habrían sido víctimas de torturas u otros hechos catalogados como

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		Fuentes no gubernamentales: El órgano encargado es el Ministerio Público, donde actualmente existen unidades especializadas en derechos humanos. Gobierno: El Gobierno informó que la Defensoría del Pueblo nace con la Constitución Nacional de la República de 1992 (artículo 276), define al Defensor del Pueblo como un comisionado parlamentario cuyas funciones son: "la defensa de los derechos humanos, la canalización de los reclamos populares y la protección de los intereses comunitarios…". Fue incorporada al ordenamiento jurídico por la Constitución Nacional, entre sus funciones y atribuciones se menciona: "Denunciar ante el Ministerio Público las violaciones de derechos humanos cometidas por personas que actúen en ejercicio de funciones oficiales, así como las de personas particulares; interponer Habeas Corpus y solicitar Amparo, sin perjuicio del Derecho que le asiste a los particulares; actuar de oficio o a petición de parte para la defensa de los derechos humanos", a su vez, en el art.10, inc. 1) "Recibir e investigar denuncias, quejas y reclamos por violaciones de derechos humanos reconocidos en la Constitución, en los tratados internacionales y en las leyes, aún cuando tales violaciones sean cometidas por personas que actúen en ejercicio de funciones oficiales"	delitos dentro del Código Penal. Dentro de ese Órgano, se ha conformado la Unidad Especializada de Derechos Humanos y ha asignado funciones exclusivas a Agentes Fiscales, mediante la Resolución F.G.E. N° 52, de fecha 13 de enero de 2011. Es necesario que el Ministerio Publico, en su carácter de titular de la acción pernal publica, disponga de una estructura organizada a fin de dar respuestas específicas, con acciones concretas, dirigidas a perseguir los ilícitos de este tipo y de todos aquellos que guarden relación, en procura de la sanción que corresponda a aquellos infractores de las normas legales vigentes en la materia". 2011: Fuentes no gubernamentales: Actualmente, hay varios mecanismos investigando este tipo de casos. Las denuncias de tortura y malos tratos por parte de oficiales de policía se investigan a nivel interno, dentro de la Policía Nacional y por los fiscales en el Ministerio Público. Hay dos departamentos dentro de la Policía Nacional a cargo de investigar y sancionar malas conductas policiales que resultan en sanciones administrativas. Los dos mecanismos internos de la Policía Nacional han sido muy criticados en el pasado por la falta de efectividad en sus investigaciones y por no transferir casos a las autoridades responsables para su investigación penal. A pesar de haber varios registros de casos relacionados a tortura, durante las últimas décadas se aplicaron muy pocas sanciones administrativas. Las dos principales razones de esta inefectividad de los mecanismos de

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		Dentro de sus atribuciones Constitucionales y legales, el Ministerio Público es el encargado de la persecución pública y social, el ambiente, otros intereses difusos, así como de los derechos de los pueblos indígenas. Dentro de dichas atribuciones investiga y lleva adelante las causas penales que ingresan conforme a denuncias presentadas –o de oficio, en su caso-por personas que habrían sido víctimas de torturas u otros hechos catalogados como delitos dentro del Código Penal.	investigación de la Policía Nacional son la falta de independencia de los oficiales policiales que llevan a cabo las investigaciones de mala conducta, y su falta de capacitación y educación. En marzo 2011 se creó un nuevo departamento en el Ministerio Público, a cargo de casos de violación de derechos humanos por parte de funcionarios oficiales. La Unidad de Derechos Humanos del Ministerio Público se compone de cuatro fiscales y un equipo. Es responsable de investigar de manera autónoma casos de tortura y violaciones de derechos humanos, especificados en su resolución de creación. Pero en la práctica debe desarrollar sus tareas con cuadros ordinarios de la policía para llevar a cabo las investigaciones y arrestos de los supuestos culpables. Por lo tanto, las investigaciones de esta Unidad no se podrán llevar a cabo independientemente de la Policía Nacional.
(d) Suspender de sus cargos a funcionarios públicos acusados de tortura/ despedir a aquellos condenados.		Fuentes no gubernamentales 2009: Por lo general no se suspende a los funcionarios mientras dure el proceso de investigación. Gobierno: El Gobierno informó que en el año 2009 se han realizado nueve denuncias de torturas en el sistema penitenciario, las cuales fueron debidamente investigadas, puede citarse como único caso comprobado el del agente de disciplina (Unidad Penitenciaria Industrial Esperanza) que en fecha 3 de noviembre de 2009, agredió físicamente a un interno, motivo	2011: El Gobierno informó que en lo que respecta al interior de las fuerzas policiales, cabe señalar que a partir del año 2009 la Policía Nacional se encuentra en un proceso de fortalecimiento de sus sistemas de control, a través de una cooperación internacional gestionada por el Ministerio del Interior ante el Departamento de Estados Unidos. Las dependencias fortalecidas son: Departamento de Asuntos Internos y la Dirección Justicia Policial. En resumen, de acuerdo a los procedimientos vigentes, los que resulten condenados serán desvinculados de toda función pública; los imputados y aun los

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		por el cual fue desafectado de la institución y derivado sus antecedentes al Ministerio Público. Otros casos importantes en este apartado son los siguientes: - Desafectación de los agentes de disciplina (Empresa Bollerito S.A., Co-Gestora del establecimiento Esperanza del Ministerio de Justicia y Trabajo), por agresión al interno en fecha 13 de setiembre de 2009. - Denuncia penal contra una auxiliar de enfermería (Unidad Esperanza), por supuesto hecho de modificación de dosis de medicamento controlado, proporcionado a internos y usurpación de cargo profesional. - Denuncia penal contra un custodio (Penitenciaría Nacional), por supuesto hecho de agresión física a un interno. - Pedido de desafectación de dos funcionarios (Unidad Esperanza) y recomendación de denuncia penal por los hechos perpetrados en abuso de sus funciones.	acusados, generalmente son apartados de la "función" y asignados a otro servicio que no tenga las mismas características que el anterior. 2011: Fuentes no gubernamentales: Se han observado mejoras en 2010. En un esfuerzo por erradicar la impunidad y aumentar la eficiencia de las investigaciones policiales, el Ministerio del Interior ha intentado encontrar soluciones para esta situación; las autoridades emitieron muchas sanciones disciplinarias y despidieron más de 70 oficiales de policía por faltas graves asociadas a conductas penales, aunque los despidos son más bien por hechos de corrupción, antes que por violación de derechos humanos. Sin embargo, parecen ser necesarios cambios estructurales para lograr mejoras significativas a largo plazo, en particular en lo que respecta a la responsabilidad penal de los perpetradores.
(e) Investigaciones ex-officio rápidas e imparciales.	Por lo general no son iniciadas.	2009: El Gobierno indicó que las investigaciones son realizadas a partir de la denuncia elevada por los afectados. Estas procuran cumplir con el objetivo de ser rápidos y eficaces a pesar de las dificultades de un Estado en vías de desarrollo. Fuentes no gubernamentales: Por lo general son iniciadas a partir de la formulación de la denuncia. Gobierno: El Gobierno informó que el	2011: El Gobierno informó que el Ministerio Publico, a través de su Unidad Especializada de Derechos Humanos dispone de una estructura organizada que le permite dar respuestas específicas, con acciones concretas, dirigidas a perseguir los ilícitos de este tipo y de todos aquellos que guarden relación. Asimismo, el Unidad de derechos Humanos realiza visitad de monitoreo a los Centros Penitenciarios del país, con la finalidad de velar por el respeto de las personas en situación de privación de libertad y facilitar la presentación de denuncias sobre

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		Ministerio Público en el ejercicio de la acción pública, actúa de Oficio, sin necesidad de solicitud o impulso salvo los hechos que requieran instancia de parte. La persecución penal de los hechos punibles de acción penal pública es promovida inmediatamente después de la noticia de la comisión de los hechos. Para tal efecto, la institución cuenta con una Dirección de Derechos Humanos que brinda apoyo técnico a Agentes Fiscales en lo penal competencias exclusivas en hechos punibles en hechos punibles contra los derechos humanos, cuya política institucional tiene como eje principal la prevención de hechos punibles contra los derechos humanos y brinda atención especial a delitos como: tortura, lesión corporal en el ejercicio de la función pública, coacción respecto a declaraciones, desapariciones forzosas, persecución de inocentes, genocidio y crímenes de guerra.	hechos punibles de los cuales pudieran ser víctimas dichas personas. En los casos en que fueron recibidas dichas denuncias, han sido remitidas a la Mesa de Entradas del Ministerio Público, y han sido asignadas las unidades fiscales para el inicio de las investigaciones. Durante el año 2010 y 2011 fueron recepcionadas 22 denuncias sobre supuestos hechos punibles cometidos en perjuicio de personas adultas y adolescentes, en situación de privación de libertad. 2011: Fuentes no gubernamentales: Se debe tener la posibilidad de iniciar investigaciones ex officio, aun cuando no haya una denuncia formal.
(f)Indemnización, tratamiento médico y rehabilitación a las víctimas de tortura y malos tratos.	Disposiciones limitadas de la época de la dictadura.	2009: El Gobierno indicó que los afectados pueden solicitar resarcimiento o indemnización en el foro competente que ejerce jurisdicción para los casos de indemnización por daños y perjuicios. En este tipo de litigios son incluidas las peticiones con referencia a gastos ocasionados como consecuencia de tratamientos médicos y rehabilitación. Fuentes no gubernamentales: La legislación paraguaya carece de un	2011: Gobierno: En relación al derecho de acceso a la justicia de las víctimas de la dictadura, fue conformado un equipo entre la Dirección General de Verdad, Justicia y Reparación y el Ministerio Publico a través de la Unidad Especializada en Derechos humanos, en relación a los casos de tortura, desaparición forzada y otros delitos cometidos durante la dictadura, surgidos en el Informe Final de la Comisión Verdad y Justicia, a fin de optimizar los trabajos de investigación. En relación a las reparaciones a las víctimas de la dictadura, en

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		ordenamiento específico por el cual se establezca indemnización a víctimas de torturas, salvo a aquellas personas que sufrieron hechos de tortura en época de la dictadura. Gobierno: En este marco, el Gobierno indicó el Proyecto de Ley "Que establece cobertura de salud a favor de las víctimas de la Dictadura 1954-1989" presentado por el Defensor del Pueblo, Manuel María Páez Monges, a la Honorable Cámara de Diputados, fundamentando el miso en el art. 14 de la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes.	el año 1996 se ha promulgado La Ley 838, que Indemniza a víctimas de violaciones de derechos humanos durante la dictadura de 1954 a 1989. Cabe resaltar que las indemnizaciones otorgadas a las víctimas de la Dictadura alcanzan a los herederos, en caso de fallecimiento de la víctima. Así también, en virtud de la Ley N° 3606/08, la indemnización también puede ser solicitada por los hijos de las víctimas.
(g) Apoyo político y financiero suficiente a la Comisión de Verdad y Justicia.		2009: El Gobierno informó que, en ese momento, se encontraba concluido el objetivo de la Comisión de Verdad y Justicia y que la misma había presentado su informe final. La Defensoría del Pueblo creó la Dirección General de Verdad, Justicia y Reparación que se hizo cargo del patrimonio documental de la Comisión. Fuentes no gubernamentales: Fue presentado el capítulo de Conclusiones y Recomendaciones del Informe Final de la Comisión de la Verdad y Justicia. Gobierno: El Gobierno informó que en el contexto político, se observa mayor apertura hacia el trabajo de la Dirección General de Verdad, Justicia y Reparación, especialmente en el campo	2011: El Gobierno indicó que el Estado ha adoptado varias medidas a fin de apoyar los trabajos y el Informe Final de la Comisión de Verdad Justicia y Reparación. Entre ellas: La Resolución 179/09 "*Por el cual se establece la Dirección General de Verdad Justicia y Reparación, en la estructura orgánica de la Defensoría del Pueblo*"; Decreto N° 1875/09 "*Por el cual se declara de Interés Nacional el Informe Final de la Comisión de Verdad y Justicia*, su divulgación y la implementación de las recomendaciones formuladas"; El Decreto N° 3138/09 "*Por el cual se declara de prioridad nacional los objetivos del Programa para la protección y Reparación de los Derechos Humanos a cargo de la Dirección General de Verdad Justicia y Reparación de la Defensoría del Pueblo*"; El Decreto N° 5619/10 " *Por el cual se crea la Comisión Interinstitucional para la instalación e*

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		de la búsqueda de los detenidos desaparecidos, para lo cual, se conformó un equipo interinstitucional con el concurso del Ministerio Público, Ministerio del Interior y la Dirección. Como resultado del trabajo realizado se produjo el hallazgo de 7 (siete) restos óseos, que a la fecha se espera contar con los recursos financieros para la identificación de los mismos. En cuanto al apoyo financiero, se le ha asignado para el año 2010 la suma de Gs. 1.830 (mil ochocientos treinta millones), equivalente a 380.000 (trescientos ochenta mil) dólares americanos, aproximadamente.	*implementación de la Red de Sitios Históricos y de Conciencia de la República del Paraguay";* Decreto N° 7101 "*Por el cual se confirma el Equipo Nacional para la búsqueda e identificación de personas detenidas-desaparecidas y ejecutadas extrajudicialmente (ENABI), durante el periodo 1954-1989."*
(h) Papel más dinámico del Ombudsman para investigar denuncias de tortura e iniciar diligencias penales.		2009: el Gobierno indicó que la Defensoría del Pueblo realiza el seguimiento de denuncias por violaciones de derechos humanos presentadas ante el Ministerio Público y en ocasiones, según las circunstancias del caso, son los propios Delegados de la Defensoría quienes realizan la denuncia ante el Ministerio Público. Sin embargo, la investigación de los hechos punibles de cualquier índole se encuentra a cargo del Ministerio Público. Fuentes no gubernamentales: La ley orgánica de la Defensoría del Pueblo establece que el Defensor del Pueblo es el encargado de velar por la vigencia de los Derechos Humanos, no obstante la detección de hechos que vulneren tales derechos deben ser canalizados al fuero penal a cargo del Ministerio Público y	2011: El Gobierno: La Defensoría del Pueblo, desde su Dirección General de Verdad, Justicia y Reparación, ha formado una mesa de Trabajo con la Unidad Especializada de Derechos Humanos del Ministerio Publico, con la que de manera coordinada atiende las denuncias formuladas, de manera a identificar todos los legajos y la información proporcionada que permita iniciar las investigaciones en forma eficiente. 2011: Fuentes no gubernamentales: El único mecanismo independiente de denuncia en Paraguay parece ser a través de la Defensoría del Pueblo. Está certificada con 'Estatus A' (cumplimiento total con los Principios de París) por el Subcomité de Acreditación del CIC (11/2008). Sin embargo, muchos critican la falta de acción por parte de dicho organismo con respecto a denuncias.

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		los Juzgados Penales. Gobierno: El Gobierno informó que la ley orgánica de la Defensoría del Pueblo establece que el Defensor del Pueblo es el encargado de velar por la vigencia de los Derechos Humanos, no obstante la detección de hechos que vulneren tales derechos deben de ser canalizados al fuero penal a cargo del Ministerio Público y los Juzgados Penales. En este marco la Defensoría del Pueblo realiza constantemente recomendaciones en el marco de las visitas realizadas en los centros de detención policiales y penitenciarios, así también, hemos tomado conocimiento de denuncias de tortura en el marco de las visitas realizadas, las cuales han sido canalizadas al Ministerio Público para su investigación, tanto en Asunción como en el interior del país.	Muchas organizaciones no gubernamentales no consideran a la Defensoría del Pueblo una institución seria que promueva ni proteja los derechos humanos. Se le critica su falta de iniciativa y la inefectividad de su funcionamiento. La Defensoría del Pueblo no cumple con el rol de mecanismo de monitoreo preventivo debido a la falta de capacidades requeridas y a un uso ineficiente de recursos. Además, no goza de la reputación de actor independiente y proactivo para la protección de los derechos humanos que se precisa para llevar a cabo dicha función. Sin embargo, como organismo independiente, de acuerdo con las recomendaciones del SPT, la Defensoría del Pueblo tendría la posibilidad de ser más activa, de visitar más a menudo los lugares de detención y mantener una base de datos de denuncias. No se descarta que, mediante reformas estructurales adecuadas, desarrollo de capacidades del personal y campañas de concientización, pueda llegar a hacerlo en el futuro.
(i) Asegurar el derecho a la asistencia letrada desde el momento del arresto.	No se garantiza efectivamente.	2009: El Gobierno informó que se habían creado nuevas defensorías en el área penal, aunque aún no existía un número apropiado. El papel del defensor público es fundamental a la hora de defender los derechos de las personas con escasos recursos. El Poder Judicial intenta progresivamente crear nuevas defensorías para garantizar la asistencia letrada desde el momento del arresto, aunque debido a un problema presupuestario ha sido menos rápido de lo deseado.	2011: El Gobierno: El estado cuenta con un Órgano, el Ministerio de la Defensa Publica, que es una institución judicial compuesta por un equipo de profesionales abogados/as pagados por el Estado paraguayo para la defensa de las personas de escasos recursos económicos, ausentes, incapaces y menores de edad. En el presente año, esta Órgano ha alcanzado autonomía funcional y autarquía presupuestaria con la promulgación de la Ley N° 4423/11 "*Ley Orgánica del Ministerio de la Defensa Publica*", sustrayéndose así de la administración de la Corte Suprema de Justicia.

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		Fuentes no gubernamentales: No se garantiza de manera eficaz. Gobierno: El Gobierno informó que la garantía de una asistencia idónea se halla consignada en los siguientes instrumentos: a. Constitución Nacional en su Artículos 12 "De la detención y del arresto", 17 "de los derechos procesales" b. Ley Nº 1286/98 Código de Procedimientos Penales, Articulo 6 « Inviolabilidad de la Defe nsa ». De esta manera, el derecho a la asistencia letrada desde el momento del arresto, está garantizado, y su incumplimiento puede ser sancionado, con la nulidad de dichos actos. El Ministerio de la Defensoría Pública, informó que conforme al Histórico de juicios atendidos en todo el país, las Defensorías Públicas del Fuero Penal han tramitado durante el 2007, 25.615. En el 2008 fueron tramitados 26556 casos. Durante el año 2009 hasta la fecha de presentar el informe (20/11/09) fueron atendidos 27.654 casos. En cuanto a Defensores asignados en lo Penal 51 Defensores, entre confirmados y nombrados. En el año 2008 se contaba con otros 18 Defensores en lo Penal, entre confirmados y nombrados. En el 2009 2 Defensores fueron nombrados. En cuanto a la totalidad de Defensores Públicos existe un total de 192 Defensores Públicos nombrados en	Igualmente, se informa que el presente año han sido nombrados 56 nuevos defensores públicos, que permitirán dar respuestas más efectivas y garantizar el derecho a la defensa a aquellas personas más vulnerables. 2011: Fuentes no gubernamentales: El derecho a recibir asesoramiento legal desde el momento del arresto, reconocido en la Constitución y en el Código de Proceso Penal, no se aplica a la práctica. La razón principal de la debilidad del Ministerio de la Defensa Pública es la falta de recursos económicos y humanos necesarios para llevar a cabo esta función de forma efectiva. El SPT informó en 2010 que la Suprema Corte solamente realiza visitas anuales a establecimientos penales que son "esencialmente de naturaleza formal y anunciadas con anticipación". Además, informó que los funcionarios no hablan directamente con los detenidos y que no verifican personalmente las condiciones de las cárceles. La Unidad de Supervisión Penitenciaria no lleva a cabo la totalidad de sus funciones por falta de recursos humanos y económicos. La dirección de la Unidad de Supervisión Penitenciaria confirmó la escasez de recursos pero informó que logran visitar aproximadamente 20 detenidos por semana. Mantienen entrevistas privadas con los detenidos, donde se examina cada caso individual y sus necesidades, en particular en lo que respecta a la asistencia legal. La disponibilidad y calidad de la asistencia legal podría verse fortalecida mediante la

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		todo el país, de los cuales 94 corresponden a Defensoría del Fuero Penal, y 10 Defensores del Fuero Penal Adolescente. Existiendo a la fecha 41 vacancias. Para el año 2010 fueron solicitadas 56 nuevos cargos para Defensores Públicos. (Informe presentado por la Defensoría General en fecha 20 de noviembre del 2009 a la DDH de la CSJ) El Ministerio de la Defensoría Pública ha presentado un Anteproyecto de Ley ante el Congreso. El Anteproyecto cuenta con 99 artículos. Estableciendo la naturaleza, ubicación y misión del Ministerio de la Defensa Pública, la autonomía, autarquía y alcance de la misma. También establece los Principios Específicos que redirían a la Defensa Pública tales como, el interés prioritario, unidad de actuación, interés predominante del asistido, confidencialidad, intervención supletoria, competencia residual y la gratuidad. El Anteproyecto fue presentado ante la Cámara de Senadores hace tres años y luego fue retirado para ser presentado a la Cámara de Diputados y ya cuenta con los dictámenes de la Comisión de Legislación, Derechos Humanos, Constitucional y Justicia y Trabajo.	cooperación del Ministerio de la Defensa Pública con colegios de abogados y otras asociaciones de sociedad civil. Debería considerarse el apoyo a detenidos por redes paralegales, como se da en otros países, especialmente hasta la aprobación de la ley de reforma. Parece también importante asegurar que el Ministerio de la Defensa Pública reciba un presupuesto apropiado. El proyecto de ley que establece la reforma de dicho Ministerio fue sancionado en ley en el Congreso de la Nación el jueves 25 de agosto. En la misma se prevé la total independencia del Ministerio de la Defensa Pública, el establecimiento de la carrera de defensor público, con diferentes categorías y salarios que se equiparen a los de jueces y fiscales.
(j) Capacitación, incluida sobre derechos humanos, para personal encargado de hacer cumplir la ley.		2009: El Gobierno indicó que el Ministerio del Interior y la Dirección de Institutos Penales tienen previsto implementar cursos de capacitación en	2011: El Gobierno: La Policía Nacional a través del Instituto Superior de Educación Policial (ISEPOL), viene desarrollando dentro de sus distintas academias materias de derechos

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		derechos humanos. El Ministerio Público posee un Centro de Entrenamiento que tienen como objetivo capacitar para la función, incluyendo la capacitación en derechos humanos. Por su parte, en las Fuerzas Armadas de la Nación existe en Comandante de Institutos de Enseñanza del Ejército, quien ha implementado un programa de derechos humanos y derechos internacional humanitario, dictado a los diferentes niveles de formación del personal de las Fuerzas Armadas. Se han creado también: el Manual de Normas Humanitarias – Derechos Humanos y Derechos Internacional Humanitario en las Fuerzas Armadas, para su distribución al Personal de las Fuerzas Armadas; el Programa Patrón de Enseñanza sobre DDHH y DIH; y la Guía del Soldado, donde se hace referencia a cómo proceder en caso de violaciones a los derechos humanos, las instituciones encargadas de recibir denuncias, sus direcciones y teléfonos. Fuentes no gubernamentales: No se garantiza en su totalidad la capacitación en derechos humanos del personal encargado de hacer cumplir la ley. Gobierno: El Gobierno informó que el Viceministerio de Justicia y Derecho Humanos ha llevado adelante varias actividades de transferencias de buenas prácticas Argentina-Paraguay, con cooperación Técnica de la Conferencia de Ministros de Justicia de Iberoamérica	humanos. A continuación el Gobierno da una descripción general de las materias y las programas y su respectiva duración en horas. Asimismo, el Ministerio de Justicia y Trabajo ha realizado capacitaciones puntuales al personal. Los señores Directores han asistido a charlas mensuales sobre la gestión penitenciaria y Derechos Humanos. 2011: Fuentes no gubernamentales: Otra dificultad identificada repetidamente como fuente de impunidad en el país es la falta de calificación para llevar a cabo investigaciones efectivas y la falta de conciencia de derechos humanos. Es importante que los oficiales de policía sepan el alcance de la prohibición de la tortura y malos tratos y sepan cómo proceder frente al abuso policial. Los oficiales que investigan abusos de derechos humanos por parte de la policía deben recibir capacitación específica para el cumplimiento de su compleja tarea. El Ministerio del Interior dejó claro que una de sus prioridades es fortalecer las capacidades de los oficiales de policía. De acuerdo con una resolución de setiembre de 2009, la Policía Nacional creó un Departamento de Derechos Humanos, que además de inspeccionar y evaluar la infraestructura de las celdas de comisarías y llevar a cabo investigaciones en casos de desalojos ordenados por la justicia, incluye entre sus funciones la de capacitar en derechos humanos. El año pasado, el CICR y la Academia de Policía capacitaron más de 117 instructores en derechos humanos. Sin embargo, los talleres son básicos y cortos. Las capacidades de la Unidad de Derechos

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		(COMJIB). En lo que atañe a la capacitación, se realizó una serie de talleres destinados a funcionarios y profesionales del Ministerio de Justicia y Trabajo, en tópicos de carácter multidisciplinario todos ellos transversalizando derechos humanos, dichos talleres fueron realizados tanto en Argentina como en Paraguay, y como metodología de trabajo se utilizó la capacitación de capacitadores, utilizando una penitenciaría que según el cronograma de trabajo y por los resultados obtenidos, sería recurrida como modelo a replicar de forma progresiva en las demás penitenciarías a partir del 2011. Otro trabajo a destacar es el realizado con la ONG DNI Paraguay en el mismo sentido, al igual que los cursos dictados por el Servicio Nacional de Promoción Profesional (SNPP) en las áreas: formación humana, relaciones públicas y seguridad penitenciaria mínima.	Humanos del Ministerio Público, con tres fiscales apoyados por un equipo, son actualmente muy limitadas. Además, aparentemente no hay un procedimiento interno específico a ser aplicado en investigaciones de tortura. La Unidad se enfoca en fortalecer las capacidades de los fiscales mediante capacitaciones continuas en temas de derechos humanos. El alcance de las actividades de esta Unidad aún no ha sido determinado con exactitud, y podría ser expandido dependiendo de las necesidades. El Ministerio Público también creó un centro de capacitación donde cada año aproximadamente 3.000 funcionarios son capacitados, inclusive en temas de derechos humanos. Desde la creación de la Unidad de Derechos Humanos del Ministerio Público, se trabajó conjuntamente con el centro de capacitación para desarrollar la capacitación en derechos humanos. Se mostraron muy dispuestos a aumentar esfuerzos por desarrollar capacidades para fortalecer la prevención de la tortura.
		El Ministerio de Defensa Nacional y las Fuerzas Armadas, informan que las labores de capacitación ejecutadas para prevenir y sancionar actos de tortura a los SSOO de las FFAANN, se resumen en actividades de Promoción, Difusión y Educación, con la específica tarea de elaborar y desarrollar programas de prevención y difusión en materia de derechos humanos en los ámbitos educativos y de entrenamiento dentro de las Fuerzas Armadas (Centros de Enseñanza, Centros de Entrenamiento,	En conclusión, como también lo señaló la Defensoría del Pueblo y lo confirmaron las autoridades de Gobierno, los oficiales policiales y los fiscales todavía precisan desarrollar sus capacidades individuales mediante una extensa y profunda capacitación en derechos humanos y la prevención de la tortura. Asimismo, la mayoría de los jueces no tiene capacitación adecuada en derechos humanos y hay poca conciencia de lo que significa la tortura y de cómo combatirla.

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		Cursos de Formación, Cursos de Ascenso, Cursos de Perfeccionamiento y Otros). En ese sentido, se ha implementado campañas de Promoción y Educación al Personal Militar en las temáticas de los Derechos Humanos y el Derecho Internacional Humanitario. El resultado que han tenido estos programas de formación citados más arriba en materia de prohibición de la tortura ha sido muy satisfactorio y esto se ha podido constatar cuando el Personal Militar se encuentran cumpliendo tareas en Apoyo a la Policía Nacional cumpliendo a cabalidad la Ley previniendo la tortura y los malos tratos; al efecto no se ha denunciado ningún caso contra la tortura, durante estas tareas contra el Personal Militar. La capacitación en el Ministerio Público incluye a los derechos humanos, para personal encargado de hacer cumplir la ley, solo se podrá dar respuesta con referencia a los funcionarios dependientes del Ministerio Público, no así con respecto a oficiales de la Policía o miembros de las Fuerzas Armadas cuya cuestión deberá ser requerida a los estamentos correspondientes. El Ministerio Público a través del Centro de Entrenamiento realiza constantes cursos y seminarios dirigidos especialmente a los Agentes Fiscales de la Unidades Especializadas en Derechos Humanos, así como de funcionarios que forman parte de las Unidades Penales citadas, donde se tratan las cuestiones	

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		estipuladas en la convención contra la Tortura y otros tratos o penas crueles, inhumanos y degradantes, su alcance y obligaciones; así como referentes a otros instrumentos de carácter internacional en materia de Derechos Humanos. Además a través del Centro de Entrenamiento ha desarrollado acciones en materia de Derechos Humanos desde el año 2002, entre las cuales se mencionan: "talleres de definición de Políticas para el tratamiento de las Denuncias de casos de violación de DDHH, que ingresan al Ministerio Público (año 2002). "Difusión de derechos de Víctimas e Imputados" (año 2004), Edición del "Manual práctico de investigación en casos de tortura", el cual se enfoca específicamente en la investigación que debe ser desplegada por el agente fiscal ante el conocimiento de hechos relacionados con la tortura, entre las que se distinguen: actos de investigación, tratamiento y entrevista a las víctimas, métodos para identificar testigos, intervención del Médico Forense, pedidos de informes, así como el dibujo de ejecución, que constituye un instrumento para planificar la investigación (incorporado por el Centro de Entrenamiento en la Malla Curricular). De igual modo, se está desarrollando la capacitación de Agentes Fiscales de Unidades Penales ordinarias y especializadas, a Asistentes Fiscales y funcionarios de áreas técnicas de apoyo de todo el país, en técnicas de	

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		entrevistas. La formación es continuada de Agentes Fiscales y funcionarios del Ministerio Público, se fortalece con la participación en actividades internacionales, generalmente estas capacitaciones se realizan en el ámbito de la cooperación internacional (AECID, RECAMPI, AIAMP, USAID, entre otros).	
(k)Inadmisibilidad de confesiones realizadas por personas arrestadas sin la presencia de un abogado.	No se garantiza efectivamente la prohibición constitucional.	Fuentes no gubernamentales 2009: Se mantiene la misma situación. Gobierno: el Gobierno informó que en la Ley Nº 1286/98 Código de Procedimientos Penales, señala en el Artículo 6, Inviolabilidad de la Defensa. "Será inviolable la defensa del imputado y el ejercicio de sus derechos…", también se contempla que "…El derecho a la defensa es irrenunciable y su violación producirá la nulidad absoluta de las actuaciones a partir del momento en que se realice…".El artículo citado precedentemente sanciona con la nulidad todo acto que se produzca en violación del mismo y trae como consecuencia la nulidad de todos los actos realizados como consecuencias del mismo. Por otra parte, en la misma ley establece en su Art. 90. Restricciones a la Policía. "La Policía no podrá tomar declaración indagatoria al imputado.". Y en el Art. 96 del mismo cuerpo legal se habla sobre la valoración y dice: "La	2011: El Gobierno cuenta con las siguientes Leyes: la Ley 1.500/99" Que reglamenta la garantía Constitucional del Habeas Corpus" y la Acordada N° 83/98 "Acceso a la Defensa Pública". Declaraciones en sede policial: en su artículo 90 que establece que "La Policía no podrá tomar declaración indagatoria al imputado". Y en su artículo 96 sostiene que "La inobservancia de los preceptos relativos a la declaración del imputado impedirán que se la utilice en su contra, aun cuando el haya dado su consentimiento para infringir alguna regla o para utilizar su declaración. Las inobservancias meramente formales serán corregidas durante el acto o con posterioridad a él. Al valorar el acto, el juez, apreciara la calidad de estas inobservancias, para determinar si procederá…" Con estas disposiciones legales cualquier inobservancia formal puede subsanarse y cuando la misma viola una garantía puede acarrear la nulidad de la declaración, por lo que existen mecanismos légale para erradicar practicas inadecuadas que puedan violar los derechos de las personas en situación de detención o arresto. 2011: Fuentes no gubernamentales: La

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		inobservancia de los preceptos relativos a la declaración del imputado impedirán que se la utilice en su contra, aún cuando él haya dado su consentimiento para infringir alguna regla o para utilizar su declaración. Las inobservancias meramente formales serán corregida durante el acto o con posterioridad a él. Al valorar el acto, el juez, apreciará la calidad de estas inobservancias, para determinar si procederá…". Con estas disposiciones legales cualquier inobservancia formal puede subsanarse y cuando la misma viola una garantía puede acarrear la nulidad de los mismos, por lo que existen mecanismos legales para erradicar practicas inadecuadas que puedan violar los derechos de las personas en situación de detención o arresto. Los Juzgados no cuentan con un sistema que pueda indicar o individualizar cuales han sido las actuaciones de los Jueces en ocasión de presentarse tales hechos. En entrevistas mantenidas con los Jueces Penales de Garantías, no registran casos en los cuales el procesado haya declarado sin la presencia de su abogado. Señalan que las actuaciones que llegan hasta ellos siempre han sido escritas y en las mismas no existe constancia de tales hechos por lo que, sin pruebas concretas de que tales violaciones se han realizado no pueden emitir resoluciones contrarias a las mismas.	situación no ha mostrado cambios significativos desde las visitas de los órganos internacionales de monitoreo, y hay quienes sostienen que la situación ha empeorado. La mayoría de los detenidos no se reúnen con sus defensores hasta una etapa avanzada del proceso, luego de la detención inicial de la policía, que es cuando se da la mayoría de los casos de tortura. En consecuencia, los defensores públicos no llevan a cabo una función de monitoreo, y muchos casos de tortura no se detectan ni se informan. Por otra parte, los defensores no tienen capacidades para visitar regularmente a sus clientes, para verificar qué tipo de trato están recibiendo y para realizar un seguimiento de sus casos. Se declaró que muchos detenidos directamente no reciben la visita de sus defensores cuando están detenidos, sino que solamente entran en contacto con ellos durante el proceso judicial. Esto tiene como consecuencia detenciones prolongadas y arbitrarias y que los detenidos queden "perdidos en la prisión preventiva".

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(l) Exámenes médicos realizados por profesionales médicos calificados.	Descuido general en exámenes.	2009: El Gobierno indicó que, ante una denuncia por hecho punible de maltrato o tortura, el examen médico es realizado por un médico forense que dictamina dentro del proceso penal. Fuentes no gubernamentales: Los exámenes médicos son realizados por profesionales de la materia.	2011: El Gobierno informó que los médicos forenses que toman intervención en los casos que tengan relación a la vida y la integridad de las personas, han recibido capacitación al respecto, la cual será fortalecida en el marco del plan de capacitación 2012 del Centro de Entrenamiento del Ministerio Publico. 2011: Fuentes no gubernamentales: Los médicos y otros funcionarios de la salud no solamente juegan un papel importante en brindarle atención médica a los detenidos, sino también en la detección y documentación de casos de tortura, presentando la información correspondiente ante las autoridades responsables. Sin embargo, a menudo no se realizan exámenes médicos en las comisarías y hay una cantidad insuficiente de expertos forenses en el país. La falta de expertos forenses tiene como consecuencia una falta de controles para detectar abusos por parte de funcionarios oficiales, y finalmente tiene como resultado una falta de evidencia en casos de tortura presentados por las víctimas. Por lo tanto, para poder prevenir la tortura, es necesario aumentar significativamente la cantidad de expertos forenses que lleven a cabo exámenes en denuncias de tortura y el personal de la salud debe recibir capacitación sobre cómo detectar señales de tortura de acuerdo con el Protocolo de Estambul, y sobre su obligación de intervenir en casos donde un detenido muestra señales de tortura.
(m) Mantener registros exactos		2009: El Gobierno informó que el	2011: El Gobierno: El Ministerio del Interior a

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de los detenidos.		Ministerio de Justicia y Trabajo posee un registro dominado “Parte Diario” donde consta con exactitud la cantidad de personas privadas de libertad en los Centros Penitenciarios, al igual que Comisarías de toda la República. Fuentes no gubernamentales: En cierta medida se registra a los detenidos, aunque esta práctica no se realiza de manera sistemática. Gobierno: El Gobierno informó que el Ministerio de Justicia y Trabajo, mantiene constantemente actualizada una base de datos penitenciaria en la que consta información pormenorizada y desagregada por cada establecimiento penitenciario, capacidad poblacional, cantidad total guardias e internos, con individualización por sexo, edad, etnia y estado procesal (condenados, o procesados).	través de la policía Nacional dispuso por Resolución N° 176/10, un registro de las personas privadas de libertad en comisarías, en prevención y respeto a los Derechos Humanos. Otro mecanismo desarrollado lo constituye el control de los informes elevados por la Dirección de Orden y Seguridad de la PN, acerca de las personas detenidas, la edad de los detenidos, la razón de la detención, elementos que sirven por un lado para subsanar aquellas detenciones no ajustadas a derechos y por otro como un mecanismo de incidencia a los jueces para que los mismos no utilicen estas dependencias como cárceles. En la línea de fortalecimiento del trabajo policial con la finalidad de brindar una herramienta práctica, que a su vez se constituya en un mecanismo de supervisión y control. En materia de cárceles, todo ciudadana/o que sea remitido a una penitenciaria es “fichado” y la Administración cuenta con archivos individuales de cada interna/o. esta información se traduce en un informe de movimiento resumido en un PARTE DIARIO que la Dirección General de Establecimientos Penitenciarios socializa diariamente con referentes de los Tres Poderes del Estado, además de las autoridades ministeriales. 2011: Fuentes no gubernamentales: El Departamento de Derechos Humanos de la Policía declaró que han habido mejoras en esta área, y que actualmente todo el país está equipado con un sistema de registros estándar. Sin embargo, a pesar de haber varios registros de casos relacionados a tortura, durante las últimas décadas se aplicaron muy

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			pocas sanciones administrativas. Las dos principales razones de esta inefectividad de los mecanismos de investigación de la Policía Nacional son la falta de independencia de los oficiales policiales que llevan a cabo las investigaciones de mala conducta, y su falta de capacitación y educación.
(n) Designar un mecanismo nacional preventivo.		2009: El Gobierno señaló que el Proyecto de Ley del Mecanismo Nacional de Prevención (MNP) contra la tortura y otros tratos o penas crueles, inhumanos o degradantes se encontraba en estudio en el Congreso Nacional. Fuentes no gubernamentales: Sigue en el Congreso el proyecto para la creación del Mecanismo Nacional de Prevención de la Tortura. Gobierno: El Proyecto de Ley aprobado por la Honorable Cámara de Senadores en sesión extraordinaria de fecha 21 de septiembre de 2010 y remitido con mensaje Nº 792 de fecha 27 de septiembre de 2010, el Proyecto de Ley « del Mecanismo Nacional de Prevención contra la tortura y otros tratos o penas crueles inhumanos o degradantes ». Actualmente es analizado en la Honorable Cámara de Diputados, por las Comisiones de Derechos Humanos, Asuntos Constitucionales, Legislación y Codificación y la de Justicia, Trabajo y Previsión Social, para su correspondiente dictamen.	2011: El Gobierno: El Estado paraguayo, por Ley N° 4.288/11 del 20 de abril de 2011, aprobó el denominado mecanismo nacional de prevención contra la tortura y otros tratos o penas crueles e inhumanos o degradantes. Como institución nueva, el "Mecanismo Nacional", es un ente autárquico con personería jurídica de derecho público, creado por esta Ley para reforzar y colaborar con la protección de las personas privadas de su libertad contra todo tipo de trato o penas prohibidas por nuestra legislación vigente y las normas internacionales que rigen la materia, así como para prevenir y procurar la erradicación de la tortura y otros tratos o penas crueles, inhumanos o degradantes. Considerando su reciente creación, se ha constituido una Comisión Ad Hoc abocada a la planificación de las necesidades presupuestarias para su implementación. 2011: Fuentes no gubernamentales: Si bien Paraguay ratificó el OPCAT en diciembre de 2005, la ley recién fue aprobada por el poder legislativo el 8 de marzo de 2011 y promulgada el 20 de abril del mismo año. La ley prevé el establecimiento de un nuevo organismo autárquico llamado "Comisión Nacional para la Prevención de la Tortura" (Comisión Nacional) que estará a cargo de dirigir y representar al

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			Mecanismo Nacional de Prevención (MNP). La relación entre la Comisión, los escabinos, las organizaciones de sociedad civil y los oficiales del Estado no está completamente clara. En particular, la ley no determina en detalles cómo funciona la cooperación con organizaciones de sociedad civil, lo cual puede crear conflictos dentro del MNP y entre organizaciones de sociedad civil, como sucedió en otros países. Particularmente, no se establece cómo se elegirán las organizaciones de sociedad civil del Comité de Selección ni aquellas que cooperarán con el MNP. Además la ley no especifica el rol de los oficiales del Estado, y eso podría representar un riesgo por la independencia del MNP. La ley no establece la experiencia o antecedentes profesionales específicos que deben tener los miembros del MNP, sino que simplemente requiere "experiencia en aquellas áreas necesarias para cumplir con el Protocolo". Además, no se especifican en detalle los métodos de trabajo del MNP, por ejemplo: metodología de visitas, composición de delegaciones a cargo de las visitas y el papel de las organizaciones de sociedad civil, distribución de trabajo dentro del MNP, derechos y responsabilidades de los miembros del MNP y expertos de la sociedad civil en la redacción de informes y recomendaciones y el proceso de destitución de miembros del MNP. Por lo tanto, debe considerarse la utilidad de regular algunos puntos de la ley en reglamentos internos de procedimiento y desarrollar un manual de monitoreo que explique en detalle la metodología de trabajo.

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			Por último, no queda claro cuándo entrará en funcionamiento el MNP. No se le asignó presupuesto en el 2011 y por ende deberá esperar a la aprobación general de presupuesto para el 2012. Es importante calcular los costos mínimos del futuro MNP y defender la asignación de un presupuesto adecuado que garantice un funcionamiento efectivo. Mientras que no se apruebe el presupuesto, se pueden ir adelantando los pasos preparatorios como ser selección de miembros, contratación de personal y elaboración de procedimientos internos, para que el MNP entre en funcionamiento cuanto antes. En este sentido, el MNP debe tomar en cuenta las funciones, experiencia y conocimientos adquiridos por las comisiones interinstitucionales y otros mecanismos de monitoreo existentes. En conclusión, el MNP como lo regula la ley cumple con los requisitos mínimos del OPCAT y en lo que respecta a la cooperación integral con la sociedad civil podría ser considerado un modelo a seguir. Sin embargo, algunos puntos, como la composición/configuración institucional y los derechos y responsabilidades de los diferentes actores, el proceso de selección de miembros, la garantía de calificaciones y pluralismo, todavía están abiertos y precisan ser tratados y posiblemente requieran reglamentación para prevenir futuros conflictos. Además, el modelo ambicioso elegido en Paraguay debe estar acompañado de un presupuesto adecuado. Es necesario realizar una evaluación de las necesidades del futuro MNP para poder defender una financiación adecuada. Por último, deberían evaluarse las necesidades de

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			desarrollo de capacidad individual de los miembros, para poder proporcionar capacitaciones.
(o) Condiciones de detención conforme a las normas mínimas sanitarias y de higiene; eliminar hacinamiento.		2009: El Gobierno indicó que, a raíz de las observaciones y recomendaciones preliminares formuladas por el Subcomité para la Prevención de la Tortura (SPT), en su visita realizada en marzo de 2009, se conformó la comisión especial encargada del monitoreo y ejecución de las mencionadas observaciones y recomendaciones, que verificó las observaciones formuladas en el terreno. Su informe fue presentado al Ministro de Justicia y Trabajo. El 9 de julio de 2009, por medio de la Resolución DGRRHH No. 157/2009, "Por la cual se establecen disposiciones relativas a la prestación de servicios de los profesionales médicos, otros especialistas y enfermeros/as, en distintas especialidades asignados a las Unidades Penitenciarias, Correccionales de Mujeres, Centros Educativos para Adolescentes Infractores y Hogares de Niños/as dependientes del MJT", se resolvió aumentar la carga horaria hasta un máximo de 40 horas semanales y elevar informes en forma mensual relacionados a la asistencia médica. 59 internos fueron capacitados mediante el Curso "Desarrollo Personal", que abarca primeros auxilios básicos y psicología básica. Fuentes no gubernamentales: Sigue	2011: El Gobierno: La población de internos en penitenciarias asciende de 7247 internos, representando un déficit actual en cuanto a capacidad de 1912 internos. Inconveniente que surgía anteriormente era que los penales del interior solo albergaban a internos de la jurisdicción en la cual se encontraban; debido al hacinamiento reinante en Tacumbu, se decidió trasladar a varios internos a varias penitenciarias del interior, según capacidad de las mismas, con lo cual rugió un nuevo inconveniente, el cual es el arraigo familiar de los internos. En muchos casos esto fue recurrido ante los jueces. En lo siguiente el Gobierno nombra algunas mejoras y aplicaciones de Plazas en las penitenciarías, así como la ejecución un plan de mejoramiento de la infraestructura de las mismas. 2011: Fuentes no gubernamentales: El Gobierno estableció una comisión interagencial para monitorear las condiciones de detención en comisarías con miembros del Departamento de Derechos Humanos, la Defensoría del Pueblo, el Ministerio del Interior y la Secretaría para la Mujer. El Gobierno también señala que dentro de la Policía Nacional, el Departamento de Asuntos Internos y la Dirección de Justicia Policial tienen la función de ejercer un control de la policía, investigando denuncias de violación de derechos humanos por parte de oficiales de policía. Mientras que el Departamento de Derechos Humanos y la comisión interagencial no tienen un enfoque específico de prevención de tortura,

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		siendo una tarea pendiente del Estado. Gobierno: El Gobierno informó que el Viceministerio de Justicia y Derechos Humanos, las medidas que han sido adoptadas para mejorar las condiciones carcelarias en materia sanitaria y de higiene suponen principalmente fuertes inversiones del Estado en construcción y reacondicionamiento de la infraestructura edilicia correspondiente a las unidades penitenciarias. La Defensoría del Pueblo, en cumplimiento de sus funciones proteger y promover los derechos humanos ha realizado visitas a las Comisarías y Penitenciarias del país, así como, ha recibido invitaciones para integrar comisiones interinstitucionales de monitoreo a centros de privación de libertad, con el objetivo de realizar las recomendaciones que considere pertinentes para el respeto de los derechos humanos de los privados de libertad. En este sentido la Defensoría del Pueblo ha realizado recomendaciones en torno al cumplimiento de las normas mínimas de las Naciones Unidas para los privados de libertad a las autoridades pertinentes en el marco del cumplimiento de sus funciones de monitoreo. Entre las comisiones interinstitucionales se encuentran:	el Departamento de Asuntos Internos y la Dirección de Justicia Policial no actúan preventivamente sino reactivamente, ante la recepción de una denuncia. Todos los mecanismos mencionados son internos de la policía y por ende no son independientes. Además, los mecanismos parecen tener un bajo nivel de visibilidad y poca cooperación y contacto con organizaciones de sociedad civil. El Departamento de Derechos Humanos de la Policía Nacional ha declarado encontrarse en una situación difícil, criticado tanto internamente como por la sociedad civil, y ha expresado su necesidad y voluntad de cooperar con la sociedad civil para fortalecer su rol. Paraguay tiene tres comisiones interinstitucionales dedicadas a visitar y monitorear cárceles, centros de detención de menores y barracas militares. No hay, sin embargo, comisiones establecidas para la visita de comisarías, donde se dan más comúnmente casos de tortura, ni para instituciones psiquiátricas. Las comisiones están configuradas como instituciones ad hoc. No tienen bases legales sólidas ni financiación independiente, lo cual afecta su funcionamiento. De acuerdo con fuentes no gubernamentales, la comisión interinstitucional para cárceles está actualmente inactiva. Durante el tiempo en que estuvo activa, se la describió como muy burocrática e inflexible, llevando a cabo solamente visitas anunciadas durante horarios de trabajo normales. La comisión interinstitucional para centros de

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		La Comisión Interinstitucional de Visitas a Centros Penitenciarios: La Defensoría del Pueblo forma parte de la Comisión de Visitas a Centros Penitenciarios conformada por la Comisión de Derechos Humanos de la Honorable Cámara de Senadores, desde el año 2004. Dicha Comisión, se halla conformada por representantes de las siguientes Instituciones: Corte Suprema de Justicia, Ministerio de Justicia y Trabajo, Ministerio Público, Ministerio de la Defensa Pública, Defensoría del Pueblo, Organizaciones no Gubernamentales tales como: Raíces, Coordinadora de Derechos Humanos del Paraguay (CODEHUPY), Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP) así como representantes del Sindicato de Funcionarios de la Penitenciaría Nacional. Con respecto a ello, cada año se realizan las visitas desde su creación a fin de realizar las recomendaciones pertinentes para el mejoramiento del sistema penitenciario del país. La Comisión Interinstitucional de Visita a Centros de Reclusión de Adolescentes se encuentra integrada por las siguientes instituciones: Defensoría del Pueblo, Ministerio del Interior, UNICEF, la Dirección de Derechos Humanos de la Corte, la Dirección de Derechos Humanos del Ministerio Publico, Representantes de la Defensoría Pública, Ministerio de Justicia y Trabajo, Secretaria de la Niñez y Adolescencia y la O.N.G, RONDAS. En virtud de las	detención de menores se creó como reacción al caso “Panchito López” presentado ante la Corte Interamericana de Derechos Humanos. Según se informa, la comisión lleva a cabo dos visitas por año en diferentes regiones del país, durante las cuales hablan en privado con los detenidos. Si bien se dijo que sus informes son específicos, con fotos y acusaciones directas, no son públicos y sólo pueden recibirse mediante solicitud. La Comisión no es independiente institucionalmente, ya que es coordinada por el Departamento de Derechos Humanos del Ministerio de Justicia. Además, los miembros de entidades estatales no son ni funcionalmente ni personalmente independientes. De acuerdo con las declaraciones, la cooperación entre sociedad civil y representantes del estado funcionó bien y sirvió para que la Comisión tuviese acceso a los centros de detención. Sin embargo, la posibilidad de realizar visitas anunciadas podría verse comprometida por preocupaciones con respecto a potenciales conflictos de interés. Debido a la falta de fondos, la Comisión no es muy activa y no permite la participación de expertos de la sociedad civil. Se habló también de que debido a que no tiene sitio web y no publica sus informes y recomendaciones tiene muy poca visibilidad social. La comisión interinstitucional para barracas militares no está activa actualmente. Según fuentes no gubernamentales, el Ministerio de Defensa se ha negado a cooperar con la sociedad civil desde el cambio de gobierno en 2008.

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		visitas realizadas por la Comisión cada año se realizan las recomendaciones pertinentes para el mejoramiento del sistema penal adolescente. La Defensoría del Pueblo ve con principal preocupación que no se respetan las garantías procesales de las personas privadas de libertad lo cual se pudo constar a raíz de las visitas a centros de detención que se realiza con periodicidad, así también, en conjunto con la Comisión Interinstitucional de visita de monitoreo a centros de reclusión. Funcionarios de ésta Defensoría han podido constatar que la mayoría de las personas que se encuentran detenidas en las comisarías superan el plazo máximo legal establecido, vulnerándose de esta manera sus derechos procesales y humanos teniendo en cuenta que las mismas no cuentan con infraestructura y menos con medios ni recursos básicos para alojar a detenidos en condiciones que respeten sus derechos y dignidad humana. Para dicho efecto la Defensoría del Pueblo había presentado un Habeas Corpus Reparador lo cual no pudo prosperar ya que el mismo fue rechazado sin fundamento lógico por parte del Juez (Información referida por el Departamento de Privados de Libertad de la Defensoría. El procedimiento utilizado cuando recibimos denuncias de Tortura es el siguiente: por un lado recibimos la denuncia, luego nos entrevistamos con la persona que se encuentra privada de su	Las comisiones interinstitucionales en Paraguay pueden llevar a cabo una función importante en el monitoreo de lugares de detención, integrando representantes del Estado y la sociedad civil. Sin embargo, por la forma en que están organizadas actualmente, no les es posible llevar a cabo un monitoreo efectivo de los lugares de detención, con el fin de prevenir la tortura y los malos tratos, de acuerdo a lo establecido en el OPCAT. Las comisiones no tienen un mandato legal que especifique su derecho a acceder a lugares de detención. Sin una base legal e institucional sólida, no es posible garantizar su funcionamiento, que depende de la voluntad del Gobierno y la disponibilidad de los representantes de la sociedad civil y la comunidad internacional. Además, no reciben financiación adecuada. Como consecuencia, dos de las tres comisiones están inactivas, y la única que funciona, no puede realizar visitas sistemáticas y regulares.

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		libertad, la cual alega que resultó víctima de un supuesto hecho de tortura a fin de escucharlo, para luego canalizar la denuncia al Ministerio Público a través de sus unidades especializadas sobre derechos humanos, lamentablemente muchas de las denuncias de tortura investigadas no han sido finiquitadas, es decir, los presuntos responsables no han sido condenados.	
(p) Limitar el recurso a la detención preventiva.	Uso casi exclusivo.	Fuentes no gubernamentales 2009: Se sigue utilizando este mecanismo. Gobierno: El Gobierno informó que la aplicación y limitación del recurso de la prisión preventiva compete exclusivamente al Poder Judicial. Sin embargo, es relevante destacar que del total de la población penitenciaria recluida en los diferentes establecimientos del país, un 70% de la misma se encuentra privada de libertad bajo la figura de la prisión preventiva, y sólo el 30 % restante posee condena firme y ejecutoriada.	2011: El Gobierno informó que la Corte Suprema de Justicia, ha aprobado en el mes de octubre su Plan Estratégico 2011-2015, donde se establecen líneas de acción y estrategias concretas tendientes a la disminución de la mora judicial. Así mismo, con el fortalecimiento del Ministerio de la Defensa Publica a través de la implementación de la nueva ley orgánica permitirá contar con un número importante de defensores públicos que puedan impulsar la mayor agilidad de los procesos y así podrá limitarse el recurso de la detención preventiva a los casos necesarios. 2011: Fuentes no gubernamentales: La Constitución (art. 12.5) y el Código Procesal Penal (art. 240), garantizan que la persona detenida tiene derecho a ser puesta, en un plazo no mayor de 24 horas, a disposición del juez competente para que este resuelva sobre la procedencia de la prisión preventiva, aplique las medidas sustitutivas o decrete la libertad por falta de mérito. Sin embargo, el sistema judicial es percibido como un actor débil en la lucha y la prevención de la tortura. De acuerdo con declaraciones, el sistema judicial no

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			funciona de manera efectiva, llevando a excesivos períodos de prisión preventiva y largos procesos judiciales. Además, se declaró que los jueces aplican la prisión preventiva como regla y no como excepción, en parte por falta de conocimiento de las alternativas existentes.
(q) Atender las necesidades básicas de los detenidos.		Fuentes no gubernamentales 2009: No se cumple a cabalidad. Gobierno : El Gobierno informó que se ha fortalecido el sistema de atención a la salud, de los detenidos en las penitenciarías. Se ha perfeccionado el método de gestión de fichas médicas de todos los privados de libertad; así mismo, se han implementado medidas preventivas contra la gripe AH1N1 y el dengue. Se ha llevado adelante un barrido sanitario para la detección de enfermedades más frecuentes (VIH, TBC y otras); se ejecutaron programas de vacunaciones y cursos a internos para promotores de salud. El primer censo penitenciario permitió contar con un perfil más acabado de las personas privadas de libertad, a fin de diseñar políticas, planes y proyectos destinados a su readaptación integral y reinserción socio laboral.	2011: El Gobierno: En materia de Salud, se ha articulado de manera más eficiente con el Ministerio de Salud Pública y Bienestar Social, los Programas de atención a TB y VIH, en el sentido de coordinar los recursos con los del Ministerio de Justicia y Trabajo para ofrecer una cobertura más eficaz. En Ciudad del Este se ha ejecutado un testeo del 100% de la población para detectar TB, VIH, VDRL. En materia de Educación, se persigue el analfabetismo “0” en los penales, para lo cual ano tras ano se va aumentando la matricula en los Centros Educativos que funcionan en todos y cada uno de los Penales con profesores del Ministerio de Educación y Cultura. En lo respecta al TRABAJO: se han hecho CAPACITACIONES PARA EL TRABAJO. 2011: Fuentes no gubernamentales: No se cumple en su totalidad debido a la escasez de recursos.
(r) Erradicar la corrupción en el sistema penitenciario y de justicia penal.	Corrupción endémica.	Fuentes no gubernamentales 2009: Sigue persistiendo la corrupción dentro del sistema penitenciario y de justicia penal. Gobierno: El Gobierno informó que el Viceministerio de Justicia y Derechos Humanos, ha encontrado lo desfasado	2011: El Gobierno informó que la Dirección de Transparencia y Lucha contra la Corrupción, dependiente del Ministerio de Justicia y Trabajo, ha establecido mecanismos de control en dicho ámbito, concentrando sus actividades, en principio, en la Penitenciaría Nacional de

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		que se encuentra el sistema penitenciario creado en 1970 con relación a los nuevos paradigmas de tratamiento de las personas privadas de libertad, el Poder Ejecutivo tomó la decisión de iniciar un proceso de reforma integral y creó una Comisión Nacional para el efecto, mediante Decreto Nº 4674 de julio de 2010. Dicha comisión se encargará de delinear las acciones más efectivas para lograr el mejoramiento del sistema penitenciario, siendo uno de sus ejes la lucha contra la corrupción en dicho estamento. Con relación a la Corte Suprema de Justicia, la misma cuenta con una ley que sanciona los casos de corrupción, la Ley Nº 2.523/2004. Que previene, tipifica y sanciona el enriquecimiento ilícito en la función pública y el tráfico de influencia. La referida ley establece sanciones como prohibiciones posteriores al ejercicio del cargo, multas que van desde los cien a trescientos días de multas e inhabilitación especial, pudiendo ser inhabilitado de uno a diez años. A través de la Superintendencia General de Justicia, la Corte Suprema de Justicia ha ejercido acciones de control y supervisión para el mejoramiento de la administración de Justicia. En el 2008 a través de la Oficina de Disciplina recibió 857 denuncias y remitió 733 informes con recomendaciones al Consejo de Superintendencia y 337 para Instrucción	Tacumbu, con el objeto de consolidar un sistema efectivo que pueda ser replicado posteriormente con éxito en los demás establecimientos penitenciarios. Así, a fin de hacer frente a esta problemática, se ha hecho una fuerte inversión en HARDWARE para la instalación de nuevos sistemas de seguridad en los penales, especialmente en el Penal de Tacumu, así como revisiones más exhaustivas de las visitas; asimismo se insta a los familiares de los internos a que se acerquen a denunciar los casos de corrupción, en varias oportunidades mediante la colaboración de los mismos se ha adoptado una estrategia específica para lograr descubrir el hecho y aplicar una sanción que corresponda a los responsables, siempre salvaguardando la identidad de los denunciantes. Como medida indirecta, se ha firmado un nuevo contrato colectivo de condiciones de trabajo con los sindicatos de funcionarios mejorando substancialmente las remuneraciones y prestaciones a los guardias cárceles. 2011: Fuentes no gubernamentales: La corrupción es un problema muy serio, tanto en la policía, la fiscalía y en el sistema judicial. Según se informó, la corrupción en el sistema judicial sigue siendo un gran problema, en especial en áreas rurales. Sin embargo, actualmente hay varias iniciativas anticorrupción en el país y se creó un Código de Ética para Jueces, que resultó en la sanción de tres jueces, por estar involucrados con partidos políticos. También se creó un Departamento de Derechos Humanos de la

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		de Sumario (Informe de Gestión/2008, pág 17 y 18). Durante el 2007 fueron remitidos a la CSJ, 714 dictámenes, en comparación a los 598 del 2006 y los 471 del 2005 (Informe de Gestión/2007, pág 22). La Corte Suprema de Justicia, asumió el compromiso de combatir la corrupción dentro del marco del Programa Umbral del Milenio. Es así que desde enero de 2006 se ha conformado la Oficina de Ética Judicial, tras la aprobación en Octubre de 2005 del Código de Ética Judicial. Esta Oficina sirve de soporte técnico, procesal y administrativo a todo el sistema de ética judicial, sirviendo asimismo de apoyo a los principales órganos: el Tribunal de Ética Judicial y el Consejo Consultivo, con el área de denuncias y de consultas. El Sistema de Ética Judicial tiene por objeto promover los niveles de calidad y probidad en la función jurisdiccional. En este contexto conforme a lo dispuesto en el Art. 10 numeral 3 del Código de Ética Judicial, durante el 2007, se culminó el proceso de suspensión temporal de afiliaciones partidarias de los magistrados, a fin de garantizar la independencia de los integrantes del Poder Judicial (Informe de Gestión/2007, pág 24). El Tribunal de Ética y Consejo Consultivo ha tramitado en el 2006 un total de 26 casos, en el 2007 fueron 26 casos, en el 2008 se tramitaron 77 y hasta agosto del 2009, fueron tramitados 33 procesos de responsabilidad ética (Informe de	Suprema Corte, que asesora al sistema judicial en temas de derechos humanos, desarrolla material y recopila leyes, en un esfuerzo por aumentar la eficiencia del poder judicial.

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		Gestión/2008, pág 36). Es importante señalar que la Oficina de Ética Judicial desde sus inicios se ha dedicado, además de tramitar los casos consultados y denunciados a difundir y capacitar sobre temas relacionados a la Ética profesional y principalmente referente al área judicial (www.pj.gov.py/etica_presentación.asp; www.pj.gov.py/etica_documentos.asp) . En el informe elaborado por la CODEHUPY en el informe de 2007, se comenta sobre su labor y que pesar de la desconfianza hacia este tribunal a inicios de su funcionamiento, sus decisiones contribuyeron a fortalecer la imagen de independencia del Poder Judicial y "viene demostrando su capacidad de independencia y controversia con la misma." (Derechos Humanos en Paraguay 2007, pag 129). En el 2008, se destaca la labor llevada a cabo por La Oficina de Ética del Poder Judicial que inició en mayo del 2.008 una campaña contra la coima con el objeto de "erradicar y suprimir" conductas consideradas dañinas para el Poder Judicial, a través de programas y compañas. "La Oficina de Ética Recibió el reconocimiento de la sociedad por sus iniciativas y trabajo en el fortalecimiento del Sistema de Justicia" (Derechos Humanos en Paraguay 2008, pag 170). Al mismo tiempo por Acordada Nº 478/07 se creó la Dirección de Auditoria Gestión Jurisdiccional, como	

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		mecanismos contra la lucha contra la corrupción, (dentro del Programa Umbral) cuyo objetivo es"… verificar que en la gestión de los Juzgados auditados se logre una ordenada y eficiente tramitación de los juicios y el pronunciamiento de los Fallos en términos d ley, así como del cumplimiento de los deberes, obligaciones, responsabilidades y prohibiciones a cargo de las diferentes autoridades, funcionarios y auxiliares de justicia, encargados de administrar justicia en todas las circunscripciones del país" (Informe de Gestión de la Dirección General de Auditoría de Gestión Judicial del 18711/2009, pág.1). En el 2007 fueron realizadas 65 auditorías. (Informe de Gestión/2007, pág. 23). En el 2008 fueron llevadas a cabo diversas Auditorías de Campo Programadas en las Circunscripciones de Capital, Central, Itapúa, Alto Paraná, Boquerón, Saltos del Guairá y Cordillera cuyo resultado abarca en Auditorias de Campo Programadas que abarcó 2 Juzgados de Paz, 59 Juzgados de Primera Instancia, 4 Tribunales de Apelación y 2 Oficinas de Apoyo, siendo un total de un total de 67 Auditorías. Durante el año 2009 fueron llevadas a cabo las Auditorías de Campo y Giras Programadas en 26 Juzgado de Paz, 104 Juzgados de Primera Instancia, 18 Tribunales de Apelación, 75 Defensorías Públicas y 4 Oficinas de Apoyo, resultando un total de 227 Auditorias, que abarcaron las diversas	

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		circunscripciones de la República (Capita, Central, Concepción, Ñeembucu, Caaguazú, Guairá, Paraguari,, Cordillera, Alto Parará, Caazapá y Saltos del Guirá (Informe de Gestión de la Dirección General de Auditoría de Gestión Judicial del 18/11/2009, pág. 3 al 8). Por otra parte se dispuso la Reingeniería del Presupuesto para mayor eficacia y transparencia, a fin de visualizar y sobre todo trasparentar la utilización de los Fondos del Estado. Este proceso contó con la asistencia técnica de USAID. La Corte Suprema de Justicia ha mantenido en el 2008 la política de transparencia y eficacia en torno a la ejecución presupuestaria a fin de optimizar los gastos públicos para un mejor servicio. Gracias a la ampliación presupuestaria se logró la creación de estructuras del Tribunal de Apelación, Juzgados de Primera Instancia y de Paz en distintas localidades del País, se crearon 27 Defensorías Públicas en los distintos fueros. (Informe de Gestión/2008, pág. 50 y 51).	
(s) Separación de presos en prisión preventiva y los convictos/ separación de menores y adultos.	No existe separación efectiva.	Fuentes no gubernamentales 2009: No se cumplen dichos mecanismos a cabalidad. Gobierno: El Gobierno informó que puede decirse que en la mayoría de los Centros Penitenciarios del País, existe una separación efectiva entre los privados de libertad por prisión	2011: El Gobierno: En materia de población carcelaria, se tiene en vista censarla e insistir en la celeridad de los procesos para llegar a una relación 60/40 procesados/condenados. A final del 2010 fue 65/35, a hoy es 72/28.

