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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 Azerbaijan, Brazil, China (People's Republic of), Denmark, Equatorial Guinea, Georgia, Indonesia, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan*

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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 c) of its resolution 8/8 on torture and other cruel, inhuman or degrading treatment or punishment of June 2008, 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 12 October 2010, 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: Azerbaijan, Brazil, China (People’s Republic of), Denmark, Equatorial Guinea, Georgia, Indonesia, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, 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.

Azerbaijan

Follow-up to the recommendations made by the Special Rapporteur (Nigel Rodley) in the report of his visit to Azerbaijan from 7 to 15 May 2000 (E/CN.4/2001/66/Add.1, para.120)

6. By letter dated 12 October 2010, the Special Rapporteur sent the table below to the Government of Azerbaijan, requesting information and comments on the follow-up measures taken with regard to the implementation of his recommendations. He expresses his gratitude to the Government for providing comprehensive information on steps taken during the reporting period.

7. The Special Rapporteur welcomes the continuous commitment of the Government to ensure that all allegations of torture and ill-treatment are investigated by prosecuting bodies. He encourages the Government to take effective steps to ensure that continued allegations of the use of torture and ill-treatment and excessive use of force by the police at the time of apprehension and while in detention are promptly and impartially investigated, and perpetrators are prosecuted and punished, including by means of criminal sanctions. The Special Rapporteur notes the lack of information provided on the number of allegations or complaints received and investigated by the Ombudsperson and appeals to the Government to enhance the accountability on the measures taken in this respect.

8. The Special Rapporteur commends the Government for measures undertaken to strengthen the independence of judiciary and notes with satisfaction the establishment of an independent judicial body in charge of the self-government of judicial authority. Nevertheless, the Special Rapporteur remains concerned about the allegations pointing to a lack of independence of the judiciary from the executive branch and echoes the observation of the Committee against Torture[1] with regard to guaranteeing the full independence and impartiality of the judiciary.

9. The Special Rapporteur notes the information regarding daily examination of temporary detention centres by prosecution officers, and relevant instructions of the Ministry of Internal Affairs allowing free and unlimited monitoring of temporary detention centres by non-governmental organizations. He calls upon the Government to ensure that the Public Committee designated to monitor places of detention, can effectively realize its mandate of conducting unimpeded and unannounced visits to all places of detention, including pre-trial detention centres.

10. The Special Rapporteur notes with satisfaction the measures undertaken to ensure that all detainees are examined by a physician prior to detention, and that medical registers are prepared in accordance with the Istanbul Protocol.[2] He encourages the Government to ensure timely forensic examination of persons alleging ill-treatment. The Special Rapporteur remains concerned about the allegations of coerced confessions said to be used as evidence to secure convictions and wishes to reiterate that any evidence obtained by torture should be excluded from judicial proceedings.

11. The Special Rapporteur calls upon the Government to give urgent consideration to discontinuing the use of the detention centre of the Ministry of National Security.

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[1] Concluding observations of the Committee against Torture, (CAT/C/AZE/CO/3), Azerbaijan, 8 December 2009.

[2] The *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (known as the “Istanbul Protocol”).

Recommendation (E/CN.4/2001/66/Add.1, para. 120).	Situation during visit	Steps taken in previous years (E/CN.4/2004/56/Add.3); (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)	Information received in the reporting period
(a) Ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators.	The legal framework guaranteed the right to appeal the decisions and actions by officials; Detainees often afraid of filing complaints for fear of reprisals; Plans to create an internal investigation department within the Ministry of Internal Affairs (MoI) and of a complaints unit within the General Prosecutor's Office; A special committee within the Ministry of Justice was created by the then new Corrections Code, tasked to deal with prisoners' complaints.	Non-governmental sources: In 2009, all complaints presented to the Ombudsman were accepted for consideration and investigated. Appeals were sent to the MoI, the Ministry of Justice, the Ministry of Defence, prosecutors' offices and the Prosecutor General for further criminal, administrative or disciplinary action. In the first months of 2009, at the MoI, 73 staff members were subjected to additional measures (4 criminal and the rest administrative) for rough treatment towards citizens, unjustified detention and unjustified detention at police stations. Government: In 2008, reforms improving the penitentiary system were underway, including the reform of the legislative basis. A hotline aimed at identifying unlawful activities of employees of law enforcement agencies started functioning in September 2005. Allegations of torture and ill-treatment by internal affairs officials were investigated by prosecutorial agencies. The Commission on Human Rights (Ombudsman) has the right to request relevant bodies to open criminal investigations. Non-governmental sources (2008): Allegations of torture and ill-treatment were not being investigated in an independent and thorough manner and alleged perpetrators are not being prosecuted.	Non-governmental sources: There have been many reported cases of ill-treatment by law enforcement officials. The European Court of Human Rights found violations of Article 3 in three of its judgments concerning Azerbaijan, notably in a recent case of Muradova v. Azerbaijan (Appl. No. 22684/05, 02/04/2009), in which the court established the absence of an effective investigation, following the applicant's complaint, leading to the identification and charging of the policemen. - Some measures have been taken to punish police officials' misconducts. The Ombudsman's annual report revealed that in 2009, 16,8% of the complaints received were against the police. - Complaints are dealt with by an Internal Investigation Office within the Ministry of Internal Affairs. Cases with a criminal element are then referred to and investigated by the Prosecutor General, while disciplinary sanctions are decided by the Minister himself. Over the period 2007-2009, more than 800 individual complaints were received by the Ministry of Internal Affairs and 614 police officers were subjected to criminal investigations or disciplinary measures. Of those cases, 16 were brought before domestic courts; 85 officers were dismissed from the Ministry, 66 relieved from their position, five downgraded and 442 subjected to

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			other disciplinary measures. Out of the 16 cases which led to the initiation of criminal proceedings, 12 police officers were sentenced to imprisonment ranging from six months to 13 years and four had to pay a fine. - There are no allegations of physical ill-treatment of patients at the Central Penitentiary Hospital. However, there have been several reports of allegations from prisoners sentenced to life of deliberate physical ill-treatment and excessive use of force by prison officers. - The problem of the lack of independence of the judiciary from the executive branch and its susceptibility to political pressure has yet to be resolved. There is still a tendency to systematically impose the sentences requested by the prosecutor. - On 27 January, a local court rejected a lawsuit initiated against, among others, the Penitentiary Service, the Chief Medical Office of the Justice Ministry, Prison No.15 and the prison hospital for a journalist's death while in detention. - The rights of juvenile offenders continue to be violated through physical and psychological violence, detention for periods in excess of those allowed for by law, and soliciting bribes in exchange for release from detention or for closing an investigation. The lack of data on investigations of such abuses suggests that accountability mechanisms are not functioning effectively.

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			- The newly established Judicial-Legal Council is responsible for evaluating the performance of judges, but lacks a case management system that would allow monitoring compliance with the rights of accused juveniles, such as the principle that cases involving juveniles. Government: With the Order No. 02/35 of 9 February 2001 on "Improvement of the work of handling the applications of citizens in the prosecutor offices of the Republic of Azerbaijan", rules were enforced to the subordinated prosecutors to examine immediately all the applications about the unfair rulings of preliminary investigation and unlawful actions and interrogations of the investigative bodies, including any acts of torture, beating, use of physical and psychological violence during preliminarily investigation and interrogation. - In case of submission of complaints alleging torture or ill-treatment by the interrogator or the investigator, a thorough and objective examination shall be carried out immediately even in the absence of a specific complaint. The offender shall be dismissed from the position and brought to justice. Information on any action undertaken as well as the right to compensation shall be communicated and explained to the victims. - In case of submission of information about the use of torture, the interrogator, investigator and prosecutor shall

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			consider the evidences and an indictment liable to assess the evidences without prejudice, excluding any kind of evidence obtained by torture or any other forms of suppression. - Hotlines are operating within the Ministry of Justice and post boxes for complaints are placed in visiting rooms. - In all penitentiary institutions there are stands announcing meetings of the administration with citizens, prisoners and those under investigation. The head of the Penitentiary Service, his deputies and other responsible officers have regularly visited penitentiary institutions, held meetings with convicted persons and have taken measures in accordance with their appeals. - During 2005-2010, 336 complaints related to torture and ill-treatment were received by the Penitentiary Service of the Ministry of Justice. As a result of prompt investigations, the referred instances have not been confirmed, except for 4, out of which 2 were related to ill-treatment and 2 were related to conditions of prison). - Complex measures have been undertaken to increase the effectiveness of justice and confidence of citizens to courts, simplify their access to legal institutions, strengthen the independence of the judicial authority and improve material and social assurance of judges. - Independence of judges is guaranteed

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			by their 'depoliticization', 'irremovability' and inviolability within the period of their term by certain requirements for appointment and also by independence of judiciary, unacceptability of interference into judiciary by any person. - In accordance with the new legislation, judicial-legal Council, functioning permanently as an independent body, has been established to fulfil the self-government of judicial authority. The Council solves, within its authority, matters of the organization of Judiciary, the selection for vacant positions and evaluation of the activity of judges, their promotion, disciplinary measures and other issues related to courts and judges. - According to the Code of Criminal Procedure, the pre-trial procedure on crimes committed by juveniles should be carried out in the presence of defender and where possible the special subdivision of preliminary investigation bodies or persons who have certain experience of work with juveniles. The juveniles' rights to obtain information about charges, right to refuse giving evidence, right to defence, confidentiality and participation of their parents or other legal representatives are guaranteed in all stages of preliminary investigation. Criminal cases of juveniles have to be examined by more experienced judges. - The Plenum of the Supreme Court adopted decision to establish a single

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			case-law in the areas of juvenile justice and eliminate cases of violation or unlawful application of substantial and procedural norms in the course of examination of criminal cases of juveniles. - In 2009, the Commissioner for Human Rights (Ombudsman) received complaints, among others, about unjustified summoning and detention, ill-treatment and conditions of detention. Following an investigation, motions were sent to the Office of the Prosecutor General, the Ministry of Internal Affairs, the Ministry of National Security, the Ministry of Justice, the Ministry of Defense for investigation and holding those guilty responsible. - On the basis of information given by the Ministry of Internal Affairs, in 2009, in relation to 151 facts on human rights violation, 247 staff members were subjected to measures enshrined in the legislation, 13 persons were dismissed from services at internal affairs bodies, 26 persons were dismissed from their positions, 208 persons were subjected to different kind of disciplinary penalties.
(b) Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. Similarly, the Ministries of Internal Affairs and of National Security should establish effective procedures	The Office of the Prosecutor monitored police stations and provisional detention wards; Prosecutors sometimes facilitate wrongdoings by the police, which was attributed to their mentality inherited	Government: In 2008, an Internal Security Department for the purpose of effective monitoring of police officers within detention facilities was created. Steps were taken to bring temporary detention centres in line with modern standards. Since 2005, a "Memorandum of Understanding" on the creation of a public committee vested with the right to confidential conversations with	Non-governmental sources: Following the ratification of OPCAT on 28 January 2009, the Ombudsman was designated as the national preventive mechanism and continued to visit places of detention regularly. However, the Ombudsman’s office is not permitted to monitor all State organs (Concluding observations of the Committee against torture,

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for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and ill-treatment; the activities of such procedures should not be dependent on the existence of a formal complaint. In addition, non-governmental organizations and other parts of civil society should be allowed to visit places of detention and to have confidential interviews with all persons deprived of their liberty.	from the Soviet regime. A number of investigators of the prosecutor's office had been dismissed for not having prevented these violations;MoI "Order on Additional Measures to Ensure Legality among the Personnel" created a personnel department in charge of training and other educational activities; The Ministry of Justice recognized the need for an independent monitoring mechanism; ICRC had access to all places of detention; Prisons had opened up to public scrutiny, including access for NGOs, but no confidential interviews with detainees.	detainees was created. A "Code of ethics of the employees of the bodies of internal affairs" was approved in April 2005. Temporary detention centres at the district police centres were modernized and new temporary detention centres were constructed. The conditions in which detainees are held at territorial police units are regularly studied, and measures are taken to remove shortcomings. Non-governmental sources: As per 2008, civil society organizations have access to places of detention in some instances. However, their access is limited and at the discretion of the authorities.	Azerbaijan, CAT/C/AZE/CO/3, 8 December 2009, paragraph 10.) The Public Committee, established in 2006 to monitor places of detention, and composed of NGO representatives, is unable to conduct visits to prisons without prior notification and has not been granted access to pre-trial detention centres. Since 2009, representatives of NGOs have not been allowed to conduct any visits. - The establishment by the Ombudsman of a Child Rights Unit has had a positive impact on conditions of detention. Even though representatives of the Ombudsman make regular visits to places of detention for juveniles, information about complaints received and their reaction is not public. - There are concerns that despite regular visits to places of detention for juveniles, no complaint concerning violation of the rights of a juvenile suspect has been received. - The lack of complaints is partly due to the lack of confidence in the effectiveness of this procedure. Government: Following the Order on "Application of articles of the Convention for the Prevention of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights in the course of criminal proceedings by the Prosecutor bodies" of 1 December 2006, specific measures were provided for the prosecutor's

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			effective supervision over the execution and application of the law in the course of interrogation and preliminary investigation in the light of requirements of Convention for the Prevention of Torture and recommendations of the European Committee for the Prevention of Torture (CPT). - The prosecution officers conduct daily examination of investigatory isolation wards and rooms of temporary detention of persons that are situated in district and city police departments. - According to Article 153.3.3 of the Code of Criminal Procedure, any instance of detention of a suspect shall immediately be reported to the prosecutor in charge of procedural aspects of investigation in a written form within 12 hours of detention, and from the very moment of obtaining a written information on the detention, the prosecutor is liable to submit all corresponding documents to the court within 48 hours for the settlement of issue of remanding in custody. The court shall rule for the remand in custody or release of the detainee. Subsequently, the prosecutor in charge shall be liable to immediately release the unlawfully detained person. - In 2009-2010, new temporary detention centres have been constructed in Khazar, Gusar, Goygol and Lerik district police departments, and the construction of new temporary detention centres will be completed in the Office

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			on Struggle against Human Trafficking, including in Nasimi, Sabunchu districts and Absheron, Samukh, Hajigabul, Guba and Tovuz Regions police organs. - Temporary detention centres have been renewed, and special prisoner carrying means of transport were provided for each place of detention. - Relevant police bodies have been granted with unlimited access to places of detention within the Ministry of Internal Affairs representatives of National Preventive Mechanism Group established within the Ombudsman. - Relevant instructions of the Ministry of Internal Affairs allowed free and unlimited monitoring of observers of governmental and non-governmental organizations in temporary detention centres. - Daily examination of observance of legality in detention centres under police organs are conducted and reports are drawn-up by prosecutorial agencies. - Effective state and public control has been established over the activity of Penitentiary institutions. Within the structure of the Ministry of Justice, the Inspection on observation of execution of sentences and Department on human rights and public relations was established with an authority of an unimpeded access to Penitentiary institutions, private meeting with prisoners, examination of their detention conditions. Any claim of ill-treatment

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			in the penitentiary system is received as an alarm and is subject to comprehensive scrutiny. - In 2008, 273 visits have been conducted to 21 penitentiary institutions, including 82 visits by National Human Rights Institution (Ombudsman), 23 visits by representatives of International Committee of the Red Cross and 168 visits by non-governmental organizations. - In December 2008, the European Committee on Prevention of Torture visited institutions under the auspices of the Ministry of Justice in the course of its fifth visit. - In accordance with the "Rules on public participation in reformation of prisoners and realization of public control over the activity of penitentiary institutions", Public Committee conducts visits to penitentiary institutions on the condition of observing the Rule of internal order of the penitentiary institutions. - During four-year functioning, members of the Committee have conducted about 260 monitoring in different penitentiary institutions of the country of their own choice. Currently, no procedure of prior notification is required for visits of the Public Committee. - For unimpeded access to penitentiary institutions, all members of the Public Committee are provided with special admission card signed by the Ministry of

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			Justice. - Favourable conditions were created for active participation of other non-governmental organizations and of mass media not included in the monitoring conducted by Public Committee. - Issues of providing public control over places of detention, including investigative isolators have been reflected in the draft "Law on guarantee of rights and freedoms of persons under arrest". - In 2009, 229 visits were conducted to various penitentiary institutions of the country by international and regional NGOs, Ombudsman and its office. Representatives of Baku Office of Organization for Peace and Security in Europe (OSCE) have also made 13 visits to penitentiary institutions and appropriate measures have been undertaken. - A list of institutions under the jurisdiction of NPM was prepared, which includes specialized boarding houses, psychiatric hospitals, orphanages, boarding houses for elderly people. 253 visits were conducted by the Ombudsman office. During the visits conducted in 2009, about 700 persons at temporary detention places and about 200 persons at investigatory isolators and prisons were received and interviewed privately. At the same time, 127 staff members were interviewed.

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(c) Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to their condition.	Suspects were afraid to voice complaints. Members of the judiciary were therefore in a particularly important safeguarding role; The General Prosecutor's Office was said to rarely investigate allegations of torture, and even less frequently to prosecute police officers allegedly responsible for the violations; Magistrates had been asked to pay particular attention to the way evidence was obtained; The judiciary had been tasked to play a proactive role when it comes to verifying information since victims might be too afraid to complain.	Government: during a judicial investigation all claims of torture against persons being investigated are considered, evidence is gathered, and the court verifies the full observance of such persons' right to protection; in the event of a complaint of torture or ill-treatment, the courts immediately call for a forensic examination. The Supreme Court adopted a decision that evidence obtained by unlawful means cannot form the basis of a judgment; this was transmitted to all courts and pre-trial investigation agencies for practical use in their work. The Ministry of Justice carries out measures aimed at increasing the professionalism of judges through training on human rights issues, including the prohibition of torture. Non-governmental sources: even when detainees complain, no investigation is conducted. As a result of trial monitoring a pattern was observed whereby judges fail to take allegations seriously and do not initiate detailed investigations into the allegations.	Non-governmental sources: There are very few forensic doctors in Azerbaijan; a person might therefore be examined only months after the alleged ill-treatment occurs, when the evidence may have disappeared. - There have been several reported cases of sick prisoners who lacked adequate medical treatment but were still kept in detention. Government: In accordance with the "Internal Disciplinary Rules for Police Temporary Detention Centres", approved by the Ministry of Internal Affairs order, detainees are examined by physician prior to placement in a detention ward and on the day of transfer. Detainees' applications about medical assistance, including their rejection are properly registered. If the examination by a health-care worker confirms that the person can not be kept in detention and need medical treatment, they are transferred to health care institutions. Arrested persons and prisoners are sent to relevant medical institutions at the Ministry of Justice through investigative isolation wards. - All cases of trauma and injuries of accused and prisoners in the penitentiary institutions are registered in special registers at the medical-sanitary centres of institutions, and at the treatment institution of the Ministry. The Chief Medical Office and Operational section of the institution are informed about this.

