United Nations A/HRC/13/39/Add.6

General Assembly

Distr.: General
26 February 2010

English/French/Spanish only

Human Rights Council
Thirteenth session
Agenda Item 3
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, Manfred Nowak

Addendum

Follow-up to the recommendations made by the Special Rapporteur Visits to Azerbaijan, Brazil, Cameroon, China (People's Republic of), Denmark, Georgia, Indonesia, Jordan, Kenya, Mongolia, Nepal, Nigeria, Paraguay, the Republic of Moldova, Romania, Spain, Sri Lanka, Uzbekistan and Togo*

* The present document is being circulated as received, in the languages of submission only.

Contents

Introduction

1. This document contains information supplied by States, as well as 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 following 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 format of the follow-up report 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 letters dated 23 October 2009, 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, Cameroon, People's Republic of China, Denmark, Georgia, Indonesia, Jordan, Kenya, Mongolia, Nepal, Nigeria, Paraguay, the Republic of Moldova, Romania, Spain, Sri Lanka, Uzbekistan and Togo. Information was received from the Governments of Denmark, Georgia, Mongolia, Paraguay, Republic of Moldova, Spain, Togo 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.

Azerbaijan

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

5. On 23 October 2009, 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 the recommendations of his predecessor's visit in 2000. The Special Rapporteur regrets that the Government has not provided any input. He looks forward to receiving information on Azerbaijan's efforts to follow-up to his recommendations and he reaffirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

6. The Special Rapporteur commends Azerbaijan for its ratification of the Optional Protocol to the UN Convention against Torture (OPCAT). He notes the designation of the Commissioner for Human Rights (Ombudsman) as the National Preventive Mechanism and appeals to the Government to facilitate its effective and independent functioning, inter alia by ensuring the availability of sufficient resources and the unfettered and unannounced access to all places of detention.

7. He further notes the information received regarding the existing complaints procedure and the steps taken to hold perpetrators accountable and encourages the Government to ensure to that all allegations of torture and ill-treatment are followed up by a prompt and impartial investigation in accordance with article 12 CAT. He further wishes to reiterate that the crime of torture requires criminal sanctions which are commensurate to the gravity of the crime, and can never be covered only by administrative measures.

8. The Special Rapporteur notes with concern the allegations received regarding cases in which confessions obtained in violation of the rights of the accused, including coerced incriminating statements, have been admitted to court proceedings. In this regard, he wishes to reiterate that the admissibility of evidence and confessions obtained under torture is one of the main incentives for the infliction of torture. Any efforts to prevent torture have to therefore include a rigorous implementation of the non-admissibility of evidence obtained under torture, as stipulated in article 15 CAT.

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 on steps taken since January 2008**
(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.	Government: reforms improving the penitentiary system are 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 are investigated by prosecutorial agencies; The Commission on Human Rights (Ombudsman) has the right to request relevant bodies to open criminal investigations. *Non-governmental sources: allegations of torture and ill-treatment are not being investigated in an independent and thorough manner and alleged perpetrators are not being prosecuted;*	***Non-governmental sources**: All complaints presented to the Ombudsman are accepted for consideration and investigated. Appeals have been sent to the Ministry of Internal Affairs, 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, the Ministry of Internal Affairs, 73 staff members were subjected to additional measures (four criminal and the rest administrative) for rough treatment towards citizens, unjustified detention and unjustified detention at police stations.*
(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 for internal monitoring of the	The Office of the Prosecutor monitored police stations and provisional detention wards; Prosecutors sometimes facilitate wrongdoings by the police, which was	Government: an Internal Security Department for the purpose of effective monitoring of the police officers within detention facilities was created; Steps have been taken to bring temporary detention centres in line with modern standards; Since 2005 "Memorandum of Understanding" dealing with the creation of a public committee vested with 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;	attributed to their mentality inherited 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;	right to confidential conversations with any of the detainees; 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 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: civil society organizations have access to places of detention in some instances. However, their access is limited and at the discretion of the authorities;*	
(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	Government: during a judicial investigation all claims of the use 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 maltreatment, 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 Supreme Court decision was transmitted to all courts and pre-trial investigation agencies for	

	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;	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; The Decree on "Modernization of the court system", dated 19 January 2006, was crucial in this sphere; *Non-governmental sources: even when detainees complain, no investigation is conducted; as a result of trial monitoring the pattern whereby judges fail to take the allegations seriously and do not initiate detailed investigations into the allegations.*	
(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 for compensating victims of acts of violence, however covering solely injuries resulting from unlawful actions; Law No. 610 of 1998 which 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 from this person in writing; Criminal Procedure Code (CPC) article 189 holds that the person who suffered losses as a result of crimes, as defined in the Criminal Code (CC) has the right to get compensation when the act has been tried before a court. The victim has the right to receive from 10 to 300 amounts of minimum wage in compensation depending on the gravity of the crime committed against him; According to CPC article 191, the court, on the basis of a petition by the victim, assigns compensation from the State budget. While reflecting the decision relating to the payment of compensation in the verdict against the perpetrator, the court also indicates that the amount allocated as compensation must be returned to the state budget; *Non-governmental sources: no cases where a person has*	

		been awarded compensation as a result of torture or ill-treatment;	
(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 duress shall not be admitted as evidence to court.	Government: the CPC provides that the defence counsel has the right to be present when a suspect or an accused person is searched or arrested and grants the right of a suspect or accused person to refuse a lawyer (article 153); The right of self-defence, along with the right to legal assistance, are also contained in article 90 CC; 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 the lawyer in a case where the suspect or accused person makes this request on his own initiative, voluntarily and in presence of a lawyer or trusted person; The refusal of the suspect or the accused of 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.*	***Non-governmental sources**: There are 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.*
(f) Given the numerous reports of inadequate legal counsel provided by State-appointed lawyers, measures should be taken to improve legal aid	Detainees' access to lawyers often restricted; Police pressured detainees not to seek counsel or to accept State-appointed	Government: a new law, elaborated in cooperation with the Council of Europe and the OSCE with the aim of enhancing the effectiveness of the provision of legal aid, entered into force in August 2004. For awareness raising purposes a booklet "Human	

services;	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.	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 equalizes the rights of the lawyer representing the defending side with the accusing side. *Non-governmental sources: the ratio of criminal defence lawyers to 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 defence 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 defence 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.*	
(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 recordings, taking photographs, making video recordings or films, 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 behaviour against detainees; During the last several years, 26 investigative rooms of 64 temporary detention centres were equipped with video installations; by the end of 2008.all stations should be equipped.	
(h) Given the numerous situations in which persons deprived of their liberty were not	Authorities voiced the opinion that ordinary people had yet to	Government: in all penitentiary facilities information desks were created to raise awareness of human rights; libraries in penitentiary institutions were provided with	

aware of their rights, public awareness campaigns on basic human rights, in particular on police powers, should be considered;	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 as the general public.	special publications focusing on the rights of detainees; In 2002 the Ministry of Justice signed an order aiming at the inclusion of international and regional human rights standards into the educational training programmes; In 2005, the "Law on access to information" was adopted, guaranteeing the right to free access to information on an equal basis; The President endorsed by decree a new structure within the Ministry of Justice - the Department for Human Rights and Relations with Society; A joint programme with the Council of Europe and the European Commission was signed in 2006, focusing on the reform of laws in the penitentiary sphere; The Ministry of Internal Affairs created a complaints website and an 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 Ministry of Internal Affairs were placed on the walls of all police stations. Measures are being taken for the implementation of a "Community policing" project within the framework of cooperation with the Organization for Security and Cooperation in Europe (OSCE).	
(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	Government: during the last years the Ministry of National Security (MNS) has taken special measures in order to humanize the activities of the Investigatory Cell, paying increased attention to detention conditions; Representatives of ICRC, OSCE/ODIHR, CPT and other governmental and nongovernmental 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, it has to be noted that this could create problems for guaranteeing speed,	

	period; The head of the cells unit confirmed that personnel did not monitor interrogation sessions which are said to be held behind closed doors.	comprehensiveness, objectivity and rationality of pre-trial proceedings of grave and very 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 the police and citizens in accordance with legal and ethical norms; monitoring to ensure compliance with human rights and freedoms have been increased; In order to familiarize officers with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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, the 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 Council of Europe, the European Union, as well as bilateral and multilateral partners.	
(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;		Under the training of trainers programme on "Training on the European Human Rights Convention (ECHR) for public prosecutors in Azerbaijan," training courses were held by the Council of Europe at the Training Centre of the General Prosecutor's Office;	
(l) Consider making the declaration provided for in article 22 of the Convention against	Azerbaijan had made no declaration under article 22 CAT nor had it ratified the	In 2001, Azerbaijan acceded to the Optional Protocol to the ICCPR; In 2002, Azerbaijan made the relevant declaration	***Non-governmental sources:*** *Azerbaijan ratified the OPCAT on 28 January*

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);	Optional Protocol to the Convention against Torture, or the Optional Protocol to the International Covenant on Civil and Political Rights;	provided for in article 22 of the Convention; On 28 January 2009, Azerbaijan acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;	*2009. On 13 January, the Commissioner for Human Rights (Ombudsman) was appointed as the NPM. The Ombudsman held discussions with representatives of different sate 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.*

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/CN.4/2001/66/Add.2, para. 169)

9. On 23 October 2009, 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 of his predecessor's visit in 2000. The Special Rapporteur regrets that the Government has not provided any input. He looks forward to receiving information on Brazil's efforts to follow-up to his recommendations and he reaffirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

10. The Special Rapporteur echoes the observations of the Special Rapporteur on extrajudicial, summary or arbitrary executions following his mission to Brazil in 2007 (A/HRC/11/2/Add.2), particularly with regard to: problems of physical abuse and corruption by prison guards, including the threat of reprisals for presenting complaints; the sharp rise in prison population over the past decade; and the inadequate external oversight of prison conditions, leading to poor prison conditions and abuses of power.

11. The Special Rapporteur commends the efforts by the Government in some states to reduce the number of pre-trial detainees being held in police stations for longer than 24 hours, and encourages the Government to further these efforts, as thousands remain in detention for long periods of time, in many cases in deplorable conditions.

12. The Special Rapporteur welcomes the reports of a small number of prosecutions of suspected perpetrators of torture. However, he regrets that the mechanisms for presenting complaints and carrying out investigations are still weak. He encourages the Government to provide him with statistics of the number of prosecutions.

13. The Special Rapporteur welcomes the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and encourages the Government to ensure that the NPM becomes functional as soon as possible and that civil society is fully included in the process of its creation and in its work.

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)	**Information received on steps taken since December 2007/current situation**
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. (a)		**Non-governmental sources:** Public declarations condemning torture made by high profile political leaders, other than human rights secretaries, are extremely rare. 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 focused on the creation of a very short and limited publicity campaign and the creation of a telephone hotline, to encourage anonymous denunciations, and with a view to collecting data. The administration and running of the "SOS Torture" line has been carried out by NGOs, who receive government funding for doing so. It was reported that the data collected by the hotline is not a reliable indicator of levels of torture in a given place, as higher numbers of calls may result from a variety of factors, such as higher awareness of the existence of the hotline or better access to telephones. Given the anonymous nature of the hotline it did not contribute to the effective reporting or investigation of alleged cases of torture.	***Non-governmental sources:*** *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.*
Abuse of power of arrest without judicial order in flagrante delicto cases	It appeared that there was a tendency to carry out arrests later classified as in flagrante		***Non-governmental sources:*** *This problem persists.*

should end immediately. (b)	even when the individual was not actually caught in the act, but there was suspicion of taking part in criminal activities.		
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. (c)	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:*** *While there have been some efforts in some states to reduce pre-trial detainees being held in police stations for longer than 24 hours, tens of thousands 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 a month while held in a cell with over 20 men.*
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 (d)	Most of the suspects in police stations believed that their families had not been informed of their arrest and whereabouts.		***Non-governmental sources:*** *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.*
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. (e)	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:*** *The decision in 2006 by Sao Paulo state to create a public defenders system was an important victory 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.*
Maintain separate custody records showing time and	In most cases, there was no record kept in the official		***Non-governmental sources:*** *There are reports suggesting that there have been*

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. (f)	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.		*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.*
Judicial provisional detention orders should never be implemented in police stations. (g)			***Non-governmental sources:*** *See current situation for (c).*
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. (h)			***Non-governmental sources:*** *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.*
When allegations of 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. (i)	The law states that the burden of 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.		***Non-governmental sources:*** *There is no information to suggest that this is being implemented. Allegations of torture are regularly dismissed by authorities at all stages of the criminal justice system.*
Complaints of ill-treatment should be expeditiously and diligently investigated. Unless the allegation is manifestly unfounded, those involved should be	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	**Non-governmental sources:** The criminal justice system is still highly flawed, which has facilitated the continued practice of torture and the impunity of those who perpetrate it.	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