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		preventiva y los condenados. La excepción se da en ciertos y determinados establecimientos por las limitaciones de su infraestructura edilicia, pero son casos aislados. En cuanto a la separación de menores y adultos existen a la fecha 6 Centros y 2 áreas de menores en las diferentes penitenciarías regionales, con lo cual se cumple con el objetivo de mantener separadas las poblaciones de internos según su franja atarea; los Centros Educativos y Área de menores se encuentran a cargo del Servicio Nacional de Adolescentes Infractores (SENAI).	
(t) Empleo de suficiente personal de prisiones.		Fuentes no gubernamentales 2009: No hay suficiente personal penitenciario en todas las penitenciarías. Gobierno: El Gobierno informó que si bien no se ha llegado al número ideal de recursos humanos asignados a los centros penitenciarios, el Ministerio de Justicia y Trabajo ha incluido dentro de su presupuesto proyectado para cada año de gestión el impostergable aumento de funcionarios: guardia cárceles, educadores, personal de blanco y funcionarios administrativos. Desde 2008, en efecto, dicho incremento de personal penitenciario ha sido una constante.	(2011: El Gobierno: La estadística es difícil de interpretar) 2011: Fuentes no gubernamentales: La Unidad de Supervisión Penitenciaria no lleva a cabo la totalidad de sus funciones por falta de recursos humanos y económicos. Se perciben a sí mismos como apoyo de la Oficina del Defensor Público, que no puede lidiar con la carga de trabajo que maneja actualmente.
(u) Limitar el uso de celdas de castigo.	Uso excesivo.	Fuentes no gubernamentales 2009: Se sigue utilizando en todas las penitenciarías. Gobierno: El Gobierno informó que el	2011: El Gobierno indicó que actualmente rige una disposición mediante la cual todos los penales están obligados a tener un libro foliado de aislamiento, donde se debe consignar los datos básicos del incidente que originan el

Recomendación (A/HRC/7/3/Add.3)	*Situación durante la visita (A/HRC/7/3/Add.3)*	*Medidas tomadas en años anteriores (A/HRC/13/39/Add.6 , A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
		capítulo 4to. de la Ley 210/70 del Régimen Penitenciario, contempla el régimen de utilización de la celda de aislamiento o castigo cuando los internos comenten infracciones establecidas en dicha normativa. A los mismos se les instruye el correspondiente sumario administrativo, con la previa y detallada comunicación de la falta que se le imputa y con la oportunidad de presentar su descargo ante el funcionario instructor sumariante. A modo de ilustración las sanciones disciplinarias son: 1) Amonestación, 2) Perdida total o parcial de beneficios previamente acordados, 3) Internación hasta 30 días en celdas de aislamiento, 4) ubicación en grupos de tratamientos más rigurosos y 5) traslado a establecimiento de otro tipo.	aislamiento. El tiempo de aislamiento debe ser establecido por el jefe de seguridad del penal y ratificado por el Director. El Director además debe recibir un reporte del incidente que suscito la medida y el mismo debe quedar archivado en el expediente del interno. Todos los Penales tienen y deben tener habilitados sus registros de aislados y/o sancionados y es el Director quien debe finalmente aplicar las sanciones disciplinarias.
(v) Garantizar la capacidad de impugnar la legalidad de la detención.		Fuentes no gubernamentales 2009: Se garantiza, pero de manera insuficiente. Gobierno: El Gobierno informó que en la Constitución Nacional establece en el Artículo 11 - De la privación de la libertad. “Nadie será privado de su libertad física o procesado, sino mediando las causas y en las condiciones fijadas por esta Constitución y las leyes.” Así también, se establece una serie de garantías procesales para las personas detenidas o arrestadas en el Artículo 12 - De la detención y del arresto.” Nadie será detenido ni arrestado sin orden	2011: El Gobierno declaró que en virtud de la Carta Maga del Paraguay, toda persona que sea ilegalmente detenida, dispone de garantías establecidas en dicho cuerpo legal para subsanar esta situación (Articulo 11 y 12 de la Constitución Nacional). Toda persona afectada en cualquiera de estos derechos, puede accionar los mecanismos establecidos para el efecto, e iniciarlos a través de la Mesa de entrada de Garantías Constitucionales que es una oficina de naturaleza administrativa que depende directamente de la Corte Suprema de Justicia y canaliza estos reclamos. En su mayoría, lo peticionado derivaba de la utilización de la garantía constitucional de Habeas Corpus como un nuevo Recurso, pero a su vez la

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		escrita de autoridad competente, salvo caso de ser sorprendido en flagrante comisión de delito que mereciese pena corporal. Toda persona detenida tiene derecho a: 1) Que se le informe, en el momento del hecho, de la causa que la motiva, de su derecho a guardar silencio y a ser asistida por un defensor de su confianza. En el acto de la detención, la autoridad está obligada a exhibir la orden escrita que la dispuso;2) Que la detención sea inmediatamente comunicada a sus familiares o personas que el detenido indique;3) Que se le mantenga en libre comunicación, salvo que, excepcionalmente, se halle establecida su incomunicación por mandato judicial competente;; la incomunicación no regirá respecto a su defensor, y en ningún caso podrá exceder del término que prescribe la ley;4) Que disponga de un intérprete, si fuese necesario, y a , 5) Que sea puesta, en un plazo no mayor de veinticuatro horas, a disposición del magistrado judicial competente, para que éste disponga cuanto corresponda en derecho." La Corte Suprema de Justicia ha llevado a cabo jornadas que ayudan a responder y canalizar las dudas e inquietudes de las personas recluidas y poner a conocimiento de las mismas el estado de sus procesos. Es así, que en el 2007 se realizaron 13 visitas carcelarias a los diferentes Centros Penitenciarios del País y en el 2.008 ocho jornadas (Informe de Gestión/2008, pág. 41;	presentación de la garantía ante la Sala permitió en ciertas ocasiones tener conocimiento de una realidad tangible que se suscita en las instituciones penitenciarias: se constata el estado actual de los procesos y se adopta medidas en casos de irregularidades.

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		Informe de Gestión/2007, pág. 21). "La Mesa de Entrada de Garantías Constitucionales es una oficina de naturaleza administrativa que depende directamente de la Corte Suprema de Justicia y de conformidad a las Acordadas y Resoluciones respectivas..." (Informe de Gestión de Mesa de Entrada de Garantías Constitucionales de la Corte Suprema de Justicia) Dentro del marco legal de la ley 1.500/99 "Que reglamenta la garantía Constitucional del Habeas Corpus" y la Acordada Nº 83 del 4 de mayo de 1.998, en los Juzgados de Primera Instancia de todo el país de enero a Octubre de 2007 han ingresado aproximadamente 173 Habeas Corpus, y 485 Amparos, siendo las ciudades de Asunción y Ciudad del Este las que registraron un mayor porcentaje (Derechos Humanos en Paraguay 2007 pág. 103). Conforme al Informe de Gestión de Mesa de Entrada de Garantías Constitucionales, durante el 2008 en las diversas Circunscripciones del País, fueron atendidos aproximadamente 1071 Amparos y 252 Habeas Corpus. Y de Enero a octubre del 2009 fueron interpuestos en las diversas Circunscripciones del país 735 Amparos y 178 Habeas Corpus (Informe de Gestión de Mesa de Entrada de Garantías Constitucionales de la CSJ. De Enero a diciembre del 2008 y Enero a Octubre del 2009). El horario de atención es de 7:00 a 17:00 hs. todos	

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		los días hábiles. Fuera del horario de recepción de los casos de Mesa de Entrada de Garantías, es decir a partir de las 17:00 has hasta las 7:00 hs se encuentra habilitada la Oficina de Atención Permanente que recibe los diversos casos. En entrevista a un funcionario de la Oficina de Distribución de causas penales que trabaja con las diversas dependencias para el sorteo de los expedientes manifestó que en el horario de la Oficina de Atención Permanente ingresan aproximadamente 2 o 3 expedientes por día y 10 o 15 expedientes en los fines de semana, sin discriminar si son de amparo o habeas corpus o en los casos de adolescentes infractores. La Sala Penal de la Corte Suprema de Justicia, durante el 2007 ha tramitado 68 Habeas Corpus y en el 2008 57 Habeas Corpus. (Informe de Gestión/2007, pág. 43; Informe de Gestión/2008, pág.41) Conforme al Informe Presentado por la Secretaría Judicial III de la Corte Suprema de Justicia en el 2009 fueron tramitados 71 Habeas Corpus y 2 Apelaciones en lo que se refiere a Amparos. (Nota: P.S.J. III Nº 982 de 30/11/09 de la Secretaría Judicial III de la Corte Suprema de Justicia) Existen un total de 197 Defensores Públicos nombrados en todo el país, de los cuales 94 corresponden a Defensoría del Fuero Penal, y 10 Defensores del	

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		Fuero Penal Adolescente. Existiendo a la fecha 41 vacancias. Para el año 2010 fueron solicitadas 56 nuevos cargos de Defensores Públicos, (Informe presentado por la Defensoría General en fecha 20 de noviembre del 2009 a la DDH de la CSJ) El Ministerio de la Defensa Pública, a través de su Consejo de Coordinación, por resolución Nº 7/06 fue creado un observatorio de prisiones, que pretende articular intercambio de información y acciones a escala MERCOSUR. Este organismo proyecta incidir en la política criminal de Estado, para garantizar el respeto de los Derechos Humanos. Este observatorio, llevo a cabo más de 300 entrevistas sobre la situación de vida de los reclusos, estos datos fueron tenidos en cuenta por las distintas autoridades del sistema penitenciario y sirvieron para la presentación de diversos habeas corpus, a favor de personas con trastornos mentales y situaciones diversas de los reclusos que requería la intervención de los defensores de sus derechos. (Derechos Humanos en Paraguay 2007, pág. 149) Desde la Dirección de Derechos Humanos de la CSJ se impulsó y conformó el Equipo Técnico Interinstitucional en el marco del cumplimiento de la Sentencia dictada por la Corte Interamericana de Derechos Humanos, en el Caso 11.666 Instituto de Reeducación del Menor Vs. Paraguay. Este equipo estuvo conformado por	

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		representantes de La Secretaría Nacional de la Niñez y la Adolescencia Ministerio de Justicia y Trabajo (SENAAI) e integrantes de la DDH. Como resultado del trabajo interinstitucional fue presentada una "Propuesta Metodológica para la Elaboración de la Política Pública de Atención a Adolescentes Infractores". (Informe de Gestión de la Dirección de Derechos Humanos de la Corte Suprema de Justicia, pág 30)	
(91) Asistencia en la aplicación de las recomendaciones de agencias de la ONU, gobiernos y organismos de desarrollo.		2009: El Gobierno señaló que, si bien existe asistencia en algunos campos, no podría considerarse suficiente para conseguir un mejoramiento de la situación. Por tanto, se exhorta a los posibles cooperantes a colaborar de manera a ir progresivamente elaborando trabajos tendientes a garantizar los derechos de los ciudadanos. Fuentes no gubernamentales: Se cuenta con la asistencia de agencias y organismos de desarrollo para su aplicación. Gobierno: El Gobierno informó que dado el Decreto Presidencial 4674 de julio de 2010 por el cual se crea la Comisión de Reforma Penitenciaria, el Gobierno se encuentra aunando esfuerzos a través de cooperación a fin de paliar la situación existente y aplicar de la forma más inmediata posible las recomendaciones recibidas en la materia.	2011: El Gobierno: El Ministerio del Interior, conjuntamente con la Policía Nacional y Comité Internacional de la Cruz Roja, desde el 2007, renueva el Convenio de Cooperación Interinstitucional, esta última con una duración de dos años, la cual tienen por objetivo general, actualizar, desarrollar y promover la integración de las normas internacionales de Derechos Humanos y los Principios Humanitarios en las actividades prácticas de la Policía Nacional. 2011: Fuentes no gubernamentales: La situación no ha mostrado cambios significativos desde las visitas de los órganos internacionales de monitoreo, y hay quienes sostienen que la situación ha empeorado. Aparentemente, la mayoría de las recomendaciones del Relator Especial contra la Tortura y del Subcomité para la Prevención de la Tortura todavía no han sido efectivamente implementadas; la tipificación de tortura aún no se adecua a las disposiciones de la Convención Contra la Tortura de la Naciones Unidas (CAT)

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			y de la Convención Interamericana contra la Tortura (CIT); no se lleva a cabo una investigación efectiva e independiente de casos de tortura, y no existe un monitoreo sistemático e independiente de los lugares de detención. Sin embargo, se debe reconocer que el Gobierno es muy consciente de los problemas de derechos humanos, especialmente en lo que respecta a la tortura y los tratos crueles. Muchos funcionarios de gobierno tienen un historial de activismo por los derechos humanos y parecen tener un interés genuino y gran disposición para mejorar la situación de derechos humanos en el Paraguay. Se establecieron departamentos de derechos humanos en muchos órganos ejecutivos, incluyendo el Ministerio del Interior, la Policía Nacional, el Ministerio de Justicia y recientemente el Ministerio Público. Además, se creó una Red de Derechos Humanos del Poder Ejecutivo, con el fin de coordinar los esfuerzos de los diferentes departamentos de derechos humanos. Dicha Red, coordinada por el Ministerio de Justicia, ha iniciado un Plan Nacional de Acción de Derechos Humanos (PNADH) del Poder Ejecutivo y está actualmente elaborando un PNADH para cada rama de gobierno, incluyendo estrategias a corto, mediano y largo plazo. Los expertos del proyecto ‘Atlas de la Tortura’ (AT) Manfred Nowak, Moritz Birk, y Tiphanie Crittin realizaron una visita de evaluación al Paraguay del 15 al 25 de marzo de 2011. Durante dicha visita, se reunieron con las principales partes interesadas del Gobierno, sociedad civil y comunidad internacional. El

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			fin principal de la visita de evaluación era identificar los factores sistémicos que contribuyen a la tortura y a los tratos crueles, inhumanos o degradantes en el Paraguay y discutir sobre las principales necesidades para lidiar con estos factores, en términos legales, de procedimientos e institucionales, así como también de capacidades del personal en las instituciones relevantes. Por otro lado, el equipo recolectó información sobre proyectos que se están llevando a cabo en el área de prevención de la tortura y sobre las capacidades de las organizaciones de sociedad civil para poder seleccionar una organización que actúe como punto de referencia local ('punto focal') para la implementación del proyecto general. Se valora mucho la apertura y franqueza del Gobierno durante las reuniones de consulta. Se reconoce abiertamente el problema de la tortura y los malos tratos como un asunto crucial de derechos humanos. El Gobierno está tomando medidas para mejorar la prevención de la tortura y se mostró dispuesto a fortalecer sus esfuerzos en cooperación con el proyecto AT. Siendo a la vez una destacada ONG especializada en prevención de la tortura y una red establecida, CODEHUPY fue elegida como punto focal para el proyecto AT.
(92) Apoyo de donantes para el mecanismo nacional de prevención.		2009: El Gobierno informó de la creación del MNP, el cual se encontraba en ese momento en estudio en el Congreso de la Nación. Fuentes no gubernamentales: existe un proyecto de ley para la prevención de la Tortura, en el cual se contempla la ayuda de organizaciones no gubernamentales e internacionales.	2011: El Gobierno: Todo lo referido al funcionamiento de este Mecanismo y el apoyo que necesite para dar efectividad al trabajo, será contemplado en la Comisión ad hoc formada para el efecto. 2011: Fuentes no gubernamentales: La ley del MNP fue elaborada por un grupo de trabajo coordinado por la red de sociedad civil

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			CODEHUPY y apoyado por el Poder Ejecutivo y Legislativo. Si bien Paraguay ratificó el OPCAT en diciembre de 2005, la ley recién fue aprobada por el poder legislativo el 8 de marzo de 2011 y promulgada el 20 de abril del mismo año. Dicha ley fue bien recibida por el SPT ya que cumple con los requisitos mínimos del OPACT. No queda claro cuándo entrará en funcionamiento el MNP. No se le asignó presupuesto en el 2011 y por ende deberá esperar a la aprobación general de presupuesto para el 2012.

Papua New Guinea

Follow-up to the recommendations made by the Special Rapporteur in the report of his visit to Papua New Guinea from 14 to 25 May 2010 (A/HRC/16/52/Add.5)

102. On 22 November 2011, the Special Rapporteur sent the table below to the Government of Papua New Guinea requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations. The Special Rapporteur regrets that the Government has not provided a response to his request. He looks forward to receiving information on Papua New Guinea's efforts to implement to the recommendations and affirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

103. The Special Rapporteur regrets not having received information about the steps taken to ratify the Convention against Torture and the Optional Protocol thereto, and urges the Government to ratify these instruments and create a national preventive mechanisms providing for regular visits to all places of detention. The Special Rapporteur urges the Government to make a declaration with respect to article 22 of the Convention recognizing the competence of the CAT and ratify the First Optional Protocol to the international Covenant on civil and political Rights, providing for the right to lodge individual complaints to the Human Rights Committee.

104. The Special Rapporteur calls upon the Government to ensure that torture is defined as a serious crime as a matter of priority, sanctioned with penalties commensurate with the gravity of torture and ensure that any statement which is established to have been made as a result of torture is explicitly excluded and is not invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

105. The Special Rapporteur welcomes the completion of the nationwide consultations on the review of the Sorcery Act and sorcery-related killings, but notes that the Royal Papua New Guinea Constabulary lacks the capacity to prevent and investigate crimes related to domestic violence and accusations of sorcery. He notes with regret that the incidents of sorcery-related killings continued to be reported throughout the country. He urges the Government to ensure a comprehensive structural reform of the Royal Papua New Guinea Constabulary in accordance with the September 2004 recommendations of the Administrative Review Committee to the Minister for Internal Security.

106. The Special Rapporteur welcomes the establishment of an independent investigation team to look into the alleged involvement of four police officers in East New Britain following the death in custody of a student in June 2011, and encourages the Government to ensure prompt and thorough investigations of all allegations of ill-treatment or excessive use of force by an independent authority and ensure that those in command at the time of the abuses are brought to justice.

107. The Special Rapporteur takes note of the Government's efforts to address the poor conditions of detention and of the fact that these efforts are often hampered by capacity and resource constraints. He believes that while many of the problems observed are caused by a lack of resources, some important steps could be taken that are not resource-dependent, such as establishing stronger legal and procedural safeguards, amending the Correctional Service Act to include provisions on confidential and private meetings with detainees, and regulating visits to police lock-ups and pre-trial detention facilities. He encourages the Government to

ensure that detention conditions comply with international minimum sanitary and hygiene standards, that detainees are provided with basic necessities, including adequate floor space, bedding, food, water and health care, and that conditions are created for inmates to get involved in work opportunities and recreational activities.

108. The Special Rapporteur notes with regret that gender-based violence remains prevalent throughout the country, with widespread domestic violence and no effective State mechanism to address it. He calls upon the Government to establish a comprehensive legal framework to address all forms of violence against women and ensure its implementation in line with the concluding observations of the Committee on the Elimination of Discrimination against Women.

109. Finally, the Special Rapporteur notes with regret that in 2011, five men were reportedly sentenced to death by hanging by the Kokopo National Court despite the assurances of the Government that Papua New Guinea has never enforced the law on death penalty since its enactment. The Special Rapporteur believes that, under the conditions of its imposition and execution in Papua New Guinea, capital punishment inevitably results in cruel, inhuman or degrading treatment or even torture. He strongly urges the Government to take steps to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition.

Recommendation (A/HRC/16/52/Add.5)	*Situation during the visit (A/HRC/16/52/Add.5)*	*Information received in the reporting period*
1. Impunity		
(a) Have the highest authorities, in particular those responsible for law enforcement activities, declare unambiguously that they will not tolerate torture or similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for them;		***Non-governmental sources:*** Reportedly, in July 2011, a member for Moresby North East, welcomed the decision by Police Commissioner Wagambie to clamp down on rogue police officers saying it was long overdue and made reference to the Special Rapporteur on torture's report on the mission to Papua New Guinea. He was quoted saying that it was time for the Police Commissioner to take these findings seriously and "make a concerted effort to clean up the force". Reportedly, in August 2011, some action was taken to bring perpetrators to justice along with reiteration that 2011 is the year of discipline and all allegations will be investigated and perpetrators held accountable. In August, following an allegation of sexual assault by a policeman while in custody in Boroko police station, Port Moresby, the police announced that an investigation would be launched. The police leadership has also spoken against domestic violence by police officers stating that cases would be investigated and appropriate action taken against police concerned.
(b) Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, providing for regular visits to all places of detention by an independent domestic monitoring body. A declaration should be made with respect to article 22 of the Convention, recognizing the competence of the CAT to receive and consider communication from individuals who claim to be victims of a violation of the provisions of the Convention;		

Recommendation (A/HRC/16/52/Add.5)	*Situation during the visit (A/HRC/16/52/Add.5)*	*Information received in the reporting period*
(c) Ratify the First Optional Protocol to the International Covenant on Civil and Political Rights, providing for the right to lodge individual complaints to the Human Rights Committee;		
(d) Amend domestic legislation to include the crime of torture with adequate penalties. The definition of this crime should be in full accordance with article 1 of the CAT;	The term "torture" appears only once in the Criminal Code Act as an aggravating circumstance in the case of sexual assault (sect. 349 (A)). Instead, the code outlaws several offences, including some but not all, of the elements of the crime of torture as understood in the CAT.	
(e) Ensure prompt and thorough ex office investigations for all allegations and suspicions of ill-treatment or excessive use of force by an authority that is independent from the investigation and prosecution. Any officer known to be abusive should be removed from custodial duties. Heads of police stations and detention facilities should be made aware of their supervisory responsibility;		***Non-governmental sources:*** It is reported that an independent investigation team was set up to look into the involvement of four police officers in East New Britain following the death in custody of a student at Kokopo police cells on 24 June 2011. The four police task force members have been suspended following the complaint. Local NGOs in the province reported that the latest killing was just one of many cases of police brutality. It was reported that a Senior Inspector was dismissed after being found guilty of 13 disciplinary charges. In one incident in 2007, he was found guilty of criminal conduct for the murder of A.P. at Gabaka Street, Gordons, Port Moresby. Cases of police violence were also reported in the media in July 2011. Sorcery related killings were reported to continue throughout the country, with a number of incidents reported from Madang and Lae. The police are said to be investigating and have promised to bring the perpetrators to justice. The Constitutional and Law Reform Commission (CLRC) have completed the nationwide consultations on the review of the Sorcery Act and Sorcery related-killings and are finalizing the report.

Recommendation (A/HRC/16/52/Add.5)	*Situation during the visit (A/HRC/16/52/Add.5)*	*Information received in the reporting period*
(f) Ensure a comprehensive and structural reform of the Royal Papua New Guinea Constabulary in accordance with the September 2004 recommendations of the Administrative Review Committee to the Minister for Internal Security.	The Royal Papua New Guinea Constabulary lacks the capacity to prevent and investigate crimes relating to domestic violence, tribal fighting and accusations of sorcery. The police are not always in a position to enforce the rule of law, owing to insufficient human and financial resources, widespread corruption and low standards of professionalism, difficulties in access to remote areas and a lack of political will.	***Non-governmental sources***: It is reported that on 21 August 2011, a tribal clash at 9-mile settlement outside Port Moresby left one man dead and several others injured. Reportedly, tension remains high and the Taris have deserted the area in fear of further attacks. The Governor of NCD appealed to relatives of the deceased to refrain from paying back killings. Police are reported to be investigating the killing.
2. Safeguards and prevention		
(a) Reduce, as a matter of urgent priority, the period of police custody to a time limit in line with international standards (maximum 48 hours);	Detainees were held in remand at police lock-ups often for several months, and sometimes for more than a year.	
(b) Establish accessible and effective complaints mechanisms in all places of detention. Complaint by detainees should be followed up by independent and thorough investigations, and complainants must be protected from reprisals.	Despite the existence of visiting magistrates, there is no provision in the law that provides for an independent, external and efficient complaint mechanism. The Correctional Service Act does not state whether meetings with detainees are private and confidential, nor does it have provisions regulating visits to police lock-ups and pretrial detention facilities.	
3. Conditions of detention		
(a) Ensure that persons deprived of their liberty are confined in facilities where conditions comply with international minimum sanitary and hygiene standards and that detainees are provided with basic necessities, such as adequate floor space, bedding, food, water and health care. Prisoners should be provided with opportunities for work, education, recreation and rehabilitation;	Detainees were locked up in overcrowded and filthy cells, without proper ventilation or natural light. In all police lock-ups (with an exception of some detainees at the Bihute police station), detainees were forced to sleep on a concrete floor, sometimes on only a piece of cardboard. The cells were often infested with mice, cockroaches and other insects. Access to food was greatly limited, the food provided by families, in the few instances where they were allowed	

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	to visit, was usually allowed. In principle, correctional institutions in Papua New Guinea provide prisoners with opportunities for work. At the Baisu correctional institution, however, detainees had no opportunities for work, education or other forms of recreation, and were locked in their cells for up to 18 hours a day. The best practice example was the Bihute correctional institution, where the opportunities available for detainees allowed for a real possibility of rehabilitation.	
(b) Separate detainees on remand from convicted prisoners; (c) Remove all juvenile from police lock-ups;	The Police Juvenile Policy and Protocol is for most part not being applied and juveniles were held with adults in all police stations visited.	
(d) Immediately close the Mount Hagen police station; (e) Build, as a matter of urgency, a proper correctional institution in the Autonomous Region of Bougainville.		
4. Women		
84. Establish a comprehensive legal framework addressing all forms of violence against women and ensure its implementation, in line with the concluding observations of the Committee on the Elimination of Discrimination against Women.	Gender-based violence is prevalent throughout the country, with widespread domestic violence and no effective State mechanism to address it. In detention, women are extremely vulnerable to sexual abuse from police officers or other detainees. There is no existing legislation that criminalizes domestic violence. As such, cases of domestic violence fall under the provisions of common and aggravated assault found in the Criminal Code. The	

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	Royal Papua New Guinea Constabulary has the Standing Order on Domestic Violence, issued in 1987, instructing police to treat cases of domestic violence with the same seriousness as any other assault. In 2002, the Criminal Code Act was amended through the Sexual Offences and Crimes against Children Act to make spousal rape and sexual harassment criminal acts. However, in village court system, chiefs may negotiate compensation or traditional apologies as a form of resolution for offences committed against women, including rape and domestic violence.	
5. Death penalty 85. Abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. 86. The Special Rapporteur recommends that OHCHR, with the agreement of the Government of Papua New Guinea, establish a country presence with a mandate for monitoring the human rights situation in the country, including the right of unimpeded access to all places of detention, and for providing technical assistance particularly in the field of judicial, police and prison reform. 87. The Special Rapporteur also recommends that relevant United Nations bodies, donor Governments and development agencies consider the protection of human rights in the criminal justice system, and in		***Non-governmental sources:*** It is reported that in July 2011, five men were sentenced to death by hanging by the Kokopo National Court for the murder of eight people on 25 September 2007.

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particular the prevention of torture, as their highest priority. Specific programmes and projects should be carried out only after the political will to implement far-reaching structural reforms aimed at the prevention of torture is clearly demonstrated.		

Republic of Moldova

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to the Republic of Moldova from 4 to 11 July 2008 (A/HRC/10/44/Add.3 para. 90)

110. By letter dated 22 November 2011, the Special Rapporteur sent the table below to the Government of the Republic of Moldova, requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations. He expresses his gratitude to the Government for providing detailed information on steps taken during the reporting period.

111. The Special Rapporteur takes note of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), on its visit carried out from 1 to 10 June 2010.

112. The Special Rapporteur notes the information on the number of cases investigated by the newly established body within the General Prosecutor's Office and encourages the authorities to effectively ensure prompt, independent and impartial investigation of all allegations of torture and ill-treatment committed in the context of the April 2009 events. He urges the authorities to launch timely prosecutions and conclude them without delay, where the evidence warrants it. Unless the allegation is manifestly unfounded, those involved should be suspended from their duties during the investigation and proceedings.

113. The Special Rapporteur further calls upon the Government to strengthen its efforts to provide victims of torture and ill-treatment with as full rehabilitation as possible, to incorporate the right to reparation for victims into domestic law together with clearly set-out enforcement mechanisms.

114. The Special Rapporteur commends the Government for its efforts to combat torture and ill-treatment, for the steps taken to combat trafficking in human beings and the progress made in relation to national response to gender-based violence. He welcomes the ongoing reforms of the criminal justice system, in particular the adoption by the Government of the Strategy for Justice Sector Reform for 2011-2016 aimed at reforming the Prosecutor's office, and the police and penitentiary systems; the adoption by the Parliament of the National Action Plan on Human Rights for the period of 2011-2014, envisaging legal assistance to victims of torture and other ill-treatment. He looks forward to receiving information on implementation efforts on these important initiatives.

115. The Special Rapporteur takes note of the Order issued by the Ministry of Internal Affairs on making the referral to forensic examination mandatory in cases of allegations of torture and ill-treatment, and of measures taken to strengthen the institutional and operational capacity of the Centre of Forensic Medicine. He calls upon the authorities to increase the number of qualified health personnel in detention facilities and ensure that medical staff in places of detention are independent and are provided with training in the medical investigation of torture and other forms of ill-treatment. The Special Rapporteur urges the authorities to ensure that reports of independent forensics are attributed the same evidentiary weight as reports prepared by State-appointed forensic experts.

116. The Special Rapporteur regrets not having received information on legislative initiatives to remove the statute of limitations for the crime of torture and for reducing the period in custody that are reportedly in progress and recalls his appeal to the Government to ensure that the period of holding detainees in police custody does not exceed 48 hours, and that no detainee should be subject to unsupervised contact with an investigator.

117. The Special Rapporteur reiterates his concern with respect to legislative and logistical constraints impeding the effective functioning of the national preventive mechanism [50] and welcomes the establishment of a working group on amending the Ombudsman Law. He welcomes the acknowledgment by the Government of the need to improve the efficiency of the national preventive mechanism (NPM), and encourages the authorities to work closely with the Office of the High Commissioner for Human Rights to bring the NPM into full conformity with the Paris Principles.[51]

118. The Special Rapporteur calls upon the Government to strengthen its efforts to provide victims of torture and ill-treatment with as full rehabilitation as possible, to incorporate the right to reparation for victims into domestic law together with clearly set-out enforcement mechanisms and ensure annual budgetary allocations for providing adequate compensation and rehabilitation of victims of torture and ill-treatment.

119. The Special Rapporteur expresses concern about reported incidents of prisoner-on-prisoner violence and the practice of intimidation in places of detention. The Special Rapporteur recalls that inter-prisoner violence can amount to torture or ill treatment if the State fails to act with due diligence to prevent it.

120. The Special Rapporteur notes with appreciation the steps undertaken to improve the conditions in detention facilities, including the action plan drafted to combat overcrowding and improve material conditions in prisons, however, he remains concerned at the reports of inadequate access to health care and lack of mandatory medical examination of detainees upon their arrival and departure from temporary detention facilities.

121. With respect to the Transnistrian region, the Special Rapporteur regrets that none of the previous recommendations have been implemented, including criminalizing torture, abolishing the death penalty and stopping immediately the practice of solitary confinement. He is concerned that no independent monitoring mechanism for places of detention has been established and urges the relevant authorities to take measures to implement the above recommendations and establish important safeguards in criminal procedure to prevent torture and ill-treatment.

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[50] Concluding observations of the Committee against Torture, (CAT/C/MDA/CO/2), Republic of Moldova, 29 March 2010.

[51] See *"UN High Commissioner for Human Rights Navi Pillay Press Conference at the conclusion of her mission to the Republic of Moldova"* OHCHR press release, 4 November 2011.
Available from:http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11569&LangID=E.

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(a) Impunity i) Abolish the statute of limitations for crimes of torture; ii) Establish effective and accessible complaints mechanisms; and protect complainants against reprisals; iii) An independent authority with no connection to the body investigating or prosecuting the case against the alleged victim should investigate promptly and thoroughly all allegations of torture and ill-treatment ex-officio; an independent forensic expert should carry out an examination in respect of all allegations of torture and ill-treatment; iv) The Forensic institute should be equipped accordingly.	A statute of limitation of five years was applicable to the crime of torture; The law provided for several complaints avenues, but the large majority of complaints were rejected quasi-automatically; Ex-officio investigations did not function in practice; The system of internal remedies was dysfunctional due to: a)The routine use of threats and reprisals by the police in order to deter detainees from filing complaints; b)the non-action of the staff of penitentiary institutions in cases of allegations of torture; c) the wide discretion and inaction of the prosecutor's office when he receives complaints; d) the lack of independent medical examination; e) the lack of independence of judges who in many cases continue to follow the arguments of the prosecutor; The State Forensic Institute was underequipped.	**Government:** i) The statute of limitations is not an impediment to investigations, since crimes of torture are investigated vigilantly and in a timely manner. ii) Since 1996 prosecutors are obliged to make daily spot checks at the places of temporary detention. This includes personal and direct control of the legality of detention, discussions with detainees, as well as reporting the results of these actions, including where necessary, issuing orders to release the persons detained illegally on remand. Thus, there is a mechanism to record, control and monitor the practice of coercive procedural measures and the conditions of detention. iii) In 2007, 1,258 complaints were submitted, 50 criminal proceedings being initiated. In the same year, 87 criminal proceedings were initiated for excess of power, 55 cases of which were sent to the court, 63 persons being convicted, including 14 persons imprisoned. In 2008, 1,128 complaints were submitted, 51 criminal proceedings being initiated. In the same year, 73 criminal proceedings were initiated for excess of power, 46 of which were sent to court, as a result of which 36 persons were convicted and 5 persons were imprisoned. In 2009, 554 complaints have been submitted, 33 criminal proceedings were initiated. The same year, 31 criminal proceedings have been initiated for excess of power, 20 of which were sent to court, 16 persons convicted and 1 person was imprisoned. Most cases investigated concerned the use of force during interrogation for the purpose of securing a confession to improve prosecution statistics. The Interior Ministry has internally examined 135 criminal cases, including 39 cases regarding excess of power, 17 cases regarding torture and	**Government:** ii) The Order No. 11/991 of 15 March 2011 on the procedure of addressing and reporting abuses, have been placed on the Ministry of Internal affairs (MIA) website. iv) In December 2011, the Centre of Forensic Medicine with the support and contribution of UNDP Moldova, launched the project "Strengthening the forensic examination of cases of torture and other forms of ill-treatment, as a key strategic element in comprehensive, integrated, holistic efforts to end torture and related forms of ill-treatment in Moldova" which aimed: to strengthen the institutional and operational capacity of the Centre of Forensic Medicine in the examination of cases on torture and other cruel, inhuman or degrading treatment or punishment cases at the national level; to increase the quality of forensic documentation brought before courts; to increase partnership and awareness between governmental and nongovernmental organisations. Various activities have been undertaken in the framework of the above mentioned project, including purchasing transport units and IT equipment. ***Non-governmental sources:*** As of April 2011, the General Prosecutor's Office have been investigating crimes committed by public authorities against

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		4 cases for coerced declarations, 19 of which had resulted in the dismissal of staff. It should be noted that during 2008, no new cases of torture or inhuman or degrading treatment were registered in the penitentiary system. An exception is the case of an employee of Prison No. 1, who was sentenced, in accordance with article 328 paragraph 2 (c) of the Criminal Code on 9 Dec. 08, to a fine and the deprivation of the right to hold public functions for a period of 3 years, for committing actions that humiliated the dignity of a prisoner on 29 Dec. 07. In 2009 no cases of torture were registered in the penitentiary system. During this year the Penitentiary Institutions Department of the Ministry of Justice initiated 2 internal investigations regarding the alleged ill-treatment of two detainees, from which one of the cases was sent to the Prosecutor Office. The facts alleged in the second case have not been confirmed. Of 473 petitions examined in 2008 by the Ministry of Internal Affairs (MIA), 38 concerned cases of ill-treatment and illegal detention of citizens. In 18 cases false facts were reported; in 15 cases the facts have been confirmed (employees have been sanctioned disciplinarily); in 19 cases the files were submitted to the prosecution bodies (for criminal procedure), and in 6 cases the petitions were sent to judicial courts (for examination of criminal cases filed by the petitioners). During the first 10 months of 2009 the MIA examined 334 petitions, of which 33 cases concerned mistreatment of persons by police employees. In 11 cases the alleged mistreatment was not confirmed; in 4 cases the court applied an administrative fine to both sides of the conflict; in 2 cases the investigation was suspended until	demonstrators. It is reported that out of the total of 108 complaints, 58 criminal cases were initiated (28 on torture, 20 on abuse of power and excess of duties, 10 on other categories of crime); 27 involving 44 policemen have been finalized and sent to court and on the majority of them the investigations continue until now. In the rest of cases, prosecution has been cancelled due to lack of constituent elements of the crimes or was suspended on the grounds that it was impossible to determine the alleged perpetrators. Reportedly, there are widespread credible reports about persons being pressured to withdraw complaints related to abuses during the April 2009 events. Courts initially convicted two police officers who were later acquitted. Eight other police officers have also been separately acquitted, and in case of one police officer, the criminal procedure was stopped with conditional sentencing. In relation to one high-profile case concerning the April events involving the death of a protester who was seen by eyewitnesses being beaten to death., 11 police officers had reportedly been dismissed as of June 2010, and put under criminal investigation. The case of the former Chisinau Police Chief, who is currently being prosecuted for neglect of duty with regards to abuses committed during the

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		the decision on the criminal case was issued; in 16 cases the files were sent to the prosecutor, of which no criminal procedure was commenced in 2 cases (the employees were only warned about the due treatment of citizens). Thus, 204 criminal cases were initiated in 2009, compared with 215 during the same period of the previous year. 60 of these concerned cases of excess of power (59 in 2008), 34 cases of torture (13 in 2008), and 5 cases of coercion to make statements (12 in 2008). 20 police employees were dismissed following a court decision. The examination of such cases reveal that police officers commit actions that clearly exceed the limits of rights and powers granted to them by law; they apply force and violence, and torture people for the following reasons: - To obtain evidence by illegal means; - To pursue personal and material interests; - To demonstrate the superiority over the victims and to neglect the general rules of conduct; - Because of lack of knowledge of the law and work duties; and - Other reasons. Most of the circumstances described in the complaints of citizens are not sufficient to start a criminal prosecution. Taking into account the necessity to ensure the impartiality of prosecutors in the investigation process of cases of torture and abuse of power, by General Prosecutor's Order of 19 Nov. 07 regarding the investigation of cases of torture, degrading and inhuman treatment, the territorial and specialized prosecutors were required to designate a prosecutor responsible for documenting and examining allegations of	April 2009 events, has been postponed 16 times as of 7 April 2011. Although the cases of several high-ranking police officers accused of crimes related to April 2009 events, were submitted to the court during 2010, there is insignificant progress in determining the cases. In addition, two prosecutors from Buiucani district have been reprimanded. One judge alleged to have conducted spot trials in the police commissariats, was stripped of his judicial mandate as a result of disciplinary proceedings. The mandate of two other judges, alleged to have conducted spot trials in police commissariats, was not prolonged. In the period from April 2009 to March 2011, the Rehabilitation Centre for Torture Victims "Memoria" has registered 7 persons who complained about being subjected to torture while in police custody. It is reported that conditions of detention in some Moldovan prisons and pre-trial detention facilities remain harsh, dangerously overcrowded, and in some instances life-threatening, in particular as a result of regular exposure to tuberculosis in penitentiaries. Reportedly, investigations of cases of torture (before and after the events of April 2009), largely do not meet minimum requirements, lasting excessively long and are completed by an inappropriate decision. It is reported

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		torture and ensuring the security of victims. This person is not involved in other activities, in order to exclude partiality in investigations of allegations of torture. Following the decision of the General Prosecutor or his or her deputies, the military prosecutor offices of Chisinau, Balti and Cahul investigate cases of torture, inhuman and degrading treatment, respectively, in the centre, North and South of the country, while the Department on Criminal Investigation of Exceptional Cases of the General Prosecutor's Office investigates the most severe cases of torture, inhuman and degrading treatment. In accordance with the above-mentioned acts, prosecutors are required, whenever a reasonable suspicion exists that the crime of torture has been committed, to immediately start criminal investigations. Following the initiation of criminal proceedings, prosecutors of Chisinau municipality and Gagauzia may withdraw the criminal cases from the prosecutors in these territorial units, appointing a special prosecutor to carry out further investigations. A directive of the Prosecutor's Office has been issued to improve forensic documentation; however, further measures are still needed to provide for effective forensic examination. iv) To date, the Legal Medical Centre presented a demand related to the necessary equipment for its laboratories. Thus, the Centre has been included in the list of bodies of the Health System, which will benefit from humanitarian aid. During 2009, the Legal Medical Centre has developed some proposals for several external assistance projects, with the purpose of strengthening the existing laboratory capacities and establishing a genetic laboratory within the Centre – these proposals were submitted for consideration to UNDP, the Government of	that in many cases, even where there are credible allegations related to torture and ill-treatment, the prosecutors were reluctant to initiate investigation. In some cases, prosecutors appear to have been present at the police station during or immediately after police ill-treatment of detained persons, but evidence which might have been used to identify perpetrators was not collected. There appears to be systemic bias against detained suspects of crimes and in favour of police investigators, even where indications of trauma and abuse are present. Some prosecutors have also reportedly tried to influence and intimidate victims of torture into withdrawing complaints. It is reported that paramedics ("Feldshers") employed by the police, are present in places of detention only during working days. In practice medical doctors in places of detention are dependent on and accountable to penitentiary management: by habit and practice, the National Forensic Centre undertakes conservative forensic documentation. Reportedly, the fact that the internal regulation of the National Forensic Centre is signed by, among others, the General Prosecutor, is indicative of a lack of independence. Forensic documentation practices carried out by official forensic doctors do not currently meet the requirements of the Istanbul Protocol. Although the law requires a doctor and/or penal

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		Japan, etc. At the same time, due to financial constraints, it has been impossible to increase the financing of the Legal Medical Centre. The Legal Medical Centre has undertaken inter alia a training course for medical-legal experts on the investigation of torture cases and other ill-treatment. ***Non-governmental sources:*** Out of 554 complaints only one perpetrator was sentenced to imprisonment for torture in 2009; thus, the investigation cannot be regarded to be efficient, operative and impartial. Forensic doctors try to cover up torture, rather than document it. ***Non-governmental sources:*** Investigative bodies fail to carry out prompt, thorough and independent investigations into allegations of torture. Police officers have not been suspended from their official duties during the investigation of complaints lodged against them, contrary to European Court of Human Rights (ECHR) jurisprudence (ECtHR, Valeriu and Nicolae Rosca vs. Moldova). This has contributed to impunity. - An investigation into a case of alleged torture that took place in 2005 was only launched in July 2009, after the ruling of the ECHR against Moldova in the case of Gorgurov v. Moldova. Despite the ruling, the Government has failed to comply with the remedy requirements. Officers responsible for acts of torture remain unpunished. - Article 60 of the Criminal Code, according to which prosecutions for serious crimes can take place up to 15 years after the crime has occurred, has not yet been amended. - The Criminal Procedural Code allows for defence lawyers to request the suspension of a	institution to inform the chief prosecutor if it finds that the prisoner was subjected to torture, in some cases no action is taken. Similarly, forensic examinations to assess the allegations of torture are rather an exception than the rule, and are often made too late, because usually victims are not accepted without the special reference from prosecutors. They also tend only to record the visible signs, without indicating and describing the context of trauma as well as without adequate additional and needed diagnostic investigations. Evidence of psychological trauma or other indications of torture are generally not undertaken. This particularly leads to under-documentation, since methodologies of torture and other forms of ill-treatment applied have become more nuanced and less likely to leave physical marks in recent years. The forensic doctors remain in need of special training on medical investigation of torture, according to adopted standards and Istanbul Protocol. In addition, the forensic medicine services are still a State monopoly. There are however some initiatives to open these services to private alternatives. This issue is addressed in the context of a larger process of revision of procedural legislation, which is at the drafting stage. At present, domestic courts tend to defer to official forensic sources, preferring these over

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		suspect without pay. - Although a special group of military prosecutors was established within the General Prosecutor's Office to investigate the allegations of torture occurred during the April 2009 event, there have been concerns as to its impartiality. After a year, most of the trials are still pending and are subject to constant delays. - On 20 October 2009, the Investigation Commission on the Elucidation of the Causes and Consequences of the Events, an ad-hoc commission made up of 9 members of parliament, was established to investigate the "causes and consequences of the April 2009 events". - On 7 May 2010, the Commission presented to the Parliament a well-documented report with reference to arbitrary arrests, wide use of disproportionate and abusive force in custody and violent measures undertaken in the aftermath of the April 2009 events. - As of June 2010, 108 complaints of torture by police officers had been received by the Office of Prosecutor General and 54 criminal investigations had been initiated in connection with the April 2009 events. Approximately 24 dossiers concerning 39 police officers were taken to the Courts for further investigation. As of September 2010, there were no convictions related to torture or other ill-treatment by police officers in connection with the events of April 2009. Most of the charges against the police officers are under article 327 (abuse of power) or article 328 (misuse of power), although some have also been brought under article 309/1 (torture) of the Penal Code, particularly in connection with several high-profile cases. - Police and security personnel have reportedly intimidated human rights defenders and victims	independent medical sources supplied by victims or their representatives.

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		of the April 2009 events. - In practice, most investigations do not meet the minimum requirements and are mostly delayed. In many cases, even where there are credible allegations of torture, prosecutors are apparently reluctant to initiate investigations. There appears to be systemic bias against detained suspects of crimes in favor of police investigators, even when there is enough evidence of torture and ill-treatment. Some prosecutors have also reportedly tried to influence and intimidate victims of torture into withdrawing complaints. - Some progress has been made into the investigation of abuses of juveniles by the police or public servants after a campaign against torture started two years ago. Complaints against police officers are being investigated by prosecutors from a different district in order to safeguard against tolerance or complicity. The number of police officers prosecuted has increased, and some have been given prison sentences. - Although the complaints against police officers for juvenile suspects' abuse are reportedly less common, the blanket denial and the absence of complaints about police misconduct against children lacks credibility and reinforces the impression that there is little political will to eradicate abuse. - Although the Centre for Human Rights plays valuable role in monitoring the treatment of juvenile suspects and prisoners and in bringing cases to the attention of the responsible authorities, criminal and administrative investigations are not pursued promptly and efficiently, and accountability remains weak. The Government did not take any steps to equip the Forensic institute. In 2011, UNDP jointly with the European Union, will launch a project to equip the national forensic agency and to	

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		establish legitimate forensic sources. - No legislative initiatives in abolishing the statute of limitations for crimes of torture are reportedly in progress. **Government:** In 2010, the centre of Forensic Medicine at the Ministry of Health, in partnership with OSCE Mission in Moldova has launched the project "Strengthening capacities and cooperation between forensic specialists from both banks of the Nistru River aimed at enhancing investigation of torture cases". In this context, a study visit of four forensic experts was organized in Turkey from 10 to 13 November 2010. On 23 November 2010, a conference on "Actual Issues on the Organization and Realization of Forensic Expertise" was carried out in Tiraspol and was attended by forensic experts from both banks of the Nistru River. - The Centre of Forensic Medicine with immediate support and contribution of UNDP Moldova launched the project "Strengthening the forensic examination of torture and other forms of ill-treatment, as a key strategic element in comprehensive, integrated, holistic efforts to end torture and related forms of ill-treatment in Moldova". It provides forensic expert training on identification and documentation of cases of torture. It also provides the Centre with technical equipment for its regional and laboratory departments. - In accordance with the Decision of the Parliament of the Republic of Moldova on the approval of the structure of the General Prosecutor Office No 77 of 04 April 2010, and the General Prosecutor Order No 365-p of 24 April 2010, a new Section on combating torture was established as a subdivision of the General	

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		Prosecutor's Office, to study the phenomena of torture and ill-treatment as a whole in order: - to identify and establish all factors, causes and conditions that permit the existence of those phenomena and to propose concrete and adequate solutions and measures for their liquidation; - to analyze the investigation of cases of torture, elucidating the problems which appear within the investigation and prosecution process of the allegations of torture and ill-treatment; - to take all legal measures to compensate the victims for the harm and to reinstate them; - to prosecute the cases of torture with an increased social importance, etc. In accordance with the Order of the General Prosecutor of November 2010, the Section for combating torture shall be informed within 24 hours about each case or allegation of torture that happened on the entire territory of the Republic of Moldova. One prosecutor (in some cases more than one) was nominated in each prosecutorial territorial office to carry out the examination of the allegations and prosecution of criminal cases on Coercion to Testify (art. 309 Criminal Code), Torture (art. 309/1 Criminal Code), Excess of Power or Excess of Official Authority (art. 328 (2) lit. a) and c), the crimes prescribed in 328 (3) and Acts of Violence against a Serviceperson (art. 368 Criminal Code). To assure their independence, prosecutors in charge of the investigation of cases on torture, inhuman and ill-treatment, nominated by the order of the chief prosecutor, shall not be implicated nor have any relations with the activities of the territorial subdivisions of the MIA or Centre for Combating Economic Crimes and Corruption (CCECC).	

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(b) Safeguards and prevention i) Reduce the period of police custody to a time limit in line with international standards (maximum 48 hours), after which transfer the detainees to a pre-trial facility, where no further unsupervised contact with the interrogator or investigator should be permitted; ii) Ensure that no confessions made by persons in custody without the presence of a lawyer that are not confirmed before a judge are admissible as evidence against the persons who made the confession; Shift the burden of proof to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress; iii) Judges, prosecutors and medical personnel should routinely ask persons arriving from police custody how they have been treated; iv) Consider video and audio taping interrogations; v) Regularly and following each transfer of a detainee undertake medical examinations; vi) Bring the legal safeguards for administrative detainees in line with international standards (limit to 48 hours,	The law provided for a limit of 72 hours of custody, after which the person is to be brought before a judge, which could be prolonged by 6 to 12 months depending on the crime; Police detention of minors could be prolonged by 30 days up to 4 months; Prolongation of police detention was decided by the investigating judge upon request of the prosecutor; De-facto, most detainees were kept in police custody for several weeks/months and regularly returned there for "further investigation" or for their trial or appeal, which made them vulnerable to reprisals; Many allegations that confessions obtained under torture were not excluded as evidence during court proceedings, in contravention of the national legislation; numerous reports that judges, prosecutors and other actors in the criminal law cycle routinely ignored allegations of torture; The burden of proof was on	**Government:** In order to develop collaboration between the representatives of the healthcare and internal affairs authorities, the Order of the Ministry of Health and MIA no. 372/388 of 3 November 2009 was issued. According to its provisions, the healthcare facility managers shall inform immediately the police authorities regarding the healthcare assistance granted to persons with injuries acquired as a result of an offence, traffic accident or sudden death. In cases when injuries derive from illegal actions of law enforcement authorities, the health care facility managers shall inform immediately the territorial or specialized prosecutor office. Concerning the medical certification of detainees who claim physical injuries, all the cases referring to the incidents from the penitentiary institutions, including cases of detecting physical injuries, are compulsorily to be sent to the Prosecutor's Office and to the Ombudsmen. The Medical Service examines the detainees on their arrival to the penitentiary in view of proving the presence of any physical injuries or other signs of violence, in accordance with article 251 (3) of the Enforcement Code and article 25 of the Statute on the Execution of Sentences by Convicts. The administration of the institution is obliged to inform, in writing and in the shortest time possible, the Penitentiary Institutions Department, the territorial Prosecutor's Office and the Human Rights Centre about the physical injuries of detainees arriving in the penitentiary. The notes received by the Penitentiary Institutions Department and delivered to the Medical Division are included in a special database. From the beginning of 2009, 13 cases of physical injuries have been registered, of	**Government:** Under the MIA order No. 367 of 10 November 2010, prosecution officer allows confidential meetings with the client whenever required and without limiting the number and duration of the meeting. Access to detained or arrested persons without written permission from prosecution officer is strictly prohibited except for the doctor and the counsel. In the context of reducing the period of staying in the police custody of persons detained up to 48 hours, a study has been initiated to look into the legislation and practices of other States in order to determine the opportunities of reduction of the detention term. ii) According to the Disposal No. 11/3966 of 26 October 2011, concerning the way of explanation of the rights of persons detained or subjected to other forms of deprivation of liberty by enforcement officers of the MIA, the police officer is obliged to explain the essence of suspicion, the reason, the rights of the deprived person. It regulates that in the case of the application of physical force during arrest or the existence of reasonable suspicion, the detained person will be obligatorily examined by a doctor, and if necessary by the medical personnel.. iii) Several trainings were organised for judges, prosecutors and medical personnel on the issue of treatment of detainees.

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access to a lawyer etc.); vii) Ensure that the sound legal basis of the National Preventive Mechanism (NPM) translates in its effective functioning in practice, including through allocation of budgetary and human resources.	the victim; No tape or video recording during interrogations; Paramedics were present in detention facilities of the police and the penitentiary system during working hours on weekdays, but the rules did not spell out when medical examinations should take place; Amendments to the Law on Parliamentary Advocates adopted had led to the establishment of an independent "Consultative Council", which has been designated as National Preventive Mechanism (NPM); complaints about insufficient resources.	which 2 cases were reported by the MIA. Police officers are obliged to supervise the work of the paramedics during the medical examination of the detainees of the temporary detention facilities (isolators), issuing two copies of medical records. These activities and organizational practices confirm where the person was detained, and that the detained person was not tortured or mistreated. The paramedics employed are cumulatively paid by the police stations, at a rate of 0.5% of their salary. The NPM has carried out approximately 90 visits to places of detention in 2009. They met 10 persons who stated that they had been ill-treated and 27 persons with visible marks. Some members of the Consultative Council have been restricted access to places of detention or have been confronted with considerable delays. Regarding the legal basis of the NPM, on 26 July 07, the Parliament adopted Law no. 200, amending and supplementing the Law on the Parliamentary Ombudsmen, thus assigning the mandate of the NPM to the Parliamentary Ombudsmen. In view of achieving the involvement of civil society, a Consultative Council was established, with the purpose of providing advice and assistance in exercising the Parliamentary Ombudsmen's liabilities as NPM. Given the need to supplement the Consultative Council with 5 members, the Centre for Human Rights announced a call in this respect, but because the number of applications was insufficient, it was decided to extend the deadline for submission until 13 November 2009. During the first 9 months of the 2009, 117	iv) According to article 93 of the PPC, video and audio recordings are recognised as evidence in criminal proceedings and are taken into account. There are video and audio surveillance systems installed in prisons for monitoring purposes. vi) Changes and additions were made to Art. 175 of the Execution Code which states that "Arrest with procedural measures of constraint of up to 72 hours will provide a provision with respect to rights and fundamental freedoms and appropriate conditions of detention". With the support of the Council of Europe and within the framework of the implementation of the Joint Programme of the EU/CoE "Supporting Democracy in the Republic of Moldova", the remand center of Chisinau General Police Commissariat has been renovated in accordance with the recommendations of the CPT. Commissioning of the refurbished IDP is expected in 22 December 2011. vii) In June 2011, new members of the NPM Consultative Council were elected. During January-September 2011, the members of the Ombudsman institution and NPM Consultative Council conducted 157 visits, received 28 acts, made 8 requests and initiated 3 criminal cases. In order to ensure the efficiency of the NPM in line with the international

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		preventive visits were carried out. Out of these, 31 were carried out by the members of the Consultative Council and 11 by the Parliamentary Ombudsmen and officials from the Centre for Human Rights. Observations of the Special Rapporteur during his visit in September 2009: The NPM still faces a number of challenges: firstly, the legal basis for this mechanism is rather ambiguous, which has led to different interpretations regarding which entity constitutes the NPM. From the side of the Ministry of Justice, it is argued that the Parliamentary Ombudsperson is the NPM. However, even the Ombudsman in charge, as well as other relevant actors, including international bodies such as the Council of Europe's Commissioner on Human Rights, have clearly stated that the NPM is comprised of the Consultative Council, under the chair of the Parliamentary Ombudsperson. The Special Rapporteur reiterates that only the latter interpretation is in line with OPCAT and the Paris Principles. Another problem is that although the NPM is meant to be comprised of 11 members, currently only six members serve on this mandate (including the Ombudsman). The Special Rapporteur wishes to emphasize that although international organisations have indicated their willingness to support the NPM, including adequate pay for its members, the State has the primary obligation to provide sufficient resources. ***Non-governmental sources:*** Although the law requires that persons be transferred within 72 hours, in practice, persons are held in police custody for up to one year. Lawyers often do not have access to their	recommendations and human rights pillar from the Strategy Sector Reform for 2011-2016, a working group on amending the Ombudsman Law was established.

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		clients. The legal assistance provided to torture victims does not comply with international standards. ***Non-governmental sources:*** On 14 March 2008, Parliament amended the Criminal Procedural Code by adding article 3-1, which stipulates that the burden of proof in cases of torture lies with the institution in which the detainee was held. This would appear to be a positive development, but the practice shows that, despite the law reform, the burden of proof still lies with the victim. No legislative initiatives in reducing the period of police custody (up to 72 hours), are reportedly in progress. Persons arrested under a warrant issued by a judge and persons convicted to administrative ("contraventional") arrest should be detained in detention facilities of Ministry of Justice. - Although efforts were undertaken by the Ministry of Justice and the Ministry of Internal Affairs in 2010 to ensure the custody of person initially arrested, there are still cases where detainees are held in police stations for several weeks. Persons have also been reportedly returned to police custody, including for "further investigation", which makes them vulnerable to reprisals in the event of filing a complaint about ill-treatment. - Juveniles suspected of an offence may not be kept in police custody for more than 24 hours, and the detention of juveniles during the investigation may not exceed four months. - A publicly-funded legal assistance programme was established. - There is no time limit on trials or appeals or on detention during trial and appeal. Some cases of detention for a year or more are still reported.	

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		Conditions in the pre-trial detention facility where most juveniles are detained are inhuman, and disciplinary sanctions violate international standards. - There have been no reported cases of refugees or asylum-seekers being placed in police custody or detention. - Testimonies obtained through torture are not excluded from criminal proceedings. Often, the first hearing of detained persons takes place without the presence of a lawyer. - Complaints related to the confidentiality of meetings with lawyers are often not considered. State-appointed lawyers act superficially and tend to cooperate greatly with the police. - Judges, prosecutors and medical personnel do not generally ask about details of the treatment while in custody. - In practice, interrogations are not recorded on audio or on video. - The National Forensic Centre only documents the results of forensic examination superficially, often failing to meet international standards. It is not independent. - Although the law requires a doctor and/or penal institution to inform the chief prosecutor about evidences of torture or other ill-treatment, in some cases no action is taken to this effect. Evidence of psychological trauma or other indications of torture are generally not undertaken, which leads to under-documentation. Domestic courts favour the official over independent medical sources provided by victims or their representatives. - The preventive medical examination of detainees in prisons does not allow for the proper documentation of torture. - Although access by the NPM to places of detention has reportedly improved, it remains de	

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		facto dysfunctional. Efforts to improve functionality of the NPM have been seriously hindered by an internal conflict between the Ombudsman (chairman of NPM) and three members of the Consultative Council. - In November 2009, the Committee Against Torture issued a detailed recommendation (CAT/C/MDA/CO/2) regarding the improvement of the NPM's functionality through strengthening its independence and capacity. - The NPM is not well-known to the public at large. It does not have a separate budget line or other resources that might be managed for the specialized purposes. - An Action Plan on the Protection of Children's Rights and Prevention and Combating of Juvenile Delinquency covering 2008–2010 was adopted, but implementation has been minimal. Efforts undertaken by the juvenile inspectors and the Commissions on Minors in the area of prevention were not effective. - No prevention programmes directed specifically at children at high risk of offending (secondary prevention) exist. - The law and procedures concerning young children involved in criminal conduct are poorly defined. In particular, compliance with the 'last resort' principle is not required and the right to legal assistance in such proceedings is not recognized. - During the last five years, the number of juvenile prisoners serving sentences has fluctuated between a high of 138 in 2006 and a low of 32 in May-June 2009. The number of juveniles confined in the 'special school' for children has fallen by almost 90 per cent during the period 2001–2008.	
(c) Institutional reforms	Lack of independence of	**Government:** Although relevant trainings and	**Government:** Strategy for Justice

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i) Continue and accelerate reforms of the prosecutor's office, the police and the penitentiary system with a view to transforming them into truly client-oriented bodies that operate transparently, including through modernized and demilitarized training; ii) Strengthen the independence of the judiciary; make judges aware of their responsibilities with regard to torture prevention; iii) Conceive the system of execution of punishments and its legal framework in a way that truly aims at rehabilitation and reintegration of offenders, in particular through abolishing restrictive detention rules and maximizing contact with the outside world; iv) Take further steps to improve food and access to health care; v) Strengthen further non-custodial measures before and after trial.	judges who in many cases continued to follow the arguments of the prosecutor without intervening in cases of alleged torture; The legal framework and penitentiary policies in Moldova were punitive, directed at locking people up, rather than aimed at reintegrating prisoners, in particular extremely restrictive visiting policies and numerous constraints on contacts with the outside world; Common problems at all pre- and post-trial prisons were poor hygienic conditions, restricted access to health care and lack of medication as well as risk of contamination with tuberculosis and other diseases; The periods of pre-trial detention were extensive; several of his interviewees had spent up to three or four years in detention without a final judgment.	seminars are taking place, there is still need for administrative and institutional measures including further trainings in the MIA and involvement of all actors in torture prevention. The MIA is in the process of implementing the Institutional Development Plan for 2009-10, which was developed in the context of reforms of the entire central public administration. In this view, the Ministry aligns to European standards and adjusts the existing legal framework to the EU acquis of decentralization, demilitarization and de-politicization of its activities, improving the management of service to society. In addition, the Ministry has organized and conducted instructive methodological seminars for leadership and personnel of subdivisions of the criminal prosecution. The seminars concerned different topics, the main emphasis being on the observance of the law by police officers in the criminal investigation work. The Ministry set up a committee on fundamental rights and freedoms of citizens. In the same context, it issued an ordinance on procedural time limits, according to which prosecution officers must provide a report to the Ministry with a view to control and coordinate the extension of periods of arrest. Furthermore, billboards on rights and obligations of persons suspected, detained, arrested and prosecuted were set up. Similarly, all sections of the prosecution authorities were provided with models of procedural documents, such as minutes/process-verbaux of apprehension and explanations of the rights and obligations of the detained persons, compiled by the General Prosecutor's Office. The preliminary report regarding the respect of rights of detained persons, elaborated by the Institute for Penal Reform within the project	Sector Reform for 2011-2016, adopted recently by the Government, creates the institutional framework necessary to coordinate reform actions with the assistance provided by the development partners to the justice sector. Practical implementation of the Strategy and application of its specific components will help develop a justice sector which is fair, of high quality, with zero tolerance to corruption, contributing to the sustainable development of the country. The overall objective of the Strategy is to build an accessible, efficient, independent, transparent, professional justice sector, with high public accountability and consistent with European standards, to ensure the rule of law and protection of human rights. In accordance with the concept of the MIA reform and the Action Plan, the reform process is divided into three stages: - Development of the legal framework (2011); - Creating the institutional and functional framework in order to regulate the activity of the subdivisions (2011-2012); - Capacity building of subdivisions regarding the implementation of the newly approved MIAframework. 40 draft laws, normative and departmental acts have been adopted. The MIA has initiated an assessment

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		"Strengthening Criminal Justice System Reform in Moldova", was sent to the heads of criminal prosecution bodies of territorial subdivisions, in order to undertake measures to eliminate any violations in the future. The MIA participated in the working group set up by the General Prosecutor's Office, where the draft of the 'Instructions on how to grant visits and telephone conversations to persons detained in preventive arrest' was elaborated. A law was drafted to amend some legislative acts for the re-examination of the applicable disciplinary regime for judges, which represents a balance between the guarantee of the judges' independence and the necessity of sanctioning a judge in case his or her behaviour necessitates such action. In order to ensure the impartiality of judges, an amendment to the law is proposed, introducing an obligation of the judge to inform the president of the court and the Superior Council of Magistrates about any attempt to influence the process of decision making. Regarding conflicts of interest, a draft law is proposed to complete article 15 of the Law on the Status of Judges, which would stipulate the obligation of the judge to present a declaration regarding his or her personal interests. A reform of the judicial organizational system is proposed, which includes the abolition of specialized law courts (Chisinau Economical District Court, Military Court, Economical Appeals Court). The specialized courts' duties shall be taken over by the courts of common jurisdiction. In March 2009, a decision of the Supreme Court was issued, clarifying many aspects of case law	and reforms of the police activity. Public- private partnerships and projects have been launched for: - Installation of video surveillance systems in all police commissariats in the country; - Contracting and installing automatic surveillance systems on the national routes; - Implementation of modern methods in investigating crimes by applying modern technology in order to eradicate ill-treatment. iv) During 2011, 9431 cases of illness in penitentiary institutions were documented. Medical services have been implemented in the context of the National Programmes for HIV/AIDS, ITS and TB control, and extended to the external consultations on various health problems (193 cases), inclusively to private medical consultations (12 cases). ***Non-governmental sources***: A draft Strategy on Justice System Reform for 2011-2015, has been submitted to the Parliament for adoption. A comprehensive Plan of Action still needs to be developed.