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			- Upon entering the penitentiary institution, all the scars and other marks of injuries are indicated during the first medical examination. Upon discovering signs of torture, ill-treatment and violence by the medical staff, special notes are made in relevant medical registers prepared in accordance with the Istanbul Protocol. Till now, the medical staff has not come across with any signs of torture, ill-treatment and violence. - During the examination of prisoners, their psychosomatic conditions as well as their previous and existing persistent illnesses are analyzed, screening is conducted with a view of identifying the first stages, symptoms of tuberculosis. - Collected information is reflected in the medical notebook for every prisoner and relevant medical measures are being undertaken. - Persons detained in penitentiary institutions are entitled to apply to medical-sanitary centre and use medical services where they pass medical examination and are provided with out-patient and inpatient treatment. If they need more comprehensive examination and treatment, they are sent to Medical and specialized medical institutions within the Ministry. - During the nine months of 2010, out-patient treatment was provided in 53 340 cases and inpatient treatment in 1314 cases for accused and prisoners. 4931 person were sent to Medical institution

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			and 864 to specialized medical institutions for more comprehensive examination and treatment.
(d) Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate compensation should be paid promptly; a system should be put in place to this end.	The Plenary of the Supreme Court had asked magistrates to provide explanations to the persons who have suffered torture and other unlawful acts regarding their right to claim compensation for moral and physical suffering and to create the necessary conditions for them actually to benefit from this right.	Government: the law provides for several means of compensating victims of acts of violence, however they only covering injuries resulting from unlawful actions. Law No. 610 of 1998 provides that if a person was held in preliminary detention or in prison as a result of a mistake or abuse by prosecutorial or judicial agencies, they have to ask for forgiveness in writing. Criminal Procedure Code (CPC) article 189 holds that the person who suffered losses as a result of a crime, as defined in the Criminal Code (CC) has the right to obtain compensation when the act has been tried before a court. The victim has the right to receive between 10 to 300 times the minimum wage, depending on the gravity of the crime committed against the person. According to CPC article 191, the court, on the basis of a petition by the victim, assigns compensation from the State budget. Non-governmental sources: As of 2009, there is no case where a person was awarded compensation as a result of torture or ill-treatment.	Government: According to the law on compensation, the damage shall be indemnified as a result of person's unlawful arrest, forceful location into the medical or fostering institution as well as person's detention for a period of more than a fixed term in the absence of lawful grounds, etc. - The issues of compensation for damage filed by victim as a result of actions and similar inhuman treatment shall be addressed and met through the court by the means of the state budget as set forth in the criminal law.
(e) Confessions made by a person under police detention without the presence of a lawyer should not be admissible as evidence against the person.	Coerced confessions were said to be used by the Prosecutor General's Office as evidence to secure convictions; The Plenary of the Supreme Court had issued a resolution, inter alia, reiterating that testimonies obtained under	Government: the CPC provides that the defense counsel has the right to be present when a suspect/accused is searched or arrested and grants the right of a suspect/accused to refuse a lawyer (art. 153). The right to self-defense, along with the right to legal assistance, are also contained in art. 90 CC.	Government: The interrogator and the investigator are instructed to explain the detainee immediately his/her rights set forth in the legislation including the right to have a lawyer. - From the very beginning of detention, the detainee shall be provided with a lawyer, and if the detainee refuses lawyer's services, an appropriate

Recommendation *(E/CN.4/2001/66/Add.1, para. 120).*	*Situation during visit*	*Steps taken in previous years* *(E/CN.4/2004/56/Add.3); (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)*	*Information received in the reporting period*
	duress shall not be admitted as evidence to court.	The testimony given by a person who has refused a lawyer at the temporary detention centre may be accepted as evidence even if no lawyer was present. CCP article 92(12) CCP holds that the investigator, the prosecutor or the court may accept the refusal from a lawyer in a case where the suspect or accused makes this request on his own initiative, voluntarily and in the presence of a lawyer or trusted person. The refusal of the suspect or the accused to a lawyer because of the lack of means to pay for legal assistance is not accepted, and a lawyer is provided for him. CCP article 125(2) provides that evidence obtained in violation of a defendant's rights is not permitted; such information is considered as having no legal force (article 125(3)). Non-governmental sources: trial monitoring conducted by NGOs showed that the courts continue to rely on confessions that may have been obtained by torture or ill-treatment. It was possible to identify a pattern whereby judges fail to take allegations seriously and do not initiate detailed investigations. As of 2009, there were reports of confessions being obtained in violation of the rights of the accused to the assistance of an interpreter and defence lawyer, as well as detainees being coerced into signing statements incriminating themselves. There are also reports of the fabrication of documents including transcripts of interrogations.	protocol is drawn up thereafter. - In compliance with Article 126 of the Criminal Procedural Code, the testimony of the suspect is received as evidence in the criminal process. The admission of guilt by the accused on committing the crime can be accepted as basis for a sentence only when it is confirmed and combined with all the evidences on the case.
(f) Given the numerous reports of inadequate legal	Detainees' access to lawyers often restricted; Police	Government: a new law, elaborated in cooperation with the CoE and the OSCE with	Non-governmental sources: Although under the Azerbaijani legislation,

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counsel provided by State-appointed lawyers, measures should be taken to improve legal aid services.	pressured detainees not to seek counsel or to accept State-appointed lawyers who might not work for their clients' best interest; State-appointed lawyers were not very active; they were only available to juveniles and persons suspected of having committed a serious offense; The new Criminal Code envisioned providing all suspects with access to State-appointed lawyers, but it was unclear starting from which moment.	the aim of enhancing the effectiveness of the provision of legal aid, entered into force in August 2004. For awareness-raising purposes a booklet entitled "Human Rights and the Police" was published. The legal basis for establishing the new bar, separate from governmental bodies, is found in the Law on "Barristers and barrister activity," adopted in 1999. It grants equal rights to the defending and accusing lawyers. Non-governmental sources: the ratio of criminal defense lawyers to the population is amongst the lowest in the world. This has a serious impact on the provision of legal aid services. Only about 350 lawyers are entitled to act as criminal defense lawyers, with the vast majority based in the capital. The new "Law on Advocates" of August 2004, which was designed to increase the number of defense lawyers, has been interpreted in a narrow manner and very few new members have actually been admitted. Remuneration for legal aid services is extremely low and, in many cases, the Government fails to pay legal aid fees.	detainees are entitled to have access to a lawyer and a doctor, in practice it is not always the case. - Lawyers appointed to handle cases of juveniles who cannot afford private counsel are poorly paid and often fail to carry out their duties with professionalism. Since 2008, the recently founded Children's Rights Legal Clinic (2007) has established a presence in three other cities. 40 cases have been handled, about half of which consisted in providing legal advice only. Government: On the basis of Article 90-91 of Criminal Procedural Code, the suspect and accused person has the right to invite a lawyer to protect his/her interests from the very moment of detention. Similarly, the detainee is granted with the possibility to contact his/her relatives or family members and assistance for involving a personal lawyer. - In the absence of financial capacity of the suspect or the accused to involve a lawyer, the investigative body shall be in charge of assigning at its discretion a lawyer at the expense of the state. - According to article 81 of the Code, on execution of sentences and para 4.2. of the "Temporary Regulation on detention of person in detention places", detained and convicted persons are provided with right to private and unlimited meeting with their lawyers by the administration of institution.

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			- In penitentiary institutions, free of charge legal assistance provided to prisoners by lawyers and representatives of NGOs is widely practiced. Since 2009, members of the Public Committee have been holding “days of legal assistance” in prisons. - The new version of the “Rules of internal order in the penitentiary institutions” which was prepared taking into account the European Penitentiary Rules, recommendation of European Committee on Prevention of Torture, International Committee of the Red Cross, Public Committee, and has been approved in the board meeting of the Ministry of Justice on 24 September 2010, includes a range of progressive provisions more effectively guaranteeing rights and safety of prisoners. According to it, National Human Rights Institution (Ombudsman), members of the Public Committee, representatives of other non-governmental structures can conduct individual meetings with prisoners within their authority. - In the framework of “State Program on elimination of poverty and sustainable development in the Republic of Azerbaijan in 2008-2015 years”, 16 legal consulting centres were established by the Ministry of Justice. Appropriate measures have been undertaken to employ qualified lawyers at these centres and provide them with necessary equipment and legislative acts. - On 24 June 2008, appropriate

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			amendments were made to legislation, according to which prisoners have the right to express their opinion on decisions adopted on serving and fulfilling the sentence or appeal these decisions. - Para 5.8 of "Internal Disciplinary Rules for Police Temporary Detention Centres" covers the process of detainees' meeting with lawyers. A special room has been furnished for detainees' meeting with lawyers in temporary detention centres, and in an absence of a room, a meeting is held in investigation room. - The issue of legal assistance to detainees described in a Draft "Law on Guarantee of Detainees' Rights and Freedoms in Detention Centres" has passed the second reading of the Parliament.
(g) Video and audio taping of proceedings in police interrogation rooms should be considered.	Video recording of investigations was done at the exclusive discretion of the investigator; The purpose of taping was to record evidence which would then be produced in court proceedings, and not as a safeguard against unlawful interrogation methods.	Government: CCP provides for the possibility of making audio/video recordings, taking photographs, or using other kinds of photography during proceedings. Investigators widely use technical devices during interrogations; in the majority of the temporary detention centres located in district police stations of towns, including in Baku, new systems have been installed to prevent illegal acts and rude behavior against detainees; During the last several years, 26 investigative rooms in 64 temporary detention centres were equipped with video installations. By the end	Non-governmental sources: The Ministry of Internal Affairs recently established, on a pilot basis, special rooms in selected police stations for the questioning of juvenile suspects and children who are victims of offences. Government: According to the Criminal Procedural Code, the investigator has the right to interrogate by means of audio, video recordings or any other recording facilities by including them into the protocols. At the end of investigation the accused, the victim and their representatives and lawyers have the right to see the audio, video recordings,

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		of 2008, all stations should be equipped.	filming, as well as the protocols used during the preliminary investigation. - According to the Board decision of the Ministry of Internal Affairs, installation process of video monitors in the temporary detention centres and investigation rooms of city and district police organs is currently ongoing. 62 functioning temporary detention centres were equipped with an alarm system and 55 with video monitoring devices. - Modern video monitors were installed in most detention centres with the aim of on-time prevention of ill-treatment and complete improvement of safety system.
(h) Given the numerous situations in which persons deprived of their liberty were not aware of their rights, public awareness campaigns on basic human rights, in particular on police powers, should be considered.	Authorities voiced the opinion that ordinary people had yet to understand that torture was an illegal and unacceptable practice and it was recognized that reforms in law and institutional structures must be accompanied by a change of the approach and mentality of law enforcement officials; A compilation including the recommendations of the CAT-Committee and Amnesty International as well as decisions by domestic bodies focusing on torture was published, which was to be distributed among law enforcement officials as well	Government: in all penitentiary facilities information desks were created to raise awareness of human rights, libraries in penitentiary institutions were also provided with special publications focusing on the rights of detainees. In 2002 the Ministry of Justice signed an order aimed at the inclusion of international and regional human rights standards into the educational training programmes. A joint programme with the CoE and the EC was signed in 2006, focusing on legal reforms in the penitentiary sphere. The MoI created a complaints website and e-mail address. Posters prepared on the basis of the Constitution, international documents on fundamental human rights and freedoms, and normative acts regulating the work of the MoI were placed on the walls of all police stations. Measures are being taken to implement a "Community	Non-governmental sources: Prisoners are not aware of the right to appeal decisions imposing disciplinary sanctions. - Raising public awareness and conducting trainings is one of the activities foreseen by the Task Force on Juvenile Justice, established in December 2008. Government: Special attention is paid to the issue of prisoners' awareness raising in penitentiary institutions. An "Inquiry book of prisoners" devoted to protection of prisoners' rights, including the rules and conditions of execution of sentences, was published in 1000 copies both in Azerbaijani and Russian languages and was delivered to libraries of the penitentiary institutions. - 3500 novels and 11.164 books on law

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	as the general public.	policing" project within the framework of cooperation with the OSCE.	and novels published in Azerbaijani and Russian languages were delivered to penitentiary institutions in 2009-2010. - The concluding observations and recommendations of treaty bodies have been translated in Azerbaijani and disseminated among relevant organizations, including penitentiary institutions. - Materials in the area of human rights protection, including on prohibition of torture and ill-treatment are regularly disseminated in hard copies and through the website of the Ministry of Justice. - In 2009, the Information and Public Relations Section of the National Preventive Mechanism (Ombudsman) disseminated 98 official press-releases in Azerbaijani and English languages, 42 of which were related to visits, 46 to investigations, and 10 to awareness-raising activities.
(i) Give urgent consideration to discontinuing the use of the detention centre of the Ministry of National Security, preferably for all purposes, or at least reducing its status to that of a temporary detention facility.	The detention centre served as a police station, provisional detention ward and remand centre where persons can be held until conviction and sentencing; The suspect therefore remained at the hands of the investigators of the Ministry of National Security during the entire period; The head of the cells unit confirmed that personnel did	Government: during the last years the Ministry of National Security (MNS) has taken special measures to humanize the activities of the Investigatory Cell, paying increased attention to detention conditions. Representatives of ICRC, OSCE/ODIHR, CPT and other governmental and non-governmental organizations, considered the functioning of the MNS's Investigatory Cell as exemplary for other detention facilities. Regarding the recommendation about discontinuation of the use of this detention facility, this could create problems for	

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	not monitor interrogation sessions which are said to be held behind closed doors.	guaranteeing speed, comprehensiveness, objectivity and rationality of pre-trial proceedings of grave criminal cases. At the same time it is possible to consider the question of changing the status of this detention centre or discontinuation of its use in the framework of complex reforms on improvement of penitentiary facilities and investigatory cells in the penitentiary system.	
(j) Give favourable consideration to putting emphasis, in the technical cooperation programme, on training activities for the police and possibly investigators of the Ministry of National Security once recommendation (i) has been implemented.		Government: measures have been taken to regulate relations between police and citizens in accordance with legal and ethical norms. Monitoring to ensure compliance with human rights and freedoms also increased. In order to familiarize officers with the provisions of the CAT, the number of hours of the course entitled "The police and human rights" was increased. An OSCE Police Assistance Programme developed in 2004 provides for assistance to the Police Academy, training of qualified staff, awareness-raising in the field of human rights among police officers, etc. Numerous workshops, conferences and trainings have been organized on various human rights topics in collaboration with international organizations, such as the OSCE, the CoE, the EU, as well as bilateral and multilateral partners.	Non-governmental sources: Although a considerable amount of training has been conducted, many practitioners still have to be trained. Training materials have been developed and the process of institutionalizing juvenile justice training for police is underway. - One of the most serious problems is the lack of specialization of judges and prosecutors and the poor performance of defence lawyers. While some judges have participated in some training activities related to child rights, the absence of judges and prosecutors specially designated to handle cases involving juvenile offenders is an obstacle. Government: International conventions against torture are included in Prosecutors' curriculum, and their knowledge on these documents are regularly tested during their attestation. In the Academy of Justice, during the training of candidates for the position of judges and temporary training of judges, special attention is paid to studies of legislation and international documents

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			in the area of protection of the rights of the child.
(k) Consider requesting advisory services from the Office of the High Commissioner for Human Rights regarding training activities for officials from the General Prosecutor's Office.		Government: Under the training of trainers programme on "Training on the ECHR for public prosecutors in Azerbaijan," courses were held by the CoE at the Training Centre of the General Prosecutor's Office.	
(l) Consider making the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ratifying the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).	Azerbaijan had made no declaration under article 22 CAT nor had it ratified the Optional Protocol to the Convention against Torture, or the Optional Protocol to the International Covenant on Civil and Political Rights;	Non-governmental sources: On 13 January 2009, the Commissioner for Human Rights (Ombudsman) was appointed as NPM. He held discussions with representatives of different state bodies, NGOs, international organizations and media and established a list of more than 200 institutions where people are deprived of their liberty. The NPM conducts regular visits to all institutions, without previous notification. Government: In 2001, Azerbaijan acceded to the Optional Protocol to the ICCPR, In 2002, Azerbaijan made the relevant declaration provided for in art. 22 CAT, On 28 January 2009, Azerbaijan acceded to the OPCAT.	

Brazil

Follow-up to the recommendations made by the Special Rapporteur (Nigel Rodley) in the report of his visit to Brazil from 20 August to 12 September 2000 (E/C2N.4/2001/66/Add.2, para. 169)

12. By letter dated 12 October 2010, the Special Rapporteur sent the table below to the Government of Brazil, requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations. The Special Rapporteur thanks the Government of Brazil for providing comprehensive information on steps taken during the reporting period.

13. The Special Rapporteur notes with appreciation the information received regarding the various directives aimed at eradicating torture and reducing law-enforcement-related and custodial deaths. He encourages the Government to establish formal enforcement and monitoring mechanisms to ensure the effective implementation of these directives.

14. While noting with satisfaction the continuing efforts and political will of the Government to end the culture of impunity, the Special Rapporteur, in line with the opinions expressed by the UN High Commissioner for Human Rights and the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.4), is concerned about the high number of extrajudicial executions, pattern of acts of torture, the excessive use of force, the high rate of homicides and inhumane conditions in Brazil’s overcrowded prisons and lack of effective measures to combat these concerns. He strongly encourages the Government to increase its efforts to investigate all allegations of torture and ill-treatment and unlawful killings and prosecute and punish the perpetrators.

15. The Special Rapporteur welcomes the initiative of drafting legislation establishing a National Truth Commission to review violations committed during the period of military repression. He commends the work of the Council for the Defense of Human Rights mandated to investigate complaints and carry out visits to correctional facilities. However, he regrets not having received information on the number of allegations investigated by these bodies and appeals to the Government to provide information on the measures taken to investigate all allegations of torture and ill-treatment.

16. The Special Rapporteur remains concerned at the reports pointing to a lack of fundamental safeguards for detainees and urges the Government to ensure that those arrested are effectively afforded their right to consult with a lawyer and obtain free legal advice. While he welcomes the determination of relevant authorities to exclude from judicial proceedings any evidence obtained under torture, he remains concerned that he was not provided with any information suggesting that the burden of proof in cases of torture lies upon the prosecution.

17. The Special Rapporteur notes with appreciation the information received regarding the measures undertaken to reduce the chronic overcrowding in prisons, including construction of new detention centres, and application of alternative sentences. He strongly encourages the Government to increase the imposition of alternative, non-custodial sentencing.

18. The Special Rapporteur notes the information regarding various bodies established to investigate prison conditions and encourages the Government to coordinate and strengthen the existing institutional and legal monitoring mechanisms overseeing the prison conditions. He wishes to reiterate his predecessor’s recommendation on ensuring that the National Preventive Mechanism becomes functional as soon as possible and that civil society is fully included in the process of its creation and in its work.

19. Finally, the Special Rapporteur wishes to reiterate the appeal to the Government to ratify the Optional Protocol to the Convention against Torture providing for a national preventive mechanism.

Recommendations *(E/CN.4/2001/66/Add.2)*	*Situation during the visit* *(See E/CN.4/2001/66/Add.2)*	*Steps taken in previous years* *(See E/CN.4/2006/6/Add.2; A/HRC/11/2/Add.2, para. 43 and A/HRC/13/39/Add.6)*	*Information received in the reporting period*
(a) The top federal and state political leaders declare unambiguously that torture and other ill-treatment by public officials will not be tolerated and that the culture of impunity must end. Unannounced visits to police stations, pre-trial detention facilities and penitentiaries should be carried out. The occurrence of abuse should result in the removal from office.		Non-governmental sources 2009: In international fora, the federal government has officially recognized the persistence of the practice of torture. Similarly, individual state and federal government representatives have at times recognized that the problem persists. However, there is still a need for a consistent, clear and unambiguous condemnation, with the aim of sending an unequivocal message to perpetrators and public at large. Non-governmental sources 2008: The Federal Government launched a national campaign against torture after the Special Rapporteur's visit. However, the campaign failed to address the fundamental causes of the crime and did not seek to improve mechanisms for safe and effective reporting and prosecution of cases. The Government established a telephone hotline, to encourage anonymous denunciations. However, given its anonymous nature, the hotline did not contribute to the effective reporting or investigation of alleged cases of torture.	Government: Directive 14, Strategic objective 3 of the National Program of Human Rights 3, enacted through Decree 7037/2009, has as its main mandate combating institutional violence, eradicating torture and reducing law-enforcement-related and custodial deaths. Although many directives will require the adoption of formal legislation to ensure effective implementation, the approval of the program by 30 ministries reflects the political will to combat torture. - One of the measures included in the Plan is the implementation of State Committees for Combating Torture. These Committees will investigate complaints in federal states, build capacity of local actors and implement preventive mechanisms at the state level. - Apart from the Council for the Defence of the Rights of the Human Person (CDDPH) (see below), the National Justice Council (CNJ) has been closely following the situation in the Espirito Santo State Prison System. In March 2010, the CNJ conducted on-site visits to various prison units throughout the state, with a view to directly determining the conditions of inmates. - In April 2009, the National Council for Crime and Prison Policy (CNPCP), tasked with the inspection of detention centres throughout the country, conducted a visit to the Viana Remand Centre and the Serra Provisional Detention Centre, both located in Espirito Santo. Additionally, at the state

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			level, a Monitoring, Follow-up, Enhancement, and Inspection Group was established through Joint Regulatory Act 1 of 4 April 2010 of the Espirito Santo State Office of Attorney-General and the Espirito Santo Court of Justice to oversee the state's prison system and the execution of socio-educational sentences. - The Regulatory Act sets forth, among other things, extending the mandate of the annual prison task force for the time necessary to review all criminal prosecutions, special sentencing and conviction orders regarding the commission of unlawful acts in connection with children and young persons in every district in Espirito Santo, among other prisons in the remaining districts.
(b) Abuse of power of arrest without judicial order in flagrante delicto cases should end immediately.	It appeared that there was a tendency to carry out arrests later classified as in flagrante even when the individual was not actually caught in the act, but there was suspicion of taking part in criminal activities.	Non-governmental sources 2008: This problem persists.	
(c) Those arrested in flagrante delicto should not be held in police stations beyond 24 hours. Overcrowding in remand prisons cannot be a justification for prolonged detention by the police.	Recent and long-term detainees were mixed together in police stations. A large number had already been sentenced, but could not be transferred to prisons because of lack of space.	Non-governmental sources 2008: While there have been some efforts in some states to reduce pre-trial detainees being held in police stations for longer than 24 hours, many continue to be held for long periods, often in overcrowded conditions. In some cases, convicted detainees are still being held in police stations. Reports of juveniles and women being held in cells with adult males have also been received. In one case a 15-year-old girl was repeatedly sexually abused for a period of	Government: On 6 May 2010, at the time of inspection of the Cariacica Provisional Detention Centre, a total of 486 inmates were housed in the establishment, although the building was designed for a maximum capacity of 212 detainees. Of the 486 prisoners in the facility, 422 were provisional detainees, in conformity with the detention centre's designated end, while the remaining 64 inmates were scheduled for transfer to other prison establishments.