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. (j)	penitentiaries and institutions for juvenile offenders. The purposes ranged from obtaining of information and confessions to the lubrication of systems of financial extortion.	It is still largely the case that the bodies responsible for investigating and reporting acts of torture, including internal police investigation units [corregedorias], forensic medical units [institutos médicos legais], the public prosecutors office [ministerio público], and the judiciary have largely failed to carry out investigations either due to lack of resources, negligence or complicity. Certain dedicated public prosecutors have proven to be notable exceptions to this rule, as are those working in the human rights department in the state of Minas Gerais, and those prosecutors responsible for monitoring São Paulo's juvenile detention system, the Foundation for the Well-Being of Minors, or Fundação Estadual do Bem Estar do Menor (FEBEM), where systematic work has contributed to increased prosecutions, though often in the face of institutional pressures. States which have police ombudsmen's offices have to some extent managed to document the extent of torture. Given the limited powers bestowed to the offices, especially the lack of investigative powers and the lack of any real independence both financial and institutional, they have also failed to reduce incidences of torture. Consequently, visits to places where torture is thought to occur and the reporting of cases is often limited to those civil society groups able to obtain access.	monitors consider any such complaints likely to be true (A/HRC/11/2/Add.2, para. 43). ***Non-governmental sources:*** *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.*
Witness protection programmes should be implemented in all states,			PROVITA currently operates in 16 states and the federal district

along the lines of the PROVITA programme. (k)			(A/HRC/11/2/Add.2, para.62). ***Non-governmental sources:*** *The PROVITA protection system is specifically designed to protect witnesses in criminal investigations, including those in which police officers may be suspected of 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 a limited number of spaces, thus only ensuring positions for those cases which are deemed a priority for police and prosecutors.*
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. (l)	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:** despite the introduction of the 1997 law against torture, only a few prosecutions have been brought in comparison to the number of allegations, and with only a handful resulting in convictions. A recent report (Análise do Cumprimento pelo Brasil das Recomendações do Comitê da ONU 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	***Non-governmental sources:*** *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.*

		is held "in camera". This is a serious impediment to the right of victims to a fair trial. Since the torture law also applies to private persons, prosecutions are more likely to be brought against private individuals than state employees. Consequently, there is no differentiation in the data between prosecutions against state actors and private individuals, limiting its value. Impunity continues to be the norm. In an opinion poll conducted in Datafolha, 24% of those interviewed in São Paulo thought that torture was an acceptable means of criminal investigation, a rise of 4% over a similar poll conducted in 1997.	
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. (m)			***Non-governmental sources:*** *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.*
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. (n)	A draft law creating this figure was under discussion.		***Non-governmental sources:*** *There is no recent information about the progress of this draft law.*
In order to end chronic overcrowding, a	The conditions in detention in many places were subhuman.		***Non-governmental sources:*** *The prison system continues to grow at unsustainable*

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. (o)	The worst conditions tended to be in police cells, where people were kept for more than the 24-hour legally prescribed period.		*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.*
The law on heinous crimes and other relevant legislation should be amended to ensure that long periods of detention or imprisonment are not imposable for low-level criminality. The crime of "disrespecting authority" should be abolished. (p)			***Non-governmental sources:*** *There is no recent information on this issue.*
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. (q)	Free legal assistance was illusory for most of the 85% who need it, because of the limited number of public defenders.		***Non-governmental sources:*** *See current situation for (e).*
Greater use should be made of and necessary resources	Reliance of the primarily volunteer work carried out by		***Non-governmental sources:*** *The effectiveness of community and state*

provided for community and state councils on human rights and police and prison ombudsmen. Fully-resourced community councils with unrestricted access to all places of detention should be established in each state. (r)	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 lack the necessary resources (mainly some ouvidorias); and others lack the genuine independence necessary to do effective work (some corregedorias).		*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 attempts to hinder or undermine their work. For example, in Rio de Janeiro, 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.*
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. (s)	The split police system makes external monitoring of the military police very difficult.		***Non-governmental sources:*** *There is no recent information of attempts to introduce structural reform of the police or legal reform allowing for the prosecution of police in civil courts.*
Police stations should be transformed into institutions offering a public service. (t)	External investigation is overly dependent on the goodwill and cooperation of the heads of police stations that hold exorbitant power.		***Non-governmental sources:*** *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.*
A qualified medical	Detainees must request a		The state institutes of forensic medicine in

professional should be available to examine every person brought to and leaving a place of detention; they 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. (u)	medical form from a delegate in order to be examined at t Forensic Medical Institute. The fact that the Forensic Medical Institute remains under the same governmental authority as the police, doubts as to the reliability of their findings will persist.		Brazil suffer from a lack of basic resources and are not sufficiently independent from the police (A/HRC/11/2/Add.2, para. 54). ***Non-governmental sources:*** *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.*
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. (v)	The forensic medical service, under the authority of the police, does not have the independence to inspire confidence in its findings.		***Non-governmental sources:*** *Some efforts have been made to separate the forensic medical centres from 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 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.*
The overcrowding needs to be brought to an immediate end, if necessary by executive action. The law requiring separation of			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

categories of prisoners should be implemented. (w)			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:*** *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.*
Permanent monitoring must be present in every institution and in places of detention for juveniles. (x)		**Non-governmental sources:** 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 Janeiro, 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	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 (A/HRC/11/2/Add.2, paras. 47-48). ***Non-governmental sources:*** *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*

		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 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 lead 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. Between January 2001 and July 2005, 269 investigations into incidents of torture were passed onto the police by the state public prosecutor's office. Seventeen separate criminal proceedings have been brought against 227 FEBEM employees. Out of these, 17 employees were convicted at first instance.	*effectively.*
Training for police, detention personnel, public prosecutors and others involve in law enforcement should include human and constitutional rights, as	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,		***Non-governmental sources:*** *Though there are numerous courses of human rights education for law-enforcement agencies across the country, implemented by state officials and civil-society, many are ineffective, as they are not integrated into*

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. (y)	corruption was widespread.		*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.*
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. (z)		**Non-governmental sources:** This amendment has now been approved by Congress as part of a wider judicial reform package, and is in force. Under the amendment, the first case submitted to the Appeals Court (Superior Tribunal de Justicia), concerning the death of Sister Dorothy Stang in Pará, was turned down on the basis that at the time of submission there was not enough proof of state incapacity or inertia in the investigation. In São Paulo, the Sapopemba Human Rights Centre has used the threat of seeking an Appeal Court authorization to unblock a torture case subjected to unnecessary delays in the respective state Supreme Court.	***Non-governmental sources:*** *This legislation has been adopted and would in theory allow the federalization 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 (by the Superior Tribunal de Justiça) to date.*
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. (aa)			***Non-governmental sources:*** *There is no current information on this issue.*
The Government should			***Non-governmental sources:*** *There is no*

give serious consideration to accepting the right of individual petition to the CAT, by making the declaration envisaged in article 22. (bb)			*current information on this issue.*
The Government is urged to consider inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country. (cc)		The Special Rapporteur on extrajudicial, summary or arbitrary executions visited Brazil in September 2003 and then in November 2007.	
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. (dd)			

Cameroon

Suivi des recommandations du Rapporteur Spécial (Nigel Rodley) faites dans le rapport de mission au Cameroun en mai 1999 (E/CN.4/2009/Add.2)

14. Le 23 octobre 2009, le Rapporteur Spécial a envoyé ce rapport de suivi au Gouvernement camerounais pour lui demander des informations et commentaires quant aux mesures prises en application des recommandations de l'ancien Rapporteur Spécial après sa mission de mai 1999. Il regrette de n'avoir pas reçu de réponse à ce jour et espère que le Gouvernement du Cameroun lui fera parvenir sous peu des mises à jour. Il se tient à la disposition du Gouvernement pour l'assister dans sa lutte contre la torture et autres mauvais traitements.

15. Le Rapporteur Spécial remarque avec préoccupation que le nouveau Code de procédure pénale permet la pratique de traitements inhumains et dégradants en ne les qualifiant pas de torture. Il est également concerné par le fait que les dispositions relatives aux conditions de garde à vue et de détention provisoire ne sont pas respectées, tout comme d'autres éléments de la procédure pénale. La surpopulation carcérale existe toujours et les mesures prises par le Gouvernement pour y remédier ne semblent pas suffisantes. Le Rapporteur Spécial encourage donc le Gouvernent à prendre davantage de mesures pour améliorer les conditions des lieux de détention au Cameroun.

16. Le Rapporteur Spécial note avec inquiétude que l'impunité continue à régner au sein des forces de l'ordre et encourage le Gouvernement camerounais à réagir fermement en cas de violation des droits humains par un membre des forces de l'ordre.

17. Le Rapporteur Spécial note avec grande satisfaction que le Cameroun a signé Protocole Facultatif à la Convention contre la Torture et Autres Peines ou Traitements Cruels, Inhumains ou Dégradants (OPCAT) le15 décembre 2009, et encourage la mise en place rapide d'un Mécanisme National de Prévention au Cameroun, qui pourra effectuer des visites inopinées dans tous les lieux de détention.

Recommandation (E/CN.4/2009/Add.2)	**Situation pendant la visite** (E/CN.4/2009/Add.2)	**Mesures prises pendant les années précédentes** (E/CN.4/2006/6/Add.2 ; A/HRC/4/33/Add.2 and A/HRC/7/3/Add.2)	**Information reçue sur mesures prises récemment/situation actuelle**
a) Les plus hautes autorités politiques devraient proclamer, dans des déclarations publiques et dans des directives à usage interne, que la torture et les autres mauvais traitements infligés par des fonctionnaires ne seront pas tolérés, et que les fonctionnaires qui se seront rendus coupables de mauvais traitements ou les auront tolérés seront immédiatement révoqués et poursuivis avec toute la rigueur de la loi;		Gouvernement : Par Décret n° 2004/320 du 8 décembre 2004 portant organisation du Gouvernement, l'Administration pénitentiaire a été rattachée au Ministère de la Justice. Un Secrétaire d'Etat chargé de l'Administration pénitentiaire assiste le Garde des Sceaux dans la gestion de cette administration; Un nouveau Code de procédure pénale, entré en vigueur le 1er janvier 2007, se positionne comme un instrument de protection des droits de l'homme des personnes confrontées à une accusation pénale. Il répond aux standards de l'équité de la procédure pénale énoncés dans de différents instruments internationaux et régionaux (la phase d'arrestation des personnes et leur garde à vue a été strictement encadrée, notamment par le droit à la présence d'un conseil, le droit de se faire examiner par un médecin, l'espacement des interrogatoires par des temps de repos, le droit de garder silence, la possibilité d'intenter un recours en habeas corpus et de se faire indemniser en cas de garde à vu ou de détention abusives) ;. Une loi portant organisation judiciaire promulguée le 29 décembre 2006 a complémenté le Code; Le 26 janvier 2006 le Ministre de la Justice a crée un Observatoire qui produira un rapport annuel au cours des trois premières	***Des sources non gouvernementales:*** L'Article 30 (2) du nouveau Code de procédure pénale favorise la pratique de la torture par les officiers de police judiciaire, puisque selon cet article les actes inhumains et dégradants liés à une sanction ne sauraient être qualifiés de torture et seraient donc très pratiqués. De plus, les aveux obtenus sous la torture sont toujours considérés comme éléments de preuve dans les procédures pénales. Il semblerait que les confessions signées de façon forcées par certains détenus, parfois dans un langage qu'ils ne comprennent pas tel que le français pour des détenus anglophones, sont toujours pratiquées, ainsi que les interrogatoires, effectué dans une langue incomprise par certains prisonniers, spécialement au Sud-Cameroun. Un usage abusif de violence et d'armes à feu par les forces de l'ordre sur les civils est toujours toléré, et a pour conséquence de réduire la confiance de la population à l'encontre des forces de police. Les dispositions des articles 118 (2) et 218 (1) du nouveau Code de procédure pénale ne seraient pas respectées par les officiers de police judiciaire. Elles traitent respectivement des conditions de garde à vue et de la détention provisoire. De plus, les avocats sont empêchés par les officiers de la police judiciaire de prendre la parole

		années de mise en œuvre de ces textes ; La prohibition de la torture est concrètement traduite dans l'ordre juridique interne par trois importantes lois, à savoir: la loi n° 97/009 du 10 janvier 1997; la loi n° 97/010 du 10 janvier 1997; la nouvelle loi n° 2005/007 du 27 juillet 2005; La Convention contre la torture a été incorporée dans son dispositif législatif notamment en établissant la compétence universelle des autorités judiciaires camerounaises pour poursuivre et juger les personnes étrangères se trouvant sur son territoire et soupçonnées d'avoir commis des actes de torture dans un autre pays. *Des sources non gouvernementales: le transfert de l'administration des prisons au Ministère de la Justice aurait permis de mieux contrôler les prisons.*	pour conseiller ou faire des observations au niveau des enquêtes préliminaires. Les jugements expéditifs se tiennent en l'absence d'avocats pour les personnes interpellées pendant des manifestations publiques.
b) Il faudrait déroger aux politiques limitant le recrutement des **fonctionnaires de manière à pourvoir les postes laissés vacants par les fonctionnaires révoqués pour de tels délits;**	Postes laissés vacants par les fonctionnaires révoqués pour des´actes de tortures ou mauvais traitement ne faisaient pas l´objet de recrutements.	Gouvernement: a fourni des listes concernant des mesures administratives et judicaires prises contre des membres de forces de l'ordre et des chefs traditionnels pour des actes de torture et des traitements inhumains dans les années 1998-2005. *Des sources non gouvernementales: L'impunité resterait quasi-totale.*	
c) Un corps de procureurs, disposant de ressources suffisantes et **d'un personnel d'enquête indépendant et spécialisé, devrait être créé et chargé de** **poursuivre les délits graves,**	Aucun corps indépendant chargé de telles Enquêtes existait. Chaque corps, la gendarmerie ou la police, enquêtait ainsi sur les allégations concernant ses propres membres.	Gouvernement : Les magistrats du parquet, bien qu'étant soumis à l'obligation de rendre compte et au principe de la subordination hiérarchique, ils ne sont pas totalement inféodés au pouvoir exécutif. Dans l'exercice de leurs fonctions, leur liberté de parole peut s'exercer à l'audience, nonobstant les instructions	