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		concerning Art. 3 ECHR. There have been 24 ECtHR judgments against Moldova under Art. 3. Aspects of the Plenum decision include the requirement that detainees are registered; the registration of officials present; that the person not be interrogated in the absence of an "escort"; and an unbiased investigation into allegations of ill-treatment. The Superior Council has held seminars on Article 3 and the case law against Moldova. One of the objectives of the continuous training of judges is their conscious involvement in the eradication of torture. In this context, thematic seminars on preventive arrest were organized, especially for instruction judges, judges, prosecutors and lawyers. From the beginning of 2008 the Ministry of Justice has undertaken numerous activities in the field of promotion of human rights. Within the Training on Human Rights the following topics were included: "The minimum standards of maintenance of convicted persons", "The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", "The Universal Declaration of Human Rights" and "The national, regional and international mechanisms of human rights protection". The regimes in the penitentiaries have been established according to the Execution Code and are characteristic to each type of penitentiary, which represents different stages of the punishment of deprivation of liberty. Thus, the practice envisages different stages within the respective process. The first one (the initial regime), a reduced period compared to the total term of the sentence, represents the stage of	

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		ensuring the adaptation of the person to the penitentiary environment and an evaluation according to rules nos. 16, 51, and 52 of the Recommendations of the Committee of Ministries of the CoE no. R2006 (2). Generally speaking, the appreciation that the penitentiary policy is still punitive does not correspond to reality. Thus, the provisions regarding the regimes of detention (art. 269 to 273 Execution Code) constitute a progressive evolution of rights of detainees in relation to their behaviour. The enforcement depends on the punishment and the behaviour of the detainees, the danger they represent, based on an evaluation of the personality and behaviour, as well as on their individual plan of serving the sentence. Regarding visits, the law stipulates the right of the detainee to at least one visit a month. Nevertheless, depending on the behaviour of the convicted person, the penitentiary administration can grant additional visits. Consequently, depending on his/her behaviour and his/her attitude towards labour (remunerated or not), the convicted person may benefit from 22 long- and short-term visits during a year. The penitentiary program includes also educational training, labour and sport activities etc., which, along with social assistance granted by the administration, contribute to the reintegration of the convicted persons into society. According to art. 227, 228 and 229 of the Execution Code, detainees have access to information, files, correspondence and telephone calls and can address correspondence to law enforcement bodies, central public authorities and international intergovernmental organizations. Post boxes were installed in all	

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		prisons and letters are collected by employees of the Moldova Post. A number of deficiencies of conditions of detention have been asserted in 21 temporary detention facilities (isolators) of the territorial police commissariats. As a result, relevant letters have been addressed to commissariats in Balti, Basarabeasca, Cimislia, Soldanesti, Rezina, Vulcanesti, Comrat, Leova, Orhei, Cahul, Causeni, Anenii-Noi, Gagauzia and Floresti with deadlines for proper actions to be undertaken to redress the situation. Despite the undertaken measures to create decent conditions of detention, in some temporary detention isolators the situation remains complicated: - lack of natural illumination and ventilation in cells (Balti, Bender, Anenii-Noi, Basarabeasca, Cahul, Causeni, Cimislia, Drochia, Floresti, Hincesti, Leova, Riscani, Singerei, Soldanesti, Soroca, Telenesti, Comrat, Vulcanesti and the Operative Service Department of the MIA); - lack of mattresses, blankets and pillows (Balti, Bender, Anenii-Noi, Basarabeasca, Causeni, Floresti, Hincesti, Leova, Rezina, Riscani, Soldanesti, Telenesti, Vulcanesti); - lack of adequate sanitary facilities in cells (Bender, Anenii-Noi, Basarabeasca, Cahul, Causeni, Cimislia, Floresti, Hincesti, Leova, Nisporeni, Ocnita, Rezina, Riscani, Singerei, Soldanesti, Telenesti, Comrat, Vulcanesti and the Operative Service Department of the MIA). The quality of the food has been improved and detainees are now given something to eat three times per day. In 2008, 2,878 persons were detained, out of which 2,037 were under preventive detention. In 2009, 2,644 persons were detained, out of which	

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		1.784 persons were under preventive detention. ***Non-governmental sources:*** The criminal investigation bodies continue to have a punitive attitude. ***Non-governmental sources:*** As of 2010, the prosecutor's offices, the police and the penitentiary system still operate on the basis of the soviet structure, and are fully militarized. In 2010, several efforts to demilitarize the prosecutor's office failed. - Moldovan legislation and practice are incompatible with international standards as far as the use of isolation or solitary confinement as a disciplinary measure for juveniles is concerned. - Although the establishment in 2010 of two separate units for the investigation of torture and juvenile justice within the General Prosecutor's Office and in each regional prosecutor's office is a positive development, there are some concerns as to the effectiveness and independence of the new anti-torture prosecutors. - Despite some positive developments, the Government has not done much to promote the independence of the judiciary. The Ministry of Justice has repeatedly been involved in removing judges, including Supreme Court judges, including for highly questionable reasons such as "losing cases in Strasbourg" and for intentionally delaying the prosecution of eminent cases linked to the April 2009 events. - On 30 October 2009, the Supreme Court of Justice issued a guidance decision on the application of article 3 of the European Convention of Human Rights in domestic courts. This non-binding guidance, while not perfect, provides important guidance for the	

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		judiciary. - Although the Enforcement Code has various provisions with respect to the rights of inmates to hold private correspondence and telephone conversations and receive food parcels, these rights are not envisaged adequately due to, for example, lack of public telephones in most institutions and a lack of clear regulations for appointments. - The criminal subculture and prisoner's hierarchy is partially supported by the prisons' administrations as a mechanism of non-formal control over the detainees. - The problem of food shortage in penitentiary institutions remains. In 2007, the amount allocated from the state budget for feeding prisoners constituted 53.2% of the minimum necessary, in 2008 - 49.8%, and from January to August 2009 it was 64.4%, average being allocated about 3.6 lei per day for a prisoner. Average daily dietary amount of value remains two times smaller than required by law. - During the period of 2008-2009, the Government undertook renovation in the medical centre of women's penitentiary in Rusca. The Centre includes a gynaecology office, a dentist, an internal therapy-medicine office and a clinical laboratory. UNFPA complemented these efforts by providing medical equipment and furniture. - In September 2010, probation services were transferred to the Department of Penitentiary Services. It is unclear, however, whether this reform will have positive impact due to widely practiced disciplinary attitude among probation staff. The pre-trial probation reports are used only in a limited number of cases. - There is only limited implementation of the 2008 Law on Mediation due to the lack of and	

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		undeveloped capacity of mediators and to the actual performance indicators stimulating the investigation bodies not to interrupt the investigation where relevant, but to send it to the courts. - The current arrangements have been described by experts as being very weak in the area of rehabilitation and social integration of victims. - The Committee on the Rights of the Child noted with regret that some of its concerns and recommendations regarding juvenile justice had not been adequately addressed, and reiterated its previous recommendation that a separate system of juvenile justice fully in line with the Convention be established. (CRC/C/MDA/CO/3, paras. 7 and 73). - No document containing a global strategy for juvenile justice reform exists. A strategy can be inferred from the programme document of the 2003-2005 and 2008-2011 juvenile justice projects. The programme document of the 2008-2011 had the following three 'priority areas' and three 'secondary areas': continued legal reform; development of a probation service; revision of effective legal assistance; provision of services to children in detention; prevention of juvenile delinquency; and training of juvenile justice professionals. Although the stated objectives are broad, the project is more holistic, in particular in addressing the need for more coherent prevention policies and programmes. There are still some gaps, however. Emphasis on diversion and alternative sentences seems to come at the expense of attention to the programmes applied in correctional facilities and services for juveniles leaving correctional facilities and returning to the community. Accountability is	

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		not addressed directly by the project. - NGOs played a small role in the implementation of the 2008–2011 project. - There is a lack of ownership by the national authorities as regards the implementation of the project and of the process of developing a juvenile justice system. - Although there has been some improvement in the treatment of juveniles after the designation of prosecutors in each trial court, the impact is still limited, in part because the designated judges have insufficient training and because many of them handle a rather small number of cases involving juveniles. In 2008, only two courts outside the capital handled more than one juvenile case per week and 17 district courts handled on average less than one case per month. - A training manual for judges, prosecutors and police has been developed and incorporated into the curricula of the National Institute of Justice, which trains judges and prosecutors, and the Police Academy. The first class of 20 prosecutors and 9 judges graduated in 2009. 130 judges and prosecutors were trained in child rights in six seminars (CRC/C/MDA/3, para. 374). Opinions on the impact of training vary. - Changes to the Criminal Code made in 2009 reduce sentences for certain crimes. Although the measures can be considered as steps towards compliance with the 'last resort' and 'shortest appropriate period of time' principles, set forth in article 37(b) of the CRC, they do not comply fully with these principles. - During the last five years, the number of juveniles given custodial sentences has fallen sharply, from 194 in 2004 to 100 in 2008. The percentage of convicted juveniles given	

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		custodial sentences rose sharply during the same period, because the number of convictions fell dramatically, from 1,774 in 2004 to 445 in 2008. The decline in the number of juveniles given custodial sentences is due in part to a 2008 amnesty. - The main alternative sentence used is 'conditional suspension of the sentence', equivalent of probation. In 2008, fines were imposed on approximately 10 per cent of convicted juveniles, and community service on nearly 25 per cent. Some convicted juveniles reject sentences of community service because it is considered demeaning, and there is some hostility towards offenders. - The number of persons below age 18 being supervised by the Probation Service at the end of 2008 was approximately 1,000, and 170 new cases were added to the caseload during the first four months of 2009. - A Probation Service and a publicly funded Legal Aid Service have been established and are in the process of developing specialized staff or programmes for juveniles. Measures intended to prevent abuse of juvenile suspects have been introduced and the recently established ombudspersons play a valuable role in investigating the situation of juvenile suspects, detainees and prisoners. - A Law on Mediation has come into force and mediators have been trained and certified. Referral of cases involving juveniles to mediation has begun and results are positive. **Government:** The Government invested 39 million MDL for the improvement of conditions in detention facilities, including for reparation and procurement of medicines. The most important achievements in this field were:	

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		-launching the reconstruction of the Penitentiary No. 1 in Taraclia; -the reparation of the cells for minors detention in Penitentiary No. 13 in Chisinau; -organization of tenders for the reconstruction of the Penitentiary No. 4 in Cricova; -creation of a modern aqua treatment centre in Rusca Penitentiary No. 7; -improved dentistry services in the penitentiary hospital. The Department of Penitentiary Institutions promotes a program for the distribution of goods and items of personal hygiene. In 2010, there were 6270 detainees in detention facilities as opposed to 10 000 detainees in 2005. During the first 9 months of 2010, the number of morbidities amounted to 9537, as compared to 10 056 during the same period of 2009, out of which the number of persons with body injuries was 1527 in 2010, and 842 in 2009. - In early 2010, the process of establishing a representative and self-administrative organ of the prosecutors was finalised, in accordance with the provision of the Law on prosecutor's Office. In 2010, the Superior Council of Prosecutors (SCP), as guarantor and representative of the prosecutor's body assured the work of the Disciplinary Board, Qualification Board, the improvement of the policy on human resources, reorganization and optimization of the prosecutor's activities, strengthening the role of the SCP in the activities of the prosecutors. During 2010, the SCP managed the following activities: -Improving the activities of the prosecutorial organs, raising the level of prosecutors'	

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		responsibility, consolidating transparency, changing the image of prosecutors' image in the society. -Developing cooperation and partnership with other state authorities' organs. - Protecting the prosecutors' statute. - Developing partnership relations with mass-media through the elaboration of a communication strategy. In order to perform its duties prescribed in the art. 82 of the Law on Prosecutors' office and the Regulations regarding its activities, Superior Council of Prosecutors (SCP) had 18 meetings/sessions and adopted 318 decisions. The Qualification Board and the Disciplinary Board have had a number of meetings, adopted several decisions and considered 64 disciplinary proceedings. So far, the Appeal Court did not repeal any decisions adopted by the SCP.	
(d) Compensation and rehabilitation i) Incorporate the right to reparation for victims of torture and ill-treatment into the domestic law together with clearly set-out enforcement mechanisms; lend full support to non-governmental institutions working on the rehabilitation of torture victims and protect the staff working for those institutions.	Article 616 of the Civil Code dealt with compensation, but no cases of compensation in practice; Services were provided by the non-governmental Medical Rehabilitation Centre for Torture Victims "Memoria", which depended on foreign funding and was unable to cover the entire country; Rehabilitation therefore suffers from a lack of financial resources for the establishment of adequate facilities as well as for training of health personnel; Allegations of threats	**Government:** There was no increase in funding for the rehabilitation of victims of torture since 2008. Humanitarian aid was provided in the framework of projects for rehabilitation of victims of torture. ***Non-governmental sources:*** Severe problems in securing funding to assist with the rehabilitation of torture victims exist. ***Non-governmental sources:*** In principle, although criminal and civil remedies exist under domestic law for victims of torture, in practice, there continue to be severe obstacles to access such legal remedies. - In 2009, at the initiative of the Prime Minister, a commission comprised of representatives of several ministries and a civil society organisation has been established for identifying	***Non-governmental sources:*** On 4 April 2011, the Mayor of Chisinau, declared that 97 young people, victims of April 2009 events and patients of the non-governmental organization RCTV Memoria, a torture rehabilitation centre, would benefit from an indemnity of 10,000 lei each from the City Hall. On 30 May 2011, the Municipal Council of Chisinau approved a list of 100 victims that would benefit from indemnities as a result of April 2009 events; in addition to this, the mother and wife of Valeriu Boboc, who was beaten to death by police during the April events, would receive 10,000 lei each. A total of 1,020,000 lei have been allocated in this sense.

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	against staff of "Memoria".	the victims of the April 2009 events entitled to financial compensation, remedies and other rehabilitation measures. - On 22 April 2010, the Commission decided that both civilians and police officers who suffered physical or psychological trauma would be provided with the rehabilitation and compensation. - The identification of the victims was delegated to the Ministry of Internal Affairs and Ministry of Health, with the help of non-governmental organizations. Non-identified victims can still submit applications accompanied with other documents. As of 1 June 2010, there had been no monetary compensation paid to the victims, although a draft decision on the first payments to 19 victims has reportedly been forwarded to the Government for approval. - In practice, the primary victim rehabilitation centre remains severely under-resourced.	A new commission, established by the Prime Minister, was constituted on 14 April 2011, and began activity on 29 April 2011, with the task to identify civilian persons and Ministry of Interior officials who were victims of the April 2009 events. The new commission is reportedly constituted for an unlimited term, and is charged with identifying persons for compensation and rehabilitation measures. There is no consistent official number of persons subjected to abuse during the April 2009 events, but NGOs estimate the figure to be circa 700 persons. According to the data presented by the Deputy Minister of Justice in the Parliamentary hearing of April 14, 2011, the victims of the April 2009 events are 467 civilians and 271 employees of the Ministry of Interior. There is no annual budget reserved for providing adequate compensation and/or medical assistance. Following the April 2009 events, only 15 civilians and 5 policemen received compensations, a total of 20 victims. On 12 May 2011, the Parliament of the Republic of Moldova adopted the National Action Plan on Human Rights for the period 2011-2014, which includes Chapter IV which refers to granting legal assistance to victims of torture and other ill-treatment.

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			According to the Decision 299 of the Ministry of Healthcare of the Republic of Moldova, the Republican Clinical Hospital has been chosen to provide medical assistance to April 2009 victims. However, this does not include other victims of torture and ill-treatment. Also this decision appears to have no clear mechanism of implementation and funding. The primary entity conducting rehabilitation for torture victims is an NGO, RCTV "Memoria".
(e) Women i) Ensure adequate funding for the existing infrastructure to support victims of domestic violence and trafficking and extend the network of centres providing psycho-social, legal and residential services to all parts of the country taking into account the increased vulnerability of women and girls in rural areas; ii)Establish specialized female law enforcement units; iii) Devise concrete mechanisms to implement the new Law on preventing and combating family violence in practice, including through a Plan of Action for its implementation and monitoring, including through allocation of adequate	The scale of trafficking was relatively unknown because most victims were not identified due to the absence of systematic identification processes and the inability or unwillingness of some victims to report their trafficking experiences; The infrastructure to support survivors of domestic violence was lacking in most parts of the country (only one shelter existed in July 2008, which was privately run and situated in the capital).	**Government:** Through the three Health Centres for Women, women subjected to any form of violence or trafficking are provided with psychological counselling, followed by a medical examination and placement in a rehabilitation centre, if necessary. The 12 Youth Friendly Health Centres provide a psychologist, consultancy and educational discussions, healthcare services for detecting diseases, as well as supervision and medical and psychological rehabilitation of victims of trafficking. During 2009, the Maternal Centre of Placement and Rehabilitation for young children from Chisinau municipality accepted a victim of trafficking and other five persons facing the risk of being trafficked. They have been provided with psychological counselling, medical examinations and rehabilitation assistance. A priority in the field of combating and preventing domestic violence is the creation and consolidation of the services that are currently underdeveloped and are provided mainly by NGOs. Three centres are highlighted:	**Government:** i) The MIA with the support of the United Nations Population Fund (UNFPA) has developed a curriculum for the heads of operative sector officers, concerning the implementation of the legislation on preventing and combating domestic violence and methods of intervention and duties of each member of the team in case of domestic violence. A manual has been developed by the UNFPA for the students of the Academy "Stefan cel Mare" of the MIA concerning the implementation of the legislation on preventing and combating domestic violence. Four training sessions have been carried out within the National Institute of Justice with the participation of prosecutors, employees of the MIA and the MLSPF, lawyers and judges of the administrative-territorial units, the International Center "La Strada" and the

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budgetary and human resources to relevant State bodies.		- the Maternal Centre "Pro Femina" (Hincesti) provides temporary placement and counselling services (psychological, social, legal) to mothers and children as victims of domestic violence; - the Family Crisis Centre "SOTIS" (Balti) provides counselling to victims of domestic violence (psychological, social, legal, medical); - the Centre for temporary placement of children at risk "The Way Home" (Balti) provides rehabilitation services to mothers and children as victims of domestic violence or victims of human trafficking. In the framework of the Project „Better Opportunities for Youth and Women", financially supported by the International Agency for Development of the USA (USAID), ten multifunctional centres for social reintegration (with placement) were set up, which provide services for victims of human trafficking and victims of domestic violence. According to a Disposition by the Ministry of Health (no. 373-d of 15 June 2009), the Directors of Family Doctors Centres of Anenii Noi, Şoldăneşti, Rezina and Vulcăneşti districts shall ensure that deputy directors, responsible for providing healthcare to mothers and children, legal doctors, family doctors, and family doctors' medical assistants participate in the course: "Protection and rehabilitation of victims of domestic violence and victims of trafficking in human beings. Multidisciplinary teams at the communitarian level" within the "Protection and rehabilitation of domestic violence victims" project. The participation in the above mentioned course strengthened the medical staff's capacities to solve issues related to domestic violence and trafficking in human beings. The Law on Prevention and Elimination of	psychologists from the Center for protection and assistance from Chisinau in which the MIA employees have participated as trainers. In collaboration with the representatives of UNFPA, the Ministry of Labour and Social Protection and the Ministry of Health, the draft Order of approving the instructions concerning intervention of the social assistance body was elaborated, concerning intervention of the social assistance body, internal affairs and medical institutions in cases of domestic violence. Human trafficking: the hearing of a minor will take place in the presence of the psychologist and of a legal representative. A strategic partner in such cases is the International Center "La Strada", which carries out protection measures of the victims jointly with the MIA. The National Referral System for Protection and Assistance of Victims and Potential Victims of Trafficking in Human Beings (NRS) was launched in five pilot rayons by establishing the so-called Multidisciplinary Teams (MDT) composed of all relevant specialists responsible for identifying and referring victims and providing protection and assistance to beneficiaries together with the NGOs. Since 2009, the NRS was expanded at the community level in 4 NRS rayons, and the MDT approach was introduced in two rayons and one town from Transnistrian region.

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		Violence in the Family entered into force on 18 September 2008. It includes important provisions on domestic violence, establishes an institutional framework with detailed responsibilities of the relevant authorities, provides for the creation of centres/services for the rehabilitation of victims and aggressors, and for complaints mechanisms, protection orders and punishment of aggressors. In order to implement this law, a draft law regarding the amendment and modification of a number of legal acts shall be enacted. The objective of this draft law is to amend the following normative acts: Criminal Code: - Introducing an article on the definition of the family member; - Introducing a new offence: violence in the family; - Introducing a new offence: sexual harassment; - Introducing an article related to rape in order to include matrimonial rape; - Introducing a new offence related to the violation of a protection order. Criminal Procedure Code: - Introducing a new article on the protection of the victim of domestic violence; - Stipulating the obligation of the prosecutor and court to verify if the victim of domestic violence expressed freely his or her consent for reconciliation. Civil Procedure Code: - Introducing a new chapter on special procedures for the application of protection actions in cases of domestic violence. The Ministry of Labour, Family and Social Protection has developed a draft of a Government Decision on approval of the Regulations regarding the organization and	Currently, the NRS is expanded to provide protection and assistance in all rayons throughout the Republic of Moldova. Another mechanism is the monthly Technical Coordination Meetings (TCM) on anti-trafficking and gender hosted by the OSCE Mission in Moldova, aimed at further coordination among anti-trafficking actors and encouraging an ongoing exchange of information. The meetings are co-chaired by the Ministry of Labour, Social Protection and Family which reports on the activities carried out by the Government. The National Institute of Justice is expanding its module on THB and domestic violence that targets primarily judges, prosecutors and police officers. Currently a monitoring system covering all the trafficking cases is being established to cover the activity of law enforcement and judiciary, from discovery of the case to pronouncing of irrevocable sentences in the court. The system will allow increased transparency of prosecution and will be enforced through direct Parliamentary control. iii) The Ministry of Labour, Social Protection and Family has initiated the harmonization of the development of the draft framework Regulation for the organization and operation of centres for rehabilitation of victims of domestic

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		operation of centres for assistance and protection of victims of family violence which is also in the process of finalization. In the context of the development of a joint methodology for collecting statistical data regarding domestic violence, the project "Development of an integrated information system for management of data on violence within the family in the Republic of Moldova" was launched on 1 July 2008. It is funded by the Agency for International Assistance of the Romanian Government for Moldova and implemented by UNFPA in cooperation with the Ministry of Social Protection, Family and Children and civil society. In the framework of this Project, the concept of the informational system "State Register of Cases of Violence within the Family" was approved by Government Decision no. 544 on 9 September 2009. This system will significantly contribute to the continuous monitoring of domestic violence and statistical analyses will provide a consistent basis for developing effective policies to prevent and combat domestic violence and will facilitate the cooperation between the appropriate institutions. In order to initiate the process of statistical data collection, statistical cards were developed for recording cases of violence within the family for experts from three branches (health, social protection and police). This process was launched in two pilot districts: Drochia and Cahul. ***Non-governmental sources:*** Moldova is a source and, to a lesser extent, a transit and destination country for trafficking in women, men and children for purposes of forced prostitution, begging and forced labour. The small breakaway region of Transnistria in	violence and on the Minimum Quality Standards for social services provided to victims of domestic violence approved by the *Decision of the Government No. 1200 from 23.12.2010.* In 2011, law enforcement bodies sent 153 requests for protection orders to courts and supervised the implementation of 178 protection orders. Law enforcement bodies have intervened and assisted in solving 77 cases of domestic violence. In 2011, the MIA jointly with the International Center "La Strada" has organized a national seminar and two international seminars on "Combating Sexual Exploitation of Children - exchange of good practices," "Audience of the minor victims / witnesses of sexual abuse ". ***Non-governmental sources:*** The reported number of child victims of violence has steadily increased over the past few years and is known to be underreported. Corporal punishment, while officially banned, is still widely used. Studies indicate that 25% of children state that they are beaten by their own parents, 13% report being corporally punished in schools by their school teachers. According to the most recent 2010 survey results by National Bureau of Statistics, the total prevalence rate of spousal/partner violence against women over lifetime since the age of 15 is 63.4%. The prevalence rate of violence

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		eastern Moldova is outside the central Government's control and remained a source of trafficking. - The new Government demonstrated a high-level commitment to combating trafficking by establishing a cabinet-level national committee on trafficking led by the foreign minister and, fully funded and staffed Permanent Secretariat of the National Committee for Preventing Trafficking in Persons. The Government continued funding the trafficking assistance centre run jointly by the government and the International Organization for Migration (IOM). - Since 2006, the Government has been implementing the National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking (NRS) - a comprehensive system of cooperation between governmental and non-governmental agencies involved in combating human trafficking. On 5 December 2008, the NRS Strategy 2009 - 2016 and Action Plan 2009 - 2011 were approved by the Parliament. - As of 2010, the Assistance and Protection Centre for Victims and Potential Victims of Trafficking in Human Beings (CAPC) has been established within the NRS which was subordinated to the Ministry of Labor, Social Protection and Family, and is jointly coordinated by the IOM. The CAPC provides temporary residence, psychological, social and legal support to victims. In 2008, the Government institutionalized the CAPC. - The NRS is being implemented in the regions through the creation and training of multidisciplinary teams (MDTs) composed of a wide range of specialists. Since 2006, MDTs have been created and trainings have been carried out in 26 territorial units of Moldova.	over lifetime among rural women (68.2%) is slightly higher than among urban ones (57.4%). The highest percentage of women who have ever experienced spousal/partner violence is among those in the age group of 45-54 (70.3%), followed by women in the age group of 55-59 (69.1%). However, even women in the age group of 15-34 report high percentages of such experiences (53.7% of the age group of 15-24 and 55.7% of the age group 25-34). Progress was made during the period September 2009 – present, in improving system-responses to domestic violence, with the first circa 40 protection orders issued by certain courts to victims under the 2008 Law on domestic violence. In addition, in September 2010, amendments were made to a number of laws to heighten the efficacy of the legal framework for combating domestic violence and other forms of violence against women, including amendments to strengthen the civil procedure code and criminal procedure codes. The new legislation also criminalizes sexual harassment and domestic violence. Nevertheless, reportedly effective protection to victims remains unavailable, particularly (but not only) in rural areas. In early 2011, the European Court of Human Rights communicated the first cases brought against Moldova concerning women and children for whom courts had ordered protection, but police had

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		The Government is working on creating MDTs in all rayons by 2012. - The Government has not yet established specialized female law enforcement units. - With the Law on Preventing and Combating Domestic Violence (Law No. 45) in force since September 2008 and with the support of IOM, UNFPA and other partners, the NRS started extending the same assistance to victims and potential victims of domestic violence. Several capacity-building events were conducted for district and community level specialists in five districts. - The 2008 law authorizes courts to issue protection orders within 24 hours of receiving a request for such an order. Since September 2009, about 28 protection orders have been issued. There are concerns about the low level of knowledge about the provisions of the law on domestic violence, general awareness and tolerance of the public towards the phenomenon. Protection orders have only been issued in a limited number of jurisdictions, namely Anenii Noi, Soldanesti, Vulcanesti, Causeni, Falesti, Rezina and, from June 2010, Chisinau. - The Law 167/2010 also requires the district police and social assistance offices to appoint persons responsible for the prevention and combating of domestic violence. At the community level, mayors will be responsible for the supervision and coordination of such measures. - Negotiations over creating the first rehabilitation centre for victims of domestic violence in Drochia district are under way. The Ministry of Labour, Social Protection and	allegedly declined or otherwise failed to protect the persons concerned.[52] A number of issues remain outstanding as concerns strengthening the system of protections for victims of domestic violence. Above all, serious and urgent attention should be paid to ensuring that police act promptly and effectively to ensure protection to victims. The Government might also be urged to support more vigorously the implementation of awareness raising campaigns on domestic violence including by ensuring effective placement of social advertisement in media. Civil society organizations also report problems with respect to impunity for family violence against the elderly. Due to the stigma associated with abuse at the community level and family, particularly in rural areas, many older people remain silent about the fact of violence in the family. A series of focus group discussions conducted by the civil society organisation HelpAge indicates that just over 40% of older people in such groups said they had experienced violence at home and 80% said they knew of a close older friend or relative experiencing violence at home. Older women stated they experienced violence at home from their husbands or grown up children.

[52] Mudric v. Moldova No. 74830/10 and Eremia v. Moldova No. 3564/11.

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		Family has committed to cover partially the costs of the centre in 2011. - The above efforts have been complemented by nationwide awareness-raising events, aimed at raising a non-tolerant attitude towards domestic violence and promoting a trust-line for victims of domestic violence. - One further step towards the prevention of domestic violence is the recent approval of the National Program on Gender Equality 2010-2015 and the National Action Plan on Gender Equality 2010-2012 (Government Decision no. 933 of 31 December 2009). A working group is currently working on adjusting the domestic legislation on gender equality with international standards. **Government:** Significant progress was achieved in relation to national response to gender-based violence. On 3 September 2010, the Law No. 167 on amending the current legislation to provide an implementing mechanism for the law on family violence was approved by the Parliament. -The Model Regulations for the Rehabilitation Centre for Victims of Family Violence (Government Decision No.129 of 22 February 2010) was approved. -The draft Quality Standards in Delivering Assistance for Victims of Family Violence is still under revision and is expected to be approved by the end of 2010. -Based on the above legislation, the Government with the support of UNFPA, has developed the draft of profession specific guidelines for the implementation of legislation in the area of domestic violence for police officers, medical staff and social assistants. -The guidelines is currently being reviewed by	It is reported that currently the National Referral System (NRS) operates in 35 administrative units of Moldova, including 32 rayons, 2 municipalities and one town thorough its multidisciplinary teams - local/regional operational units of the NRS formed of specialists such as social assistants, police, doctors, professors, etc. By 2011, the NRS is slated to be expanded to provide protection and assistance in all rayons throughout the Republic of Moldova. The NRS aims at social and economic empowerment of the disadvantaged groups vulnerable to trafficking in human beings and domestic violence (potential victims/at-risk cases), which includes a specific component for this purpose – pro-active prevention by providing social assistance to potential victims of trafficking in persons and domestic violence. In order to avoid the risk of trafficking in the case of disadvantaged persons, multidisciplinary teams supervised by the NRS Coordination Unit, in co-operation with International Organization for Migration and local NGOs identify and provide individual assistance to potential victims of trafficking in human beings. Other types of support includes – medical and psychological assistance, material support facilitating procedure for obtaining social benefits, legal assistance, assistance in obtaining IDs. Crisis situations are assisted in the

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		relevant ministries and will be tentatively approved by the end of 2010. - The issues of violence against women and domestic violence are specifically targeted in the National Programme on Gender Equality for 2010-2015. - During the period of 2009-2010, the representatives of the Ministry of Labour, Social Protection and Family and civil society have participated in the drafting process of the Council of Europe Convention to prevent and combat domestic violence and violence against women. Upon the realization and approval of the treaty, the Republic of Moldova will automatically become signatory state. - UNFPA supported the development of a number of methodological tools for different target groups, including analytical programmes for legal, social and psychological assistance in cases of domestic violence for Master course students; rehabilitation programme for victims of domestic violence and perpetrators; guide for interventions in cases of domestic violence for multidisciplinary teams; analytical programme for police officers; a Guide on implementation of the Law No. 45 on preventing and combating domestic violence, including the Protection Order for judges. Services for victims of domestic violence include: shelters and support centres providing assistance and rehabilitation to female victims of domestic violence; counselling services for child victims of domestic violence; centres for assistance and protection of victims and potential victims of trafficking in human beings (THB); family crisis centres; centre for information and counselling for victims of domestic violence; maternal centre providing emergency placement services as well as	Protection Centre for Victims and Potential Victims of Trafficking in Human Beings (CAPC). The key element of the NRS is the Assistance and Protection Centre for Victims and Potential Victims of Trafficking in Human Beings (CAPC), subordinated to the Ministry of Labour, Social Protection and Family, jointly managed with the International Organization for Migration (IOM). The CAPC is classified as a service provider of high specialization – providing crisis intervention services to victims of domestic violence and victims and potential victims of human trafficking (temporary residence, psychological counselling, social support, medical assistance, legal support, recreational activities). Alongside with the CAPC, four regional assistance centers are operational on the territory of the Republic of Moldova Centres (Cahul, Balti, Causeni, Drochia) offering accommodation, food, legal, social, psychological and urgent medical assistance, security and protection as well as assistance to contact relatives to victims of domestic violence. Within the National Referral System (NRS) for Assistance and Protection of (Potential) Victims of trafficking in human beings, 910 potential victims of trafficking/persons at risk have been assisted during the period 2006-2010, and 328 persons potential victims of trafficking/persons at risk have been

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		temporary placement and counselling services to mother and child-victims of family violence; centre for temporary placement of children at risk; law centre providing network of legal services to victims of domestic violence in four districts: Anenii-Noi, Rezina, Soldanesti, Vulcanesti. -The protection and assistance of victims and potential victims of THB is carried out within the National Referral System for Protection and Assistance of Victims and Potential Victims of Trafficking in Human Beings (NRS). -The social and economic empowerment of the disadvantaged groups is carried out on a permanent basis within the NRS. Multidisciplinary teams, in co-operation with International Organisation for Migration in Moldova and local NGOs, identify and provide individual assistance to potential victims of THB. Other services include vocational training, employment mediation, business development training and assistance, medical, psychological and legal assistance. Special assistance is provided to victims identified abroad who are referred to community services for their social reintegration. -The Law on prevention and combating trafficking in human beings provides rehabilitation and recovery of victims of human trafficking, including medical and legal assistance, psychological, material, professional rehabilitation and accommodation. The Chisinau Centre for Protection and Assistance which was institutionalized in 2009 by the Ministry of Labour, Social Protection and Family, offers accommodation for up to 30 days subject to extension for pregnant women. -The repatriation procedure for victims of human trafficking is set out by the Regulation on	assisted during 2010, where approximately 50 % were victims of domestic violence. Many – although not all – of these measures remain dependent upon external and/or international donor assistance. Finally, the development of shelters for victims of domestic violence is reportedly hampered by the lack of a regulatory framework through which NGOs might be supported by the state budget. In the recent period, the Ministry of Labour, Social Protection and Family has reportedly budgeted for several shelters for victims of domestic violence, but is unable to disburse the funding because of an absence of modalities through which the state might support the activities of non-governmental organisations. The lacuna of a regulatory framework for state support for non-governmental organisations providing services in the public interest should be swiftly rectified. Vulnerable women and girls remain at risk of trafficking for sexual exploitation, while men are exposed to trafficking for labour exploitation, particularly in the agricultural and construction sectors. Children are also trafficked, for forced labour and begging in neighbouring countries. Some victims are trafficked from the breakaway region of Transnistria, in eastern Moldova, an area beyond the control of the central government.

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		Procedure for Repatriation of Children and Adults-Victims of Human Trafficking, Smuggling of Migrants, as well as Unaccompanied Children, approved by Government Decision No. 948 of August 2008. -A hotline run by the NGO International Centre La Strada is available 24 hours a day.	The Government approved the Decision No. 835 of 13 September 2010, of the National Plan for Preventing and Combating Human Trafficking for the years 2010-2011. The National Committee to Combat Trafficking in Human Beings (NCCTHB) is an inter-institutional which has the responsibility to collect and analyze data on trafficking phenomenon as well as on actions against trafficking in human beings and their impact. However, although 4 National Action Plans have been adopted up to this date, no national reports have ever been published.[53] The Secretariat of the NCCTHB is not activating on the permanent basis, and its members perform duties on their main workplace. In 2010, the prosecution bodies reportedly initiated criminal proceedings on 140 cases of trafficking in human beings, in 2008 – 215 cases and in 2009 – 185 cases. The same tendency is noticed in relation to cases of trafficking in children: in 2010 – 21 cases initiated on trafficking in children, in 2009 – 21, in 2008 – 31 cases. Many criminal cases initiated on human trafficking are re-qualified at a later stage of the criminal proceedings into other related crimes (pimping, organization of illegal migration, illegal taking of children out of the country,

[53] Evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties, Republic of Moldova,Report of the International Centre "La Strada".

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			forced labor). There is still poor capacity of law enforcement agencies in identifying victims of trafficking and in investigating cases of trafficking in persons and related cases. Previous efforts on monitoring activities of the judiciary identified the lack of transparency as a problem.[54] Only in a very limited number of cases are victims of trafficking are offered a just satisfaction (compensation) for the non-pecuniary damage caused to them. Further identification of systemic problems in the criminal investigation of cases of trafficking in persons is required and follow up activities are required to strengthen the capacities of the law enforcement agencies and courts in examining cases of human trafficking and protection of victims of human trafficking within the criminal proceedings. In order to provide protection and assistance to the victims and potential victims of human trafficking, the National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking (NRS) was established in 2006. The NRS involves social assistants, police, doctors, professors, etc.– and currently covers 32 administrative units of Moldova, including 29 rayons, 2 municipalities

[54] OSCE *Analytic Report on Observance of Fair Trial Standards and Corresponding Rights of Parties During Court Proceedings,*www.osce.org/documents/mm/2008/06/31833_en.pdf.

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			and one town. One major focus of the NRS since its creation is the "pro-active prevention" focusing on vulnerable persons who, because of their difficult situation, are at risk of being trafficked. The Center for Assistance and Protection of victims of trafficking and at risk cases in Chisinau (CAP) remains the main pillar of the NRS highly specialized in providing crisis intervention services to its beneficiaries, including victims of domestic violence. After its institutionalization by the Government in 2008, the CAP is operated currently by the Ministry of Labor, Social Protection and Family (MLSPF).[55] However, due to lack of sufficient funds in the state budget, the IOM continues to support the Government with funding for staff and assistance services costs. There are also regional assistance centers providing assistance to this categories of persons (Cahul, Balti, Drochia, Causeni) financed by the Government. The government has invited the Special Rapporteur on Trafficking to visit Moldova. In addition OHCHR, UN Moldova and the Government are planning a major event on European Anti-Trafficking Day, October 18, 2011, to launch translation of the OHCHR commentary to the UN Recommended Principles and

[55] Government Decision no. 847 of 11.07. 2008

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			Guidelines on Human Rights and Human Trafficking, as well as to plan follow-up to the government's National Plan for Prevention and Combating of Trafficking in Human Beings for the Years 2010-2011.
(f) Health-care facilities/psychiatric institutions i) Consider ratifying the Convention on the Rights of Persons with Disabilities and ensure respect for the safeguards available to patients, in particular their right to free and informed consent in compliance with international standards (see also report A/63/175); ii) Allocate funds necessary to reform the system of psychiatric treatment.	Persons in the psychiatric clinic visited by the Special Rapporteur, in particular those serving court sentences were held in apathy, subject to excessive use of tranquilizers; Lack of clarity of whether the use of tranquilizers ways based on free and informed consent by the patients; The medication given to the partly very young children, especially in terms of tranquilizers, was clearly not suitable; The Ministry of Health recognized that the treatment, which consisted almost exclusively of the use of strong neuroleptics was inadequate and indicated that psychiatric care would be individualized, new treatments developed, and modern drugs purchased once the necessary funds were made available;	**Government:** Currently the Ministry of Labour, Family and Social Protection undertakes a number of actions in order to prepare the ratification of the Convention on the Rights of Persons with Disabilities, including drafting a strategy on social inclusion of persons with disabilities and adjusting national legislation to international standards in this respect. Within the psychiatric medical institutions, patients are treated with minimum therapeutic doses of psychotropic substances and are involved in the rehabilitation process that includes ergo-therapy through attending the reading room and the gym. The reforms adopted by the administration of the psychiatric medical institutions led to creating and extending the recreational space. The patient is informed of the methods of treatment and the prescribed medicine and is asked to sign the "Consent on hospitalization, investigation and therapeutic procedures provided within the psychiatric hospital". If the patient is unable to sign the form, it will be signed by his or her close relative or legal representative. Within the health facilities, children are treated with the last generation of psychotropic substances calculated in line with international standards by bodyweight. The therapeutic indications are prescribed in accordance with treatment standards and are coordinated with professors of the department of psychiatry, narcology and psychology. Currently, the focus in pedo-psychiatry is based on the use of	**Government:** i) The Government initiated amendments to the national legal framework in compliance with the international human rights law by adopting the Law on social inclusion in December 2011. The law is ensuring the development and approval of methodology for the identification of disabilities degree in accordance with the WHO standards; adjustment of national legislative-normative framework to the European and international standards on the protection of the rights of persons with disabilities; reorganization of structures and institutions responsible for the coordination of the system of social inclusion of persons with disabilities. ii) Improving the legal framework in providing psychiatric care by ensuring hospital treatment in psychiatric hospitals is carried out with informed consent of the patient/legal representative. According to the Mental Health Act no. 1402 of 16.12.1997 and to the order of the Ministry of Health no. 591 of 20 August 2010, which regulates the activity of the mental health service, hospitalization of patients is determined by the pre informing patient about the

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		psychotherapy, occupational therapy, physiotherapy and physical exercises. ***Non-governmental sources:*** On July 9 2010, Parliament approved the ratification of the Convention on the Rights of Persons with Disabilities and on 21 September 2010, it deposited the instrument of ratification. - Reforms directed to the implementation of the Convention are in initial stages and are expected to take at least 18 months. Early areas identified for reform in this regard include clarification of the monitoring mechanisms; adoption of a comprehensive anti-discrimination law; reforming civil code provisions on guardianship and trusteeship; ending practices of abusive detention of persons with mental disabilities; reorienting social inclusion systems for the treatment of persons with disabilities; reforming the Education Code to facilitate genuine inclusion of persons with disabilities in schooling and vocational training. In March 2010, the Ministry of Health established the Human Rights and Health Working Group which elaborated a plan of actions intended to address issues of concern raised in the CPT report (CPT/Inf (2008) 39). It generally recognized that the large mental health institutions need to be significantly reorganized and reformed to efficiently redress the situation. In August 2010, the Ministry initiated the revision of about 20 regulations. It is likely that another reform will be needed, as the August 2010 was carried out without extensive consultation. **Government:** The Ministry of Health Order No. 591 of 20 August 2010, "Regarding the organizational structure and functions of Mental	mental state, the need for the stationary treatment conditions, with the following clinical examination in specialized subdivision and pre-informing patient on treatment methods, investigations and possible complications (informed consent form). In subdivisions for treatment of children, hospitalization is made only as a last meaning of therapeutic intervention, after having exhausted all alternative treatment modalities (psychotherapy, rehabilitation in Community Mental Health Centres). Hospitalization in section for children is carried out only with the consent of legal representative and with the consent of the child according to the capacity of comprehension. Psychiatric hospital treatment is performed in accordance with medical standards of treatment approved by the Ministry of Health and the National Clinical Protocols of basic diseases. A valuable support in the recovery process was received with the opening of the National Center for Mental Health established by the Ministry of Health`s Order no. 482 from 13.07.2010. Provision with drugs in psychiatric hospitals is currently at a rate of 60% / 40% (classical psychotropic medicines/ new generation psychotropic medicines). The implementation of measures of referred recommendations are constantly monitored and improved.

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		Health Services" along with 24 regulations of service organisation was adopted. National Clinical and Institutional Protocols, containing treatment guidelines have been developed according to the international standards. The funds for centralized purchase of drugs providing free drugs to patients who suffer from chronic mental disabilities, and patients with disabilities of I-II degree, have been increased from 5 mln lei (2008) to 12 mln lei (2009). The in-patients are provided with recent psychoactive medications. Specific measures have been undertaken with the purpose of improving accommodation conditions. Such measures include increasing nutrition from 11 lei (2009) to 16 lei (2010) per patient per day, performing reparation in clinical units. Other measures undertaken include: - improved conditions for forced treatment, installed video equipments ensuring safety and protection; improved informed consent upon the admission to the hospital; therapy; and formulation of invasive investigations. - established institutional rehabilitation service for patients with mental disabilities and behaviour disorders. The following documents were drafted: Informative notes/brochures on patients' rights and responsibilities within the psychiatric institutions; Legislation and Norms for the medical and non-medical staff in mental health services. - By the Law No.166 –XVIII of 9 July 2010, the Republic of Moldova ratified the UN Convention on the Rights of Persons with Disabilities. A strategy for social inclusion of persons with disabilities (2010-2013) was developed defining the state policy in the field of social protection of persons with disabilities	

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		and its adjustment to international standards and provisions of the Convention. - On 9 July 2010, the Law on the approval of the Strategy on social inclusion of persons with disabilities (2010-2013) was adopted by the Parliament. - During 2010-2011, the Strategy envisages the elaboration and adoption of the Law on social inclusion of people with disabilities; development and approval of methodology for the identification of disabilities degree in accordance with the WHO standards; adjustment of national legislative-normative framework to the European and international standards on the protection of the rights of persons with disabilities; reorganization of structures and institutions responsible for the coordination of the system of social inclusion of persons with disabilities.	
(g) Transnistrian region of the Republic of Moldova i) In addition to the introduction and implementation of legal safeguards, such as inter alia the reduction of the length of police custody to a maximum of 48 hours and the medical examination of newly arrived detainees in places of detention, establish independent monitoring of places of detention; ii) Criminalize torture and abolish the death penalty de-jure.	Conditions in custody of the militia headquarters in Tiraspol were in violation of minimum international standards (overcrowded cells with few sleeping facilities, almost no daylight and ventilation, 24 hours artificial light, restricted access to food and very poor sanitary facilities); A "Human Rights Commissioner" had been instituted, but does not undertake monitoring visits to places of detention. Most of the Special Rapporteur's interlocutors expressed distrust in this institution; Whereas the Transnistrian	**Government:** The existence of a secessionist regime in the Eastern part created serious difficulties to the implementation of commitments resulting from relevant international conventions on human rights protection and other international treaties to which Moldova is party throughout the country. Moldovan authorities do not have access and are unable to effectively exercise constitutional prerogatives in the region, because of parallel structures that have usurped local power in this part of the country. The state of affairs concerning torture or cruel, inhuman or degrading treatment and punishment applied to individuals remains unknown. The Government periodically raises awareness of international organizations on cases of violations of human rights and fundamental freedoms by the separatist regime in Tiraspol, aiming at determining it to comply with the rigors of	

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iii) Stop immediately the practice of solitary confinement for persons sentenced to death and to life imprisonment.	"Criminal Code" did not contain the definition of torture required by the Convention against Torture, it criminalized "istyazanie" (torment), to be punished with up to 3 years imprisonment and stated that it can be combined with "torture", to be punished with up to 7 years imprisonment; Although abolitionist in practice, the death penalty was still provided for by the "legislation" of the Transnistrian region of the Republic of Moldova; Legislation in force required solitary confinement for persons sentenced to capital punishment and to life imprisonment and prescribed draconic restrictions on contacts with the outside world.	international standards in this matter. ***Non-governmental sources:*** An independent monitoring mechanism for places of detention has not been established. Transnistrian authorities refused to cooperate with international organizations wanting to monitor places of detention. On 21 July 2010, a delegation of the Committee against Torture had to interrupt its visit to Transnistria because of the lack of guarantees by the official representatives to interview detainees confidentially. The Transnistrian Ombudsman has not been responsive to the United Nations country office's approaches of initiating joint visits to places of detention. - In practice, cases of arbitrary detention have been regularly reported in Transnistria and the Special Rapporteur on Torture has taken them up. - The death penalty has not yet been abolished as per article 43 of the Transnistrian Criminal Code. Torture has not been introduced as a crime in the Criminal Code. - The practice of solitary confinement for persons sentenced to death and to life imprisonment has not changed.	

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(a) Impunity	A statute of limitation of	**Government:**	

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i) Abolish the statute of limitations for crimes of torture; ii) Establish effective and accessible complaints mechanisms; and protect complainants against reprisals; iii) An independent authority with no connection to the body investigating or prosecuting the case against the alleged victim should investigate promptly and thoroughly all allegations of torture and ill-treatment ex-officio; an independent forensic expert should carry out an examination in respect of all allegations of torture and ill-treatment; iv) The Forensic institute should be equipped accordingly.	five years was applicable to the crime of torture; The law provided for several complaints avenues, but the large majority of complaints were rejected quasi-automatically; Ex-officio investigations did not function in practice; The system of internal remedies was dysfunctional due to: a)The routine use of threats and reprisals by the police in order to deter detainees from filing complaints; b)the non-action of the staff of penitentiary institutions in cases of allegations of torture; c) the wide discretion and inaction of the prosecutor's office when he receives complaints; d) the lack of independent medical examination; e) the lack of independence of judges who in many cases continue to follow the arguments of the prosecutor; The State Forensic Institute was underequipped.	i) The statute of limitations is not an impediment to investigations, since crimes of torture are investigated vigilantly and in a timely manner. ii) Since 1996 prosecutors are obliged to make daily spot checks at the places of temporary detention. This includes personal and direct control of the legality of detention, discussions with detainees, as well as reporting the results of these actions, including where necessary, issuing orders to release the persons detained illegally on remand. Thus, there is a mechanism to record, control and monitor the practice of coercive procedural measures and the conditions of detention. iii) In 2007, 1,258 complaints were submitted, 50 criminal proceedings being initiated. In the same year, 87 criminal proceedings were initiated for excess of power, 55 cases of which were sent to the court, 63 persons being convicted, including 14 persons imprisoned. In 2008, 1,128 complaints were submitted, 51 criminal proceedings being initiated. In the same year, 73 criminal proceedings were initiated for excess of power, 46 of which were sent to court, as a result of which 36 persons were convicted and 5 persons were imprisoned. In 2009, 554 complaints have been submitted, 33 criminal proceedings were initiated. The same year, 31 criminal proceedings have been initiated for excess of power, 20 of which were sent to court, 16 persons convicted and 1 person was imprisoned. Most cases investigated concerned the use of force during interrogation for the purpose of securing a confession to improve prosecution statistics. The Interior Ministry has internally examined 135 criminal cases, including 39 cases regarding excess of power, 17 cases regarding torture and	

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		4 cases for coerced declarations, 19 of which had resulted in the dismissal of staff. It should be noted that during 2008, no new cases of torture or inhuman or degrading treatment were registered in the penitentiary system. An exception is the case of an employee of Prison No. 1, who was sentenced, in accordance with article 328 paragraph 2 (c) of the Criminal Code on 9 Dec. 08, to a fine and the deprivation of the right to hold public functions for a period of 3 years, for committing actions that humiliated the dignity of a prisoner on 29 Dec. 07. In 2009 no cases of torture were registered in the penitentiary system. During this year the Penitentiary Institutions Department of the Ministry of Justice initiated 2 internal investigations regarding the alleged ill-treatment of two detainees, from which one of the cases was sent to the Prosecutor Office. The facts alleged in the second case have not been confirmed. Of 473 petitions examined in 2008 by the Ministry of Internal Affairs (MIA), 38 concerned cases of ill-treatment and illegal detention of citizens. In 18 cases false facts were reported; in 15 cases the facts have been confirmed (employees have been sanctioned disciplinarily); in 19 cases the files were submitted to the prosecution bodies (for criminal procedure), and in 6 cases the petitions were sent to judicial courts (for examination of criminal cases filed by the petitioners). During the first 10 months of 2009 the MIA examined 334 petitions, of which 33 cases concerned mistreatment of persons by police employees. In 11 cases the alleged mistreatment was not confirmed; in 4 cases the court applied an administrative fine to both sides of the conflict;	

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		in 2 cases the investigation was suspended until the decision on the criminal case was issued; in 16 cases the files were sent to the prosecutor, of which no criminal procedure was commenced in 2 cases (the employees were only warned about the due treatment of citizens). Thus, 204 criminal cases were initiated in 2009, compared with 215 during the same period of the previous year. 60 of these concerned cases of excess of power (59 in 2008), 34 cases of torture (13 in 2008), and 5 cases of coercion to make statements (12 in 2008). 20 police employees were dismissed following a court decision. The examination of such cases reveal that police officers commit actions that clearly exceed the limits of rights and powers granted to them by law; they apply force and violence, and torture people for the following reasons: - To obtain evidence by illegal means; - To pursue personal and material interests; - To demonstrate the superiority over the victims and to neglect the general rules of conduct; - Because of lack of knowledge of the law and work duties; and - Other reasons. Most of the circumstances described in the complaints of citizens are not sufficient to start a criminal prosecution. Taking into account the necessity to ensure the impartiality of prosecutors in the investigation process of cases of torture and abuse of power, by General Prosecutor's Order of 19 Nov. 07 regarding the investigation of cases of torture, degrading and inhuman treatment, the territorial and specialized prosecutors were required to	

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		designate a prosecutor responsible for documenting and examining allegations of torture and ensuring the security of victims. This person is not involved in other activities, in order to exclude partiality in investigations of allegations of torture. Following the decision of the General Prosecutor or his or her deputies, the military prosecutor offices of Chisinau, Balti and Cahul investigate cases of torture, inhuman and degrading treatment, respectively, in the centre, North and South of the country, while the Department on Criminal Investigation of Exceptional Cases of the General Prosecutor's Office investigates the most severe cases of torture, inhuman and degrading treatment. In accordance with the above-mentioned acts, prosecutors are required, whenever a reasonable suspicion exists that the crime of torture has been committed, to immediately start criminal investigations. Following the initiation of criminal proceedings, prosecutors of Chisinau municipality and Gagauzia may withdraw the criminal cases from the prosecutors in these territorial units, appointing a special prosecutor to carry out further investigations. A directive of the Prosecutor's Office has been issued to improve forensic documentation; however, further measures are still needed to provide for effective forensic examination. iv) To date, the Legal Medical Centre presented a demand related to the necessary equipment for its laboratories. Thus, the Centre has been included in the list of bodies of the Health System, which will benefit from humanitarian aid. During 2009, the Legal Medical Centre has developed some proposals for several external assistance projects, with the purpose of strengthening the existing laboratory capacities	

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		and establishing a genetic laboratory within the Centre – these proposals were submitted for consideration to UNDP, the Government of Japan, etc. At the same time, due to financial constraints, it has been impossible to increase the financing of the Legal Medical Centre. The Legal Medical Centre has undertaken inter alia a training course for medical-legal experts on the investigation of torture cases and other ill-treatment. ***Non-governmental sources:*** Out of 554 complaints only one perpetrator was sentenced to imprisonment for torture in 2009; thus, the investigation cannot be regarded to be efficient, operative and impartial. Forensic doctors try to cover up torture, rather than document it. ***Non-governmental sources:*** Investigative bodies fail to carry out prompt, thorough and independent investigations into allegations of torture. Police officers have not been suspended from their official duties during the investigation of complaints lodged against them, contrary to European Court of Human Rights (ECHR) jurisprudence (ECtHR, Valeriu and Nicolae Rosca vs. Moldova). This has contributed to impunity. - An investigation into a case of alleged torture that took place in 2005 was only launched in July 2009, after the ruling of the ECHR against Moldova in the case of Gorgurov v. Moldova. Despite the ruling, the Government has failed to comply with the remedy requirements. Officers responsible for acts of torture remain unpunished. - Article 60 of the Criminal Code, according to which prosecutions for serious crimes can take	

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		place up to 15 years after the crime has occurred, has not yet been amended. - The Criminal Procedural Code allows for defence lawyers to request the suspension of a suspect without pay. - Although a special group of military prosecutors was established within the General Prosecutor's Office to investigate the allegations of torture occurred during the April 2009 event, there have been concerns as to its impartiality. After a year, most of the trials are still pending and are subject to constant delays. - On 20 October 2009, the Investigation Commission on the Elucidation of the Causes and Consequences of the Events, an ad-hoc commission made up of 9 members of parliament, was established to investigate the "causes and consequences of the April 2009 events". - On 7 May 2010, the Commission presented to the Parliament a well-documented report with reference to arbitrary arrests, wide use of disproportionate and abusive force in custody and violent measures undertaken in the aftermath of the April 2009 events. - As of June 2010, 108 complaints of torture by police officers had been received by the Office of Prosecutor General and 54 criminal investigations had been initiated in connection with the April 2009 events. Approximately 24 dossiers concerning 39 police officers were taken to the Courts for further investigation. As of September 2010, there were no convictions related to torture or other ill-treatment by police officers in connection with the events of April 2009. Most of the charges against the police officers are under article 327 (abuse of power) or article 328 (misuse of power), although some	

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		have also been brought under article 309/1 (torture) of the Penal Code, particularly in connection with several high-profile cases. - Police and security personnel have reportedly intimidated human rights defenders and victims of the April 2009 events. - In practice, most investigations do not meet the minimum requirements and are mostly delayed. In many cases, even where there are credible allegations of torture, prosecutors are apparently reluctant to initiate investigations. There appears to be systemic bias against detained suspects of crimes in favor of police investigators, even when there is enough evidence of torture and ill-treatment. Some prosecutors have also reportedly tried to influence and intimidate victims of torture into withdrawing complaints. - Some progress has been made into the investigation of abuses of juveniles by the police or public servants after a campaign against torture started two years ago. Complaints against police officers are being investigated by prosecutors from a different district in order to safeguard against tolerance or complicity. The number of police officers prosecuted has increased, and some have been given prison sentences. - Although the complaints against police officers for juvenile suspects' abuse are reportedly less common, the blanket denial and the absence of complaints about police misconduct against children lacks credibility and reinforces the impression that there is little political will to eradicate abuse. - Although the Centre for Human Rights plays valuable role in monitoring the treatment of juvenile suspects and prisoners and in bringing cases to the attention of the responsible authorities, criminal and administrative	

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		investigations are not pursued promptly and efficiently, and accountability remains weak. The Government did not take any steps to equip the Forensic institute. In 2011, UNDP jointly with the European Union, will launch a project to equip the national forensic agency and to establish legitimate forensic sources. - No legislative initiatives in abolishing the statute of limitations for crimes of torture are reportedly in progress. **Government:** In 2010, the centre of Forensic Medicine at the Ministry of Health, in partnership with OSCE Mission in Moldova has launched the project "Strengthening capacities and cooperation between forensic specialists from both banks of the Nistru River aimed at enhancing investigation of torture cases". In this context, a study visit of four forensic experts was organized in Turkey from 10 to 13 November 2010. On 23 November 2010, a conference on "Actual Issues on the Organization and Realization of Forensic Expertise" was carried out in Tiraspol and was attended by forensic experts from both banks of the Nistru River. - The Centre of Forensic Medicine with immediate support and contribution of UNDP Moldova launched the project "Strengthening the forensic examination of torture and other forms of ill-treatment, as a key strategic element in comprehensive, integrated, holistic efforts to end torture and related forms of ill-treatment in Moldova". It provides forensic expert training on identification and documentation of cases of torture. It also provides the Centre with technical equipment for its regional and laboratory departments.	

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		- In accordance with the Decision of the Parliament of the Republic of Moldova on the approval of the structure of the General Prosecutor Office No 77 of 04 April 2010, and the General Prosecutor Order No 365-p of 24 April 2010, a new Section on combating torture was established as a subdivision of the General Prosecutor's Office, to study the phenomena of torture and ill-treatment as a whole in order: - to identify and establish all factors, causes and conditions that permit the existence of those phenomena and to propose concrete and adequate solutions and measures for their liquidation; - to analyze the investigation of cases of torture, elucidating the problems which appear within the investigation and prosecution process of the allegations of torture and ill-treatment; - to take all legal measures to compensate the victims for the harm and to reinstate them; - to prosecute the cases of torture with an increased social importance, etc. In accordance with the Order of the General Prosecutor of November 2010, the Section for combating torture shall be informed within 24 hours about each case or allegation of torture that happened on the entire territory of the Republic of Moldova. One prosecutor (in some cases more than one) was nominated in each prosecutorial territorial office to carry out the examination of the allegations and prosecution of criminal cases on Coercion to Testify (art. 309 Criminal Code), Torture (art. 309/1 Criminal Code), Excess of Power or Excess of Official Authority (art. 328 (2) lit. a) and c), the crimes prescribed in 328 (3) and Acts of Violence against a Serviceperson (art. 368 Criminal Code). To assure their	

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		independence, prosecutors in charge of the investigation of cases on torture, inhuman and ill-treatment, nominated by the order of the chief prosecutor, shall not be implicated nor have any relations with the activities of the territorial subdivisions of the MIA or Centre for Combating Economic Crimes and Corruption (CCECC).	
(b) Safeguards and prevention i) Reduce the period of police custody to a time limit in line with international standards (maximum 48 hours), after which transfer the detainees to a pre-trial facility, where no further unsupervised contact with the interrogator or investigator should be permitted; ii) Ensure that no confessions made by persons in custody without the presence of a lawyer that are not confirmed before a judge are admissible as evidence against the persons who made the confession; Shift the burden of proof to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress; iii) Judges, prosecutors and medical personnel should routinely ask persons arriving from police custody how they have been treated; iv) Consider video and audio	The law provided for a limit of 72 hours of custody, after which the person is to be brought before a judge, which could be prolonged by 6 to 12 months depending on the crime; Police detention of minors could be prolonged by 30 days up to 4 months; Prolongation of police detention was decided by the investigating judge upon request of the prosecutor; De-facto, most detainees were kept in police custody for several weeks/months and regularly returned there for "further investigation" or for their trial or appeal, which made them vulnerable to reprisals; Many allegations that confessions obtained under torture were not excluded as evidence during court	**Government**: In order to develop collaboration between the representatives of the healthcare and internal affairs authorities, the Order of the Ministry of Health and MIA no. 372/388 of 3 November 2009 was issued. According to its provisions, the healthcare facility managers shall inform immediately the police authorities regarding the healthcare assistance granted to persons with injuries acquired as a result of an offence, traffic accident or sudden death. In cases when injuries derive from illegal actions of law enforcement authorities, the health care facility managers shall inform immediately the territorial or specialized prosecutor office. Concerning the medical certification of detainees who claim physical injuries, all the cases referring to the incidents from the penitentiary institutions, including cases of detecting physical injuries, are compulsorily to be sent to the Prosecutor's Office and to the Ombudsmen. The Medical Service examines the detainees on their arrival to the penitentiary in view of proving the presence of any physical injuries or other signs of violence, in accordance with article 251 (3) of the Enforcement Code and article 25 of the Statute on the Execution of Sentences by Convicts. The administration of the institution is obliged to inform, in writing and in the shortest time possible, the	

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taping interrogations; v) Regularly and following each transfer of a detainee undertake medical examinations; vi) Bring the legal safeguards for administrative detainees in line with international standards (limit to 48 hours, access to a lawyer etc.); vii) Ensure that the sound legal basis of the National Preventive Mechanism (NPM) translates in its effective functioning in practice, including through allocation of budgetary and human resources.	proceedings, in contravention of the national legislation; numerous reports that judges, prosecutors and other actors in the criminal law cycle routinely ignored allegations of torture; The burden of proof was on the victim; No tape or video recording during interrogations; Paramedics were present in detention facilities of the police and the penitentiary system during working hours on weekdays, but the rules did not spell out when medical examinations should take place; Amendments to the Law on Parliamentary Advocates adopted had led to the establishment of an independent "Consultative Council", which has been designated as National Preventive Mechanism (NPM); complaints about insufficient resources.	Penitentiary Institutions Department, the territorial Prosecutor's Office and the Human Rights Centre about the physical injuries of detainees arriving in the penitentiary. The notes received by the Penitentiary Institutions Department and delivered to the Medical Division are included in a special database. From the beginning of 2009, 13 cases of physical injuries have been registered, of which 2 cases were reported by the MIA. Police officers are obliged to supervise the work of the paramedics during the medical examination of the detainees of the temporary detention facilities (isolators), issuing two copies of medical records. These activities and organizational practices confirm where the person was detained, and that the detained person was not tortured or mistreated. The paramedics employed are cumulatively paid by the police stations, at a rate of 0.5% of their salary. The NPM has carried out approximately 90 visits to places of detention in 2009. They met 10 persons who stated that they had been ill-treated and 27 persons with visible marks. Some members of the Consultative Council have been restricted access to places of detention or have been confronted with considerable delays. Regarding the legal basis of the NPM, on 26 July 07, the Parliament adopted Law no. 200, amending and supplementing the Law on the Parliamentary Ombudsmen, thus assigning the mandate of the NPM to the Parliamentary Ombudsmen. In view of achieving the involvement of civil society, a Consultative Council was established, with the purpose of providing advice and assistance in exercising the Parliamentary Ombudsmen's liabilities as NPM.	

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		Given the need to supplement the Consultative Council with 5 members, the Centre for Human Rights announced a call in this respect, but because the number of applications was insufficient, it was decided to extend the deadline for submission until 13 November 2009. During the first 9 months of the 2009, 117 preventive visits were carried out. Out of these, 31 were carried out by the members of the Consultative Council and 11 by the Parliamentary Ombudsmen and officials from the Centre for Human Rights. Observations of the Special Rapporteur during his visit in September 2009: The NPM still faces a number of challenges: firstly, the legal basis for this mechanism is rather ambiguous, which has led to different interpretations regarding which entity constitutes the NPM. From the side of the Ministry of Justice, it is argued that the Parliamentary Ombudsperson is the NPM. However, even the Ombudsman in charge, as well as other relevant actors, including international bodies such as the Council of Europe's Commissioner on Human Rights, have clearly stated that the NPM is comprised of the Consultative Council, under the chair of the Parliamentary Ombudsperson. The Special Rapporteur reiterates that only the latter interpretation is in line with OPCAT and the Paris Principles. Another problem is that although the NPM is meant to be comprised of 11 members, currently only six members serve on this mandate (including the Ombudsman). The Special Rapporteur wishes to emphasize that although international organisations have indicated their willingness to support the NPM,	

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		including adequate pay for its members, the State has the primary obligation to provide sufficient resources. ***Non-governmental sources:*** Although the law requires that persons be transferred within 72 hours, in practice, persons are held in police custody for up to one year. Lawyers often do not have access to their clients. The legal assistance provided to torture victims does not comply with international standards. ***Non-governmental sources:*** On 14 March 2008, Parliament amended the Criminal Procedural Code by adding article 3-1, which stipulates that the burden of proof in cases of torture lies with the institution in which the detainee was held. This would appear to be a positive development, but the practice shows that, despite the law reform, the burden of proof still lies with the victim. No legislative initiatives in reducing the period of police custody (up to 72 hours), are reportedly in progress. Persons arrested under a warrant issued by a judge and persons convicted to administrative ("contraventional") arrest should be detained in detention facilities of Ministry of Justice. - Although efforts were undertaken by the Ministry of Justice and the Ministry of Internal Affairs in 2010 to ensure the custody of person initially arrested, there are still cases where detainees are held in police stations for several weeks. Persons have also been reportedly returned to police custody, including for "further investigation", which makes them vulnerable to reprisals in the event of filing a complaint about ill-treatment.	