Recommendations (E/CN.4/2001/66/Add.2)	*Situation during the visit (See E/CN.4/2001/66/Add.2)*	*Steps taken in previous years (See E/CN.4/2006/6/Add.2; A/HRC/11/2/Add.2, para. 43 and A/HRC/13/39/Add.6)*	*Information received in the reporting period*
		a month while held in a cell with over 20 men.	- According to the investigation, the presence of convicted prisoners in the establishment is due to delays in the transmission of information from the Sentencing Courts regarding changes to the status of detainees, in addition to the absence of space in prison units designed for the particular incarceration regimes of convicted offenders. - The presence of provisional detainees in the facility is unacceptable. The Government believes that small task forces composed of judges should be established to conduct ongoing oversight and to take legal steps, including ordering the immediate removal of prisoners from the facility, provided the action does not lead to worse conditions of confinement (transfer to ill-equipped and overcrowded police precincts).
(d) Family members should be immediately informed of their relatives' arrest and be given access to them. Security checks during visits should be respectful of their dignity	Most of the suspects in police stations believed that their families had not been informed of their arrest and whereabouts.	Non-governmental sources 2008: There are reports of detainees who are not given access to family members or regular visits by human rights groups. Degrading and invasive searches of family members persist throughout the prison system and the juvenile detention system.	Government: In the Cariacica Provisional Detention Centre (CDP-C) family visits extend for approximately 15 minutes and take place in the prison lounge due to the absence of a designated area for this purpose. Conjugal visits are not permitted at the CDP-C.
(e) Those arrested should be informed of their right to consult with a lawyer and to obtain free legal advice. A statement of detainees' rights should be readily available for consultation in all places of detention.	Although the Constitution provides that those arrested are ensured of assistance by their family and lawyer, there was no specific legal provision regarding the period of time after which a person has access to a lawyer.	Non-governmental sources 2008: The decision in 2006 by Sao Paulo state to create a public defenders system was an important step for those campaigning for the provision of free legal access in Brazil's richest state. Nevertheless, the provision of free access to lawyers remains scant at best, with many detainees complaining of access to a lawyer for less than ten minutes prior to trial.	

Recommendations *(E/CN.4/2001/66/Add.2)*	*Situation during the visit* *(See E/CN.4/2001/66/Add.2)*	*Steps taken in previous years* *(See E/CN.4/2006/6/Add.2; A/HRC/11/2/Add.2, para. 43 and A/HRC/13/39/Add.6)*	*Information received in the reporting period*
(f) Maintain separate custody records showing time and reasons for arrest, the identity of the arresting officer, the time and reasons for any transfers and the time a person is released or transferred.	In most cases, there was no record kept in the official registers in police stations of the time and place of the arrest, or of the identity of the arresting officers, and subsequent transfer of suspects to a police station.	Non-governmental sources 2008: There are reports suggesting that there have been changes in the way detentions are being documented. However, in the Rio de Janeiro pre-trial detention system, the state required all detainees to define their gang allegiance and to accept full responsibility for their own security when incarcerated with members of the same gang.	Government: The legal status of all Cariacica Provisional Detention Centre inmates has been routinely verified by the Legal Assistance Directorate the Penal System, which prepares periodic reports to assist the Justice Secretariat with the assignment of convicted inmates to adequate penitentiary facilities.
(g) Judicial provisional detention orders should never be implemented in police stations.		Non-governmental sources 2008: See current situation for (c).	
(h) No statement or confession, other than one made in the presence of a judge or lawyer should have probative value in court. Urgent consideration should be given to introducing video and audio taping of proceedings in police interrogation rooms.		Non-governmental sources 2008: There is no information to suggest that video taping or audio recording of police interrogations are being used. However, the use of confessions given to the police without the presence of a judge continues to have probative value in court.	Government: Under Brazilian law, extra-judicial confessions have only ancillary value and are not considered sufficient to convict a defendant. This position is supported by article 155 of Brazilian Criminal Code of Procedure as amended in 2008 (Law 11690). The article in the amended version requires presentation of the total body of evidence in an adversary system. It also prohibits judges to ground their decisions on information collected during the investigative procedure with the exception of non-repeatable and anticipated precautionary evidence. - The recommendation on introducing video and audio recording procedures in police interrogation rooms was discussed at the 11th National Human Rights Conference and was incorporated into the National Program of Human Rights 3 (Directive 14, Strategic Objective 3).
(i) When allegations of	The law states that the burden of	Non-governmental sources 2008: There is	

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torture or ill-treatment are raised by the defendant during trial, the burden of proof should shift to the prosecution that a confession was not obtained by unlawful means.	proof lies upon whoever has made it. However, the President of the Federal Supreme Court noted that in cases of torture allegations made by a defendant during a trial, the burden of proof is reversed.	no information to suggest that this is being implemented. Allegations of torture are regularly dismissed by authorities at all stages of the criminal justice procedure.	
(j) Complaints of ill-treatment should be expeditiously and diligently investigated. Unless the allegation is manifestly unfounded, those involved should be suspended from their duties during the investigation and proceedings. Where a specific allegation or pattern of acts of torture or ill-treatment is demonstrated, the personnel involved should be peremptorily dismissed.	Torture and similar ill-treatment were meted out on a widespread and systematic basis, at all phases of detention: arrest, preliminary detention, other provisional detention, and in penitentiaries and institutions for juvenile offenders. The purposes ranged from obtaining of information and confessions to the lubrication of systems of financial extortion.	Senior Government officials responsible for prison administration affirmed that there are problems with physical abuse and corruption by prison guards. The threat of retaliation for making a complaint against a prison official is so serious that prison monitors consider any such complaints likely to be true (A/HRC/11/2/Add.2, para. 43). Non-governmental sources 2009: While there have been some important prosecutions of suspected perpetrators of torture, as far as records stand, convictions continue to be minimal. This is largely due to the fact that mechanisms for denouncing, investigating and prosecuting perpetrators of torture remain extremely weak. Non-governmental sources 2008: Bodies responsible for investigating and reporting acts of torture have largely failed to carry out investigations either due to a lack of resources, negligence or complicity. Certain dedicated public prosecutors have proven to be notable exceptions to this rule (Minas Gerais and those in Sao Paulo monitoring juvenile justice system) and their work has contributed to increased prosecutions, though often in the face of	Government: The Law against Torture (Law 9455/ 1997) mandates that a conviction for torture will result in “the loss of public office, function, or position and prohibition on the exercise thereof for a period equal to double the sentence”. While some state courts do not yet allow the application of this provision, current jurisprudence of the superior courts (Federal Supreme Court and Superior Court of Justice) is heading toward the loss of public function in the event of a conviction for torture. - Regarding reference to “known torturers from the period of the Military Government”, the National Program of Human Rights provides for the designation of a Working Group to prepare draft legislation by April 2010, establishing a pluralistic and multiparty National Truth Commission (Comissão Nacional da Verdade) to review violations committed in the context of the political repression between 1964 and 1988. - The work of the Council for the Defense of Human Rights (Conselho de Defesa dos Dreitos da Pessoa Humana (CDDPH) should be noted. The Council is tasked with receiving complaints and investigating particularly egregious human

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		institutional pressures. Police ombudsmen’s offices in some States have managed to document cases of torture. However, given the general lack of investigative powers of such offices and the lack of any real independence, both financial and institutional, they have failed to reduce the incidences of torture. Visits to places where torture is thought to occur and the reporting of cases is often limited.	rights violations. The Council has conducted visits to various correctional facilities. Moreover, the National Congress is currently considering Bill 4715/94 which would transform the Council into the National Human Rights Council (Conselho Nacional dos Dreitos Humanos) and include in its responsibilities “the performance of inspections and oversight of correctional facilities or juvenile detention or confinement units”. - In April 2009, the Council revived the special committee established in 2006 to investigate complaints of human rights violations in the Espirito Santo State Prison System. In October 2009, the committee conducted visits to a number of state prison facilities and has discussed measures to address the identified problems with the prison officials. In the second half of 2010, the CDDPH was scheduled to conduct a new visit to Espirito Santo prison units, including the Cariacica Provisional Detention Centre. Non-governmental sources: Torture within the prison system continues to be widespread and systematic. Underreporting, coupled with routine investigatory failures ensure that accountability for torture remains extremely rare. Public officials accused of torture are not always suspended from their duties pending the conclusion of investigations; this creates considerable difficulties for investigators, as victims and witnesses fear reprisals from the accused prison and police staff. - The 2008 Parliamentary Commission of

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			Inquiry Report on the Penitentiary system (CPI report) describes numerous cases of torture from information collected from all 26 states and Brasília, and states that the Commission received reports of torture at every single detention centre it inspected (over 60 centres). The report starkly concludes that the prison system of Brazil is “a camp of physical and psychological torture,” noting in particular that, “from a psychological standpoint, torture is widespread prevalent, and generally unrestricted.” The report further states that beatings in police jails are “routine”. - Many torture cases within the Pernambuco prison system are associated with the institution of the “Chaveiro” (“Key Master”). Chaveiros are prisoners who have been delegated the role of security agents by prison administrators and are given the authority to oversee and control entire cell blocks. They have keys to the cells and, in some cases, weapons such as machetes. Chaveiros sometimes justify beatings on their watch on the basis of alleged infractions by the detainees, such as possessing an unpaid debt or engaging in homosexual acts. - Other acts are associated with prison militias who reportedly work in collaboration with the police. - Cases of torture remain largely uninvestigated, and accountability of perpetrators is extremely rare. One of the most significant obstacles in alleviating the prevalence of torture in the prison system is the lack of cooperation and willingness from judges, police officers and

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			prosecutors to investigate these cases. - Underreporting continues to be a serious problem, mainly due to fear of reprisals.
(k) Witness protection programmes should be implemented in all states, along the lines of the PROVITA programme.		PROVITA currently operates in 16 states and the federal district (A/HRC/11/2/Add.2, para.62). Non-governmental sources 2008: The PROVITA protection system is specifically designed to protect witnesses in criminal investigations, including those in which there may be police involvement. However, people with prior criminal records cannot enter the PROVITA protection system. As such the PROVITA system is not designed to provide protection to victims of torture, especially those held in detention. The PROVITA system suffers from inconsistent funding and a limited number of spaces, thus only ensuring positions for those cases which are deemed a priority for the police and prosecutors.	
(l) Prosecutors should bring charges under the 1997 law against torture and request that judges enforce the prohibition of bail for those charged. Sufficient prosecutorial resources should be assigned by Attorney-Generals for criminal investigations of torture and ill-treatment.	The Torture Law was virtually ignored, and prosecutors and judges preferred using the traditional, inadequate notions of abuse of authority and causing bodily harm.	Non-governmental sources 2009: While there is greater recognition of the 1997 law against torture, there continues to be reluctance on the part of the prosecution service to prosecute law enforcement agents under it. However, the lack of regular statistical data relating to the use of 1997 law against torture and the fact that it is also used in cases involving non-state agents makes an accurate assessment of its implementation impossible. Non-governmental sources 2008: A report (Análise do Cumprimento pelo Brasil das Recomendações do Comitê da ONU	Government: The Government does not yet have data on the application of Law 9455/97 by judicial authorities and the Public Prosecutor's Office. Jurisprudence in this area is largely available from public websites. Notwithstanding this, the Government undertakes to submit detailed information on this question at a proper time.

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		contra a Tortura, Programa dh Internacional, MNDH-NE & GAJOP, July 2005) cited figures showing that in the state of São Paulo, which has the highest prison population in the country, there had only been 12 convictions under the torture law between 1997 and 2004, and most of these of private individuals. Information about prosecutions of state agents for torture, as well as other human rights violations, is difficult to obtain, as much of the information about such cases is held "in camera", which is a serious impediment to the right of victims to a fair trial.	
(m) Investigations of police criminality should be under an independent body with its own investigative resources and personnel. The Office of the Public Prosecutor should have the authority to control and direct such the investigations.		Non-governmental sources 2008: While some states have instituted the office of a police ombudsman, none is fully independent nor does it have its own investigative powers or personnel. Government: In 2006, a technical cooperation agreement was concluded with the National Secretariat of Public Safety of the Ministry of Justice to fulfill the agreement signed with the European Union to strengthen the existing Police Ombudsman Units, including capacity building, databases for the submission of complaints and guidance on preventive police action.	Government: The Public Prosecutor's Office has the main responsibility for prosecuting public criminal cases. Whereas some years ago the launch of criminal investigations by the Prosecutor's Office against law enforcement agents was constrained by prevailing legal interpretations (namely that the competent internal affairs divisions could adequately conduct the investigations), today the bulk of case law is inclined towards the participation of the Prosecutor's Office. Non-governmental sources: Internal affairs officers, within the police, are entrusted to investigate alleged abuses of fellow officers despite their lack of guarantees of autonomy and protection from retaliation. The Office of the Public Prosecutor should, in theory, be better equipped to investigate police abuses. However, prosecutors still faces constraints, both practical and formal, and lack the

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			investigatory resources to perform such a task. Though the Office of the Public Prosecutor has the constitutional duty of police oversight, in most states there is no specialized team of prosecutors assigned to carrying out this task. Whatever the jurisdictional configuration, officers entrusted to investigate fellow officers are typically part of the same ultimate chain of command. - Public prosecutors face formal and practical challenges in their efforts to investigate police abuse. While public prosecutors possess the formal authority to demand that police investigations be commenced and that specified steps be taken, in practice prosecutors are hindered by an overwhelming dependence on evidentiary material provided by the police, as few prosecutor's offices have their own investigatory force. - Prosecutors also face judicial challenges by police associations, which contest the constitutionality of prosecutor-led investigations. Despite recent judicial decisions largely supporting the ability of prosecutors to investigate police abuse, the issue awaits a final ruling by the plenary of the Supreme Federal Tribunal. - Particularly worrying is the fact that police associations are pushing for a constitutional amendment eviscerating the Office of the Public Prosecutor's role in police oversight in order to establish a National Police Council comprised of sitting heads of state civil police institutions. This past May, this proposed

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			amendment (Proposta de Emenda Constitucional 381/2009) was overwhelmingly passed in its originating committee in the House of Representatives.
(n) Positive consideration should be given to the proposal to create the function of the investigative judge, whose task would be to safeguard the rights of those deprived of their liberty.	A draft law creating this figure was under discussion.	Non-governmental sources 2008: There is no recent information about the progress of this draft law.	
(o) In order to end chronic overcrowding, a programme of awareness-raising within the judiciary is imperative to ensure that this profession becomes sensitive to the need to protect the rights of suspects and convicted prisoners. The judiciary should take some responsibility for the conditions of treatment for those in detention. They should be reluctant to proceed with charges that prevent non-custodial measures when dealing with ordinary criminality.	The conditions in detention in many places were subhuman. The worst conditions tended to be in police cells, where people were kept for more than the 24-hour legally prescribed period.	Non-governmental sources 2008: The prison system continues to grow at unsustainable rates. There is no current information as to what is being done to encourage the imposition of alternative, non-custodial sentencing. The prisons continue to be overcrowded, with precarious hygienic conditions.	
(p) The law on heinous crimes and other relevant legislation should be amended to ensure that long periods of detention or imprisonment are not		Non-governmental sources 2008: There is no recent information on this issue.	Government: On 21 October 2008, Administrative Rule 2063 of 20 October 2008 was published to create a commission of jurists, within the scope of the Ministry of Justice, to analyze and prepare a review and modernization of the

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imposable for low-level criminality. The crime of “disrespecting authority” should be abolished.			provisions governing abuse of authority. The Commission submitted a draft bill redressing the authoritarian elements of the applicable laws which were drafted during the military government. - A large portion of inmates serving their sentences in the Cariacica Provisional Detention Centre were convicted for the commission of serious offences (heinous or equivalent) whose sentence progression is greater, inevitably extending their confinement under the closed incarceration regime. It was recommended, however, that a small task force composed of judges be established to conduct periodic reviews, with a view to evaluating/reevaluating possible applicable benefits.
(q) There should be sufficient public defenders to ensure that legal advice and protection are available for every person deprived of liberty from the moment of arrest.	Free legal assistance was illusory for most of the 85% who need it, because of the limited number of public defenders.	Non-governmental sources 2008: See (e).	Government: Prisoners at the Cariacica Provisional Detention Centre (CDP-C) voiced general complaints about the absence of effective and individualized legal assistance and lack of information on their respective cases (pre-trial and/or sentencing). - In June 2009, the Government of the state of Espirito Santo agreed to administer a public examination to 35 public defenders and to appoint all selected candidates within 30 days of formal approval of the public examination.
(r) Greater use should be made of and necessary resources provided for community and state councils on human rights and police and prison ombudsmen. Fully-resourced community	Reliance of the primarily volunteer work carried out by the Catholic Prison Ministry, community councils and state human rights councils. In many places, the latter two do not exist or do not function; some	Non-governmental sources 2008: The effectiveness of community and state councils on human rights continue to vary dramatically around the country. In those few cases where these councils have been working effectively, there are extremely worrying reports of politically motivated	Non-governmental sources: Community councils do not exist in many states, and many of the existing ones do not function well. In 2008, only 642 of the approximately 2,886 community councils required by law to exist where active. Six states do not even have one active council

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councils with unrestricted access to all places of detention should be established in each state.	lack the necessary resources (mainly some ouvidorias); and others lack the genuine independence necessary to do effective work (some corregedorias).	attempts to hinder or undermine their work. For example, in Rio de Janeiro, the state government with judicial collaboration, managed to oust the president of the community council after he made persistent denunciations of violations. In the state of Espírito Santo, where the prison system is riddled with corruption and human rights violations, the state authorities have managed to bar all access to prisons by the officially mandated human rights council and all other human rights or religious groups.	(Acre, Amazonas, Brasilia, Espirito Santo, Paraiba and Roraima). - In eight states, there is no active Penitentiary Ombudsman's Office. Where they exist, they lack investigative resources, and none have adequate guarantees of autonomy. The offices function almost exclusively as receivers of complaints, and carry out little or no investigations as they lack the staff and budgetary independence. - Seven state penitentiary systems do not even possess an active permanent internal affairs institution.
(s) The police should be unified under civilian authority and justice. Congress should approve the draft law to transfer the ordinary courts jurisdiction over manslaughter, causing bodily harm and other crimes including torture committed by the military police.	The split police system makes external monitoring of the military police very difficult.	Non-governmental sources 2008: There is no recent information of attempts to introduce structural police allowing for police prosecution in civil courts.	Government: Decisions of the superior courts have expressed a clear inclination in this direction, including the Federal Supreme Court.
(t) Police stations should be transformed into institutions offering a public service.	External investigation is overly dependent on the goodwill and cooperation of the heads of police stations that hold exorbitant power.	Non-governmental sources 2008: While some efforts were made, most notably in Rio de Janeiro, to change the structure and nature of police stations, there is no current information to suggest that such fundamental reforms have been effectively realized.	
(u) A qualified medical professional should be available to examine every person brought to and leaving a place of detention; they	Detainees must request a medical form from a delegate in order to be examined at t Forensic Medical Institute. The fact that the Forensic Medical	The state institutes of forensic medicine in Brazil suffer from a lack of basic resources and are not sufficiently independent from the police	Government: In the Cariacica Provisional Detention Centre hygiene kits are distributed every two weeks. Health checks are performed at an on-site clinic by a certified nursing professional.