comme les actes de torture, commis ou tolérés par des fonctionnaires;	Il y avait un doute si de telles enquêtes puissent être menées à terme, l'esprit de corps conduisant chacun à protéger ses collaborateurs;	reçues, s'ils en ont averti au préalable leur chef hiérarchique direct. Le Code de procédure pénale (CPP), qui est entré en vigueur le 1 janvier 2007, a réinstauré le juge d'instruction, magistrat indépendant dans ses attributions juridictionnelles, et qui sera chargé de l'information judiciaire pour les infractions graves. *Des sources non gouvernementales: aucun corps comme tel n'existerait. Un département des droits de l'homme aurait été créé au sein du Ministère de la Justice contre l'abus de la part des fonctionnaires du Ministère, mais il n'aurait pas le droit de mener des enquêtes indépendantes et de poursuivre les délits graves.*	
d) Un organisme tel que le Comité national des droits de l'homme et des libertés devrait être doté de l'autorité et des ressources nécessaires pour procéder, comme il le jugera nécessaire et sans préavis, à l'inspection de tout lieu de détention, officiellement reconnu ou soupçonné, publier ses constatations régulièrement et présenter les preuves d'un comportement criminel à l'organisme compétent et aux supérieurs administratifs de l'autorité publique coupable; des organisations non gouvernementales dont la valeur est connue, qui fournissent parfois déjà une assistance humanitaire dans	Le Comité national des droits de l'homme et des libertés (CNDHL), créé par le décret No 90/1459 du 8 novembre 990, opérationnel depuis février 1992 avait pour mandat, entre autres, de visiter tous les types de lieux de détention. Mais, les activités du Comité ont été principalement de nature confidentielle, les autorités concernées étant les seules à recevoir les recommandations du Comité. De plus, le CNDHL n'avait pas le mandat de présenter les preuves d'un comportement criminel à l'organisme compétent et aux supérieurs administratifs de l'autorité	Gouvernement : Par la Loi n° 2004/016 du 22 juillet 2004 une Commission Nationale des Droits de l'Homme et des Libertés a été créée. La CNDHL est entre autres mandatée de visiter les lieux de détention ; elle peut convoquer toute partie ou témoin; saisir le Ministre chargé de la justice pour toute infraction relevant de sa loi organique; user de la médiation et de la conciliation dans les matières non répressives; intervenir pour la défense des victimes des violations des droits de l'homme. *Des sources non gouvernementales: la CNDHL ne pourrait exercer correctement son rôle, n'étant pas présente sur tout le territoire national.* *La CNDHL ne disposerait pas d'assez de ressources pour pouvoir accomplir son mandat. En plus, elle ne serait pas*	

certains établissements pénitentiaires, pourraient être associées à ces fonctions;	publique coupable ;	*indépendante et impartiale et ses rapports ne seraient pas publiés. La Commission aurait accès aux lieux de détention et pourrait mener des enquêtes, mais ces enquêtes ne pourraient se faire sans l'accord préalable des autorités. Les associations de défense des droits de l'homme ne seraient jamais associées aux commissions d'enquêtes.*	
e) La famille et les avocats des détenus devraient avoir le droit de voir ces derniers et de leur parler, sans surveillance, dans les 24 heures, ou dans certains **cas exceptionnels, dans les 48 heures suivant leur arrestation;**	Aucune disposition légale ne garantissait expressément à une personne placée en garde à vue le droit d´accès à un conseiller juridique ou à des membres de leur famille dans les premières heures suivant l'arrestation. La quasi-totalité des détenus rencontrés dans les commissariats et gendarmeries ont ainsi indiqué qu'ils avaient été interrogés sans que soit présent un avocat ou une tierce personne. Il y a avait également des témoignages de menaces contre les familles ou les avocats lorsqu'ils avaient tenté de venir rendre visite aux personnes placées en garde à vue.	Gouvernement : le droit de voir la personne gardée à vue ou détenue provisoirement est rigoureusement organisé tant au plan législatif que réglementaire : l'article 122 (3) du nouveau Code de Procédure Pénal prévoit que « la personne gardée à vue peut, à tout moment, recevoir aux heures ouvrables la visite de son avocat et celle d'un membre de sa famille, ou de toute personne pouvant suivre son traitement durant la garde à vue ». En ce qui concerne les droits de la personne détenue provisoirement, le législateur y avait consacré le chapitre VII du CPP qui traite «des visites et des correspondances ». Ainsi, l'article 238 (1) dispose que «en cas de détention provisoire, les conjoints, ascendants, descendants, collatéraux, alliés et amis de l'inculpé ont un droit de visite qui s'exerce suivant les horaires fixés par l'administration pénitentiaire, sur avis conforme du Procureur de la République». Sur le plan réglementaire, l'article 41 du décret n° 92/052 du 27 mars 1992 portant sur le régime pénitentiaire au Cameroun, prévoit que « le détenu peut pendant leur visite communiquer avec les conseils quand il le désire. Cette communication	***Des sources non gouvernementales:*** Malgré les dispositions du nouveau Code de procédure pénale, la durée de la garde à vue outrepasse très souvent les 48 heures prévues par la loi, un fait qui n'est souvent ni connu du procureur de la République, ni motivé. Dans certains centres de détention, une présence de plus de 85% de détenus en détention préventive a été notée.

		s'effectue hors la présence d'un élément d'encadrement ».	
f) Des installations médicales devraient être mises à disposition afin qu'un médecin indépendant puisse examiner toute personne privée de liberté dans les **24 heures suivant son arrestation;**	Les personnes privées de liberté et placées en garde à vue n´avaient pas d´accès à un examen médical indépendant après leur arrestation.	*Des sources non gouvernementales: aucune installation de ce type n'aurait été mise à disposition ; les conditions de santé dans les prisons resteraient déplorables ; les soins seraient payants et les médicaments pour les maladies courantes ne seraient pas toujours disponibles ; lorsque les malades sont amenés dans les hôpitaux publics, on leur prescrirait seulement des ordonnances sans qu'ils puissent bénéficier de soins ; la surpopulation carcérale favoriserait l'apparition de multiples maladies endémiques;* *Le nouveau Code pénal pourrait améliorer cette situation.*	***Des sources non gouvernementales:*** Outre l'environnement insalubre, les détenus souffrent souvent de malnutrition et ne bénéficient toujours pas de prise en charge en cas de maladie. Les soins médicaux restent payants.
g) L'unité spéciale des antigangs basée près de Maroua devrait être, sinon dissoute, du moins placée effectivement sous contrôle politique et administratif et les états de service de ses effectifs, y compris de son commandant, devraient être soigneusement examinés en vue de poursuivre les membres de cette unité qui auront participé à des tortures ou des meurtres ou les auront tolérés;	L´unité spéciale des antigangs de Maroua, qui faisait partie de ce qui est appelé la "réserve ministérielle" ou le groupement polyvalent d'intervention de la gendarmerie (GPIG), était directement supervisée par le Ministre d'État à la défense et le Président de la République. Le Rapporteur Spécial a reçu des allégations de détentions arbitraires, tortures et exécutions sommaires par les antigangs de Maroua. Le Rapporteur spécial n'a pas eu accès au quartier général	Gouvernement : l'unité spéciale des antigangs basée à Marouai a été créée pour lutter contre le grand banditisme connu sous l'appellation de phénomène des «coupeurs de route», brigands lourdement armés qui écumaient particulièrement les provinces septentrionales; Cette unité serait soumise aux lois de la République et partant aux conventions internationales auxquelles le Cameroun est partie ; elle ne serait donc pas investie du pouvoir de torturer ou de perpétrer des meurtres, mais elle contribuait à garantir la sécurité des citoyens et assure la liberté de circuler.	

	à Maroua.		
h) La gendarmerie et la police devraient créer des services spéciaux chargés de procéder à des enquêtes lorsque des allégations de torture sont formulées, et de veiller à ce que ce genre de méfaits ne soient plus perpétrés;	Il est clair que les voies de recours prévues par le système n'étaient pas adéquates. La plupart des cas n'étaient pas portés à la connaissance des autorités concernées en raison du manque de confiance ou de la peur de représailles, entre autres, chez les victimes et leurs proches ;	Gouvernement : S'agissant de la police, une Division Spéciale de Contrôle des Services a été créée par Décret n° 20051065 du 23 février 2005, qui « assure la Police des Polices » (article 1 alinéa 2 du Décret). La Division Spéciale est entre autre, chargée de la prévention de la lutte contre toutes exactions, tous comportements et tous actes portant atteinte à la légalité, à la tenue et à la conduite, au devoir, à l'honneur et à la probité, commis en service, à l'occasion du service, au sein ou en dehors de celui-ci». *Des sources non gouvernementales: quelques services chargés d'examiner des cas de mauvais traitements et d'abus commis par la police et la gendarmerie auraient été créés, mais il n'y aurait pas d'information sur leur efficacité et leur fonctionnement ne serait pas transparent.*	***Des sources non gouvernementales:*** La police n'est toujours pas très pénalisée dans les cas de violations des droits humains; et les prisons, les commissariats ou les brigades de gendarmerie restent des lieux de torture et de répression. Il est problématique que les gendarmes ne puissent pas être poursuivis dans les cas d'infractions commises dans l'exercice de leurs fonctions, qu'après autorisation du Ministère de la défense.
i) D'importantes ressources devraient être consacrées à **l'amélioration des lieux de détention de manière à assurer un minimum de respect pour l'humanité et la dignité de tous ceux que l'État prive de liberté;**	Les cellules de la police et de la gendarmerie étaient globalement exécrables; elles étaient exiguës, sales, mal éclairées et insuffisamment aérées. Une partie de cellules dans les prisons étaient également dans un état déplorable. La surpopulation carcérale était un problème majeur.	Gouvernement: l'amélioration des conditions carcérales est tributaire des ressources financières qui ne sont pas toujours disponibles; l'Etat y pourvoit dans la mesure du possible et invite tous les partenaires à y contribuer; Gouvernement: l'amélioration du cadre de détention est une préoccupation constante de l'Etat. le cadre du budget de l'exercice 2007, des lignes de crédit ont été ouvertes pour un montant global de 503.565.000 francs CFA (soit environ 768.801 euros) pour l'aménagement des prisons. *Des sources non gouvernementales: le Ministère de la Justice aurait créé un département de droits de l'homme pour*	***Des sources non gouvernementales:*** Si la pratique de la torture physique semble se raréfier dans les lieux de détention, celle, morale et psychologique, est de plus en plus récurrente, et s'exprime par les conditions précaires de détention, les arrestations arbitraires, l'enchaînement, la détention secrète, la violation du droit à la présomption d'innocence ou la corruption comme condition d'accès aux services publics. Les conditions de détention dans les prisons sont déplorables, et la surpopulation carcérale serait due à la corruption et à la lenteur des instances judiciaires.

		poursuivre les délits commis par des employés du Ministère ; mais il y aurait toujours une surpopulation carcérale dans tous les centres de détention; *Les détenus n'auraient droit qu'à un repas par jour (moins de 5 bananes par jour ou une boule de couscous avec quelques grains de haricots).* *Au nord, il y aurait toujours des lieux de détention gérés par les "Lamidos" (les chefs traditionnels) - des "prisons privées".*	
j) Tous les délinquants ou suspects emprisonnés pour la première fois pour des délits non violents, en particulier s'ils sont âgés de moins de 18 ans, devraient être libérés; ils ne devraient pas être privés de liberté tant que le problème de la surpopulation carcérale n'aura pas été réglé;	La surpopulation dans les prisons était une préoccupation majeure, dans certaines prisons, 80% des détenus étaient des personnes détenues en détention préventive, certaines depuis plus de 7 ans. Des prévenus (en détention préventive) étaient également détenus à la police et de gendarmerie. un très grand nombre de cas de personnes détenues relevaient en outre des juridictions de droit civil ;	Gouvernement: chaque fois que les pouvoirs publics ont constaté l'augmentation de la population carcérale dans une prison donnée, il a été mis sur pied un processus de décongestionnement, par le transfert des détenus définitivement condamnés dans des prisons, moins peuplées. Par ailleurs, ayant pris conscience du problème, l'Etat a créé de nouvelles prisons à Yaoundé, Bangem, Fundong, Ndop et Moulvoudaye. Toutefois, ces efforts sont limités par le programme d'ajustement structurel auquel le Cameroun est soumis. Le nouveau Code de procédure pénale prévoirait un contrôle rigoureux de la légalité des mesures restrictives de la liberté individuelle et la répression et la réparation des détentions arbitraires, et la durée de la détention provisoire doit être indiquée dans le mandat de la détention provisoire. D'après l'article 221(2) du CPP « à l'expiration du délai de validité du mandat de détention provisoire, le Juge d'instruction doit, sous peine de poursuites	***Des sources non gouvernementales:*** Le problème de la surpopulation carcérale n'a pas été réglé, et peu de nouveaux centres de détention ont été construits. De plus, le temps de détention préventive est toujours beaucoup trop élevé. Des cas de torture chez des jeunes de moins de 18 ans ont été notés à plusieurs occasions. En outre, il n'existe pas de séparation effective des hommes et des femmes, des adultes et des mineurs, ainsi que des condamnés et des prévenus.