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		- Juveniles suspected of an offence may not be kept in police custody for more than 24 hours, and the detention of juveniles during the investigation may not exceed four months. - A publicly-funded legal assistance programme was established. - There is no time limit on trials or appeals or on detention during trial and appeal. Some cases of detention for a year or more are still reported. Conditions in the pre-trial detention facility where most juveniles are detained are inhuman, and disciplinary sanctions violate international standards. - There have been no reported cases of refugees or asylum-seekers being placed in police custody or detention. - Testimonies obtained through torture are not excluded from criminal proceedings. Often, the first hearing of detained persons takes place without the presence of a lawyer. - Complaints related to the confidentiality of meetings with lawyers are often not considered. State-appointed lawyers act superficially and tend to cooperate greatly with the police. - Judges, prosecutors and medical personnel do not generally ask about details of the treatment while in custody. - In practice, interrogations are not recorded on audio or on video. - The National Forensic Centre only documents the results of forensic examination superficially, often failing to meet international standards. It is not independent. - Although the law requires a doctor and/or penal institution to inform the chief prosecutor about evidences of torture or other ill-treatment, in some cases no action is taken to this effect. Evidence of psychological trauma or other	

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		indications of torture are generally not undertaken, which leads to under-documentation. Domestic courts favour the official over independent medical sources provided by victims or their representatives. - The preventive medical examination of detainees in prisons does not allow for the proper documentation of torture. - Although access by the NPM to places of detention has reportedly improved, it remains de facto dysfunctional. Efforts to improve functionality of the NPM have been seriously hindered by an internal conflict between the Ombudsman (chairman of NPM) and three members of the Consultative Council. - In November 2009, the Committee Against Torture issued a detailed recommendation (CAT/C/MDA/CO/2) regarding the improvement of the NPM's functionality through strengthening its independence and capacity. - The NPM is not well-known to the public at large. It does not have a separate budget line or other resources that might be managed for the specialized purposes. - An Action Plan on the Protection of Children's Rights and Prevention and Combating of Juvenile Delinquency covering 2008–2010 was adopted, but implementation has been minimal. Efforts undertaken by the juvenile inspectors and the Commissions on Minors in the area of prevention were not effective. - No prevention programmes directed specifically at children at high risk of offending (secondary prevention) exist. - The law and procedures concerning young children involved in criminal conduct are poorly defined. In particular, compliance with the 'last	

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		resort' principle is not required and the right to legal assistance in such proceedings is not recognized. - During the last five years, the number of juvenile prisoners serving sentences has fluctuated between a high of 138 in 2006 and a low of 32 in May-June 2009. The number of juveniles confined in the 'special school' for children has fallen by almost 90 per cent during the period 2001–2008.	
(c) Institutional reforms i) Continue and accelerate reforms of the prosecutor's office, the police and the penitentiary system with a view to transforming them into truly client-oriented bodies that operate transparently, including through modernized and demilitarized training; ii) Strengthen the independence of the judiciary; make judges aware of their responsibilities with regard to torture prevention; iii) Conceive the system of execution of punishments and its legal framework in a way that truly aims at rehabilitation and reintegration of offenders, in particular through abolishing restrictive detention rules and maximizing contact with the outside world;	Lack of independence of judges who in many cases continued to follow the arguments of the prosecutor without intervening in cases of alleged torture; The legal framework and penitentiary policies in Moldova were punitive, directed at locking people up, rather than aimed at reintegrating prisoners, in particular extremely restrictive visiting policies and numerous constraints on contacts with the outside world; Common problems at all pre- and post-trial prisons were poor hygienic conditions, restricted access to health care and lack of medication as well as risk of contamination with tuberculosis and other diseases;	**Government**: Although relevant trainings and seminars are taking place, there is still need for administrative and institutional measures including further trainings in the MIA and involvement of all actors in torture prevention. The MIA is in the process of implementing the Institutional Development Plan for 2009-10, which was developed in the context of reforms of the entire central public administration. In this view, the Ministry aligns to European standards and adjusts the existing legal framework to the EU acquis of decentralization, demilitarization and de-politicization of its activities, improving the management of service to society. In addition, the Ministry has organized and conducted instructive methodological seminars for leadership and personnel of subdivisions of the criminal prosecution. The seminars concerned different topics, the main emphasis being on the observance of the law by police officers in the criminal investigation work. The Ministry set up a committee on fundamental rights and freedoms of citizens. In the same context, it issued an ordinance on procedural time limits, according to which prosecution officers must provide a report to the Ministry with a view to control and coordinate the	

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iv) Take further steps to improve food and access to health care; v) Strengthen further non-custodial measures before and after trial.	The periods of pre-trial detention were extensive; several of his interviewees had spent up to three or four years in detention without a final judgment.	extension of periods of arrest. Furthermore, billboards on rights and obligations of persons suspected, detained, arrested and prosecuted were set up. Similarly, all sections of the prosecution authorities were provided with models of procedural documents, such as minutes/process-verbaux of apprehension and explanations of the rights and obligations of the detained persons, compiled by the General Prosecutor's Office. The preliminary report regarding the respect of rights of detained persons, elaborated by the Institute for Penal Reform within the project "Strengthening Criminal Justice System Reform in Moldova", was sent to the heads of criminal prosecution bodies of territorial subdivisions, in order to undertake measures to eliminate any violations in the future. The MIA participated in the working group set up by the General Prosecutor's Office, where the draft of the 'Instructions on how to grant visits and telephone conversations to persons detained in preventive arrest' was elaborated. A law was drafted to amend some legislative acts for the re-examination of the applicable disciplinary regime for judges, which represents a balance between the guarantee of the judges' independence and the necessity of sanctioning a judge in case his or her behaviour necessitates such action. In order to ensure the impartiality of judges, an amendment to the law is proposed, introducing an obligation of the judge to inform the president of the court and the Superior Council of Magistrates about any attempt to influence the process of decision making. Regarding conflicts of interest, a draft law is proposed to complete article 15 of the Law on	

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		the Status of Judges, which would stipulate the obligation of the judge to present a declaration regarding his or her personal interests. A reform of the judicial organizational system is proposed, which includes the abolition of specialized law courts (Chisinau Economical District Court, Military Court, Economical Appeals Court). The specialized courts' duties shall be taken over by the courts of common jurisdiction. In March 09, a decision of the Supreme Court was issued, clarifying many aspects of case law concerning Art. 3 ECHR. There have been 24 ECtHR judgments against Moldova under Art. 3. Aspects of the Plenum decision include the requirement that detainees are registered; the registration of officials present; that the person not be interrogated in the absence of an "escort"; and an unbiased investigation into allegations of ill-treatment. The Superior Council has held seminars on Article 3 and the case law against Moldova. One of the objectives of the continuous training of judges is their conscious involvement in the eradication of torture. In this context, thematic seminars on preventive arrest were organized, especially for instruction judges, judges, prosecutors and lawyers. From the beginning of 2008 the Ministry of Justice has undertaken numerous activities in the field of promotion of human rights. Within the Training on Human Rights the following topics were included: "The minimum standards of maintenance of convicted persons", "The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", "The Universal Declaration of Human Rights" and "The national, regional and	

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		international mechanisms of human rights protection". The regimes in the penitentiaries have been established according to the Execution Code and are characteristic to each type of penitentiary, which represents different stages of the punishment of deprivation of liberty. Thus, the practice envisages different stages within the respective process. The first one (the initial regime), a reduced period compared to the total term of the sentence, represents the stage of ensuring the adaptation of the person to the penitentiary environment and an evaluation according to rules nos. 16, 51, and 52 of the Recommendations of the Committee of Ministries of the CoE no. R2006 (2). Generally speaking, the appreciation that the penitentiary policy is still punitive does not correspond to reality. Thus, the provisions regarding the regimes of detention (art. 269 to 273 Execution Code) constitute a progressive evolution of rights of detainees in relation to their behaviour. The enforcement depends on the punishment and the behaviour of the detainees, the danger they represent, based on an evaluation of the personality and behaviour, as well as on their individual plan of serving the sentence. Regarding visits, the law stipulates the right of the detainee to at least one visit a month. Nevertheless, depending on the behaviour of the convicted person, the penitentiary administration can grant additional visits. Consequently, depending on his/her behaviour and his/her attitude towards labour (remunerated or not), the convicted person may benefit from 22 long- and short-term visits during a year. The penitentiary program includes also educational	

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		training, labour and sport activities etc., which, along with social assistance granted by the administration, contribute to the reintegration of the convicted persons into society. According to art. 227, 228 and 229 of the Execution Code, detainees have access to information, files, correspondence and telephone calls and can address correspondence to law enforcement bodies, central public authorities and international intergovernmental organizations. Post boxes were installed in all prisons and letters are collected by employees of the Moldova Post. A number of deficiencies of conditions of detention have been asserted in 21 temporary detention facilities (isolators) of the territorial police commissariats. As a result, relevant letters have been addressed to commissariats in Balti, Basarabeasca, Cimislia, Soldanesti, Rezina, Vulcanesti, Comrat, Leova, Orhei, Cahul, Causeni, Anenii-Noi, Gagauzia and Floresti with deadlines for proper actions to be undertaken to redress the situation. Despite the undertaken measures to create decent conditions of detention, in some temporary detention isolators the situation remains complicated: - lack of natural illumination and ventilation in cells (Balti, Bender, Anenii-Noi, Basarabeasca, Cahul, Causeni, Cimislia, Drochia, Floresti, Hincesti, Leova, Riscani, Singerei, Soldanesti, Soroca, Telenesti, Comrat, Vulcanesti and the Operative Service Department of the MIA); - lack of mattresses, blankets and pillows (Balti, Bender, Anenii-Noi, Basarabeasca, Causeni, Floresti, Hincesti, Leova, Rezina, Riscani, Soldanesti, Telenesti, Vulcanesti); - lack of adequate sanitary facilities in cells	

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		(Bender, Anenii-Noi, Basarabeasca, Cahul, Causeni, Cimislia, Floresti, Hincesti, Leova, Nisporeni, Ocnita, Rezina, Riscani, Singerei, Soldanesti, Telenesti, Comrat, Vulcanesti and the Operative Service Department of the MIA). The quality of the food has been improved and detainees are now given something to eat three times per day. In 2008, 2,878 persons were detained, out of which 2,037 were under preventive detention. In 2009, 2,644 persons were detained, out of which 1.784 persons were under preventive detention. ***Non-governmental sources:*** The criminal investigation bodies continue to have a punitive attitude. ***Non-governmental sources:*** As of 2010, the prosecutor's offices, the police and the penitentiary system still operate on the basis of the soviet structure, and are fully militarized. In 2010, several efforts to demilitarize the prosecutor's office failed. - Moldovan legislation and practice are incompatible with international standards as far as the use of isolation or solitary confinement as a disciplinary measure for juveniles is concerned. - Although the establishment in 2010 of two separate units for the investigation of torture and juvenile justice within the General Prosecutor's Office and in each regional prosecutor's office is a positive development, there are some concerns as to the effectiveness and independence of the new anti-torture prosecutors. - Despite some positive developments, the Government has not done much to promote the	

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		independence of the judiciary. The Ministry of Justice has repeatedly been involved in removing judges, including Supreme Court judges, including for highly questionable reasons such as "losing cases in Strasbourg" and for intentionally delaying the prosecution of eminent cases linked to the April 2009 events. - On 30 October 2009, the Supreme Court of Justice issued a guidance decision on the application of article 3 of the European Convention of Human Rights in domestic courts. This non-binding guidance, while not perfect, provides important guidance for the judiciary. - Although the Enforcement Code has various provisions with respect to the rights of inmates to hold private correspondence and telephone conversations and receive food parcels, these rights are not envisaged adequately due to, for example, lack of public telephones in most institutions and a lack of clear regulations for appointments. - The criminal subculture and prisoner's hierarchy is partially supported by the prisons' administrations as a mechanism of non-formal control over the detainees. - The problem of food shortage in penitentiary institutions remains. In 2007, the amount allocated from the state budget for feeding prisoners constituted 53.2% of the minimum necessary, in 2008 - 49.8%, and from January to August 2009 it was 64.4%, average being allocated about 3.6 lei per day for a prisoner. Average daily dietary amount of value remains two times smaller than required by law. - During the period of 2008-2009, the Government undertook renovation in the medical centre of women's penitentiary in	

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		Rusca. The Centre includes a gynaecology office, a dentist, an internal therapy-medicine office and a clinical laboratory. UNFPA complemented these efforts by providing medical equipment and furniture. - In September 2010, probation services were transferred to the Department of Penitentiary Services. It is unclear, however, whether this reform will have positive impact due to widely practiced disciplinary attitude among probation staff. The pre-trial probation reports are used only in a limited number of cases. - There is only limited implementation of the 2008 Law on Mediation due to the lack of and undeveloped capacity of mediators and to the actual performance indicators stimulating the investigation bodies not to interrupt the investigation where relevant, but to send it to the courts. - The current arrangements have been described by experts as being very weak in the area of rehabilitation and social integration of victims. - The Committee on the Rights of the Child noted with regret that some of its concerns and recommendations regarding juvenile justice had not been adequately addressed, and reiterated its previous recommendation that a separate system of juvenile justice fully in line with the Convention be established. (CRC/C/MDA/CO/3, paras. 7 and 73). - No document containing a global strategy for juvenile justice reform exists. A strategy can be inferred from the programme document of the 2003-2005 and 2008-2011 juvenile justice projects. The programme document of the 2008-2011 had the following three ‘priority areas’ and three ‘secondary areas’: continued legal reform;	

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		development of a probation service; revision of effective legal assistance; provision of services to children in detention; prevention of juvenile delinquency; and training of juvenile justice professionals. Although the stated objectives are broad, the project is more holistic, in particular in addressing the need for more coherent prevention policies and programmes. There are still some gaps, however. Emphasis on diversion and alternative sentences seems to come at the expense of attention to the programmes applied in correctional facilities and services for juveniles leaving correctional facilities and returning to the community. Accountability is not addressed directly by the project. - NGOs played a small role in the implementation of the 2008–2011 project. - There is a lack of ownership by the national authorities as regards the implementation of the project and of the process of developing a juvenile justice system. - Although there has been some improvement in the treatment of juveniles after the designation of prosecutors in each trial court, the impact is still limited, in part because the designated judges have insufficient training and because many of them handle a rather small number of cases involving juveniles. In 2008, only two courts outside the capital handled more than one juvenile case per week and 17 district courts handled on average less than one case per month. - A training manual for judges, prosecutors and police has been developed and incorporated into the curricula of the National Institute of Justice, which trains judges and prosecutors, and the Police Academy. The first class of 20	

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		prosecutors and 9 judges graduated in 2009. 130 judges and prosecutors were trained in child rights in six seminars (CRC/C/MDA/3, para. 374). Opinions on the impact of training vary. - Changes to the Criminal Code made in 2009 reduce sentences for certain crimes. Although the measures can be considered as steps towards compliance with the 'last resort' and 'shortest appropriate period of time' principles, set forth in article 37(b) of the CRC, they do not comply fully with these principles. - During the last five years, the number of juveniles given custodial sentences has fallen sharply, from 194 in 2004 to 100 in 2008. The percentage of convicted juveniles given custodial sentences rose sharply during the same period, because the number of convictions fell dramatically, from 1,774 in 2004 to 445 in 2008. The decline in the number of juveniles given custodial sentences is due in part to a 2008 amnesty. - The main alternative sentence used is 'conditional suspension of the sentence', equivalent of probation. In 2008, fines were imposed on approximately 10 per cent of convicted juveniles, and community service on nearly 25 per cent. Some convicted juveniles reject sentences of community service because it is considered demeaning, and there is some hostility towards offenders. - The number of persons below age 18 being supervised by the Probation Service at the end of 2008 was approximately 1,000, and 170 new cases were added to the caseload during the first four months of 2009. - A Probation Service and a publicly funded Legal Aid Service have been established and are	

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		in the process of developing specialized staff or programmes for juveniles. Measures intended to prevent abuse of juvenile suspects have been introduced and the recently established ombudspersons play a valuable role in investigating the situation of juvenile suspects, detainees and prisoners. - A Law on Mediation has come into force and mediators have been trained and certified. Referral of cases involving juveniles to mediation has begun and results are positive. **Government:** The Government invested 39 million MDL for the improvement of conditions in detention facilities, including for reparation and procurement of medicines. The most important achievements in this field were: -launching the reconstruction of the Penitentiary No. 1 in Taraclia; -the reparation of the cells for minors detention in Penitentiary No. 13 in Chisinau; -organization of tenders for the reconstruction of the Penitentiary No. 4 in Cricova; -creation of a modern aqua treatment centre in Rusca Penitentiary No. 7; -improved dentistry services in the penitentiary hospital. The Department of Penitentiary Institutions promotes a program for the distribution of goods and items of personal hygiene. In 2010, there were 6270 detainees in detention facilities as opposed to 10 000 detainees in 2005. During the first 9 months of 2010, the number of morbidities amounted to 9537, as compared to 10 056 during the same period of 2009, out of which the number of persons with body injuries was 1527 in 2010, and 842 in 2009.	

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		- In early 2010, the process of establishing a representative and self-administrative organ of the prosecutors was finalised, in accordance with the provision of the Law on prosecutor's Office. In 2010, the Superior Council of Prosecutors (SCP), as guarantor and representative of the prosecutor's body assured the work of the Disciplinary Board, Qualification Board, the improvement of the policy on human resources, reorganization and optimization of the prosecutor's activities, strengthening the role of the SCP in the activities of the prosecutors. During 2010, the SCP managed the following activities: -Improving the activities of the prosecutorial organs, raising the level of prosecutors' responsibility, consolidating transparency, changing the image of prosecutors' image in the society. -Developing cooperation and partnership with other state authorities' organs. - Protecting the prosecutors' statute. - Developing partnership relations with mass-media through the elaboration of a communication strategy. In order to perform its duties prescribed in the art. 82 of the Law on Prosecutors' office and the Regulations regarding its activities, Superior Council of Prosecutors (SCP) had 18 meetings/sessions and adopted 318 decisions. The Qualification Board and the Disciplinary Board have had a number of meetings, adopted several decisions and considered 64 disciplinary proceedings. So far, the Appeal Court did not repeal any decisions adopted by the SCP.	

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(d) Compensation and rehabilitation i) Incorporate the right to reparation for victims of torture and ill-treatment into the domestic law together with clearly set-out enforcement mechanisms; lend full support to non-governmental institutions working on the rehabilitation of torture victims and protect the staff working for those institutions.	Article 616 of the Civil Code dealt with compensation, but no cases of compensation in practice; Services were provided by the non-governmental Medical Rehabilitation Centre for Torture Victims "Memoria", which depended on foreign funding and was unable to cover the entire country; Rehabilitation therefore suffers from a lack of financial resources for the establishment of adequate facilities as well as for training of health personnel; Allegations of threats against staff of "Memoria".	**Government:** There was no increase in funding for the rehabilitation of victims of torture since 2008. Humanitarian aid was provided in the framework of projects for rehabilitation of victims of torture. ***Non-governmental sources:*** Severe problems in securing funding to assist with the rehabilitation of torture victims exist. ***Non-governmental sources:*** In principle, although criminal and civil remedies exist under domestic law for victims of torture, in practice, there continue to be severe obstacles to access such legal remedies. - In 2009, at the initiative of the Prime Minister, a commission comprised of representatives of several ministries and a civil society organisation has been established for identifying the victims of the April 2009 events entitled to financial compensation, remedies and other rehabilitation measures. - On 22 April 2010, the Commission decided that both civilians and police officers who suffered physical or psychological trauma would be provided with the rehabilitation and compensation. - The identification of the victims was delegated to the Ministry of Internal Affairs and Ministry of Health, with the help of non-governmental organizations. Non-identified victims can still submit applications accompanied with other documents. As of 1 June 2010, there had been no monetary compensation paid to the victims, although a draft decision on the first payments to 19 victims has reportedly been forwarded to the Government for approval. - In practice, the primary victim rehabilitation	

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		centre remains severely under-resourced.	
(e) Women i) Ensure adequate funding for the existing infrastructure to support victims of domestic violence and trafficking and extend the network of centres providing psycho-social, legal and residential services to all parts of the country taking into account the increased vulnerability of women and girls in rural areas; ii)Establish specialized female law enforcement units; iii) Devise concrete mechanisms to implement the new Law on preventing and combating family violence in practice, including through a Plan of Action for its implementation and monitoring, including through allocation of adequate budgetary and human resources to relevant State bodies.	The scale of trafficking was relatively unknown because most victims were not identified due to the absence of systematic identification processes and the inability or unwillingness of some victims to report their trafficking experiences; The infrastructure to support survivors of domestic violence was lacking in most parts of the country (only one shelter existed in July 2008, which was privately run and situated in the capital).	**Government:** Through the three Health Centres for Women, women subjected to any form of violence or trafficking are provided with psychological counselling, followed by a medical examination and placement in a rehabilitation centre, if necessary. The 12 Youth Friendly Health Centres provide a psychologist, consultancy and educational discussions, healthcare services for detecting diseases, as well as supervision and medical and psychological rehabilitation of victims of trafficking. During 2009, the Maternal Centre of Placement and Rehabilitation for young children from Chisinau municipality accepted a victim of trafficking and other five persons facing the risk of being trafficked. They have been provided with psychological counselling, medical examinations and rehabilitation assistance. A priority in the field of combating and preventing domestic violence is the creation and consolidation of the services that are currently underdeveloped and are provided mainly by NGOs. Three centres are highlighted: - the Maternal Centre “Pro Femina” (Hincesti) provides temporary placement and counselling services (psychological, social, legal) to mothers and children as victims of domestic violence; - the Family Crisis Centre “SOTIS” (Balti) provides counselling to victims of domestic violence (psychological, social, legal, medical); - the Centre for temporary placement of children at risk “The Way Home” (Balti) provides rehabilitation services to mothers and children as victims of domestic violence or victims of human trafficking. In the framework of the Project „Better	

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		Opportunities for Youth and Women", financially supported by the International Agency for Development of the USA (USAID), ten multifunctional centres for social reintegration (with placement) were set up, which provide services for victims of human trafficking and victims of domestic violence. According to a Disposition by the Ministry of Health (no. 373-d of 15 June 2009), the Directors of Family Doctors Centres of Anenii Noi, Şoldăneşti, Rezina and Vulcăneşti districts shall ensure that deputy directors, responsible for providing healthcare to mothers and children, legal doctors, family doctors, and family doctors' medical assistants participate in the course: "Protection and rehabilitation of victims of domestic violence and victims of trafficking in human beings. Multidisciplinary teams at the communitarian level" within the "Protection and rehabilitation of domestic violence victims" project. The participation in the above mentioned course strengthened the medical staff's capacities to solve issues related to domestic violence and trafficking in human beings. The Law on Prevention and Elimination of Violence in the Family entered into force on 18 September 2008. It includes important provisions on domestic violence, establishes an institutional framework with detailed responsibilities of the relevant authorities, provides for the creation of centres/services for the rehabilitation of victims and aggressors, and for complaints mechanisms, protection orders and punishment of aggressors. In order to implement this law, a draft law regarding the amendment and modification of a number of legal acts shall be enacted. The objective of this	

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		draft law is to amend the following normative acts: Criminal Code: - Introducing an article on the definition of the family member; - Introducing a new offence: violence in the family; - Introducing a new offence: sexual harassment; - Introducing an article related to rape in order to include matrimonial rape; - Introducing a new offence related to the violation of a protection order. Criminal Procedure Code: - Introducing a new article on the protection of the victim of domestic violence; - Stipulating the obligation of the prosecutor and court to verify if the victim of domestic violence expressed freely his or her consent for reconciliation. Civil Procedure Code: - Introducing a new chapter on special procedures for the application of protection actions in cases of domestic violence. The Ministry of Labour, Family and Social Protection has developed a draft of a Government Decision on approval of the Regulations regarding the organization and operation of centres for assistance and protection of victims of family violence which is also in the process of finalization. In the context of the development of a joint methodology for collecting statistical data regarding domestic violence, the project "Development of an integrated information system for management of data on violence within the family in the Republic of Moldova" was launched on 1 July 2008. It is funded by the Agency for International Assistance of the	

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		Romanian Government for Moldova and implemented by UNFPA in cooperation with the Ministry of Social Protection, Family and Children and civil society. In the framework of this Project, the concept of the informational system "State Register of Cases of Violence within the Family" was approved by Government Decision no. 544 on 9 September 2009. This system will significantly contribute to the continuous monitoring of domestic violence and statistical analyses will provide a consistent basis for developing effective policies to prevent and combat domestic violence and will facilitate the cooperation between the appropriate institutions. In order to initiate the process of statistical data collection, statistical cards were developed for recording cases of violence within the family for experts from three branches (health, social protection and police). This process was launched in two pilot districts: Drochia and Cahul. **Non-governmental sources:** Moldova is a source and, to a lesser extent, a transit and destination country for trafficking in women, men and children for purposes of forced prostitution, begging and forced labour. The small breakaway region of Transnistria in eastern Moldova is outside the central Government's control and remained a source of trafficking. - The new Government demonstrated a high-level commitment to combating trafficking by establishing a cabinet-level national committee on trafficking led by the foreign minister and, fully funded and staffed Permanent Secretariat of the National Committee for Preventing Trafficking in Persons. The Government	

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		continued funding the trafficking assistance centre run jointly by the government and the International Organization for Migration (IOM). - Since 2006, the Government has been implementing the National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking (NRS) - a comprehensive system of cooperation between governmental and non-governmental agencies involved in combating human trafficking. On 5 December 2008, the NRS Strategy 2009 - 2016 and Action Plan 2009 - 2011 were approved by the Parliament. - As of 2010, the Assistance and Protection Centre for Victims and Potential Victims of Trafficking in Human Beings (CAPC) has been established within the NRS which was subordinated to the Ministry of Labor, Social Protection and Family, and is jointly coordinated by the IOM. The CAPC provides temporary residence, psychological, social and legal support to victims. In 2008, the Government institutionalized the CAPC. - The NRS is being implemented in the regions through the creation and training of multidisciplinary teams (MDTs) composed of a wide range of specialists. Since 2006, MDTs have been created and trainings have been carried out in 26 territorial units of Moldova. The Government is working on creating MDTs in all rayons by 2012. - The Government has not yet established specialized female law enforcement units. - With the Law on Preventing and Combating Domestic Violence (Law No. 45) in force since September 2008 and with the support of IOM, UNFPA and other partners, the NRS started extending the same assistance to victims and	

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		potential victims of domestic violence. Several capacity-building events were conducted for district and community level specialists in five districts. - The 2008 law authorizes courts to issue protection orders within 24 hours of receiving a request for such an order. Since September 2009, about 28 protection orders have been issued. There are concerns about the low level of knowledge about the provisions of the law on domestic violence, general awareness and tolerance of the public towards the phenomenon. Protection orders have only been issued in a limited number of jurisdictions, namely Anenii Noi, Soldanesti, Vulcanesti, Causeni, Falesti, Rezina and, from June 2010, Chisinau. - The Law 167/2010 also requires the district police and social assistance offices to appoint persons responsible for the prevention and combating of domestic violence. At the community level, mayors will be responsible for the supervision and coordination of such measures. - Negotiations over creating the first rehabilitation centre for victims of domestic violence in Drochia district are under way. The Ministry of Labour, Social Protection and Family has committed to cover partially the costs of the centre in 2011. - The above efforts have been complemented by nationwide awareness-raising events, aimed at raising a non-tolerant attitude towards domestic violence and promoting a trust-line for victims of domestic violence. - One further step towards the prevention of domestic violence is the recent approval of the National Program on Gender Equality 2010-2015 and the National Action Plan on Gender	

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		Equality 2010-2012 (Government Decision no. 933 of 31 December 2009). A working group is currently working on adjusting the domestic legislation on gender equality with international standards. **Government:** Significant progress was achieved in relation to national response to gender-based violence. On 3 September 2010, the Law No. 167 on amending the current legislation to provide an implementing mechanism for the law on family violence was approved by the Parliament. -The Model Regulations for the Rehabilitation Centre for Victims of Family Violence (Government Decision No.129 of 22 February 2010) was approved. -The draft Quality Standards in Delivering Assistance for Victims of Family Violence is still under revision and is expected to be approved by the end of 2010. -Based on the above legislation, the Government with the support of UNFPA, has developed the draft of profession specific guidelines for the implementation of legislation in the area of domestic violence for police officers, medical staff and social assistants. -The guidelines is currently being reviewed by relevant ministries and will be tentatively approved by the end of 2010. - The issues of violence against women and domestic violence are specifically targeted in the National Programme on Gender Equality for 2010-2015. - During the period of 2009-2010, the representatives of the Ministry of Labour, Social Protection and Family and civil society have participated in the drafting process of the	

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		Council of Europe Convention to prevent and combat domestic violence and violence against women. Upon the realization and approval of the treaty, the Republic of Moldova will automatically become signatory state. - UNFPA supported the development of a number of methodological tools for different target groups, including analytical programmes for legal, social and psychological assistance in cases of domestic violence for Master course students; rehabilitation programme for victims of domestic violence and perpetrators; guide for interventions in cases of domestic violence for multidisciplinary teams; analytical programme for police officers; a Guide on implementation of the Law No. 45 on preventing and combating domestic violence, including the Protection Order for judges. Services for victims of domestic violence include: shelters and support centres providing assistance and rehabilitation to female victims of domestic violence; counselling services for child victims of domestic violence; centres for assistance and protection of victims and potential victims of trafficking in human beings (THB); family crisis centres; centre for information and counselling for victims of domestic violence; maternal centre providing emergency placement services as well as temporary placement and counselling services to mother and child-victims of family violence; centre for temporary placement of children at risk; law centre providing network of legal services to victims of domestic violence in four districts: Anenii-Noi, Rezina, Soldanesti, Vulcanesti. -The protection and assistance of victims and potential victims of THB is carried out within	

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		the National Referral System for Protection and Assistance of Victims and Potential Victims of Trafficking in Human Beings (NRS). -The social and economic empowerment of the disadvantaged groups is carried out on a permanent basis within the NRS. Multidisciplinary teams, in co-operation with International Organisation for Migration in Moldova and local NGOs, identify and provide individual assistance to potential victims of THB. Other services include vocational training, employment mediation, business development training and assistance, medical, psychological and legal assistance. Special assistance is provided to victims identified abroad who are referred to community services for their social reintegration. -The Law on prevention and combating trafficking in human beings provides rehabilitation and recovery of victims of human trafficking, including medical and legal assistance, psychological, material, professional rehabilitation and accommodation. The Chisinau Centre for Protection and Assistance which was institutionalized in 2009 by the Ministry of Labour, Social Protection and Family, offers accommodation for up to 30 days subject to extension for pregnant women. -The repatriation procedure for victims of human trafficking is set out by the Regulation on Procedure for Repatriation of Children and Adults-Victims of Human Trafficking, Smuggling of Migrants, as well as Unaccompanied Children, approved by Government Decision No. 948 of August 2008. -A hotline run by the NGO International Centre La Strada is available 24 hours a day.	
(f) Health-care	Persons in the psychiatric	**Government:** Currently the Ministry of	

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facilities/psychiatric institutions i) Consider ratifying the Convention on the Rights of Persons with Disabilities and ensure respect for the safeguards available to patients, in particular their right to free and informed consent in compliance with international standards (see also report A/63/175); ii) Allocate funds necessary to reform the system of psychiatric treatment.	clinic visited by the Special Rapporteur, in particular those serving court sentences were held in apathy, subject to excessive use of tranquilizers; Lack of clarity of whether the use of tranquilizers ways based on free and informed consent by the patients; The medication given to the partly very young children, especially in terms of tranquilizers, was clearly not suitable; The Ministry of Health recognized that the treatment, which consisted almost exclusively of the use of strong neuroleptics was inadequate and indicated that psychiatric care would be individualized, new treatments developed, and modern drugs purchased once the necessary funds were made available;	Labour, Family and Social Protection undertakes a number of actions in order to prepare the ratification of the Convention on the Rights of Persons with Disabilities, including drafting a strategy on social inclusion of persons with disabilities and adjusting national legislation to international standards in this respect. Within the psychiatric medical institutions, patients are treated with minimum therapeutic doses of psychotropic substances and are involved in the rehabilitation process that includes ergo-therapy through attending the reading room and the gym. The reforms adopted by the administration of the psychiatric medical institutions led to creating and extending the recreational space. The patient is informed of the methods of treatment and the prescribed medicine and is asked to sign the "Consent on hospitalization, investigation and therapeutic procedures provided within the psychiatric hospital". If the patient is unable to sign the form, it will be signed by his or her close relative or legal representative. Within the health facilities, children are treated with the last generation of psychotropic substances calculated in line with international standards by bodyweight. The therapeutic indications are prescribed in accordance with treatment standards and are coordinated with professors of the department of psychiatry, narcology and psychology. Currently, the focus in pedo-psychiatry is based on the use of psychotherapy, occupational therapy, physiotherapy and physical exercises. ***Non-governmental sources***: On July 9 2010, Parliament approved the ratification of the	

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		Convention on the Rights of Persons with Disabilities and on 21 September 2010, it deposited the instrument of ratification. - Reforms directed to the implementation of the Convention are in initial stages and are expected to take at least 18 months. Early areas identified for reform in this regard include clarification of the monitoring mechanisms; adoption of a comprehensive anti-discrimination law; reforming civil code provisions on guardianship and trusteeship; ending practices of abusive detention of persons with mental disabilities; reorienting social inclusion systems for the treatment of persons with disabilities; reforming the Education Code to facilitate genuine inclusion of persons with disabilities in schooling and vocational training. In March 2010, the Ministry of Health established the Human Rights and Health Working Group which elaborated a plan of actions intended to address issues of concern raised in the CPT report (CPT/Inf (2008) 39). It generally recognized that the large mental health institutions need to be significantly reorganized and reformed to efficiently redress the situation. In August 2010, the Ministry initiated the revision of about 20 regulations. It is likely that another reform will be needed, as the August 2010 was carried out without extensive consultation. **Government**: The Ministry of Health Order No. 591 of 20 August 2010, "Regarding the organizational structure and functions of Mental Health Services" along with 24 regulations of service organisation was adopted. National Clinical and Institutional Protocols, containing treatment guidelines have been developed	

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		according to the international standards. The funds for centralized purchase of drugs providing free drugs to patients who suffer from chronic mental disabilities, and patients with disabilities of I-II degree, have been increased from 5 mln lei (2008) to 12 mln lei (2009). The in-patients are provided with recent psychoactive medications. Specific measures have been undertaken with the purpose of improving accommodation conditions. Such measures include increasing nutrition from 11 lei (2009) to 16 lei (2010) per patient per day, performing reparation in clinical units. Other measures undertaken include: - improved conditions for forced treatment, installed video equipment ensuring safety and protection; improved informed consent upon the admission to the hospital; therapy; and formulation of invasive investigations. - established institutional rehabilitation service for patients with mental disabilities and behaviour disorders. The following documents were drafted: Informative notes/brochures on patients' rights and responsibilities within the psychiatric institutions; Legislation and Norms for the medical and non-medical staff in mental health services. - By the Law No.166 –XVIII of 9 July 2010, the Republic of Moldova ratified the UN Convention on the Rights of Persons with Disabilities. A strategy for social inclusion of persons with disabilities (2010-2013) was developed defining the state policy in the field of social protection of persons with disabilities and its adjustment to international standards and provisions of the Convention. - On 9 July 2010, the Law on the approval of the	

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		Strategy on social inclusion of persons with disabilities (2010-2013) was adopted by the Parliament. - During 2010-2011, the Strategy envisages the elaboration and adoption of the Law on social inclusion of people with disabilities; development and approval of methodology for the identification of disabilities degree in accordance with the WHO standards; adjustment of national legislative-normative framework to the European and international standards on the protection of the rights of persons with disabilities; reorganization of structures and institutions responsible for the coordination of the system of social inclusion of persons with disabilities.	
(g) Transnistrian region of the Republic of Moldova i) In addition to the introduction and implementation of legal safeguards, such as inter alia the reduction of the length of police custody to a maximum of 48 hours and the medical examination of newly arrived detainees in places of detention, establish independent monitoring of places of detention; ii) Criminalize torture and abolish the death penalty de-jure. iii) Stop immediately the	Conditions in custody of the militia headquarters in Tiraspol were in violation of minimum international standards (overcrowded cells with few sleeping facilities, almost no daylight and ventilation, 24 hours artificial light, restricted access to food and very poor sanitary facilities); A "Human Rights Commissioner" had been instituted, but does not undertake monitoring visits to places of detention. Most of the Special Rapporteur's interlocutors expressed distrust in this institution; Whereas the Transnistrian "Criminal Code" did not	**Government:** The existence of a secessionist regime in the Eastern part created serious difficulties to the implementation of commitments resulting from relevant international conventions on human rights protection and other international treaties to which Moldova is party throughout the country. Moldovan authorities do not have access and are unable to effectively exercise constitutional prerogatives in the region, because of parallel structures that have usurped local power in this part of the country. The state of affairs concerning torture or cruel, inhuman or degrading treatment and punishment applied to individuals remains unknown. The Government periodically raises awareness of international organizations on cases of violations of human rights and fundamental freedoms by the separatist regime in Tiraspol, aiming at determining it to comply with the rigors of international standards in this matter.	

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practice of solitary confinement for persons sentenced to death and to life imprisonment.	contain the definition of torture required by the Convention against Torture, it criminalized "istyazanie" (torment), to be punished with up to 3 years imprisonment and stated that it can be combined with "torture", to be punished with up to 7 years imprisonment; Although abolitionist in practice, the death penalty was still provided for by the "legislation" of the Transnistrian region of the Republic of Moldova; Legislation in force required solitary confinement for persons sentenced to capital punishment and to life imprisonment and prescribed draconic restrictions on contacts with the outside world.	***Non-governmental sources:*** An independent monitoring mechanism for places of detention has not been established. Transnistrian authorities refused to cooperate with international organizations wanting to monitor places of detention. On 21 July 2010, a delegation of the Committee against Torture had to interrupt its visit to Transnistria because of the lack of guarantees by the official representatives to interview detainees confidentially. The Transnistrian Ombudsman has not been responsive to the United Nations country office's approaches of initiating joint visits to places of detention. - In practice, cases of arbitrary detention have been regularly reported in Transnistria and the Special Rapporteur on Torture has taken them up. - The death penalty has not yet been abolished as per article 43 of the Transnistrian Criminal Code. Torture has not been introduced as a crime in the Criminal Code. - The practice of solitary confinement for persons sentenced to death and to life imprisonment has not changed.	

Spain

Seguimiento de las recomendaciones del Relator Especial (Theo van Boven) en su informe relativo a su visita a España del 5 al 10 de octubre de 2003 (E/CN.4/2004/56/Add.2)

122. El 22 de noviembre de 2011, el Relator Especial envió la tabla que se encuentra a continuación al Gobierno de España solicitando información y comentarios sobre las medidas adoptadas con respecto a la aplicación de sus recomendaciones. El Relator Especial lamenta que el Gobierno no haya proporcionado una respuesta a su solicitud. Él espera recibir información en cuanto a sus esfuerzos para aplicar las recomendaciones, e informa de su disposición a ayudarle en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

123. Con respecto a las garantías de las personas detenidas, el Relator Especial pide al Gobierno a que proporcione información acerca del proceso de seguimiento, evaluación y reformulación del Plan Nacional de Derechos Humanos. En particular, el Relator agradecería contar con información en cuanto a la reforma del artículo 520.4 de la Ley de Enjuiciamiento Criminal a fin de reducir el actual plazo máximo de ocho horas dentro del cual debe hacerse efectivo el derecho a la asistencia letrada. En relación a las relaciones sociales entre los presos y sus familias, el Relator Especial quisiera agradecer al Gobierno de España por la explicación detallada de la política de separación de los presos. Sin embargo, tomando en cuenta la importancia de la familia, el Relator Especial exhorta al Gobierno a reconsiderar esta política.

124. Con relación a la limitación de las garantías para los detenidos incomunicados, el Relator Especial solicita al gobierno que proporcione información acerca de las reformas legales previstas por el Plan Nacional de Derechos Humanos que garantizarían el examen médico de las personas en situaciones de incomunicación por un segundo médico adscrito al sistema público de salud, designado por el mecanismo nacional de prevención de tortura. Además, tomando en cuenta el hecho de que ha sido adoptado en la práctica por la mitad de los juzgados encargados de la instrucción de los delitos de banda armada, el Relator reitera su recomendación de aplicar el protocolo que permite a los detenidos ser examinados por médicos de su elección en todo juzgado encargado de la instrucción de los delitos de banda armada.

125. Con respecto a los casos de delitos de terrorismo, el Relator Especial toma en cuenta que tres de los seis juzgados encargados de la instrucción de los delitos terroristas vienen aplicando un protocolo por el cual comunican a las familias de los detenidos el lugar de la detención y los traslados que se lleven a cabo. A la luz de ello, consideraría recomendable que este protocolo se aplicara en todo juzgado encargado de la instrucción de los delitos de terrorismo.

126. En relación al régimen de incomunicación, el Relator Especial toma nota de la información proporcionada por el Gobierno de España sobre este tema. Sin embargo, a la luz de la información recibida por el Relator Especial en los últimos años acerca de un presunto alto porcentaje de alegaciones de actos de maltrato o tortura relacionados con situaciones de detención e incomunicación, llama al Gobierno a considerar seriamente la supresión del régimen de incomunicación, o en todo caso regularlo más estrictamente para que no sea la circunstancia propicia para la aplicación de tormentos.

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Las más altas autoridades deberían reafirmar y declarar oficial y públicamente la prohibición de la tortura y los tratos o penas crueles, inhumanos o degradantes en toda circunstancia e investigar con las denuncias de la práctica de la tortura en todas sus formas.		***2010: Fuentes no gubernamentales:*** La promoción y defensa de los derechos humanos constituye una de las prioridades de la política exterior del gobierno así como de su política de cooperación internacional. Así se recoge en los Planes recién aprobados en Consejo de Ministros el pasado 12 de diciembre de 2008 como en el nuevo Plan Director de Cooperación Española 2009-2012. - En los pocos casos en que la tortura se ha demostrado fehacientemente, las autoridades han minimizado su importancia, considerándolos en todo caso hechos aislados sin mucha importancia. Este talante de ocultación colisiona con la posición de la sociedad civil, de sectores profesionales y académicos que han denunciado la existencia de la tortura y exigido la implementación de medidas concretas para su prevención y por medio de ella, su erradicación. - En cuanto a las actuaciones gubernamentales, cabe destacar la aprobación de la Ley Orgánica 4/2010, de 20 de mayo, del Régimen disciplinario del Cuerpo Nacional de Policía, en la que se tipifican como faltas muy graves "la práctica de tratos inhumanos, degradantes, discriminatorios o vejatorios a los ciudadanos que se encuentren bajo custodia policial". - El Mecanismo Nacional de Prevención, en su primer informe anual insistirá en el principio de "tolerancia cero" del Gobierno no sólo ante cualquier acto de tortura o	

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		maltrato, sino también ante las irregularidades procedimentales que se puedan cometer en el trato contra detenidos, fomentando el establecimiento de buenas prácticas en este sentido.	
		Gobierno: El Gobierno informó que la Constitución española establece en su artículo 15 el derecho a la vida y la integridad física y moral de las personas sin que en ningún caso puedan ser sometidas a tortura ni a penas o tratos inhumanos o degradantes.	
		Los malos tratos y las torturas constituyen en España un delito perseguible de oficio, siempre que hay indicios de su comisión, contemplando el ordenamiento jurídico varias vías para la investigación de dichos supuestos y la garantía del derecho fundamental. En particular, la Constitución española establece en su articulo 24 que todas las personas tienen derecho a obtener la tutela efectiva de los jueces y tribunales en el ejercicio de sus derechos e intereses legítimos, sin que en ningún caso pueda producirse indefensión.	
		Por tanto la investigación se realiza a través de los órganos judiciales que son, por su propia naturaleza, independientes. El sistema español vigente en materia de investigaciones sobre denuncias de malos tratos ya esta por tanto adecuado a las normas internacionales y a los principios generales que exigen que dichas investigaciones sean prontas, independientes, imparciales y exhaustivas. En efecto, dicha investigación corresponde a los órganos judiciales que, en un estado de	

Recomendaciones (E/CN.4/2004/56/Add.2)	*Situación durante la visita* (E/CN.4/2004/56/Add.2)	*Medidas tomadas en años anteriores* (E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)	*Información recibida en el periodo reportado*
		derecho como el español, reposan y actúan de conformidad con dichos principios por lo que no caben mas mecanismos que los procedimientos judiciales que establece la ley de enjuiciamiento criminal. España considera que los órganos judiciales, cuya independencia es inherente a sus funciones, son la institución idónea para llevar a cabo dichas investigaciones, estando en total conformidad con los principios relativos a la investigación y documentación eficaces de la tortura y otros tratos o penas, crueles, inhumanos o degradantes, adoptados por la Asamblea General en su resolución 55 /89 anexo, de 4 de diciembre de 2000. En el mismo sentido el articulo 53 establece que cualquier ciudadano podrá recabar la tutela de las libertades y derechos reconocidos en el articulo 14 y la sección primera del capitulo 2º- entre los que se encuentra la interdicción de la tortura o los malos tratos- ante los tribunales ordinarios por un procedimiento basado en los principios de preferencia y sumariedad, e, incluso, a través del recurso de amparo ante el Tribunal Constitucional. Asimismo, el Tribunal Constitucional (“alta autoridad del Estado” utilizando los términos empleados en las recomendaciones) y máxima instancia nacional en materia de garantías constitucionales y protección de los derechos fundamentales, ha reiterado durante 2010 la obligación que incumbe a todos los órganos judiciales de investigar las denuncias de torturas y malos tratos. Las sentencias del Tribunal Constitucional	

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		de 19 de julio y de 18 de octubre de 2010, otorgan a los recurrentes el amparo necesitado y ordenan a las autoridades judiciales competentes que realicen una investigación más exhaustiva de los hechos denunciados. Esta última sentencia señala que en relación con la investigación de este tipo de denuncias deben tomarse en consideración las circunstancias concretas de cada caso siendo preciso atender a la probable escasez de pruebas existentes en este tipo de delitos lo que debe alentar la diligencia del instructor para la práctica efectiva de las medidas posibles de investigación. La sentencia añade que la cualificación oficial de los denunciados debe compensarse con la firmeza judicial frente a la posible resistencia o demora en la aportación de medios de prueba, con especial atención a las diligencias de prueba cuyo origen se sitúe al margen de las instituciones afectadas por la denuncia, y con la presunción a efectos indagatorios de que las lesiones que eventualmente presente el detenido tras su detención, y que eran inexistentes antes de la misma, son atribuibles a las personas encargadas de su custodia. En concreto respecto a la valoración del testimonio judicial del denunciante advierte que el efecto de la violencia ejercida sobre la libertad y las posibilidades de autodeterminación del individuo no deja de producirse en el momento en que físicamente cesa aquella y se le pone a disposición judicial, sino que su virtualidad coactiva puede pervivir y normalmente lo hará mas allá de su práctica.El Plan	

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		Nacional de Derechos Humanos, aprobado por el Gobierno de España en diciembre de 2008, constituye por sí solo la más amplia declaración oficial posible a favor del respeto de los derechos humanos y la interdicción de la tortura y los malos tratos. El Gobierno concibe el plan de derechos humanos como un mecanismo más para la garantía de tales derechos, estableciendo una lista de compromisos concretos destinados precisamente a fomentar, realizar y proteger el ejercicio de los derechos humanos. Unos compromisos cuya ejecución efectiva puede ser seguida y evaluada. Las obligaciones internacionales, la elaboración de determinadas leyes, la creación de organismos específicos para su defensa, las decisiones dirigidas a mejorar la calidad de la justicia, los mecanismos de control a los poderes públicos en su relación con los ciudadanos, los medidas en relación con la igualdad, con los derechos sociales, con el medio ambiente, la transparencia en la gestión pública, todos habrán de ser instrumentos con que perfeccionar la garantía de los derechos humanos en España. Cada medida del plan es una garantía en sí misma. Lo es porque compromete al Gobierno a realizar acciones en beneficio de un derecho determinado, y lo es porque lleva aparejada la información necesaria para que su ejecución pueda ser fiscalizada por las instituciones y organizaciones de la sociedad civil interesadas. 2009: El Gobierno declaró el principio de “tolerancia cero” contra cualquier acto de	

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		tortura o maltrato en la defensa ante el Comité contra la Tortura. Fuentes no gubernamentales: Existe un compromiso claro del Gobierno en contra de la tortura y los malos tratos. Las autoridades policiales españolas insisten en la política de tolerancia cero en relación con cualquier comportamiento delictivo de los funcionarios, y han adoptado una serie de disposiciones para proteger los derechos de los detenidos, así como para garantizar que las fuerzas del orden que trabajan en estas circunstancias observen una conducta apropiada (A/HRC/10/3/Add.2). 2008: El Gobierno confirma su compromiso con la defensa de los derechos humanos, el absoluto respeto a la legalidad y la máxima transparencia en la gestión pública. Se aprobó la Instrucción 12/2007 de la Secretaría de Estado de Seguridad sobre los Comportamientos Exigidos a los Miembros de las Fuerzas y Cuerpos de Seguridad del Estado (FCSE) para Garantizar los Derechos de las Personas Detenidas o bajo Custodia Policial. Se aprobó también la Instrucción 7/2007 de la Secretaría de Estado de Seguridad para poner a disposición de los ciudadanos en todas las dependencias policiales un libro de quejas y sugerencias, que deben ser investigadas y respondidas debidamente por los Cuerpos Policiales. El Gobierno precisa que no tiene competencias sobre las Policías locales que dependen de los Ayuntamientos y de los	

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		Alcaldes, los cuales son elegidos democráticamente. Fuentes no gubernamentales 2008: No se observaron avances significativos durante el 2007 en relación con la implementación de esta recomendación. 2007: El Gobierno español reitera que el Ministerio del Interior ha venido aplicando siempre y sin excepción el principio de tolerancia cero ante la posible vulneración de los derechos constitucionales, favoreciendo la investigación, la transparencia y la cooperación con el resto de los poderes del Estado cuando haya sospecha de que se haya producido uno de estos actos. Fuentes no gubernamentales 2007: A nivel nacional se han producido algunas declaraciones institucionales en los últimos dos años. Sin embargo, siguen produciéndose declaraciones públicas de altos responsables políticos y policiales que niegan que en España se torture o que minimizan la gravedad de la situación. Son habituales las declaraciones públicas de apoyo a funcionarios denunciados o inculpados por tortura y/o malos tratos. 2006: Fuentes no gubernamentales: Las autoridades no cuestionan el régimen de incomunicación y tachan de falsa todas las denuncias por tortura presentadas en los Juzgados. 2005: El Gobierno informó que la defensa y promoción de los derechos humanos constituye uno de los ejes fundamentales de	

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		la política exterior. 2005: Fuentes no gubernamentales: Las valoraciones de representantes políticos en declaraciones públicas tras la visita, así como el tratamiento de los principales medios de comunicación fueron en todo momento de ocultación.	
Elaborar un plan general para impedir y suprimir la tortura y otras formas de tratos o castigos crueles, inhumanos o degradantes.		***2010: Fuentes no gubernamentales:*** Está vigente el Plan Nacional de Derechos Humanos de diciembre de 2008, que tiene carácter plurianual. **Gobierno:** El Gobierno informó que en diciembre de 2008 aprobó el Plan Nacional de Derechos Humanos que da pleno cumplimiento a esta recomendación del relator, por cuanto recoge expresamente todas las acciones y medidas del Gobierno español para hacer efectivo su compromiso a favor de los derechos humanos, así como para prevenir y combatir hasta las últimas consecuencias la tortura y cualquier otra forma de trato o castigo cruel, inhumano y degradante. 2009: El 12 de diciembre de 2008, el Consejo de Ministros aprobó el Plan de Derechos Humanos, el cual constituye una declaración a favor de los derechos humanos y un rechazo absoluto de cualquier violación, incluyendo la tortura. El Plan señala la erradicación de la tortura como uno de los objetivos concretos de la política exterior. El Plan establece también una serie de medidas relativas a las garantías legales del detenido, incluidas las relativas a la detención incomunicada; al	

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		funcionamiento de la Inspección de personal y servicios, a la formación de las FCSE, las garantías de los derechos humanos en los centros de Internamiento de Extranjeros y garantiza la aplicación del principio de no devolución (non refoulement). Fuentes no gubernamentales: El Plan de Derechos Humanos indica que "el Ministerio del Interior asume con firmeza la decisión de fomentar la cultura del respeto a ultranza de los derechos humanos". Las medidas 94 a 97 y 101 a 104 se orientan a reforzar las garantías legales del detenido, mejorar la eficacia de la Inspección de Personal y Servicios de Seguridad del Ministerio del Interior y promover la formación en derechos humanos de los miembros de las Fuerzas y Cuerpos de Seguridad. 2008: El Gobierno informó que estaba prevista la elaboración de un nuevo manual para la actuación operativa en supuestos de custodia policial. El Estado español no tiene competencias directas sobre la Policía Autónoma Vasca y los Mossos de Esquadra, por lo que no puede responder a alegaciones sobre el inadecuado funcionamiento de los sistemas de grabación. El ordenamiento penitenciario prevé la existencia de un régimen cerrado para penados calificados de peligrosidad extrema o para casos de inadaptación a los regímenes ordinarios y abiertos. La aplicación de este régimen excepcional cuenta con una serie de garantías.	

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		La actual Administración penitenciaria ha iniciado una serie de actuaciones de intervención para proteger sus derechos, tales como la reducción de población en régimen cerrado, la intervención especifica con internos de régimen cerrado y el Fichero de Internos de Especial Seguimiento (FIES). En la actualidad no hay dudas sobre la posible ilegalidad o influencia automática sobre el régimen o el tratamiento penitenciario del FIES. En 2006 se actualizó la instrucción sobre los ficheros. Esta no ha sido impugnada por oponerse al ordenamiento jurídico. El primer borrador del Plan de Derechos Humanos se envió el 16 de enero de 2008 a diversas Instituciones y ONGs, pidiendo la formulación de comentarios y sugerencias para su mejora. 2008: Fuentes no gubernamentales: Durante el 2007 continuaron sin recibir ninguna información sobre la evolución del “Plan Nacional de Derechos Humanos”, anunciado en junio de 2006. 2007: El Gobierno afirma que los derechos de las personas detenidas cuentan ya con un marco protector. Los casos de desviación en la actuación policial son escasísimos y se han reforzado los instrumentos para garantizar su erradicación. 2007: Fuentes no gubernamentales: El protocolo que el Gobierno Vasco puso en marcha no ha impedido la aparición de	

Recomendaciones *(E/CN.4/2004/56/Add.2)*	*Situación durante la visita* *(E/CN.4/2004/56/Add.2)*	*Medidas tomadas en años anteriores* *(E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
		nuevas denuncias. No existe información sobre el protocolo para determinar la actuación de los Mossos d'Esquadra en la atención a enfermos mentales. El régimen de FIES sigue en vigor después de que un recurso interpuesto ante la Audiencia Nacional fuera desestimado. La sentencia que desestimó este recurso ha sido recurrida en casación ante el Tribunal Supremo. 2006: Fuentes no gubernamentales: No se ha implementado esta recomendación. En torno al Protocolo diseñado por el Gobierno Autónomo Vasco, en ningún caso restringirían la aplicación de la incomunicación y los familiares de los denunciantes se han quejado de su inoperatividad. 2005: El Gobierno informó que proseguiría la política de colaboración con las instituciones internacionales que trabajan en el ámbito de la tortura. 2005: Fuentes no gubernamentales: No se habría implementado esta recomendación. El Protocolo puesto en marcha por el Gobierno Autónomo vasco presenta deficiencias.	
Suprimir el régimen de incomunicación.	La evolución jurídica reciente en España parece ignorar la opinión internacional contra la detención en régimen de incomunicación y tiende a ir en dirección opuesta.	***2010: Fuentes no gubernamentales:*** La recomendación fue rechazada ya que el gobierno Español afirma la necesidad del mantenimiento del régimen de incomunicación, necesidad derivada de la mayor complejidad de las investigaciones policiales y judiciales cuando se trate de	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
		casos implicando bandas armadas, organizaciones terroristas o rebeldes además de posibles implicaciones internacionales. - En 2009, de 88 personas detenidas en régimen de incomunicación, 45 de ellas indicaron que fueron torturadas por la Ertzaintza (1), por la Policía Nacional (40) y por la Guardia Civil (15). Los métodos incluyen: asfixia por aplicación de bolsa, golpes, ejercicios físicos y agresión sexual a las mujeres. - Hasta el 16 de Septiembre, 43 personas han sido detenidas bajo el régimen de incomunicación y 33 las personas que han denunciado malos tratos y tortura a manos de la Policía Nacional (4), Ertzaintza (14) y Guardia Civil (12). - El Mecanismo Nacional de Prevención tiene presente el régimen de restricción de derechos que supone la detención incomunicada, y por ello presta una especial atención al cumplimiento de todas las garantías de los detenidos. **Gobierno:** El Gobierno informó que la detención incomunicada se lleva a efecto en España con todas las garantías procesales. Su régimen legal es sumamente restrictivo, pues exige en todo caso autorización judicial mediante resolución motivada y razonada que ha de dictarse en las primeras 24 horas de la detención, y un control permanente y directo de la situación personal del detenido por parte del juez que ha acordado la incomunicación o del juez de instrucción del partido judicial en que el detenido se halle privado de libertad.	

Recomendaciones *(E/CN.4/2004/56/Add.2)*	*Situación durante la visita* *(E/CN.4/2004/56/Add.2)*	*Medidas tomadas en años anteriores* *(E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
		La necesidad de su mantenimiento deriva de que, en el caso bandas armadas, organizaciones terroristas o rebeldes, el esclarecimiento de los hechos delictivos requiere una investigación policial y judicial de mayor complejidad y con posibles implicaciones internacionales. Tanto los tribunales ordinarios, como el Tribunal Constitucional, máximo órgano judicial encargado de velar por los derechos fundamentales en nuestro país, se han pronunciado sobre la adecuación de nuestro sistema legal de detención incomunicada a las exigencias de los convenios internacionales suscritos por España, precisamente por las rigurosas garantías que establece nuestra normativa al respecto. En consecuencia, hay que señalar que: – El sistema de detención incomunicada existente en España se ajusta perfectamente a las exigencias de los convenios internacionales suscritos por nuestro país, precisamente por las rigurosas garantías que establece nuestra normativa al respecto, habiendo sido ratificada su legalidad tanto por los tribunales ordinarios como por el tribunal Constitucional español. – La legislación y jurisprudencia españolas son particularmente rigurosas en la exigencia de una motivación y una valoración individualizada por parte del juez para acordar la incomunicación del detenido o preso. – El control continuo y permanente de la autoridad judicial, o en su caso del fiscal, que desde el primer momento debe tener	

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		constancia de la detención, del lugar de custodia, y de los funcionarios actuantes - para lo que cuenta con los medios necesarios y con el auxilio de los correspondientes médicos forenses- constituyen una garantía suficiente de los derechos del detenido incomunicado. No existen, por lo tanto, previsiones para la modificación de la legislación española en el sentido apuntado por la recomendación del relator, si bien el Gobierno español se ha comprometido, mediante el Plan de Derechos Humanos aprobado en diciembre de 2008, a adoptar las siguientes medidas que vengan a reforzar las garantías con las que ya cuentan las personas detenidas en régimen de incomunicación: a. prohibición de la aplicación del régimen de incomunicación a los menores de edad. b. designación, por el mecanismo nacional de prevención de la tortura, de un segundo médico del sistema público de salud para que reconozca al detenido incomunicado. c. grabación en vídeo de todo el tiempo de permanencia del detenido incomunicado en las instalaciones policiales. 2009: El Tribunal Constitucional se ha pronunciado sobre la adecuación del sistema legal de detención incomunicada a las exigencias de los Convenios Internacionales suscritos por España El Tribunal Europeo de Derechos Humanos ha avalado la doctrina del Tribunal	

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		Constitucional, declarando expresamente que es causa razonable de limitación del derecho a la asistencia por el letrado de confianza. El régimen de incomunicación es sumamente garantista. El régimen es de aplicación absolutamente excepcional. En 2008, solo se aplicó al 0.049% del total de detenidos. La Medida 97 del Plan señala algunas medidas para mejorar las garantías de los detenidos sometidos al régimen de incomunicación. Fuentes no gubernamentales: El Plan Nacional de Derechos Humanos prohíbe la detención incomunicada de menores e incluye el derecho a un segundo examen médico por un médico designado por el titular del futuro MNP. El porcentaje de detenidos incomunicados entre 2004 y 2008 en las que hubo alegaciones de maltrato o tortura varía entre 76 y 84 por ciento. Los métodos de tortura incluyen tortura física, métodos de privación, tortura sexual, amenazas, técnicas coercitivas y de comunicación. Aunque la policía autónoma vasca no aplicó el régimen de incomunicación a ninguna persona detenido en 2007 y 2008, se ha sometido por los menos una persona a dicho régimen desde marzo de 2009. En 2009 la Ertzaintza solicitó la incomunicación de un detenido, por primera vez desde 2006. El Parlamento Vasco rechazó una propuesta de ley que solicitaba la derogación de dicho régimen.	

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		Pese a que en la legislación española se han establecido ciertas salvaguardias jurídicas al respecto, como la asistencia de un abogado designado de oficio, el Relator Especial opina que el mantenimiento de ese régimen resulta altamente problemático y abre la posibilidad de que se inflija un trato prohibido al detenido y, al mismo tiempo, expone a España a tener que responder a denuncias de malos tratos a detenidos (A/HRC/10/3/Add.2). 2008: El Parlamento español rechazó varias iniciativas parlamentarias para modificar el régimen de incomunicación. La incomunicación no se decide de modo automático, sino conforme al procedimiento establecido en la ley. Sólo se aplicó la detención incomunicada al 37.5 % de los detenidos, y al 29.7% cuando se refiere a los casos relacionados con ETA. El detenido en régimen de incomunicación se ve privado de algunos derechos. Existe una práctica sistemática en el entorno de la banda terrorista ETA de denunciar torturas, con el objetivo de provocar el continuo descrédito de las Fuerzas y Cuerpos de Seguridad. 2008: Fuentes no gubernamentales: Las personas detenidas en relación con el terrorismo son incomunicadas de manera sistemática, a petición de las fuerzas policiales que los detienen. Al menos una tercera parte denunció tortura y malos tratos durante su custodia policial. 2007: El Gobierno aclara que dicho régimen	

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		se aplica a personas detenidas como medida cautelar, decretado por la autoridad judicial y siempre bajo tutela de ésta, y no tiene como finalidad el aislamiento del detenido, sino la desconexión del mismo con posibles informadores o enlaces, evitándose que pueda recibir o emitir consignas que perjudiquen la investigación judicial. Asentada la base legal de una detención incomunicada, esta se lleva a efecto con todas las garantías procesales. El Tribunal Constitucional se ha pronunciado sobre la adecuación del sistema legal español de detención incomunicada a las exigencias de los convenios internacionales. 2007: Fuentes no gubernamentales: La legislación española prevé la posibilidad de mantener la incomunicación hasta 13 días en casos de terrorismo. Las iniciativas parlamentarias para derogar el régimen de detención incomunicada han sido rechazadas por el Congreso de los Diputados. 2006: Fuentes no gubernamentales: el Ministro de Justicia habló de la intención de reducir la duración de la detención incomunicada de 13 días a un máximo de 10 días, a través de una reforma legislativa. Esta detención crea condiciones que facilitan la perpetración de la tortura. En 2005, 46 de las 50 personas detenidas en régimen de incomunicación denunciaron haber sufrido torturas y malos tratos. 2005: El Gobierno informó que no considera que la detención incomunicada cree per se condiciones que faciliten la perpetración de	

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		la tortura. El régimen de detención incomunicada vigente en España está rodeado de las máximas cautelas legales que aseguran su adecuación a los estándares internacionales de derechos humanos, e impiden la tortura o malos tratos. La detención policial en régimen de incomunicación no produce que al detenido se vea privado de ninguno de sus derechos fundamentales, ni la falta de supervisión judicial que favorezca la posible tortura o malos tratos. La incomunicación tiene por objeto evitar que el detenido pueda comunicar a otras personas elementos esenciales en la investigación. 2005: Fuentes no gubernamentales: No se habría implementado esta recomendación. En la nueva redacción del párrafo 2 del artículo 509 de la Ley de Enjuiciamiento Criminal, se extiende a un plazo de hasta ocho días adicionales el régimen de incomunicación. Esto se habría aplicado anteriormente haciendo una interpretación extensiva de otros artículos de dicha Ley.	
Garantizar con rapidez y eficacia a todas las personas detenidas por las fuerzas de seguridad: a) el derecho de acceso a un abogado, incluido el derecho a consultar al abogado en privado; b) el derecho a ser examinadas por un médico de su elección; y c) el derecho a informar a sus familiares del	En la práctica, el abogado solamente aparece cuando el detenido está a unto de hacer y firmar su declaración formal, y no tiene la oportunidad de hablar con el detenido. Aparentemente se informa a los detenidos que hay un abogado presente y se les facilita el número de identificación, pero no lo pueden ver. El abogado permanece en	***2010: Fuentes no gubernamentales***: España seguirá con los objetivos fijados en el Plan de Derechos Humanos aprobado en el 2008 que fortalecen las garantías con las que ya cuentan las personas detenidas en régimen de incomunicación, incluyendo la prohibición de la aplicación del régimen de incomunicación a menores de edad, la designación por el Mecanismo Nacional de Prevención de la Tortura de un segundo médico del sistema público de salud para	

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hecho y del lugar de su detención.	silencio mientras se hace la declaración. Durante el régimen de incomunicación, el detenido no tiene acceso a un abogado y a un médico de su elección.	que reconozca al detenido incomunicado y la grabación en vídeo de todo el tiempo de permanencia del detenido incomunicado en las instalaciones policiales. **Gobierno:** El Gobierno informó que: a) El sistema legal español garantiza el acceso rápido y eficaz del detenido a un abogado (artículo 17.3 de la Constitución y artículo 520 de la ley de enjuiciamiento criminal). Tan pronto como el funcionario policial practica un arresto, está obligado a solicitar la presencia del abogado de la elección del detenido o del colegio de abogados para que designe uno del turno de oficio. Si el funcionario no cumple con esta obligación con la debida diligencia puede ser objeto de sanción penal y disciplinaria. Durante el plazo (ocho horas) que establece la ley para que dicho abogado efectúe su comparecencia en dependencias policiales, no se le pueden hacer preguntas al detenido, ni practicar con el mismo diligencia alguna. Además, desde el mismo momento del arresto, se informa al detenido de que tiene derecho a guardar silencio y a un reconocimiento médico. La instrucción 12/2007 de la Secretaría de Estado de Seguridad sobre los comportamientos exigidos a los miembros de las fuerzas y cuerpos de seguridad del Estado para garantizar los derechos de las personas detenidas o bajo custodia policial, viene a reforzar estos derechos en los siguientes términos: “se pondrá especial empeño en garantizar que el derecho a la asistencia jurídica se	

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		preste de acuerdo con lo previsto en el ordenamiento jurídico, utilizando los medios disponibles para hacer efectiva la presencia del abogado a la mayor brevedad posible. Para ello, la solicitud de asistencia letrada se cursará de forma inmediata al abogado designado por el detenido o, en su defecto, al colegio de abogados, reiterando la misma, si transcurridas tres horas de la primera comunicación, no se hubiera personado el letrado. En el libro de telefonemas se anotará siempre la llamada o llamadas al letrado o colegio de abogados y todas las incidencias que pudieran producirse (imposibilidad de establecer comunicación, falta de respuesta etc.).” Para mejorar las garantías de las personas detenidas y dar cumplimiento a las recomendaciones de los organismos internacionales en materia de defensa de los derechos humanos, el Plan Nacional de Derechos Humanos contempla abordar la reforma del artículo 520.4 de la ley de enjuiciamiento criminal a fin de reducir el actual plazo máximo de ocho horas, dentro del que debe hacerse efectivo el derecho a la asistencia letrada. Por lo que se refiere al derecho a entrevistarse en privado con un abogado, hay que señalar que todas las personas detenidas en España, con excepción de los sometidos a régimen de incomunicación, tienen derecho a entrevistarse en privado con su abogado tras la toma de declaración.	