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should have the necessary medicines to meet the detainees' medical needs; and the authority to have detainees transferred to a hospital. Access to the medical profession should not be dependent on the personnel of the detaining authority. Professionals working in places of deprivation of liberty should be under an independent authority.	Institute remains under the same governmental authority as the police, doubts as to the reliability of their findings will persist.	(A/HRC/11/2/Add.2, para. 54). Non-governmental sources 2008: There continues to be a lack of access to independent and effective medical attention for detainees, be it in possible torture cases or for general medical treatment for detainees. There are also reports that detainees are not being transferred to medical facilities due to lack of available staff to transfer them.	Depending on the inmate's condition, health checks may be provided at a Prison Unit operated by the State Justice Secretariat, equipped with the requisite health services, or at a public health care facility, in the event the inmate requires hospital admission. - According to the Agreement signed between the National Justice Council and the Espirito Santo State Government in June 2009, the State Secretariats of Public Security and Social Defense and Justice agreed to undertake urgent measures to increase health assistance to inmates housed in the Viana Remand Centre, ensuring the transfer of any prisoner with a worsening health condition, where medically necessary and communicating the transfer immediately to the competent case judge within a period of 12 hours. - Health related interventions were scheduled to take place in several police departments throughout June 2009. - The respective draft bill on contracting of psychiatrists for the prison system will be submitted for approval by the Legislative Assembly in June.
(v) The forensic medical services should be under judicial or another independent authority. The police should not have a monopoly of expert forensic evidence for judicial purposes.	The forensic medical service, under the authority of the police, does not have the independence to inspire confidence in its findings.	Non-governmental sources 2008: Some efforts have been made to separate forensic medical centres from their close ties to the police, removing them from the control of the civil police. However, no state boasts a forensic medical centre which is fully independent of the state secretariat of public security. Resources continue to be limited and forensic medical centres continue to lack proper	

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		training and preparation for dealing with possible torture cases. Forms for registering autopsies continue to be extremely limiting, hindering the possibility of proper identification of torture cases.	
(w) The overcrowding needs to be brought to an immediate end, if necessary by executive action. The law requiring separation of categories of prisoners should be implemented.		The national prison population has risen sharply over the last decade, and the incarceration rate has more than doubled. The dramatic rise - caused by the slowness of the judicial system, poor monitoring of inmate status and release entitlement, increased crime rates, high recidivism rates, and the popularity of tougher law and order approaches favouring longer prison terms over alternative sentences - has resulted in severely overcrowded prisons (A/HRC/11/2/Add.2, para. 42). Non-governmental sources 2008: At present the prison population is around 460,000, leaving a shortfall of 160,000 places in the system. Even though the federal government has invested in building new prisons, no building programme can match the rate of growth of the number of detainees. As such, any semblance of separation or categorization of prisoners is not done, to the extent that juveniles and women can be detained with adult males.	Government: According to 2009 data from the Ministry of Justice, the prison population in Brazil is 446,613. Of this total, 31.08% represents provisional detainees; 68.93% have been sentenced and 3,834 are subject to special security measures. The correctional system has a capacity of 290,723 inmates, leaving an excess population of 155,890 detainees. - The administration of the penitentiary system at the state level is the responsibility of the respective local governments. The federal government has issued guidelines and undertaken a series of direct and decentralized actions through the National Penitentiary Department of the Ministry of Justice, many of which have resulted in the allocation of resource to mitigate deficiencies and shortfalls, mainly related to prison space and modernization of facilities, treatment of inmates and support to the application of alternative sentences. - New provisional detention centres and penitentiary units that are currently under construction throughout the state could serve to mitigate current conditions of overcrowding. The Secretariat of the State Prison System submitted a schedule for decommissioning by August 2010 all remaining metal cellblocks at the Cariacica

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			Provisional Detention Centre, a measure that would secure progress in the renovation and construction of additional detention centres. - Various projects are currently being implemented to reduce overcrowding in the state's prison units; transfer inmates held in police precincts to provisional detention centres, replace military police officers assigned to detention centres with correction officers; and expand health assistance and job placement programs for prisoners. - The shortage of places in the Espirito Santo State's prison system totals 6,926, despite an increase of 3,254 slots in relation to 2008 and 5,247 spaces in comparison to 2003. - While the figures on overcrowding in the Espirito Santo State Prison System reflect similar problems facing other states of the federation, overcoming will require an ongoing and long-term effort to expand available space and enhance the management of the prison system. - From 2003 to date, a significant effort has been mounted to increase the capacity of the Espirito Santo State Prison System through the inauguration of 17 new facilities. The renovation work has generated a combined 4,564 places, bringing the total number of new spaces, when added to the 1,054 slots refurbished through the renovation projects described above, to 5,618. New prison facilities either under construction or in the process of being contracted will add an addition

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			5,644 places. - 11 prison facilities under construction in the State of Espirito Santo, are scheduled to be completed by March 2011. An additional 576 places still in the design stage will bring the total prison units under construction and in contracting stage to 6,220, more than double the total provided for in the Agreement signed between the State of Espirito Santo and the National Justice Council, which mandates the construction of 2,715 new places by August 2010. - The construction of 300 places for juvenile offenders in Espirito Santo State prison was scheduled to be completed by March 2010. - With respect to minors transferred to the Sao Gabriel da Palha Provisional Detention Centre, the Secretariat of Justice undertook to refer them to the Cariacica Socio-Educational Internment Unit by 10 June 2009.
(x) Permanent monitoring must be present in every institution and in places of detention for juveniles.		There are many bodies with the legal authority to investigate prison conditions, but they have not provided adequate oversight in practice. This lack of external oversight has permitted poor prison conditions and abuses of power to continue. The law provides for a number of organs to inspect and monitor prisons. However, inmates interviewed had rarely seen or even heard of a visit by an external prison monitor. They were aware of rare visits by prison internal affairs, but no visits by a judge, prison council, or other prison oversight body	Government: The Bill establishing the National Mechanism to Prevent and Combat Torture includes unannounced visits to penitentiary facilities and any public or private detention centre, including psychiatric wards, shelters and other internment or treatment units. On 19 December 2009, the draft Bill was finalized. The draft legislation will be submitted by the Special Secretary for Human Rights to the President who will, in turn, forward the proposed legislation to the National Congress.

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		(A/HRC/11/2/Add.2, paras. 47-48). Non-governmental sources 2009: Oversight has been further hindered by political and judicial intervention against those few bodies that are both mandated to monitor prisons and had previously been working effectively. Non-governmental sources 2008: Concern has been expressed about the interference with human rights groups or officially authorised prison visiting bodies, such as the community council of Rio de Janiero, or conselho da comunidade, a prison inspection body made up of the authorities and civil society. The authorities reportedly placed pressure on the judge of the penal executions court, or juiz da vara de execuções penais, to replace the president of the conselho da comunidade, who was widely critical of the state's prison system. In São Paulo, human rights groups were blocked from visiting the FEBEM juvenile detention system, visited by the Special Rapporteur in 2000, where it is reported that torture and ill-treatment remains widespread and systematic. Although the state authorities of São Paulo have granted extensive access to the system to specified NGOs, certain directors continue to block human rights monitors on the grounds of security. Rigorous work by NGOs and the state Public Prosecutor's Office continue to expose torture in FEBEM units. Overall, attempts to tackle human rights violations in the FEBEM have failed, and in the first months of 2005, after an unsuccessful	- The Integrated Plan of Actions to Combat Torture, prepared in cooperation with experts and civil society stakeholders, intend to strengthen existing institutional and legal monitoring mechanisms in order to ensure the shortest time possible between unannounced inspection visits, as well as guaranteed direct access to inmates and confidentiality of the contacts. - The National Justice Council urged the state courts to take a series of measures, including the partial or full interdiction of the Cariacica Provisional Detention Centre detention centre, with a view to preventing the transfer of any additional detainees to the facility. The CNJ also proposed the performance of quarterly task force reviews regarding the legal status of inmates, as well as the creation of a "Supervisory Council" composed of the state's sentencing judges to more closely monitor the prison system. - The government of the State of Espirito Santo will conduct a public examination to contract 1,083 correctional officers and supervision agents, with a view to expanding the prison system's personnel base. Non-governmental sources: The draft Bill to create a national preventive mechanism has not been submitted to Congress. However, state mechanisms for preventing torture have been created in two states (Alagoas and Rio de Janeiro). - When criminal justice officials carry out visits to prisons, they are often inadequate and superficial. The Law on the

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		attempt by the then FEBEM president to root out and punish corrupt employees, there were large scale disturbances, resulting in numerous riots, many reportedly instigated by FEBEM staff, which saw the destruction of several FEBEM units, deaths of detainees and the transfer of juveniles into the adult prison system. The president of the FEBEM who led the crackdown subsequently resigned, and human rights groups reported a recent increase in repressive treatment of adolescents, through the use of collective punishment, torture and beatings.	Administration of Sentences (Lei de Execuçoes Penais) stipulates that judges must visit prisons at least once a month. The National Justice Council approved a resolution in January 2009 stating that these judges shall submit a report on their visits every three months. However, in practice neither provision is complied with. - The coordinator of the Prison System Monitoring and Inspection Department at the National Council of Justice is organizing a training session for the judiciary on how to conduct prison inspections.
(y) Training for police, detention personnel, public prosecutors and others involve in law enforcement should include human and constitutional rights, as well as scientific techniques and other best practices for the professional discharge of their functions. UNDP's human security programme could have a substantial contribution.	The training and professionalism of police and other personnel responsible for custody were often inadequate, sometimes to the point of non-existence. A culture of brutality and, often, corruption was widespread.	Non-governmental sources 2008: Though there are numerous human rights education courses for law-enforcement agencies across the country, implemented by state officials and civil-society, many are ineffective, as they are not integrated into day-to-day practice. Without the combined elements of profound reforms of the criminal justice system; increased professionalization of law-enforcement officers, through better recruitment, training, oversight and control; a shift in policy by state and federal governments; and the full investigation and prosecution of all cases of human rights violations, these violations will persist.	Government: To date, five International Workshops on the Monitoring of Detention Centres and Forensic Science have been organized with the support of the Association for the Prevention of Torture. The objective is to enhance monitoring techniques and methodologies in detention centres. - Forensic Science Workshops are also held with the purpose of strengthening the role of forensics in the documentation of torture and deaths in custody. - In addition, the Ministry of Justice established the PRONASCI, a program for key actors involved in the public safety field which focuses on capacity-building for civil and military police, municipal guards and community leaders. Activities include Human Rights Days, the National Curriculum Matrix, the National Community Police Plan, and the National Network for Advanced Studies in Public

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			Safety (RENAESP). - According to the Agreement signed between the National Justice Council and the Espirito Santo State Government in June 2009, the Secretariats agreed to execute an agreement with higher learning institutions to administer practicums in law, psychological affairs, and legal medicine for newly contracted 1,083 correctional officers and supervision agents within two months.
(z)The proposed constitutional amendment that would permit the federal Government to seek Appeal Court authorization to assume jurisdiction over crimes involving violations of internationally recognized human rights should be adopted. This would entail increased resources for federal prosecutorial authorities.		Non-governmental sources 2009: This legislation has been adopted and would in theory allow for the federalisation of human rights cases. However, though some cases have been submitted to the head of the federal prosecution system for evaluation, none have been federalized to date.	Government: Amendment 45 (2004) established that human rights violations are federal offences. To date, two petitions have been filed to transfer criminal proceedings to the federal realm. In one of the cases, the petition was denied on the grounds that transfer to the federal courts was only applicable in the event of a demonstrated omission by state institutions, which was not verified in this case. The second case is currently under consideration of the Superior Court of Justice.
(aa) Federal funding of police and penal establishments should take account of the existing structures to guarantee respect for the rights of those in detention. Federal funds should be available to implement the recommendations.		Non-governmental sources 2008: There is no current information on this issue.	Government: The Government has established qualitative criteria for the distribution of resources of the National Public Safety Fund (Fundo National de Segurança Pública) with a view to increasing fund allocations to states that implement public policies, including reduction in police lethality, establishment of autonomous and independent Police Ombudsman Units and measures to prevent violence and crime.
(bb) The Government should give serious consideration to		Non-governmental sources 2008: There is	

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accepting the right of individual petition to the CAT, by making the declaration envisaged in article 22.		no current information on this issue.	
(cc) The Government is urged to consider inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country.		The Special Rapporteur on extrajudicial, summary or arbitrary executions visited Brazil in September 2003 and in November 2007.[3]	
(dd)The UN Voluntary Fund for Victims of Torture is invited to consider requests for assistance by NGOs working for the medical needs of persons who have been tortured and for legal redress.			

[3] The report of the visit can be found at: http://www2.ohchr.org/english/issues/executions/docs/A_HRC_11_2_Add_2_English.pdf.

China

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

20. On 12 October 2010, 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 the implementation of his recommendations. The Special Rapporteur regrets that the Government has not provided any input. 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.

21. The Special Rapporteur regrets that, despite the introduction of new categories of offences relating to torture, the definition of torture in the Chinese criminal law is not in conformity with articles 1 and 4 of the Convention against Torture. He regrets not having received an update in relation to the implementation of the National Human Rights Action Plan on combating torture and looks forward to receiving information and data about the number of allegations of torture and ill-treatment investigated and perpetrators brought to justice.

22. The Special Rapporteur notes with concern that he was not provided with any update in relation to the establishment of supervisory mechanisms for law enforcement bodies and the administration of justice. He calls upon the Government to become party to the Optional Protocol to the CAT (OPCAT) providing for a national preventive mechanism and make a declaration under article 22 of the CAT providing the Committee against Torture with the competence to receive and consider individual complaints.

23. The Special Rapporteur remains concerned about the reported cases of confessions obtained under torture. He recalls the appeal to the Government to ensure that any testimony obtained by torture is excluded from judicial proceeding. The Special Rapporteur is 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 lack of the guarantee of the right to fair trial. He reiterates that the period of holding detainees in police custody should not exceed 48 hours, and that no detainee should be subject 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.

24. The Special Rapporteur remains concerned about reported cases of persecution, harassment and arbitrary detention of lawyers and urges the Government to amend the relevant provisions of the Criminal Law allowing intimidation, harassment and sanctioning of lawyers who, for example, counsel defendant to repudiate a forced confession. The Special Rapporteur urges the Government to ensure legal safeguards conducive to independent and effective functioning of the legal counsel.

25. The Special Rapporteur welcomes the Government's plans to improve the functioning of the mechanism of compensation and rehabilitation as proclaimed in its National Human Rights Action Plan 2009-2010, and looks forward to receiving information on the steps taken to strengthen the mechanism of compensation and redress for victims of torture.

26. The Special Rapporteur is concerned that, according to non-governmental sources, the Government continues to refuse releasing statistics on application of the death penalty. He is worried that the death row prisoners were denied final farewell visits by their families

and continued to remain handcuffed and shackled despite his appeal to the Government to avoid imposing additional punishment on death row prisoners.

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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: 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. By including only a list of situations amounting to torture and ill-treatment, other torture methods risk to fall outside the law. In practice, the punishment against perpetrators of torture is very light in comparison to the gravity of the crime. It is still common that perpetrators of torture escape criminal punishment or any punishment at all. 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: 1) 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. 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 Xiaobo, among others. The government campaign of “transformation” of Falun Gong practitioners in detention, aimed at forcing them to submit and	

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		renounce their beliefs, and similar efforts to coerce Tibetans to denounce the Dalai Lama, are 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. 2) 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 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." 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. 3) 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 precludes the expanding use 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	

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		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 convicting suspects as charged.	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: As of 2009, the Government rejects the release of concrete data about enforcement efforts and increased transparency in the criminal justice system. In most cases no effective investigations were conducted in torture cases documented by human rights organizations. If investigations were initiated, they failed to meet the requirements of promptness, effectiveness and impartiality. The police, SPP and courts are not independent and remain under the supervision of the Chinese Communist Party, including through "Politics and Law Commissions".	
c) Any public official	The Public Security Organs'	Non-governmental sources: Perpetrators of torture are	

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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.	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.	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. Allegations of torture arising in politically sensitive cases seldom result in adequate investigation or prosecution. Individuals from politically targeted groups, including Uighurs, Tibetans, Falun Gong, democracy activists and human rights defenders, who allege torture or other ill-treatment in policy 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: 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 facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant or	The CPL gave public security organs broad discretion to detain suspects for long periods in custody without judicial review. Coercive summoning (Juchuan) could be extended for up to 48 hours and the	Non-governmental sources: China's Criminal Procedure Law continues to allow the police 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	

[4] 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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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;	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).	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 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. 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. - 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. - Regulations recently issued by the Supreme People's Procuratorate and Ministry of Public Security may enhance the utility of the procuratorate's approval of arrest as a mechanism to prevent torture.[4] 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	

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		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. - In practice individuals are often held in police detention for periods longer than allowed for by law prior to and following arrest. 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. - 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 led the Supreme People's Procuratorate and the Ministry of Public Security to carry out an inspection campaign 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. - 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	

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		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: 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: 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. 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 non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased.	Upon approval by the procuratorate, suspects could be held for up to a total of seven months in investigative 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.	Non-governmental sources: 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 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	China's domestic legislation did not provide for habeas corpus or any other legal	Government: Under the NHRA, effective steps shall be taken to guarantee the lawful, timely and impartial trial of all cases.	

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lawfulness of the detention before an independent court, e.g. through habeas corpus.	recourse to challenge arrest and pre-trial detention before an independent court.	Non-governmental sources: No steps to guarantee prompt judicial review before an independent judicial authority of the lawfulness of the arrest have been taken. 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. 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 be expanded throughout the country.	- 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 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	Non-governmental sources: 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.[5] These regulations have been 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	

[5] “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 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

[6] 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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	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.	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 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 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	

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		conduct a full review of all facts.[6] - 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 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). - 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: There is no right to access a lawyer before the initial interrogation. The	

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
		use of evidence obtained through torture remains admissible and is still being used in judicial proceedings. The police retain full control over the recording and the disposal of the video material which has lead 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 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.	While Chinese law and prison detention regulations cover medical care for detainees quite comprehensively, none of the provisions establish the prisoners' rights to independent medical examinations.	Government: Under the NHRA, a system of conducting a physical examination of detainees before and after the interrogation shall be established and promoted. Non-governmental sources: No significant steps have been taken since the visit. - The right to access to medical care provided for by law is 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	- 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);	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: There continue to be	

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

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 and A/HRC/10/44/Add.5)	Information received in the reporting period
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 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.	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. - 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; - 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.[7] - In more than a dozen cases investigated by NGOs,	

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		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 authorities, seriously compromising judicial independence. Non-governmental sources 2009: 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. 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	There is no provision under Chinese law for individuals to be brought promptly before an independent judicial authority to assess the lawfulness of the	Non-governmental sources 2008: The Public Procuratorate remains in charge of decisions over extending police custody and pre-trial detention.	

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transferred to independent courts	detention. Decisions over an extension of custody and pre-trial detention rested with the Public Procuratorate.		
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. This does however not apply to lawyers “whose speech endangers the national security, or who maliciously slanders others and seriously disturbs the order of the court”. 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 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 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-		Non-governmental sources: The previously conducted ‘in-house’ education campaigns have not	

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raising campaigns on the principles of the CAT for the public at large, public security personnel, legal professionals and the judiciary.		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 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: Most victims of torture have not received any compensation or only small amounts.	
p) Death row prisoners should not be subjected to additional punishment such as being handcuffed and shackled.	At the Beijing Municipality Detention Centre, death row prisoners awaiting appeal were handcuffed and shackled with leg irons for 24 hours a day and in all circumstances.	Non-governmental sources: Death row 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: 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 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	

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		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: The number of capital offences remains the same. 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", "supplying of State secrets to individuals abroad" etc. should be abolished.	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 religion, speech and assembly.	Non-governmental sources: 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. - According to the 2009 China law Yearbook, 1,712 individuals were arrested and 1,407 indicted for crimes related to "endangering state security" in 2008, up from 742 arrested and 619 indicted in 2007. 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.[8] The SPC report	

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

[9] 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 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).