		disciplinaires, ordonner immédiatement la mise en liberté de l'inculpé, à moins qu'il ne soit détenu pour autre cause ». L'article 236(1) prévoit que « toute personne ayant fait l'objet d'une garde à vue ou d'une détention provisoire abusive peut, lorsque la procédure aboutit à une décision de non-lieu ou d'acquittement devenue irrévocable, obtenir une indemnité si elle établit qu'elle a subi du fait de sa détention un préjudice actuel d'une gravité particulière». *Des sources non gouvernementales : le problème de la surpopulation carcérale serait loin d'être réglé dans les prisons camerounaises, et les mineurs continueraient d'être incarcérés même pour des délits mineurs. Les audiences étant surchargées en raison du manque de magistrats, nombreuses seraient les affaires renvoyées. En outre, les décisions de justice ne seraient pas rédigées à temps, ce qui entraverait le déclenchement des procédures d'appel.*	
k) La pratique consistant à utiliser des détenus comme force disciplinaire auxiliaire devrait être abandonnée;		Gouvernement : cette pratique avait été identifiée dans les prisons centrales de Yaoundé et de Douala, mais elle est formellement interdite et des sanctions administratives ont été prises à l'encontre des Régisseurs des dites prisons. *Des sources non gouvernementales: les responsables pénitenciers continueraient d'utiliser des détenus (communément appelé 'antigangs') comme force disciplinaire auxiliaire. De nombreux cas de torture sur des prisonniers seraient le fait de membres de ce corps qui terroriseraient la population carcérale en*	

		cas de refus d'obéissance.	
l) Les Rapporteurs spéciaux sur les exécutions extrajudiciaires, **sommaires ou arbitraires et sur l'indépendance des juges et des avocats devraient être** **invités à se rendre dans le pays. Au cours de cette visite, l'accent pourrait être mis en** **particulier sur la réticence ou l'inaptitude du parquet et des autorités judiciaires à** **contrôler convenablement le traitement, notamment par la police et la gendarmerie, des personnes privées de leur liberté, et à poursuivre et à condamner les fonctionnaires chargés** **de l'application des lois responsables d'actes de torture et à leur imposer les peines prévues à cet effet.**	Il n'y avait pas d'autorité indépendante chargée de mener des enquêtes sur les infractions commises par des membres des forces de l'ordre. Le Rapporteur Spécial a reçu des allégations concernant des exécutions extrajudiciaires perpétrées par les forces armées, en particulier par unité spéciale des antigangs ;		***Des sources non gouvernementales:*** Le Cameroun n'a toujours pas ratifié le *Protocole facultatif à la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*, qui prévoient un mécanisme de prévention de la torture par des visites régulières des lieux de détention par des organismes indépendants nationaux et internationaux. De plus, l'accès des lieux de détention est interdit aux associations de défense des droits humains. Le Cameroun a signé Protocole Facultatif à la Convention contre la Torture et Autres Peines ou Traitements Cruels, Inhumains ou Dégradants le 15 décembre 2009

China

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

18. On 23 October 2009, 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 his recommendations and he reaffirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

19. The Special Rapporteur welcomes China's efforts to improve the situation of human rights in the country and to combat torture as proclaimed in its National Human Rights Action Plan 2009-2010 (NHRA). He positively notes that the NHRA unambiguously prohibits torture as well as the use of evidence obtained through torture and declares to prevent torture by inter alia establishing and improving supervisory mechanisms for law enforcement and for the administration of justice, conducting physical examinations of detainees before and after any interrogation and improving the treatment of detainees. However, the Special Rapporteur regrets that China fails to take concrete steps in this regard, rejects to release concrete data about enforcement efforts and to increase transparency in the criminal justice system. Despite some efforts to improve the regulations criminalizing torture, the Special Rapporteur regrets that no further steps have been taken to bring the Chinese criminal law in line with the requirements of articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Special Rapporteur expresses concern about allegations of continuing use of confessions obtained through torture in judicial proceedings. Although welcoming the increased use of video and audio taping at interrogations, he regrets that such material is fully controlled by the police authorities making an effective and independent monitoring impossible. He is further concerned about the lack of investigations, prosecution and punishment of the perpetrators of torture. He reiterates that no independent mechanism mandated to monitor all places of detention has been created and thus strongly encourages the Government to ratify and implement the Optional Protocol to the CAT.

20. The Special Rapporteur remains concerned about the use of "Re-education through Labour" and similar forms of administrative detention, particularly the "coercive quarantine for drug rehabilitation" and the treatment of such detainees. He is particularly concerned about increasing reports of arbitrary administrative detention in so called 'black jails' preventing petitioners to file complaints. The Special Rapporteur notes with concern reports about the excessive use and length of pre-trial detention putting the concerned persons at risk of torture and ill-treatment. He reiterates his recommendations concerning the guarantee of habeas corpus or equivalent means to challenge the lawfulness of detention and the full guarantee of the right to fair trial.

21. Although he welcomes the revision and abolition of regulations inconsistent with the reformed Lawyers Law, the Special Rapporteur regrets that China has so far failed to take concrete steps to guarantee the right to legal counsel, the presumption of innocence and the right to remain silent. He notes with great concern that the intimidation, repression and harassment of lawyers who take on 'sensitive' cases continue and that several lawyers have been detained and convicted on arbitrary grounds. The Special Rapporteur is worried about the continuing prosecution of 'political crimes' such as "endangering state security" and the discrimination of such political prisoners in the sentence reduction and parole process.

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**
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 articles 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 articles 247 and 248 of the Criminal Law (CL), however a number of other regulations permit exceptions (see infra Rec c)).	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.	***Non-governmental sources:*** *Despite the introduction of new categories of offences relating to torture by the Supreme People's Procuratorate (SPP), the definition of torture and the prohibition and criminalization of torture in Chinese law do not satisfy the requirements of Articles 1 and 4 of 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.*
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 Supreme People's Procuratorate (SPP) is the mechanism responsible for investigating and prosecuting crimes committed by State functionaries. The Procurators are also mandated to monitor		*Government:* The National Human Right Action Plan 2009-2010 (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:*** *The Government rejects the release of concrete*

	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.		*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, procuratorate 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 indicted for abuse of torture**, including prosecutors and judges implicated in colluding in torture or ignoring evidence, should be immediately **suspended from duty pending trial, and prosecuted**.	The Public Security Organs' Regulations on Pursuing Responsibility for Policemen's Errors in Implementing the Law and other regulations stipulated that "responsibility for 'errors', including forcing confessions or testimony will not be pursued where the law is unclear or judicial interpretations inconsistent" and allowed for a number of exceptions.		***Non-governmental sources:*** *Perpetrators of torture are rarely suspended, indicted or held legally accountable.*
d) The declaration should be made with respect to **article 22 of 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	No declaration made to recognize individual complaint procedure.		

Convention. CAT			
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 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	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 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).	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.	***Non-governmental sources:*** *No steps have been taken to change the CPL and stop the practice of excessive periods of pre-trial detention.*
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.	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.	***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.*
g) **All detainees should be**	China's domestic legislation did		**Government***:* Under the NHRA, effective

effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus	not provide for habeas corpus or any other legal recourse to challenge arrest and pre-trial detention before an independent court.		steps shall be taken to guarantee the lawful, timely and impartial trial of all cases. ***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 pervasiveness of torture for the purpose of extracting confession and the SPP announced in 2005 that	Article 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 (article 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.	***Non-governmental sources:*** *There is no right to access a lawyer before the initial interrogation. The 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".*

	eliminating confession through torture was among its priorities. • Piloting systems of audio and video recording in interrogation rooms had been started.		
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 an after the interrogation shall be established and promoted. ***Non-governmental sources****: No significant steps have been taken since the visit of the Special Rapporteur.* *The right to access to medical care provided for by Chinese 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 article 14 of ICCPR,** including the following: • the right to remain silent and the privilege against self-incrimination; • the effective exclusion of evidence extracted through torture; • the presumption of innocence; • timely notice of reasons for detention or arrest; • prompt external review of	• The CPL was not in conformity with international fair trial standards (e.g. it did not provide for the right to remain silent and privilege against self-incrimination); • The Rules on the Handling of Criminal Cases by Public Security Authorities permitted exceptions to the 24 hours time period for family notification; • Extensive periods of police custody permitted by law, no independent judicial review of arrest and detention; • Article 96 of the CPL provides for access to a lawyer		**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:*** *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.*

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.	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.		
k) The power to order or approve arrest and supervision of the police and detention facilities of the procurators should be transferred to independent courts	There is no provision under Chinese law for individuals to be brought promptly before an independent judicial authority to assess the lawfulness of the detention. Decisions over an extension of custody and pre-trial detention rested with the Public Procuratorate.		***Non-governmental sources:*** *The Public Procuratorate remains in charge of decisions over extending police custody and pre-trial detention.*
l) Article 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 article 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:*** *Article 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". Articles 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 2009, eighteen 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 Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism be established – where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal – to visit all places where persons are deprived of their liberty throughout the country			
n) **Systematic training programmes** and awareness-raising campaigns on the principles of the Convention against Torture for the public at large, public security personnel, legal professionals and the judiciary			***Non-governmental sources:*** *The previously conducted 'in-house' campaigns of education have not yielded appreciable results in the past. China has not fulfilled the obligation to widely educate its employees and citizens about human rights and the prohibition of torture. It has furthermore blocked access of civil society actors to information and human rights training courses. Websites reporting on human rights violations are blocked, censored or closed down by the authorities.*
o) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity	The Law on State Compensation guaranteed the right to compensation for losses suffered through infringements		*Government:* According to the NHRA, the economic compensation, legal remedies and rehabilitation to victims shall be improved.

of the physical and mental harm suffered, and adequate medical treatment and rehabilitation	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.		***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.	Plans to implement the full audio-visual recording of appellate court proceedings in death penalty cases were announced. In 2007, the SPC resumed review of death penalty sentences as of Jan 2007. Semi-official accounts estimated a drop in the number of executions by 30% in 2007 compared to 2006 as a result of a reduction in death sentences passed by lower courts and an average of approx. 15% of overturned death sentences by the SPC.	***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 lack 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.*
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.	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:*** *The number of capital offences remains the same. The Government still executes persons for non-violent, political crimes and there are no indications that it may change the practice.*
s) Political crimes that leave large discretion to law	The replacement of the crimes "counter-revolution" and		***Non-governmental sources:*** *The Government has taken no steps towards*

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	"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.		*the abolition of political 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 percent 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	RTL and other forms of		***Non-governmental sources:*** *The*

Labour" and similar forms of forced re-education in prisons, pre-trial detention centres and psychiatric hospitals should be abolished.	administrative detention had been used for many years against political groups, Falun Gong practitioners and human rights defenders, accused of politically deviant and dissident behaviour, disturbance of the social order or similar petty offences. Some of these measures of re-education through coercion, humiliation and punishment were aimed at altering the personality of detainees up to the point of breaking their will.		*discussions on RTL in the National People's Congress have not yielded official results. However, the available statistical data suggest that the use of RTL is declining, partly due to the sending of drug-related offenders to "coercive quarantine for drug rehabilitation (CQDR)", a new form of administrative detention for drug addicts initiated under the new Drug Prohibition Law (effective 1 June 2008). 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 Office of the United Nations High Commissioner for Human Rights, 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)

22. On 23 October 2009, the Special Rapporteur sent this follow-up report to the Government of Denmark requesting information and comments on the follow-up measures taken with regard to the implementation of his recommendation. On 18 November 2009, the Government responded with a detailed report to his request. The Special Rapporteur thanks the Danish Government for providing him with very relevant information for this report.

23. The Special Rapporteur notes with satisfaction that several positive projects were undertaken by Denmark during the reporting period, showing the concern of the State on issues such as trafficking and domestic violence. Although no new legislation concerning solitary confinement was drafted, the Special Rapporteur welcomes the fact that the practice has been decreasing in the recent year and encourages Denmark to continue pursuing its efforts.

24. The Special Rapporteur takes note that the Danish Government will develop changes to the Danish Aliens Act in 2010 and looks forward to receiving an update on this. On the issue of diplomatic assurances, the Special Rapporteur expresses some concern and requests Denmark to treat the issue with the greatest caution.

25. Despite the difficulty in establishing a responsibility of the Danish Government regarding the rendition flights of the CIA, the Special Rapporteur appreciates the efforts of the State to clarify the situation, actively condemn such illegal practices and seek further guarantees from the United States in this regard.

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 (*Straffelovrådet*) has thoroughly assessed the need for the adoption of a specific provision on the crime of torture in Danish criminal law. The committee did not recommend this mainly due to the fact that all acts considered to be covered by the definition of torture in Art. 1 CAT is already covered by existing provisions of Danish criminal law. The Danish Government is still of the opinion that the current legislation – including the specific provision in Section 157 (a) of the Danish Criminal Code to make torture an aggravating circumstance in the determination of a penalty for a violation of the Criminal Code – is a sufficient and adequate response to the need to criminalize the crime of torture.
(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	***Non-governmental sources:*** A report from the Danish Director of Public Prosecutions [Rigsadvokaten] from October 31 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 in 2006 13.838 compared to 7.189 days in 2007. This is a decrease of 48%.[1]	***Non-governmental sources:*** *There has been no new legislation concerning solitary confinement.* *The statistics covering 2008 are not available at the present time.*

[1] 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)

	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 wais strictly restricted to situations where there are specific reasons to presume that the accused will impede the prosecution of the case; Administration of Justice Act contains no provisions according to which solitary confinement can be imposed following a court decision, the decision to exclude a prisoner from association with others is to be made after having presented the case to the legal staff of the Chief Constable's office; Instances where pre-trial detainees reported that the police used the threat of extending solitary confinement to coerce detainees to cooperate in an investigation.	A report from the Danish Prison and Probation Service [Kriminalforsorgen] 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.[2]	
(c) Set an absolute limit to the length of detention of foreigners pending deportation, and review the	Detainees perceived as uncertain how long they would remain in detention, since Danish legislation does not		***Non-governmental sources:*** *There has been no amendment to the Aliens Act concerning a maximum limit to the length of deprivation of liberty for foreigners*

[2] 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)

practice of habeas corpus proceedings under section 37 of the Aliens Act;	provide for a maximum period of deprivation of liberty; he was informed of cases where persons had been detained for 18 months.		*pending deportation.* *A bill amending the Aliens Act was adopted in December 2008. 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.*[3] **Government:** By 5 November 2009, 45 aliens were detained in Ellebæk of which 18 were waiting to be returned or deported. In addition, by 5 November 2009, 31 aliens who had been expelled and who are awaiting an effectuation of the decision of expulsion were remanded in custody. Furthermore, by 5 November 2009, 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 in order to carry out the expulsion. The Directive 2008/115/EF of the European 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

[3] 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)

			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 has decided to implement the directive on an intergovernmental basis and has informed the Council thereof. The necessary changes to the Danish Aliens Act are expected to be proposed to Parliament in 2010.
(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		***Non-governmental sources:*** *In May 2008 a meeting place for foreign prostitutes was established 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 has also been established at the centre. At the centre, the women receive health services, courses in contraception, language courses, counsel concerning rights and opportunities, etc.*[4] **Government:** Health care services are being provided to potential victims of trafficking in prostitution in the established