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		La privación, en el caso de detenidos sometidos al régimen de incomunicación, del derecho a entrevistarse en privado con un abogado responde, cuando nos enfrentamos a bandas armadas, terroristas o criminales altamente organizadas, a la necesidad de proteger la integridad del abogado y evitar el riesgo de que pueda ser objeto de coacción para la consecución de fines tales como la difusión de alertas que puedan facilitar la fuga del resto de integrantes de la banda terrorista, la destrucción de las pruebas del delito etc. No se considera que la celebración de una entrevista privada del detenido con su abogado constituya una garantía esencial contra eventuales malos tratos policiales. Sí lo es, como recoge nuestro ordenamiento jurídico, el control continuo y permanente de la autoridad judicial, o en su caso del fiscal, que desde el primer momento debe tener constancia de la detención, del lugar de custodia, y de los funcionarios actuantes, para lo que cuenta con los medios necesarios para llevar a cabo dicho control, auxiliado por los correspondientes médicos forenses, y capacitado para tomar las medidas necesarias en cada momento, como por ejemplo denegar la incomunicación u ordenar que el detenido pase inmediatamente a su disposición. En todo caso, una vez cesa, el periodo de detención incomunicada (máximo cinco días en dependencias policiales) el interesado recupera todos los derechos a la asistencia letrada y preparación de su defensa de modo confidencial con el abogado de su libre	

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		elección. b) El sistema legal español atribuye específicamente a los médicos forenses la asistencia de todos los detenidos y no sólo de aquellos que se encuentran en régimen de incomunicación, constituyendo su labor la más eficaz forma de garantía contra eventuales malos tratos por las siguientes razones: – Se trata de profesionales de la medicina con años de especialización en la investigación de las causas de la muerte o de las lesiones sufridas por una persona, por lo que tienen la mejor formación para detectar cualquier mal trato que pudiera sufrir el detenido. – Prestan servicio a la administración de justicia tras ser seleccionados mediante oposición pública, conforme a los principios de mérito y capacidad, y en función de sus conocimientos técnicos y legales. Ni el juez, ni las autoridades gubernamentales pueden elegir qué médico forense atiende a un detenido concreto, tarea que corresponde a quien esté previamente destinado en dicho juzgado. – En su actuación profesional, los médicos forenses están plenamente sometidos a las normas deontológicas de la profesión médica, sin que puedan recibir instrucciones ni del juez ni de las autoridades gubernativas. Pese a que la presencia del médico forense constituye por sí misma la principal garantía de los derechos del detenido, nuestra legislación permite que los detenidos no	

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		incomunicados puedan ser visitados por un médico de su elección. Adicionalmente, la instrucción 12/2007 del Secretario de Estado de Seguridad contempla que en el caso de que el detenido presente cualquier lesión imputable o no a la detención deberá ser trasladado de forma inmediata a un centro sanitario para su evaluación. Si bien, en el caso de detenidos incomunicados, la legislación española permite limitar su derecho a acceder a un médico de su elección, la mitad de los juzgados encargados de la instrucción de los delitos de banda armada, vienen en la práctica aplicando, desde diciembre de 2006, un protocolo por el que se permite que los detenidos puedan ser examinados por médicos de su elección, si así lo solicitan, en unión del médico forense adscrito al juzgado. Además, y para generalizar estas garantías adicionales, el Plan de Derechos Humanos aprobado por el Gobierno de España prevé que se lleven a cabo las reformas legales oportunas para garantizar que el detenido en situación de incomunicación sea reconocido, además de por el forense, por otro médico adscrito al sistema público de salud libremente designado por el mecanismo nacional de prevención de la tortura. c) La ley española permite, en el caso de delitos de terrorismo, limitar temporalmente la comunicación del hecho de la detención a los familiares del detenido. Es una limitación temporal que tiene el mismo fundamento que las anteriores: evitar que el contacto del detenido con personas de su	

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		entorno pueda frustrar las investigaciones judiciales. En cualquier caso, conviene tener en cuenta que tres de los seis juzgados encargados de la instrucción de los delitos terroristas, vienen aplicando, desde diciembre de 2006, un protocolo por el cual sí comunican a las familias de los detenidos el lugar de la detención y de los traslados que se lleven a cabo. 2009: La detención incomunicada solo puede durar el tiempo estrictamente necesario para la realización de las averiguaciones tendentes al esclarecimiento de los hechos y, como máximo 120 horas. Transcurrido este plazo, el detenido deberá ser puesto a disposición judicial. El Juez puede acordar la prisión incomunicada por otro plazo no superior a 5 días. Si hay merito para ello, el Juez puede acordar una nueva incomunicación de 3 días. No existen casos en los que la incomunicación dure más de 5 días, y ninguno en 2009. En cuanto a las presuntas amenazas a abogados por policías, los abogados tendrían el inmediato amparo de sus corporaciones profesionales, del ministerio fiscal y de los juzgados y tribunales, además de poder presentar las denuncias correspondientes. Los médicos forenses prestan servicio a la Administración de Justicia tras ser seleccionados mediante concurso público. Ni el Juez ni las autoridades pueden elegir qué médico atiende a un detenido concreto. Pese a que el Protocolo de Estambul no es de obligado cumplimiento, los médicos	

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		forenses están aplicando las recomendaciones en él contenidas. El detenido es también examinado en el juzgado de guardia donde se le realiza un nuevo examen médico. La instrucción 12/2007 señala que en el caso de que el detenido presente cualquier lesión, imputable o no a la detención, o manifieste presentarla, deberá ser trasladado de forma inmediata a un centro sanitario. En la práctica, los Jueces Centrales de Instrucción acuerdan sistemáticamente la comunicación a las familias de los detenidos del lugar de la detención y de los traslados que se llevan a cabo. Fuentes no gubernamentales: Al final del interrogatorio policial, el abogado de la persona detenida está autorizado a hacerle preguntas y a registrarlas como parte de la declaración formal. Sin embargo, en ocasiones los agentes del ordenan a los abogados a que se abstengan de intervenir. Los abogados que intentan hablar o que piden el número de identificación a los agentes presentes reciben un trato agresivo e intimidatorio. Es frecuente que haya policías presentes durante el examen médico del detenido, por lo que puede sentirse intimidado y guardar silencio sobre los malos tratos sufridos. Por ello, los informes médicos no siempre reflejan de manera exacta y completa el estado fisico y mental del detenido. El Gobierno Vasco creó una línea de atención telefónica de 24 horas para que las familias de las personas detenidas en	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
		régimen de incomunicación obtengan información sobre los motivos de la detención, el lugar y el estado de salud de los detenidos. Sin embargo, no siempre funciona correctamente. 2008: El Gobierno informó sobre la asistencia médica y letrada al detenido. 2008: Fuentes no gubernamentales: Se observa un avance, si bien débil y contradictorio. El Juez de la Audiencia Nacional, Baltasar Garzón, habría permitido en ocasiones concretas que personas detenidas bajo régimen de incomunicación, tengan derecho a ser visitados por médicos de su elección y que se informara a las familias sobre el paradero y la situación en que se encuentra su familiar detenido. Sin embargo, estas medidas sólo han sido aplicadas por un juez, no de oficio y en pocos casos. Las autoridades son renuentes a aplicar estas medidas de forma sistemática y protocolizada. Ha aumentado el número de abogados que han sufrido agresiones o amenazas cuando realizaban su trabajo de asesorar a personas privadas de libertad o en el momento de ser detenidas. No se presentan quejas formales en la mayoría de estos incidentes para evitar perjuicios a las personas a las que se pretende defender. Existen denuncias de que el abogado de oficio no se identifica ante el detenido en régimen de incomunicación. Existen determinadas irregularidades en la prestación de la asistencia letrada. 2007: El Gobierno señala que el sistema legal español garantiza el acceso rápido y	

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		eficaz del detenido a un abogado. Desde el mismo momento del arresto, se le informa sobre su derecho a guardar silencio y a ver a un médico. La situación de incomunicación en dependencias policiales no priva al detenido de asistencia letrada. El sistema legal español no reconoce el derecho del detenido a la asistencia por un médico de su elección bajo ningún régimen. No es previsible una modificación legal a este respecto. La ley prevé la posibilidad de que en caso de urgencia, el detenido sea atendido por otro facultativo del sistema público de salud e incluso por un médico privado. En relación con los detenidos en régimen de incomunicación, la aplicación de la recomendación del Relator Especial presenta el grave inconveniente de posibilitar la utilización del "médico de confianza" para transmitir al exterior noticias de la investigación. En estos casos, el retraso en la comunicación a los familiares ha encontrado plena justificación en el Tribunal Constitucional. 2007: Fuentes no gubernamentales: Siguen sin garantizarse estos derechos. No se les permite ser asistidas por un letrado de su elección. Se continúa impidiendo que el abogado se comunique con su cliente antes de la declaración o durante ella. Se han registrado casos en que los abogados defensores son amenazados por los jueces que interrogan al detenido. El reconocimiento de la persona detenida por	

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		un médico de su elección es sistemáticamente rechazado. Los informes emitidos por los médicos forenses estatales siguen siendo deficientes. Finalmente, la Guardia Civil y la Policía Nacional no informan a los familiares de los detenidos sobre su paradero o las circunstancias de la detención. La Policía Autónoma Vasca es la única que dispone de un sistema telefónico de atención a las familias de los detenidos bajo incomunicación. 2006: Fuentes no gubernamentales: no se ha observado ninguna variación en referencia a esta recomendación. 2005: El Gobierno informó que la designación del abogado de oficio la realiza el respectivo Colegio de Abogados. La libre elección de abogado forma parte del contenido normal del derecho del detenido a la asistencia letrada, pero no de su contenido esencial. Los Médicos Forenses son destinados a los juzgados mediante un sistema objetivo basado en la antigüedad. La decisión judicial que acuerda la incomunicación impone, al menos, una visita diaria del médico forense al incomunicado, practicar los reconocimientos en un lugar apropiado y a solas con el detenido y emitir un informe escrito que se remite al Juzgado y consta en la causa. 2005: Fuentes no gubernamentales: No se habría observado ninguna variación en referencia a esta recomendación.	
Todo interrogatorio debería	En la práctica, el abogado	***2010: Fuentes no gubernamentales***: En	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
comenzar con la identificación de las personas presentes. Los interrogatorios deberían ser grabados, preferiblemente en cinta de vídeo, y en la grabación se debería incluir la identidad de todos los presentes. Se debería prohibir expresamente cubrir los ojos con vendas o la cabeza con capuchas.	solamente aparece cuando el detenido está a unto de hacer y firmar su declaración formal, y no tiene la oportunidad de hablar con el detenido. Aparentemente se informa a los detenidos que hay un abogado presente y se les facilita el número de identificación, pero no lo pueden ver. El abogado permanece en silencio mientras se hace la declaración. Se recibieron informes de que los detenidos eran encapuchados durante los traslados y durante el régimen de incomunicación.	abril de 2009, se habían instalado 2.500 cámaras en Cataluña. - El Plan de Derechos Humanos incluye el compromiso de instalar el material necesario para la grabación de las personas detenidas en régimen de incomunicación. Sin embargo, no se incluye una medida similar para personas que no permanecen incomunicados. - En el año 2009 se ordenó la grabación de todo el período de incomunicación en tan sólo 14 ocasiones. En el caso de los cinco detenidos por parte de la Ertzaintza la orden venía recogida en el Protocolo para el tratamiento de detenidos incomunicados, y en los restantes casos tuvo que ser una petición expresa de la defensa. - En el año 2010, se ha autorizado la grabación en 16 ocasiones, 14 por actuación de la Ertzaintza. - Pese a que varios juzgados en la instrucción de denuncias de torturas han solicitado la visualización y copia de estas grabaciones, aún no se han aportado en ninguna causa. - Por medio de la Instrucción 12/2009, del Secretario de Estado de Seguridad, se creó el «Libro de Registro y Custodia de Detenidos» como único registro. Salvo los casos excepcionales previstos, sólo se anotarán los datos de personas detenidas mayores de 18 años. Se pretende que la nueva ficha recoja cualquier incidencia que se haya podido producir en la detención y durante el traslado del detenido y que facilite la información completa de su	

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		cadena de custodia, de tal modo que, a la vista de la misma, se pueda conocer la identidad de los funcionarios policiales responsables de la custodia durante la totalidad de la estancia en las dependencias policiales, reflejando, a tal efecto, cada cambio de custodia con indicación de cuándo se produce exactamente. - El 14 de septiembre de 2007 se dictó una instrucción del Ministerio del Interior para el uso obligatorio del número de identificación personal en un lugar visible del uniforme de todos los agentes de los Cuerpos y Fuerzas de Seguridad del Estado, cuya entrada en vigor era en marzo de 2008. En noviembre de 2008, el gobierno autónomo catalán aprobó un decreto similar. Los agentes de la Ertzaintza no llevan ningún número de identificación en su uniforme. **Gobierno:** El Gobierno informó que en cumplimiento de las recomendaciones formuladas por los organismos internacionales de defensa de los derechos humanos, incluido ese relator contra la tortura, el Plan de Derechos Humanos del Gobierno de España incluyó la siguiente medida (número 97 b) : "se abordarán las medidas normativas y técnicas necesarias para dar cumplimiento a la recomendación de los organismos de derechos humanos de grabar, en vídeo u otro soporte audiovisual, todo el tiempo de permanencia en dependencias policiales del detenido sometido a régimen de incomunicación". A día de hoy, las fuerzas y cuerpos de	

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		seguridad del Estado están dando puntual cumplimiento a todas las resoluciones judiciales (normalmente de la audiencia nacional) por las que se acuerda la grabación en vídeo de los detenidos sometidos a régimen de incomunicación. Para ello, se les ha dotado de los medios técnicos necesarios, tales como un avanzado sistema de grabación de las zonas comunes y salas para práctica de diligencias (declaraciones, reconocimientos, desprecinto de efectos intervenidos) de la comisaría general de información en Madrid, así como unidades portátiles de grabación para su utilización por la guardia civil. En cuanto a la instalación de videocámaras en todos los centros de detención de las FCSE, se están instalando cámaras en las zonas comunes de los centros de detención tanto del CNP como de la GC, estando ya cubierto un porcentaje superior al 50% de los mismos. Las policía autónomas vasca y catalana también disponen de videocámaras en sus instalaciones para la prevención de malos tratos a los detenidos. Señalar que las cámaras son instaladas en las zonas comunes por las que han de pasar los detenidos y los funcionarios que los custodian para la práctica de las diligencias oportunas (visitas de los forenses, abogado para tomas de declaración o ruedas de reconocimientos, comisiones judiciales y suministro de alimentos a lo detenidos). En las salas de interrogatorio hay cámaras si el juez que instruye lo recomienda, toda vez	

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		que la diligencia de la toma de declaración está validada jurídicamente por el letrado que asiste a la práctica de la diligencia. En cuanto a la utilización de vendas o capuchas durante los interrogatorios, no sólo está expresamente prohibida, sino que tal actuación constituye un delito sancionado por el código penal. El ordenamiento jurídico establece que la toma de declaración siempre se realizará en presencia de abogado, así como la absoluta interdicción del uso de cualquier medida coactiva y con estricta aplicación de los criterios rectores de la ley orgánica 2/1986, de 13 de marzo, de fuerzas y cuerpos de seguridad, que establece, como principio básico de actuación de las fuerzas y cuerpos de seguridad el absoluto respeto a la Constitución y al resto del ordenamiento jurídico. Todas estas normas de actuación, se ven respaldadas por la estricta tipificación de los delitos de tortura y malos tratos contenida principalmente en los artículos 173, 174 y 607 bis del Código Penal. En base a todas estas normas, la instrucción 12/2007, sobre los comportamientos exigidos a los miembros de las fuerzas y cuerpos de seguridad del Estado para garantizar los derechos de las personas detenidas o bajo custodia policial establece: “se garantizará la espontaneidad de la toma de declaración, de manera que no se menoscabe la capacidad de decisión o juicio del detenido, no formulándole reconvenciones o apercibimientos. Se le permitirá manifestar lo que estime	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
		conveniente para su defensa, consignándolo en el acta. Si, a consecuencia de la duración del interrogatorio, el detenido diera muestras de fatiga, se deberá suspender el mismo hasta que se recupere. Nuestro ordenamiento jurídico prohíbe terminantemente el uso de cualquier exceso físico o psíquico para obtener una declaración del detenido, de manera que el empleo de tales medios constituye infracción penal o disciplinaria, y como tal será perseguida." 2009: Las FCSE dan cumplimiento a las resoluciones judiciales por las que se acuerda la grabación en video de los detenidos en régimen de incomunicación. A la fecha se han instalado en un 50% de los centros de detención de las FCSE. En las salas de toma de declaración, se utilizan siempre que lo ordene el Juez que instruye el procedimiento. Todas las personas que participan en la toma de declaración quedan debidamente identificadas en las diligencias policiales que se instruyen. El uso de capuchas u otros elementos susceptibles de ser utilizados para maltratar, coaccionar, desorientar o presionar al detenido están absolutamente prohibidos por el ordenamiento jurídico. Fuentes no gubernamentales: Aunque el Plan Nacional de Derechos Humanos incluye la propuesta de instalar cámaras de video-vigilancia durante el periodo de incomunicación, no prevé la grabación en las salas de interrogatorio. Asimismo, la grabación no es obligatoria, y sólo se realiza	

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		a petición del juez. La incomunicación permite proceder a interrogatorios de los que no se extiende diligencia sin la presencia de un abogado, realizados por funcionarios que no siempre llevan uniforme, con el fin de obtener información que permita avanzar en las investigaciones o para preparar una declaración de la que quedará constancia. En la mayoría de los casos, se dice que la tortura y los malos tratos, infligidos por medios tanto físicos como psicológicos, tienden a producirse durante los interrogatorios, mientras que en algunas denuncias se mencionan malos tratos infligidos durante el traslado de los sospechosos de terrorismo a Madrid (A/HRC/10/3/Add.2). 2008: Actualmente existe un estudio con relación a la viabilidad de extender la video-vigilancia a determinadas dependencias policiales. Con respecto a los derechos del detenido en la toma de declaración, el Gobierno informó sobre las garantías incluidas en la Instrucción 12/2007 de la Secretaría de Estado de Seguridad. El ordenamiento jurídico prohíbe terminantemente el uso de la tortura o cualquier exceso físico o psíquico para obtener una declaración del detenido. El empleo de tales medios constituye una infracción y será perseguida. Si tales hechos delictivos se cometen por funcionarios policiales, es imprescindible que las denuncias contengan datos	

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		suficientes para iniciar una investigación. Las Fuerzas de Seguridad no disponen de capacidad técnica para grabar de manera permanente a todas las personas que se hallen en situación de detención incomunicadas. 2008: Fuentes no gubernamentales: Confirmaron la vigencia de las alegaciones presentadas en el anterior informe y agregan que el Juez Garzón habría pedido a la policía que se grabe de manera permanente a todas las personas en detención incomunicada. La Policía no cuenta con la capacidad técnica para su implementación. 2007: El Gobierno reitera que las garantías de los detenidos son establecidas por la Ley de Enjuiciamiento Criminal, la cual estipula que durante los interrogatorios los detenidos serán asistidos por un abogado. Cuando se presume que el detenido participó en alguno de los delitos a que se refiere el artículo 384 bis se le nombrará un abogado de oficio. La grabación de los interrogatorios no añade ventajas apreciables frente al riesgo de que el detenido la utilice para “dramatizar” el interrogatorio. 2007: Fuente no gubernamentales: No ha habido modificación en este punto y las propuestas que se han efectuadas han sido rechazadas por algunos sindicatos policiales. Diversas causas contra funcionarios públicos por torturas y/o malos tratos, han tenido que ser archivadas porque se “extravían” o se “borran” las cintas en las que se habían	

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		grabado las agresiones denunciadas. Nunca se utilizan vendas o capuchas durante los interrogatorios efectuados en sede policial y con presencia del abogado. Durante interrogatorios no "formales" en los que no está presente un abogado ni se realiza un acta, se les ha obligado a mantener la cabeza baja, en posiciones dolorosas, mientras son amenazados con ser golpeados si miran al agente que los interroga. 2006: Fuentes no gubernamentales: No se graban ni los ni se recoge acta de los interrogatorios. En el interrogatorio que se efectúa en sede policial, el instructor y el secretario se identifican por sus números de agente, y el abogado le enseña su carné profesional al detenido. 2005: El Gobierno informó que la cautela de identificar a los intervinientes se aplica no sólo respecto al interrogatorio policial de un detenido, sino a cualquier diligencia practicada en dependencias policiales. La grabación del desarrollo del interrogatorio contravendría disposiciones sobre el derecho a la intimidad. 2005: Fuentes no gubernamentales: No se habría observado ninguna variación en referencia a esta recomendación en las diligencias efectuadas por la Policía Nacional o por la Guardia Civil.	
Investigar las denuncias e informes de tortura y malos tratos. Tomar medidas legales contra los funcionarios públicos	Existen mecanismos y procedimientos de investigación en el ordenamiento jurídico, pero por diversas razones esa capacidad de investigación	***2010: Fuentes no gubernamentales:*** Los casos de malos tratos ocurren de manera esporádica y no sistemática. - Se recogieron 243 denuncias de agresiones y/o malos tratos contra 629 personas al	

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implicados, y suspenderlos de sus funciones hasta conocerse el resultado de la investigación y de las diligencias jurídicas o disciplinarias posteriores. Realizar investigaciones independientes de los presuntos autores y de la organización a la que sirven, de conformidad con los Principios relativos a la investigación y documentación eficaces de la tortura y otros tratos o penas crueles, inhumanos o degradantes.	resulta con frecuencia ineficaz. La negación de la práctica de la tortura o malos tratos, el temor de que las denuncias de tortura sean respondidas con querellas por difamación, y la imparcialidad e independencia discutibles de los mecanismos internos de exigencia de responsabilidades a los miembros de las fuerzas y cuerpos de seguridad son algunos de los factores que contribuyen a la ausencia de una política y una práctica de investigaciones prontas e imparciales.	momento de ser detenidos o durante la privación de libertad. La mayor parte de las denuncias tuvieron lugar en Catalunya, Eskal Herria y Madrid. Los denunciantes son en su mayoría personas que participan en movilizaciones sociales (302), migrantes (103), personas privadas de libertad (69) y personas en régimen de incomunicación (45). Los principales presuntos perpetradores son los Mossos d'Esquadra y el Cuerpo Nacional de Policía. - Tras la instalación de circuitos cerrados de televisión en comisarías catalanas durante el ultimo año, el número de acusaciones por agresiones de los Mossos d'Esquadra ha disminuido en un 40%. - El informe anual de la Fiscalía General del Estado reveló que durante el año se habían presentado más de 230 denuncias de tortura y otros malos tratos a manos de funcionarios encargados de hacer cumplir la ley. - No se han tomado medidas para crear una comisión independiente de quejas contra la policía. - Hubo un aumento de la tendencia a no denunciar las agresiones sufridas por temor a verse envueltos en contradenuncias y por desconfianza hacia los órganos encargados de investigar las agresiones. - La Fiscalía General del Estado dedicó por primera vez en 2008 un capítulo de su Memoria anual a los delitos de torturas y contra la integridad moral cometidos por funcionarios. En 2007 se investigaron o juzgaron 75 casos de presuntas torturas u otros malos tratos. Cuatro de ellos	

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		concluyeron con una declaración de culpabilidad y siete con una absolución. 21 casos fueron sobreseídos por el fiscal o el juez de instrucción antes de llegar a la fase de juicio. - Muchas de las denuncias interpuestas son inmediatamente archivadas, en la mayoría de los casos sin que se hubiera practicado ningún tipo de prueba. Son pocos los casos en que se desarrollan diligencias probatorias tales como la toma de declaración del denunciante o la comparecencia de Médicos Forenses. Asimismo, existe una negativa por parte de las autoridades penitenciarias para facilitar pruebas y una insuficiencia de impulso procesal de oficio. - El Mecanismo Nacional de Prevención ha recibido, desde el inicio de su funcionamiento, varias quejas por las sospechas de malos tratos hacia personas detenidas por la presunta comisión de delitos de terrorismo. Dichas quejas han sido adecuadamente estudiadas, requiriendo al juez de la Audiencia Nacional responsable del caso, la documentación pertinente y entrevistándose, en algún caso que se ha estimado necesario, con las personas privadas de libertad. En ningún caso se desprendió la existencia de malos tratos, si bien si se formularon las correspondientes recomendaciones, con el fin del establecimiento de buenas prácticas en el régimen de incomunicación. - El Defensor del Pueblo formuló una recomendación para que cuando se reciba una denuncia de algún ciudadano	

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		contra la actuación de agentes locales se investiguen los hechos sin limitar la investigación a recoger la versión de los agentes denunciados, integrando la investigación con cuantos testimonios, grabaciones de video-vigilancia y demás medios de prueba disponibles. **Gobierno:** El Gobierno informó que los malos tratos y las torturas constituyen en España un delito perseguible de oficio, siempre que hay indicios de su comisión. El ordenamiento contempla varias vías para investigación de estos supuestos y la garantía del derecho fundamental. En particular, la Constitución española establece en su artículo 24 que todas las personas tienen derecho a obtener la tutela efectiva de los jueces y tribunales en ejercicio de sus derechos e intereses legítimos, sin que en ningún caso pueda producirse indefensión. En el Estado de derecho, corresponde a los jueces y tribunales, en su condición de órganos totalmente autónomos e independientes de los Gobiernos y administraciones públicas, llevar a cabo las actuaciones necesarias e investigar las denuncias hasta las últimas consecuencias, para lo que cuentan con los medios y la capacidad legal necesarios. El sistema actual garantiza la independencia de las investigaciones del siguiente modo: En el transcurso de la investigación judicial, el juez ordena a la policía judicial la realización de las diligencias de averiguación oportunas. En su función de	

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		policía judicial, los funcionarios policiales responden únicamente de las órdenes e instrucciones del juez, sin tener que dar cuenta de ellas a sus superiores. Para mayor garantía, el procedimiento habitual incluye la prevención de que el juez encargue la investigación a los expertos de policía judicial de un cuerpo policial distinto del investigado. En el caso de que la investigación no derive de un procedimiento judicial sino que se esté realizando de modo interno en el ámbito administrativo, los cuerpos policiales disponen de sus propias unidades especializadas en la investigación de asuntos internos y derivación de responsabilidades disciplinarias. Para mayor garantía, junto con estas unidades policiales especializadas, existe un órgano administrativo, la inspección de personal y servicios de seguridad, con dependencia directa de la Secretaría de Estado de Seguridad y por lo tanto plenamente independiente de los cuerpos policiales que tiene amplias competencias y los medios necesarios para la investigación de los casos de presunta actuación irregular de los que tenga conocimiento (incluso a través de noticias aparecidas en los medios de comunicación o los que le sean planteados por particulares o por las ONGs). En todo caso, la suspensión de funciones de los funcionarios policiales denunciados por torturas o malos tratos ya está contemplada en la normativa reguladora de su régimen disciplinario y se adopta siempre que existen indicios suficientes para acordar esta medida	

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		cautelar y teniendo en cuenta, en todo caso, el derecho a la presunción de inocencia reconocido en la Constitución española. 2009: La regulación actual contempla la apertura de un expediente disciplinario contra los presuntos responsables de tortura o malos tratos, así como la medida cautelar de suspensión de funciones en espera del resultado de la acción penal. Los funcionarios policiales responden solamente a las órdenes e instrucciones del Juez, sin tener que dar cuenta a sus superiores. En 2008, el Tribunal Constitucional amplió y precisó su doctrina respecto a la investigación de supuestos malos tratos mediante seis sentencias. En cuanto a la aplicación de los tipos penales de torturas, el Tribunal Supremo ha visto, entre 2002 y 2009, 34 casos relativos a la aplicación de estos. El numero de condenas a agentes de policía y funcionarios de prisiones, en esos mismos años y en los diferentes tribunales supera los 250. La caída del número de denuncias en 2006 es compatible con una retirada temporal de la instrucción por parte del grupo terrorista ETA durante ese periodo. Fuentes no gubernamentales: Entre 2000 y 2008, 634 de las 957 personas detenidas en régimen de incomunicación alegaron malos tratos. De estas, el 70 por ciento interpusieron una denuncia judicial. En 2008, 95 personas fueron detenidas en régimen de incomunicación. El 68 por ciento alegaron malos tratos. En 2009, 37	

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		personas han sido puestas en régimen de incomunicación. El 39 por ciento han alegado malos tratos. Existe también de una relación directamente proporcional entre la frecuencia de alegaciones de tortura y la duración de la incomunicación. La mayoría de las denuncias de malos tratos físicos y psicológicos presentadas ante el juez de instrucción tras el período de detención policial en la investigación de los ataques terroristas perpetrados el 11 de marzo de 2004 e incluso reiteradas ante el tribunal durante el juicio, fueron ignoradas. Ninguna denuncia ha finalizado en una condena judicial. Las denuncias son investigadas por la fiscalía, jueces, inspección interna y el Defensor del Pueblo. Ha habido acusaciones de injurias a los cuerpos y fuerzas de seguridad del estado, en contra de abogados y personas que denuncian torturas, aún cuando sus propias denuncias son archivadas sin haberse efectuado las debidas diligencias para investigar los hechos. Existen sentencias recientes del Tribunal Constitucional en las que se recoge la doctrina de que la gravedad del delito de torturas y la especial dificultad probatoria en esos casos obligan a actuar con especial diligencia en las investigaciones judiciales (A/HRC/10/3/Add.2). 2008: El Gobierno informó sobre la Instrucción 12/2007. Los retrasos durante la investigación de las denuncias de malos tratos responden a problemas estructurales	

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		del sistema de Justicia español. 2008: Fuentes no gubernamentales: Esta recomendación continúa sin cumplirse. Algunos de los problemas más habituales en las investigaciones judiciales son la falta de investigación por parte del Juzgado, retrasos en la investigación y la no separación de los funcionarios implicados. A partir de 2004 no existen denuncias judiciales por malos tratos o tortura entre los detenidos por la Ertzaintza, aunque si existe una alta frecuencia de alegaciones en los detenidos por la Guardia Nacional. En 2008, el 68% de los detenidos incomunicados en el País Vasco indicaron haber sido víctimas de malos tratos o tortura. Ninguna denuncia judicial ha finalizado en condena. 2007: El Gobierno reitera que en la actualidad los malos tratos y torturas son un delito perseguible de oficio cuando hay indicios de su comisión. 2007: Fuentes no gubernamentales: No se aprecia ningún avance en este sentido. Es habitual que transcurran varios meses o más de un año entre el momento en que se formula una denuncia por torturas y el momento en que el juzgado comienza la investigación, toma declaración al denunciante y ordena su reconocimiento por un médico forense. La aplicación de medidas cautelares contra los funcionarios imputados por tortura y/o malos tratos no es habitual. Las organizaciones no gubernamentales han criticada la falta de seriedad y profesionalismo de algunos jueces frente a	

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		denuncias de tortura y/o malos tratos. 2006: Fuentes no gubernamentales: No se ha observado ninguna variación. El departamento encargado de investigar las denuncias de tortura no es independiente. 2005: El Gobierno recalca que el marco legal permite la pronta investigación de toda denuncia de torturas. El empleo de la tortura y de los malos tratos por parte de los miembros de las Fuerzas y Cuerpos de Seguridad puede tener consecuencias penales y disciplinarias. El Tribunal Supremo ha dictado entre 1997 y 2003 16 sentencias condenatorias de torturas. Una confesión obtenida bajo tortura no tiene ninguna validez y no podrá ser utilizada en juicio. 2005: Fuentes no gubernamentales: No se habría observado ninguna variación en referencia a esta recomendación. Se alega que la diligencia se demostraría en la voluntad de los Juzgados de archivar la denuncia. No hay información sobre casos donde funcionarios permanezcan suspendidos hasta conocerse el resultado de la investigación.	
Asegurar a las víctimas de la tortura o de los malos tratos el remedio y la reparación adecuados, incluida la rehabilitación, la indemnización, la satisfacción y las garantías de no repetición.	No existe una legislación eficaz que garantice a las víctimas de tortura una indemnización justa y suficiente. Las normas aplicadas por los tribunales para calcular el monto de la indemnización son las establecidas por la legislación de seguros, que son aplicables a las lesiones sufridas en accidentes,	***2010: Fuentes no gubernamentales***: no se ha producido ningún avance este año en cuanto a la reparación de las víctimas de tortura. - En el año 2010 hay conocimiento de dos casos en los que denunciantes de tortura fueron después denunciados por las autoridades. La causa de un detenido fue archivada sin ni siquiera tomarle declaración	

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	pero no a las lesiones producidas deliberada e intencionalmente.	para ratificarla. Varios días después el Juzgado de Instrucción incoaba diligencias previas por un delito de falsa denuncia tras atender a un informe de la fiscalía. 2009: El Gobierno indicó que España es uno de los pocos países europeos que prevé desde hace tiempo que la acción de reparación se sustancie en el correspondiente procedimiento penal a efectos de agilizar su resolución. El perjudicado por el delito o falta puede optar por ejercitar su acción civil en el proceso penal o reservarse dicha acción para su ejercicio ante la jurisdicción civil. En el caso de que en el proceso penal se dicte sentencia absolutoria, la victima puede reclamar indemnización de daños y perjuicios por "funcionamiento normal o anormal de los servicios públicos". 2008: El Ministerio del Interior afirma que su cumplimiento excede su ámbito de competencia. Todos los ciudadanos tienen el mismo derecho a la presunción de inocencia y a la tutela judicial efectiva. El acoso y las amenazas por parte de funcionarios públicos a quienes los han denunciado constituyen graves delitos. 2008: Fuentes no gubernamentales: No se ha producido ningún avance. La deficiente investigación judicial y excesiva duración de la instrucción de los procedimientos por tortura y malos tratos hacen imposible una pronta y eficaz reparación de las víctimas. La levedad de las penas impuestas a los	

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		funcionarios cuando son condenados, así como el hecho de que en muchos los casos no son suspendidos, constituyen una nueva agresión a las víctimas. 2007: Fuentes no gubernamentales: no se ha producido ningún avance. Las víctimas de tortura o malos tratos son, casi en su totalidad, objeto de una contra-denuncia por parte de los funcionarios imputados. Se han registrado casos de acoso y amenazas por parte de los agentes policiales denunciados. 2006: Fuentes no gubernamentales: No hay constancia de que se haya producido ni un solo avance. 2005: El Gobierno informó que este régimen exhaustivo de investigación y castigo de la tortura se ve completado por las disposiciones del ordenamiento español que aseguran un adecuado resarcimiento a las victimas de tortura. La legislación ofrece la posibilidad de ejercer conjuntamente, en el mismo proceso, la acción penal y la acción civil derivadas del delito. 2005: Fuentes no gubernamentales: Esta recomendación no se habría implementado debido a la falta real de un sistema jurídico y disciplinario eficaz para la represión de los delitos de tortura.	
Prestar la consideración debida al mantenimiento de las relaciones sociales entre los presos y sus familias, en interés de la familia y de la rehabilitación social del preso.	La dispersión de los presos no tiene ninguna base jurídica y se aplica de manera arbitraria. Los presos están lejos de sus familias y de sus abogados, lo que puede también causar problemas a la hora de preparar	***2010: Fuentes no gubernamentales:*** El Gobierno sigue aplicando la misma política penitenciaria. Un promedio de 615 kilómetros separa a los presos de sus familias. Sólo 40 vascos se encuentran encarcelados en tierra vasca. Los demás se encuentran separados en 80 cárceles y hay	

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	su defensa. Las autoridades explicaron que esta política se aplicó para separar a los terroristas de ETA de los presos que se reinsertarán en la sociedad.	69 presos encarcelados a más de 1.000 kilómetros. El alejamiento también conlleva su dispersión o separación en diferentes módulos de cada una de la totalidad de 53 prisiones. En muchas de ellas incluso no se ven entre ellos, y como consecuencia de ello, son una treintena de presos los que se encuentran totalmente aislados; es decir, sin poder ver a otro compañero. - El Área de Seguridad y Justicia del Defensor del Pueblo ha prestado atención a este aspecto, a raíz de la recepción de quejas de familiares de presos o de la iniciación de quejas de oficio. Las penas de privación de libertad deberían ser ejecutadas teniendo en cuenta la necesidad de guardar un equilibrio que respete los derechos elementales de los presos y que pueda conducir a la reinserción de esas personas en la comunidad. **Gobierno:** El Gobierno informó que la política de separación y destino a los distintos centros penitenciarios de los presos y penados por delitos de terrorismo, se ajusta a la legalidad, es controlada judicialmente y no es contraria a los derechos humanos. Además, es una medida hoy por hoy necesaria, desde un punto de vista de política criminal frente al terrorismo. Es decir, no se adopta como castigo, sino como medida eficaz para la seguridad colectiva, la seguridad y buen orden de los establecimientos penitenciarios, así como para facilitar a los individuos la posibilidad de sustraerse a la presión del grupo. Los tres elementos que persigue son:	

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		a. razones de seguridad. Hay que recordar las fugas (1985 Martutene) y los numerosos intentos de fuga habidos por parte de miembros de ETA (1987 Alcalá Meco; 1990 Herrera de la Mancha; 1992 en Puerto I y Ocaña; 1993 Granada; 2001 Nanclares y la reciente en Huelva del 2008) b. reinserción. La cohesión del colectivo de presos de ETA en un mismo centro impide la adecuada reinserción y tratamiento de los internos, mediante amenazas y la exclusión social de las familias de aquéllos que quieren abandonar la disciplina de la banda terrorista. c. evolución personal del preso: los requisitos de prueba de desvinculación de la banda suponen un reconocimiento firme de posicionamientos no violentos y de reparación del daño causado, principios inspiradores del nuestro ordenamiento jurídico. En relación con la legalidad y oportunidad de esta medida: – El defensor del pueblo manifestó en su informe de 19 de octubre de 2009, dirigido al Comité contra la Tortura (CAT): “la permanencia de un recluso en una prisión próxima a su domicilio no es un derecho subjetivo. La ley general penitenciaria configura esta posibilidad como una medida relacionada con el tratamiento individualizado, de tal manera que según los casos puede ser contraproducente para la reinserción social del preso a que se refiere el artículo 25.2 de la Constitución española. Tanto en los casos	

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		de terrorismo como en cualesquiera otros delitos puede ser inadecuado que el preso se ubique en un lugar próximo a su entorno social. La llamada dispersión de presos ha sido y es una actuación legal y respetuosa con los derechos de todos." – El apartado XI de las líneas directrices sobre los derechos humanos y la lucha antiterrorista adoptadas por el Comité de Ministros del Consejo de Europa el 11 de julio de 2002 reconoce que "los imperativos de la lucha contra el terrorismo pueden exigir que el trato de una persona privada de libertad por actividades terroristas sea objeto de restricciones más importantes que las aplicadas a otros detenidos en lo que se refiere en particular a: "la dispersión de estas personas dentro del mismo centro penitenciario o en diferentes centros penitenciarios, con la condición de que haya una relación de proporcionalidad entre el fin perseguido y la medida tomada" La Comisión Europea de Derechos Humanos, en su decisión 1 de octubre de 1990, , estimó que la negativa de trasladar a un recluso a un centro próximo a residencia puede estar justificada en razones de diversa índole, entre las que se señalan razones de seguridad nacional, seguridad pública, bienestar económico del país, la defensa del orden en la prevención del delito, la protección de la salud o de la moral, o la protección de los derechos y libertades de los demás en los términos señalados en el párrafo 2 del artículo 8 del convenio europeo para la protección de los derechos humanos y libertades fundamentales.	

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		2009: Las circunstancias tenidas en cuenta para la asignación del centro penitenciario a los reclusos son, principalmente: a) intervención penitenciaria o razones de seguridad; b) criterios para la reinserción; y c) evolución personal del preso. Fuentes no gubernamentales: Los derechos de las víctimas y la reeducación y reinserción social son la finalidad de la pena. Por tanto, puede ser positiva la dispersión de presos. Hay aproximadamente 570 presos de ETA dispersados en más de 50 prisiones a una distancia media de 600 km. del País Vasco, un hecho que en sí constituye un riesgo y una carga económica para los familiares que los visitan, así como un obstáculo práctico para la preparación de la defensa en los casos en que los acusados que se encuentran en prisión provisional están internados a gran distancia de sus abogados (A/HRC/10/3/Add.2). 2008: El Gobierno confirma la información presentada anteriormente. De los 66 centros penitenciarios dependientes de la Administración General del Estado en todo el territorio nacional, solamente 23 disponen de Departamentos de régimen cerrado. Dado el reducido número de población penitenciaria que se encuentra clasificada en régimen cerrado, no es posible contar con estas infraestructuras en todos los establecimientos. Casi todas las Comunidades Autónomas cuentan con	

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		departamentos de régimen cerrado. El Gobierno informó sobre su política de dispersión y las condiciones de reclusión especialmente severas. Los internos en régimen cerrado, representan un conjunto de población más vulnerable, por lo que cuentan con una intervención más directa e intensa. 2008: Fuentes no gubernamentales: No se observa ningún avance. Actualmente, sólo 22 de las 474 personas presas, condenadas o acusadas de pertenencia o colaboración con ETA se encuentran presas en prisiones vascas. 2007: El Gobierno afirma que el régimen penitenciario que se aplica a los presos del País Vasco es el mismo que se aplica a todos los presos. Las instituciones penitenciarias españolas procuran la reinserción social de los penados, pero atienden también a la retención y la custodia, la ordenada convivencia y la seguridad. La dispersión es una condición necesaria para la función rehabilitadora de la pena en casos de reclusos pertenecientes a bandas de criminalidad organizada o a grupos terroristas. 2007: Fuente no gubernamentales: No se observan avances. Solamente 13 presos se encuentran en cárceles vascas. No hubo ninguna repatriación al País Vasco entre finales de 2005 y 2006. 2006: Fuentes no gubernamentales: Se ve	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
		precisamente la tendencia contraria. De los 528 presos vascos encarcelados en las prisiones del Estado español, sólo 11 están en el País Vasco. 2005: El Gobierno informó que el número de condenados por delitos de terrorismo y la estrategia de presión intimidatoria de la banda terrorista ETA hace inviable por el momento su concentración en establecimientos penitenciarios cercanos al domicilio de sus familias. 2005: Fuentes no gubernamentales: Se habría producido un mayor alejamiento de los presos de sus lugares de origen.	
Considerar la posibilidad de invitar al Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia a visitar el país.	Se recibieron denuncias de tortura y malos tratos de personas no originarias de Europa occidental o por miembros de minorías étnicas. Esas personas pueden también tropezar con dificultades para formular una denuncia o sostenerla durante la tramitación judicial.	***2010: Fuentes no gubernamentales***: El Gobierno apoya a las recomendaciones de elaborar y publicar estadísticas oficiales sobre crímenes e incidentes de motivación racial y desarrollar un plan nacional de acción contra el racismo y la xenofobia. **Gobierno:** El Gobierno informó que es plenamente favorable a la invitación del relator especial sobre formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia. España se encuentra entre los países que han cursado una "invitación permanente" a todos los relatores especiales, lo que significa que, el Gobierno de España está dispuesto a aceptar automáticamente las solicitudes de cualesquiera de los titulares de mandatos de procedimientos especiales para visitar nuestro país. 2009: Existe una invitación a todos los Relatores para que visiten España.	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
		La política para eliminar las diferentes formas de discriminación racial se basa en el ordenamiento jurídico español y en varios instrumentos aprobados por el Consejo de Ministros, incluido el Plan Estratégico de Ciudadanía e Integración (2007-2010). 2008: El Gobierno reitera su opinión favorable a la invitación al Relator Especial sobre las Formas Contemporáneas de Racismo. La Comisaría General de Extranjería y Documentación ha informado que no tiene constancia del alto número de denuncias. 2008: Fuentes no gubernamentales: No hay constancia de que se haya cursado esta invitación, aunque existe un alto número de denuncias por torturas y/o malos tratos con trasfondo xenófobo. Los migrantes afrontan más dificultades que los nacionales cuando pretenden denunciar agresiones por parte de funcionarios de policía. 2007: Fuentes no gubernamentales: No existe información con relación a una visita futura de dicho Relator Especial. 2006: Fuentes no gubernamentales: No se ha cursado la invitación. 2005: Fuentes no gubernamentales: No hay información de las gestiones para su invitación.	
Ratificar el Protocolo Facultativo de la Convención contra la Tortura y Otros		***2010: Fuentes no gubernamentales:*** El 10 de mayo del 2010 tuvo lugar en el Senado la presentación del Mecanismo Nacional de Prevención con arreglo al Protocolo	

Recomendaciones *(E/CN.4/2004/56/Add.2)*	*Situación durante la visita* *(E/CN.4/2004/56/Add.2)*	*Medidas tomadas en años anteriores* *(E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
Tratos o Penas Crueles, Inhumanos o Degradantes.		Facultativo de la Convención contra la Tortura u otros Tratos o Penas Crueles o Degradantes, cuyas funciones en España han sido atribuidas al Defensor del Pueblo, por Ley Orgánica 1/2009, de 3 de noviembre. El propósito de la jornada era dar a conocer el Mecanismo de Prevención español, así como cambiar impresiones y criterios en torno a los diferentes enfoques y situaciones existentes en Europa acerca del cumplimiento del citado Protocolo Facultativo. - El Mecanismo Nacional de Prevención entró en funcionamiento a comienzos del año 2010, y la primera visita a un lugar de privación de libertad tuvo lugar en el mes de marzo. Al 17 de septiembre de 2010, se han llevado a cabo 158 visitas. - Se tiene conocimiento de una visita llevada a cabo por el MNP. Las personas que presuntamente gestionaban el mecanismo no mostraron una actitud mínima de empatía o entendimiento hacia el testimonio que se les estaba relatando, además de no mostrar un formulario o protocolo de actuación a seguir en estas visitas. La reunión no se dio en circunstancias de privacidad y de garantía ante la policía actuante. Asimismo, se desconoce el procedimiento que sigue el informe que siguió a la entrevista y una queja al respecto fue presentada ante la Defensoría. **Gobierno:** El Gobierno informó que España ratificó el protocolo facultativo de la Convención contra la Tortura y otros tratos o penas crueles, inhumanos o degradantes el	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
		4 de abril de 2006. En cumplimiento del protocolo facultativo de la Convención contra la Tortura mediante la ley orgánica 1/ 2009 de 3 de noviembre, se atribuyó al Defensor del Pueblo la condición de mecanismo nacional de prevención de la tortura. 2009: El 15 de octubre de 2009 se aprobó la modificación a la Ley Orgánica del Defensor del Pueblo por lo que se atribuye a esta institución la titularidad del MNP. Fuentes no gubernamentales: En junio de 2009 se anunció el modelo de Mecanismo Nacional de Prevención de la Tortura, integrado al Defensor del Pueblo. 2008: El Gobierno afirma que se han llevado a cabo numerosas reuniones para definir la estructura del Mecanismo Nacional de Prevención de Tortura (MNP), con la participación de los actores relevantes de la sociedad civil. 2008: Fuentes no gubernamentales: Durante el 2007, miembros de organizaciones no gubernamentales y organizaciones de Derechos Humanos del Estado mantuvieron reuniones con representantes de la Administración relativas al diseño del MNP. El Gobierno no ha dado pasos efectivos para su pronta implementación y estaría obstaculizando el acceso de organizaciones de derechos humanos a los centros de detención. 2007: El Gobierno español informa de que el Protocolo Facultativo entró en vigor el 22	

Recomendaciones (*E/CN.4/2004/56/Add.2*)	*Situación durante la visita* (*E/CN.4/2004/56/Add.2*)	*Medidas tomadas en años anteriores* (*E/CN.4/2005/62/Add.2, E/CN.4/2006/6/Add.2, A/HRC/4/33/Add.2, A/HRC/7/3/Add.2 y A/HRC/13/39/Add.6, A/HRC/16/52/Add.2*)	*Información recibida en el periodo reportado*
		de junio de 2006. 2007: Fuentes no gubernamentales: En abril de 2006, el Gobierno ratificó el Protocolo Facultativo. 2006: El 13 de abril de 2005, el Ministro de Asuntos Exteriores y de Cooperación depositó la firma del Protocolo Facultativo. 2006: Fuentes no gubernamentales: El Gobierno español firmó el Protocolo Facultativo. 2005: Se han iniciado los trámites internos para la firma y la ratificación del Protocolo Facultativo. 2005: Fuentes no gubernamentales: El Gobierno español todavía no ha dado ningún paso práctico para su ratificación.	

Sri Lanka

Follow-up to the recommendations made by the Special Rapporteur (Manfred Nowak) in the report of his visit to Sri Lanka from 1 to 8 October 2007 (A/HRC/7/3/Add.6)

127. By letter dated 22 November 2011, the Special Rapporteur sent the table below to the Government of Sri Lanka, requesting information and comments on the follow-up measures taken with regard to the implementation of his predecessor's recommendations. He expresses his gratitude to the Government for providing detailed information on steps taken during the reporting period.

128. The Special Rapporteur takes note of the Government's efforts to expedite criminal proceedings relating to torture cases by establishing various ad hoc commissions of inquiry, including the Presidential Commission of Inquiry to investigate serious cases of human rights violations that occurred since 1 August 2005, as well as the establishment of Lessons Learnt Reconciliation Commission (LLRC) and the Inter-Agency Advisory Committee (IAAC).[56]

129. The Special Rapporteur echoes the concern raised by the Committee against Torture regarding the prevailing climate of impunity for acts of torture and ill-treatment and the failure to investigate promptly and impartially wherever there is reasonable ground to believe that an act of torture has been committed. [57]

130. He calls upon the Government to take steps to address the outstanding concerns raised by the Committee over the LLRC's limited mandate and its alleged lack of independence, and promptly launch impartial and effective investigations into all allegations of torture, rape, enforced disappearances and other forms of ill-treatment, occurred during the last stages of the conflict and in the post-conflict phase.[58] He looks forward to receiving information on the investigations undertaken into allegations of torture and ill-treatment and steps taken to hold accountable those responsible.

131. The Special Rapporteur takes note of the steps taken to monitor the implementation of the Presidential directions of 7 July 2006 (reissued in 2007) and the Rules with regard to Persons in Custody of the Police (Code of Departmental Order No. A 20). He expresses concern that, as also noted by the Committee against Torture, the suspects held in custody are not afforded statutory rights to inform a family member and are not given access to legal counsel at the moment of arrest.

132. The Special Rapporteur calls upon the Government to abolish unacknowledged custody and detention facilities allegedly run by the Sri Lankan military intelligence and paramilitary groups,[59] make police station chiefs, investigating and operative officers criminally accountable for any unacknowledged detention, and make it a serious crime.

133. The Special Rapporteur expresses concern about the 18th Constitutional Amendment of 8 September 2010, which eliminates the Constitutional Council and empowers the President to make direct appointments of members to key Commissions, including the

[56] See para. 21 of CAT/C/LKA/CO/3-4.
[57] See para. 18 of CAT/C/LKA/CO/3-4.
[58] See para. 21 of CAT/C/LKA/CO/3-4.
[59] See para. 9 of CAT/C/LKA/CO/3-4.

National Police Commissioner and the Chairman and members of the Human Rights Commission (NHRC). He calls upon the Government to ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim, and that the constitution and activities of the NHRC comply with the Paris Principles. The Special Rapporteur echoes the recommendation of the Committee against Torture about establishing an independent national system to effectively monitor and inspect all places of detention, including, *inter alia,* facilities holding LTTE suspects. [60]

134. The Special Rapporteur welcomes the Government's decision to lift the long-standing state of emergency on 31 August 2011, and expresses concern about the new regulations under the Prevention of Terrorism Act No. 48 of 1979 (PTA), which unduly restrict legal safeguards for persons suspected or charged with a terrorist or related crime. This has also been pointed out by the Committee against Torture. [61]

135. The Special Rapporteur expresses concern about the fact that the burden of proof lies on the prosecution to prove beyond a reasonable doubt that a confession or other evidence has not been obtained under any kind of duress, except for cases of confessions falling under the PTA. He calls on the Government to ensure that its anti-terrorism measures are compatible with the provisions of article 2, paragraph 2 of the Convention. The Special Rapporteur recalls that international customary law and treaty law require States to ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. [62]

136. The Special Rapporteur welcomes the proposed plan of the Minister for Prison Reforms and Rehabilitation to separate convicts from pre-trial detainees and minor offenders from criminals, and looks forward to receiving information on the steps undertaken with respect to implementing a comprehensive structural reform of the prison system, aimed at reducing the number of detainees, increasing prison capacities and reducing the overcrowding, separating juveniles and adult detainees as well as remand and convicted prisoners.

137. Finally, the Special Rapporteur wishes to reiterate the appeal to the Government to abolish capital punishment or, at a minimum, commute death sentences into prison sentences. In his view, the manner of imposition and execution of the death penalty in Sri Lanka inevitably involves the commission of cruel, inhuman or degrading treatment and, in some cases, torture. He regrets that no action was taken to ratify the Optional Protocol to the Convention against Torture (OPCAT) and calls upon the Government to take measures to ratify it and establish a National Preventive Mechanism.

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[60] See para.9, CAT/C/LKA/CO/3-4.

[61] See para.10, CAT/C/LKA/CO/3-4.

[62] See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15.

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years and (A/HRC/16/52/Add.2)*	*Information received in the reporting period*
(a) End impunity for members of the TMVP-Karuna group.	The Special Rapporteur was concerned about the reported links between the Government and the TMVP-Karuna group, which were confirmed by the TMVP representative the Special Rapporteur met in Trincomalee. The TMVP-Karuna group has been accused of brutal human rights abuses.	***Non-governmental sources:*** The TMVP continues to carry out unlawful killings, hostage-taking for ransoms, recruitment of child soldiers and enforced disappearances. On 7 October 2008, Karuna was sworn into Parliament, with the full support of President and Government. As military commander of the TMVP, and previously as a military commander in the LTTE, Karuna was suspected of serious human rights abuses and war crimes, including the abduction of hundreds of teenagers to serve as child soldiers, holding civilians as hostage, torture and killings. There has been no official investigation into these allegations. Non-governmental sources: Karuna continues to be a Member of Parliament from the ruling Party, the UPFA. - In his report following his December 2009 visit to Sri Lanka, the Special Envoy of the Special Representative of the Secretary-General on Children & Armed Conflict, Patrick Cammaert, stated that cases of child recruitment and threats of re-recruitment have been attributed to a 'commander' Iniya Bharathi who is part of the TMVP breakaway faction under Karuna's leadership in the Ampara district of the Eastern Province. To date, these reports have not been investigated.	**Government:** There have been no reported killings, hostage-taking or recruitment of child soldiers as stated by the NGOs. Karuna is no more with the Tamil Makkal Viduthalai Pulikal (TMVP). He broke away and he is now a Member of Parliament. Both TMVP and the Karuna group denounced terrorism and have joined the democratic mainstream. According to the Crimes Division of the Sri Lanka Police, there are no pending investigations arising out of any complaints of either Karuna or the TMVP after 2009. If there are any complaints with credible information the Police will conduct impartial investigations. ***Non-governmental sources:*** Reportedly, no progress has been achieved. It is reported that impunity persists and new human rights abuses continue to be reported by both forces reportedly loyal to "Karuna" (SLFP Minister Vinayagamoorthy Muralitharan) and those reportedly loyal to his former deputy "Pillayan" (TMVP leader and Chief Minister of the Eastern Province, Sivanesathurai Chandrakanthan). Internecine violence between the two groups has reportedly harmed civilians. Reportedly, in December 2010,

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years and (A/HRC/16/52/Add.2)*	*Information received in the reporting period*
			witnesses before Sri Lanka's "Lessons Learnt and Reconciliation Commission" (LLRC) blamed the groups for numerous human rights violations, including enforced disappearances.[63]
(b) Ensure that detainees are given access to legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations.	The Code of Criminal Procedure lacks fundamental safeguards, such as the right to inform a family member of the arrest or the access to a lawyer and/or a doctor of his or her choice for a person arrested and held in custody. The Code does not specify the interrogation conditions and is silent about the possibility of the presence of a lawyer and an interpreter during the interrogation.	***Non-governmental sources:*** Sri Lanka's criminal procedure has not been reformed in this regard. In practice, linkages between the police and criminal lawyers sometimes prevent a suspect from being adequately represented. In other cases, lawyers who have visited police stations along with their clients had themselves been assaulted afterwards. Non-governmental source also quotes a senior police officer stating that one of the principal causes for torture was the absence of legal representation when a suspect was produced before a Magistrate at the very first instance. This privilege is afforded, if at all, only to the elite. Where the emergency laws were concerned, the situation was even worse. Since lawyers did not visit army camps or STF camps, persons detained under emergency regulations did not receive legal assistance. Detainees are denied confidential information with their legal counsel and interviews take place in the presence of law enforcement personnel, which undermines reporting of ill-treatment.	**Government:** The implementation of the Presidential directions of 7 July 2006 (reissued in 2007) is monitored by the National Human Rights Commission (HRCSL) by way of visiting Police Stations and examining the records and also the conditions of detainees. These directives were widely disseminated to reach the entire Police Force and the three Armed Forces. When a suspect is arrested under the laws of Sri Lanka, he or she has to be informed about the reason for arrest; the next of kin have to be informed of the arrest; facilities would be made available for the person to contact a lawyer; there are Police departmental orders with regard to the safe custody of the persons including many other relevant instructions to Officers.

[63] See, for example. Proceedings of public sittings of the Commission of Inquiry on Lessons Learnt and Reconciliation appointed by His Excellency the President in terms of Section 2 of the Commissions of Inquiry Act, District Secretariat, Trincomalee, 3 December 2010 (LLRC/FV/03-12-10/01); and Ottamavadi Divisional Secretariat, 10 December 2010 (LLRC/FV/03-12-10/01), http://www.llrc.lk/index.php?option=com_content&view=article&id=26&Itemid=56

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years and (A/HRC/16/52/Add.2)*	*Information received in the reporting period*
		Non-governmental sources: Most lawyers are now unwilling to take torture cases. Even in cases where the accused (victim of torture) is able to obtain legal counsel, he is not ensured of a private consultation. - Additionally there are lapses in informing the family within 24 hours when a person has been arrested.	***Non-governmental sources:*** Reportedly, there has been no change in law or actual procedures which is an important protection gap. There is still no legal requirement that detainees have access to legal counsel within 24 hours of arrest. There is no law or regulation on the right to have a lawyer during interrogation. Although Sri Lanka lifted the State of Emergency at the end of August, it retained the Prevention of Terrorism Act (PTA) and introduced new regulations under the PTA on *29 August (24 hours before the state of emergency lapsed)* that provide, among other things, for the continued detention of persons previously detained under the Emergency Regulations[64].
(c) All detainees should be granted the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.	Detainees regularly reported that habeas corpus hearings before a magistrate either involved no real opportunity to complain about police torture, given that they were often escorted to courts by the very same perpetrators, and that the magistrate did not inquire into	***Non-governmental sources:*** Extreme delays in the legal procedures in the Court of Appeal for habeas corpus applications have rendered this remedy practically ineffective. In the majority of cases, the preliminary inquiry before the Magistrates' Court takes many years and applications filed in the 1980s are still pending in the Court of Appeal. No time	**Government:** In total there are 131 *habeas corpus* applications pending with the following breakdown: Colombo (2010 -3; 2011 - 3), Vavuniya (2010-122; 2011-2) and Trincomalee (2011-1). In addition, the detainee can also challenge the grounds of

[64] See, "CPA Statement on the new Regulations under the Prevention of Terrorism Act," Centre for Policy Alternatives, 23 September 2011 http://cpalanka.org/wp-content/uploads/2011/09/CPA-Statement-on-the-new-Regulations-under-the-Prevention-of-Terrorism-Act.pdf

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years and (A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	whether the suspect was mistreated in custody.	limits for the final determination of these applications exist. ***Non-governmental sources:*** A practice that has now become routine in Sri Lanka is to pressure victims of torture to 'settle' their cases. The alleged accused (and victim of torture) who is facing criminal charges initiates a Fundamental Rights (FR) case with regard to the torture s/he underwent due to the ineffectiveness of habeas corpus. When officials learn of the FR case, the police (or other officials) then pressure the accused (victim) to "settle" wherein the criminal charges are dropped in exchange for a withdrawal of the FR case. Pressure to 'settle' cases is so prevalent that it is reported that even Supreme Court judges have begun encouraging victims to 'settle'.	detention in the Supreme Court by way of a fundamental rights application. ***Non-governmental sources:*** There has been no change in law or actual procedures. It is alleged that the problem persists for criminal detainees and reliance on extraordinary measures to hold detainees without judicial review (as has been the case in detention for "rehabilitation" of former LTTE members) further compounds this problem.
(d) Ensure that magistrates routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol.	Detainees face various obstacles in filing complaints and having access to independent medical examinations, which are frequently alleged to take place in the presence of the perpetrators, or are performed by junior doctors with little experience. The fact that a system of Judicial Medical Officers (JMO) is in place in the country is a positive sign. Obstacles for victims of torture to access the JMOs result in loss of important medical evidence, impeding criminal proceedings against perpetrators. There is also no obligation for law enforcement officials or judges to investigate cases of torture ex	***Non-governmental sources***: Detainees may complain of ill-treatment and request a medical examination by a JMO. However, detainees rarely complain due to fear of retribution by the custodial officers, to whose charge they are returned after production in court. Furthermore, detainees have little access to independent medical examinations; in many instances victims of torture are accompanied to the examination by the alleged perpetrators. In addition, doctors and JMOs often fail to record evidence of torture or provide false reports, and some doctors provide treatment to victims without disclosing the evidence of torture in official records. JMOs have been found to be complicit in covering up acts of torture. Non-governmental sources: The Magistrate	**Government:** Under section 8.1 (Arrest and Detention) of the National Action Plan for the Protection of Human Rights (NHRAP) i.e. safeguards have been proposed and the Government is in the process of implementing it. ***Non-governmental sources:*** Reportedly, no instructions have been issued to magistrates to ask persons brought from police custody about their treatment. Inquiring into treatment is left to the discretion of individual magistrates. It is reported that magistrates do

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years and (A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	officio.	almost never inquires about torture. The Police also do their best to ensure that there is no opportunity for the accused (victims) to talk. - The medical-legal forms are not questioned by the Magistrate and in cases when the forms do indicate torture took place; the forms are not submitted by the Police as part of the record. - It was also reported that in cases where medical examinations are performed, the accused (victims) are presented before the doctor when scars have largely healed.	not always question about treatment even when suspects have visible injuries. Lawyers allege that individuals with injuries have been produced outside of normal working hours and at the homes of magistrates rather than in court, without lawyers present. Reportedly, suspects have been threatened with further violence, and their lawyers and families (and other witnesses) with arrest or physical harm by police officers attempting to suppress information, including information about torture. Reportedly, in case of torture allegations, magistrates only order a medical examination by a Judicial Medical Officer.
(e) Ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.	Jurisdiction for offences under the Anti-Torture Act No. 22 lies with the High Court. Complaints have to be addressed to the Attorney General's (AG) Department. Upon instruction of the AG, the Special Investigation Unit (SIU), under the supervision of the Inspector General of the Police (IGP), conducts the investigations. The Prosecution of Torture Perpetrators Unit (PTP) monitors the work of the SIU and the Criminal Investigation Department (CID), and is also in charge of investigating torture cases. The	***Non-governmental sources:*** Investigations into allegations of torture are in practice handled by the SIU. Aggrieved parties or their family members can lodge complaints with the ASP or SP of the relevant area. The ASP/SP records statements of the victims as well as that of witnesses and thereafter forwards the complaint to the legal division of the police. Upon receipt, the complaint is referred to the IGP, who then forwards it to the SIU with instructions to begin investigations. Since the SIU is directly under the command of the IGP, investigations commence only at the initiation of the IGP. The IGP may instead instruct the CID or another special unit of the police to	**Government:** Statistics to both indictments against persons and those charged in the Magistrate Courts are provided separately. All the indictments were referred to the High Court. And 44 police officers have been indicted between 2006 and 2011. Item 6 of the section on Torture of the NHRAP covers a specific recommendation on addressing any allegations of impunity for acts of torture. ***Non-governmental sources:*** The

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years and (A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	AG's Department decides to indict alleged offenders based on files submitted by the SIU and the PTP. The indictments by the Attorney General have lead so far to only three convictions and eight acquittals. Senior police officers with regional command responsibilities also conduct inquiries into torture allegations. The National Police Commission (NPC) is in charge of disciplinary control over all officers except the Inspector General. However, this procedure was only established in January 2007. The legitimacy and credibility of the NPC has been questioned because of the appointments of the Commissioners by the President. The CID was given the mandate to handle all criminal investigations into complaints of alleged torture, other than complaints relating to allegations against CID officers. However, complaints of torture recorded at police stations are first referred to the Assistant Superintendent of Police (ASP) or the Superintendent of Police (SP) of the relevant area. The SIU also handles allegations of torture referred to the Government by the National Human Rights	investigate a complaint. These "special cases" are dealt with by the CID, headed by an ASP. The SIU is not solely dedicated to investigating allegations of torture; it also investigates other offences allegedly committed by police officers, such as fraud. According to the same information, the SIU's cadre is insufficient and its officers are liable to transfer. The very fact that police officers investigate their colleagues impairs public confidence in the propriety and efficiency of the investigations. The National Police Commission's long-term effectiveness is threatened by the lack of a strong constituency supporting its independence and by the fact that it has failed to improve police accountability. The police routinely fabricate information and alter reports to support their version of the facts. The period within which a crime is investigated by the police is susceptible to abuse of the parties associated with this process in several ways. Despite Government commitments to address impunity, perpetrators of human rights violations do not face a serious threat of prosecution. There were no such convictions violations in 2008. ***Non-governmental sources:*** The SIU no longer is referred to in practice, but the IGP hands over the investigation to the Deputy IGP, who hands it over to the Assistant Superintendant who issues a statement	situation has reportedly deteriorated. It is reported that between 2005 and 2008, when the SIU had primary responsibility for investigating torture complaints reported to the Attorney General, 60 indictments were issued against suspected perpetrators of torture. But after 2008 implementation of the CAT Act (investigations and indictments) stalled as the AG's office took over responsibility for preliminary investigation of torture complaints and referred few cases to the SIU. Since 2009, there have reportedly been no new investigations under CAT and no prosecutions.[65] It is alleged that the National Police Commission is no longer an independent body since the 18th Constitutional Amendment passed on 8 September 2010, eliminating the Constitutional Council and giving the President full control over appointments.

[65] See, Asian Human Rights Commission, "SRI LANKA: A review of Sri Lanka's compliance with the obligations under the Convention against Torture and Ill-treatment," 8 July 2011.