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
		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 been imposed on 255 individuals.[9] - 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.[10] Non-governmental sources 2009: The Government has taken no steps towards the abolition of political	

[10] 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 and A/HRC/10/44/Add.5)	Information received in the reporting period
		crimes. Many people are still detained and sentenced for crimes such as "endangering state security" (ESS). 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 the basis of vaguely defined political crimes, both before and after the 1997 reform of the CL, should be released.	Despite the revision of the CL in 1997, political dissidents sentenced before 1997 continued to serve long prison sentences for "hooliganism" 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.	Non-governmental sources: No steps have been taken to release prisoners sentenced for the non-violent exercise of their rights.	
u) "Re-education through Labour" and similar forms of forced re-education in prisons, pre-trial detention centres and psychiatric	RTL and other forms of administrative detention had been used for many years against political groups, Falun Gong practitioners and human	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	

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hospitals should be abolished.	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.	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 liberty.	Non-governmental sources: 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 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)

27. By letter dated 12 October 2010, 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 his recommendations. The Special Rapporteur thanks the Danish Government for providing him with additional information for this report.

28. The Special Rapporteur wishes to reiterate his appreciation for the Danish Government's long-standing commitment to and leadership in combating torture worldwide. The Special Rapporteur commends the Government for maintaining high standards of conditions of detention in most institutions. The Special Rapporteur welcomes the efforts of the Government to monitor the situation in detention centres where male and female detainees freely decide to be placed together and wishes to reiterate the need to ensure that appropriate safeguards are in place to prevent abuse.

29. The Special Rapporteur notes the information about not considering an adoption of a specific provision on the crime of torture due to the already existing and adequate provision in the Criminal Code and trusts that the above mentioned provision not only ensures that all acts of torture are offences under its criminal law but makes them punishable by appropriate penalties and criminal sanctions.

30. While welcoming the efforts of the Government to reduce the practice of the use of solitary confinement, the Special Rapporteur wishes to encourage the Government to further significantly reduce the use of solitary confinement due to its negative mental health effects upon detainees.

31. The Special Rapporteur regrets not having received an update on the Government's decision to make necessary changes to the Aliens Act, and looks forward to receiving information in relation to setting an absolute limit to the length of detention of foreigners pending deportation. On the issue of diplomatic assurances, the Special Rapporteur takes note of the September 2010 consultation reaffirming the Government's decision about the possibility of the use of diplomatic assurances on conditions of due consideration of safety in each individual case. Nevertheless, he calls on the Government to refrain from the use of diplomatic assurances.

32. The Special Rapporteur notes with satisfaction the conclusions issued by the inter-ministerial working group investigating the alleged CIA flights operating through Denmark and Greenland and encourages the Government to condemn illegal practices of rendition flights and ensure the observance and implementation of the recommendations issued by the working group.

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*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.
(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 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	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 7.189 in 2007, a decrease of 48%.[11] 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.[12]	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

[11] 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)

[12] 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	Information received in the reporting period
	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.		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 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[13], 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

[13] 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

[14] 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*	*Information received in the reporting period*
			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[14] 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 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, ad 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.[15] Government: By 5 November 2009, 45 aliens were detained in Ellebæk of which 18	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: Denmark decided to

[15] 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)

Recommendations (A/HRC/10/44/Add.2)	Situation during visit in 2008	Steps taken in previous years	Information received in the reporting period
		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 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.	implement the directive on an intergovernmental basis and informed the Council. The necessary changes to the Aliens Act will be proposed during 2010. By November 2010, 56 aliens 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.

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
(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 countries of origin.	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.[16] 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 socially, psychologically and practically during the reflection period. Legal counselling is offered to potential victims of trafficking through outreach work.	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

[16] 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

[17] The report is not finalised yet.

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
		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.[17] 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 trafficking.	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 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	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,	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	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

Recommendations (A/HRC/10/44/Add.2)	Situation during visit in 2008	Steps taken in previous years	Information received in the reporting period
with men is based on her completely free and informed decision, and scrupulously monitor appropriate safeguards to prevent abuse.	this was not the case in Nuuk Prison in Greenland.	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.	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 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	The Government considered to	Non-governmental sources: According to	Non-governmental sources: On 1

Recommendations (A/HRC/10/44/Add.2)	Situation during visit in 2008	Steps taken in previous years	Information received in the reporting period
diplomatic assurances as a means of returning suspected terrorists to countries known for practicing torture.	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.	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.[18] 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 limited." The white book lists a number of restrictions and strict preconditions in this respect.	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

[18] Source: (Besvarelse af spørgsmål nr. S 2331 stillet af folketingsmedlem Simon Emil Ammitzbøll (UFG) til ministeren for flygtninge, indvandrere og integration den 28. Maj 2009). Brev af 9 Juni 2009.

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			appealed to the High Court of Eastern Denmark.
(g) Ensure that investigations into alleged CIA rendition flights using Danish and Greenlandic airports are carried out in an inclusive and transparent manner.	A Danish documentary broadcast on 30 January 2008 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.	Government: The Governmental report on secret CIA-Rendition flights in Denmark, 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.[19] 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	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 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

[19] 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).

Recommendations (A/HRC/10/44/Add.2)	Situation during visit in 2008	Steps taken in previous years	Information received in the reporting period
		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 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.	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, including secret detentions, indefinite detention, as well as the use of torture

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
			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.[20] 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 their cases thoroughly reviewed by the refugee authorities based on a factual and individual assessment of all relevant	Non-governmental sources: Denmark has 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

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

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
		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 country with difficult living conditions, will be at risk of developing or experiencing a	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 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 can not, 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."

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
		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.	
(i)The Special Rapporteur recommends, as a priority for the Greenland Home Rule	High incidence of assault and sexual offences against women in Greenland: a study by the	Non-governmental sources: According to an inquiry into the matter, in February 2009 a draft [National Strategi for sundhedsfremme	Non-governmental sources: On 1 September 2010, the Danish Minister of Justice informed the Parliament about

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
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.	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".	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.	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

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
			on family planning which includes, among others, debates on violence in relationships 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

Recommendations (A/HRC/10/44/Add.2)	*Situation during visit in 2008*	*Steps taken in previous years*	*Information received in the reporting period*
			"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)

33. El 12 de octubre de 2010, 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 Gobierno proporcionó información extensa el 8 de noviembre de 2010. El Relator Especial quisiera agradecer al Gobierno la información detallada proporcionada, y informa su disposición a ayudarle en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

34. El Relator Especial toma nota de que el Gobierno aprobó la ley nº 6/2006 sobre la prevención y sanción de la tortura y aplaude la creación de un mecanismo no jurisdiccional con el objeto de proteger los derechos del ciudadano. Considera un paso positivo que la Ley nº 6/2006, junto con el mecanismo no jurisdiccional, tienda a armonizar la legislación nacional con el derecho internacional. Al respecto, solicita al Estado que proporcione información sobre el trabajo del mecanismo no jurisdiccional, y la forma en que se trata de atender la recomendación sobre los mecanismos eficaces de supervisión y rendición de cuentas.

35. En cuanto al sistema judicial, el Relator Especial encomia los pasos dados por el Estado para reformar la judicatura, y el hecho de que haya proporcionado información sobre la Ley del Poder Judicial (5/2009) así como sobre el Tribunal Constitucional. Considera un paso positivo que el Gobierno prevea la adopción de una nueva ley penitenciaria. 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.

36. 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. Así como 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 y 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.

37. El Relator Especial toma nota de la existencia de la ley 1/2004, sobre el tráfico ilícito de emigrantes y trata de personas, sin embargo 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)*	*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 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 Convención Internacional contra la Tortura y Otros Tratos o

Recomendación (A/HRC/13/39/Add.4)	*Situación durante la visita (A/HRC/13/39/Add.4)*	*Información recibida en el periodo reportado*
		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 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 funcionamiento de los Juzgados de Vigilancia Penitenciaria

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		(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 familiares regulares en todos los lugares de detención	Las políticas de visita variaban entre lugares de detención, desde políticas 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	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	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

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instalaciones sanitarias.	algunos casos de ducharse o hacer ejercicio.	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.
(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 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		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.

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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.		

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)

38. By letter dated 12 October 2010, 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 his recommendations. He expresses his gratitude to the Government for providing comprehensive information on steps taken during the reporting period.

39. The Special Rapporteur welcomes the initial steps undertaken in the context of the Anti-Torture Plan and criminal justice reform, including the adoption of a new Strategy on the Fight against Ill-treatment; the entering into force of the new Criminal Procedure Code which regulates the plea agreement and provides an extended list for pre-trial alternatives; and the new Code on Imprisonment which regulates complaint procedures and disciplinary proceedings within the penitentiary institutions. He notes with appreciation the initiative of the Criminal Justice Reform Inter-Agency Coordinating Council to review the compliance of the Criminal Code with international standards.

40. The Special Rapporteur would like to thank the Government for providing updated statistics in relation to the investigation of allegations of torture and ill-treatment. He encourages the Government to uphold unambiguously the zero tolerance policy against torture and ill-treatment and make further efforts to reduce the risk of ill-treatment and excessive use of force by the police at the time of apprehension and while in detention. The Special Rapporteur welcomes the disciplinary sanctions taken against several law-enforcement bodies and prosecutors. However, he notes 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.

41. The Special Rapproteur notes with satisfaction the Criminal Law Reform Strategy and the Government's Action Plan on strengthening the independence and impartiality of the judiciary. He would like to encourage the Government to continue its efforts to reduce the dominant role of prosecutors in the administration of justice.

42. The Special Rapporteur welcomes efforts undertaken to remove non-violent Offenders from confinement in pre-trial detention facilities and encourages the Government to increase the number of probation workers. He hopes that the number of cases where non-custodial measures were applied will increase especially in relation to those who can not afford bail. He positively notes the development of guidelines for prosecutors encouraging the application of non-custodial measures and encourages the Government to strictly separate pre-trial and convicted persons.

43. The Special Rapporteur positively notes the measures envisaged in the Penitentiary Strategy and the corresponding Action Plan to address prison overcrowding and to bring the conditions of temporary detention facilities in line with international standards. He hopes that social-rehabilitation and vocational activities introduced within selected penitentiary institutions will be expanded to other penitentiary institutions in the country. The Special Rapporteur welcomes the draft Healthcare Strategy for Penitentiary Establishments and hopes that it would truly address the existing challenges in the healthcare system.

44. The Special Rapporteur welcomes the allocation of financial resources to the National Preventive Mechanism (NPM) and hopes that the selection of experts for the NPM will reflect its independence.

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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 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 inhuman or degrading treatment is a case of special importance, which has to be

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			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.
(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	

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		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 October 2005 require the automatic opening of a case if reports on torture are received and fix maximum delays for preliminary investigations.	
(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	Non-governmental sources: Prisoners of 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.

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		identification numbers.	
(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.	
(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 on expert forensic evidence for judicial purposes.	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 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	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

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		governmental decree; as a legal entity of public law, the National Bureau is entitled to carry out remunerated activities as noted in its statute.	entity and other private ones.
(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.	
(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 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	Not respected in practice.	Reform in line with the Criminal Law Reform Strategy and the Government's Action Plan to be completed in early	

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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.		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 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;	

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		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.	
(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		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.

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 and A/HRC/7/3/Add.2*)	*Information received in the reporting period*
be increased.			- Regarding the reform of the probation service, a separate Strategy and an Action 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.
(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 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	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 hospitals within the penitentiary system provide medical treatment to convicts). Furthermore, a healthcare strategy for the Penitentiary System is being developed.

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		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.	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.
(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.	
(o) In accordance with the Optional Protocol to the Convention against Torture, establish a truly independent monitoring mechanism.		2005: accession to the Optional Protocol to the Convention against Torture (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	Non-governmental sources: There are no independent monitoring systems in place. The Local Monitoring Commissions cannot be considered independent since 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));

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 and A/HRC/7/3/Add.2)*	*Information received in the reporting period*
		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.	(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 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	

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		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 Unit checks the health conditions of prisoners.	
(q) Law enforcement recruits undergo an extensive and 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.		The curriculum of the Police Academy of the Ministry of Internal Affaires contains 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	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.

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 and A/HRC/7/3/Add.2)*	*Information received in the reporting period*
		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.	
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.	

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)

45. On 12 October 2010, the Special Rapporteur sent the table below to the Government of Indonesia requesting information and comments on the follow-up measures taken with regard to the implementation of his recommendations. He expresses his gratitude to the Government for providing information on the implementation of the recommendations issued in this report.

46. The Special Rapporteur welcomes the steps undertaken to include a definition of torture in the Penal Code and encourages the Government to ensure that the bill to this effect provides the definition, prohibition and punishment of torture in accordance with articles 1 and 4 of the Convention against Torture. The Special Rapporteur remains concerned about reports of torture and ill-treatment committed by the members of security forces and the lack of independent mechanisms to investigate allegations of torture. He recalls the appeal to the Government to ensure that Komnas HAM (National Human Rights Commission) is empowered to effectively exercise its authority to investigate allegations of torture and to conduct unannounced visits and that its recommendations to hold perpetrators accountable are thoroughly followed-up and implemented by State authorities.

47. The Special Rapporteur notes with appreciation various steps undertaken to ensure the effective functioning of the National Human Rights Commission and the National Police Commission and looks forward to receiving information on the number of complaints received and prosecutions carried out by these bodies. He recalls the appeal to the Government to ensure the effective and independent functioning of The Victim and Witness Protection Body and the National Human Rights Commission.

48. While noting the efforts of the Government to prevent the enforcement of the new Islamic Criminal Legal Code authorizing the use of corporal punishment, the Special Rapporteur is concerned about the reports of continued use of severe sentences such as stoning and caning for certain offences. He urges the Government to reject this newly revised Criminal Legal Code with a view of fully abolishing them in its domestic criminal legislation.

49. The Special Rapporteur regrets that there have been no new developments regarding reducing the time limit for police custody (61 days) and recalls the appeal to the Government to ensure that all detainees can effectively challenge the lawfulness of the detention before independent courts and without delay; to guarantee inadmissibility of confessions obtained under torture and ill-treatment and increase its efforts to adopt legal provisions to allow video and audio taping of interrogations. The Special Rapporteur notes with appreciation the steps undertaken to raise the age of criminal responsibility of minors and 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.

50. The Special Rapporteur commends the Government for undertaking steps to improve the conditions of detention. He welcomes the establishment of a Task Force dedicated to the eradication of corruption and calls on the Government to ensure that it has sufficient authority to hold public officials responsible for acts of corruption in view of the pending legislation reported to be undermining its effective functioning. He notes with satisfaction the establishment of institutions for the defense and protection of victims of domestic violence in provincial and district police offices, as well as crisis and social

reintegration and rehabilitation service units throughout the country and hopes that these mechanisms will effectively enforce the prohibition of violence against women.

51. 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 and to become party to the Optional Protocol to the Convention against Torture (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)*	*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 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	Indonesia had not made a declaration under article 22 UNCAT.	Non-governmental sources: No declaration has been made under article 22.	

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6)*	*Information received in the reporting period*
receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.			
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 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		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 National Police, who is in breach of human rights principles, will be punished in accordance with Article 60,

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6)*	*Information received in the reporting period*
training for all stakeholders, including the National Human Rights Commission and civil society representatives, in order to lead them to live up to their human rights obligations and fulfil their specific task in the fight against torture.			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.
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 victim.	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; Investigating authorities were mostly institutionally linked to suspected perpetrators, and	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 of internal and external mechanisms exist in Indonesia to monitor police work, but none of these institutions had 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)*	*Information received in the reporting period*
	therefore not independent.	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.	
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.
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		

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	Situation during visit	Steps taken in previous years (A/HRC/13/39/Add.6)	Information received in the reporting period
	not used in practice; Women held in Social Welfare Centres have no access to judicial review of their detention.		
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.
82. Confessions made by persons in custody without the	Many allegations of confessions under torture, which were		Government: Investigators in the Criminal Investigation Section of 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)*	*Information received in the reporting period*
presence of a lawyer and which 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.	admissible during court proceedings, were received.		National Police have been instructed by their superior officers to provide access to the media when interrogating suspects. 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.
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 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.
84. The Government of Indonesia should expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National	Indonesia was not party to the OPCAT; The National Human Rights Action Plan (2004-2009) foresaw the ratification of the Optional	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	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

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	Situation during visit	Steps taken in previous years (A/HRC/13/39/Add.6)	Information received in the reporting period
Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention.	Protocol to the Convention against Torture in 2008.	facilities with or without announcement.	of ratification.
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 effective players in the fight against torture and provide them with the necessary resources and training to ensure their effective functioning.	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 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.	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. 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.
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 province.
Conditions of detention			

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6)*	*Information received in the reporting period*
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 facilities.		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 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.
88. The Government of Indonesia should ensure that 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 was deeply ingrained in the criminal justice system, 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	Non-governmental sources: In 2009 efforts to combat corruption ran the risk 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.

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	Situation during visit	Steps taken in previous years (A/HRC/13/39/Add.6)	Information received in the reporting period
corruption by public officials responsible for the administration of justice, including judges, prosecutors, police and prison personnel.	having alleged to have paid in order not to be subjected to beatings.		
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 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

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6)*	*Information received in the reporting period*
			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 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	The 2004 law banning violence in household and establishing		Government: The Government has developed a system for registering and reporting cases of violence against

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	Situation during visit	Steps taken in previous years (A/HRC/13/39/Add.6)	Information received in the reporting period
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.	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.		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 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

Recommendations (A/HRC/7/3/Add.7, para. 72-92)	*Situation during visit*	*Steps taken in previous years (A/HRC/13/39/Add.6)*	*Information received in the reporting period*
			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 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.			

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)

52. By letter dated 12 October 2010, 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 recommendations. By letter dated 19 January 2011, the Government of Jordan responded by providing information on the measures taken with regard to the implementation of the recommendations.

53. The Special Rapporteur notes with satisfaction that the Convention against Torture has become part of the national legislation and is thus enforceable in national courts. He further 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. This was also noted by the Committee against Torture (CAT) in 2010.[21]

54. The Special Rapporteur commends the Government for taking steps to integrate the provisions of the CAT into training curricula for the personnel of the Public Security Directorate (PSD) and to raise public awareness about the provisions of the CAT. However, he remains concerned that no public official has ever been prosecuted for having committed torture under article 208 of the Penal Code, and that only disciplinary sanctions and lenient penalties were imposed on public officials found guilty for abuse or torture. In this connection, he echoes the recommendation of the CAT and calls upon the Government to define the offence of torture in accordance with articles 1 and 4 of the Convention distinct from other crimes.

55. The Special Rapporteur welcomes the Memorandum of Understanding signed between the PSD and the National Centre for Human Rights (NCHR) aimed at strengthening the NCHR's role to receive complaints and monitor places of detention. He regrets not having received data on the number of complaints of torture and ill-treatment received by these bodies, including the results of any investigation undertaken in this respect. He strongly encourages 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.

56. The Special Rapporteur notes that although the Criminal Procedural Code provides for the guarantees for the right to habeas corpus and the possibility to challenge the lawfulness of the detention before an independent court, according to non-governmental sources, this mechanism has not been effective in practice. He welcomes a number of convictions overturned by the Court of Cassation on the ground that the confessions were obtained by torture and encourages the Government to give serious consideration to video and audio taping of interrogations and provide information on whether any officials have been prosecuted and punished for extracting such confessions. The Special Rapporteur 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.

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

57. Finally, the Special Rapporteur welcomes the efforts made by the NCHR and the PSD to conduct unannounced visits to places of detention, and wishes to reiterate his recommendation to consider the ratification of the Optional Protocol to the Convention against Torture (OPCAT) and the establishment of a National Preventive Mechanism.