[4] 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

	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.		drop-in-centre in Copenhagen and through special agreements with two major hospitals which provide health care services within the field of STD, abortion, childbirth, etc. Similar arrangements are being developed in areas outside the capital. Victims in the reflection period have access to a wider range of medical and dental care as well as physiotherapy and psychological assistance according to individual needs. 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 (for EU-citizens). Additional funding has been allocated to services provided by specially trained personnel to support individual victims socially, psychologically and practically during the reflection period. The service provided consists of psychological and social support, counselling, development of victims' skills and qualifications, assistance in court, etc. Legal counselling is being offered to potential victims of trafficking through outreach work. The range of protected accommodation in the reflection period has been expanded in order to meet individual needs. Victims of trafficking can be accommodated in a

[5] The report is not finalised yet.

			crisis centre exclusively targeted for victims of trafficking, 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. The centres offer various possibilities for support and education. Rehabilitation of other victims of human trafficking The national action plan to combat trafficking includes all victims of trafficking. Trafficking in areas other than for sexual exploitation is being monitored by the Danish Centre for Human Trafficking and discussed on a regular basis in various coordination meetings both at ministerial level and at practical level with NGOs and law enforcement. So far there have not been any cases of victims of trafficking other than for sexual exploitation. Special attention is given to children who are potentially trafficked for different kinds of exploitation. A screening is being carried out among unaccompanied minors and mechanisms are put in place if a child is found to be victim of trafficking. Trafficking for labour exploitation is an area of special attention for the Centre for Human Trafficking in 2009 and 2010. Different research projects are carried out or are planned to be carried out in this area. Current findings show that in relation to the Danish Au Pair-agreement it cannot be concluded that trafficking of human beings is taking place[5]. There are

			indications of exploitation both in the recruiting phase and during the time with the host families but not to a degree where it can be determined as human trafficking.
(e) Ensure that, where arrangements exist for male and female detainees to be accommodated in the same premises, the decision of a woman to be placed together with men is based on her completely free and informed decision, and scrupulously monitor appropriate safeguards to prevent abuse;	Practice of accommodating male and female detainees in the same premises, based on the principle of normalization; while in most places such arrangements were voluntary, this was not the case in Nuuk Prison in Greenland.		**Government:** Special attention will be paid to the placement of female inmates in connection with the establishment of the new institution in Nuuk, which is planned to open in 2013. According to the Chief Governor of Institutions in Greenland, no cases of violence or sexual abuse of women have been registered in the existing institution in Nuuk even though close relationships are sometimes formed between female and male inmates. In addition, nothing indicates that the women form relationships with male inmates for protection purposes. With reference to the renewed request for information from the Rapporteur, the Chief Governor confirmed that the 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.
(f) Refrain from the use of diplomatic assurances as a means of returning suspected terrorists to countries known for practicing torture;	The Government considered to employ diplomatic assurances to return suspected terrorists to countries known for their practice of torture; Memorandum of Understanding between the Ministry of		***Non-governmental sources:*** *According to Bill No. L 209 of 28 April 2009 on administrative expulsion, etc. adopted on 28 May 2009, diplomatic assurances can be used in concrete cases. A concrete and individual assessment will be made in each case and, according to the Government,*

	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.		*will always be assessed in light of Denmark's international obligations.*[6] **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 2009 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.
(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 United States of America Central Intelligence Agency (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: Neither the existing information on extraordinary rendition flights, nor the answers given by the United States of America to questions from Denmark have made it possible for the Working Group or the relevant Danish authorities to authoritatively determine whether or not CIA flights have occurred in Danish, Greenlandic or Faroese airspace or not. Further it can't be verified or substantiated if the claim that Danish, Greenlandic and Faroese authorities should have had or actually did have knowledge of alleged extra-judicial CIA activities. Consequently, there is no basis to conclude

[6] 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.

			that the Danish Government bears responsibility or co-responsibility for alleged illegal activities of the CIA or other foreign authorities' activities. 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 an extraordinary rendition heading towards or being in Danish, Greenlandic or Faroese airspace.[7] In connection with the publication of the report on Secret CIA-flights in Denmark, Greenland and Faroe Islands on the 23 October 2008, the Danish 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 Danish Government informed the US Government of the Danish position and law in relation to renditions, through a note verbale dated 27 October 2008. In the note, the Danish Government strongly condemned the use of extraordinary renditions defined as transport of individuals which takes place outside the scope of national and international law. Further, the Danish Government stressed that such renditions constitute a violation of the fundamental human rights of the detained individuals and cannot be justified regardless of the circumstances or

[7] 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)

			purpose of the transport. Just prior to the publication of the report the Danish Government received on the 22 October a future guarantee from the US Government 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. In relation to the implementation of the recommendations regarding the use of all possible control measures in relation to flights under specific suspicion and notification of the relevant authorities to ensure that the situation is immediately addressed, the Danish, Greenlandic and Faroese authorities continue to be alert. The Danish Government will actively engage in discussions at regional level and, where necessary, at international level on the question of a common definition of civilian state aircrafts and the question whether the existing rules on supervision with foreign intelligences, supervision of flights and immunity provide an adequate protection against violation of the human rights.
(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,		***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 Danish Government to observe the recommendations from UNHCR not to*

	particularly in the area of rehabilitation for victims of torture;		*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.*[8] *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. The detention and the way how the police proceeded during the raid caused public debate. The detention of possible victims of torture with the aim of deportation was criticized by a former member of UN Committee against Torture. In addition the detainees were interviewed by an Iraqi delegation without a lawyer present.* **Government:** Denmark is continuing its active international policy against torture. In 2008 the General Assembly adopted a comprehensive omnibus resolution on torture, presented by Denmark, by consensus. In March 2009, the Human Rights Council adopted a resolution on "Torture and other cruel, inhuman or degrading treatment or punishment: The role and responsibility of medical and other health personnel." At the General Assembly in 2009, Denmark submitted an omnibus resolution strengthening the

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

			protection against torture, which was adopted by consensus. All rejected Iraqi asylum seekers in Denmark have had their cases thoroughly reviewed by the refugee authorities based on a factual and individual assessment of all relevant information pertaining to the case. 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 the 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 Danish Parliament has 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, for example life-threatening diseases and incurable mental disorders, 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 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, since it is prescribed in the preparatory works that a humanitarian residence permit can only be 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 for acute illness and "necessary, urgent and pain-relieving" medical treatment. Newly arrived asylum seekers are offered an appointment with a Danish Red Cross nurse at the reception centre or may be taken to see a doctor, particularly if there is reason to believe that the asylum seeker has been tortured. Asylum seekers who have been subjected to torture receive consultations with a psychologist or psychiatrist and receive physiotherapy. Treatment is initiated in the health clinics at the asylum centres, and carried out by nurses and medical specialists in general medicine. Asylum seekers can also be referred to other medical specialists and hospitals, if the doctor thinks it is necessary. In some cases the Danish Immigration Service has to approve the treatment.
The Special Rapporteur recommends, as a priority for the Greenland Home Rule Government, that it develop and implement an adequately resourced plan of action against domestic violence in Greenland in cooperation with actors with relevant experience, such as the Ministry of Welfare and Gender Equality.	High incidence of assault and sexual offences against women in Greenland: a study by the National Institute for Public Health showed that 60 per cent of women in Greenland aged 18 to 24 were victims of assaults or threats; a third of whom were victims of aggravated assaults. 34 per cent of these women were victims of sexual assaults; 12.5 per cent already when they		***Non-governmental sources:*** *According to an inquiry into the matter, in February 2009 a draft [National Strategi for sundhedsfremme og forebyggelse af vold og seksuelle overgreb] was expected "soon".* **Government:** The multi-faceted approach in the National Action Plan to combat domestic violence 2005-2008 and the former action plan will continue as 35 million Danish kroner has been allocated to a new National Strategy to combat

	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".		violence in intimate relations 2009-2012. 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.

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)

26. By letter dated 23 October 2009, the Special Rapporteur sent the following report 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 by letter dated 4 December 2009.

27. The Special Rapporteur welcomes the continuing work on the implementation of the Anti-torture Plan and the revised Criminal Justice Reform Strategy, which has been expanded to cover important additional areas such as juvenile justice. The Special Rapporteur is looking forward to receiving the implementation report prepared by the Secretariat of the Criminal Justice Reform Inter-Agency Council. He further welcomes the elaboration of the draft Code on Imprisonment which incorporates important new developments in the fight against torture and other ill-treatment.

28. The Special Rapporteur would like to call upon the Government to play a more pro-active role with regard to compensation and rehabilitation of victims of torture and other ill-treatment.

29. The Special Rapporteur would like to thank the Government for providing extensive statistics in relation to pre-trial detention and non-custodial measures and would like to positively note the increasing use of bail. He further welcomes the efforts undertaken to reform the probation service and hopes that respective legislative amendments will be made shortly.

30. The Special Rapporteur notes with appreciation the adoption of the Penitentiary Strategy and a corresponding Action Plan, which cover an improved food supply and health care as well as education programmes. However, more concentrated efforts need to be made to effectively tackle the persistent overcrowding in a number of penitentiary facilities.

31. Finally, the Special Rapporteur welcomes the legislative amendment by which the Office of the Public Defender was officially designated as a National Preventive Mechanism. He hopes that the future composition of the National Preventive Mechanism will truly reflect the independence of that mechanism.

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 on steps taken since December 2007/current situation**
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 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.
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** (a)	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.
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** (b)	Not in place	CPC para. 73(f) states that a medical examination is an absolute right that can neither be denied nor restricted. Article 73(f) refers to medical expertise (needed for the determination of important factual circumstances of a case), which is subject to a court decision; Article 922 of the Law on Imprisonment of 23 June 2005 requires a medical examination after every transfer;	

		CPC article 263, provides that, if information recorded upon routine medical examination shows that a prisoner has injuries, the prosecutor can initiate a preliminary investigation, even in the absence of allegations from the detainee; Internal Guidelines of the Prosecutor General regarding Preliminary Investigation into allegations of torture, inhuman and degrading treatment of 7 October 2005 require the automatic opening of a case if reports on torture are received and fix maximum delays for preliminary investigations.	
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 (c)	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	***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 started 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.

		specific criminal case and has direct access to detainees, shall be identifiable; the Ministry of Internal Affairs of Georgia is seeking to improve the system of identification, e.g. through unifying the identification numbers.	
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 (d)		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.	
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	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	**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

for judicial purposes (e)		National Bureau, who shall present the statute of the National Bureau to the Government for approval; Fees for forensic expertise are defined by governmental decree; as a legal entity of public law, the National Bureau is entitled to carry out remunerated activities as noted in its statute;	alternative forensic medical expertise on one's own expenses. Several forensic expertise bureaus exist in the country, including one public legal entity and other private ones.
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 (f)	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;	
Victims receive substantial compensation and adequate medical treatment and rehabilitation (g)	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	***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. The victim applied in 2008 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

		detailed provisions on adequate medical treatment and rehabilitation;	programmes.
Necessary measures be taken to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards (e.g. the Basic Principles on the Independence of the Judiciary). Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings (h)	Not respected in practice	Reform in line with the Criminal Law Reform Strategy and the Government's Action Plan to be completed in early 2009. Its guiding principles are: Strengthened independence and impartiality of the judiciary; Improve social guarantees for judges as well as non-judicial staff in the judiciary; improved training for both categories; Systemic reorganization of the judiciary ensuring effectiveness and efficiency of the whole judicial process; Development of infrastructure for the judiciary including construction of new buildings and the provision of necessary technical equipment; and Reform of established court/case management systems. Constitutional amendments were introduced in December 2007 to minimize the authority of the President in the judicial system; the High Council of Justice appoints and dismisses judges; the Chairman of the Supreme Court of Georgia chairs the meetings of the High Council; 2007 Law on the "Rules of Communication with Judges of General Courts of Georgia"; Revision of the Code of Judicial Ethics to ensure compliance with the European Standards of Judges' Ethical Behaviour adopted by the Conference of Judges on 20	

		October 2007; A competitive selection process for judges is conducted periodically by the High Council of Justice; training improved, salaries raised; Illegal decisions by judges were decriminalized by law; amendments to the Law on "Disciplinary administration of justice and disciplinary responsibilities of judges of common courts of Georgia" of 19 July 2007 make explicit that wrongful interpretation of the law based on intimate convictions of the judge cannot form the basis for disciplinary proceedings and the judge cannot be prosecuted for such conduct; On 10 October 2008, amendments to the Constitution of Georgia merged the Prosecution Service with the Ministry of Justice; a new Law on the Prosecution Service, adopted on 21 October 2008, incorporated the prosecution service in the Ministry of Justice; the Chief Prosecutor is nominated by the Minister of Justice and appointed by the President;	
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		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	***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 %.