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years and (A/HRC/16/52/Add.2)*	*Information received in the reporting period*
	Commission, NGOs and the Special Rapporteur on Torture.	indicating that there was an investigation and the case is closed. - The National Police Commission is largely defunct and has communicated to various civil society organizations and families they are not in a position to take up such cases.	
(f) Ensure all public officials, in particular prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, to report ex officio to the relevant authorities for proper investigation in accordance with Art.12 CAT.	In general, the Special Rapporteur noted with concern the absence of an effective ex officio investigation mechanism in accordance with Art. 12 CAT.	***Non-governmental sources:*** Detainees do not mention torture to the Magistrate at their first hearing because of ignorance or fear of reprisals. The Court interprets this in a manner unfavourable to the accused. Often, the wrong person is produced before the Magistrate. The Magistrate does not take the trouble to interrogate the suspect or to confirm the identification of the suspect to ensure that the suspect has not been tortured.	**Government:** Section 8.1 and the item 2 (Torture) of the NHRAP, recommend improved standards of Medico-legal work focusing on judicial officers in the detection in cases of torture. ***Non-governmental sources:*** Medical care for torture-related injuries is available in prisons or with referral to hospitals (including for injuries sustained in police custody before prisoners reach the prison), but prison authorities and prison doctors are reportedly not required to report injuries or request investigations. It is reported that public officials are not instructed to ensure prompt and impartial investigations when they have reason to suspect an act of torture or ill-treatment.
(g) Ensure that confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence against the persons who made the confession.	Art. 24 to 27 of the Evidence Ordinance (EO) do not allow confessions in court that are extracted through torture. In addition, ordinary law provides that a confession made to a police officer or to another person while in police custody is inadmissible before the courts. This rule,	See (b). ***Non-governmental sources:*** The emergency laws still allows the admissibility of confessions given to police officers above the rank of an ASP and imposes a burden on the accused to prove that the confession was not voluntary. It has been observed by a senior human rights lawyer that in 99% of the cases filed under the PTA, the sole evidence relied upon are confessions made to an ASP	**Government:** Prior to a confession of an accused person being admitted in a Court of Law, a *voir dire* inquiry is conducted. It is only upon satisfying the judge at the *voir dire* inquiry that the confession has been made voluntarily that the confession is deemed admissible as evidence. It

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	however, is not applicable to persons detained under Emergency Regulations. Over the course of his visits to police stations and prisons, the Special Rapporteur received numerous consistent and credible allegations from detainees who reported that they were ill-treated by the police during inquiries in order to extract confessions.	or an officer above this rank. Therefore, persons are charged on grounds based on involuntary statements derived through force. Courts have convicted persons on evidence of confessions in spite of medical reports of torture, the absence of legal representation and the lack of an interpreter during interrogation and trial. ***Non-governmental sources:*** The provision in the Emergency Regulations that enabled the admissibility of confessions was repealed when the ERs were amended by Gazette 1651/24 in May 2010. However though the confession is not admissible when given to a police officer, the confession is often brought up in cross examination. For example, in cases where there is an alleged robbery and the stolen goods are found, the prosecution brings up the confession as the indication of where the stolen goods were hidden.	will be incumbent on the judge to assess the evidentiary value, i.e. the truth of the statement. The Magistrates have the power to order medical examinations and they have exercised this judicial power in appropriate cases. ***Non-governmental sources:*** No real change has been reported: whilst the Emergency Regulations have been repealed, it is alleged that persons are still arrested and detained under the Prevention of Terrorism Act, under which such persons may and have been convicted on the basis of a "confession" made to a police officer, even when that "confession" is retracted in court and torture has been alleged. Reportedly, there remains no legal requirement that a lawyer be present during questioning of a detainee.
(h) The burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of duress.		***Non-governmental sources:*** The burden of proof regarding confessions obtained under duress continues to be on the accused, in accordance with the Criminal Procedure Code.	**Government:** The burden of proving the ingredients of an offense is always on the prosecution. It is only with regard to confessions under PTA that the burden shifts to the accused to show that it is inadmissible under section 24 of the evidence ordinance. Under section 24 of the evidence ordinance, a confession made by

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			an accused person is inadmissible in criminal proceedings if the making of the confession appears to the court to have been made under inducement, promise or threat. Voluntariness and truth are benchmarks that are taken into consideration before a court would admit a confession against an accused. ***Non-governmental sources:*** No change has been reported: without the PTA being repealed or revised to the effect recommended by the Special Rapporteur this situation will reportedly remain.
(i) Expedite criminal procedures relating to torture cases by, e.g., establishing special courts dealing with torture and ill-treatment by public officials.	The Special Rapporteur is concerned about the long duration of investigation with regard to cases of torture and ill-treatment of often more than two years and allegations of threats against complainants and torture victims.	***Non-governmental sources:*** There is no constitutional or statutory safeguard against protracted trials. Indictments take several years to be forwarded to the accused. Even after an indictment is served and the case commences in the High Court, proceedings may drag on for years, allowing ample time for the accused police officers to threaten, intimidate or kill witnesses. The Government has said that the Attorney General has instructed his officers to give preference to cases coming under the CAT Act. However, there is little evidence of such prioritisation. There have been only three convictions and several acquittals under this Act. The vast majority of cases remain pending in the courts with little hope of a successful outcome. ***Non-governmental sources:*** In the past, if	**Government:** It is admitted that there is some delay in criminal proceedings. It is difficult to give priority to any one type of case. Murder, rape, child abuse are examples of cases, that also need equal attention. The Attorney General however has instructed the State counsel to expedite the pending torture cases. ***Non-governmental sources:*** No progress.

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		there was a case of torture alleged against a Police Officer, the officer was interdicted till the inquiry into the case was complete and the Police Officers innocence was proven. However this practice is no longer adhered to.	
(j) Allow judges to be able to exercise more discretion in sentencing perpetrators of torture under the 1994 Torture Act.	The Special Rapporteur appreciates that, by enacting the 1994 Torture Act, the Government has implemented its obligation to criminalize torture and bring perpetrators to justice. He is also encouraged by the significant number of indictments, 34, filed by the Attorney General under this Act. However, he regrets that these indictments have led so far only to three convictions. One of the reported factors influencing this outcome is the Torture Act's high mandatory minimum sentence of seven years. It is effectively a disincentive to apply against perpetrators.	***Non-governmental sources:*** There has been recent precedence in the Supreme Court to award lesser sentences.	**Government:** The judiciary is in the process of formulating guidelines on sentencing policy. ***Non-governmental sources:*** No change in policy; no apparent official plan to address this recommendation.
(k) Drastically reduce the period of police custody under the Emergency Regulations and repeal other restrictions of human rights under them.	For three decades, emergency rule has continued between intervals in Sri Lanka. The Prevention of Terrorism Act (PTA) of 1979 was suspended in 2002 after the CFA was agreed upon. However, the law is still in force and its section 9 (1), allowing to detain a person under detention order (DO) for a period of "three months in the first instance, in such place and subject to such conditions as may be determined by the Minister", renewable to a maximum of 18	***Non-governmental sources:*** By Amendment Regulation 2008, the period of preventive detention of suspects arrested under Regulation 19 EMPPR was extended to a further period of six months, where it appeared that the release of such a person would be detrimental to the interests of national security, thus extending the entire period of preventive detention to one and a half years. Such a suspect was mandated to be produced before a Magistrate every 60 days during this period. After operating for several months, this Regulation was suspended by order of the Supreme Court on 15 Dec. 08,	**Government:** Since the lapse of the ER, Regulations have been made in terms of Section 27 of the PTA for the treatment of detainees consequent to the lapsing of the emergency regulations. According to the current regulations: 1. Detainees under the lapsed regulations shall be produced forthwith before a Magistrate who will bring the suspect under the Code of Criminal

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	months, still applies. Although the CFA provided for the temporary suspension of the PTA, throughout this time many provisions of the PTA were reintroduced under the Emergency Regulations and now that the CFA has been abrogated, the temporary suspension of the PTA has been repealed. New Emergency Regulations (ER, or Emergency Miscellaneous Provisions and Powers Regulations, EMPPR) were imposed on 14 Aug. 05. They are drawn from the PTA and allow detention without charge for 90 days, renewable for up to one year. Suspects can also be held for up to a year under "preventive detention" orders.	which meant that the old Regulations 19 and 21 of EMPPR 2005 were revived. Accordingly, the current state of the law is that suspects are required to be brought before a Magistrate after 30 days following arrest and can thereafter be kept up to ninety days in detention, in a place "authorised by the Inspector General of Police" (IGP). Following the expiration of the 90 day period, they must be remanded by a Magistrate into fiscal custody. Although the Regulation indicates that custody thereafter cannot be more than one year, the current practice is that fiscal custody is indefinitely extended by periodic remand orders issued by Magistrates. Lawyers appearing for these suspects say that a suspect is typically detainees for up to two years or more until the Attorney General decides to indict him/her or alternatively ask for the suspect's discharge. ***Non-governmental sources:*** According to the amendment to the Regulation of May 2010, the detention of a person under ER 19 has to be notified to a Magistrate within 72 hours and the detainee has to be produced before a competent court within 30 days. The maximum period of detention has been reduced to three months. - Due to the short period of detention, charges are sometimes framed without adequate evidence. Bail is not given in cases of those detained under the Emergency Regulations or the PTA.	Procedure Act. 2. If this production does not take place within 30 days from 30th August 2011 and the Magistrate does not take steps to remand him on material available, the detainee shall be released. 3. If a detention order either under Part II or Part III has been issued in respect of the detainee before the expiry of 30 days, the detainee shall not be released subject to the availability of the right of bail in given circumstances. 4. Those who were remanded by the magistrate under the provisions of the lapsed regulations will be deemed to have been remanded under the Prevention of Terrorism Act. As of 1 September 2011, any person arrested or detained are given the above guarantees in terms of Code of Criminal Procedure Act or in the appropriate case under the Provisions of the PTA. In addition, the Police circular no-2321/2011 on the safety and security of the suspects in custody

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			have been issued on 29 December 2011. ***Non-governmental sources:*** The state of emergency was lifted at the end of August 2011; the PTA was reactivated in 2006 and since 31 August 2011, is being used to manage detentions that were previously under ERs. It is reported that the PTA allows for an even longer period of detention without charge (18 months) than was allowed under the ERs (12 months).
(l) Develop proper mechanisms for the protection of torture victims and witnesses.	In general, the lack of effective witness and victim protection prevents the effective application of the laws in place.	***Non-governmental sources:*** The police and security forces are known to put severe pressure on petitioners, lawyers, litigants, witnesses and families to drop human rights cases involving torture. Intimidation of witnesses is a common practice among law enforcement agencies. Once accused or indicted for torture, the law enforcement officers are kept in their positions. A draft law on Witness and Victims of Crime Protection was presented to Parliament in 2008; however, this Bill has been pending for many months in the House. Its range is commendably wide but it has also been criticized for being seriously flawed otherwise.	**Government:** The Draft Bill on Victims, Witnesses and Victims of Crime Protection which was presented in the Parliament, was referred to the Consultative Committee and several recommendations were made therein. Subsequently, the Parliament was prorogued and thereafter the Bill has not been represented in the Parliament. The recommendations and amendments are being incorporated into the Bill and the Bills is currently with the Legal Draftsman. ***Non-governmental sources:*** No progress. Reportedly, there remains no witness protection program in Sri Lanka. A bill (albeit flawed) aimed at creating a witness protection program was presented to Sri Lanka's parliament in 2008. It has not to

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			date been debated or voted on.
(m) Ensure that the constitution and activities of the NHRC comply with the Paris Principles, including with respect to annual reporting on the human rights situation and follow-up on past cases of violations.	The NHRC is empowered to conduct investigations into complaints of violations of fundamental rights. However, it can only make recommendations and is not empowered to approach courts directly. In Oct. 07, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) downgraded the NHRC's status, due to concerns about the independence of the Commissioners, in view of the 2006 presidential appointments, which were done without the recommendation of the Constitutional Council, as prescribed in Sri Lanka law. Concern was also express regarding the balance, objectivity and politicization of its work and its failure to issue annual reports on human rights, as required by the Paris Principles.	***Non-governmental sources:*** The NHRC is mandated to investigate fundamental rights violations. In practice however, it has no enforcement powers, and has been unable to put clear policies into place, as well as effective and consistent practices in relation to investigations. It also suffers from a lack of resources and qualified staff. Its independence and integrity has been negatively affected as a result of its members being unilaterally appointed by the President, bypassing the pre-condition of approval by the Constitutional Council. The current Commissioners have not demonstrated any commitment to human rights protection and are mainly lawyers and retired judges. The NHRC is still under special review of the ICC; until a decision has been reached, it will remain under "B" status.	**Government:** In terms of the 18th Amendment to the Constitution, the Chairman and Members of the Human Rights Commission of Sri Lanka are appointed by the President after seeking the observations of a Parliamentary Council. This Council consists of the Prime Minister, the Speaker, the Leader of the Opposition and a nominee each of the Prime Minister and the Leader of the Opposition. The aforementioned nominees have to belong to communities other than those to which the Prime Minister, Speaker and Leader of the Opposition belong, ensuring a wide representation by all communities. Other safeguards to guarantees the independence and integrity of the Human Rights Commission are incorporated into the constituting legislation, in terms Act No 21 of 1996. The independence is similar to the independence of the judiciary, in that they are not removable prior to the expiration of their terms. Section 29 of Act No. 21 of 1996 casts a positive duty on the State to provide the Commission with adequate funds to discharge its statutory functions and duties.

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			Non-governmental sources: With passage of the 18th amendment, eliminating the Constitutional Council and formally empowering the President to make direct appointments to key Commissions, it is reported that the NHRC can no longer be considered an independent body as is required by the Paris Principles. As of August 2011, the ICC grades the NHRC as a B Status Institution.
(n) Establish appropriate detention facilities for persons kept in prolonged custody under the Emergency Regulations.	During the Special Rapporteur's visit to various police stations, he observed that detainees were locked up in basic cells, slept on the concrete floor and were often without natural light and sufficient ventilation. The conditions for those held in police stations under detention orders pursuant to the Emergency Regulations for periods of several months up to one year were inhuman. This applies both for smaller police stations, but particularly for the CID and TID headquarters in Colombo, where detainees were kept in rooms used as offices during the daytime, and forced to sleep on desks in some cases.	***Non-governmental sources:*** The emergency laws continue to create an environment which permits torture and CIDTP, due to the extended period of detention, which at times take place in locations not supervised by the prison administration. Under the PTA, normal prison rules do not apply. Torture, denial of proper food and restrictions on visiting hours are observed, together with deplorable conditions at police stations and Special Task Force camps. Unauthorized detention centres continue to be maintained. ***Non-governmental sources:*** The conditions have worsened since the Special Rapporteur's visit in 2007.	**Government:** At present, 361 persons (354 males and 7 females) are held in custody under Prevention of Terrorism Act. Sri Lanka maintains only one detention centre located in Boossa. Medical facilities are available 24 hours and a doctor is present at the Boossa detention centre. Medical treatment is provided by the Government Hospitals at any time. Visits by parents, next of kin and legal representatives will ensure the protection of the rights of the detainee and the detainee is legally entitled to apply to court for medical and other forensic examinations of reports. They are also entitled to engage the services of medical and forensic experts privately. The material emanating from the examination can be adduced in court and will be

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			treated with equal weight. The detainee is entitled to make a statement to the examining medical officer providing a clinical history that would set out any injury or bodily harm. ***Non-governmental sources:*** Reportedly, there has been no improvement in detention facilities for detainees held under the PTA and previously detained under ERs. It is reported that there was a marked deterioration in overall conditions under which people detained without charge were held. It is alleged that at the conclusion of the armed conflict in May 2009, the Sri Lankan Government forcibly and arbitrarily detained almost 300,000 displaced persons in closed camps under military guard and under extremely poor conditions – including inadequate shelter, sanitation and access to medical care. Rigid restrictions on displaced people's freedom of movement in and out of the camps were reportedly maintained for more than six months, until December 2009, and then gradually loosened. Reportedly, the Sri Lankan authorities detained separately and also without charge some 11,000

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			people (including children) suspected of links to the LTTE in a variety of "rehabilitation" camps, many of which were repurposed school buildings or old displacement camps with minimal facilities. It is alleged that torture has been reported in these facilities and more than 1,000 of these detainees remain in detention (as of 30 September 2011) without charge more than two years later.
(o) Establish an effective and independent complaints system in prisons for torture and abuse leading to criminal investigations.	The medical personnel in various prisons acknowledged that they received on a regular basis allegations of torture and other forms of ill-treatment by persons who are transferred from police stations to the prisons. In many cases, these complaints are corroborated by physical evidence, such as scars and haematomas. However, the medical personnel only feels responsible for treating obvious wounds and does not take any further action, like reporting the alleged abuse to the authorities or sending the victim to a JMO. Sometimes the guards beat detainees if they have done something wrong.	***Non-governmental sources:*** Prison officials admit that torture and ill-treatment occurred within prison walls and that there were no regular procedures of inquiry and report. There have been very few visits to detention facilities by Magistrates, the so-called Board of Visitors and the Human Rights Commission of Sri Lanka. There is no effective monitoring of facilities that accommodate inmates detained under emergency law or at police detention facilities. ***Non-governmental sources:*** Magistrates rarely, if ever, visit prisons. There has been no appointed Board of Visitors nationally or locally in each area. - Over the past two years, the HRC has dramatically scaled down and completely stopped its surprise visits to detention facilities in some areas.	**Government:** The Ministry of Rehabilitation and Prison Reforms has issued instructions to the administrators of all prisons to visit all wards and cells of their prisons daily and to take proper immediate action with regard to complaints of inmates. Instructions were also given to take immediate action on complaints against prison officers and to take disciplinary action If necessary. A complaint box has been placed at the prison entrance for the people to visit the inmates to place their complaints. Instructions were also given to refer any inmate who has been assaulted by the prison officer to the judicial medical officer. Once in every 30 days authorized magistrates visit the detainees in the detention centers.

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			Section 18 (Civil and Political Rights) of the NHRAP, proposes several prioritized measures to ensure compliance with minimum standards for the treatment of prisoners and will address issues including deficiencies in prison conditions and overcrowding. ***Non-governmental sources:*** There is no complaint mechanism or any apparent plan to initiate one. Inmates who have complained of torture have reportedly been threatened by prison authorities.
(p) Investigate corporal punishment cases at Bogambara Prison as well as torture allegations against TID, mainly in Boosa, aimed at bringing the perpetrators and their commanders to justice.	The Special Rapporteur heard of a number of instances of corporal punishment at Bogambara prison. In one case, a preliminary disciplinary inquiry was conducted against the officer concerned and formal charges were to be presented against an officer by the Prisons Department.	***Non-governmental sources:*** There were reports of women guards in Bogambara being interdicted but they have all been released.	**Government:** The Ministry of Rehabilitation and Prison Reforms has taken disciplinary action against the officer at Bogambara prison that is said to have assaulted an inmate. It is proposed to relocate the prisons in Colombo and Kandy to new premises with modern state of the art facilities. It is believed that there will be a significant reduction of the prison population by the adoption of non-custodial sentences which will further reduce the problem of overcrowding. As regards errant prisons officials, there are a number of them who have been indicted for abuses. ***Non-governmental sources:*** Reportedly, no known action has been taken to investigate these

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			allegations. On 14 June 2011, seven Tamil detainees in Bogambara Prison were reportedly tortured by investigating officers following a dispute between two groups of Sinhalese prisoners who were allegedly selling drugs within the prison. Guards reportedly threatened the prisoners with death, saying they would die like two well-known Tamil prisoners who were tortured and killed by Sinhalese prisoners in a 1983 prison massacre. The victims, who were reportedly bleeding and in severe pain, were eventually admitted to the prison hospital.[66]
(q) Design and implement a comprehensive structural reform of the prison system, aimed at reducing the number of detainees, increasing prison capacities and modernizing the prison facilities.	The Government provided the Special Rapporteur with statistics indicating severe overcrowding of prisons. While the total capacity of all prisons amounts to 8,200, the actual prison population has reached 28,000. The combination of severe overcrowding and the antiquated infrastructure of certain prison facilities places unbearable strains on services and resources, which for detainees in certain prisons, such as the Colombo Remand Prison, where the lack of	***Non-governmental sources:*** Prisons are faced with severe overcrowding. There is a lack of adequate sanitation, food and water, and inadequate medical treatment, and prisoners have little exposure to sunlight. The buildings are old, and the possibility of the spread of contagious disease remains a serious problem. ***Non-governmental sources***: In September 2010, it was reported that the President suggested an overhaul of the Penal Code and the administration of justice in the lower courts as jails are overcrowded and congested. The Minister for Rehabilitation and Prison	**Government:** The Ministry of Rehabilitation and Prison Reforms has taken steps to ease the congestion in prisons by establishing new open prison camps and prisons. More sanitary facilities and better water supply are being provided. Medical facilities have also been enhanced. ***Non-governmental sources:*** Reportedly, Sri Lankan prisons remain extremely overcrowded and unhygienic. As of July 2011,

[66] See, "SRI LANKA: Seven Tamil detainees hospitalised after severe torture by the prison officials inside Bogambara Remand Prison," ASIAN HUMAN RIGHTS COMMISSION, Urgent Appeal Case: AHRC-UAC-133-2011, 3 August 2011.

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	space was most obvious amounts to degrading treatment.	Reforms was quoted as saying that a rehabilitation programme would be established with the assistance of the state and private sector agencies.	Sri Lanka claimed to have an institutional capacity of about 11,000 and a prison population of nearly 34,000. A. Dissanayake, Secretary to the Ministry of Rehabilitation and Prison Reforms, told the Sri Lankan newspaper the Daily Mirror that Welikada prison near Colombo was overcrowded at 220 percent of capacity – housing 4,500 inmates in a facility intended for 2,000.[67] The Department of Prisons reported that in 2010 its facilities overall were overcrowded by 129.4 percent.[68] In September 2010, Sri Lanka's Minister of Prisons Reforms and Rehabilitation announced a proposal to relocate jails situated in cities to the suburbs, but there has been no apparent progress since then. New prison construction has also been proposed for Jaffna.
(r) Remove non-violent offenders from confinement in pre-trial detention facilities, and subject them to non-custodial measures (i.e.	The Colombo Remand Prison is a very old institution and the conditions of detention are appalling: the institution is extremely overcrowded and prisoners are detained in poor	***Non-governmental sources:*** A large number of prisoners are remand prisoners and it is estimated that only 25 % of remand prisoners are ultimately convicted. ***Non-governmental sources:*** Bail is given	**Government:** Arrangements are made to keep remand prisons separate from convicted prisoners. ***Non-governmental sources:*** It is reported that in 2010, the Minister

[67] "Sri Lankan jails 'hell' for women," *Aljazeera*, 25 July 2011, http://english.aljazeera.net/indepth/features/2011/07/2011725142452794174.html.

[68] "Accommodation and Buildings, 2001-2010," Department of Prisons, http://www.prisons.gov.lk/Statistics/Statics/Title9/9.7.pdf

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guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement).	hygienic conditions. On the day of the visit there were a total of 1,552 detainees. Ninety persons were convicted, 1,332 persons were in pre-trial detention and 130 persons were detained under the Emergency Regulations.	with unreasonable conditions. Either the bail amount is too high, or the sureties have to be civil servants or in some cases civil servants from that area. Sometimes the crime is committed in an area that is not the same as the court, even though it is within the court's jurisdiction, making it difficult to obtain such sureties. - Due to enormous delays in the courts, victims are encouraged or simply decide to plead guilty even when innocent, immediately begin their prison sentence and hope that the sentence is ultimately commuted.	for Prison Reforms and Rehabilitation said his Ministry planned to separate convicts from pre-trial detainees and minor offenders from criminals. This, however, remains to be implemented. Reportedly, in 2010, 18,000 people received sentences to do community service in lieu of incarceration. Since 2010, there have been two significant prison riots.
(s) Ensure separation of remand and convicted prisoners.	The lack of adequate facilities also leads to a situation where convicted prisoners are held together with pre-trial detainees in violation of Sri Lanka's obligation under Art. 10 of the International Covenant on Civil and Political Rights.	***Non-governmental sources:*** Section 48 of the Prisons Ordinance states that convicted prisoners, whenever practical, shall be separated from remand prisoners (subsection c). The rule that convicted prisoners should be separated from remand prisoners is reflected also in the Sri Lanka Prison Rules 177 and 178. Upon admittance of a person into the prisons system, however, there is no distinction between the innocent and the guilty. Remand prisoners are not separated from those convicted. ***Non-governmental sources:*** Please refer to point (q). The Minister for Rehabilitation and Prison Reforms has made statements that reforms are envisaged.	**Government:** The Ministry of Rehabilitation and Prison Reforms has taken steps to separate remand prisoners from convicts. It was decided to construct a new prison complex so that remand and convicted prisoners can be kept separately. ***Non-governmental sources***: No apparent progress
(t) Ensure separation of juvenile and adult detainees, and ensure the deprivation of liberty of children to an absolute	In the TID facilities in Colombo the Special Rapporteur met eight children who were being held on account of being child soldiers for the LTTE. He strongly condemns	***Non-governmental sources:*** Section 48 of the Prisons Ordinance states that juvenile prisoners, whenever practical, shall be separated from adults; Section 13 of the Children and Young Persons Ordinance No	**Government:** The Ministry of Rehabilitation and Prison Reforms has instructed officers to transfer child suspects to children's homes without delay and to separate them

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minimum as required by Article 37 (b) of the Convention on the Rights of the Child.	the recruitment of children in the conflict, be it for fighting or other forms of servicing the armed groups. He also deems prolonged detention of minors in counter-terrorism detention facilities deeply worrying.	48 stipulates that children and young offenders should be kept separate from adults in police stations and courts, etc. Furthermore, the Community Based Corrections Act. No 46 of 1999 stipulates a wide range of non-custodial orders for the rehabilitation of (child) offenders including unpaid community work. In practice, child offenders are kept in police cells together with adult offenders prior to being produced in court. Consequently, children are often exposed to abuse. Children kept in custody under emergency law face even greater hardships. Further, the police hardly follow alternatives to detaining children in the police station, such as releasing them to their parents or placing them in a remand home. The placement of children in adult prisons pending trial is a common practice, as there is lack of capacity in remand homes for children. ***Non-governmental sources:*** There is a facility in Thaldena which was reserved for youth offenders between the ages of 18 and 22. However, many of those convicted for drug offences have been recently placed in that facility.	from other inmates during their short stay in prisons. ***Non-governmental sources:*** It is alleged that after the armed conflict ended in May 2009, about 600 children were detained as former LTTE child combatant. They were initially held with adult LTTE suspects and then transferred to dedicated "rehabilitation" facilities for child soldiers where they received educational instruction, skills training and political indoctrination. Sri Lanka reportedly claims that all former child soldiers have since been released from detention.
(u) Abolish capital punishment or, at a minimum, commute death sentences into prison sentences.	The death penalty is foreseen by Art. 52 of the Penal Code. Murder is punishable by death (art. 296). No death sentence has been carried out in Sri Lanka since 1977. However, the High Court sentenced five police officers guilty of rape and murder to death sentences.	***Non-governmental sources:*** Although Sri Lanka is ranked as "abolitionist in practice" by non-governmental sources, it has not abolished capital punishment in its legislation.	**Government:** The Death Penalty could be imposed only for limited and most serious crimes such as treason, murder and for possession and trafficking of drugs. Persons sentenced to death have a right to seek pardon or commutation of sentence and amnesty. The death sentence is not imposed on persons under 18 years of age or on pregnant women. No executions

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			have been carried out for nearly 30 years. A moratorium on death sentence is in place in Sri Lanka. In the case of killings in Angulana, three police officers were convicted. ***Non-governmental sources:*** No change in law or policy. Reportedly, according to Sri Lanka's Department of Prisons, 96 people were sentenced to death in 2010, all were convicted of murder. Since 2006, 673 death sentences have been issued -- 15 for drug offences and 658 for murder.[69] Reportedly, in a very rare prosecution of deaths in police custody, in August 2011, four policemen received the death sentence for the 2009 custodial killing of two young men in Angulana. It is reported that news of the killings sparked large public demonstrations against the police. In April 2011, three Sri Lankan solders were sentenced to death for rape and murder of a 22 year old woman in Jaffna in 1996.

[69] "Direct Admissions of Convicted Prisoners by Type of Offences, and Rate Per 100,000 of Population, 2004-2010," Department of Prisons, http://www.prisons.gov.lk/Statistics/Statics/Title4/4.12.pdf

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			No death sentences have reportedly been carried out.
(v) Establish centres for the rehabilitation of torture victims		***Non-governmental sources:*** There is no state sponsored system of rehabilitation afforded to torture victims.	**Government:** Section 8 on Torture of the NHRAP – Rehabilitation and Reparation, a comprehensive reparation programme for victims of torture has been proposed. ***Non-governmental sources:*** No progress.
(w) Ratify the Optional Protocol to the Convention against Torture, and establish a truly independent monitoring mechanism to visit all places where persons are deprived of their liberty throughout the country, and carry out private interviews.	A number of shortcomings remain and, most significantly, the absence of an independent and effective preventive mechanism mandated to make regular and unannounced visits to all places of detention throughout the country at any time, to conduct private interviews with detainees, and to subject them to thorough independent medical examinations. It is the Special Rapporteur's conviction that this is the most effective way of preventing torture. In the case of Sri Lanka, he is not satisfied that visits undertaken by existing mechanisms, such as the NHRC, are presently fulfilling this role, or carrying out this level of scrutiny. In this regard, the Special Rapporteur welcomes information from the Government that it intends to establish an inter-agency body to study possible modalities and mechanisms to undertake visits to places of	Sri Lanka has not signed or ratified the OPCAT. ***Non-governmental sources***: The Release of Remand Prisoners Act No. 8 of 1991 provides for monthly visits to prisons by a Magistrate, and Section 39 of the Prisons Ordinance empowered judges, members of parliament and Magistrates to visit the prisons at any time and hold therein "any inspection, investigation or inquiry." Section 28(2) of the Human Rights Commission Act, No 21 of 1996 empowers any person authorised by the Commission to enter at any time any place of detention, police station, prison or any other place in which any person is detained by judicial order or otherwise and to make such examinations or inquiries as may be necessary, to ascertain the conditions of detention of the persons detained therein. However, current emergency laws allow for detention of persons in places other than official detention facilities. By inference, visits to such undisclosed and secret places of detention are not possible. Though it is provided for by law that Magistrates visit remand prisons, this is seldom observed in	**Government:** Sri Lanka has not accepted Article 21 and 22 of the Convention, Ratification of the Optional Protocol of the Convention would be considered by the State party. ***Non-governmental sources:*** No action taken to ratify the Optional Protocol. It is reported that Sri Lanka's National Human Rights Commission (NHRC) does not make regular unannounced visits to places of detention, but will make a surprise visit if alerted to a problem, for example through their public hotline. It is alleged that security forces often fail to alert the NHRC to detentions. The NHRC reports, for example, that officers of the Commission visited Mount Lavinia Police Station on 15th August 2011, on the information

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	detention and also to strengthen the capacities and efficacy of the NHRC in this connection.	practice. The Government has announced that it was considering the introduction of legislation to make it compulsory that Magistrates inspected places of detention. Yet, this intention has not been translated into actual practice. Officers of the NHRC, even on the rare occasions when they did visit places where persons were detained, were only shown the regular holding areas rather than the mess rooms and the toilets, where torture may actually be taking place. Also, the fact that they have to obtain prior permission for these visits renders a 'surprise element' impossible in such visits, which could help uncover abuse. ***Non-governmental sources:*** The situation remains the same.	received through the hotline. It is alleged that detainees had been held in police custody for more than seven days and appeared to have been tortured. Several other detainees were being held on detention orders under emergency regulations. Reportedly, information about these detentions had not been sent to the Commission as required by per provisions of the Human Rights Commission of Sri Lanka Act and Presidential Directives. Some places of detention have reportedly been kept secret, making independent monitoring impossible.
(x) Ensure that security personnel undergo extensive and thorough training, using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education.		***Non-governmental sources:*** Human rights education, which was introduced into police training in the early 1980s, is part of the curricula at the Sri Lanka Police Training School as well as at the Police Higher Training Institute. Human rights and humanitarian law also form part of the curricula in the training courses at all levels of the army and some courses are supplemented by training programmes conducted by the NHRC, the ICRC, NGOs and universities. However, the quality of the training is poor and the training facilities are sub-standard. The State has no national human rights plan. ***Non-governmental sources:*** The United Nations Resident Coordinator's Office held a Human Rights Training of Trainers for the	**Government:** In service training programmes are conducted by the Judges Training Institute under the auspices of the Judicial Services Commission. In-house training and workshops are periodically conducted by the Attorney General's Department for prosecutors. In 2010, 23 newly recruited police officers were trained on torture prevention; 50 inspectors of police, sub-inspectors of police, police constables, police sergeants, and 50 chief inspectors, inspectors of police, sun-inspectors were trained on Torture Act and Mandate of the HRCSL.

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		Police Training College in May 2009. The Unit subsequently provided the police with a comprehensive Human Rights Manual, corresponding lesson plans and role plays, which the Deputy Inspector General Training was instrumental in finalising in August 2009. However, the United Nations has still not received word that the manual was cleared for official use by the IGP and formally integrated into the College's training programme.	***Non-governmental sources***: Some human rights training has been provided to security personnel but implementation of government directives and regulations aimed at protecting detainees reportedly remains extremely weak.
(y) Establish a field presence of the UNOHCHR with a mandate for both monitoring the human rights situation in the country, including the right of unimpeded access to all places of detention, and providing technical assistance particularly in the field of judicial, police and prison reform.	During the visit of the Special Rapporteur, two technical cooperation officers of the OHCHR were located in Colombo. The establishment of a field presence of the OHCHR with a mandate to monitor the human rights situation was strictly refused by the Government.	No monitoring mission of the OHCHR has been set up due to refusal by the Government. However, there is a Human Rights Advisor in the country. ***Non-governmental sources:*** The situation remains the same.	**Government:** An independent national mechanism in the form of the National Human Rights Commission for monitoring the human rights situation was established in the country under Act No. 21 of 1996. The National Action Plan for Promotion and Protection of Human Rights has already been approved by the Government and is in the process of implementation. ***Non-governmental sources:*** No progress.

Togo

Suivi des recommandations du Rapporteur spécial (Manfred Nowak) contenues dans le rapport de mission au Togo en avril 2007 (A/HRC/7/3/Add.5)

138. Le 22 Novembre 2011, le Rapporteur spécial a envoyé le tableau ci-dessous au Gouvernement togolais pour lui demander des informations et commentaires sur les mesures prises suite aux recommandations émises par le Rapporteur spécial après sa mission d'avril 2007. Le Rapporteur spécial regrette qu'à ce jour, le Gouvernement n'ait pas encore répondu à cette demande. Il attend de recevoir des informations sur les efforts du Togo pour assurer le suivi des recommandations et reste disponible pour fournir tout appui technique dont aurait besoin le Gouvernement togolais.

139. Le Rapporteur spécial se félicite de la ratification, par le Gouvernement togolais, du Protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants (OPCAT) le 20 juillet 2010. Il note que le Comité des droits de l'homme a recommandé l'élaboration d'un mécanisme permettant à tout détenu de signaler toute violation dont il serait victime.[70] Le Rapporteur spécial aimerait recevoir des informations détaillées sur les mesures envisagées et/ou prises pour la mise en place d'un Mécanisme National de Prévention au Togo qui pourra effectuer des visites inopinées dans tous les centres de détention.

140. Le Comité des droits de l'homme et le Comité contre la torture [71] regrettent que la pratique des mutilations génitales féminines reste encore répandue malgré les mesures prises par le Gouvernement pour y mettre fin. Le rapporteur spécial est préoccupé par le fait que cette pratique ne soit pas sanctionnée par le système pénal togolais. Le Gouvernement devrait poursuivre et renforcer ses efforts pour mettre fin aux pratiques discriminatoires, telles que les mutilations génitales féminines. À ce titre, le Gouvernement devrait intensifier ses efforts de sensibilisation aux mutilations génitales féminines, en particulier au sein des communautés où elles sont encore répandues. Il devrait pénaliser la pratique et veiller à ce que les auteurs de mutilations génitales féminines soient traduits en justice.

141. Le Rapporteur spécial est préoccupé par le fait que le Gouvernement togolais n'ait toujours pas adopté de disposition pénale qui définisse et criminalise explicitement la torture; et que, dans ce contexte, la pratique de la torture et des traitements cruels, inhumains ou dégradants demeure impunie. Le Rapporteur spécial exhorte le Gouvernement togolais à adopter une disposition pénale définissant la torture conformément aux standards internationaux, ainsi que des dispositions incriminant et sanctionnant les actes de torture par des peines proportionnées à leur gravité; et à s'assurer que tout acte de torture ou traitement cruel, inhumain ou dégradant soit l'objet de poursuites et de sanctions proportionnellement à sa gravité.

142. Le Rapporteur spécial reste préoccupé par les allégations de torture et de mauvais traitements en détention, notamment dans les locaux de l'Agence Nationale de Renseignement (ANR), et par les allégations de décès résultant de mauvais traitements en détention. L'État partie devrait prendre des mesures afin d'enquêter sur toutes les allégations de torture et de mauvais traitements,

[70] CCPR/C/TGO/CO/4, para.18.
[71] CCPR/C/TGO/CO/4, para.13; CAT/C/TGO/CO/1, para.27.

ainsi que sur tout décès survenu en détention. De telles enquêtes doivent être diligemment menées de manière à traduire les auteurs en justice et accorder des réparations effectives aux victimes.

143. Dans l'objectif de lutte contre l'impunité persistante au Togo, le Gouvernement devrait poursuivre ses efforts pour aboutir à la conclusion prochaine des travaux de la Commission Vérité, Justice et Réconciliation. Des enquêtes indépendantes et impartiales doivent par ailleurs être diligentées pour faire la lumière sur les violations des droits de l'homme commises en 2005 et poursuivre les responsables. Le Rapporteur spécial exhorte le Gouvernement à mettre en place un système de justice transitionnelleet réitère son souhait de continuer à suivre les activités de la Commission.

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93. Le Gouvernement togolais devrait ériger la torture en infraction pénale conformément à l´article 4 de la Convention contre la torture et selon la définition contenue dans son article premier, en fixant les peines appropriées.	La législation ne contient aucune disposition définissant la torture et érigeant les actes de torture en infraction comme l´exige l´article 4 de la Convention contre la torture.	**Gouvernement :** Le Togo donne la primauté aux traités internationaux sur la législation interne et les a intégrés dans sa loi fondamentale Le Togo a prévu dans sa législation interne des dispositions pour prévenir des actes de torture. En 2008, certains projets de textes, en particulier ceux qui visent à mettre en conformité le Code pénal avec les normes internationales relatives à la torture, ont été validés au cours d´un atelier national de validation les 24-26 novembre 2008 à Lomé. ***Des sources non gouvernementales :*** Le nouveau Code pénal et Code de procédure pénale, qui n'étaient pas encore adoptés par l'Assemblée nationale, intègrent la torture en tant qu'infraction avec les peines applicables. Le code de l'enfant interdit explicitement la torture sans l'ériger en infraction. - La torture continue d'être pratiquée au Togo. Aucune mesure législative n'a été prise depuis 2007 pour prévenir et sanctionner les actes de tortures.[72]	
94. Il devrait lutter contre l´impunité en mettant en place sur les lieux de détention des mécanismes d´examen des	Aucune condamnation prononcée par un tribunal pénal pour des actes de torture ou des mauvais traitements infligés dans le passé.	**Gouvernement:** Tout détenu a le droit d´adresser un courrier confidentiel au Directeur de l´Administration Pénitentiaire ou au Procureur de la	

[72] Le Rapporteur spécial regret que la réponse détaillée du Gouvernement togolais ne contenait pas d'information sur la mise en œuvre de la recommandation mentionnée au paragraphe 93 du rapport A/HRC/7/3/Add.5.

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plaintes efficaces ouvrant la voie à une information pénale indépendante contre les auteurs d´actes de torture et de mauvais traitements et à la conduite d´office d´enquêtes approfondies sur les allégations de torture ou de mauvais traitements, et traduire en justice les auteurs d´actes de torture ou de mauvais traitements identifiés dans l´appendice.	Absence de mécanismes, internes ou externes, d´examen des plaintes auxquels les victimes présumées de torture ou de mauvais traitements pourraient recourir, Existence d´une permanence téléphonique destinée aux victimes, rattachée au parquet, qui est opérationnelle, mais sur laquelle plus de précisions n'étaient pas disponibles.	République pour dénoncer tout mauvais traitement. **Gouvernement:** le 20 juillet 2010, le Togo a ratifié le protocole facultatif se rapportant à la convention contre la torture et aux autres peines ou traitements cruels, inhumains ou dégradants. Les 20 et 21 juillet 2010, un séminaire a été organisé par le Haut Commissariat des NU aux Droits de l'Homme et par l'association pour la prévention de la torture sur les mécanismes de préventions de la torture pour le Togo. Une série de recommandations ont été mises en place, ce qui permettra une prévention efficace de la torture dans les lieux de détention. ***Des sources non gouvernementales :*** Les mécanismes de communication entre l'administration pénitentiaire et les personnes détenues rencontrent des obstacles que constituent certains détenus qui sont institués 'Chef de cour', ou 'Chef de cellule', avec pour responsabilité de gérer le quotidien de leurs codétenus. Ainsi, ceux-ci prennent des mesures de gestion du courrier des détenus, mais la confidentialité des correspondances dans la pratique n'est pas souvent garantie. L'envoi de courriers est même souvent soumis au paiement de certains frais non comptabilisés. Les courriers compromettants sont censurés et retenus par le régisseur de la prison.	

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		- Il n'existe aucun mécanisme formel d'examen des plaintes. - Les détenus ne connaissent pas le droit de saisir par une lettre confidentielle le Directeur de l'Administration Pénitentiaire ou le procureur. - Les tortures et intimidations continuent jusqu'à ce jour et aucune condamnation n'est prononcée par un tribunal pénal pour des actes de torture ou des traitements mauvais infligés. Pour les quelques rares victimes qui connaissent ce droit, les plaintes ne sont pas examinées.	
95. Le Gouvernement devrait interdire expressément les châtiments corporels et mettre en place des mécanismes efficaces pour lutter contre ces pratiques.	La législation ne contient aucune disposition définissant la torture et érigeant les actes de torture en infraction comme l´exige l´article 4 de la Convention contre la torture.	**Gouvernement:** Le Togo donne la primauté aux traités internationaux sur la législation interne et les a intégrés dans sa loi fondamentale Le Togo a prévu dans sa législation interne des dispositions pour prévenir des actes de torture. En 2008, certains projets de textes, en particulier ceux qui visent à mettre en conformité le Code pénal avec les normes internationales relatives à la torture, ont été validés au cours d´un atelier national de validation les 24-26 novembre 2008 à Lomé. **Gouvernement:** a mis en place le 14 janvier 2009, une ligne verte joignable qui peut être un moyen utilisé par tout individu pour dénoncer les cas de maltraitance, de violence, d'abus sur un enfant. ***Des sources non gouvernementales :*** Il n'y a aucune disposition dissuasive sur les châtiments corporels et aucune	

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		mesure n'est prise pour sanctionner les auteurs de ces actes. - Dans la brigade pour mineurs, des cas de châtiments corporels sont constatés y compris en présence de la principale responsable de la structure. - Dans la moitié sud du pays (Lomé Commune, régions maritime et des plateaux) l'accompagnement et le renforcement des capacités des acteurs de la justice juvénile (OPJ, régisseurs et chefs prison), par la Bureau catholique de l'enfance avec l'appui technique et financier de l'UNICEF, a permis une régression sensible des châtiments corporels dans les commissariats et prisons. - Les châtiments corporels sont administrés aux personnes interpellées dans le cadre des manifestations publiques, particulièrement dans les cellules de gendarmerie et de commissariat de police.	
96. En ce qui concerne les mineurs, le Rapporteur spécial réitère les recommandations formulées par le Comité des droits de l´enfant visant à ce que l´État prenne des mesures législatives et concrètes efficaces pour interdire l´application de châtiments corporels aux enfants et sensibiliser le public aux conséquences néfastes de cette pratique.	Les mineurs en détention sont particulièrement vulnérables de subir des châtiments corporels.	**Gouvernement:** Suite à la dénonciation du responsable de la Brigade des Mineurs à cause de pratique de châtiment corporel contre les mineurs, ce dernier a été remplacé par une femme choisie à dessein pour ces aptitudes de protection des enfants. Des sources non gouvernementales: L'article 347 du code de l'enfant dispose que « Aucun enfant détenu ou emprisonné, arrêté, ou privé de sa liberté ne sera soumis à la torture, à des traitements, châtiments inhumains ou dégradants ». - Le code l'enfant protège également les enfants contre la violence physique, sexuelle ou morale au sein de la	

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		famille. L'article 357 dispose à cet effet: « les maltraitances physiques et psychologiques, les châtiments corporels, la privation volontaire de soins ou d'aliments sont punis …». - A la brigade pour mineurs de Lomé et dans certaines unités de police et de gendarmerie bénéficiant de l'accompagnement des ONG, les châtiments corporels sont devenus des exceptions. Les services de la Brigade des mineurs se trouvent seulement dans la ville de Lomé. Aucune brigade ne se trouve dans les autres régions et ville du pays; ce qui amène les agents des services pénitenciers à maintenir parfois en détention les mineurs avec les adultes.	
97. Le Gouvernement devrait mettre en place des mécanismes pour faire respecter l´interdiction de la violence à l´encontre des femmes, y compris les pratiques traditionnelles comme les mutilations génitales, continuer d´organiser des campagnes de sensibilisation, et faire une étude pour évaluer la prévalence des mutilations génitales au Togo.	La pratique de la mutilation générale persiste et continue d´être acceptée par la société et les mécanismes pour faire respecter son interdiction sont quasiment inexistants. Le RS a eu connaissance d´une seule condamnation, prononcée en 1998, pour infraction à la loi no 98-106 de 1998.	**Gouvernement :** En 1999, le Ministre des affaires sociales à l´époque, a entrepris une campagne de sensibilisation à l´échelle nationale avec l´appui de UNFPA et UNICEF, suite à laquelle les ONGs ont pris le relais. En janvier 2009, le Gouvernement a indiqué que la pratique n´est plus acceptée par la population. Le taux de prévalence des mutilations génitales au Togo est passé de 12%en 1996 à 6.9% en 2008 (rapport d´étude de Ministère de l´action sociale). **Gouvernement:** Une étude faite en 2008 par le Ministère de l'Action Sociale de la Promotion de la Femme, de la protection de l'enfant et des personnes âgées constate un recul du phénomène des mutilations génitales féminines au Togo de 12 % en 1996 à	

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		6,9% en 2008. ***Des sources non gouvernementales:*** - Les campagnes de sensibilisation continuent; des projets de reconversion des exciseuses sont mis en place dans le Nord du pays pour éradiquer le phénomène, néanmoins la pratique continue dans la clandestinité. - Le Code de l'enfant a repris les éléments de la loi N°98-106 de 1998, et les a améliorés en sanctionnant même la complicité des actes de mutilations génitales par le silence et la non dénonciation. Des peines d'emprisonnement sont prévues à l'encontre des auteurs de cette pratique dont la non-dénonciation est constitutive d'infraction. - Le manque de contrôle permet, puisque la tradition est complice, de continuer la pratique en cachette; ce qui est plus dangereux.	
98. Le Gouvernement togolais devrait soutenir la Commission Nationale des Droits de l´Homme dans les efforts qu'elle déploie pour jouer un rôle de premier plan dans la lutte contre la torture et donner à ses membres et à son personnel les ressources nécessaires et la formation voulue pour qu´ils soient en mesure d´instruire les plaintes.		**Gouvernement :** En 2008, le Comité international de coordination des institutions nationales (ICC) a accrédité la Commission nationale des droits de l´homme (CNDH) au statut A. En 2008, les activités de la CNDH, ont abouti à la libération de plus de 300 détenus préventifs dans les prisons du pays. Selon le Gouvernement, cette libération est le résultat de plusieurs actions conjuguées réalisées par la CNDH, dont deux sont mentionnées ci-dessous: 1. Les audiences foraines organisées en février 2008 avec l´appui du Bureau du Haut Commissariat des Nations Unies	

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		aux Droits de l´Homme (HCDH-OHCHR) au Togo par les tribunaux de Kévé (Préfecture de l´Avé) et de Kpalimé (Préfecture de Kloto) dont les détenus sont gardés à la prison civile de Lomé ont permis l´examen d´un nombre important de dossier qui souffraient d´un retard exagéré, a abouti à la libération des détenues. 2. Dans le cadre des activités marquant le 60ème anniversaire la Déclaration universelle des droits de l´homme, la CNDH avec l´appui du HCDH-OHCHR a organisé un atelier technique d´échange sur l´application du code de procédure pénale, entre autre sur la détention préventive comme mesure exceptionnelle, ainsi prévu par l´article 112. Non seulement l´atelier a permis aux magistrats de réexaminer les modalités d´application, mais a été suivi par la visite des prisons par un groupe composé de membres de la CNDH et de magistrats de chaque ressort. Un certain nombre de lacunes procédurales ayant été constatées, les personnes irrégulièrement ***Des sources non gouvernementales:*** La CNDH manque de moyens matériels et financiers lui permettant de lutter efficacement contre la torture. - La visibilité sur le terrain des activités de la CNDH fait parfois défaut, surtout pour ce qui concerne les activités de ses deux antennes de terrain (Atakpamé et Kara). Celles-ci invoquent souvent le manque de moyens humain et financier pour faire le travail qui est attendu d'eux.	

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		- Même si le gouvernement a fait l'effort de donner une place à la CNDH, cette dernière n'a pas toujours les mains et la voix libres.	
99. Le Gouvernement devrait améliorer les garanties contre la torture existantes en introduisant une procédure efficace d´habeas corpus, faire respecter les garanties comme le délai de quarante-huit heures pour la garde à vue dans les locaux de la police ou de la gendarmerie, veiller à ce que tout détenu fasse l´objet d´un examen médical indépendant après son arrestation et après tout transfèrement, faire en sorte que la famille du détenu soit rapidement informée de son arrestation, et mettre en place un système d´aide juridictionnelle pour les personnes accusées d´infractions graves.	Un fort pourcentage de détenus est maintenu en garde à vue au-delà de la durée maximale légale de quatre-vingt-seize heures que le ministère public peut autoriser, dont certains jusqu´à deux semaines. Aucun examen médical n´est effectué après l´arrestation ou transfèrement d´une personne. Aucun système d´aide juridictionnelle n´est en place.	**Gouvernement :** En 2009, l'inspection des prisons et autres lieux de détention est confrontée à des difficultés liées à l'insuffisance des moyens humains, matériels et financiers. C'est pourquoi, dans le cadre du Programme National de Modernisation de la Justice (PNMJ) (2005-2010), le sous-programme 1 a prévu le renforcement de contrôle des capacités des juridictions par le renforcement de contrôle de l'inspection générale des services juridictionnels et pénitentiaires et la création d'une direction des parquets. Il s'agira de réorganiser, d'équiper et de doter en personnel ces deux institutions. Depuis novembre 2007, le PNMJ a organisé plusieurs ateliers de renforcement des capacités des officiers de police judiciaire afin de mieux accomplir leur mission. 140 officiers de police judiciaire ont déjà profité des ces formations. ***Des sources non gouvernementales:*** Des mesures prises restent insuffisantes. - Un effort est fait pour le respect des délais de garde à vue. A l'intérieur du pays la problématique du non respect du délai légal de garde à vue persiste à cause, très souvent, du manque chronique de moyens logistiques pour le transfèrement des personnes suspectées d'infraction.	

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		- L'examen médical des détenus n'est toujours pas devenu systématique. - La plupart du temps, ceux qui sont souffrants ou qui ont subit de mauvais traitements lors de leurs interpellation ou de leurs détention, sont obligés de payer de leurs propres poches les soins à l'infirmerie de la gendarmerie. De plus, les médecins ne consultent pas ou très peu dans les prisons. - L'Etat a mis en place un fonds d'aide juridictionnelle mais qui n'est pas opérationnel. D'autres institutions notamment l'Ambassade des Etats-Unis ont financé la mise en place d'une ligne verte d'assistance juridique à toute personne y compris les détenus. - Des personnes détenues pour des délits mineurs restent 3 à 6 mois voire un an sans jugement ni inculpation; les raisons évoquées sont souvent l'existence d'un juge unique.	
100. Le Gouvernement devrait faire en sorte que les personnes placées en détention préventive comparaissent rapidement devant un juge et soient informées en tout temps de leurs droits et de l´état d´avancement de leur affaire, fixer des limites à la durée de la détention préventive et veiller à ce que ces délais soient respectés en organisant périodiquement des inspections indépendantes.	Le Rapporteur spécial a constaté personnellement dans de nombreux cas que la durée maximale de la garde à vue dans les postes de police ou de gendarmerie (quarante-huit ou quatre-vingt-seize heures) était expirée et qu´elle n´avait pas été prolongée par le ministère public comme la loi l´exige. Cela signifie que de nombreux détenus passent de longues périodes dans des conditions épouvantables sans aucun fondement juridique. De nombreux prisonniers en détention avant jugement ont déclaré qu´ils n´avaient pas été présentés à un juge ou un	**Gouvernement** : La circulaire No. 022/MISD du 17 mai 2004 autorise la personne placée en garde à vue à avoir un entretien de 15 minutes avec son conseil dès la 24ème heure de garde à vue dans le but de prévenir les traitements inhumains. - En 2008, les procureurs de la République et les juges d´instruction font des visites périodiques et inopinées dans les centres de détention (commissariats, brigades de gendarmerie et prisons). De plus, l´effectif des magistrats augmente de 25 personnes chaque année sur 5 ans suivant les objectifs fixés par le PNMJ. Les magistrats en fonction suivent des formations continues.	

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	procureur même après plusieurs semaines ou mois de détention. Beaucoup ne connaissaient pas l´état de leur affaire même s´ils étaient détenus depuis longtemps.	- En outre, la révision du code de procédure pénale était en cours (voir 93). La réhabilitation des prisons est faite (appui UE) et celle des infrastructures juridictionnelles était en cours (appui UE) en vue de permettre, entre autre, la tenue régulière et en temps réel des audiences pénales. Gouvernement: Instauration du juge des libertés et de la détention en janvier 2010. L'article 457 de l'avant projet de code de procédure pénal donne compétence au juge des libertés et de l'application des peines de se prononcer sur les détentions illégales ou arbitraires. ***Des sources non gouvernementales:*** Quoique des efforts soient faits dans ce domaine, la situation de beaucoup de détenus est préoccupante. La durée de la détention préventive n'est pas toujours respectée. - Les détenus préventifs sont souvent oubliés et les infractions graves demeurent de cinq à 10 ans sans jugement. - Les personnes en garde à vue ne connaissent pas, pour la plupart, leurs droits. Elles pensent qu'un avocat est cher et elles sont livrées à elles-mêmes. Ainsi, la pratique constatée par le rapporteur spécial suit son cours. - Les moyens ne sont pas à la disposition des juges pour faire à fond le travail.	
101. Le Gouvernement devrait modifier la législation de sorte qu´aucune condamnation ne puisse reposer sur des preuves	Souvent les aveux constituent le principal élément de preuve. Dans la plupart des locaux de garde à vue qu´il a visités, le	**Gouvernement :** En 2008, la révision du code de procédure pénale était en cours. De plus, la Commission Nationale des Droits de l´Homme	

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obtenues sous la torture et que les aveux ne constituent pas le motif principal des condamnations; il devrait d´ores et déjà donner aux tribunaux des directives claires à ce sujet.	Rapporteur spécial a vu des preuves de mauvais traitements infligés quotidiennement, essentiellement pour arracher des aveux.	(CNDH) appuyé par le OHCHR organisait des sessions de sensibilisation à l´interdiction de la torture et mauvais traitements et de renforcement des capacités des magistrats et des officiers de police judiciaire (OPJ). ***Des sources non gouvernementales:*** La révision du code de procédure pénale est toujours en cours. - Le gouvernement n'a pas pris de mesures pour empêcher que des condamnations reposent sur des preuves obtenues sous la torture et que les aveux ne constituent pas le motif principal des condamnations. Si des consignes sont données, ces pratiques continuent malheureusement au niveau de la police judiciaire.	
102. Le Gouvernement togolais devrait faire passer les infractions mineures du champ de la justice répressive à celui de la justice réparatrice, élargir l´application des mesures de substitution à la détention préventive et des peines non privatives de liberté, rendre obligatoire le recours à des mesures non privatives de liberté à moins qu.il n´existe des raisons impérieuses de placer le prévenu en détention.		**Gouvernement :** La révision du code pénal prévoit l´introduction des peines alternatives non privatives de liberté pour les infractions mineures. **Gouvernement:** l'article 293 et suivants de l'avant projet de code de procédure pénale instituent la procédure du plaider coupable. ***Des sources non gouvernementales:*** Aucune disposition n'est prévue ni prise pour faire la distinction entre les peines alternatives non privatives de liberté et les emprisonnements dans le cadre de la révision du code de procédure pénale.	
103. Le Gouvernement togolais devrait poursuivre ses efforts en	Les conditions de détention pendant la garde à vue dans les	**Gouvernement :** le gouvernement togolais est conscient que les	

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vue d´améliorer les conditions de détention, en particulier, fournir des soins médicaux, traiter les malades mentaux au lieu de les punir et prendre les mesures voulues pour les protéger de la torture et des mauvais traitements, améliorer la quantité de nourriture et la qualité, éventuellement en créant des fermes pénitentiaires où les détenus doivent cependant pouvoir être admis sans discrimination.	locaux de la police ou de la gendarmerie, mais aussi dans la plupart des établissements pénitentiaires, constituent un traitement inhumain. En particulier, il est préoccupé par le dramatique surpeuplement de la plupart des prisons, les conditions d´hygiène déplorables, l´insuffisance et la mauvaise qualité de la nourriture ainsi que par les difficultés d´accès aux services médicaux.	conditions de détention dans les prisons restent à améliorer. Il existe 14 prisons dont deux non-fonctionnelles, et le surplus carcéral se monte à 1140 détenus. Le sous-programme 2 du PNMJ, relatif à la modernisation de la législation, a prévu l'institution d'un juge de l'application de peines et d'un juge de la détention et des libertés. Ils auront certainement un grand rôle à jouer en matière d'inspection des prisons/exécution des peines. En 2008, la plupart des prisons venaient d´être réhabilités et d´autre seront bientôt construites (appui Union Européenne) afin d´améliorer les conditions de détention. Par ailleurs, le Gouvernement avait informé que l´Administration Pénitentiaire était en partenariat avec des ONGs internationales pour la prise en charge sanitaire des détenus. Des équipes médicales venaient périodiquement consulter les détenues Le budget de la santé pénitentiaire avait été sensiblement revu à la hausse dans la loi des finances 2009. **Gouvernement:** un concours de recrutement a été organise en juin 2010. 500 surveillants et gardiens supplémentaires. ***Des sources non gouvernementales:*** La situation n'a guère évolué. Au niveau des quartiers pour mineurs dans quatre prisons du ressort de la Cour d'appel de Lomé, des améliorations sensibles sont apportées aux conditions	

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		de détention notamment en matière d'hygiène et d'assainissement, de la ration alimentaire, de soins de santé, de conditions de couchage, d'appui psychosocial et affectif par les ONG avec l'appui des partenaires dont l'UNICEF. - En dépit des diverses réformes et réaménagement des lieux de détention engagés (PAUSEP-UE), les conditions de détention demeurent particulièrement difficiles au regard de la surpopulation carcérale, des conditions d'hygiène, d'assainissement, d'alimentation et de couchage qui prévalent dans presque toutes les maisons d'arrêts du Togo. - A la prison civile de Lomé, il y a 1,154 détenus pour une capacité d'accueil de 600 personnes, à Atakpamé, 299 détenus pour 158, à Sokodé, 311 détenus pour 275, au 30 aout 2010. - Dans les prisons, les femmes ont été séparées des hommes mais il faut une politique de séparation entre les délinquants mineurs et les criminels et entre les adultes et les mineurs Un document de politique pénitentiaire et de réinsertion des détenus a été valide au cours d'un atelier organisé du 13 au 15 octobre 2010.	
104. Le Gouvernement devrait séparer les prisonniers en détention préventive des condamnés et former et déployer du personnel féminin dans les quartiers des prisons et les locaux de garde à vue réservés aux femmes.	Contrairement à ce qu´exigent les normes internationales minima, il n´y a pas de personnel féminin dans les prisons ni dans les locaux de garde à vue de la police ou de la gendarmerie. Le Gouvernement a indiqué que ce problème était en train d´être résolu avec la création	**Gouvernement** : dans les prisons, les commissariats de police ou les brigades de gendarmerie, il existe du personnel féminin, bien qu'en faible proportion. De plus, la législation pénitentiaire sera mise en conformité avec la règle 55 de l'ensemble des règles pour le	

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	d´un corps spécial de surveillants relevant du Ministère de la justice, qui comprendrait des surveillants des deux sexes.	traitement des détenus, en instituant une garde féminine dans les centres de détention. Le texte créant le corps des gardiens de prisons est adopté en conseil des ministres et le processus de recrutement des surveillants des deux sexes s'inscrit dans cette perspective. Un décret portant sur la création du corps des surveillants des établissements pénitentiaires a été adopté par le conseil des ministres le 14 janvier 2009. ***Des sources non gouvernementales:*** Il n'y a pas de séparation entre les détenus préventifs et les détenus condamnés à cause du manque d'infrastructures. - Peu de personnel féminin existe pour le moment, notamment au sein de l'administration pénitentiaire, seule une femme régisseur sur les 12 prisons que compte le Togo. - Le gouvernement a donné l'impression d'agir dans ce sens, mais l'action n'est pas perceptible.	
105. Les autorités togolaises devraient faire en sorte que les détenus ne soient pas obliges de se déshabiller lorsqu´ils sont placés en garde à vue dans les locaux de la gendarmerie.	Le Rapporteur spécial a été informé de l´existence d´une instruction spéciale de la gendarmerie visant à prévenir les suicides, que certains responsables ont interprétée comme signifiant que les détenus devaient rester nus jour et nuit dans leur cellule. Or, d´après le Gouvernement, la gendarmerie n´a jamais donné l´ordre de laisser nues les personnes en garde à vue.	**Gouvernement :** Depuis les recommandations formulées en avril 2007, les dispositions pratiques ont été prises par les autorités au niveau de la gendarmerie et de la police. En vertu de ces dispositions, les détenus sont dans leurs tenues lorsqu´ils sont en garde à vue au bureau en attendant les instructions. Lorsqu´ils doivent être internés dans la chambre de sureté, ils sont fouillés et débarrassés de tout objet pouvant leur permettre de se suicider. Ainsi, ils sont gardés en short de sport ou en culotte, mais jamais nus.	