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 and A/HRC/10/44/Add.5)*	*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	- 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	- 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 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

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that torture is an extremely serious crime which will be punished with severe (long-term) prison sentences.	the situation of torture.		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 penalties commensurate with the gravity of torture.	Torture was criminalized in accordance with article 208 of the Penal Code; however, the definition was not consistent with article 1 of the Convention against Torture.	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 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

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			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 criminals, and the system of internal special courts served only to shield security officials from justice.		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 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

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
			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 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	- 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 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	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. - Special monitoring and complaints office was set up in the Public Security Department and reports directly to the

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
	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.	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.	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.

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 and A/HRC/10/44/Add.5)	Information received in the reporting period
			Complaint boxes affiliated with this Office were placed in all correctional and rehabilitation centres. - 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	The discussion regarding separation of the two authorities was ongoing.	

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	and impartiality.		
(h) All detainees be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.	Articles121 to 129 CCP guaranteed the right to habeas corpus. They also held that a detainee could challenge a detention order and any 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	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		

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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.	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.		
(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	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 may

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
all persons present.			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	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.

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
		death" against prison guards in Aqaba, who beat a detainee to death in May 2007.	
(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	No declaration		.

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 and A/HRC/10/44/Add.5)	Information received in the reporting period
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.			
(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 based on separation of convicted persons from persons awaiting trial.	- 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 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	Non-governmental sources: Pre-trial and convicted detainees are separated.

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
		social worker.	
(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 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	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	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

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
safe conditions.	of the 1954 Crime Prevention Law, because they are at risk of becoming victims of honour crimes.		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.	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	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

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 and A/HRC/10/44/Add.5)*	*Information received in the reporting period*
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.			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 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

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			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. 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

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			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.

Kazakhstan

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)

58. On 12 October 2010, 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 the recommendations of his visit. He would like to thank the Government for providing information by letter dated 11 November 2010.

59. In April 2010, the Government of Kazakhstan officially invited the former Special Rapporteur for a follow-up visit to the country to discuss the implementation of his recommendations with the Government, civil society organizations and the Regional Office of the High Commissioner of Human Rights (OHCHR) for Central Asia. The Special Rapporteur wishes to commend the Government of Kazakhstan for its official invitation to pay a follow-up visit, which indicates a serious commitment to combating torture and improving the conditions of detention, and constitutes a best practice example.

60. The Special Rapporteur acknowledges various legislative developments and amendments to the Criminal Procedural Code and Criminal Code; the approval of the Government's Plan of action for 2010-2012 on the implementation of the recommendation of the CAT; legal-normative acts ensuring obligatory participation of forensic experts in the conduct of medical examination; rules of the organisation of activities of educational and professional schools in penitentiary system and expresses hope that various legislative projects will be adopted soon. The Special Rapporteur welcomes the consideration of amending the definition of torture in line with article 1 of CAT, and calls upon the Government to ensure that torture is established as a serious crime, sanctioned with appropriate penalties.

61. The Special Rapporteur is concerned that although the number of complaints alleging offences committed by officials of the penitentiary system has increased during the past five years, the reported number of initiated cases against alleged perpetrators of the law enforcement bodies appears to be low. While acknowledging that the Manual (Guidelines) of the Office of the Public Prosecutor providing for complaints mechanisms is a step forward, the Special Rapporteur questions the effectiveness of the complaints mechanism envisaged in the Manual, 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 promptly, independently and thoroughly investigate all allegations of torture and ill-treatment by law enforcement agencies.

62. The Special Rapporteur welcomes the consideration by the Parliament of the draft Bill introducing amendments in the Criminal Procedural 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. He further notes with appreciation the normative decree of the Supreme Court to establish criminal liability for committing torture and exceeding ex officio power and providing for non-admissibility of evidence extracted by torture and expresses hope that evidence obtained by torture will not be invoked in any proceedings.

63. The Special Rapporteur welcomes the normative decree of the Supreme Court providing for the compensation and rehabilitation of victims of torture, and the plans to establish new institutions of restorative justice. He looks forward to hearing more about the implementation of this provision in practice and receiving examples of cases of compensation, including medical or psychological rehabilitation.

64. The Special Rapporteur welcomes the efforts of the Government directed to reforming the law enforcement, penitentiary and judicial systems, including 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. He looks forward to receiving more information on concrete steps undertaken to implement these measures.

65. The Special Rapporteur further welcomes the transfer of the temporary isolators, centres for adaptation and rehabilitation of minors from the Ministry of Interior to the Ministry of Education and regrets that consideration of the transfer of investigation isolators from the National Security Committee, and the temporary detention isolators from the Ministry of the Interior to the Ministry of Justice, is postponed. He hopes that the financial revision related to the transfer will be dealt with promptly.

66. While the Special Rapporteur notes with satisfaction the adoption of the Law on Refugees and amendment to the Criminal Procedural Code ensuring the principle of non-refoulement, he 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 CAT.

67. The Special Rapporteur encourages the Government to finalise the legislation on the National Preventive Mechanism and equip it with sufficient human and other resources. The Special Rapporteur welcomes the adoption of the law on the prevention of domestic violence and respective amendments made to the Criminal Procedural Code and Code of Administrative Offences and hopes that adequate funding will be allocated for the establishment of crisis centres for victims of domestic violence.

68. The Special Rapporteur welcomes efforts made towards the implementation of harm reduction programmes, including the realization of pilot projects on substitute therapy, and encourages the Government to take further measures to introduce programmes on exchange of single-use needles in correctional facilities and investigation isolators.

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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 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

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3)*	*Information received in the reporting period*
		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”; -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

Recommendation (A/HRC/13/39/Add.3)	Situation during the visit (A/HRC/13/39/Add.3)	Information received in the reporting period
		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 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 penalties13 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 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	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

Recommendation (A/HRC/13/39/Add.3)	*Situation during the visit (A/HRC/13/39/Add.3)*	*Information received in the reporting period*
	by law enforcement agencies.	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, 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,	Government: Measures are being 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

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	prosecutors tend to ignore grave violations.	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 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.	Medical personnel employed by the Ministry of the Interior and the penitentiary 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 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

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		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 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

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		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 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 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

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		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, 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	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	Government: The country is considering measures to ensure the practical application of the principle of adversary court proceedings and absolute independence and fairness of the judicial power by guaranteeing the division

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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.	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.	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 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

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		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 domestic law, together with clearly set out enforcement mechanisms.	There is no legal obligation in Kazakh domestic legislation for financial 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 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	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

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training.		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 : - 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

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		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 staff regarding their role in preventing torture and ill-treatment.	Temporary detention isolators are under the responsibility of the Ministry of the Interior and investigation isolators under the responsibility of the National Security Committee.	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.
(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 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

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		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 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 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	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

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	considered independent; consequently, it needs to be done by an outside medical expert.	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 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.	Criminal and criminal procedure codes 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 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

Recommendation (A/HRC/13/39/Add.3)	Situation during the visit (A/HRC/13/39/Add.3)	Information received in the reporting period
		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, 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.	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

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	- 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 lost their parents or legal guardians, or have been picked up in the streets.	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 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	See above	Government: A countrywide programme of cooperation aimed at improving the quality of life for children is developed between the Government and UNICEF for the period of 2010-2015. In addition, UNICEF has developed

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includes the United Nations Office on Drugs and Crime, the United Nations Children's Fund, OHCHR and nongovernmental organizations, to implement these reforms.		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). - 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	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 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

Recommendation (A/HRC/13/39/Add.3)	Situation during the visit (A/HRC/13/39/Add.3)	Information received in the reporting period
	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.	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 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)

69. On 12 October 2010, the Special Rapporteur sent the table below to the Government of Mongolia 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 any information with regard to the implementation of the recommendations. He looks forward to receiving information on Mongolia'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.

70. The Special Rapporteur positively notes various legislative amendments to the Criminal Code and the Criminal Procedural Code and regrets not having received information regarding the steps undertaken to criminalize torture in conformity with articles 1 and 4 of the Convention against Torture, as pointed out by the Committee against Torture (CAT).[22]

71. The Special Rapporteur is concerned about the reports of frequently occurring arbitrary arrests and detentions, the lack of access to a judge and to a lawyer, as noted by the CAT, and urges the Government to take prompt and effective measures to ensure that all detainees have prompt access to a lawyer and are provided with guarantees to challenge the lawfulness of detention in order to prevent facilitation or perpetration of torture and other cruel, inhuman or degrading treatment. He reiterates his previous recommendation and calls upon the Government to take measures to ensure that any evidence obtained by torture is excluded from judicial proceedings. He further notes the recommendation of the CAT to introduce video and audio monitoring and recording of all interrogations. He calls upon the Government to amend the criminal legislation 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 the investigator.

72. The Special Rapporteur expresses concern about the reports of the lack of prosecution and adequate punishment for acts of torture and ill-treatment committed by law enforcement officials and interrogators, also referred to by the CAT and urges the Government to take steps to combat impunity by, inter alia, holding all alleged perpetrators responsible for acts of torture, and ensuring that independent and efficient mechanisms are in place to challenge impunity. He 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 recognize the competence of the CAT to receive and consider individual communications.

73. While acknowledging the efforts of the NHRCM in conducting visits to prisons, 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.

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[22] Concluding Observations of the Committee against Torture, (CAT/C/MNG/CO/1/CRP.1), Mongolia, 1-19 November 2010.

74. The Special Rapporteur looks forward to receiving information in relation to the treatment of death row prisoners in accordance with the Standard Minimum Rules of Prisoners. He welcomes the declaration by the President on 14 January 2010, of a moratorium on the death penalty and hopes that the Government will take prompt steps to abolish it in law.

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)*	*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 capacity, as required by CAT. It also does not	

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)*	*Information received in the reporting period*
		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 shall be carried out. Transfers to other arrest	

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)	Information received in the reporting period
		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. Non-governmental sources: According the	

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)*	*Information received in the reporting period*
		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-Corruption Agency. The official statistical	

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)	Information received in the reporting period
		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 use of non-custodial	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 confinement ranges	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 for juveniles to only those accused of serious	

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)	Information received in the reporting period
measures; reduction of maximum period of pre-trial detention; pre-trial detention as a measure of last resort.	from14 days up to 30 months. Suspects under 18 can be detained for up to 18 months (art. 366.4).	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 total secrecy surrounding	Government: It is prohibited to apply the death sentence to women, juveniles and the elderly (over approximately sixty). The Great State Hural has committed to decrease the types of	

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)	Information received in the reporting period
	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.	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 law enforcement recruits.	There was a basic lack of awareness and understanding of the international standards relating to the prohibition of torture among law	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 investigators. The provision of human rights	

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	enforcement officials, prosecutors, lawyers and members of the judiciary. It was reported that three quarters of the existing corps have no human rights training.	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 issues has been conducted by the Government	

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		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)

75. On 12 October 2010, 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 fact-finding mission in 2005. He expresses his gratitude to the Government for providing information in a letter dated 19 November 2010.

76. The Special Rapporteur welcomes the draft bill on Witness Protection and Article 164 of the draft Penal Code criminalizing 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.

77. The Special Rapporteur is concerned that a number of laws granting quasi-judicial power to Chief District Officers, and 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 and calls upon the Government to take measures to investigate all allegations of torture, prosecute and punish those responsible for acts of torture and ensure that victims of torture and ill-treatment are provided with adequate compensation. The Special Rapporteur notes with concern the reports of discriminatory targeting of detainees from certain ethnic minorities and lower castes, as well as the reported cases of torture in the southern part of Nepal and urges the Government to undertake impartial investigations into past and present allegations of torture.

78. The Special Rapporteur regrets that the Government has not taken steps to make incommunicado and secret detention illegal and calls upon the Government to release immediately the reported large number of detainees held arbitrarily by Armed Police Forces at unknown locations. The Special Rapporteur refers to the information submitted by non-governmental sources regarding holding detainees for longer periods of time and calls upon the police to better respect the maximum period of 24 hours to produce arrested individuals before the judicial authority, to ensure that persons deprived of their liberty can effectively challenge the lawfulness of their detention, and to guarantee the inadmissibility of evidence obtained under torture.

79. 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 and to become party to the Optional Protocol to the Convention against Torture (OPCAT) providing for 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)	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: 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

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)*	*Information received in the reporting period*
			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.
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 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	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 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.

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		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. 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	

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)*	*Information received in the reporting period*
		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.	
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 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.
d) Those legally arrested should not be held in facilities under the control of	Legislation (2004 Terrorist and Disruptive Activities (Control and Punishment)	Government: According to Art. 24 (3) of the Interim Constitution, detainees must be presented before a	Non-governmental sources: Although the Interim Constitution requires bringing detainees before court within

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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.	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 such authority).	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.	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	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

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		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 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.	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.
(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	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.

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		otherwise disciplined by the 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.	
(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-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	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 the law with respect to the use of confessions obtained under coercion. From 2006 to 2007, the

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		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.	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.
(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 system and the rule of law on the part of victims and their families.	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 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	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 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

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		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.	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.
(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	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

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)*	*Information received in the reporting period*
		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 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.	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 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

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)	Information received in the reporting period
			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, 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.
(j) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or	The 1996 Compensation relating to Torture Act is not in line with the Convention's requirements for effective	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	Non-governmental sources: There is no information as to whether any action has been taken against any authorities indicted for abuse or torture. The civilian judicial system

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)*	*Information received in the reporting period*
ignoring evidence, be immediately suspended from duty pending trial, and prosecuted.	remedies.	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.	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. 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

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)*	*Information received in the reporting period*
			judicial custody.
(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 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

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)*	*Information received in the reporting period*
			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. 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	No action taken.		

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)	Information received in the reporting period
Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the CAT.			
(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.
(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 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.
(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.
(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		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	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

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)*	*Information received in the reporting period*
use of policing equipment, and that existing personnel receive continuing education.		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 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.	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 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.
(r) Security forces personnel recommended for United Nations peacekeeping operations be scrupulously		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	Non-governmental sources: There is a need to increase the level of cooperation between the OHCHR and the UN Department of Peacekeeping

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)	Information received in the reporting period
vetted for their suitability to serve, and that any concerns raised by OHCHR in respect of individuals or units be taken into consideration.		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.	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.
(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.
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, 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	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

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)*	*Information received in the reporting period*
		abused and then threatened in order not to disclose what happened.	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.
Torture and ill-treatment against children.		Non-governmental sources: The widespread 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.

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).

80. On 12 October 2010, 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 recommendations. The Special Rapporteur regrets that the Government has not provided any input. He looks forward to receiving information on Nigeria'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.

81. The Special Rapporteur positively notes the information submitted by non-governmental sources about statements of public condemnation of torture by Governmental officials and the drafting of an anti-torture legislation by the National Committee on Torture. He urges the Government to ensure that the Criminal Code is amended to contain provisions in accordance with articles 1 and 4 of the CAT establishing torture as a serious crime punishable with severe prison sentences. The Special Rapporteur is worried that no developments have taken place to abolish corporal punishment, including Sharia-based punishments.

82. The Special Rapporteur is concerned that the existing complaints mechanism within the police force is ineffective nor independent and does not enjoy public confidence. He regrets that according to non-governmental sources, the right to legal counsel is rarely exercised and that detainees can rarely afford such counsel nor bail. The latter is crucial in the prevention of torture and other cruel, inhuman or degrading treatment. He calls on the Parliament to ensure the expeditious adoption and effective implementation of the bill to extend the mandate of the Federal Legal Aid Council.

83. The Special Rapporteur is concerned about the indications of non-governmental sources that no actions have been taken to implement his predecessor's recommendation on vesting the power to order arrest and supervision of the police and detention facilities with independent courts. He calls upon the Government to guarantee inadmissibility of confessions obtained under torture and ill-treatment, 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. He looks forward to receiving information on the use of non-custodial measures for non-violent or minor offences.

84. The Special Rapporteur notes with appreciation the information about designating the National Committee on Torture as the National Preventive Mechanism mandated to visit places of detention and investigate allegations of torture. He calls on the Government to take measures to ensure the independence 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)*	*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.
(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 severe (long-term) prison sentences.	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 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

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)	Information received in the reporting period
			beatings with guns, sticks, whips and other tools; mock executions; shootings in the foot or legs; and being hung from the ceiling.
(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 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.
(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 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.

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)*	*Information received in the reporting period*
			- 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 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.
(g) All detainees should be effectively guaranteed the ability to challenge the	De facto, the vast majority of detainees did not have the ability to challenge the	Non-governmental sources: A detainee's power to challenge their detention has been dependent on their financial capacity,	Non-governmental sources: In practice, the ability of a detainee to challenge the lawfulness of a detention is dependent on

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)	Information received in the reporting period
lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.	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.	and poverty has been restricting the ability of detainees to obtain adequate legal representation.	their financial capacity. In addition, habeas corpus proceedings can take years and enforced disappearances are frequent.
(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 with the Istanbul Protocol.	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.
(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.
(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	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	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	Non-governmental sources: There is no information indicating that custody registers are kept. Detainees held at police stations often report that none of their details are taken and they are held until

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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.	records were frequently incomplete or inaccurate.	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.	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.
(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 prosecuting the case against the alleged victim.	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, or investigations lack independence as they could be conducted by the police. No information was provided by the Government on evidence of	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 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	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

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	successful criminal prosecutions of perpetrators of torture, payment of compensation, or statistics on disciplinary sanctions meted out to officers.	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.	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.
(m) Any public official found responsible for abuse 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.	Although there are a number of bodies that can accept 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.	Non-governmental sources: In 2009 concerns remained about the culture of 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: as of 2009, there had been no reported case of compensation awarded or the state providing rehabilitation to victims of torture.	Non-governmental sources: There is no information on any compensation awarded or rehabilitation provided by the State to any victim of torture.
(o) The declaration should be made with respect to article	Nigeria has not recognized the competence of the Committee		Non-governmental sources: Nigeria has recognized the competence of the National

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)*	*Information received in the reporting period*
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 victims of a violation of the provisions of the Convention.	against Torture to receive communications from individuals under article 22 of CAT.		Committee on torture to receive communications from individuals under Article 22 of CAT.
(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 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.
(r) Detainees under 18 should be separated from	Section 419 of the Criminal Procedure Code requires that imprisoned minors shall not be,	Non-governmental sources: Young children are often detained in the same cell as adult males, partly due to overcrowding.	Non-governmental sources: Detainees under 18 are not routinely separated, and there are many reports of children as

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adult ones.	so far as it is deemed practical, allowed to associate with adult prisoners. However, there was no strict separation of juveniles and adults.	Detainees under 18 are not routinely separated from adults.	young as 12 held with adults in police and prison detention.
(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.
(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.
(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.
(v) Abolish the death penalty de jure, commute the	Capital punishment was still in the national legislation, but	Non-governmental sources: The Minister of Foreign Affairs' statement on the	Non-governmental sources: No action has been taken to abolish the death penalty,

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)*	*Information received in the reporting period*
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.	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 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.	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 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.	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.
(w) Establish effective 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.	Nigeria has legislation 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.	Government: Several states have adopted 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	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.

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)	Information received in the reporting period
		campaigns to eradicate traditional practices as FGM. A bill is pending before the National Assembly.	
(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 equipment, and that existing personnel receive continuing education.	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 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	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.

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)*	*Information received in the reporting period*
places where persons are deprived of their liberty 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)

85. El 12 de octubre de 2010, 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 proporciono información el 26 de noviembre de 2010. El Relator Especial quisiera agradecer al Gobierno la información proporcionada, invitarle a enviar información sobre todas las recomendaciones emitidas, y informar de su disposición a ayudarle en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

86. 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. Asimismo, valora el trabajo para incluir en el Código Penal Militar el delito de tortura siguiendo los estándares de la Convención; y destaca la aprobación en el Senado del Proyecto de Ley del Mecanismo Nacional de Prevención contra la Tortura. Al respecto, insta respetuosamente al órgano legislativo a que concluya exitosamente tal proceso.

87. El Relator Especial manifiesta su preocupación por el hecho de que, hasta el momento, no se haya establecido una autoridad independiente para investigar denuncias de tortura; aunque toma nota de que el Ministerio Público ha recibido y dado seguimiento a varias denuncias de tortura. Sin embargo, hace énfasis en las denuncias de tortura investigadas en las que los presuntos responsables no han sido condenados aún. Asímismo, toma nota de la existencia de la Acción Publica como medio para iniciar investigaciones *ex–officio,* pero agradecería al Estado que proporcionara más información sobre la efectividad de dicho recurso.