Procedure Code be restricted, particularly for non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased (j)		have committed a crime out of negligence.	The percentage of cases in which bail was granted varied between 28 and 43 %. The percentage for custodial bail granted varied between 11 and 17 %. In 0,4 to 2,3 % of all cases, a personal guarantee was recognized as sufficient. Regarding the reform of the probation service, a separate Strategy and an Action 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.
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 (n)	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	***Non-governmental sources:*** *Please see table below.* **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

		26 January 2009 has been determined by Decree No. 24 of the Minister of Justice of Georgia (see appendix 2, table 1); The Medical Monitoring Unit of the General Inspection supervises the activities of the medical services of penitentiary establishments, as well as the conditions of detention and leads actions aimed at combating HIV/AIDS, tuberculosis and other illnesses; Employment and educational programs have been gradually introduced , libraries improved;	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. 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.
and Pre-trial and convicted prisoners be strictly separated (k)	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.	
In accordance with the Optional Protocol to the Convention against Torture, establish a truly independent monitoring mechanism (o);		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	***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)

		and the criteria for the appointment of the Members; Ministry of Justice Decree No. 2190 sets out the corresponding rules; Local Monitoring Commissions may enter a penitentiary institution at any time without prior notification of the prison administration to conduct monitoring, receive complaints etc; On the basis of a 2004 Memorandum of Understanding between the Ministry of Interior and the Public Defender, representatives of NGOs authorized by the Ombudsman can enter temporary detention facilities without prior notice; although the possibility of sending reports to the Prosecutor's office is provided, this has not been done in more than three years.	The Office of the Public Defender (PDO) was officially designated as a National Preventive Mechanism (article 31 (1)), being expressly obliged to cooperate with all relevant international human rights bodies/institutions in line with the NPM mandate and creation of the National Preventive Group (article 31 (3)); (2) Adequate resources to be provided for carrying out its mandate (article 31 (2)); (3) Unimpeded access to all places of detention, access to relevant information and right to conduct private interviews (article 19 (1) and (2)); Confidentiality criteria: respect towards confidential/private data of detainees (article 19 (3)); (4) Expertise and professionalism of the members of the National Preventive Group; (article 191 (2)); (5) Right to make recommendations, including the presentation of the NPM report before the Parliament of Georgia (article 21); and (6) Privileges for the members of the National Preventive Group: they have a right withhold giving 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.
All investigative law enforcement bodies establish effective procedures for		Law enforcement agencies, namely the Ministries of Justice and Interior and the Prosecution Service, have so-called	

internal monitoring and disciplining of the behaviour of their agents, with a view to eliminating practices of torture and ill-treatment (p)		"General Inspections", responsible for supervising the performance of their personnel and investigating misconduct; On 19 June 2006, the Code of Ethics for Prosecutors was approved by Order No. 5 of the Prosecutor General; A Code of Police Ethics for the Ministry of Internal Affairs signed by the Minister of Interior on 5 January 2007 and entered into force; The Human Rights Unit within the Ministry of Internal Affairs of Georgia conducts random and unscheduled checks in temporary detention isolators including the register, complaints, allegations of mistreatment, etc.; steps to ensure more transparency of the activities of the Unit were taken; The Prisoner's Rights Protection Unit within the penitentiary system conducts visits, providing on the spot legal consultations; the Medical Supervision Unit checks the health conditions of prisoners.	
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 (q)		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	**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.

		(established in 2005 respectively 2006) with support from international organizations. During this course students also acquire the necessary negotiation skills for managing critical situations and for ensuring that coercive force is used as a last resort. Use of special means and firearms – practical training for prospective policemen for legitimate and effective use of special means. At the end of the course a practical exam is held, where unsuccessful students are unable to graduate from the academy.	
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 of the recommendations of the Special Rapporteur on Torture (Manfred Nowak) pursuant his visit to Indonesia from 10 to 23 November 2007 (A/HRC/7/3/Add.7)

32. On 23 October 2009, 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. The Special Rapporteur regrets that the Government has not provided any input. He looks forward to receiving information on Indonesia's efforts to follow up to his recommendations and he reaffirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

33. While recognizing the overall commitment by the Government of Indonesia to uphold and promote human rights, the Special Rapporteur regrets that, according to non-governmental sources the Indonesian legal framework still lacks an adequate definition, prohibition, and punishment of torture. The Special Rapporteur positively notes the existence of several internal and external mechanisms to monitor police work and is encouraged by the Memorandum of Understanding between the police and Komnas HAM (National Human Rights Commission). Unfortunately, these mechanisms fall short of the required independence and authority to initiate processes which effectively lead to the establishment of accountability. The lack of independent and effective monitoring mechanisms, including the possibility to conduct unannounced visits and confidential interviews with detainees, as well as accessible complaints mechanisms continues to contribute to impunity and an environment conducive to the perpetration of torture. The Special Rapporteur is particularly concerned by numerous allegations of excessive use of force applied as part of indiscriminate village "sweeping" operations in Papua.

34. Moreover, the Special Rapporteur is particularly concerned about the recent adoption of the new Islamic Criminal Legal Code in Aceh which provides for punishments such as stoning and caning, and is in clear contravention of the prohibition of torture and cruel, inhuman or degrading punishment and the obligation to prevent and prohibit corporal punishment.

35. The Special Rapporteur encourages the Government to continue its efforts to improve the conditions of detention, in particular to tackle overcrowding, and to ensure the separation of minors and adults, men and women, and pre-trial detainees and convicts. Measures to fight corruption - which is deeply ingrained in the criminal justice system - shall be rigorously implemented and enforced as a matter of priority. In this regard, the Special Rapporteur is particularly concerned by information received indicating that pending legislation may undermine the effectiveness of the Anti-Corruption Commission.

36. The Special Rapporteur recalls his appeal to the Government to bring the maximum time limit for police custody (61 days) in line with international standards (48 hours), to ensure that all persons deprived of their liberty can effectively challenge the lawfulness of their detention before courts, to guarantee the inadmissibility of evidence obtained under torture, and to raise the criminal responsibility of minors (currently 8 years). The Special Rapporteur further urges the Government to abolish the death penalty and end all secrecy surrounding its execution.

37. Finally, the Special Rapporteur wishes to reiterate his appeal to the Government to make a declaration under article 22 CAT providing the UN Committee against Torture with the competence to receive and consider individual complaints, and furthermore 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**	**Information on steps taken since the visit**
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:*** *There is 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.*
74. The declaration should be made with respect to article 22 of the Convention recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.	Indonesia had not made a declaration under article 22 UNCAT.	***Non-governmental sources:*** *No declaration has been made under article 22.*
75. The Government should ensure that corporal punishment, independently of the physical suffering it causes, is explicitly	Sharia law, incorporated into the 2005 Aceh Criminal Code, provided for flogging and affected disproportionally women;	***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,*

criminalized in all parts of the country.	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.	*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.*
76. Officials at the highest level should condemn torture and announce a zero-tolerance policy vis-à-vis any ill-treatment by State officials. The Government should adopt an anti-torture action plan which foresees awareness-raising programmes and training for all stakeholders, including the National Human Rights Commission and civil society representatives, in order to lead them to live up to their human rights obligations and fulfil their specific task in the fight against torture.		***Non-governmental sources:*** *To raise the awareness of human rights, 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.*
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 therefore not independent.	***Non-governmental sources:*** *There is 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 now exist in Indonesia to monitor police work, but none of these institutions has the mandate, independence and authority to hold police officers accountable for human rights violations. An independent public complaints board that would guarantee that police officials who violate human rights are brought to justice and victims receive reparations is still lacking. The National Human Rights Commission (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.	
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 to challenge the validity of detention, the Special Rapporteur has received numerous indications that this procedure is not used in practice; Women held in Social Welfare Centres have no access to judicial review of their detention.	
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.	

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.	
82. Confessions made by persons in custody without the 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.	Many allegations of confessions under torture, which were admissible during court proceedings, were received.	
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, 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. However, torture survivors 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.*
84. The Government of Indonesia should expediently accede to the Optional Protocol to the Convention against Torture, and establish a truly independent National Preventive Mechanism (NPM) to carry out unannounced visits to all places of detention.	Indonesia was not party to the OPCAT; The National Human Rights Action Plan (2004-2009) foresaw the ratification of the Optional Protocol to the Convention against Torture in 2008.	***Non-governmental sources:*** *Indonesia has not yet signed the Optional Protocol. Komnas HAM will propose to the Indonesian Police to give Komnas HAM authority to visit police detention facilities with or without announcement.*
85. The Government of Indonesia should support the National Commission on Human	The National Human Rights Commission and the Police signed a Memorandum of	***Non-governmental sources:*** *The Memorandum of Understanding between Komnas HAM and the Police is*

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.	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.	*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).*
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:*** *Army, police and particularly mobile paramilitary units (Brimob) conduct largely indiscriminate village "sweeping" operations in the Central Highlands of Papua, often using excessive, sometimes lethal force against civilians. Soldiers routinely arrest Papuans without legal authority, transfer them to military barracks and ill-treat them. Prison guards continue to torture inmates inside Abepura prison.*
Conditions of detention		
87. The Government of Indonesia should continue efforts to improve detention conditions, in particular with a view to providing health care, treat rather than punish persons with mental disabilities, and improve the quantity and quality of food. The Government, in all detention contexts, should ensure the separation of minors from adults and of pre-trial prisoners from convicts and train and deploy female personnel to women's sections of prisons and custody facilities.	Conditions of detention varied considerably throughout the country, facilities in urban areas were overcrowded, while prisons outside of Java offered enough space; Overcrowded facilities, e.g. Chipinang prison, were confronted with sanitary and health difficulties, corruption, and inter-prisoner violence; Numerous complaints about the quality of food were voiced; Punishment cells as well as new arrival areas were not in line with international standards; Persons with mental disabilities were often	

	held in punishment cells; Convicted and pre-trial detainees were not separated in many facilities.	
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 by public officials responsible for the administration of justice, including judges, prosecutors, police and prison personnel.	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 having alleged to have paid in order not to be subjected to beatings.	***Non-governmental sources:*** *Efforts to combat corruption run the risk of being without actual impact. Current pending legislation undermines 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.*
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:*** *The death penalty continues to be imposed and executed. According to available information, ten persons have been 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.*
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.	

Women		
91. In consultation with the Commission on Violence against Women, the Government should establish effective mechanisms to enforce the prohibition of violence against women, including in the family and wider community, above all through further awareness-raising within the law-enforcement organs.	The 2004 law banning violence in household and establishing complaints channels was adopted; The lack of awareness among law enforcement agencies and the public, and an insufficient number of appropriate police units to deal with such complaints hamper the implementation of the law.	
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)

38. By letter dated 23 October 2009, the Special Rapporteur sent the following report to the Government of Jordan, 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 his request. He looks forward to receiving information on its endeavours to implement his recommendations and he reaffirms that he stands ready to assist Jordan in its efforts to prevent and combat torture and ill-treatment.

39. The Special Rapporteur particularly regrets that he was not provided with official statistical data on prosecutions of torture perpetrators under the amended article 208 of the Penal Code or on compensation rewarded to victims of torture. According to non-governmental sources, nobody has been prosecuted under article 208 to date.

40. He is equally concerned about indications by non-governmental sources that no developments have taken place with regard to his recommendations on the introduction of legal safeguards against torture and ill-treatment, such as habeas corpus procedures, routine questions by judges to detainees about their treatment, or non-admissibility of confessions of persons in custody without the presence of a lawyer. Yet another area of concern is the non-governmental information that women and girls are still placed in protective custody.

41. The Special Rapporteur is encouraged that the role of the National Centre for Human Rights in receiving complaints is strengthened by a Memorandum of Understanding (MoU) with the Public Security Directorate (PSD). He equally welcomes the initial steps taken by the PSD to sign a MoU with the Bar Association regarding attendance of lawyers during interrogations and appeals to the Government to amend the law in this respect. The consideration of amendments to the law, which would introduce alternative sentences, is another positive step. The Special Rapporteur welcomes the information provided by non-governmental sources that pre-trial and convicted prisoners are now separated, after the inauguration of two new prisons.

42. Regarding the statement of the Government during the UPR process that the Special Rapporteur had withdrawn his findings on torture in Jordan,[9] he wishes to clarify that he never renounced the conclusions of his report.

43. Finally, the Special Rapporteur wishes to reiterate his recommendation to the Government of Jordan to consider the ratification of the OPCAT and the establishment of a National Preventive Mechanism.

[9] Report of the Working Group on the Universal Periodic Review, Jordan, A/HRC/11/29 of 3 March 2009, para. 52.

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.		***Non-governmental sources:*** *No steps have been taken in this regard.*
(b) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted. The message should be spread that torture is an extremely serious crime which will be punished with severe (long-term) prison sentences	There was 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. There was little public discussion about the situation of torture.	HE King Abdullah and the director of the PSD, Lt. Gen Muhammad Mahmud al-'Aitan issued clear instructions that there was to be no torture. The General Intelligence Directorate (GID) issued written and oral instructions addressed to all personnel to refrain from abusing any detainee physically, verbally or emotionally; the instructions provided for an increase in penalties for violations.	***Non-governmental sources:*** *The NCHR has urged the PSD to issue instructions for the prevention of torture.*
(c) The crime of torture be defined as a matter of priority in accordance with Article 1 of the Convention against Torture (CAT), 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.	***Non-governmental sources:*** *Nobody has been prosecuted under the amended article to date.* *The crime of torture is still defined as a "misdemeanour" and the minimum sentence is three months rather than six.*