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		Des sources non gouvernementales: Dans les cellules des commissariats de police, les hommes sont torse nu et les femmes sont habillées, et certains n'y ont pas droit à une douche. - Les cellules sont souvent réglementaires dans les commissariats de police, contrairement aux cellules de garde à vue de la gendarmerie, qui sont en réalité des salles 'cachots', sans ouverture ni moyen d'avoir une vue sur les personnes qui s'y trouvent. - Le traitement généralement subi par les personnes gardées à vue dépend aussi des circonstances d'interpellation; les personnes interpellées dans le cadre des manifestations publiques sont moins bien traitées que celles suspectées d'autres délits.	
106. Le Gouvernement togolais devrait veiller à ce que le principe de non-discrimination soit respecté à tous les niveaux du système de justice pénale, lutter contre la corruption, qui touche particulièrement les pauvres, les groupes vulnérables et les minorités, et prendre des mesures efficaces pour lutter contre la corruption des agents de l´État, mais également des hauts responsables de l´administration pénitentiaire.		**Gouvernement :** En 2008, le projet de loi anti-corruption était en cours d´examen au conseil des ministres. Des sources non gouvernementales: Malgré la modernisation de la justice amorcée, la corruption dans le domaine de la justice persiste. Les actes de corruption demeurent un fléau dans le système judiciaire donnant lieu aux traitements arbitraires et à la discrimination pour les justiciables pauvres et vulnérables. - Les visites aux détenus sont conditionnées au paiement de quelques sommes d'argent aux surveillants de l'administration pénitentiaire.	
107. Le Gouvernement devrait préciser le statut de la gendarmerie et déterminer	Manque de clarté dans le partage des responsabilités entre la police et la gendarmerie. En principe la	**Gouvernement :** Le texte de loi No. 2007-010 du 1er mars 2007, fixe le statut général des personnels militaires	

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clairement les responsabilités de la gendarmerie et celles de la police, séparer les fonctions militaires et les fonctions de maintien de l´ordre, créer des chaînes de commandement claires dans les établissements pénitentiaires, et veiller à ce que dans les prisons le pouvoir soit détenu par les autorités et non par les hiérarques de la population carcérale.	gendarmerie opère essentiellement dans les zones rurales, mais la distinction entre police et gendarmerie est devenue très floue et les deux intervenaient simultanément dans les mêmes zones (en particulier à Lomé) Dans les prisons, le pouvoir est systématiquement délégué au « bureau interne » , c´est-à-dire aux détenus les plus hauts dans la hiérarchie de la prison, ce qui est nécessairement source de corruption, de violence entre détenus et de dépendance de certains détenus à l´égard de leurs codétenus.	des Forces Armées Togolaises duquel découle le statut particulier de la gendarmerie nationale. Ce statut fixe les missions et les responsabilités de la gendarmerie. Calqué sur le modèle français, la gendarmerie est un corps des Forces Armées Togolaises dont le ministère de la sécurité et de la protection civile dispose pour emploi notamment en maintien de l´ordre pour la sécurité. Les missions essentielles sont : les missions de police judicaire, police administrative, militaires. En ce qui concerne les prisons, en 2008 des nouvelles dispositions ont été mises en place, d´après lesquelles une direction générales qui dispose du corps des gardiens de préfecture pour assurer la garde des prisons et la gestion des prisonniers sera créée. Selon le Gouvernement, le système de «bureau interne » n´existe plus de hiérarchie au sein de la population carcérales. ***Des sources non gouvernementales:*** Le maintien de l'ordre dans les prisons est toujours confié à la hiérarchie de la population carcérale. Les textes sont peut-être clairs mais la pratique est souffrante. - En ce qui concerne la gestion de la garde des prisons, le gouvernement fait beaucoup d'effort pour l'élimination du « bureau interne » mais c'est un phénomène vieux qui tarde à disparaître.	
108. Le Gouvernement devrait améliorer la formation des forces de l´ordre et du personnel	Le type de formation dispensée aux membres des forces de l´ordre semble aussi être excessivement	**Gouvernement :** Depuis le recrutement de 2005 dans le corps de la gendarmerie et de la police, le	

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pénitentiaire et intégrer les droits de l´homme dans les programmes correspondants.	militarisé, puisqu´il accorde beaucoup de place aux aptitudes militaires et peu à la préparation aux tâches complexes liées à l´enquête pénale ou au maintien de l´ordre.	niveau minimum exigé est le Brevet d´Etudes du Premier Cycle (BEPC). Avec ce niveau de formation les recrues sont intellectuellement aptes pour comprendre et assimiler les cours et les notions sur les modules des droits de l´homme, le maintien de l´ordre avec armes, les relations civilo-militaires, le droit international humanitaire (DIH), le droit relatif à la femme (phénomène) et de l´enfant. Les corps des gardiens de préfecture (GP) dont l´une de ses missions et la garde des prisons et la gestion des prisonniers subit les mêmes formations que les forces de sécurité. Les éléments de cette unité sont très bien imprégnés des mêmes modules. **Gouvernement:** les surveillants et gardiens des prisons auront des formations sur les droits de l homme. Des sources non gouvernementales: Les formations et les modules tels que décrits existent mais le problème se trouve au niveau de l'application et surtout par rapport à la chaîne de commandement qui imposent aux agents de ces corps de poser des actes qui ne sont pas toujours professionnels. - Depuis 2005, le recrutement dans les corps de la police et la gendarmerie exigeait officiellement le niveau BEPC (brevet d'études du premier cycle du second degré). Mais cette probité intellectuelle avancée par le gouvernement n'est pas prouvée sur le terrain par tous les agents qui donnent l'impression de ne pas connaître leur travail et de ne pas assimiler les	

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		notions sur les droits de l'homme. - Le maintien d'ordre est fait avec des moyens disproportionnés. La mentalité de ces deux corps fait ressortir un sentiment de supériorité sur la population.	
109. Le Gouvernement togolais devrait ratifier le Protocole facultatif se rapportant à la Convention contre la torture et créer des mécanismes nationaux en mesure d´effectuer des visites inopinées dans tous les lieux de détention.		**Gouvernement :** En vue de la ratification de l'OPCAT et la mise en place d'un MNP, un atelier a été organisé en 2009. Le séminaire national a adopté des propositions concrètes en vue de la mise en place et désignation d'un MNP. Adoption d'une feuille de route sur la rapide ratification de l'OPCAT et la mise en place du MNP. La création d'un groupe de travail sur le suivi du processus. Des sources non gouvernementales: L'OPCAT est ratifiée par le Togo le 20 juillet 2010. Le MNP est en cours d'être mise en place.	
110. S´agissant des mineurs, le Togo devrait sans tarder prendre des mesures pour que la privation de liberté ne soit utilisée qu´en dernier recours, pour la durée la plus courte possible et dans des conditions appropriées.	Le Togo ne dispose pas d´un système de justice pour mineurs compatible avec les dispositions et principes de la Convention relative aux droits de l´enfant, ce qui signifie qu´il n´y a pratiquement pas d´alternative à la détention pour les mineurs en conflit avec la loi et qu´il n´existe aucune mesure de protection particulière à l´égard des personnes de moins. de 18 ans.	**Gouvernement :** En 2007, le ministère de la justice a commandé une étude sur l´état de la justice des mineurs au Togo dont les recommandations serviront à formuler un programme de prise en compte de la justice pour mineurs. Ce programme complétera le PNMJ. De plus, dans la nouvelle organisation judiciaire, le juge des enfants et les tribunaux pour enfants seront décentralisés et existeront au niveau de chaque région. **Gouvernement:** L'article 112 et suivants de l'avant projet du code de procédure pénale précise que la détention est une mesure exceptionnelle et soumise à des	

Recommandation (A/HRC/7/3/Add.5)	*Situation pendant la visite (A/HRC/7/3/Add.5)*	*Mesures prises pendant les années précédentes (A/HRC/10/44/Add.5 ; A/HRC/16/52/Add.2.)*	*Informations reçues pendant la période considérée*
		conditions strictes. D'autre part, l'article 311 du code de l'enfant institue la médiation qui vise à conclure une conciliation entre l'enfant auteur d'une infraction ou son représentant légal et la victime ou son représentant légal ou ses ayants droit. Cela a pour objet d'arrêter les effets des poursuites pénales, d'assurer la réparation du dommage et de mettre fin aux troubles. ***Des sources non gouvernementales:*** En matière de la justice pour mineurs le Code de l'enfant a introduit des dispositions privilégiant les mesures alternatives à l'emprisonnement sur les mesures privatives de liberté. Dans la pratique, ces dispositions sont réellement mises en œuvre dans les unités de police et de gendarmerie ainsi que les prisons de la moitié sud pays qui bénéficient de l'appui et l'accompagnement des ONG et de l'UNICEF. 30 magistrats du ressort de la cour d'appel de Lomé ont été formés en 2010 sur la justice réparatrice et restauratrice des mineurs. - Un atelier de réflexion sur la réforme de la brigade pour mineurs a été organisé durant le 1er semestre 2010 dans le but de redéfinir les missions et la structure de cette brigade pour lui permettre de répondre aux principes et standards internationaux. - La Commission nationale des droits de l'homme a reçu des fonds de l'Union européenne pour l'organisation d'un atelier en mars 2010 sur la reforme de la brigade pour	

Recommandation (A/HRC/7/3/Add.5)	*Situation pendant la visite (A/HRC/7/3/Add.5)*	*Mesures prises pendant les années précédentes (A/HRC/10/44/Add.5 ; A/HRC/16/52/Add.2.)*	*Informations reçues pendant la période considérée*
		mineurs, dans le but de redéfinir et organiser les missions et structures, en vue de mieux respecter les standards de droits de l'homme.	
111. Plutôt que d´être placés en détention, les enfants orphelins ou marginalisés, comme les enfants victimes de la traite ou les enfants des rues, devraient être confiés à des institutions ne relevant pas du système de justice pénale.	Souvent les mineurs, et quelquefois même les jeunes enfants, sont placés en détention au lieu d´être confiés aux services sociaux. À la brigade des mineurs de Lomé, par exemple, des enfants abandonnés, victimes de la traite et marginalisés, dont certains âgés de moins de 10 ans, sont détenus avec de jeunes adultes délinquants.	**Gouvernement :** Le code de l´enfant a été adopté et promulgué le 6 juillet 2007. Des brigades pour mineurs ont été érigées au niveau de chaque région. Des sources non gouvernementales: La situation est corrigée depuis l'adoption du code de l'enfant qui a prévu la protection spéciale des enfants en situation difficile ou en danger, et la protection des enfants victimes de traites. Depuis lors ces catégories d'enfants ne sont plus envoyées à la brigade pour mineurs mais systématiquement orientées vers les structures de prise en charge des enfants, avec l'appui des ONG et des partenaires financiers. De même, un document déterminant le paquet minimum de services pour la prise en charge des enfants vulnérables au Togo a été élaboré en 2009 et un décret portant normes et standards applicables aux structures d'accueil et de protection des enfants vulnérables au Togo vient d'être adopté en août 2010. - Actuellement la seule brigade pour mineurs du Togo se trouve à Lomé. Des centres de transit ont été également crées en vue d'accueillir les enfants victimes de traite et les enfants de la rue. Ainsi, cinq structures existent à Lomé, dont deux gouvernementaux, et trois dans les autres régions soit un à Kara et un à Atakpamé.	
112. Le Gouvernement devrait mettre en place un système de		**Gouvernement :** La formation continue des magistrats, des OPJ	

Recommandation (A/HRC/7/3/Add.5)	*Situation pendant la visite (A/HRC/7/3/Add.5)*	*Mesures prises pendant les années précédentes (A/HRC/10/44/Add.5 ; A/HRC/16/52/Add.2.)*	*Informations reçues pendant la période considérée*
justice pénale au sein duquel exerceraient des policiers, des procureurs et des juges dûment formés, et créer toutes les garanties utiles, notamment l´aide juridictionnelle.		(gendarmes et policiers) qui se fait déjà est rendue systématique par le PNMJ. ***Des sources non gouvernementales***: Aucune structure réelle n'est créée pour la formation continue des magistrats et des officiers de police judiciaire. - Les mécanismes de l'aide juridictionnelle sont en train d'être mise en place. Des ateliers ont été organisés sur le sujet au cours de l'année 2010.	
113. Le Togo devrait abolir la peine de mort.	Le Code pénal togolais (art. 17, 45, 222, 223, 233 et 234) prévoit toujours la peine de mort pour un certain nombre d´infractions. Néanmoins, selon la délégation togolaise qui s´est exprimée devant le Comité des droits de l´homme, la justice togolaise n´a eu à prononcer que très peu de condamnations à la peine capitale. Le RS informé que le Togo était abolitionniste dans la pratique et que l´abolition de jure de la peine de mort était envisagée dans le cadre des réformes législatives en cours.	**Gouvernement :** En juin 2009, l´Assemblée Nationale a adopté la loi sur l´abolition de la peine de mort. Le projet de la loi visant l´abolition de la peine de mort a été adopté par conseil des ministres le 10 décembre 2008.	
114. Il encourage le Gouvernement et les partis politiques à continuer de signifier clairement à toutes les parties prenantes que la torture et les mauvais traitements sont inacceptables dans un contexte électoral et que quiconque commettra un acte de violence devra rendre des comptes. Les élections doivent se dérouler sans	Une impunité entoure tous les actes de violence politique perpétrés au fil des années	**Gouvernement :** les membres de la Commission de Vérité, Justice, Réconciliation, sont onze et ils ont été nommés et installés respectivement le 27 et le 29. ***Des sources non gouvernementales:*** Lors des élections présidentielles du 4 mars 2010 et pendant la période de préparation, des formations ont été données aux forces de l'ordre et de	

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la participation de l'armée.		sécurité sur le maintien de l'ordre sans violences en période électorale. Des membres des partis politiques ont été également formés sur la non-violence avant, pendant et après les élections. Des campagnes de sensibilisation ont été aussi organisées, ce qui a contribué à diminuer les violences redoutées avant et pendant les élections. Lors des élections des formations ont été dispensées aux membres du maintien de l'ordre par les bureaux du HCDH, UNREC et CICR. - Depuis les élections du 4 mars 2010, les forces de l'ordre continuent de réprimer par des moyens disproportionnés les manifestants. On continue à compter des morts, des blessés et des arrestations arbitraires.	
115. Les tribunaux devraient sans délai se prononcer sur les plaintes pour actes de torture, mauvais traitements ou autres violations des droits de l´homme infligés lors des élections de 2005 et d´élections antérieures, et poursuivre les responsables.	Une impunité entoure tous les actes de violence politique perpétrés au fil des années depuis 1958 et, en particulier, les événements liés aux élections de 2005	**Gouvernement :** les membres de la Commission de Vérité, Justice, Réconciliation, sont onze et ils ont été nommés et installés respectivement le 27 et le 29 mai 2009. En 2007, un ministère délégué à la Présidence chargé de la réconciliation et des institutions ad hoc a été créé afin de résoudre le problème de l´impunité. Il est chargé de mettre en place deux commissions, la commission chargée de promouvoir les mesures susceptibles de favoriser le pardon et la réconciliation nationale et la commission chargée de faire la lumière sur les actes de violence. ***Des sources non-gouvernementales:*** Les victimes des événements de 2005 attendent toujours la justice. Rien ne semble avoir été mis en place pour	

Recommandation (A/HRC/7/3/Add.5)	*Situation pendant la visite (A/HRC/7/3/Add.5)*	*Mesures prises pendant les années précédentes (A/HRC/10/44/Add.5 ; A/HRC/16/52/Add.2.)*	*Informations reçues pendant la période considérée*
		prévenir la répétition des violations pour l'élection présidentielle de 2010. Depuis 2006, 37 plaintes ont été déposées. Aucune enquête judiciaire n'a été ouverte. Un décret présidentiel « portant création de la commission vérité, justice et réconciliation » a été émis en février 2009, mais ce texte ne répond pas aux exigences d'une commission de vérité réellement efficace, et comporte de graves lacunes. Il ne confère pas à cet organisme l'autorité nécessaire pour recueillir toutes les informations qu'il juge pertinentes et convoquer des personnes lorsque cela s'avère nécessaire. Rien n'est dit non plus sur la nécessité de traduire en justice les responsables présumés des violations. En outre, ne comporte aucune garantie en ce qui concerne la protection des témoins, des victimes et de leurs familles et les dispositions prévoyant la nomination des membres de la commission ne présentent pas les garanties suffisantes quant à leur compétence, leur indépendance et leur impartialité. Par ailleurs, le décret ne prévoit pas que les travaux de cette commission devront être rendus publics. Cette Commission ne saurait se substituer à un processus judiciaire visant à établir la responsabilité pénale individuelle et doit venir en complément de celui des juridictions nationales. ***Des sources non gouvernementales 2008 :*** Un ensemble de plus de 100	

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		victimes de violations de droits de l´homme commises en 2005 ont déposé des plaintes en 2008 mais aucun examen des plaintes ne semble avoir été fait. **Gouvernement:** le décret N 2009-046 / PR du 25 février 2009 établant la Commission Vérité Justice et Réconciliation vise à faire la lumière sur les actes de violence à caractère politique commis dans le pays entre 1958 et 2005 et d'étudier les modalités d'apaisement des victimes conformément aux recommandations de l Accord Politique Global du 20 aout 2006. La Commission est entrée dans sa phase active de ses travaux. Il faut noter que cette commission n'est pas un tribunal, elle n'a pas le pouvoir de juger. Elle ne se substitue donc pas à un processus judiciaire visant à établir la responsabilité pénale individuelle. Des plaintes deposées par le collectif de l'Associations contre l'impunité au Togo (CACIT) a commencé au niveau des tribunaux d'Arakpamé et d'Amlamé. ***Des sources non gouvernementales:*** Des plaintes ont été déposées auprès des tribunaux après les violences électorales de 2005 mais elles n'ont pas eu de suite jusqu'à ce jour. - Néanmoins le Gouvernement a mis en place une Commission Vérité, Justice et Réconciliation (CVJR) chargée de faire la lumière sur les actes de violence à caractère politique de 1958 à 2005. Le rapport de la CVJR	

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		sera remis au gouvernement qui décidera de la suite à donner. - Bien que le mandat de la Commission vérité justice et réconciliation couvre les actes de violations des droits de l'homme commis dans la période allant de 1958 à 2010, celle-ci n'est cependant pas investie de la mission de poursuite et de sanction propre à des juridictions traditionnelles ; de plus, les conclusions du rapport de ses activités devront être remises au gouvernement, qui décidera des suites et de l'opportunité des poursuites à entreprendre. La question de l'impunité est davantage liée à l'indépendance de la justice, vu l'immixtion des acteurs politiques et militaires qui est souvent observée dans la conduite de certaines procédures. - Depuis 2005, des nombreuses plaintes déposées, dont 72 par le Collectif des Associations Contre l'Impunité au Togo (CACIT) seul, aucune n'est instruite jusqu'à ce jour.	

Uruguay

Seguimiento a las recomendaciones del Relator Especial (Manfred Nowak) en su informe relativo a su visita a Uruguay del 21 al 27 de marzo de 2009 (A/HRC/13/39/Add.2)

144. El 22 de noviembre de 2011, el Relator Especial envió el cuadro que se encuentra a continuación al Gobierno del Uruguay solicitando información y comentarios sobre las medidas adoptadas con respecto a la aplicación de sus recomendaciones. El Gobierno proporcionó información el 30 de enero de 2012. El Relator Especial quisiera agradecer al Gobierno por la información proporcionada, invitarle a enviar información sobre todas las recomendaciones emitidas, e informar de su disposición para ayudarle en los esfuerzos para prevenir y combatir la tortura y los malos tratos. El Relator Especial toma nota de las respuestas proporcionadas por el Gobierno. Sin embargo, desafortunadamente, en esta ocasión no ha sido posible incorporar la información en el presente informe, debido a la recepción de tal respuesta en fecha muy reciente.

145. En el mes de febrero de 2012, el Gobierno de Uruguay emitió una invitación formal al Relator Especial para realizar una visita de seguimiento. El Relator Especial se compromete a contemplar la posibilidad de una tal visita en su calendario de actividades y desea agradecer al Gobierno de Uruguay por esta invitación. Ella demuestra un compromiso serio de combatir la tortura y mejorar las condiciones de detención, y constituye un ejemplo de mejores prácticas.

146. Respecto a la reforma del sistema de justicia penal, el Relator Especial toma nota de que el proyecto del Código de Proceso Penal sigue a consideración de la Comisión de Constitución y Legislación del Senado y solicita al Gobierno a que siga proporcionando información detallada en cuanto al desarrollo del proyecto. Asimismo, el Relator ve como un paso positivo el lanzamiento del programa "Apoyo a la reforma del sistema de justicia penal y a la mejora de las condiciones de vida y de reinserción socioeconómica de las personas privadas de libertad". El Relator Especial toma nota de la inclusión de una definición del delito de tortura en la Ley 18.026 y apreciaría además contar con información acerca de los resultados de la evaluación de dicha definición según la recomendación del Comisionado Parlamentario para el Sistema Carcelario. Sin embargo, el Relator Especial lamenta que el Gobierno de Uruguay no haya proporcionado información en cuanto a la reforma del Código Penal, en particular con respecto a la inclusión de la tortura como delito independiente.

147. Con respecto al problema crónico de hacinamiento en los centros de reclusión, el Relator reconoce las acciones tomadas por el Gobierno, en particular la construcción de nuevos establecimientos penitenciarios y módulos, la habilitación o cierre de algunos de los módulos con mayores problemas de hacinamiento y deterioro edilicio, y los intentos a establecer medidas alternativas a la prisión preventiva. El Relator toma nota del cierre del módulo 3 del COMCAR e insta al Gobierno a tratar como prioridad el cierre de los módulos 2 y 4. El Relator agradece al Gobierno por proveer estadísticas detalladas en cuanto al hacinamiento en los establecimientos penitenciarios, reconoce los avances realizados en los últimos años, y toma nota que el Gobierno reconoce que la situación sigue siendo crítica en 11 de los 31 establecimientos.

148. En relación a las condiciones de vida en las cárceles, el Relator Especial ve como un paso positivo el aumento de los recursos financieros destinados al mejoramiento de la situación de las personas detenidas. El Relator aplaude el inicio de instancias de diálogo con la población detenida y las acciones tomadas para incluir a esta población en el proceso de mejorar las condiciones de vida. El Relator agradecería contar con información detallada sobre la participación de la población privada de su libertad en la formulación e implementación de la estrategia del Gobierno para dignificar las condiciones de reclusión. El Relator encomia el

énfasis de esta estrategia en el trabajo, la educación y el deporte, y comparte la perspectiva del Gobierno en cuanto a que las condiciones siguen siendo inadecuadas a la condición humana.

149. El Relator Especial toma nota también de las medidas adoptadas para realizar la reubicación de las cárceles de la órbita policial a la órbita civil. Sin embargo, lamenta que el Gobierno no tenga previsto la creación de un Ministerio de Justicia. Con respecto a la recomendación del Relator sobre la creación de un cuerpo de guardias de prisiones bien entrenado que sustituya al personal policial, el Relator toma nota de la creación de cargos para operadores penitenciarios. El Relator Especial solicita al Gobierno proporcionar más información acerca de los roles tanto del personal policial como del personal penitenciario en los establecimientos carcelarios. El Relator Especial lamenta que el Gobierno no haya proporcionado información en cuanto a la utilización de personal militar para encargarse de la custodia perimetral de establecimientos penitenciarios. El Relator además toma nota de los programas de capitación y sensibilización en derechos humanos planeados para funcionarios policiales y penitenciarios. Sin embargo, considera que la preparación de documentos y manuales no es suficiente; es necesario organizar cursos extensos y obligatorios para entrenar al personal policial a trabajar en el ámbito penitenciario aun si solo es por un periodo corto.

Recomendación (A/HRC/13/39/Add.2)	*Situación durante la visita (A/HRC/13/39/Add.2)*	*Medidas para la implementación de las recomendaciones1 (A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
Reforma del sistema de administración de justicia penal (a) Emprender una reforma profunda de los sistemas penitenciario y de justicia penal encaminada a la prevención del delito y la resocialización de los delincuentes, en lugar de centrarse en las medidas punitivas y adoptar una política basada simplemente en encerrar a los sospechosos y a los delincuentes convictos.	- Recurso a la prisión preventiva como regla general y no excepción. - Encierro de los reclusos durante casi 24 horas, escasas posibilidades de rehabilitación y preparación para la reinserción en la sociedad y falta de actividades educativas o de ocio.	***Fuentes no gubernamentales:*** El Gobierno que asumió tareas el 1º de marzo de 2010 ha señalado que la atención de la situación carcelaria constituye una de las prioridades del gobierno. Las autoridades han expresado su decisión política de encarar reformas par aliviar las graves condiciones de hacinamiento y de carencias edilicias y abordar un tratamiento integral de las personas privadas de libertad. - El Ministro del Interior indicó que "es necesario formular una nueva política penitenciaria para los próximos 20 años, para salir de la emergencia y para tener un sistema que permita la reinserción de las personas que han delinquido." - Los antecedentes que intentaron reformas de tipo más integral, incluida la Ley de Humanización del Sistema Carcelario, han quedado inoperativos como consecuencia de la oposición de algunos sectores políticos y la no aplicación de la misma por parte del sistema judicial. - El Estado no ha emprendido ninguna iniciativa tendiente a la postergada reforma del Sistema de Justicia Penal, Código Penal y Código de Proceso Penal. Desde 2006, una Comisión elaboró una base mínima para la reforma del CPP, remitidas al Parlamento Nacional en setiembre de 2009, y aún siguen sin discutirse en las cámaras.	

Recomendación (A/HRC/13/39/Add.2)	*Situación durante la visita (A/HRC/13/39/Add.2)*	*Medidas para la implementación de las recomendaciones1 (A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
		Gobierno: El gobierno que asumió funciones el 1 de marzo de 2010 ha señalado, sin dubitaciones, la necesidad de actuar en varios niveles a efectos de paliar la crisis penitenciaria nacional. En tal sentido, en el terreno de las soluciones profundas se ha coincidido en la necesidad de introducir reformas sustantivas en el sistema penal y procesal penal nacional. A ese respecto, y en seguimiento del proceso iniciado por el gobierno anterior, una Comisión de alto nivel integrada por expertos ha hecho entrega de los dos proyectos de nuevos Códigos que se han elaborado. Estos documentos han sido analizados por el Poder Ejecutivo y se encuentran en condiciones de ser remitidos al Parlamento para su consideración. Sin embargo, se han advertido lagunas o vacíos en las normas propuestas y por ello, el Ministerio del Interior con la cooperación financiera y técnica del Programa de las Naciones Unidas para el Desarrollo, ha formulado la iniciativa de contar con una consultoría legal, especializada en derechos humanos, cuyo propósito es completar el marco normativo penal y procesal penal propuesto, supliendo las carencias señaladas. Entre las carencias anotadas se encuentra la falta de formulación de un delito autónomo de tortura, distinto del crimen de lesa humanidad previsto ya en la ley interna uruguaya, así otras conductas punibles contenidas en la definición de malos tratos.	
(b) Crear un Ministerio de	- En el sistema vigente son los	***Fuentes no gubernamentales:*** No se	

Recomendación (A/HRC/13/39/Add.2)	*Situación durante la visita (A/HRC/13/39/Add.2)*	*Medidas para la implementación de las recomendaciones1 (A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
Justicia que sea responsable del sistema penitenciario, dentro del marco de una reforma global del sistema de justicia penal.	oficiales de policía, que carecen de formación específica para trabajar con reclusos, los que actúan como guardias de prisiones.	ha considerado la creación de un Ministerio de Justicia. Las discusiones sobre una nueva institucionalidad, que podría depender directamente del Poder Ejecutivo y estuviera constituida colegiadamente por las diversas agencias del Estado involucradas en la materia, parece ser el próximo paso, una vez atendida la "emergencia carcelaria" y la reducción del hacinamiento. Sin embargo, se prevé la creación de un Instituto Nacional de Rehabilitación, dentro del Ministerio del Interior, aunque con cierto grado de autonomía. - Hasta tanto, las únicas medidas materializadas, a través de la promulgación de la Ley Nº 18.667 "de Emergencia carcelaria", de fecha 13/7/2010, prevé que, la faltante de recursos humanos que se adscriban al trato directo con la población, se superará con la creación de 1500 nuevos cupos para funcionarios policiales. - Un aspecto preocupante ha sido la introducción en el debate público a propósito de la incorporación de funcionarios del Ministerio de Defensa en labores policiales. El Presidente José Mujica ha planteado su propuesta de que efectivos militares pasen a ser quienes realicen los controles de seguridad de las visitas, en el ingreso y egreso de los establecimientos carcelarios. Esta responsabilidad se sumaría a la ya asumida para la custodia de la seguridad perimetral. La incursión de personal militar, formado para la Defensa, una función	

Recomendación (A/HRC/13/39/Add.2)	*Situación durante la visita (A/HRC/13/39/Add.2)*	*Medidas para la implementación de las recomendaciones1 (A/HRC/16/52/Add.2)*	*Información recibida en el periodo reportado*
		esencialmente distinta de la Seguridad, resulta altamente preocupante, máxime cuando la reconversión de estos roles estará dada por un "curso" de capacitación. El argumento para ello se asienta en la incapacidad del Estado para gestionar eficientemente 29 establecimientos, hacinados, ruinosos y con serio déficit de personal. **Gobierno:** Existe consenso sobra la necesidad de que el Instituto Nacional de Rehabilitación tenga responsabilidades en la gestión de las medidas de privación de libertad en todo el país, y se integre por personal civil especializado sometido a un Estatuto específico. En este marco, y como mecanismos adecuados para favorecer el proceso de transición, además de la creación de vacantes civiles en este nuevo escalafón, se ha resuelto un paulatino traspaso de vacante desde el Escalafón policial hacia el Escalafón "S" (Penitenciario). El citado Escalafón había sido creado por el artículo 48 de la ley 15.851 del 14/12/1986 pero su puesta en funcionamiento no se había instrumentado hasta el presente.	
(c) Dentro del nuevo ministerio, crear un cuerpo de guardias de prisiones bien entrenado y dotado de recursos que sustituya a los oficiales de policía que actualmente desempeñan esa función. La escasez de personal en los centros de reclusión conduce a una falta de seguridad para los propios miembros de	Ver arriba. - Para los adolescentes privados de libertad existe una escasez crónica de personal y de recursos económicos. Los trabajadores sociales no reciben formación específica antes de empezar a prestar servicio.	***Fuentes no gubernamentales***: La Dirección Nacional de Cárceles, a través de la Policía Nacional, dispone de cuerpos especiales para la gestión de conflictos intracarcelarios: motines, requisas, fugas. Son grupos especializados o fuerzas de choque, que dirimen los conflictos por vía violenta o la persuasión a través de la fuerza física. No existen dispositivos o	

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ese personal y les dificulta el cumplimiento de su obligación de proteger a los internos de la violencia entre los reclusos.		cuerpos de mediación no violenta que pudieran intervenir sobre el conflicto antes de su estallido. La violencia intra-carcelaria se multiplica exponencialmente debido a las condiciones materiales de vida (edilicias y de servicio), de interelacionamiento con los pares y la autoridad, el hacinamiento, el ocio compulsivo y el encierro total. - Existe una iniciativa para la creación del Escalafón Penitenciario, el cual dote a los guardias de las cárceles de un estatuto propio diferenciado de lo policial. - La Ley de Presupuesto a estudio del Parlamento plantea la creación de 1.200 cargos para la atención directa de internos, 300 cargos técnicos, 60 altamente especializados y 100 administrativos.	
(d) Limitar la utilización de la prisión preventiva, especialmente en el caso de los delitos no violentos y menos graves, y recurrir con mayor frecuencia a las medidas que no entrañan la privación de libertad.	- Recurso a la prisión preventiva como regla general y no excepción. - La ley no establece plazos máximos de dirección de la prisión preventiva.	**Gobierno:** Se ha resuelto inaugurar una Oficina de Supervisión de Libertad Asistida, para tener un mejor control de las medidas alternativas a la prisión. Fuentes no gubernamentales: La prisión preventiva continúa a la fecha, siendo la medida judicial exclusiva para adultos infractores. - El encierro compulsivo es la medida ejercida en más del 90% de los establecimientos de reclusión, tanto del sistema de adultos como de adolescentes. - La eficiencia en el procesamiento de las solicitudes de libertad asistida, en la órbita del Ministerio del Interior, se encuentra igual con el cuello de botella que se produce en el ámbito del Poder	

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		Judicial, y específicamente en la Suprema Corte de Justicia que tiene la potestad de otorgarlas o no. - En las discusiones en el Parlamento se ha planteado la necesidad de analizar la flexibilización de la prisión preventiva para los delitos menos violentos. **Gobierno:** El Gobierno ha señalado el tema penitenciario como una prioridad nacional se realizó una convocatoria abierta a todos los partidos con representación parlamentaria para generar un espacio de diálogo constructivo y abierto que permitiera arribar a acuerdos básicos sobre los temas de seguridad pública. El documento de consenso (Documento de Consenso Interpartidario), aprobado en agosto del 2010 plantea, reestructurar el sistema de privación de libertad tanto para adultos como para adolescentes, privilegiando las medidas alternativas o sustitutivas de la prisión preventiva, incluida la propuesta de que los centros penitenciarios se ubiquen institucionalmente fuera de la órbita y gestión de la policía. - El Poder Ejecutivo ha remitido al Parlamento, un proyecto de ley que faculta la utilización de personal militar para ser destinado a la custodia perimetral de cárceles. El mismo texto contempla estrictas medidas de control para evitar toda forma de tráfico en las cárceles, fortaleciendo los mecanismos de prevención de objetos prohibidos. A través del apoyo del la Agencia	

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		Especial de Cooperación se está trabajando en el rediseño del área de capacitación al personal penitenciario, con la puesta en práctica de un plan piloto con los 29 últimos ingresos. Asimismo, un proyecto emergente de la Conferencia de Ministros de Iberoamérica, que cuenta con el apoyo de la Agencia de Cooperación Española, promoverá la transferencia de buenas prácticas en la atención de mujeres privadas de libertad de Argentina en le marco de intercambio de experiencias entre países de Latinoamérica. **Gobierno:** El Documento de Consenso Interpartidario, aprobado en agosto del 2010 plantea, reestructurar el sistema de privación de libertad tanto para adultos como para adolescentes, privilegiando las medidas alternativas o sustitutivas de la prisión preventiva, incluida la propuesta de que los centros penitenciarios se ubiquen institucionalmente fuera de la órbita y gestión de la policía. En dicho marco y tomando en consideración que durante el año 2010 dio comienzo la discusión de la asignación presupuestal para los próximos cinco años de gestión, el mensaje y el proyecto de ley remitido por el Poder Ejecutivo a las Cámaras contiene disposiciones financieras que permiten asegurar el funcionamiento de una nueva institucionalidad. En efecto, está prevista la creación de Institución Nacional de Rehabilitación que opere como servicio	

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		descentralizado del Ministerio del Interior, fuera de la dependencia policial. A nivel parlamentario existe un acuerdo para la creación de una comisión bicameral dedicada a redactar los cometidos y desempeños a ser asumidos por le citado Instituto.	
(e) Velar por que, en el caso de los adolescentes, la privación de libertad se utilice únicamente como medida de último recurso y se recurra lo menos posible a la prisión preventiva.		**Gobierno:** Al 31 de julio de 2009, el número de jóvenes privados de libertad era de 276, mientras que el número de jóvenes bajo el sistema público de ejecución de medidas no privativas de libertad era de 262. Al 31 de diciembre de 2009, había 248 jóvenes privados de libertad, 28 en centros de internación transitoria, 14 en régimen de semi-libertad y 216 con medidas no privativas de libertad. El SEMEJI/INAU ha desarrollado la estructura del Programa de Medidas no Privativas de Libertad de Base Comunitaria, y se completó la expansión a todo el país. Fuentes no gubernamentales: El uso de la privación de libertad sigue siendo una acción sobre-utilizada. En el caso de los adolescentes, de un total aproximado de 600 jóvenes infractores de ley, bajo medidas del Sistema Penal Juvenil, la mitad es privada de libertad y la otra mitad cumple medidas sustitutivas a la reclusión. Estos últimos son jóvenes que por provenir de sectores socioeconómicos medios o medios altos y que en un alto porcentaje residen en Montevideo, poseen redes sociales próximas que aseguran su acceso a la justicia, el cumplimiento de sus medidas de protección y garantías y por ende la	

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		capacidad de acompañar cercanamente la custodia. Los otros, en cambio, provienen de sectores históricamente desafiliados, segregados y estigmatizados. La justicia para ellos opera de una manera discriminadora, selectiva y con mayor punitividad. - En el caso de los adolescentes atendidos en la órbita de la libertad asistida (PROMESEC), se ha comprobado la eficiencia de las acciones ya que sólo el 2% de los casos reincide. - Las lógicas instaladas no son avanzar en el terreno de las penas alternativas sino reproducir más y mayor encierro, alimentando un circuito de reproducción de la violencia. - Las autoridades del INAU, quienes asumieron sus cargos en julio de 2010, plantean generar programas alternativos y de trabajo comunitario.	
Condiciones de reclusión (f) Asegurar que las personas privadas de libertad estén recluidas en centros penitenciarios en condiciones que cumplan las normas mínimas sanitarias e higiénicas internacionales y que los internos vean satisfechas sus necesidades básicas, como espacio suficiente, ropa de cama, alimentos y cuidado de la salud. Facilitar a los internos posibilidades de trabajar y estudiar, así como de realizar actividades de ocio y rehabilitación; debe abordarse de inmediato el problema crónico	- Las condiciones se han ido deteriorando en los últimos años y el hacinamiento se ha convertido en un grave problema en la mayoría de las prisiones. - Las condiciones en algunos centros las condiciones pueden considerarse como un trato inhumano y degradante. - El hacinamiento y el acceso limitado a los servicios médicos eran motivo de preocupación en prácticamente todos los lugares visitados.	**Gobierno:** Se inauguraron tres nuevos centros para menores, se realizaron obras de reparación en dos centros y se realizaron dos nuevas perforaciones para el suministro de agua en Colonia Berro. La práctica para menores de satisfacer las necesidades fisiológicas en bolsas o botellas ha desaparecido. Actualmente, si el menor demanda concurrir al sanitario, a la hora que sea, debe atendérselo. La alimentación para menores es variada y de calidad nutritiva. Se permite también que los familiares ingresen alimentos. - Cien mujeres detenidas en el Establecimiento Correccional y de Detención para Mujeres fueron re-	

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del hacinamiento.		localizadas, con lo cual se solucionó el problema de hacinamiento. El 15 de abril se inauguró el Establecimiento El Molino, para el alojamiento de mujeres privadas de libertad con hijos nacidos en prisión o en período de lactancia. - El primer sector del Establecimiento Punta Rieles podrá albergar a 173 presos, del Centro Nacional de Rehabilitación y del COMCAR. Al final de 2010 se espera contar con entre 500 y 700 plazas. La finalización de la ampliación de 250 plazas en el COMCAR y en la Cárcel Las Rosas de Maldonado se prevé para julio 2010 y en el Establecimiento de Libertad se prevé para septiembre 2010. La finalización de las obras en el Departamento de Rivera con 400 plazas está prevista para septiembre 2010. Se estudia la posible apertura de una Casa de Medio Camino para aquellos penados en situación de pre-egreso. - Se proyectan varias opciones de rehabilitación y tratamiento, en las áreas de trabajo y educación. Fuentes no gubernamentales: Las condiciones generales de reclusión no han cambiado, ya que hasta el momento son muy pocas las nuevas plazas habilitadas. - El uso abusivo de la privación de libertad y la crisis estructural y sostenida del sistema carcelario, desembocan en una de sus más graves consecuencias: el hacinamiento que padece casi dos tercios de la población privada de libertad. Con una densidad	

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		general del 138 % -que supera el límite crítico de 120%- 5 de los 29 establecimientos de reclusión registran índices de entre el 173 % y el 301%. Bajo una superpoblación de tal magnitud, los impactos en la cotidianeidad son perversos, agravándose aún con la escasez, en el mejor de los casos, y la total ausencia en la mayoría de los otros, de alternativas socio-educativas, recreativas, culturales y laborales que, colaboren hacia el proceso de resocialización y rehabilitación de las personas privadas de libertad. La incapacidad del sistema para proveer alternativas de formación y de trabajo, están directamente vinculadas a la reincidencia en el delito, toda vez que, sin herramientas y sin la incorporación de competencias sociales para la inserción al egreso, seis de cada diez personas que han estado en prisión, vuelven al sistema. Uruguay posee marcos legislativos importantes a los efectos de garantizar el ejercicio de los derechos al trabajo y a la educación de la población reclusa. - El ejercicio concreto de los derechos a la educación y al trabajo, en situación de privación de libertad, es sin embargo un gran debe. Según datos de la Dirección de Desarrollo Penitenciario del Ministerio del Interior, el 45 % de la población reclusa, trabaja y/o estudia. Según estas cifras, alrededor de 2000 presos estudian y 998 trabajan en los establecimientos bajo la conducción de la Dirección Nacional de Cárceles.	

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		Aproximadamente 1.370 presos cumplen tareas laborales en las cárceles departamentales y en los establecimientos que dependen del Ministerio del Interior. Sin embargo, a través de la encuesta aplicada a una muestra estadísticamente representativa de 1300 personas privadas de libertad, sólo el 13 % dice estar trabajando, y de ese porcentaje, sólo el 7 % recibe a cambio una remuneración por la tarea. Esa remuneración, se operativiza solamente en las cárceles dependientes de la Dirección Nacional de Cárceles y en unas pocas dependientes del Subsistema de Jefaturas del Interior. - En cuanto a la educación, se han registrado avances significativos en los últimos años, incluyendo la generalización de la enseñanza primaria en la totalidad de los establecimientos. Al finalizar 2009, Educación Secundaria disponía de 110 docentes, distribuidos en 12 establecimientos, para dictar clases de ciclo básico y bachillerato. Quedan fuera de la cobertura sin embargo, 17 establecimientos. - El más serio déficit detectado se encuentra en los procedimientos y la transparencia para la contabilización de las medidas de redención de pena. Son numerosos los casos denunciados por personas privadas de libertad, que a la hora de asistir a una revista de la Suprema Corte de Justicia, constatan que los cómputos que allí figuran, en el mejor de los casos, son deficientes y no corresponden a la cantidad de	

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		tiempo trabajado o estudiado; y en otros muchos ni siquiera llegan al expediente los informes que acreditan que esa persona trabaja y/o estudia. - En muchos casos, cuando la medida de redención de pena se refiere al trabajo, si no media el peculio, el registro es nulo. La persona trabaja pues, además de sin percibir beneficio económico alguno por su tarea, sin tener la capacidad de acogerse al beneficio de la conmutación de la pena por trabajo. - El acceso al agua sigue siendo un problema central en diversos establecimientos. COMCARr, "Las Latas" en el Penal de Libertad, Canelones, Cabildo y Las Rosas (Maldonado), registran las situaciones más graves. En algunos de estos centros, por ejemplo en Las Rosas, el suministro durante todo el año se limita a dos horas diarias, distribuidas en dos turnos. Ese suministro se hace a través de un único caño de plastiducto por módulo, a través del cual los reclusos deben llenar tarrinas para acopiar y administrar durante todo el día. En Canelones, los cortes se producen frecuentemente, por razones no argumentadas desde las autoridades carcelarias, y preponderantemente en los meses de verano. En la cárcel femenina de Cabildo, el agua proviene de tanques de almacenaje, muy contaminados, por lo cual los índices de potabilidad no son adecuados. A la escasez de suministro de agua se asocian problemas vinculados a la higiene personal y del ambiente, la	

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		propagación de enfermedades que tienen como vehículo el agua, lo cual en muchas ocasiones es factor además de generación de conflictos internos. - En relación con los menores, en hogares de la Colonia Berro (Sarandí, Piedras y Ser), las prácticas discrecionales para la conducción de los adolescentes a los gabinetes sanitarios sigue siendo una constante. Los jóvenes continúan encerrados 24 horas al día, y aún necesitan evacuar sus necesidades fisiológicas en condiciones inaceptables. - Los adolescentes sólo tienen acceso a actividades educativas o de ocio en algunos centros. En otros centros, los detenidos permanecen en sus celdas entre 20 y 22 horas por día en general, incluso 24 horas en caso de castigo. La reinserción social es casi inexistente. Existe también la utilización casi sistemática de la violencia en contra de los adolescentes por parte de la policía durante el arresto, motines o requisas, y por parte de los guardias de manera cotidiana. En Puertas, Ser, Piedras y Ariel, la mayoría de las celdas tienen un dramático nivel de insalubridad. - Para las mujeres, el traslado al actual centro de Rehabilitación descongestionó en parte la cárcel de Cabildo. Sin embargo, esto ha acarreado nuevas complejidades, como la coexistencia de dos modelos de privación de libertad contrapuestos: el de CNR, gerenciado por un equipo multidisciplinario y con un régimen de mínima seguridad y el de la Dirección Nacional de Cárceles que rige para las	

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		mujeres trasladadas desde Cabildo, con condiciones de administración de la seguridad y la reclusión idénticas a las de Cabildo. El descongestionamiento de Cabildo fue transitorio, ya que debido al alto número de nuevos ingresos, dicha cárcel ya está sobresaturada nuevamente. El Hogar "Nuevo Molino", para mujeres infractoras que conviven con sus hijos, si bien fue inaugurado formalmente el 15 de abril, no fue habitado sino hasta el mes de julio, ya que la Dirección Nacional de Cárceles no disponía de personal penitenciario para el funcionamiento del nuevo establecimiento. - El calendario de obras estructurado para el plan de descongestionamiento carcelario no se ha cumplido. A la fecha, no están inauguradas la nueva cárcel de Punta de Rieles, el nuevo módulo de COMCAR, el nuevo módulo del Penal de Libertad, la cárcel espejo en Maldonado, la nueva cárcel regional de Rivera y el reacondicionamiento del Centro No. 2. Con excepción de Rivera, estos emprendimientos debían haberse culminado entre agosto y setiembre de 2010, según lo planificado. **Gobierno:** en materia de gestión, se procurará la unificación de los centros carcelarios del país en un solo instituto y la posterior regionalización de los mismos, distribuidos en 6 regiones. La misma prevé en el marco de un sistema de tratamiento progresivo la creación de sistemas de mínima	

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		seguridad en cada departamento del país, en la modalidad de chacras productivas. Frente a un déficit de 2000 plazas en el sistema, con una tasa de densidad global de 129% está previsto que entre finales del corriente año e inicios del 2011 se habiliten 2000 plazas nuevas, número que será fortalecido con la proyección de dos Unidades penitenciarias de al menos 900 plazas cada una durante este período de gobierno. - Aprobación de la Ley No. 18.667 del 13 de julio de 2010 que habilita la utilización de predios bajo la jurisdicción del Ministerio de Defensa Nacional bajo régimen de comodato para servir de instalaciones penitenciarias con el fin de reducir el hacinamiento y dispone la asignación de un monto significativo de recursos financieros del Estado con el fin de mejorar la situación edilicia y de las instalaciones de los centros penitenciarios. En uso de los citados fondos se adquirieron módulos portátiles dotados de calefacción, cama y ducha, alguno de los cuales han sido instalados en predios penitenciarios. - Con el acuerdo de la Suprema Corte de Justicia, una Comisión integrada por representantes del citado órgano judicial y del Ministerio del Interior han elevado una propuesta de ley destinada a descomprimir el hacinamiento actualmente existente, pero que también contempla normas permanentes destinadas a establecer cupos máximos carcelarios y	

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		mecanismos de liberación cuando se superan los plazos razonables de prisión preventiva, sin acusación fiscal. - La realización del derecho efectivo a la educación y el trabajo en el sistema carcelario constituye uno de los problemas más graves. En el marco de los Acuerdos Interpartidarios, el documento de consenso aprobado establece que "se asegurará que toda persona privada de su li8bertad en cumplimiento de un disposición judicial, pueda realizar tareas productivas y remuneradas (procurando el reconocimiento de sus tareas a los efectos previsionales en lo aplicable) así como formarse, estudiar y culminar sus estudios, lo que facilitará claramente la reinserción del detenido. En dicho marco, se han iniciado contactos con el Ministerio de Trabajo y Seguridad Social para el desarrollo de un plan nacional de estímulo al trabajo de los reclusos y los recién liberados. Este aspecto de la cuestión constituye un eje básico de la solicitud de cooperación formulada ante la Unión Europea, ya que es intención del gobierno instalar emprendimientos productivos de distinto alcance en los centros penitenciarios como una estrategia de reinserción social, desarrollo y estímulo de aptitudes y creación de alternativas útiles para la facilitación del egreso y la reintegración social. Actualmente se está implementado dentro del Proyecto	

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		L (NNUU "Unidos en la Acción"- Gobierno) un efecto específico de estimulo a la generación de trabajo y una asistencia técnica para la mejora y fortalecimiento de los actuales instrumentos jurídicos.	
(g) Clausurar inmediatamente los módulos construidos con chapa metálica, conocidos popularmente como "Las Latas", del penal de Libertad y los módulos 2-4 del COMCAR.	- Los detenidos se encontraban hacinados, en condiciones deplorables, con acceso restringido al agua, sólo podían salir de las celdas un máximo de cuatro horas a la semana y no era fácil obtener atención médica, por lo que los reclusos se autolesionaban para poder visitar a un médico.	***Fuentes no gubernamentales:*** Las "latas" del Penal de Libertad y los módulos 2 y 4 del COMCAR no se han clausurado. En esta última cárcel se prevé el cierre del módulo 5 y el módulo 2. Los reclusos alojados en el primero serán trasladados a la cárcel de Punta de Rieles, mientras que –la mayoría- de los reclusos del módulo 2 serán trasladados al nuevo módulo que se está construyendo (310 plazas) dentro del establecimiento, los restantes reclusos serán distribuidos en el resto de la cárcel. El nuevo escenario que se generará por estos realojamientos dentro del establecimiento elevará el números de reclusos por cada módulo (1,3,4), lo cual como la experiencia indica, agravará las condiciones ya deplorables, inhumanas e inhabitables, tanto materiales como de interelacionamiento entre reclusos y con los funcionarios. - La única estrategia de regulación es la administración de la disciplina y el castigo en forma discrecional y arbitraria. En centros con poca población también se registran graves problemas de discrecionalidad, sobre todo en las cárceles dependientes de las Jefaturas Departamentales, debido a conductas autoritarias e inquisitivas, directamente vinculadas a un ejercicio	

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		del poder autoritario, que es rezago de la última dictadura en Uruguay. - Se continúan recibiendo alegaciones de malos tratos y golpizas a adolescentes por parte de los funcionarios policiales que custodian los hogares. La violencia física se ejerce en general en las persecuciones que los funcionarios realizan durante las fugas y al momento de la detención de los jóvenes. A su vez, se ha constatado, a través de entrevistas con los jóvenes, que los mismos sufren graves maltratos y golpizas en los centros de detención transitorios. - En establecimientos donde se encuentran recluidas las mujeres, estos fenómenos se agravan, ya que son doblemente estigmatizadas, toda vez que el sistema no está pensado en perspectiva de género ni contempla otras especificidades de este grupo de población, con excepción de las vinculadas al rol de madre.	
(h) Garantizar la separación efectiva entre los presos en prisión preventiva y los que cumplen condena.	- No había separación alguna.	***Fuentes no gubernamentales:*** Esta separación es inexistente en todas las cárceles, por dos factores: a) la capacidad edilicia de los establecimientos y b) la precariedad administrativa junto a la lentitud burocrática del sistema para procesar y sistematizar información, vinculadas a la escasez o inexistencia de herramientas y capacidades tecnológicas. - El Ministerio del Interior ha anunciado que los nuevos centros que se abrirán tendrán en cuenta esta distinción. - A pesar de la creación de nuevos	

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		mecanismos y agencias como la Oficina de Seguimiento a la Libertad Anticipada (OSLA), no se ha modificado la relación entre personas privadas de libertad procesadas y condenadas. El 73% de la población carcelaria no tiene condena, vencido además el plazo razonable y contrariamente al carácter excepcional del encarcelamiento cautelar. La jurisprudencia local ha establecido en diversos fallos que la prisión preventiva es la regla, siendo excepcional la procedencia de la excarcelación. **Gobierno**: Inicio del sistema de clasificación de presos, en particular la separación entre penados y procesados. La tarea, de competencia específica del Instituto Nacional de de Criminología, ha sido completada en la Cárcel Departamental de Rocha, en el COMCAR, con la población que será próximamente transferida al establecimiento de punta Rieles, continuando en breve con el establecimiento de Libertad, Maldonado, Rivera y Canelones. - Aprobación del Decreto 180/120 de 14 de junio de 2010 instituye el mecanismo de la libertad asistida y crea la Oficina de Seguimiento de la Libertad Anticipada. En la actualidad, la Oficina hace seguimiento a un promedio de 70 casos. - Modificación del régimen de salidas transitorias, ampliando los plazos de permanencia y las razones por las cuales se otorgan.	

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Garantizar que, como procedimiento habitual, profesionales médicos calificados realicen un examen a los internos en el momento de la detención, el traslado y la puesta en libertad (i)	- Los adolescentes eran llevados a un médico previo al traslado, pero la mayoría de los menores denunciaron haber recibido palizas y otros malos tratos por parte de la policía después del examen médico.		
(j) Seguir el proyecto piloto del COMCAR para que los servicios médicos queden a cargo del Ministerio de Salud.	- La calidad de los servicios médicos había mejorado desde que el Ministerio de Salud pasó a ocuparse de prestar servicios médicos en la prisión.	***Fuentes no gubernamentales:*** La calidad del servicio médico ha mejorado sustancialmente desde que la Administración de Servicios de Salud del Estado (ASSE) se hiciera cargo del mismo, tanto a nivel administrativo como a nivel operativo y procedimental. Se comprueba también un avance importante en la atención odontológica a los reclusos en todos los establecimientos de privación de libertad. - Al final del periodo de la actual administración se espera que la cobertura de ASSE alcance a todos los centros penitenciarios del país. - Existe una propuesta de crear una nueva unidad asistencial, llamada Servicio de Asistencia Integral para Personas Privadas de Libertad. **Gobierno:** Creación de un programa específico dentro del Ministerio de Salud Pública destinado a sumir gradual competencia en la atención primaria de la salud de los reclusos alojados en centros penitenciarios. El Ministerio de Salud Pública asumirá la atención del establecimiento de Punta Rieles cuya inauguración está prevista para el mes de noviembre, ampliando con ello, el número de establecimientos carcelarios atendidos	

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		en salud bajo esta modalidad.	
Lucha contra la impunidad y reparación para las víctimas de la tortura			
(k) Enmendar el Código Penal a fin de incluir la definición de la tortura como delito independiente, en consonancia con lo dispuesto en los artículos 1 y 4 de la Convención contra la Tortura.	- Según la Ley No. 18026 cualquier caso de tortura se considera un crimen de lesa humanidad. - La definición de tortura abarca también actos de trato cruel, inhumano o degradante.	***Fuentes no gubernamentales***: La aprobación de la Ley No. 18026 incluye el delito de tortura entre otros, lo que ha significado un avance sustantivo en la legislación. Sin embargo, la no inclusión de la ley en el corpus del Código Penal hace difícil su aplicación práctica y no contempla casos de torturas de civiles y delincuentes comunes, es decir, que el delito de tortura no está tipificado como delito autónomo. Asimismo el marco conceptual desde donde se enunció la ley se relaciona directamente con contextos autoritarios, totalitarios, etc., lo que podría generar una lectura unilineal de la misma. En este sentido, la tortura en forma exclusiva y en forma excluyente se relaciona con las violaciones a los derechos humanos durante la última dictadura cívico-militar. El actual Gobierno ha expresado su voluntad de incluir el delito de tortura en la reforma del Código Penal, pero ello aún no se ha concretado.	
(l) Asegurar que todas las denuncias de tortura y malos tratos se investiguen minuciosamente y sin demora por una autoridad independiente que no tenga relación con la autoridad encargada de llevar la investigación o el enjuiciamiento del caso.	- La Dirección de Asuntos Internos del Ministerio del Interior se ocupa de investigar dichas denuncias, aunque depende de la misma autoridad ministerial que la policía.	**Gobierno:** La Gerencia del SEMEJI elaboró una cartilla para la recepción de denuncias o quejas, habilitándose un mecanismo de investigación. El Directorio del Instituto del Niño y Adolescente del Uruguay dispuso diversas medidas para evitar represalias en los casos donde menores hayan presentado alegaciones de malos tratos al Relator Especial. En	

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		2009 se realizaron 133 investigaciones, de las cuales 6 eran por maltrato. Al 30 de abril de 2010, no se habían iniciado investigaciones por maltrato. Fuentes no gubernamentales: Si bien el recurso que ha instalado la gerencia de SEMEJI es un gran avance, aún resta por implementar de forma más eficiente los marcos en los cuales los menores pueden realizar sus denuncias.	
(m) Velar por que quienes cometieron violaciones de los derechos humanos durante la dictadura comparezcan ante la justicia, por que se imparta justicia en un plazo razonable y por que se respete la memoria de las víctimas, incluso de los muertos y los desaparecidos.	- Actualmente se llevan a cabo varios juicios, aunque con lentitud.	***Fuentes no gubernamentales:*** El accionar de la Justicia está limitado por la Ley de Caducidad, que otorga al Poder Ejecutivo la potestad de determinar cuáles casos pueden ser juzgados, violando el principio de separación de poderes, entre otras cosas. El Gobierno, a través de sus representantes legislativos, está redactando un proyecto de ley para dejar sin efecto la Ley de Caducidad. - La Ley de Caducidad fue ratificada en las elecciones de noviembre 2009. Sin embargo, esto no excluye la posibilidad de juicios.	
(n) Ofrecer una indemnización sustancial, así como tratamiento médico y rehabilitación adecuados, a las víctimas de la tortura y los malos tratos.	- Existe un proyecto de ley de reparación a las víctimas del terrorismo de Estado.	***Fuentes no gubernamentales:*** En 2009 se aprobó la Ley 18.650 que estableció indemnizaciones para las personas víctimas de tortura durante la dictadura. La Ley creó una Comisión Especial, integrada por representantes de varios organismos del Estado y de la sociedad civil. La Ley reconoce expresamente la responsabilidad del Estado por los daños causados y el derecho a la atención médica. Sin embargo, indemnizaciones económicas sólo serán otorgadas a aquellas	

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		víctimas que certifiquen haber tenido lesiones gravísimas, lo cual ha generado polémica debido a que su aplicación sería bastante acotada. - La ley sobre indemnización excluye a todas aquellas víctimas con ganancias de más de 1.500 USD mensuales o aquellos que ya reciben seguro social. En relación con personas jubiladas, se les obliga a decidir entre el seguro social que les corresponde por su trabajo o 750 USD de compensación mensual. - Desde la recuperación democrática se han aprobado diversas leyes de reparación. De todas formas continúan existiendo situaciones que no han sido contempladas. Por ejemplo, los limites cronológicos que definen las mismas, excluyen gravísimos casos de violaciones. Ha habido un avance significativo en la reparación desde el punto de vista económico y sanitario, pero resta un trabajo profundo sobre la reparación psico-jurídica y simbólica, de la cual todavía no se tiene una postura clara. En este último caso los avances han estado relacionados, en gran medida, más con impulsos aleatorios y esporádicos desde el Estado, que con políticas de memoria serias, democráticas, y sobre todo presupuestadas.	
Prevención de la tortura (o) Ampliar el mandato del Comisionado Parlamentario para el sistema carcelario de manera que incluya todos los lugares de detención y velar por que ese mecanismo se integre en la	- El mandado se limita a los adultos.	***Fuentes no gubernamentales:*** El mandato del Comisionado Parlamentario lo autoriza a monitorear todo el Sistema Carcelario del país, además de otros atributos que dictamina la ley. No tiene la potestad	

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Institución Nacional de Derechos Humanos como mecanismo nacional de prevención.		de seguimiento en psiquiátricos, hogares para menores que cumplen medidas de ejecución de privación de libertad, hogares alojados en centros de amparo, y centros de detención transitoria. - La sociedad civil trabaja proactivamente en la instalación de la INDDHH, interviniendo en jornadas y debatas sobre el mismo, articulando acciones concretas, mantenido un dialogo fluido con el Estado, y participando en mesas intersectoriales. Gobierno: La Institución nacional de Derechos Humanos ya creada será incluida en las previsiones de funcionamiento y recursos junto con la aprobación del presupuesto del Parlamento uruguayo a ser votado en el mes de febrero de 2011, al así determinarlo su vinculación orgánica dispuesta en ley de creación. Se aguarda que culminado dicho proceso, se proceda a su integración y pronta puesta en funcionamiento. El mecanismo nacional de prevención previsto en el Protocolo Adicional a la Convención contra la Tortura caerá bajo la égida de la Institución nacional de Derechos Humanos.	
(p) Asignar recursos humanos y financieros suficientes para que la sólida base jurídica del mecanismo nacional de prevención se traduzca en un funcionamiento eficaz en la práctica.		***Fuentes no gubernamentales:*** Se está discutiendo la ley de presupuesto, la cual tiene como objetivo distribuir los recursos financieros a todos los ministerios, áreas y reparticiones del Estado, durante el período octubre 2010 a octubre de 2011. En ésta ley, no se presupuestó la asignación de	

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		recursos para el funcionamiento real y concreto de la Institución Nacional de Derechos Humanos, y por ende, de la implementación del mecanismo, que se encuentra bajo esa institucionalidad.	
Administración de justicia penal para los menores delincuentes (q) Elaborar un sistema moderno de justicia de menores encaminado a la prevención del delito y la rehabilitación de los menores delincuentes.		**Gobierno:** El número y calidad de las actividades socio-educativas en la Colonia Berro ha aumentado considerablemente desde 2005. En 2009 se incrementaron las horas docentes en la Escuela Educacional Dr. Roberto Berro. Las mismas sufrieron alguna interrupción en 2009 pero se han normalizado. En los Centros SER y Las Piedras se duplicó la carga horaria de actividades. Asimismo, se logró elevar el tiempo de utilización de patio a tres horas diarias. Fuentes no gubernamentales: Si bien las actividades socio-educativas han aumentando considerablemente, no se planifican y ejecutan desde una propuesta educativa. A su vez la ausencia de un proyecto educativo, no permite construir trayectorias de egreso acordes a la perspectiva de derechos para los adolescentes privados de libertad.	
(r) Introducir programas de rehabilitación del uso de drogas en los centros de internamiento de menores.	- Al menos la mitad de los internos son consumidores de drogas. A menudo se utilizan sedantes como terapia de sustitución.	**Gobierno**: La medicación psiquiátrica se administra bajo receta médica especial, en forma técnicamente adecuada. Los jóvenes con problemas de consumo de sustancias psicoactivas reciben atención médica y psicológica en la División Salud del INAU, tratamiento con internación en el Centro Portal Amarillo y en dos Centros de Adicciones en la región	

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		metropolitana del país. Se están realizando también dos investigaciones sobre los jóvenes, las características del consumo y factores asociados al mismo y otra con los funcionarios, la forma como enfrentan el tema y las demandas de capacitación que presentan. Fuentes no gubernamentales: La discrecionalidad del sistema, la falta de personal idóneo, la ausencia de una gerencia eficiente y coherente a la hora de aplicar los lineamientos educativos, hace que las mejoras en diversas áreas, por ejemplo en salud, pasen desapercibidas. El tratamiento para adicciones a menores infractores es una de esas áreas en las cuales la inoperancia del sistema se hace evidente. Por eso es necesario incorporar a la estructura de SEMEJI, mecanismos, dispositivos y protocolos que tiendan a generar una nueva institucionalidad jerarquizada, fundada en el pleno cumplimento de los derechos de los jóvenes, acorde a lo establecido en el Código de la Niñez y la Adolescencia.	
Mujeres (s) De acuerdo con lo dispuesto en el Plan Nacional de Lucha contra la Violencia Doméstica, establecer mecanismos eficaces para abordar los casos de violencia contra la mujer, incluso mediante la organización de más actividades de fomento de la sensibilización entre los funcionarios judiciales y de las fuerzas del orden.	- Pocas de las actividades previstas en el Plan Nacional se habían ejecutado y se habían prorrogado las fechas límite para su puesta en práctica. - Las dificultades incluyen la renuencia de los jueces a aplicar la ley, la ausencia de un procedimiento o mecanismo para velar por el cumplimiento de las medidas cautelares y la falta de	***Fuentes no gubernamentales:*** Actualmente existen varias acciones y programas desde el ámbito público y por parte de la sociedad civil. - Sigue funcionando la Bancada Bicameral femenina, que constituye un espacio abierto a las inquietudes que ameritan medidas legislativas con enfoque de género. - El 26 de octubre se lanzará la campaña UNETE, impulsada por el	

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	infraestructura para prestar apoyo a las víctimas.	Secretario General de las Naciones Unidas, con una fuerte acción en los medios de comunicación y espacios públicos alertando sobre la violencia contra la mujer y llamando a detenerla. **Gobierno:** en este plano, y como señala la información proporcionada al Relator por fuentes no gubernamentales, se está llevando adelante diversas acciones a nivel ministerial a efectos de revertir el proceso evidenciado con el alto número de policías, identificados como agentes de violencia doméstica.	
(t) Crear refugios para las víctimas de la violencia doméstica y centros de rehabilitación para quienes cometan delitos de esa naturaleza.	- No había refugios para mujeres.	***Fuentes no gubernamentales***: No existen aún refugios, aunque se estima que antes de que termine el 2010 estará operativo un centro. También existe un acuerdo entre el Ministerio de Desarrollo Social y el Ministerio de Vivienda par aportar soluciones habitacionales a las mujeres que deben dejar su residencia debido a la violencia que sufren. A esos efectos existe un subsidio para alquileres. - En relación a los perpetradores, existe un trabajo concreto en el ámbito de la Sanidad Policial con funcionarios policiales que han cometido estos hechos.	
(106) El Relator Especial recomienda también que los órganos competentes de las Naciones Unidas, los gobiernos donantes y los organismos de desarrollo presten asistencia al Gobierno del Uruguay en la aplicación de las presentes recomendaciones, en particular		**Gobierno:** Se encuentran en desarrollo varios programas con diferentes órganos de Naciones Unidas y gobiernos donantes, incluyendo para el tratamiento de personas con problemas de acción; fortalecimiento a la Oficina de Supervisión de Libertad Asistida; formación penitenciaria; promoción de iniciativas a	

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en sus esfuerzos por reformar su sistema de justicia penal, mejorar el sistema penitenciario e impartir una formación apropiada a los policías y los guardias de prisiones.		emprendimientos de trabajo, cooperativismo y orientación al egreso sustentable; promoción de actividades sociolaborales, acompañamiento a las personas privadas de libertad, fortalecimiento de capacidades en pre-egreso; y fortalecimiento del sistema, promoción del diálogo y el diseño de un sistema integral, relevamiento y estudio del sistema y condiciones de reclusión de adultos y menores de 18 años. ***Fuentes no gubernamentales:*** El 30 de junio el Gobierno firmó un programa de cooperación con las Naciones Unidas de "Apoyo a la reforma de las instituciones para personas privadas de libertad". El proyecto desarrollará una experiencia piloto en tres centros penitenciarios en materia de prevención del uso de sustancias adictivas y en emprendimientos productivos y de generación de empleo. - También se apoyará el funcionamiento de una Oficina en el Ministerio del Interior destinada a aplicar medidas alternativas a la prisión. - El Programa permitirá realizar un ciclo de diálogos interinstitucionales en torno a la reforma penitenciaria. - Por su parte, la Unión Europea ha anunciado un Programa de 5.5. millones de euros a ser llevado a partir del 2012.	

Uzbekistan

Follow-up to the recommendations made by the Special Rapporteur (Theo van Boven) in the report of his visit to Uzbekistan from 24 November to 6 December 2002 (E/CN.4/2003/68/Add.2)

150. By letter dated 22 November 2011, the Special Rapporteur sent the table below to the Government of the Republic of Uzbekistan, requesting information and comments on the follow-up measures taken with regard to the implementation of his predecessor's recommendations. By letter dated 13 February 2012, the Government of Uzbekistan responded by providing information on the measures taken with regard to the implementation of the recommendations. The Special Rapporteur regrets that due to late submission of the Government's response, it has not been possible to consider the information for the purpose of drafting the observations.

151. The Special Rapporteur observes that the definition of torture in the amended Criminal Code does not cover acts by "other persons acting in an official capacity" and lacks adequate penalties. He reiterates his concern about the reports on the use, by courts, of evidence obtained under coercion, including by torture.

152. The Special Rapporteur expresses concern at the reported allegations of acts of harassment and intimidation, of forcible and arbitrary removal of peaceful protesters, and of lack of a fair trial in the context of two peaceful assemblies held in Tashkent in late 2010. The Special Rapporteur calls upon the Government to launch prompt, impartial and thorough investigations into these cases and initiate public prosecutions, where the evidence warrants it.

153. The Special Rapporteur remains concerned at the reported detention on allegedly fabricated charges, arbitrary detention, confession obtained under torture, and the absence of information on the complaints of torture and ill-treatment received by the Ombudsman. He wishes to note that an effective and independent mechanism still remains to be established outside the procuracy to investigate all allegations of torture and ill-treatment promptly, independently and thoroughly and prosecute and punish the alleged perpetrators by means of criminal sanctions.

154. The Special Rapporteur echoes the concern expressed by the Human Rights Committee[73] about the lack of full implementation of the right to habeas corpus and calls upon the Government to take steps to ensure that the amended legislation on habeas corpus is fully applied in practice.

155. The Special Rapporteur welcomes the consideration by the Office of the Prosecutor General of the question of ratification of the Optional Protocol to the Convention against Torture and encourages the Government to make the declaration provided for in article 22 of the Convention recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.

[73] See CCPR/C/UZB/CO/3.

156. Finally, the Special Rapporteur wishes to reiterate the request made in 2010 to conduct a follow-up visit to the country to make an assessment of the various legislative amendments and their practical implementation with regard to the fight against torture and other cruel, inhuman or degrading treatment or punishment.

Recommendation (E/CN.4/2003/68/Add.2)	*Situation during visit (See: E/CN.4/2003/68/Add.2)*	*Steps taken in previous years See: A/HRC/7/3/Add.2, E/CN.4/2006/6/Add.2, A/HRC/13/39/Add.6, and A/HRC/16/52/Add.2)*	*Information received in the reporting period*
(a)The highest authorities need to publicly condemn torture. They should declare unambiguously that they will not tolerate torture and similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for the abuses.		**Government:** this recommendation has been fully implemented as reflected in numerous legislative, practical and judicial reforms, such as the prohibition of torture contained in article 26 of the 1992 Constitution, the accession to the Convention against Torture in 1995, the criminalization of torture by article 235 of the Criminal Code; the participation of the Parliament of Uzbekistan in the monitoring of the Convention against Torture; the Supreme Court resolutions of 19 December 2003 and 24 September 2004 which excludes evidence obtained under torture, violence, threats, etc.; - The Supreme Court issued a resolution on 14 June 2008 on "The courts' practice of the examination of criminal cases by judges related to torture and other cruel, inhuman or degrading treatment or punishment", which obliges judges to issue a separate decision in relation to the member of the law enforcement bodies who allegedly committed the violation; - The concluding observations of the Committee against Torture were subject of sessions of a number of Senate Committees; - The Office of the General-Prosecutor held a session on the strengthening of the prosecutorial supervision ('nadzor') in this regard; - The Ministry of Internal Affairs held a session in 2008 during which questions of inadmissibility of coerced evidence were discussed; - In 2008, the office of the Prosecutor received 2222 complaints in relation to unlawful actions by members of the law enforcement bodies (163 less then in 2007), among which 1643 concerned staff of the Ministry of Internal Affairs, 7 regarding servants of the Security Service and 104 regarding judges. 104 of the complaints were related to allegations of torture and other cruel, inhuman or degrading treatment or punishment. 9 criminal cases were opened against members of the law enforcement bodies; the concerned persons were	

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		suspended from their functions; - Special units in charge of respect for human rights were created in the Ministry of Justice, the office of the Prosecutor General, and the Ministry of Interior, which deal with complains and petitions by citizens, including about torture; - The Prosecutor's office, Ombudsman, the National Human Rights Centre and a number of international organizations and diplomatic missions monitor places of detention; - The 2004 National Action Plan against Torture guides anti-torture work. ***Non-governmental sources:*** The practice of torture and other forms of cruel, inhuman and degrading treatment or punishment was not condemned by the highest authorities or the media; Official state agencies and Government-controlled national media still avoid the word "torture" in their official documents or publications. Official public figures who are responsible for the investigation of criminal cases or handling of complaints and petitions on tortures or other forms of cruel treatment, do not feel personally responsible despite the legal prohibition of torture in the Criminal Code. Moreover, the practice of investigating criminal cases in the system of law-enforcement agencies of Uzbekistan, enormous influence of the so-called principle of "automatism" on the system of criminal proceedings in the country, in practice results in the following – in case a person is arrested, he/she should necessarily be accused, pass through the investigation, face the trial, be convicted, and sentenced to punishment. - Based on this approach, the highest officials encourage the use of torture in the system of criminal justice in order to obtain confessions as evidence. Concerning the 2004 National Action Plan against Torture, a set of formal actions were included.	