88. 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. Consideraría recomendable además, la adopción de una normativa que garantice a todas las victimas de tortura y malos tratos su derecho a la indemnización, tratamiento médico y rehabilitación, pues el proyecto de Ley relativo, actualmente sujeto a debate legislativo, se encuentra limitado a las víctimas de la dictadura.

89. El Relator Especial aplaude la labor de la Defensoría del Pueblo en el monitoreo de distintos centros de privación de libertad y en la formulación de recomendaciones para el cumplimiento de las normas mínimas de las Naciones Unidas para las personas privadas de libertad. A la luz de las mismas, el Relator manifiesta su preocupación por la falta de respeto a las garantías procesales de las personas privadas de su libertad, ya que la mayoría de 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. En este sentido, lamenta el rechazo del recurso de Habeas Corpus presentado por la Defensoría del Pueblo. Toma nota también de las recomendaciones que en materia de tortura ha emitido el Ombudsman, así como de las denuncias penales que ha iniciado en el marco de visitas realizadas en centros de detención policiales y penitenciarios.

90. El Relator Especial nota su preocupación debido a que del total de la población penitenciaria, solo un 30% se encuentra privado de su libertad con base a condena firme y

ejecutoriada, mientras que el 70% restante lo esta bajo la figura de la prisión preventiva. Invita al Estado a garantizar la separación de presos en prisión preventiva y los convictos, y de menores y adultos. Finalmente, exhorta al Congreso a concluir exitosamente el Proyecto de Ley sobre la naturaleza, misión y ubicación del Ministerio de la Defensa Pública, con la finalidad de contribuir al fortalecimiento del derecho a la asistencia letrada.

91. El Relator Especial considera que seria recomendable contar con información práctica por parte del Estado relativa a la efectividad 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)	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 Social.
(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 Tortura (Articulo 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

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)*	*Información recibida en el periodo reportado*
			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.
(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. 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”. Dentro de sus atribuciones Constitucionales y legales, el Ministerio Público es el encargado de la

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			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
(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 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

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			funciones.
(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 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 forzosa, persecución de inocentes, genocidio y crímenes de guerra.
(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 ordenamiento específico por el cual se establezca indemnización a víctimas de Torturas, salvo a aquellas	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.

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		personas que sufrieron hechos de tortura en época de la dictadura.	
(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 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.
(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	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.

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		que vulneren tales derechos deben ser canalizados al fuero penal a cargo del Ministerio Público y los Juzgados Penales.	
(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. 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 Defensa ». 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 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.

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			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.
(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 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.	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 (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

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		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.	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. 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, 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

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			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 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 entrevistas.

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			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 Articulo 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 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

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			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.
(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.	
(m) Mantener registros exactos de los detenidos.		2009: El Gobierno informó que el 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).

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(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.
(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	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

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		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 siendo una tarea pendiente del Estado	encuentran: 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 Publica, Ministerio de Justicia y Trabajo, Secretaria de la Niñez y Adolescencia y la O.N.G, RONDAS. En virtud de las 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

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			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 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

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			condena firme y ejecutoriada.
(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.
(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 defasdo 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

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			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 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 2.006 se ha conformado la Oficina de Ética Judicial, tras la aprobación en Octubre de 2.005 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

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			2007 fueron 26 casos, en el 2008 se tramitaron 77 y hasta agosto del 2009, fueron tramitados 33 procesos de responsabilidad ética (Informe de 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 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,

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			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 Auditoria de Gestión Judicial del 18711/2009, pag.1). En el 2007 fueron realizadas 65 auditorias. (Informe de Gestión/2007, pag 23). En el 2008 fueron llevadas a cabo diversas Auditorias 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 Auditorias. Durante el año 2009 fueron llevadas a cabo las Auditorias 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 circunscripciones de la Republica (Capita, Central, Concepción, Ñeembucu, Caaguazú, Guairá, Paraguari,, Cordillera, Alto Parará, Caazapá y Saltos del Guirá (Informe de Gestión de la Dirección General de Auditoria 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

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			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 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.
(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 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

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			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.
(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 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

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			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; 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

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			Octubre del 2009). El horario de atención es de 7:00 a 17:00 hs. todos 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 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

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			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 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	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

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		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.	en la materia.
(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.	

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)

92. By letter dated 12 October 2010, 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 his recommendations. He expresses his gratitude to the Government for providing comprehensive information in letters dated 30 November 2010 and 31 December 2010.

93. The Special Rapporteur notes with satisfaction several positive developments that have taken place since 2009, such as the establishment of a new section on combating torture within the General Prosecutor’s Office and hopes that this newly established body will effectively ensure the prompt, independent and impartial investigation of all allegations of torture and ill-treatment. He notes with appreciation the ongoing reforms of the criminal justice system and in particular the introduction of probation and other forms of alternative punishment. The Special Rapporteur calls upon the Government to strengthen further non-custodial measures before and after trial and ensure that the National Forensic Centre meets international standards and functions independently.

94. The Special Rapporteur notes with appreciation the inclusion in the new Code of Criminal Procedure of provisions prohibiting the admissibility of evidence obtained by torture, and provisions shifting the burden of proof in cases of torture to the prosecution. He calls upon the Government to ensure inadmissibility in court, of confessions obtained under torture and consider video and audio taping of all interrogations. The Special Rapporteur regrets that no legislative initiatives in reducing the period in custody are reportedly in progress and recalls his predecessor’s 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 the investigator.

95. The Special Rapporteur notes with satisfaction the progress achieved in relation to the national response to gender-based violence, including adoption of the legislation providing an implementing mechanism for the law on family violence and the establishment of psycho-social, legal and residential services for victims of domestic violence.

96. The Special Rapporteur echoes the concern expressed by the Committee against Torture about serious legislative and logistical constraints impeding the effective functioning of the national preventive mechanism[23] and calls upon the Government to ensure its functioning by clarifying its status and strengthening its independence.

97. While overall recognizing the commitment of the Government to strengthen the independence of the judiciary and noting with satisfaction several positive developments in this areas, the Special Rapporteur strongly encourages the Government to continue its efforts at reforming the Prosecutor’s office, and the police and penitentiary systems with a view to demilitarize and transform them into truly client-oriented bodies.

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

98. The Special Rapporteur welcomes the initiative of the Prime Minister to establish a Commission to coordinate identification of the victims of the April 2009 events, their compensation, remedies and other rehabilitation measures. He, however, regrets that the primary victim rehabilitation centre remains severely under-resourced. He 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.

99. The Special Rapporteur notes with appreciation the steps undertaken to improve the conditions in detention facilities, including the reconstruction of several penitentiary institutions. However, he is 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.

100. 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.

Recommendation *(A/HRC/10/44/Add.3)*	*Situation during the visit* *(A/HRC/10/44/Add.3)*	*Steps taken in previous years* *(A/HRC/10/44/Add.3)*	*Information received* *in the reporting period*
(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	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 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

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		135 criminal cases, including 39 cases regarding excess of power, 17 cases regarding torture and 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	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

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		administrative fine to both sides of the conflict; 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	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

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		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 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	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 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-

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		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 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.	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 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,

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			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).
(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	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;	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	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

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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, 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	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 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	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 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	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. 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

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allocation of budgetary and human resources.	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.	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 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	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

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		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 clients. The legal assistance provided to torture victims does not comply with international standards.	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 resort' principle is not required and the right to legal assistance in such proceedings is

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			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; The periods of pre-trial detention were extensive;	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 extension of periods of arrest. Furthermore,	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

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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.	several of his interviewees had spent up to three or four years in detention without a final judgment.	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 the Status of Judges, which would stipulate the	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

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		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 international mechanisms of human rights	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 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).

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		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 training, labour and sport activities etc., which, along	- 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 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

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		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	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 custodial

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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.	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

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			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. - In early 2010, the process of

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			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

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			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 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

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			Government for approval. - In practice, the primary victim rehabilitation 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	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 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

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		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 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	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 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

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		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 operation of centres for assistance and protection	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

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		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.	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 relevant ministries and will be tentatively approved by the end of 2010.

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			- 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

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			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 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

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			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 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);	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,	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	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

Recommendation *(A/HRC/10/44/Add.3)*	*Situation during the visit* *(A/HRC/10/44/Add.3)*	*Steps taken in previous years* *(A/HRC/10/44/Add.3)*	*Information received* *in the reporting period*
ii) Allocate funds necessary to reform the system of psychiatric treatment.	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;	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.	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 according to the international standards. The funds for centralized purchase of drugs providing free drugs to patients who suffer from chronic mental

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			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 and its adjustment to international standards and provisions of

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			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-	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	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	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.

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jure. iii) Stop immediately the practice of solitary confinement for persons sentenced to death and to life imprisonment.	interlocutors expressed distrust in this institution; Whereas the Transnistrian “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.	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.	- 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)

101. El 12 de octubre de 2010, 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 Gobierno proporcionó información extensa el 26 de noviembre de 2010. El Relator Especial quisiera agradecer al Gobierno la información detallada proporcionada, e informar de su disposición a ayudarle en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

102. El Relator Especial toma nota de que la Constitución Española establece 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. Toma nota también del hecho que los males tratos y las torturas constituyen en España un delito perseguible de oficio. Considera un paso positivo el criterio reiterado por el Tribunal Constitucional a lo largo del año 2010, puntualizando la obligación que incumbe a todos los órganos judiciales de investigar las denuncias de torturas y malos tratos.

103. El Relator Especial encomia la adopción del Plan Nacional de Derechos Humanos en diciembre de 2008, el cual toma en cuenta las recomendaciones del relator y recoge acciones y medidas del Gobierno español para hacer efectivo su compromiso a favor de los derechos humanos.

104. Con relación a la detención incomunicada, el Relator reitera su preocupación por la limitación de ciertas garantías durante este período. Lamenta que el Gobierno no tenga previsto modificar la legislación española en el sentido apuntado por la recomendación del Relator sin embargo aprecia que el Gobierno, mediante el Plan de Derechos Humanos, se haya comprometido a adoptar medidas para reforzar las garantías de las personas detenidas en régimen de incomunicación, entre ellas la prohibición de la aplicación del régimen de incomunicación a los menores de edad; la designación, por el mecanismo nacional de prevención de la tortura, de un segundo médico del sistema público de salud para que examine al detenido incomunicado; y la grabación en vídeo durante todo el tiempo de permanencia del detenido incomunicado en las instalaciones policiales.

105. Con respecto a la limitación del derecho de acceso a un médico de propia elección para los detenidos incomunicados, el Relator toma en cuenta que la mitad de los juzgados encargados de la instrucción de los delitos de banda armada, vienen aplicando en la práctica, desde diciembre de 2006, un protocolo por el que se permite que los detenidos puedan ser examinados por médicos de su elección. A la luz de ello, consideraría recomendable que este protocolo se aplicara en todo juzgado encargado de la instrucción de los delitos de banda armada.

106. El Relator Especial, quisiera exhortar al Gobierno a incrementar los esfuerzos para abordar lo más pronto posible 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, tal y como lo contempla el Plan Nacional de Derechos Humanos.

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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.		2009: El Gobierno declaró el principio de "tolerancia cero" contra cualquier acto de 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	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

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		competencias sobre las Policías locales que dependen de los Ayuntamientos y de los 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	Prevención, en su primer informe anual insistirá en el principio de "tolerancia cero" del Gobierno no sólo ante cualquier acto de tortura o 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

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		constituye uno de los ejes fundamentales de 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.	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 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

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			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 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

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			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 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

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			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.
Elaborar un plan general para impedir y suprimir la tortura y otras formas de tratos o castigos crueles, inhumanos o degradantes.		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 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	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.

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		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. 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	

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		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 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	

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		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.	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 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	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 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

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		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. 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	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. 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

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		(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 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	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 constancia de la detención, del lugar de custodia, y de los funcionarios actuantes -para lo que cuenta con los medios necesarios y con

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		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 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	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.

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		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 hecho y del lugar de su detención.	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 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.	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	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 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

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		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 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	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 preste de acuerdo con lo previsto en el ordenamiento jurídico, utilizando los medios disponibles para hacer efectiva la presencia del abogado a

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		ello, los informes médicos no siempre reflejan de manera exacta y completa el estado físico 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 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	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. La privación, en el caso de detenidos sometidos al régimen de

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		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 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	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

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		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 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 G2587bajo 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	defensa de modo confidencial con el abogado de su libre 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

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		la causa. 2005: Fuentes no gubernamentales: No se habría observado ninguna variación en referencia a esta recomendación.	principal garantía de los derechos del detenido, nuestra legislación permite que los detenidos no 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

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			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 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.
Todo interrogatorio debería 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.	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 silencio mientras se hace la declaración. Se recibieron informes de que los detenidos eran encapuchados durante los traslados y durante el régimen de incomunicación.	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	Fuentes no gubernamentales: En 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

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		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 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	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 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

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		infracción y será perseguida. Si tales hechos delictivos se cometen por funcionarios policiales, es imprescindible que las denuncias contengan datos 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.	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 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

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		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 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.	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 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

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			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 conveniente para su defensa, consignándolo en el acta. Si, a consecuencia de la duración del

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			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.”
Investigar las denuncias e informes de tortura y malos tratos. Tomar medidas legales contra los funcionarios públicos 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.	Existen mecanismos y procedimientos de investigación en el ordenamiento jurídico, pero por diversas razones esa capacidad de investigación 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.	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	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 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

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		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 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	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 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

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		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 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	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 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

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		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 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.	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 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

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			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 cautelar y teniendo en cuenta, en todo caso, el derecho a la presunción de inocencia reconocido en la Constitución

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			española.
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, pero no a las lesiones producidas deliberada e intencionalmente.	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 funcionarios cuando son condenados, así como el hecho de que en muchos los casos	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 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.

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		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 su defensa. Las autoridades explicaron que esta política se aplicó para separar a	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.	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 69 presos encarcelados a más de 1.000 kilómetros. El

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	los terroristas de ETA de los presos que se reinsertarán en la sociedad.	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 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	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

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		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 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	grupo. Los tres elementos que persigue son: 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

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		domicilio de sus familias. 2005: Fuentes no gubernamentales: Se habría producido un mayor alejamiento de los presos de sus lugares de origen.	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 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,

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)*	*Información recibida en el periodo reportado*
			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.
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.	2009: Existe una invitación a todos los Relatores para que visiten España. 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	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.

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)	Información recibida en el periodo reportado
		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 Tratos o Penas Crueles, Inhumanos o Degradantes.		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	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 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

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)*	*Información recibida en el periodo reportado*
		detención. 2007: El Gobierno español informa de que el Protocolo Facultativo entró en vigor el 22 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.	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 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.

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)

107. By letter dated 12 October 2010, 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 recommendations. The Special Rapporteur regrets that the Government has not provided him with a response to the request. He looks forward to receiving information on its endeavours to implement the recommendations and affirms that he stands ready to assist Sri Lanka in its efforts to prevent and combat torture and ill-treatment.

108. The Special Rapporteur is concerned that despite the end of the armed conflict between the Government of Sri Lank and the Liberation Tigers of Tamil Eelam (LTTE), the Government continues to apply the emergency regulations allowing arbitrary arrest and detention, prolonged and incommunicado detention, and torture. He calls upon the Government to repeal the emergency regulations and take steps to end impunity for members of the TMVP-Karuna group, who, according to non-governmental sources, continue to enjoy immunity as members of Parliament despite their alleged involvement in unlawful killings, recruitment of child soldiers and enforced disappearances, continue to enjoy immunity as a member of the Parliament.

109. The Special Rapporteur further welcomes the determination of the Government to combat torture or extra-judicial executions as noted in the Responses of the Government to the UPR Recommendations[24] and urges the Government to strengthen its efforts addressed to preventing torture and extrajudicial executions, to ensure that detainees have access to legal counsel, and that they are provided with timely medical examination. The Special Rapporteur remains concerned about information received from non-governmental sources about the reported practice of pressuring victims of torture to "settle" their cases by withdrawing their complaint. He urges the Government to ensure that all detainees are granted the ability to challenge the lawfulness of the detention before an independent court.

110. The Special Rapporteur notes the information regarding the confusing procedure of handling the investigation of allegations of torture and ill-treatment. In this connection, he urges the Government to ensure the establishment and effective functioning of an independent authority to carry out investigations into allegations of torture and that the National Human Rights Commission has sufficient resources and capacity to function independently and effectively.

111. The Special Rapporteur notes with satisfaction the amendment to the Regulation of May 2010, according to which the detention of a person under the Emergency Regulation is subject to notification to a Magistrate within 72 hours. He was encouraged that the Emergency Regulations enabling the admissibility of confessions were repealed in 2010. However, he is alarmed about the reports of the use of confession in cross examination. He calls upon the Government to ensure that any testimony obtained under torture is excluded from judicial proceedings. He encourages the Government to amend the Criminal Procedural Code to shift the burden of proof in cases of torture to the prosecution.

[24] Report of the Working Group on the Universal Periodic Review, A/HRC/8/46/Add.1, Sri Lanka. Addendum, 25 August 2008.

112. The Special Rapporteur looks forward to receiving information in relation to the implementation of a draft Law on Witness and Victims of Crime Protection. He wishes to call upon the Government to establish rehabilitation centres for the treatment of torture survivors.

113. Finally, the Special Rapporteur wishes to reiterate the appeal to the Government to ratify the Optional Protocol to the Convention against Torture (OPCAT) and establish a National Preventive Mechanism.

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years*	*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.
(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	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.

Recommendation (A/HRC/7/3/Add.6)	Situation during visit (A/HRC/7/3/Add.6)	Steps taken in previous years	Information received in the reporting period
		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.	
(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 whether the suspect was mistreated in custody.	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 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'.
(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	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	Non-governmental sources: The Magistrate 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.

Recommendation (A/HRC/7/3/Add.6)	Situation during visit (A/HRC/7/3/Add.6)	Steps taken in previous years	Information received in the reporting period
	against perpetrators. There is also no obligation for law enforcement officials or judges to investigate cases of torture ex officio.	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.	
(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 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	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 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	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 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.

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years*	*Information received in the reporting period*
	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 Commission, NGOs and the Special Rapporteur on Torture.	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.	
(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.	
(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, however, is not applicable to persons detained under Emergency	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 or an	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

Recommendation (A/HRC/7/3/Add.6)	Situation during visit (A/HRC/7/3/Add.6)	Steps taken in previous years	Information received in the reporting period
	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.	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.	the confession as the indication of where the stolen goods were hidden.
(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.
(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 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	The Special Rapporteur appreciates that, by enacting the 1994 Torture Act, the Government		Non-governmental sources: There has been recent precedence in the Supreme

Recommendation (A/HRC/7/3/Add.6)	Situation during visit (A/HRC/7/3/Add.6)	Steps taken in previous years	Information received in the reporting period
torture under the 1994 Torture Act.	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.		Court to award lesser sentences.
(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 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,	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, 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	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.

Recommendation (A/HRC/7/3/Add.6)	Situation during visit (A/HRC/7/3/Add.6)	Steps taken in previous years	Information received in the reporting period
	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.	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.	
(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.	
(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	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	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	

Recommendation *(A/HRC/7/3/Add.6)*	*Situation during visit* *(A/HRC/7/3/Add.6)*	*Steps taken in previous years*	*Information received in the reporting period*
situation and follow-up on past cases of violations.	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.	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 anycommitment 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.	
(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.