(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.		***Non-governmental sources:*** *No steps have been taken in this regard.*
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), guarantees 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 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.	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 Ministry created a registry for complaints in the Attorney-General's Office.	***Non-governmental sources:*** *Prisoners can complain to the Ministry of Interior's PSD through Legal Affairs prosecutors who are present all the time in seven prisons: Muwaqqar, Qafqafa, Swaqa, Jweideh men, Jweideh women, al-'Aqaba and Birain. The prison-based prosecutors work closely with officials in the Complaints and Human Rights Office of the PSD, who visit the prisons every two weeks and empty the sealed complaints boxes.* *In February 2008, the NCHR was allowed to open an office inside Swaqa prison to receive complaints from prisoners on a weekly basis. However, the NCHR was not allowed access to Swaqa prison during disturbances which occurred in the prison in April 2008. The PSD has reportedly stopped cooperating with the NCHR following its critical reporting of*

			the April 2008 events. *Detainees can complain to the NHCR during their visits to places of detention. Otherwise, they can also make use of the NCHR's hotline or complain in person or through relatives. In April 2009 the NCHR and the PSD signed a Memorandum of Understanding regarding further cooperation in the field of complaints of human rights violations and strengthening the role of the NCHR.* *A complaints hotline was established at the PSD.* *The Office of Ombudsman (diwan al mathalem) was established in February 2009.*
(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.		***Non-governmental sources:*** *In July 2009 the Bar Association signed a legally non-binding Memorandum of Understanding with the PSD regarding the attendance of lawyers during investigations.*
(g) The power to order or approve arrest and supervision of the police and detention facilities of the prosecutors be transferred to independent courts	Security services were effectively shielded from independent criminal prosecution and judicial scrutiny as abuses by officials of those services were dealt with by a special court system, which lacked independence and impartiality.	The discussion regarding separation of the two authorities was ongoing.	***Non-governmental sources:*** *There were no developments in this regard.*
(h) All detainees be effectively guaranteed the ability to challenge the lawfulness of the detention before an	Articles 121 to 129 CCP guaranteed the right to habeas corpus. They also held that a detainee could challenge a		***Non-governmental sources:*** *There were no developments in*

independent court, e.g. through habeas corpus proceedings	detention order and any extension of a detention order before the competent court. However, this mechanism was not effective in practice.		*this regard.*
(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.		***Non-governmental sources:*** *With a few individual exceptions, judges do not ask detainees about their treatment.*
(j) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators of investigators should be permitted	Article 100 CCP stipulates that a police officer who was not satisfied with a testimony should send the person concerned to the Public Prosecutor within 24 hours, who in turn had to question him or her within 24 hours. An individual could bring action for deprivation of liberty against an official who kept him or her in custody for over 24 hours without questioning. However, in practice persons were at times detained longer than 24 hours.		***Non-governmental sources:*** *There were no developments in this regard.*
(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	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, the registers generally contained the name of the detainee or prisoner, the nationality and charge, if any; the doctors had medical files of	***Non-governmental sources:*** *There were no developments in this regard.*

	not effective in practice.	those seeking and receiving medical care; however no entry examination was performed.	
(l) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present	A confession could be accepted as the only evidence in a case if the court was convinced that it was made voluntarily and willingly (article 159 CCP). The Court of Cassation has overturned a number of convictions on the grounds that security officials had obtained confessions from defendants under torture.	The Court of Cassation has issued several rulings with regard to confessions made as a result of violence: e.g. ruling No. 1513/2003 of 4 May 2006, which held that "statements obtained as a result of violence and coercion cannot be relied upon to convict a defendant"; there were still a number of cases where "confessions" allegedly extracted under torture or other forms of duress continue to be admitted as evidence, especially by the State Security Court.	*There were no developments in this regard.*
(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.	A prosecutor appointed by the director of the PSD, who is at the same time an official of the PSD, carries out investigations into allegations of torture and ill-treatment against officials and prosecutes them in a police court staffed by judges who are PSD officials appointed by the PSD director as well. Following encouragements by the international community and HE King Abdullah, the police prosecutor brought charges of "beatings leading to death" against prison guards in Aqaba, who beat a detainee to death in	***Non-governmental sources:*** *Independent investigations are carried out by the NCHR, who can then refer cases to the PSD, but it lacks the power to refer them directly to the courts.* *The PSD carried out some investigations into complaints of torture and ill-treatment; however, the results of the investigations are in general rather modest.*

		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.		***Non-governmental sources:*** *There were no steps taken in this regard.*
(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.	No compensation has been awarded to victims of torture.	**Non-governmental sources:** *There were no developments in this regard.*
(p) The declaration be made with respect to Article 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 Convention	Jordan has not recognized the competence of the Committee against Torture to receive and consider communications from individuals.		***Non-governmental sources:*** *There were no developments in this regard.*
(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,		A committee was created within the Ministry of Interior to consider alternative sentencing measures. An "Office for Prison Reform"	***Non-governmental sources:*** *In July 2009 a committee was set up by the Ministries of the Interior, Justice, Health, Social Development and the PSD, including a representative of the*

for execution of the judgement)		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.	*NCHR in order to study proposed amendments to the Law on Correction and Rehabilitation Centres and the Criminal Procedure Code, which introduce alternative sanctions.*
(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 social worker.	***Non-governmental sources:*** *Pre-trial and convicted prisoners are in fact separated.*
(s) The Criminal Procedure Code be			***Non-governmental sources:***

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			*There were no developments in this regard.*
(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.	
(u) Females not sentenced for a crime but detained under the Crime Prevention Law for being at risk of becoming victims of honour crimes be housed in specific victim shelters where they are at liberty but still enjoy safe conditions	No allegations of ill-treatment were received in the Juweidah (Female) Correction and Rehabilitation Centre. There is a policy of holding females in "protective" detention, under the provisions of the 1954 Crime Prevention Law, because they are at risk of becoming victims of honour crimes.	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. Those at risk of becoming victims of "honour crimes" continue to be detained in Jweideh prison. The Crime Prevention Law is still in use in relation to the arrest of women.	***Non-governmental sources:*** *There were no developments in this regard.* *Women and girls are still placed in protective custody. Disproportionally lenient sentences are imposed on perpetrators of honour crimes.*
(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	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 CAT to law enforcement personnel and encouragement of senior officers to bring it to the attention of their subordinates; and the inclusion of CAT in all basic	***Non-governmental sources:*** *The NCHR has carried out a number of lectures and training courses for law enforcement personnel.*

existing personnel receive continuing education		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.	
(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 (OPCAT) be ratified, and a truly independent monitoring mechanism be established – where the members of the visiting commissions would be appointed for a fixed period of time and not subject to dismissal – to visit all places where persons are deprived of their liberty throughout the country.	OPCAT has not been ratified.	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.	OPCAT has not been ratified. ***Non-governmental sources:*** *The NCHR carries out unannounced visits to places of detention.*
(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.	***Non-governmental sources:*** *The NCHR and the PSD, the Ministry of Justice, the Prosecutor's Office and the Mizan Law Group for Human Rights is implementing a programme called "Karama" aimed at the eradication of torture by ensuring that such acts are criminalised, investigated,*

		Several training workshops have been carried out by the NCHR.	*prosecuted and punished.* *Furthermore, in cooperation with the PSD, the NCHR has produced a manual for detainees regarding their rights and duties, which was distributed in all prisons.*

Kenya

Follow-up of the recommendations of the Special Rapporteur on Torture (Nigel Rodley) pursuant his visit to Kenya from 20 to 29 September 1999 (E/CN.4/2000/9/Add.4, para. 92)

44. On 23 October 2009, the Special Rapporteur sent the table below to the Government of Kenya requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations of his predecessor's visit in 1999. The Special Rapporteur regrets that the Government has not provided any input. He looks forward to receiving information on Kenya's efforts to follow-up to his recommendations and he reaffirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

45. The Special Rapporteur is seriously concerned about the lack of accountability in the criminal justice sector. While welcoming Kenya's plans to establish a Civilian Police Oversight Body in 2008, the Special Rapporteur regrets that no concrete steps have been taken. He notes with concern the lack of prompt and independent investigations against the perpetrators of torture and specialized procedures to lodge torture complaints. He further regrets that judges and magistrates continue to ignore torture complaints by defendants and the victims' limited access to medical examinations to document torture. Recognizing the important role of the Kenya National Commission on Human Rights in undertaking visits to places of detention, the Special Rapporteur is concerned that it lacks the necessary resources to fulfil its functions and regrets that it has been denied access to detention facilities in some cases. Equally, the judiciary falls short of visiting and inspecting prisons due to a lack of capacity or will. The Special Rapporteur strongly encourages the Government to ratify and implement the Optional Protocol to the Convention against Torture (OPCAT) and accept the individual complaints mechanism, in accordance with article 22 CAT.

46. The Special Rapporteur is further worried about the unavailability of legal aid to the majority of persons in detention and urges the Government to proceed with the adoption of a legal aid scheme. He moreover regrets the lack of an enforceable right to adequate compensation for torture victims and the difficulties in obtaining it through civil litigation.

Recommendations (E/CN.4/2000/9/Add.4)	**Situation during the visit** (E/CN.4/2000/9/Add.4)	**Measures adopted in previous years** E/CN.4/2002/76/Add.1; A/HRC/4/33/Add.2; A/HRC/7/3/Add.2	**Information received during 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;	A major obstacle to the documentation and investigation of torture allegations was the absence of an independent body in charge of investigating alleged cases of torture by law enforcement officials. The mechanisms existing to investigate police abuse operated within the police hierarchy and were carried out by the Criminal Investigation Department (CID) under the responsibility of the officer-in-charge of a police station, who would decide on the continuation of investigations.	In 2008, the establishment of a Civilian Police Oversight Body was planned to ensure impartial and independent investigations against the police, including allegations of torture.	***Non-governmental sources:*** *There are no specialized procedures for lodging torture complaints and no authority conferred with the obligation to promptly and impartially investigate torture allegations. Further, no law providing access to immediate medical examination exists. Torture accusations against police officers are usually investigated by fellow officers. The Kenya National Commission on Human Rights (KNCHR), obliged to carry out investigations, is not considered the competent and impartial authority contemplated by Article 12 CAT.* *Regarding the incidents at the "Nyayo Torture Chambers", perpetrators of torture are not adequately prosecuted and victims not provided redress.* *Regarding the military operation against the SLDF in the Mount Elgon District, that reportedly involved torture and ill-treatment, the Government has refused to independently investigate the allegations against members of state forces or to task the Attorney General to commence proceedings. So far there was only an internal police investigation that was neither prompt nor impartial.*
b) The police, at a level at least as senior as Assistant-Commissioner, should systematically make thorough, unannounced visits to	- The officer-in-charge of a police station was to check the occurrence book and cells register on a daily basis as well as to routinely visit all	Inspections of police stations by senior police officers took place at irregular intervals and mainly for administrative reasons.	

police stations to verify the legality of the detention of all persons held, as well as their treatment and conditions of detention. Disciplinary and criminal charges should be preferred in respect of any abuses;	cells to see the detainees' state of health, however, in practice, senior police officers did not fulfil their supervisory duties and rarely took disciplinary action; - Despite constitutional provisions, individuals were frequently detained for extended periods without being brought before a magistrate; - Mass arrests often took place at the end of the month when people had received their salary, allegedly to extract bribes;		
c) A body such as the Standing Committee on Human Rights should be endowed with the authority and resources to inspect at will, as necessary and without notice, any place of deprivation of liberty, whether officially recognized or suspected, 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	The Standing Committee of Human Rights, established in May 1996 under executive authority, was mandated inter alia to investigate alleged human rights violations, to visit any place of detention under the authority of the Government and make recommendations to improve the conditions of detention, and to receive complaints. The Committee was also provided with the power to prosecute the person suspected of having committed a human rights violation, suggest other	The High Court upheld the power of the KNCHR, established in 2002 to replace the former Standing Committee on Human Rights, to visit detention facilities and the Government had issued strict instructions to prison officers to grant such requests. The KNCHR, carried out several visits to penal institutions, but was denied access to police stations. While it was mandated to carry out investigations into human rights violations, the KNCHR had to refer cases to the authorities for investigation due to lack of resources.	***Non-governmental sources:*** *On numerous occasions the KNCHR has been publicly denied access to places of detention.*

in question; reputable non-governmental organizations could be associated with these functions;	methods of settlement and to grant relief. The first public report published by the Committee in 1998 however made only cursory reference to human rights abuses.		
d) In line with guidelines 15 and 16 of the United Nations Guidelines on the Role of Prosecutors, the Attorney-General's Chambers should pay particular attention to the diligent prosecution of cases of torture and similar ill-treatment by law enforcement officials and take appropriate action when they come across information suggesting that evidence has been obtained by such methods;	- According to statistics for the years 1998-1999 received from the Attorney-General in October 1999, 134 criminal proceedings against law enforcement officials were pending before the courts; - However, torture complaints were rarely fully investigated. The very few cases of torture brought to court were reportedly the object of civil proceedings only and no criminal proceedings against law enforcement officials appeared to be instituted in these cases; - The Office of the Attorney General would respond to all complaints from NGOs, informing them that their complaint had been received and that an inquiry had been opened without providing follow-up information;	Within the Governance, Justice, Law and Order Sector Reform Programme (GJLOS), the Department of Public Prosecution, including the Attorney-General's Office was being reformed; a National Prosecution Policy was being developed;	

e) 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;	There had only ever been three civil claims initiated against police officers suspected of torture, of which two were successful, although compensation was reportedly outstanding.		***Non-governmental sources:*** *The legal system does not provide for an enforceable right to adequate compensation. The lack of a specific definition of torture makes it difficult to seek legal redress on behalf of torture survivors and victims. Further there is no legislation making torture a criminal offence as stipulated in Article 4 CAT. Compensation is only recoverable through court action. Victims usually seek compensation through civil litigation that requires court fees and is plagued with delays. Very few cases have reported successful outcomes for torture victims and the compensations have been negligible. Furthermore, there is no public health scheme offering rehabilitation for torture victims.*
f) The period of police detention in capital cases (14 days) should be brought into line with the normal 24-hour period applicable to persons suspected of other crimes;	- Police custody in relation to less serious crimes was constitutionally limited to 24 hours; - The Constitution allowed for police detention of up to 14 days in capital cases, such as treason, administration of unlawful oaths to commit capital offences, murder and robbery with violence; - A large number of cases appeared to have been classified by the police as being in the category of "robbery with violence" solely in order to be legally in a position to detain the concerned person for more		***Non-governmental sources:*** *Police detention in capital cases continues to exceed the 14 day maximum period.*

	than the normal 24-hour period;		
g) Confessions made by a person under police detention without the presence of a lawyer should not be admissible against the person;	Suspects were often convicted following the use of confessions extracted under torture with little or no judicial recourse, despite both constitutional and legal prohibitions on the use of torture and the non-admissibility of evidence obtained under torture;	Section 25A of the Evidence Act was amended in 2003 to the effect that confessions were only admissible if made before a court.	***Non-governmental sources:*** *Section 25A of the Evidence Act was amended in 2007, to provide for the sharing of the power between the court and the police in obtaining confessions. Rules concerning safeguards are to be made by the Attorney General who has not yet acted in that regard.*
h) Legal aid should be available to anyone held in police custody or on remand who has not the means to secure legal assistance, with lawyers being given immediate access to their clients. The Law Society should consider establishing an appropriate scheme in cooperation with the Government;	The SR found that legal aid was virtually unavailable for the overwhelming majority of suspects held by the police, because most suspects could not afford legal assistance and only those charged with capital offences were entitled to legal aid. At the time of the SR's visit, Kenyan Bar Association did not provide legal aid services. The right of lawyers to have immediate and unhindered access to detainees was not clearly provided for in the law, but could be partly based on Chapter V of the Constitution. In practice however, lawyers were	A National Legal Aid Scheme was pending before Parliament.	***Non-governmental sources:*** *Due to the extremely high costs of legal aid, it remains unavailable to the majority of the population.*