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		Non-governmental sources: Since the successful performance of law enforcement bodies is measured by the number of resolved cases, torture remains the most frequent and widely practiced mean of obtaining confession in view of resolving cases. Government: Special human rights entities established within the Ministry of Justice, Office of the Prosecutor General, Ministry of Internal Affairs, are responsible for complaints on various human rights issues. In 2009, out of 3089 complaints received on unlawful activities of members of law enforcement bodies (2283 complaints during 9 months in 2010), 2377 (1824 in 2010) was in relation to the staff of the Ministry of Internal Affairs, 3 (4 in 2010) in relation to the members of the National Security Services, 50 (109 in 2010), in relation to courts, 15 (37 in 2010), in relation to procuracy. 65 (146 in 2010) complaints were related to the use of torture and other unlawful forms of treatment. 6 (7 in 2010) criminal cases were filed against the members of law enforcement bodies who were subsequently removed from the office. 9 criminal cases were filed in 2008. 4 employees of the law enforcement bodies were sentenced to various terms of imprisonment with charges of "intentionally causing body injury". - Incidents of torture and other forms of cruel treatment committed by law enforcement bodies are being discussed during the board meetings of the Ministry of Internal Affairs and the Prosecutor General, in the Parliament and in the Plenum of the Supreme Court as well as during the sessions of the Interagency task-force group established to examine the compliance of law enforcement bodies' activities with human rights norms and standards. The sessions are attended by the representatives of mass media and non-governmental organisations. - During the 6 months of 2010, out of 226 criminal cases	

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		filed against 285 employees of the organs of internal affairs, 75 were accused of misusing power, exceeding official authority, failing to act, neglecting official duty; 4 members were accused of committing torture and other forms of ill-treatment. During 9 months of 2010, 186 employees of the organs of internal affairs were brought to trial with charges of committing various offences and suspended from organs of internal affairs.	
(b)The Government should amend its domestic penal law to include the crime of torture the definition consistent with article 1 of the Convention against Torture and supported by an adequate penalty.	The prohibition of torture as contained in article 26 of the Constitution; Torture was not criminalized with commensurate penalties in criminal law.	- CAT/C/UZB/CO/3, para. 5 dated November 2008 holds that: "While the Committee acknowledges the efforts made to amend legislation to incorporate the definition of torture of the Convention into domestic law, it remains concerned that in particular the definition in the amended article 235 of the Criminal Code restricts the prohibited practice of torture to the actions of law enforcement officials and does not cover acts by "other persons acting in an official capacity", including those acts that result from instigation, consent or acquiescence of a public official and as such does not contain all the elements of article 1 of the Convention." **Government:** In December 2008, an order was issued by the Ministry of Internal Affairs on the "Adoption of the Plan for major activities for the implementation of the National Action Plan for the implementation of the concluding observations of the Committee against Torture." ***Non-governmental sources:*** Article 235 of the Criminal Code of the Republic of Uzbekistan is practically not applied; no official judicial proceedings have been conducted on the basis of article 235 of the Criminal Code, as the judges are not independent in the decision making;	

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		- Torture is normally applied with the consent or at the request of higher officers, officials or other public figures; those who use tortures are encouraged, awarded or promoted in rank; - There have not been cases of exclusion of testimonies extorted under torture. **Government:** Under article 235 of the Criminal Code, torture and other forms of other cruel, inhuman and degrading treatment and punishment are criminally punishable acts. If the crime is committed by a person not belonging to law enforcement bodies, but with the knowledge of or with implicit consent of the investigator, interrogator or a staff of the organs of law enforcement, the action is qualified as aiding and abetting the use of torture and other forms of ill-treatment. If unlawful actions were used to obtain confession, the perpetrators are held accountable for obtaining evidence by torture.	
(c)Amend the domestic penal law to include the right to habeas corpus.	No habeas corpus.	**Government:** - Article 19 of the Constitution holds that the rights and freedoms of citizens are inviolable and only a court has the right to restrict them; - The institute of habeas corpus is being introduced in progressive stages. The adoption of the Presidential Decree of 2005 “On the transfer of the right to sanction pre-trial detention to the courts” was followed by the adoption of new legislation on 11 July 2007 which amended, inter alia, articles 18 and 29 of the Criminal Procedure Code and article 10 of the Law on Judges. In addition, according to the amended article 243 of the Criminal Procedure Code, judges are now obliged to issue: 1) a decision about the pre-trial detention; 2) deny the pre-trial detention or 3) extend the period of custody for up to 48 hours for the parties to present additional evidence. The amended legislation strengthens the guarantees and	

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		protection of the constitutional rights and freedoms in criminal procedures. First, it only allows pre-trial detention for premeditated crimes for which the foreseen sentence is higher than 3 years or for crimes by negligence with a sentence higher than 5 years. Second, the amended legislation provides that the two parties (prosecutor and detained person as well as his/her defence counsel) must be present in the judicial deliberations on the decision regarding measures for pre-trial detention. Third, the maximum period of remand in custody is 72 hours, which can be extended for another 48 hours on the request of both parties. Fourth, the decision of the court to adopt measures for detention in remand can be appealed to a court within 72 hours of the adoption of the decision. The maximum period for detention pending investigation is 3 months, which can be extended by the court by 5 months upon request of the prosecutor of the department, by 7 months by the Deputy Prosecutor-General, by 9 months by the Prosecutor-General, by 1 year by the Prosecutor-General in case of serious difficulties in the investigation. In 2008, 453 individuals were released from custody. In the period of 6 months in 2009, 240 individuals were released from custody: 127 by the investigators, 77 by the court and 36 by prosecutors. In the same period in 2008, 216 individuals were released from custody. - The proposal to shorten the maximum period of custody from 72 hours to 48 hours is being considered. - Article 286 of the Administrative Code holds that relatives and the lawyer of any detained person have to be informed of the arrest. Article 294 provides for the right of a person under administrative detention to legal aid at any moment, starting from his/her arrest. Article 297 describes in detail the rights of lawyers to familiarize themselves with case materials, to file petitions and complaints. ***Non-governmental sources:*** The situation did not	

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		improve following the introduction of habeas corpus because the judges issue the sanctions to detain based on instructions of officials from the executive branch; in 99% of all cases the requests by prosecutors to sanction pre-trial detention are granted by courts; - The court does not have the right to verify the legality of detention; the reconsideration of the decision of the court can be done only through an appeal within 3 days, i.e. the detainee does not have the right to periodically apply to a court within reasonable time periods asking for the detention order to be revoked; the participation of the lawyer at this stage is not mandatory; the hearings are conducted in closed sessions; - The judge who considers the detention request of the prosecutor has the right to consider the criminal case concerning the same individual in all instances; - Article 286 of the Administrative Code is not applied, relatives and friends of the detained persons are usually not notified, in some cases the lawyers are not allowed to be present in the courts. ***Non-governmental sources:*** Despite the introduction of habeas corpus, police custody without court order exceeds 24 hours in cases involving juveniles. **Government:** Article 110 of the Criminal Procedural Code holds that the interrogation of the convicted person should take place immediately or within 24 hours after arrest, summon for questioning or pre-trial detention. Judges have to ensure the right of the person to provide evidence at any time during the judicial investigation. The defence counsel is allowed to take part at all stages of the judicial process, and in case of arrest, from the very beginning of factual deprivation of liberty. Both the suspect and accused are entitled to make a call, inform their defence or close relative about their whereabouts and detention in custody. Defence counsel is allowed to use new technological means during the examination of	

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		the case. If the defendant is under arrest, the defence is entitled to have a private appointment without any restriction as to the frequency and duration of the appointment and without asking for permission from public officials. With a view of ensuring the independence of defence, norms providing written permission for participation in the case or permission for appointment are excluded from the judicial process. For any form of influence on defence, an administrative liability is established. Article 243 of the Criminal Procedural Code provides the order of the use of pre-trial detention measures. Preventive measures in a form of pre-trial detention might be applied only in relation to the suspect in custody or any person involved as witness. The request on the application of measures for pre-trial detention is being considered in a closed judicial session attended by prosecutor, defence counsel, the suspect or accused, over the period of 12 hours from the moment of receipt of documents and no later than the last day of detention. The decision of the court to admit or decline the use of pre-trial detention measure enters into force from the moment of its adoption and is subject to immediate execution. Under article 241 of the Criminal Procedural Code, the decision can be appealed to a court. The Court of appeal can approve or revoke the court decision on the use of pre-trial measures of detention within 3 days. The appeal or protest itself does not prevent the implementation of the decision of the court. The Supreme Court, together with international and national experts is systematically organising various conferences, round tables and seminars on the issue of developing the institute of "habeas corpus". Since the introduction of habeas corpus in 2008, in more than 700	

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		cases, courts rejected the request of investigation bodies to apply pre-trial detention measures.	
(d)Take necessary measures to establish and ensure the independence of the judiciary in conformity with international standards and to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings.	Although granted by law, in practice the judiciary was not fully independent.	- CAT/C/UZB/CO/3, para. 19: "The Committee remains concerned that there is a lack of security of tenure of judges, that the designation of Supreme Court judges rests entirely with the Presidency, and that lower level appointments are made by the executive which re-appoints judges every five years." **Government:** The independence of judges is guaranteed by the Constitution and by the Law on "Courts"; the only basis for a judicial decision is the law and that no outside interference is permitted; the governing principles are objectivity, justice, transparency, openness and equality of the parties; - The "Concept note on the deepening of judicial reform" led to amendments to several laws to ensure the effective implementation of the transfer of sanctioning of pre-trial detention to courts; - The material basis of general courts has been improved; - Regulations on "Guaranteeing the right to legal defence of detained, suspected and accused persons"; - At present, the equality between the prokuratura and the lawyer exist in practice in judicial procedures. The President issued an order on 23 June 2008 on "The educational research centre on democratisation and the liberalisation of the court legislation and the respect for the independence of the judicial system". First, a separate information, analytical and consultative body was established within the system of the Supreme Court, which works on the development of the judicial-legal reform. The Centre is also in charge of monitoring the courts' practice and elaborates proposals for the improvement of the justice system. The Centre initiated a series of legislative proposals such as the strengthening of the powers of the lawyer in the criminal trial, the improvement of the execution of judicial	

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		decisions and the limitation of the powers of the prokuratura in the areas of the supervision ('nadzor') over the investigation of criminal cases. - In 2008, the prokuratura sent 14407 criminal cases in relation to 21865 individuals to the courts which included an accusation; it closed 1088 cases in relation to 199 individuals and sent 415 cases in relation to 495 individuals to the courts where the parties have reached an agreement. The Ministry of Internal Affairs, opened 30343 cases in relation to 38890 individuals; it closed 2149 cases in relation to 449 individuals and sent 9879 cases in relation to 10430 individuals to the courts where the parties have reached an agreement. Non-governmental sources: The courts in practice do not perform the task of impartial, full and objective consideration of complaints and petitions of defendants in respect of torture or other similar forms of treatment / punishment during the pre-trial period of the criminal proceeding in contravention of provisions of the Law "On courts". - One of the reasons for this situation is the involvement of the President in the appointment of judges of all levels (article 63 parts 1-4 of the Law "On courts") as well as appointment of judges for a comparatively short period of five years (article 63 part 5 of the Law). Though the law guarantees the independence of the judiciary (articles 67 – 74 of the Law), judges realize that their time in office would not be prolonged in case they "offend" the government. - In practice it is very difficult to find judges who act in accordance with the law in pronouncing their verdicts; cases are considered with an accusative bias and very often the verdicts of the courts repeat the accusations, sometimes including spelling mistakes and misprints contained therein. The judges demonstrate with all their appearance that nothing depends on them, they can not deliver an objective and legal judgment due to the fact that the "case is under control", and the judgment of	

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		acquittal will be either repealed due to the mildness of the sentence by way of supervision on the basis of the protest issued by the higher level prosecutor or court, or within one year after its coming into. - The material status of judges of general jurisdiction has partially improved; but the status of social protection to judges does not correspond to their position. **Government:** The functional independence of judiciary is guaranteed by the Constitution and the Law on "Courts". With a view of strengthening the independence of judiciary, a Commission on the selection and recommendation for the position of judges was established. The Commission is composed of judges, members of Oliy Majlis, academicians and jurists, members of the law enforcement bodies and NGOs. The upper house of the Parliament selects judges of the Supreme Court and Supreme Economic Court upon the presentation of the President. The regional, district and other judges are appointed by the President. - The outcome of the Review of the Universal Periodic Review on Uzbekistan adopted on 21 August 2009, provides measures to further strengthen the independence of judges through examining the practice of appointment of judges and conducting survey among judges on the issues of appointment of judges. - In accordance with the redrafted Law on "Courts", the judicial system was separated from the organs of executive branch. The Ministry of Justice is not involved in presenting candidates for the position of judges, dismissal or early termination of power. - A High Qualification Commission under the President was established to deal with the organizational issues of the judiciary, including the selection and recommendation of candidates for the position of judges. A department on the execution of judicial decisions was established to provide material-technical and financial	

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		support for the activities of judges. Specialization of judges of general jurisdiction was carried out; courts dealing with criminal and civil cases were established. - The Centre for the professional qualification of judges, operating under the Ministry of Justice, incorporated the issues on the application of article 235 of the Criminal Code in the training curriculum for induction and professional development of judges. Special manuals were developed for judges and employees of justice sector on the issues of examination of complaints related to torture. Lectures are organized for judges on the issues of international human rights treaties and international cooperation of the Republic of Uzbekistan in the area of human rights. - In December 2009, a human rights Resource centre was established. In early 2010, a number of practical seminars on the issues of international standards in the area of execution of justice were organized together with the Ministry of Justice, Supreme Court and Research Centre within the Supreme Court.	
(e)Ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body, outside the procuracy, capable of prosecuting perpetrators.	- No such mechanisms functioned; - The procuracy had disproportional power.	- CAT/C/UZB/CO/3, paras. 6c and 10 "The failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention" and "The Committee is disappointed that most of the small number of persons whose cases were pursued by the State party received mainly disciplinary penalties. The Committee is also concerned that sentences of those convicted under article 235 of the Criminal Code are not commensurate with the gravity of the offence of torture as required by the Convention." **Government:** The Ombudsman office is responsible for dealing with complaints on the basis of article 10 of the	

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		law "On the Human Rights Commissioner of the Oliy Majlis of the Republic of Uzbekistan"; - With regard to each allegation of torture or other illegal methods of interrogation, a thorough examination has to be conducted including a medical-legal examination. Depending on the results, appropriate steps have to be taken (art. 15 of the Criminal-Procedure Code); judges examine all allegations closely; - Ministry of Interior Decree No. 334 of 18 December 2003 created a complaints system; Special inspection units have been put in charge of investigating torture allegations; they are independent and they may involve civil society representatives; The "Unit on Respect for Human Rights and Links with International Organizations and the Public" under the Ministry of Interior, created in September 2005, is in charge of examining complaints about unlawful acts, including torture by ministry staff; It has regional representatives; - A human rights unit within the Ministry of Justice has been created; - On 15 December 2008, by order of the Ministry of Internal Affairs, a Central Commission on Human Rights was established. Similar commissions function in all its territorial organs. The commissions hold systematic sessions on the results of the services on the respect of legality and the protection of human rights, in compliance with the law "On the requests of citizens". In 2009, the Department of the protection of human rights and legal support of the Ministry of Internal Affairs elaborated a methodological guide on human rights, including one chapter on issues related to the Convention Against Torture. In 2008, the Office of the Ombudsman received: 8 complaints about illegal actions of staff of penitentiary facilities; 268 complaints on	

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		actions by members of the law enforcement forces and 270 complaints related to violations of the investigation procedure. In 2008, the Ministry of Internal Affairs conducted monitoring of 11 penitentiary facilities and SIZOs in which foreign visitors participated. ***Non-governmental sources:*** When the Office of the Ombudsman receives torture complaints, the latter are referred to the agencies accused of the torture for investigation; - Judges do not take appropriate steps when they receive allegations of torture and illegal methods of interrogation; - Order № 334 of the Ministry of Internal Affairs dated 18 December 2003 is not operational. The groups that investigate cases of torture do not allow for any involvement of civil society or representatives of the International Committee of the Red Cross; - Usually the report of the Government to the Human Rights Committee contains 3 or 4 cases which confirm massive absence of such cases – the reports are submitted with some periodicity once in 4 or 5 years i.e. the figures speak for themselves. - The human rights units established in the Ministry of Internal Affairs and the Ministry of Justice act formally, there is no established practice of regular cooperation or partnership with human rights groups or non-governmental non-commercial organizations in terms of revealing cases of tortures and bringing officials to account. - The "Regulation on the procedure of ensuring the protection of rights of detained, suspected and accused persons at the stage of pre-trial and trial investigation" provides that the detained persons have the right to support from the lawyer since the moment of their detention (i.e. at least 24 hours after their arrest) as well	

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		as to the right of having confidential meeting with their lawyers. However, the Regulations signed by the Chief Investigation Department of the Ministry of Internal Affairs jointly with the Bar Association of Uzbekistan were initially launched as a joint project. This pilot project covered only the capital of Uzbekistan i.e. Tashkent. Currently this project is no longer working. - According to the official statements, the Government of Uzbekistan has recently formed new divisions within several key ministries (Department on human rights with the Ministry of Justice, Commission on human rights with the Ministry of Internal Affairs, Division on human rights and international norms with the Office of the Prosecutor General of the Republic of Uzbekistan). - The newly established Department on Human Rights with the Ministry of Justice of Uzbekistan was created with the same purpose of receiving individual complaints on alleged cases of human rights violations, including alleged case of torture. - Nevertheless, all these measures above remain of a formal character for the following reasons: □These new structures operate on the basis of internal rules and regulations, which are usually not published and therefore rarely accessible to persons outside these institutions. For example it is very difficult to obtain information on measures and mechanisms of internal control in respect of behavior and discipline of the staff of the Ministry of Internal Affairs and National Security Service. The new ministerial regulations on human rights as well as ministries themselves both seriously lack transparency in their activities. Moreover, the staff of these subdivisions does not have specialized professional training for the receipt and handling complaints and petitions relating to the facts of torture and other violations of human rights. They are overloaded with other tasks, as many of them are still	

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		involved in other types of law-enforcement work. Non-governmental sources: The procuracy has the authority to supervise the activities of all actors of judicial process, including judges, while it remains under the sole supervision of the superior prosecutor. Other bodies are hardly capable to uphold cases of torture independently and promptly. **Government:** According to article 4 of the Law on "Procuracy", the organs of procuracy carry out state prosecution in the examination of criminal cases, participate in the consideration of civil cases and cases of administrative offences and examination of judicial acts inconsistent with the law. The procuracy does not have authority to supervise the activities of courts. - The Law of 10 April 2009 on "Amending and supplementing several legislative acts with a view of improving the activities of the Human Rights Commissioner of the Oliy Majlis (Ombudsman)", strengthens the authority of the Ombudsman in the criminal-procedural and criminal-executive legislation. According to article 14 of the above law, during the examination of complaints and monitoring of human rights violations, the Ombudsman is allowed to meet and talk to person in custody. Relevant amendments to article 216 of the Criminal Procedural Code and article 18, 40 and 79 of the Criminal Administrative Code were made to this effect. Additional amendments to the Criminal Administrative Code allow the Ombudsman to visit without any obstacles places of detention either by his/her own initiative or upon receiving a complaint. The Ombudsman and his regional representatives carry out regular monitoring in places of detention. From November 2009 to November 2010, the Ombudsman and his representative visited 2 medical treatment facilities in the system of execution of punishment, Zangiatinskaya correctional colony and 3 investigation isolators. In 2009, the percentage of complaints received	

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		by the Ombudsman related to the right to freedom and personal security was 21.5% of the total number of complaints, compared to 19.3% in 2008 which constitutes 2.2% increase in the number of complaints on the issues of human rights and personal security. In 2009, out of 1588 complaints received by the Ombudsman, 886 complaints have been taken under monitoring and 115 were resolved. In 2009, the estimated percentage of positively resolved appeals was 13% of all appeals transmitted by the Ombudsman. Complaints received from persons under detention, as well as from their relatives were related to the issues of their transfer to another detention facility, granting amnesty, allowing access to medical treatment. In the 2010 financial year, out of 48 complaints received from persons currently detained, 31 complaints were taken under scrutiny, and 4 complaints were considered on merits.	
(f)Any public official indicted for abuse or torture should be immediately suspended from duty pending trial.	No suspensions.	**Government:** articles 256, 257, and 266 of the Criminal Procedure Code provide for dismissal of public officials accused of torture. - Disciplinary punishments are common; some criminal cases opened; - In 2008, as a result of an examination by organs of the 'prokuratura' of complaints of alleged cases of torture by members of the law-enforcement bodies, 9 criminal cases were initiated. After the indictments, the respective members of the law-enforcement bodies were suspended from their functions in compliance with existing legislation. Non-governmental sources: - Impunity is wide-spread; reprisals against complainants and intimidation is wide-spread; - Articles 256, 257 and 266 of the Criminal and Procedural Code are not applied; judges and prosecutors do not suspend officials accused of torture; - Disciplinary measures and transfers to other positions	

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		are used; - Practically there were no cases when an official accused of using torture, was suspended from the case and performing his responsibilities. The so called principle of protecting the "esprit de corps" is in operation. - There are many cases in practice, when an officer who used torture remains in the same unit of the law enforcement agency and continues pressing the victim of torture and his/her relatives (for example, through regular home visits, visits to the hospital as well as making regular telephone calls) for the purpose of withdrawal of their complaint on torture. Independent observers and human rights activists have a lot of information confirming frequent cases when an officer of law enforcement agencies, especially the prison guards in the colonies of the penitentiary institutions in Uzbekistan, are covertly encouraged to use torture against the arrested and convicted persons, but they are asked to do that "carefully" in order to avoid traces of torture so that the victim would never let anybody know about the facts of torture. The victims of tortures and their relatives very often say that the officers of law-enforcement agencies that used torture receive promotion and continue their service in the same system. - Upon receipt of a complaint or petition on torture, the management of law-enforcement agency traditionally does its best not to accept or register such complaint, stating that the facts in the complaint are not true, as this is the intention of an arrested / suspected / accused person to avoid punishment. This irresponsible approach towards the complaints on cases of torture is very frequently observed among judges. At best, when the traces of torture are visible and they are properly documented by the defense, disciplinary proceedings are launched against the officer who used torture, or the criminal case is launched on the basis of articles 205 and 206 ("Abuse of authority" and 'Misuse of authority") of	

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		the Criminal Code. The demands of the victims of torture or the defense on the initiation of a criminal prosecution on the basis of article 235 (torture) of the Criminal Code in 99.9% of cases remain not satisfied. **Government:** In 2009, the organs of procuracy registered 3089 (2222 in 2008) complaints about unlawful activities of members of law enforcement bodies. 146 (104 in 2008) complaints out of 3089 were related to the use of torture and other forms of ill-treatment. During the examination of complaints with respect to 10 employees of the Ministry of Internal Affairs, 7 criminal cases (9 cases in 2008) were initiated under article 235 of the Criminal Code. During the inspection carried out by the organs of procuracy in 2009 and in the period of 9 months in 2010, 13 criminal cases were initiated in relation to 20 employees of law enforcement bodies who were subsequently suspended from their duties.	
(g) Ministry of Internal Affairs and National Security Service to establish procedures for internal monitoring of the behaviour and discipline of their agents; the activities of such procedures should not be dependent on the existence of a formal complaint.	The law required inspections by the prosecutor's office; however, these were not effective in practice.	**Government:** A "Programme of Tasks" was approved by the Ministry of the Interior in 2007 in order to eliminate any mistakes in the area of human resources; - In every penitentiary facility, there is a post-box for communications and complaints addressed to the 'prokuratora'. The correspondence that is facilitated through this post-box is not submitted to censure. Penitentiary institutions are monitored by members and senators of the Parliament, of the Ombudsman and the National Human Rights Centre. In April 2009, legislation was adopted which introduced changes to the Criminal Procedural and Criminal Execution Codes, which prohibit censuring the correspondence of detainees with the Ombudsman and establish conditions for individuals deprived of liberty to hold unlimited meetings and discussions with the Ombudsman. The Ministry of Internal Affairs concluded agreements for cooperation: In 2004 with the Ombudsman; in 2008 with the National Centre for Human Rights the Office of the	

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		General Prosecutor, and the Ministry of Justice in order to take joint measures for the protection of the rights of individuals deprived of liberty. In September 2008, a Human Rights Unit was established within the system of the Ministry of Internal Affairs and their territorial departments which are called upon to examine allegations of human rights violations by staff of the organs of internal affairs, including complaints about torture. ***Non-governmental sources:*** The unit "On protection of human rights" created with the Ministry of Internal Affairs in 2007 is ineffective; - Responding to this recommendation the Government claims that "In 2007 the Ministry of Internal Affairs approved the "Program of actions" for the purpose of eliminating all violations in the area of human resources". This program remains on paper as there is no coordination of the efforts of involved agencies as well as responsibility for non-implementation of activities envisaged by the program. The agencies have their own units of control over the performance of their officers, but one can not speak of the efficiency of their activity, as the professional achievements and effectiveness of a law-enforcement agency are assessed not on the basis of the number of complaints / petitions on tortures that were considered by this agency and acted upon, but on the basis of the number of criminal cases properly handled by this agency and the number of accused persons subsequently sentenced. Such an attitude is subsequently replicated in the behaviour and professional activity of officials and staff of the law enforcement agencies. **Government:** Once in every 10 days, the members of the prosecutor's office review the lawfulness of holding detainees in temporary isolators. Public prosecutors carry out monthly inspection in investigative isolators to	

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		review the complaints of detainees. - The Ombudsman is authorised to investigate cases of grave human rights violations, including cases of torture in relation to the activities of procuracy and Ministry of Internal Affairs. In 2010, the employees of the human rights department at the Ministry of Internal Affairs considered 2442 complaints, out of which 5 complaints were related to human rights violations of detainees, 14 were on the issues of torture and ill-treatment, 12 were related to the failure of authorities to act, 17 were on illegal arrest or detention, 17 were on holding liable innocent persons, 29 were on human rights violations of citizens, 48 were related to abuse of power, 43 were on neglect of official duty, 52 were about exceeding power and official powers, 155 were related to violating the law on the treatment of citizens, 2050 were about other illegal activities committed by the employees of organs of internal affair. Out of 2442, 1882 or 77% were not justified, and criminal cases were initiated in relation to 358 (14.6%) complaints related to 49 employees. Administrative disciplinary measures were applied to other employees. During 2010-2011, the Ombudsman and the Ministry of Internal Affairs in collaboration with international organisations will be holding seminars and conferences on issues of the protection of human rights through increasing human rights culture in the activities of law enforcement bodies.	
(h) Independent non-governmental investigators should be authorized to have full and prompt access to all places of detention; they should be allowed to have confidential interviews with all persons deprived of their	No such mechanisms were in place.	CAT/C/UZB/CO/3, para. 13: "While noting the State party's affirmation that all places of detention are monitored by independent national and international organizations without any restrictions and that they would welcome further inspections including by the International Committee of the Red Cross (ICRC), the Committee remains concerned at information received, indicating that acceptable terms of access to detainees	

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liberty.		were absent, causing, inter alia, the ICRC to cease prison visits in 2004." **Government:** recalls Instruction "On the Organization of Visits of Places of Detention by Representatives of the Diplomatic Corps, International and Local nongovernmental Organizations and Media Representatives" of 30 November 2004; - Ministry of Interior's Order n. 346 contains the right of persons seeking to visit a prison to appeal a denial to the courts and limits the delays within which decisions about visits have to be taken. - Ministry of Interior order n. 268 of 8 October 2004 "On the Approval of Instructions with regard to a model agreement on cooperation between institutions and organs of the penitentiary system with NGOs". - Amendments to the Administrative Code of December 2005 strengthen the transparency of NGOs and seek to reinforce their responsibility for the implementation of their own statutes to ensure that the State can take legal action against persons or organisations that violate national legislation; - On 13 December 2004, the ICRC decided to stop their visits; although the Uzbek side has asked them to take up the visits again, the ICRC so far has denied to do so; - In 2008, the ICRC has conducted 19 visits to colonies and SIZOs, 10 of which were repeated visits. Since the beginning of 2009, the ICRC visited 3 institutions of the penitentiary system. - The Department of the Ministry of Internal Affairs responsible for the execution of sentences facilitates the visit of diplomats, members of international and domestic NGOs and the media to institutions of the penitentiary system. ***Non-governmental sources:*** no such mechanism is in place; - Since 30 November 2004, representatives of	

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		international and local NGOs and media have not been allowed to visit the places of detention; - Order № 346 of the Ministry of Internal Affairs is ineffective, the applications for visits by family members are often left without response; - There is also lack of access by the independent doctors to inmates in order to reveal traces of torture; - The system of execution of punishment is under the control of the Ministry of Internal Affairs if Uzbekistan. The Government claims that "the Ministry of internal affairs has issued the order No 268 dated October 8, 2004 'On the Approval of Instructions with regard to a model agreement on cooperation between institutions and organs of the penitentiary system with NGOs'. According to the Government, based on this model agreement on cooperation between the NGOs and penitentiary institutions, the NGOs and other independent observers have the opportunity to visit the colonies of the system of execution of punishment. - This statement is far from the reality. This model agreement was never published, the NGOs and independent ob-servers willing to visit penitentiary institutions of Uzbekistan are not aware of this agreement and were never informed. Currently the penitentiary system of Uzbekistan remains completely closed and not accessible to the independent observers from the international organizations, NGOs and human rights groups. ***Non-governmental sources***: The Instruction "On the Organization of Visits to Places of Detention by Representatives of the Diplomatic Corps, International and Local Non-Governmental Organizations and Media Representatives" of 30 November 2009 does not provide timeline for revision of requests by GUIN, which may perpetuate the processing time. In September 2010, a United Nations agency was denied access to the facility, despite the fact that it had sent the request two weeks	

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		prior to the visit, when the usual processing time for other requests by state agencies is only five working days. **Government:** The Department of the Ministry of Internal Affairs, together with interested ministries, entities and civil society representatives carries out activities for the establishment of independent monitoring system. In 2010, 84 visits were conducted in colonies and investigation isolators, out of which 74 visits were carried out by the representatives of state bodies, NGOs and mass media, compared to 56 visits carried out by national and international organisations in 2009. The ICRC delegates visited 51 colonies in 2010, 21 in 2009, 19 in 2008 and 1 in 2007 located in the territory of the Tashkent city, Tashkentskiy, Andijanskiy, Bukharskiy and Samarkandskiy districts. The Ministry of Internal Affairs order No 346 of 30 November 2004 "On the Organization of Visits to Places of Detention by Representatives of the Diplomatic Corps, International and Local nongovernmental Organizations and Media Representatives" does not regulate the order of request and organization of visits to places of detention by the relatives or family members. The request of visit by the representatives of Diplomatic Corps, International and Local nongovernmental Organizations and Media Representatives is subject to authorization by the Ministry of Foreign Affairs, and by the Ministry of Justice for organizations registered in the Ministry of Justice. The request is being subsequently addressed to and considered by the Department of the Ministry of Internal Affairs which then informs the Ministry of Foreign Affairs and Ministry of Justice.	
(i) Magistrates and judges, as well as procurators, should always ask persons brought from MVD or SNB custody	This question was not asked.	**Government:** the presumption of innocence is the cornerstone of the criminal justice system; - Article 17 of the Criminal-Procedure Code requires judges, prosecutors, investigators and interrogators to	

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how they have been treated and be particularly attentive to their condition, and, where indicated, even in the absence of a formal complaint from the defendant, order a medical examination.		respect the dignity of participants in criminal proceedings; - Point 19 of Resolution No. 17 of the Supreme Court of 19 December 2003 implements this recommendations, i.e. any investigator, prosecutor or judge has to ask each person coming from a place of detention how he/she was treated during investigation and interrogation; - In accordance with Prosecutor General's order no. 41 of 31 May 2004, the prosecutor, when sanctioning arrest, must question the suspected or accused person and ask about whether or not any forms of torture or ill-treatment were used by the investigator or anybody else to extract a confession. - The Supreme Court issued a resolution on 14 June 2008 on "The courts' practice of the examination of criminal cases by judges related to torture and other cruel, inhuman or degrading treatment or punishment", which obliges judges to issue a separate decision in relation to the member of the law enforcement bodies who allegedly committed the violation. Non-governmental sources: Judges do not observe the presumption of innocence in pronouncing verdicts; - Judges, prosecutors and investigators do not apply article 17 of the Criminal and Criminal Procedure Codes; - Investigators, prosecutors and judges do not ask persons arriving from the places of detention how they were treated during the investigation and interrogation since the Resolution of the Plenary of the Supreme Court is not the law, but only a recommendation. Article 439 of the Criminal and Procedural Code ("Commencement of the judicial enquiry") says that the "chairperson announces the commencement of the judicial enquiry. The enquiry starts with the pronouncement of the act of accusation. The chairperson asks the accused	

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		whether they admit their guilt." Article 442 "Schedule of interrogation in court" says the following: "The interrogation of the accused person starts with the proposal of the chairperson to give evidence on the aspects of the case which were known to this person. After that the accused person is being interrogated by the public prosecutor, civic prosecutor, as well as the complainant, the civil claimant, and their representatives, the defence attorney, the civic defence attorney, the civil defendant and his representative". In general, investigation and proceedings in court are conducted with an accusatory bias. **Government:** In accordance with Article 23 of the Criminal Procedural Code, the person is innocent until proved guilty by the court. The person is not obliged to prove his or her innocence. All suspicions in the course of judicial investigation, if not approved, will be delivered in favour of the suspect.	
(j) All measures should be taken to ensure in practice absolute respect for the principle of inadmissibility of evidence obtained by torture in accordance with international standards and the May 1997 Supreme Court resolution.	- Many convictions were based on evidence obtained under torture; - Allegations of torture were ignored by the courts.	CAT/C/UZB/CO/3, para. 20: "While appreciating the frank acknowledgement by the representatives of the State party that confessions under torture have been used as a form of evidence in some proceedings, and notwithstanding the Supreme Court's actions to prohibit the admissibility of such evidence, the Committee remains concerned that the principle of non-admissibility of such evidence is not being respected in every instance." **Government:** in conformity with article 243 of the Criminal Procedure Code, an instruction for the staff of the Prosecutor's Office was elaborated, which provides that prosecutors personally ask suspected and accused persons about the treatment that they received in custody. - Article 3 of Supreme Court resolution "On the Application of Some of the Norms of the Criminal	

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		Procedure Legislation on Admission of Proof" of 24 September 2004 prohibits the use of evidence obtained by any illegal means of investigation; - Between 2004 and 2007 about 50 criminal cases were returned for additional investigation because the evidence was excluded as having been obtained under torture, violence or deceit; ***Non-governmental sources:*** - Allegations of torture by the accused and their lawyers are routinely ignored by judges; Prosecutors interrogate the suspected and accused in the absence of lawyers; - While the Criminal and Procedural Code of Uzbekistan is the main document which regulates criminal proceedings, it does not contain any direct prohibition on the use of evidence exerted under torture as a proof. Article 3 of the Resolution of the Plenary of the Supreme Court "On the application of certain norms of criminal and procedural legislation in respect of the admission of proof" dated 24 September 2004, prohibits the use of proofs obtained illegally. The Resolution of the Plenary of the Supreme Court No 17 of 2003 also says that the evidence received by means of torture, force, threat, deceit or any other cruel and degrading human dignity treatment, other illegal means as well as in violation of the rights of the suspect, can not be presented as the basis for the accusation. Moreover, in accordance with this Regulation, the investigator, prosecutor and judge should ask the person delivered from the pre-trial prison or the detention centre how he/she was treated there. Each complaint of a person brought from the pre-trial prison or the detention centre on torture or any other illegal method of investigation, should be fully checked and verified including through the medical and legal examination. Based on the results of this study, appropriate decisions should be taken,	

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		including the decision to institute the criminal prosecution on the case of torture. But the above mentioned requirements are not implemented in practice.	
(k) Confessions made by persons in MVD or SNB custody without the presence of a lawyer/legal counsel and that are not confirmed before a judge should not be admissible as evidence; consider video and audio taping of proceedings in MVD and SNB interrogation rooms.	- Many convictions were based on evidence obtained under torture; - Allegations of torture were ignored by the courts.	**Government:** - In accordance with the Prosecutor General's order no. 41 of 31 May 2004, if it is suspected that torture has been committed or traces potentially stemming from torture are detected during the investigation or during trial, a forensic examination and a preliminary investigation have to be conducted; if the suspicion is confirmed, a criminal case must be opened; - Point 19 of Resolution No. 17 of the Supreme Court of 19 December 2003 establishes that evidence obtained under torture etc., violating the rights of a person to legal aid, cannot form the basis of an accusation; - Point 3 of Resolution No. 12 of 24 September 2004 of the plenary of the Supreme Court "On Some Questions Related to the Norms of the Criminal Procedure Legislation about the Permissibility of Proofs" provides, that evidence obtained under torture etc. are not permissible; - The Presidium of the Supreme Court issued a resolution on 14 June 2008 "On the courts' practice of the examination of criminal cases by judges related to torture and other cruel, inhuman or degrading treatment or punishment" which obliges judges to issue a separate decision in relation to the member of the law enforcement bodies who allegedly committed the violation. On the basis of an analysis made by the Supreme Court, the necessity to establish concrete obligations of the staff of the Ministry of Internal Affairs in relation to the protection of detained persons was	

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		confirmed. The examined judicial practice of the criminal cases revealed that in 2008, only in two cases violations of the right to defence were established. In those cases, the judicial decision was declared void and sent for additional investigation or a new procedure. ***Non-governmental sources:*** Judges continue to ignore torture complaints in practice. Available information shows that in 99% of cases the judges tend to think that complaints/ petitions relating to torture and ill-treatment by accused persons are attempts to escape justice. The Criminal and Criminal Procedure Codes do not contain a norm prohibiting the use of evidence obtained in a detention facility of the National Security Service or the Ministry of Internal Affairs in the absence of a lawyer or not confirmed in the presence of a judge. The response of the Government to the recommendation (k) of the UN Special Rapporteur refers to an order of the Prosecutor General as well as the Resolution of the Plenary of the Supreme Court of Uzbekistan, which are not laws and have only the character of recommendations. **Government:** According to the National Plan of Action on the implementation of the recommendations of the UN Committee on Human Rights, the question of improving the practices of investigative activities (e.g., interrogations) through video and audio taping will be considered during the second half of 2011.	
(l) Amend legislation to allow for the unmonitored presence of legal counsel and relatives of persons deprived of their liberty within 24 hours and ensure that law enforcement agencies inform criminal suspects of their right to defence counsel.	- Legal counsel often barred from taking part in proceedings, most often at least for 10 days; - Access to legal counsel depended on approval of the investigator.	**Government:** Regulations "On the Invitation of Lawyers and their Participation in Preliminary Investigation", which provide that every suspect or accused has the right to be represented by a defence lawyer from the moment of deprivation of liberty, but in any case no later than 24 hours after apprehension; the lawyer can meet his/her client in private; - Regulations "On Guaranteeing the Right to Legal Defence of Detained, Suspected and Accused Persons" of March 2003 provide for	

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		the participation of defence lawyers in criminal cases, describe mechanisms for providing free legal aid, establish a procedure for renouncing defence counsel, as well as a procedure for filing complaints about violations of the right to legal defence. - By amended legislation of 31 December 2008, the rights of detained, suspected or convicted persons were strengthened. The amended provisions of the Criminal Procedural Code now provide, inter alia, for the right of the suspected person to know with what he/she is charged; the right to make phone calls or otherwise inform a lawyer or a relative of the arrest and the place of detention; to have a defense lawyer and to meet with him/her in person confidentially with no limitation in numbers and the right to request for the first interrogation not later then 24 hours after the arrest. The amended provisions also guarantee that the defence lawyer have access to the case at all stages of the criminal trial and in case of a detained person from the moment of the factual arrest. A number of other rights of the defense counsel are provided by the amended legislation. - Access to relatives or other persons, with the exception of the defence counsel, is only granted with written permission of the respective investigator. ***Non-governmental sources:*** Arrest protocols are often issued in violation of the prescribed time limits, as the Criminal and Criminal Procedure Codes provide that they should be composed immediately after the delivery of the person to the law-enforcement agency; following the issuing of the protocol, access to a lawyer is granted. It is difficult to prove this, since the court, when sanctioning the arrest, does not have the power to check the legality of detention and release the person in case it determines that the detentions was illegal; - Nobody has the opportunity to check whether the	

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		rights of the detained were explained to the person at the moment of his/her detention since there is only a record on this in the transcript of interrogation. **Government:** Following the amendment in article 66 of the Criminal Procedural Code providing for the participation of the legal counsel of the witness from the moment of calling the witness, a joint decree ensuring the requirements of the above law was signed by the General Prosecutor's Office, Ministry of Internal Affairs, National Security Service, States Customs Committee and Ministry of Justice. Chapter 60 of the Criminal Procedural Code provides separate procedural order for cases involving minors with additional safeguards. Article 51 of the Criminal Procedural Code provides for mandatory participation of the lawyer in cases involving minors.	
(m) Improve legal aid service, in compliance with the United Nations Basic Principles on the Role of Lawyers.		**Government:** On 8 June 2005, the Minister of Justice issued decree No. 92 "On Perfecting the Bar's Functioning" to improve the training of defence lawyers by introducing amendments to the law "On the Bar"; - In 2006/2007, 78 defence lawyers were trained in the Ministry of Justice's training centre; seminars on criminal justice are regularly being held for prosecutors at Tashkent State Juridical Institute; also the Institute of the National Security Service contributes to the up-grading of the qualifications of future defence lawyers; - Numerous seminars for staff members of law-enforcement organs were held; - Amendments in the Law on Lawyers made in December 2008 strengthen the right of the individual to professional legal assistance. The amendments include: (1) the creation of a Chamber of Defence lawyers with mandatory membership which replaces the	A Chamber of Defence lawyers was established with territorial branches in the Republic of Karakalpakstan, districts and in the city of Tashkent. An effective system of accreditation is in place. Candidates have to pass an exam for qualification before the qualifying commission within territorial administration of the Chamber of Defence.

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		Lawyers' Associations; (2) the establishment of new requirements such as preparative professional trainings; (3) the obligation of lawyers to participate in continuing legal education; (4) the establishment of unified ethical rules; (5) the oversight of the Chamber of the professional conduct of lawyers; (6) the strengthening of the disciplinary responsibility of lawyers. ***Non-governmental sources:*** The reform of the bar effectively deprived the lawyers of their independence; the Chamber of defense lawyers with mandatory membership which was established instead of the Bar Association was turned into a quasi-ministry or sort of a department with the Ministry of Justice. The Chamber and the Ministry have the right of oversight over the performance of lawyers and compliance with the requirements and conditions of the license. They also have the right to make a submission for the purpose of cancelling a lawyer's license. **Government:** The Constitution of the Republic of Uzbekistan guarantees everyone's right to professional legal aid at any stage of investigation and judicial proceedings. The activities of the institute of defence lawyers are regulated through the Law "On the Bar" and the Law "On guarantees of functioning and social protection of defence lawyers". On 1 May 2008, a Presidential decree was adopted on "Measures for further improvement of the institute of the legal profession in the Republic of Uzbekistan". The defence is entitled to collect and present evidences independently which could be later used as evidence through inquiry and obtaining the written consent of the person. The request for motion on submission of evidence is subject to mandatory consideration by the investigator. As a result of several reforms, a centralised system of self-	

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		administration of the Bar was established. A Chamber of Defence lawyers was established with territorial branches in the Republic of Karakalpakstan, districts and in the city of Tashkent. An effective system of accreditation is in place. Candidates have to pass an exam for qualification before the qualifying commission within territorial administration of the Chamber of Defence.	
(n) Medical doctors attached to an independent forensic institute, possibly under the jurisdiction of the Ministry of Health, and specifically trained in identifying sequelae of physical torture or prohibited ill-treatment should have access to detainees upon arrest and upon transfer to each new detention facility. Furthermore, medical reports drawn up by private doctors should be admissible as evidence in court.	No independent medical service in place.	**Government:** Under the "Plan of Action to Implement the UN Convention against Torture" approved by the Prime Minister trainings for doctors of forensic pathology institutes and institutions of execution of sentences; - The Ministry of Internal Affairs together with the International Rehabilitation Council for Victims of Torture conducted an educational project for medical staff of penitentiary facilities who work on the identification, examination and documentation of torture cases. To date, 132 individuals working in penitentiary institutions (104 doctors and 28 other medical staff) were trained in this connection. In 2009, 64 court medical experts participated in a training at the Tashkent University during which they familiarised themselves with the Istanbul Protocol of 1999. ***Non-governmental sources:*** pathology institutes, pre-trial detention centres and prisons remain under the Ministry of Internal Affairs; detainees there lack access to independent doctors as well as to relatives. **Government:** On 20 May 2010, 35 medical employees of the system of execution of punishment in the city of Tashkent were trained on the issues of identifying physical torture and other forms of ill-treatment. According to the 2010-2011 schedules of trainings for the development of doctors, the training of medical personnel of penitentiary system is ongoing. Pursuant to the guidance of 24 October 2002 "On the medical	

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		service of persons in investigative isolators and facilities of the Chief Directorate for Execution of Punishment (GUIN) and Ministry of Internal Affairs (MVD)", every detainee is undergoing a mandatory medical examination and is entitled to have free and unlimited access to medical services. Pursuant to the Agreement on cooperation of the Ombudsman with the Ministry of Internal Affairs, a decision was taken to introduce the position of Ombudsman on the rights of detainees in detention facilities for minors and women. In 2009, 150 doctors and medical personnel of the penitentiary system of the MVD were trained on the issues of identification and documentation of torture. Trainings were organised in cooperation with the International Rehabilitation Council for Victims of Torture and WHO.	
(o) Priority should be given to enhancing and strengthening the training of law enforcement agents regarding the treatment of persons deprived of liberty. The Government should continue to request relevant international organizations to provide it with assistance in that matter.		**Government:** Regulations "On Ensuring the Protection of the Rights of Detainees, Suspects and Accused during Preliminary Investigation and Interrogation" of 1 October 2006. - The National Human Rights Centre conducted trainings for law-enforcement agents; - The National Security Service holds weekly training session; - The 2006 Decree on "Moral-ethical courts" strengthened the control of the behaviour and discipline of Ministry of Interior officials in accordance with international norms; - Between 2004 and 2007 Ministry of Interior staff were subjected to a re- attestation; - In January 2009, a department on the "Theory and Practice of Human Rights Protection" was established within the Academy of the Ministry of Internal Affairs, where courses are held on international human rights standards at different levels. Together with the OSCE, a series of activities on human rights were organised for members of the Ministry of Internal Affairs during 2008-2009. In this framework a series of trainings were	

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		held in February 2009 for 75 participants on international human rights treaties, including the Convention Against Torture and the understanding of the issue of torture. This example was replicated in several cities and towns of the country in March-April 2009. During 2009, 255 conferences were organised by the Ministry of Internal Affairs for its staff of which 60 focused on the Convention Against Torture. Staff of the Ministry attended 285 conferences organised by other Ministries and state institutions. - In the Centre for Improvement of the Qualifications for Jurists under the Ministry of Justice and in the higher scientific courses of the Office of the General-Prosecutor particular attention is paid to increase the knowledge of judges, court staff, members of the prosecutor's office and the Ministry of Justice as well as lawyers. Course and modules include the protection of human rights through the procedure of the supervision ("nadzor"), with international and national experts. - In 2008, 21 individual complaints were received by the Prosecutor's Office from convicted or detained persons in relation to unlawful actions by members of the law enforcement bodies. In 19 cases, illegal behaviour was confirmed and measures were taken according to the Criminal Procedural Code. ***Non-governmental sources:*** At the request of the Ministry of Internal Affairs, a three-day training event was organized by UNODC, the International Rehabilitation Council for Torture Victims (IRCT) and the Office of the High Commissioner for Human Rights (OHCHR) between 16 and 18 December 2008, on the "Prevention, Detection, Assessment and Documentation of Torture and Ill-treatment in line with International Standards and National Legislation" in Tashkent; 35 persons including prison doctors of the Ministry of Internal Affairs, fifteen forensic experts of the Ministry of Health and fifteen prison staff, representing regime	

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		and security departments of the prison administration of the Ministry of Internal Affairs participated. UNODC had requested judges and prosecutors to also participate in the training, but this request did not receive a positive response from the Uzbek authorities. - The training was guided by the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The medical specialists received training on the medical aspects of torture prevention, detection, assessment and documentation, based on the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol). Prison staff received training on selected prison management topics, related to the prevention of ill-treatment and torture. The main training tool used for this element of the training was "A Human Rights Approach to Prison Management, Handbook for Prison Staff", published by the International Centre for Prison Studies. - Following this training a request was received from the Main Department of Execution of Penalties (GUIN) to conduct a follow up training activity to cover all regions of Uzbekistan. UNODC submitted a project proposal for discussion, which includes a nation-wide training on the prevention, detection, documentation and assessment of torture, for prison staff, prison medical staff, Ministry of Health forensic experts, as well as judges and prosecutors. - In general, educational activities are rather of a one-time character, very often they are formal and do not really influence the mentality of the staff of law-enforcement agencies; - An analysis of educational activities and courses which are regularly organized for law-enforcement officers shows that these activities and courses focus on propaganda activities.	

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			Government: During the 10 months of 2010, 216 members (150 members in 2009) of the organs of internal affairs were trained on the issues of human rights. From 11-12 May 2010, 50 members of the penitentiary system of Tashkent city were trained on the issues of human rights in the penitentiary system, organized by the Academy of the MVD in cooperation with the OSCE in the Republic of Uzbekistan. From 14-15 May 2010, 5 employees of the MVD were trained on the topic of prevention and warning of the trafficking of human beings and international cooperation in the area of providing assistance to the victims of trafficking. In May and August 2010, 51 employees of the penitentiary system were trained on the issues of education in the penitentiary system. During 2010, 75 employees from the department of human rights and legal support, criminal investigation, prevention of crime, penitentiary system, protection of public order of the MVD of the Republic of Karakalpakstan, UVD of Samarkandksiy, Novoyskiy, Djizayskiy, Tashkentskiy, Khorezmskiy districts were trained on the issues of the realization of the provisions of the UN Convention against Torture in the activities of law enforcement bodies. The Centre for advanced training of defence lawyers by the Ministry of Justice continues conducting systematic trainings and advanced courses for judges, employees of courts and candidates for judges. The organs of execution of punishment collaborate with non governmental entities in the area of legal awareness raising among detainees and employees of penitentiary system and in the area of provision of legal, psychological and medical assistance. Non governmental organisations provide assistance for detainees' employment, organisation of their leisure and education, participation in spiritual-religious, legal, physical and cultural activities.	
(p) Consider amending existing legislation to place	-	Correctional facilities were	**Government:** Concept paper on the further development and improvement of the penitentiary	

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correctional facilities (prisons and colonies) and remand centres (SIZOs) under the authority of the Ministry of Justice.	under the Ministry of Interior; - Transfer to the Ministry of Justice was being discussed.	system 2005-2010 reflects transfer figures prominently. - The National Action Plan on the implementation of the concluding observations and recommendations of the Committee Against Torture foresees the study of international practices on the transfer of the penitentiary system from the Ministry of Internal Affairs to the Ministry of Justice. Practices of European countries are currently being studied. In this connection, a number of penitentiary facilities in Germany were visited by members of the National Human Rights Centre and the Office of the Ministry of Internal Affairs. Non-governmental sources:This issue has not yet been settled. No decisions were made on the transfer of the system of penitentiary institutions and places of detention under the Ministry of Justice. ***Non-governmental sources:*** The transfer of the correctional facilities and remand centres under the authority of the Ministry of Justice has not yet taken place.	
(q) Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate reparation should be promptly given to that person; for this purpose a system of compensation and rehabilitation should be put in place.		**Government:** Reforming the judicial system is being implemented in phases. CAT/C/UZB/CO/3, para. 18: "Noting the State party's information about victims' rights to material and moral rehabilitation envisaged in the Criminal Procedure Code and the Civil Code, the Committee is concerned at the lack of examples of cases in which the individual received such compensation, including medical or psychosocial rehabilitation." **Government:** the "Concept note on the further development and perfecting of the penitentiary system for 2005 – 2010" provides for improved training, the transfer of the system to the Ministry of Justice, improvement of detention conditions and rehabilitation; - Articles 985 to 991 of the Civil Code and Resolution of the Supreme Court's Plenary of 28 April 2000 "On	

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		Questions of Applying the Law on Compensation for Moral Damage." provide for compensation; - With the objective to establish a system of adequate compensation for victims of torture, the Supreme Court and the Office of the Prosecutor-General are studying the courts' practices on compensation for victims of torture and other cruel, inhuman or degrading treatment or punishment, which is within the framework of the National Action Plan on the recommendations of the Human Rights Council on the results of the Universal Period Review of Uzbekistan. ***Non-governmental sources:*** The existing criminal law provides for compensation in case of rehabilitation of the accused person. The civil legislation prescribes compensation of moral damage, but this requires that the person be recognized as a victim of a crime and that the perpetrator be found guilty by a court verdict; there are therefore no cases of compensation in practice.	
(r) Provide the Ombudsman office with the necessary financial and human resources; grant the authority to inspect at will, as necessary and without notice, any place of deprivation of liberty, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question.	Ombudsman office under-resourced.	**Government:** - "Law on the Ombudsman" was strengthened in 2004 and anchored it in the Constitution has been fulfilled; - Ombudsman specialised in penitentiary institutions was established; - A system of parliamentary control of the implementation of CAT is in place; ***Non-governmental sources:*** - The Ombudsman, which is part of the Parliamentary system, formally has the right to conduct surprise visits to penitentiary establishments, but the inmates are warned by the administration to keep silent about their problems, otherwise the situation might become even worse after the visit of the Ombudsman; - Whereas formally the Ombudsman institution has the right to meet and talk with detained and accused persons in private and confidentially (Article 13 of the Law), according to article 11 of the Law "On	

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		Ombudsman", it can officially start an investigation of a particular case of human rights violations only after the applicant had used all forms of appeal envisaged by the law, which renders the mechanisms ineffective; - Upon receipt of a recommendation by the Ombudsman, any state agency should provide a reasonable reply to the recommendation in question, but is not obliged to fulfil the recommendation. - The National Human Rights Centre does not conduct monitoring of detention facilities. **Government:** According to the Presidential decree of 1 May 2008 "On the improvement of the activities of the Secretariat of the Human Rights Commissioner of the Oliy Majlis of the Republic of Uzbekistan", the Government was assigned to consider the issue of supporting the Ombudsman. A number of measures aimed at strengthening material-technical basis of human rights national institutions of the Republic of Uzbekistan were approved and necessary funds were allocated to equip the office. The allocation of annual financial means for the Secretariat of the Human Rights Commissioner is currently under consideration.	
(s) Treat relatives in a humane manner with a view to avoiding their unnecessary suffering due to the secrecy and uncertainty surrounding capital cases. It is further recommended that a moratorium be introduced on the execution of the death penalty and that urgent and serious consideration be given to the abolition of capital punishment.		**Government:** - The death penalty was abolished starting from 1 January 2008. However, it is to be underlined that while the death penalty has been de jure abolished following the legislative change in 2007, the death penalty had already been de facto abolished with the presidential decree issued on 1 August 2005. - The death penalty was replaced by life imprisonment or long-term imprisonment, which can only be applied for two crimes (premeditated murder under aggravating circumstances and terrorism). Notwithstanding the gravity of the crime committed, these two sentences cannot be applied to minors and women and men older than 60 years. In accordance with the legislation abolishing the death penalty, 35 sentences in relation to	

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		48 individuals have been commuted (33 individuals received life imprisonment and 15 long-term imprisonment). Family members and the lawyers of the concerned individuals were informed about the respective decisions. ***Non-governmental sources:*** Following the abolition of the death penalty, two new concepts were introduced in the criminal legislation: life imprisonment and long-term imprisonment. However, with regard to previously executed death penalties, information remains de-facto and de-jure a state secret, the relatives of persons that were executed by shooting in Uzbekistan had no opportunity to bear farewell to the condemned as no last meeting with them was envisaged in the legislation. Until now many people do not know the date of the execution of their relatives as well can not visit their grave, as the place of burial is not disclosed being a state secret. The law that was passed does not provide for the disclosure of the places of burial of executed persons as well as informing the relatives of the sentenced persons on the date of execution. - The section of the Law on life imprisonment has a number of mutually exclusive provisions which leave room for the interpretation: The issue of pardoning those sentenced to the life imprisonment. Uzbekistan abolished the cruelest type of punishment – the death penalty. However, instead, other types of punishment that are almost equal in terms of severity (life imprisonment and long-term imprisonment) were introduced. In accordance with the Law "On introduction of changes and amendments to some legislative acts of the Republic of Uzbekistan due to the abolition of the death penalty" the right of submitting an application for pardon in respect of those sentenced to life imprisonment and long-term imprisonment emerges upon the expiration of a long period of time: 25 or 20 years for life imprisonment and 20 or 15 years for long-	

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		term imprisonment. - The law also contains a new version of article 50 of the Criminal and Criminal Procedural Code, which says that, in case of presidential clemency, the persons sentenced to life imprisonment shall automatically be considered sentenced to long term imprisonment (25 years) and that they are bound to serve this sentence in a strict regime colony. Therefore, it is possible to release those who benefited from presidential clemency after 45 years only. - Moreover, the possibility of a pre-term submission of an application of pardon is dependent on the desire of the administration of the colony, as the administration decides at its discretion whether "the accused person has firmly embarked on the path of correction, has not had any disciplinary punishments for violations of the established regime, has a good attitude to labour and training as well actively participates in correctional measures". Against the background of the lack of transparency of penitentiary institutions and of any public rules in respect of administering the colonies in Uzbekistan, it is probable that the abovementioned powers of the administration of the colony on the execution of punishment will be implemented on an arbitrary basis. - All this means that the Government does not apply an individual approach towards each person sentenced to life or long term imprisonment, but rather applies the same treatment to all persons sentenced to life or long term imprisonment. - Another proof of this assumption are the changes that were introduced to article 136 (The rules of serving the life imprisonment sentence) after the abolition of the death penalty: "The persons sentenced to life imprisonment shall stay for the first ten years in strict conditions. After serving at least ten years, the persons sentenced to life imprisonment, provided they have no disciplinary penalties for the violation of the established	

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		regime, can be transferred from strict conditions to ordinary conditions. After serving at least fifteen years the persons sentenced to life imprisonment, provided they have no disciplinary penalties for violations of the regime, can be transferred from ordinary conditions to softer conditions". These rules of applying encouragement measures towards persons sentenced to life imprisonment (the transfer from strict conditions to ordinary and relieved conditions of stay), prescribed in the legislation contradict the principle of progress in administering persons sentenced to life imprisonment. 2) The law does not provide for the possibility to have a criminal case reviewed. The risk of sentencing an innocent person to life imprisonment is as possible as it has been before. In case all instances of appeal in respect of indictment of the court have been exhausted and the presidential clemency remains the only hope for the restoration of justice, in accordance with the Law the right to appeal for pardon can emerge only after serving 20 years of sentence. - According to paragraph 2 article 136 of the Criminal and Criminal Procedural Codes, those sentenced to life imprisonment must be put in prison cells by at last two persons. Upon the request of inmates or in case of necessity they may be placed in solitary confinement. - Overall the rules imposed on persons convicted to long-term and life imprisonment are very restrictive and contradict the principle of rehabilitation and reintegration. **Government:** In the period of 2005-2010, none of the earlier passed death penalties were executed. According to norms regulating the order of submitting a request for amnesty in the Criminal Administrative Code, a request for amnesty can be submitted by persons sentenced to life imprisonment or to long period of imprisonment.	

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(t) The Government should give urgent consideration to closing Jaslyk colony which by its very location creates conditions of detention amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives.		Government: Jaslyk prison was built taking into account all sanitary norms and international standards; - The implementation of the recommendation to close Jaslyk colony is currently not being studied. More than a quarter of the prisoners detained at Jaslyk colony lived in the Republic of Karakalkakstan and Khorezmskoy department prior to their arrests. As there are no other detention facilities in these regions, it is much cheaper and easier for the prisoners' families to visit them in Jaslyk than in other colonies. ***Non-governmental sources:*** In 2008 a new colony was built in Jaslyk; The Government has interpreted this recommendation of the UN Special Rapporteur and shifted the discussion on the situation in Jaslyk to the issue of treatment of inmates rather than the issue of the geographic location of the colony. Moreover, in 2008 a new block was commissioned in Jaslyk for the purpose of holding the persons sentenced to life or long term imprisonment.	
(u) All competent government authorities should give immediate attention and respond to interim measures ordered by the Human Rights Committee and urgent appeals dispatched by United Nations monitoring mechanisms regarding persons whose life and physical integrity may be at risk of imminent and irreparable harm.		**Government:** The Supreme Court takes the decisions about interim measures; - The Ministry for Foreign Affairs is continuously working on the preparation of replies to requests of treaty bodies and special procedures, which include information on criminal cases against Uzbek citizens. In 2009, 5 replies have been sent to the Human Rights Committee in relation to 11 citizens of Uzbekistan and 10 replies have been sent to special procedures in relation to 39 citizens of the country. ***Non-governmental sources:*** The relevant authorities are not responsive to the requests of the United Nations Human Rights Committee in terms of persons whose life and physical health can be subject to inevitable and irrecoverable harm; - Currently there are over 180 persons accused on the basis of political and religious grounds in colonies;	

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		- At least 50-80 persons die annually in colonies from ill-treatment and disease.	
(v) Make the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention, as well as to ratifying the Optional Protocol to the Convention, whereby a body shall be set up to undertake regular visits to all places of detention in the country in order to prevent torture; invite the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders as well as the Special Rapporteur on the independence of judges and lawyers to carry out visits to the country.		**Government:** the question of making a declaration under article 22 of the Convention against Torture is under consideration; - The recommendation to make the declaration under article 22 of the Convention against Torture and the Optional Protocol (OPCAT) is an attempt to impose an unwanted step on a sovereign State. Whereas Uzbekistan has not acceded to the OPCAT, many measures have been taken to extend national and international monitoring efforts; - A Working Group studies and elaborates proposals for the implementation of article 22 of the UN Convention Against Torture which provides for an individual complaint procedure. The Government notes that the country ratified the Optional Protocol to the International Covenant on Civil and Political Rights in 1995 which also provides for an individual complaint mechanism. Studies are being undertaken on the practices of the work of the Committee against Torture regarding the individual complaint mechanism for the establishment of a national preventive mechanism compliant with the Optional Protocol to the Convention Against Torture. ***Non-governmental sources:*** In November 2007, the Government of Uzbekistan confirmed that it is considering making a declaration in accordance with article 22 of the UN Convention Against Torture before the UN Committee Against Torture. There were no developments or news on this matter since then. Rather, in contradiction to that commitment, the Government made another statement, which said that "the recommendation to make a declaration in accordance with Article 22 of the UN Convention Against Torture as well as Optional Protocol thereto (OPCAT) is an attempt to compel a sovereign state to make a move	

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		which it does not intend to make". This is a manipulation of the term "national sovereignty". During the period under review none of the recommended representatives of the UN special procedures were invited. **Government:** The question of the ratification of the Optional Protocol to the Convention was considered by the Office of the Prosecutor General and a position paper from 2009 November was transmitted to the Ministry of Foreign Affairs. A positive decision on the ratification of the Optional Protocol could be taken after establishing a national preventive mechanisms against torture and introducing amendments in the criminal-procedural and criminal-administrative legislations in relation to unlimited access to places of detention by international experts and the level of readiness of the Republic of Uzbekistan to recognise the jurisdiction of the Sub-Committee.	

Appendix

Guidelines for the submission of information on the follow-up to the country visits of the Special Rapporteur on the question of torture

1 Follow-up is a key-element in ensuring the effectiveness of recommendations of Special Procedure mechanisms. In this context, all Governments are urged to enter into a constructive dialogue with the Special Rapporteur on torture with respect to the follow-up to his recommendations, so as to enable him to fulfil his mandate more effectively.

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

3. A summary of the content of the submissions from non-governmental sources is integrated in the follow-up table, which is then forwarded to the concerned State for its input and comments. In particular, States are requested to provide information on the consideration given to the recommendations, the steps taken to implement them, and any constraints which may prevent their implementation.

4. For a given country visit report, written information regarding follow-up measures to each of the recommendations should be submitted to the Office of the High Commissioner for Human Rights. Submissions should not exceed 10 pages in length.

5. The Special Rapporteur will include summaries of the written information submitted to him in the addenda on the follow-up to country visits of the report to the Human Rights Council.

	Country visit report	*Previous follow-up information reported*
China	E/CN.4/2006/6/Add.6	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5; A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Denmark	A/HRC/10/44/Add.2	A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Equatorial Guinea	A/HRC/13/39/Add.4	A/HRC/16/52/Add.2
Georgia	E/CN.4/2006/6/Add.3	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5; A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Greece	A/HRC/16/52/Add.4	
Indonesia	A/HRC/7/3/Add.7	A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Jamaica	A/HRC/16/52/Add.3	
Jordan	A/HRC/4/33/Add.3	A/HRC/7/3/Add.2; A/HRC/10/44/Add.5; A/HRC/13/39/Add.6;

	Country visit report	*Previous follow-up information reported*
		A/HRC/16/52/Add.2
Kazakhstan	A/HRC/13/39/Add.3	A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Mongolia	E/CN.4/2006/6/Add.4	A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Nepal	E/CN.4/2006/6/Add.5	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/10/44/Add.5; A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Nigeria	A/HRC/7/3/Add.4	A/HRC/10/44/Add.5; A/HRC/13/39/Add.6
Paraguay	A/HRC/7/3/Add.3	A/HRC/7/3/Add.3; A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Papua New Guinea	A/HRC/16/52/Add.5	
Republic of Moldova	A/HRC/10/44/Add.3	A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Spain	E/CN.4/2004/56/Add.2	E/CN.4/2005/62/Add.2; E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Sri Lanka	A/HRC/7/3/Add.6	A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Togo	A/HRC/7/3/Add.5	A/HRC/10/44/Add.5; A/HRC/13/39/Add.6; A/HRC/16/52/Add.2
Uruguay	A/HRC/13/39/Add.2	A/HRC/16/52/Add.2
Uzbekistan	E/CN.4/2003/68/Add.2	A/HRC/7/3/Add.2;E/CN.4/2006/6/Add.2; A/HRC/13/39/Add.6; A/HRC/16/52/Add.2