Recommendation (A/HRC/7/3/Add.6)	Situation during visit (A/HRC/7/3/Add.6)	Steps taken in previous years	Information received in the reporting period
(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.
(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.
(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,	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 Reforms was quoted as saying that a rehabilitation programme would be established with the assistance of the state and private sector

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit* (A/HRC/7/3/Add.6)	*Steps taken in previous years*	*Information received in the reporting period*
	which for detainees in certain prisons, such as the Colombo Remand Prison, where the lack of space was most obvious amounts to degrading treatment.		agencies.
(r) Remove non-violent offenders from confinement in pre-trial detention facilities, and subject them to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgement).	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 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.	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 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.
(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.
(t) Ensure separation of juvenile and adult detainees, and ensure the deprivation of liberty of children to an	In the TID facilities in Colombo the Special Rapporteur met eight children who were being held on account of being child soldiers for	Non-governmental sources: Section 48 of the Prisons Ordinance states that juvenile prisoners, whenever practical, shall be separated from adults; Section	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

Recommendation (A/HRC/7/3/Add.6)	Situation during visit (A/HRC/7/3/Add.6)	Steps taken in previous years	Information received in the reporting period
absolute minimum as required by Article 37 (b) of the Convention on the Rights of the Child.	the LTTE. He strongly condemns 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.	13 of the Children and Young Persons Ordinance No 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.	for drug offences have been recently placed in that facility.
(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.	
(v) Establish centres for the rehabilitation of torture victims		Non-governmental sources: There is no state sponsored system of rehabilitation afforded to torture victims.	
(w) Ratify the Optional Protocol to the Convention	A number of shortcomings remain and, most significantly, the	Sri Lanka has not signed or ratified the	Non-governmental sources: The situation

Recommendation (A/HRC/7/3/Add.6)	*Situation during visit (A/HRC/7/3/Add.6)*	*Steps taken in previous years*	*Information received in the reporting period*
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.	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 detention and also to strengthen the capacities and efficacy of the NHRC in this connection.	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 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	remains the same.

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		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.	
(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 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.
(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.

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)

114. Le 12 octobre 2010, le Rapporteur spécial a envoyé le tableau ci-dessous au Gouvernement togolais pour lui demander des informations et commentaires quant aux mesures prises en application des recommandations du Rapporteur spécial après sa mission d'avril 2007. Par lettre datée du 19 novembre 2010, le Gouvernement a répondu à cette demande. Le Rapporteur spécial remercie le Gouvernement pour les informations fournies.

115. Le Rapporteur spécial félicite le Gouvernement togolais d'avoir ratifié le Protocole Facultatif à la Convention contre la Torture et Autres Peines ou Traitements Cruels, Inhumains ou Dégradants (OPCAT). Il note qu'un Comité de suivi en charge du processus de mise en œuvre du protocole a été établit. 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.

116. Le Rapporteur spécial note avec appréciation un recul du phénomène des mutilations génitales selon les statistiques collectées par le Gouvernement, et encourage le Gouvernement à continuer ses efforts dans cette matière.

117. Le Rapporteur spécial note que, grâce à l'accompagnement des ONG dans certaines unités de police et de gendarmerie, le nombre de cas de châtiments corporels des enfants a diminué. Il fait appel au Gouvernement de renforcer ses efforts pour interdire et prévenir les châtiments corporels en général.

118. Le Rapporteur spécial est préoccupé par la persistance du problème du non respect du délai légal de garde à vue persiste en raison, dans la plupart des cas, du manque de ressources et moyens, en particulier à l'intérieur du pays.

119. Le Rapporteur spécial prend note de l'élaboration de l'avant projet de code de procédure pénal qui vise à établir un nombre de garanties procédurales cruciales pour la prévention de la torture. A titre d'exemple, l'avant projet prévoit que le juge des libertés et de la détention est compétent pour se prononcer sur les détentions illégales ou arbitraires. L'avant-projet stipule également que la détention est une mesure exceptionnelle et soumise à des conditions strictes. Conscient de l'importance de ces garanties, le Rapporteur spécial aimerait obtenir des informations détaillées sur les normes stipulées dans l'avant projet, son adoption ainsi que la mise en œuvre des nouvelles garanties.

120. Le Rapporteur spécial prend note que la Commission Vérité Justice et Réconciliation est entrée dans sa phase active et aimerait suivre ses activités. Il est préoccupé quant à l'autorité de ses membres, leur indépendance et la protection des victimes et témoins.

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)*	*Informations reçues pendant la période considérée*
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.[25]
94. Il devrait lutter contre l´impunité en mettant en place sur les lieux de détention des mécanismes d´examen des 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.	Aucune condamnation prononcée par un tribunal pénal pour des actes de torture ou des mauvais traitements infligés dans le passé. 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.	Gouvernement : Tout détenu a le droit d´adresser un courrier confidentiel au Directeur de l´Administration Pénitentiaire ou au Procureur de la 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

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

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			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. - 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	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

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		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.	les châtiments corporels et aucune 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 famille. L'article 357 dispose à cet effet: « les maltraitances physiques et psychologiques, les châtiments

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			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 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

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			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 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	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. - 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.

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		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	
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. - 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

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			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 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.	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. - 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	Souvent les aveux constituent le	Gouvernement : En 2008, la révision	Des sources non gouvernementales: La

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modifier la législation de sorte qu´aucune condamnation ne puisse reposer sur des preuves 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.	principal élément de preuve. Dans la plupart des locaux de garde à vue qu´il a visités, le Rapporteur spécial a vu des preuves de mauvais traitements infligés quotidiennement, essentiellement pour arracher des aveux.	du code de procédure pénale était en cours. De plus, la Commission Nationale des Droits de l´Homme (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).	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 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	Les conditions de détention pendant la garde à vue dans les 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	Gouvernement : le gouvernement togolais est conscient que les 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	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 de détention notamment en matière d'hygiène et d'assainissement, de la ration alimentaire, de soins de santé, de conditions de couchage, d'appui

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discrimination.	services médicaux.	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.	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 d´un corps spécial de surveillants relevant du Ministère de la justice,	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 traitement des détenus, en instituant	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.

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	qui comprendrait des surveillants des deux sexes.	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.	- 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.	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		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

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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.			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 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.	Manque de clarté dans le partage des responsabilités entre la police et la gendarmerie. En principe la 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.	Gouvernement : Le texte de loi No. 2007-010 du 1er mars 2007, fixe le statut général des personnels militaires 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 pénitentiaire et intégrer les droits de l´homme dans les programmes	Le type de formation dispensée aux membres des forces de l´ordre semble aussi être excessivement militarisé, puisqu´il accorde beaucoup de place aux aptitudes	Gouvernement : Depuis le recrutement de 2005 dans le corps de la gendarmerie et de la police, le niveau minimum exigé est le Brevet d´Etudes du Premier Cycle (BEPC). Avec ce	Gouvernement: les surveillants et gardiens des prisons auront des formations sur les droits de l homme. Des sources non gouvernementales: Les

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correspondants.	militaires et peu à la préparation aux tâches complexes liées à l´enquête pénale ou au maintien de l´ordre.	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.	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 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	Le Togo ne dispose pas d´un système de justice pour mineurs compatible avec les dispositions et	Gouvernement : En 2007, le ministère de la justice a commandé une étude sur l´état de la justice des mineurs au Togo	Gouvernement: L'article 112 et suivants de l'avant projet du code de procédure pénale précise que la

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de liberté ne soit utilisée qu´en dernier recours, pour la durée la plus courte possible et dans des conditions appropriées.	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.	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.	détention est une mesure exceptionnelle et soumise à des 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

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			la brigade pour 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 justice pénale au sein duquel exerceraient des policiers, des procureurs et des juges dûment		Gouvernement : La formation continue des magistrats, des OPJ (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.

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)	Informations reçues pendant la période considérée
formés, et créer toutes les garanties utiles, notamment l´aide juridictionnelle.			- 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 la participation de l'armée.	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 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,

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			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 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	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 sera remis au gouvernement qui décidera de la suite à

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)*	*Informations reçues pendant la période considérée*
		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 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.	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)

121. El 12 de octubre de 2010, el Relator Especial envió la tabla 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 12 de noviembre de 2010. 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.

122. Respecto a la reforma global del sistema de justicia penal, el Relator Especial quisiera, en primer lugar, encomiar el reconocimiento gubernamental de la existencia de una crisis penitenciaria nacional y las medidas adoptadas para enfrentarla. Considera como un paso positivo la formulación de la iniciativa de la consultoría legal especializada en derechos humanos que, con el apoyo financiero y técnico del PNUD, tiene como objetivo completar satisfactoriamente la reforma del marco normativo y procesal penal. Espera que se efectúe satisfactoriamente la creación de la Institución Nacional de Rehabilitación que opere como servicio descentralizado y fuera de la dependencia policial. Llama la atención del Relator Especial, que en el seguimiento a la recomendación sobre la creación de un cuerpo de guardias de prisiones bien entrenado que sustituya a los oficiales de policía, el Gobierno haya aprobado la Ley 18.667, que faculta la utilización de personal militar para encargarse de la custodia perimetral de cárceles, a este respecto, el Relator Especial valoraría que el Estado proporcionara más información.

123. En relación al problema crónico de hacinamiento en los centros de reclusión, el Relator Especial toma nota de las medidas adoptadas por el Gobierno, como la reubicación de algunas mujeres detenidas y la creación de un nuevo establecimiento destinado a mujeres privadas de libertad con hijos nacidos en prisión o en periodo de lactancia. El Relator Especial valoraría obtener información relativa al avance en la proyección de la creación de dos unidades penitenciarias, y sobre la manera en que ha operado en la práctica la disposición de la Ley 18.667 sobre la utilización de predios bajo la jurisdicción del Ministerio de Defensa Nacional para servir de instalaciones penitenciarias. El Relator espera que en breve se concluya el trabajo legislativo relativo a la propuesta de ley destinada a aliviar el hacinamiento, establecer cupos máximos carcelarios y mecanismos de puesta en libertad cuando se superen los plazos razonables de prisión preventiva sin acusación fiscal. El Relator Especial apreciaría además contar con información relativa al acceso a agua y a las actividades educativas o de ocio en los distintos centros de detención en general; e invita al Gobierno a continuar con el aumento de actividades socio-educativas en los centros de privación de libertad para menores.

124. El Relator Especial aplaude la decisión del Gobierno de eliminar los módulos conocidos como “Las Latas” y queda a la expectativa de la finalización de la construcción del nuevo módulo en el establecimiento de la Libertad. Sin embargo, lamenta la falta de información puntual sobre el proceso de cierre de los módulos 2-4 del COMCAR. Con referencia a la prisión preventiva, el Relator Especial ve como un paso positivo la creación de la Oficina de Supervisión de Libertad Asistida y el inicio del sistema de clasificación de presos. Toma nota de la disminución del número de jóvenes que permanecen privados de su libertad y del aumento en la utilización del sistema público de ejecución de medidas no privativas de libertad. También valora la creación de tres nuevos centros para menores y la

mejora en la alimentación de éstos. Exhortar al Gobierno a continuar adoptando medidas tendientes a mejorar las condiciones de detención.

125. El Relator Especial lamenta la falta de información con respecto a la enmienda del Código Penal relativa a la definición de la tortura_según lo establecido en la Convención contra la Tortura; la investigación de las denuncias de tortura y malos tratos, el garantizar que quienes cometieron violaciones a los derechos humanos durante la dictadura comparezcan ante la justicia, así como el derecho a la indemnización, tratamiento medico y rehabilitación de las víctimas de tortura y malos tratos.

Recomendación (A/HRC/13/39/Add.2)	*Situación durante la visita (A/HRC/13/39/Add.2)*	*Medidas para la implementación de las recomendaciones1*	*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	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.

Recomendación (A/HRC/13/39/Add.2)	Situación durante la visita (A/HRC/13/39/Add.2)	Medidas para la implementación de las recomendaciones1	Información recibida en el periodo reportado
		cámaras.	
(b) Crear un Ministerio de Justicia que sea responsable del sistema penitenciario, dentro del marco de una reforma global del sistema de justicia penal.	- En el sistema vigente son los oficiales de policía, que carecen de formación específica para trabajar con reclusos, los que actúan como guardias de prisiones.	Fuentes no gubernamentales: No se 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	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.

Recomendación (A/HRC/13/39/Add.2)	*Situación durante la visita (A/HRC/13/39/Add.2)*	*Medidas para la implementación de las recomendaciones1*	*Información recibida en el periodo reportado*
		custodia de la seguridad perimetral. La incursión de personal militar, formado para la Defensa, una función 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.	
(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 ese personal y les dificulta el cumplimiento de su obligación de proteger a los internos de la violencia entre los reclusos.	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 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	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

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		1.200 cargos para la atención directa de internos, 300 cargos técnicos, 60 altamente especializados y 100 administrativos.	cárceles, fortaleciendo los mecanismos de prevención de objetos prohibidos. A través del apoyo del la Agencia 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.
(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 Judicial, y específicamente en la	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

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		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.	Nacional de Rehabilitación que opere como servicio 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	

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		aseguran su acceso a la justicia, el cumplimiento de sus medidas de protección y garantías y por ende la 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	- 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	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	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 seguridad en cada departamento del país, en la modalidad de chacras productivas. Frente a un déficit de 2000 plazas en el

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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 del hacinamiento.	limitado a los servicios médicos eran motivo de preocupación en prácticamente todos los lugares visitados.	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-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	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 mecanismos de liberación cuando se superan los plazos razonables de prisión preventiva, sin acusación fiscal.

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		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 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	- 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 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

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		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. 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	instrumentos jurídicos.

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		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 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	

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		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 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	

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		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 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.	

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		Con excepción de Rivera, estos emprendimientos debían haberse culminado entre agosto y setiembre de 2010, según lo planificado.	
(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 del poder autoritario, que es rezago de	Gobierno: Clausura de las Latas: El traslado de los reclusos ubicados en las latas de Libertad está previsto sea resuelto en el más breve plazo, a través del realojamiento en el nuevo módulo en construcción en el establecimiento de la Libertad y con la construcción de un complejo carcelario de máxima, media y mínima seguridad-se asegura la desocupación del primer módulo de las latas para el mes de noviembre – El Gobierno confirma su disposición a clausurar los conteiner conocidos como “las latas” como parte integrante de su política de mejoramiento de la situación carcelaria nacional.

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		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.	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

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		- A pesar de la creación de nuevos 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.	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.
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	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 en salud bajo esta modalidad.

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		centros penitenciarios del país. - Existe una propuesta de crear una nueva unidad asistencial, llamada Servicio de Asistencia Integral para Personas Privadas de Libertad.	
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	- La Dirección de Asuntos Internos del Ministerio del Interior se ocupa de investigar dichas denuncias, aunque depende de la misma	Gobierno: La Gerencia del SEMEJI elaboró una cartilla para la recepción de denuncias o quejas, habilitándose	

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por una autoridad independiente que no tenga relación con la autoridad encargada de llevar la investigación o el enjuiciamiento del caso.	autoridad ministerial que la policía.	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 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	- 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	

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adecuados, a las víctimas de la tortura y los malos tratos.		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 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	

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		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 Institución Nacional de Derechos Humanos como mecanismo nacional de prevención.	- 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 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.	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.
		- 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.	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 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.	

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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 metropolitana del país. Se están realizando también dos investigaciones sobre los jóvenes, las características	

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		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 infraestructura para prestar apoyo a	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	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.

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	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.	
(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 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.		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 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	

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		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)

126. By letter dated 12 October 2010, 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 recommendations. He expresses his gratitude to the Government for providing information by letters dated 18 November 2010 and 14 January 2011.

127. The Special Rapporteur notes with appreciation the information received regarding the various measures undertaken to address the allegations of torture and ill-treatment by public officials, including the establishment of special human rights entities within various ministries and strengthening the authority of the Ombudsman in the examination of complaints. He is concerned at the reported allegations of use of torture and ill-treatment and the absence of information on the complaints of torture and ill-treatment received by the Ombudsman and wishes to note that an effective and independent mechanism still remains to be established outside the procuracy to promptly, independently and thoroughly investigate all allegations of torture and ill-treatment and prosecute and punish the alleged perpetrators, including by means of criminal sanctions.

128. The Special Rapporteur is concerned that the definition of torture in the amended Criminal Code does not cover acts by “other persons acting in an official capacity”, lacks adequate penalties and remains practically inapplicable. He expresses concern about the reports on the use, by courts, of evidence obtained under coercion, including by torture.

129. While acknowledging the various legislative amendments to the Criminal Procedure Code and the Code regulating the execution of penalties, the rules governing the right of defence for persons deprived of liberty, the Special Rapporteur regrets not having received information on the application of these guarantees in practice. He echoes the concern expressed by the Human Rights Committee[26] 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.

130. While recognizing the efforts undertaken to strengthen the independence of the judiciary and welcoming the establishment of a Commission dealing with the appointment of judges, the Special Rapporteur is concerned about the procedure of appointment of judges and the overall independence of judiciary. He welcomes the decision of the Government to follow the measures provided in the outcome of the Universal Periodic Review[27] on strengthening the independence and impartiality of the judiciary.

131. 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.

[26] Concluding observations of the Human Rights Committee, (CCPR/C/UZB/CO/3), Uzbekistan, 8-26 March 2010.

[27] Report of the Working Group on the Universal Periodic Review. Uzbekistan. A/HRC/10/83, Human Rights Council, 11 March 2009.

132. The Special Rapporteur regrets that the Government did not make any progress in establishing a mechanism of adequate reparation and compensation to all victims of torture and ill-treatment with as full rehabilitation as possible and urges the Government to take necessary steps to establish such mechanism of redress and reparation for victims.

133. 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	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	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

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*	*Information received in the reporting period*
		enforcement bodies; the concerned persons were 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	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 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.

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	Information received in the reporting period
		Torture, a set of formal actions were included.	
(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; - 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	Non-governmental sources: Despite the introduction of habeas corpus, police custody without court order exceeds 24 hours in cases involving

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		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 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	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 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

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		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 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.	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 cases, courts rejected the request of investigation bodies to

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			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	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

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		improvement of the execution of judicial 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	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 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

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		deliver an objective and legal judgment due to the fact that the “case is under control”, and the judgment of 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.	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 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	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

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		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 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;	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 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

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		- 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 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,	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.

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		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 involved in other types of law-enforcement work.	
(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	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

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		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 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	employees of law enforcement bodies who were subsequently suspended from their duties.

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		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 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.	
(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 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	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 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

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		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.	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 liberty.	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 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	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

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		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 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	that it had sent the request two weeks 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

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		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.	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 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.	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 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	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.

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		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 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	

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		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.	
(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 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;	

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		- 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, 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	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.

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		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 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	

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		Supreme Court of Uzbekistan, which are not laws and have only the character of recommendations.	
(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 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	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.

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		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 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.	
(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 Lawyers’ Associations; (2) the establishment of new requirements such as preparative professional trainings; (3) the obligation of lawyers to participate in continuing legal	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

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		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.	reforms, a centralised system of self-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 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

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			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 held in	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

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		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	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.

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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	

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		propaganda activities.	
(p) Consider amending existing legislation to place correctional facilities (prisons and colonies) and remand centres (SIZOs) under the authority of the Ministry of Justice.	- Correctional facilities were under the Ministry of Interior; - Transfer to the Ministry of Justice was being discussed.	Government: Concept paper on the further development and improvement of the penitentiary 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. Government: Reforming the judicial system is being implemented in phases.
(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.		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 Questions of Applying the Law on Compensation for Moral Damage.” provide for compensation; - With the objective to establish a system of adequate	

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		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 Ombudsman", it can officially start an investigation of a particular case of	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.

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	Information received in the reporting period
		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.	
(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 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	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.

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*	*Information received in the reporting period*
		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-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	

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		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 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	

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		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.	
(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.	

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(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; - 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		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	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

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*	*Information received in the reporting period*
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.		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 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.	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*
Azerbaijan	E/CN.4/2001/66/Add.1	E/CN.4/2004/56/Add.3; 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
Brazil	E/CN.4/2001/66/Add.2	E/CN.4/2006/6/Add.2; A/HRC/13/39/Add.6
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
Denmark	A/HRC/10/44/Add.2	A/HRC/13/39/Add.6
Equatorial Guinea	A/HRC/13/39/Add.4	
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
Indonesia	A/HRC/7/3/Add.7	A/HRC/13/39/Add.6
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
Kazakhstan	A/HRC/13/39/Add.3	A/HRC/13/39/Add.6
Mongolia	E/CN.4/2006/6/Add.4	A/HRC/13/39/Add.6
Nepal	E/CN.4/2006/6/Add.5	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2;

	Country visit report	*Previous follow-up information reported*
		A/HRC/10/44/Add.5; A/HRC/13/39/Add.6
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
Republic of Moldova	A/HRC/10/44/Add.3	A/HRC/13/39/Add.6
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
Sri Lanka	A/HRC/7/3/Add.6	A/HRC/13/39/Add.6
Togo	A/HRC/7/3/Add.5	A/HRC/10/44/Add.5; A/HRC/13/39/Add.6
Uruguay	A/HRC/13/39/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