	frequently denied access to their clients in pre-trial detention centres of in prisons.		
i) Close family members of persons detained should be immediately informed of their relative's detention and be given access to them;			***Non-governmental sources:*** *Family members of persons targeted during military operations in the Mount Elgon District remain uninformed about the whereabouts and status of their next of kin.*
j) The police monopoly of issuing P3 forms for medical examinations should be abandoned;	- The request for the issuing of a "Medical Examination Report" (P3) had to be made to the police, who reportedly frequently refused to issue the patient or even the doctor with the P3 form and therefore prevented the bringing of a case through the resulting lack of evidence; - P3 forms were the only medical form accepted as evidence by most magistrates; - Cases if intimidation of medical personnel;	In order to enhance accessibility of the P3 form, it was made available online.	***Non-governmental sources:*** *Only a limited number of Kenyans have access to internet and thereby to the P3 form. Upon downloading the form, it has to be stamped by the police and referred to a government medical practitioner for filing that can charge fees. The P3 and A23 forms have several shortcomings as instruments of documenting torture.* *There are very few medical officers in detention facilities, and they are often inadequately trained on issues of torture and ill-treatment.*
k) Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to	- Based upon case law, magistrates were required to hold "a trial within a trial" when the defendant claimed that he or she had been torture. According to information received by the SR, magistrates would		***Non-governmental sources:*** *Magistrates and judges fail to ask persons brought before them about their treatment in custody. Research on the prevalence of torture in prisons revealed that 54 per cent of the complaints of torture by prisoners were made before magistrates and judges, and no action was taken in 81 per cent of*

their condition;	however rarely take up torture complaints by defendants, even where victims were bearing clear signs of torture; - From a legal point of view, the Chief Justice confirmed that the burden of proof would rest with the prosecution; in practice however, it seemed that the defence had to demonstrate that the evidence was not given freely;		*the cases.*
l) The system for appointment of the judiciary should be reviewed with a view to ensuring genuine independence of the judiciary. The Government is urged to consider inviting the Special Rapporteur on the independence of judges and lawyers to visit the country;			
m) A general opening up of the prison system is required, in a way that would welcome rather than deter access by civil society. In particular, impediments to access by lawyers, doctors and family members should be removed. Civil society should be brought in as	- NGOs complained that they did not have access to prisons in practice, even lawyers had difficulties accessing prisons or were restricted to stay in a specific room and therefore could not inspect the conditions of detention; - Private doctors	In 2001, the Kenyan Prison Service introduced an "open door policy", declaring the prisons open for access by civil society, media and the general public, but access remained restricted with respect to police stations.	***Non-governmental sources:*** *Access to places of detention for institutions other than the KNCHR remains restricted.*

partners to help humanize an under-resourced and overpopulated system.	reportedly had no access to prisoners without a court order and even if they possessed legal authorisation, consultations with their clients were only possible with the consent and in the presence of the prison doctor;		
n) The judiciary should be more diligent in visiting and inspecting prisons and more circumspect in its readiness to remand suspects or sentence offenders to deprivation of liberty. This applies particularly in respect of non-violent, first-time, suspected offenders and juveniles;	- Problems of overcrowding were exacerbated by delays within the justice system - Many prisoners held on remand for long periods. - Individuals, including juveniles were sometimes detained in prison without having been brought before a magistrate or judge - Habeas corpus actions were open to the few who could afford a lawyer.	The 1998 Community Service Orders Act had been instrumental in addressing the question of overcrowding, and ensured that petty offenders no longer had to serve prison sentences. Non-custodial sentences in community service projects became common.	***Non-governmental sources:*** *Justices often do not have the capacity or will to exercise the task of independent visitations. There is no obligation for Visiting Justices to visit prisons or to publicize or follow-up on the recommendations, which are furthermore not binding for the prison authorities.* *Even if the possibility of bail as an alternative to pre-trial detention is foreseen, the conditions are often too strict, excluding people who are unable to pay the bail.*
o) Corporal punishment as a criminal penalty should be abolished at once. The same applies, despite its obsolescence, to corporal punishment for prison disciplinary offences;	According to article 74 (2) of the Kenyan Constitution, corporal punishment ordered by a court as part of a criminal sentence was not in contravention of the prohibition of torture referred to by the same article; Corporal punishment was foreseen as a disciplinary punishment in prisons; its application had to be	The Criminal Amendment Act, enacted in 2003, abolished corporal punishment as a legal criminal penalty and corporal punishment was also banished by corporal punishment.	***Non-governmental sources:*** *Kenya retains hard labour as a lawful punishment for convicted prisoners.*

	confirmed by the Commissioner of Prison, who claimed not to have confirmed such punishment in the previous 10 years;		
p) The Government is invited to consider favourably making the declaration contemplated in article 22 of the Convention against Torture, whereby the Committee against Torture could receive individual complaints from persons alleging non-compliance with the terms of the Convention. It is also invited similarly to consider ratifying the Optional Protocol to the ICCPR so that the Human Rights Committee could receive individual complaints;			***Non-governmental sources:*** *By failing to ratify the optional protocols to the CAT and ICCPR, the Government continues to restrict accountability mechanisms and limit access to detention facilities.*

Mongolia

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

47. On 23 October 2009, 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 his recommendations. By letter dated 19 January 2010, the Government responded with a detailed report to this request. The Special Rapporteur reaffirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

48. The Special Rapporteur welcomes Mongolia's legislative efforts to criminalize torture but regrets that the definition of torture is not in line with the requirements of articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). He further notes with concern that the Criminal Procedure Code does not ensure that evidence obtained from torture is not invoked in any proceedings and reiterates that confessions not made in the presence of a lawyer should be inadmissible.

49. The Special Rapporteur urges Mongolia to undertake all efforts, including the amendment of laws, to combat the persisting culture of impunity in the country. Commending the important work of the National Human Rights Commission of Mongolia (NHRCM) and the Office of the Prosecution in receiving complaints and undertaking investigations, he underlines the need for adequate funding of those mechanisms and non-interference in their work in order to guarantee their functioning.

50. Also welcoming the efforts of the NHRCM and NGOs in conducting visits to prisons, the Special Rapporteur emphasizes the importance of an independent and effective body systematically undertaking visits to all places of detention. For this purpose, he urges the Government to ratify the OPCAT and establish a National Preventive Mechanism.

51. The Special Rapporteur also positively notes the role of the NHRMC in conducting trainings for the prevention of torture among law enforcement personnel and other stakeholders in the criminal justice system as well as general awareness-raising campaigns, and encourages Mongolia to continue such efforts.

52. The Special Rapporteur welcomes the moratorium on the death penalty and hopes for its abolition in law.

Recommendation (E/CN.4/2006/6/Add.4)	**Situation during visit** (E/CN.4/2006/6/Add.4)	**Steps taken to implement the recommendations**
(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.	***Non-governmental sources:*** *The culture of impunity persists.* **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.
(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.	***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 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.* **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.
(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 policeman that took them there, and a medical examination shall be carried out. Transfers to other arrest and detention centres shall be carried out only with the authorization of a prosecutor. According to Articles 58 and 59 of the Code of Criminal Procedure, a person detained with an arrest order shall be received at the arrest and detention centre in the presence of a policeman and released by the 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 appropriate legislations. 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.	***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.* **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, the case will not be considered as evidence in court

		proceedings.
(f) Judges and prosecutors should ask persons how they have were treated and order independent medical examinations		***Non-governmental sources:*** *According the guidelines for the administration of the CPC, a prosecutor shall visit a detained suspect or accused at least once within 10 days, shall receive information on his\her health condition, and shall include thee results in his report.* **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.
(g) Prompt and thorough investigations by independent authority	Investigations could not be carried out ex officio.	***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 information received from the Judiciary states that within the last three years, there have been no such cases.* **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.
(h) Immediate suspension from duty of any public official indicted for abuse or	No such cases.	***Non-governmental sources:*** *Since 2002, only one person has been punished under Article 251 of the Criminal Code for cruel, inhuman*

torture		*treatment.*
(i) Compensation and rehabilitation of victims	No reference to compensation for torture or ill-treatment in the law.	***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.* ***Government****:* Although there is no specific provision that provides 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.
(j) Recognize the competence of the CAT to receive and consider individual communications	Not done.	
(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 measures; reduction of maximum period of pre-trial detention; pre-trial detention as a measure of last resort.	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 from14 days up to 30 months. Suspects under 18 can be detained for up to 18 months (art. 366.4).	**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 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.	***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.* **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.
(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 visit 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 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.	***Non-governmental sources:*** *The Assorted Criminal Code of Mongolia currently under consideration retains the death penalty, although 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.* **Government**: It is prohibited to apply the death sentence to women, juveniles and the elderly (over around sixty). The Great State Hural has committed to decrease the types of cases that can receive the death sentence, and to abolish it in future. A working group has been created to conduct research on the issue. The Government has stated that the death penalty is not a permanent measure, but rather a temporary response to the criminal situation in Mongolia. No statistical data on the number of death sentences carried out is available, pursuant to Article 1(55) of the law on Approving State Secret's list.
(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.	***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.* **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.
(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 enforcement officials, prosecutors, lawyers and	***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'*

	members of the judiciary. It was reported that three quarters of the existing corps have no human rights training.	*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.* **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 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.
(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 conducts 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 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)

53. On 23 October 2009, the Special Rapporteur sent his follow-up chart 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. The Special Rapporteur regrets that the Government has not provided him with a response to his request. He looks forward to receiving information on its efforts to implement his recommendations and he reaffirms that he stands ready to assist Nepal in its efforts to prevent and combat torture and ill-treatment.

54. The Special Rapporteur welcomes the repeated commitment of the Government of Nepal to end impunity. However, impunity seems to still prevail for past human rights abuses within the police and the Nepal Army, and the Special Rapporteur notes with concern that no visible steps have been taken to prosecute those responsible for torture during the conflict. He therefore encourages the Nepal Army to cooperate better with judicial bodies and hold impartial investigations for past and present torture allegations. The Special Rapporteur also urges that the draft bill criminalizing torture be tabled before the Parliament. He further encourages Nepal to follow and implement the recommendations of the NHRC, undertake impartial investigations and provide victims with adequate remedies.

55. While noting with satisfaction that judges and court staff are more and more cooperative with torture victims, the Special Rapporteur is concerned that despite efforts of the Supreme Court, the habeas corpus remedy still does not function correctly. Also, the Special Rapporteur is concerned that the judicial process is not very functional or respected, since for example some suspects do not have a proper medical examination, or have to confess in the absence of their lawyer. In this regard, he also encourages Nepal to standardize its prison registers, and requests police to better respect the maximum time of 24 hours to present a detainee before a judge.

56. The Special Rapporteur welcomes the fact that the security forces have made commitments to incorporate human rights trainings as part of their normal training programmes.

57. The Special Rapporteur finally notes that Nepal continues to lack an independent external monitoring mechanism supervising all places of detention. In this context, he strongly encourages the Government to ratify the Optional Protocol to the Convention against Torture (OPCAT).

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.	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 of the Government of Nepal continue to make pubic commitments that impunity must end. For instance, in his statement to the General Assembly on 26 September 2008, then Prime Minister Pushpa Kamal Dahal "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, despite these commitments, 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.*
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.	In 2007 the Inter-ministerial consultations on the draft torture bill were underway. The Interim Constitution of January 2007 Article 26 stipulates: "(1) No person who is detained during investigation or for enquiry or for trial or for any other	***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*

		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:*** *Article 26(1) of the Interim Constitution of January 2007 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 December 2007 signed with the seven party alliance (SPA), the creation of a National Peace and Rehabilitation*	*and Justice related to the preparation of the torture bill has not been transparent, which has caused frustration for national and international organizations interested in supporting the criminalization process.* *A draft bill which would set the framework for the establishment of a truth and reconciliation commission defines mental and physical torture as a serious human rights violation, and has a provision prohibiting amnesty for acts of torture or degrading treatment. The bill has been the subject of public consultations conducted by the Ministry of Peace and Reconstruction (with the support of OHCHR), but has yet to be presented before Parliament.* *Despite revisions to the Army Act in 2006, there has yet to be a successful criminal prosecution of Nepal Army personnel involved in conflict-related torture. The Nepal Army continues to maintain that the previous Army Act, in effect during the conflict, prevents them from cooperating fully with police investigations into allegations of torture by its personnel during the conflict.* *The only legislation to redress torture survivors is the 'Torture Compensation Act 1996' of Nepal, which deals only with the compensation of torture. It does not allow for criminal prosecution of the perpetrators involved in torture and*

		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.	*other ill-treatment, and contains a limitation clause of 35 days.*
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.	Article 24 (2) of the Interim Constitution of 2007 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:*** *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. Often, after detaining an individual incommunicado for several days, the police subsequently record the arrest date as the day on which this person was finally presented in court.* *Systematic incommunicado detention of political detainees ended with the ceasefire in April 2006; however there are still some cases of incommunicado detention*	***Non-governmental sources:*** *Although incommunicado detention is less common now than during the conflict, it 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.*

		for up to 11 days.	
d) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention**, which should not exceed 48 hours.** After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;	Legislation (2004 Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) and the 1989 Public Security Act (PSA)) effectively provided the police and the military with sweeping powers to detain suspects for preventive reasons, in some cases for up to 12 months; (Section 15 (2) of the State Cases Act requires that arrested persons be produced before the "appropriate authority" within 24 hours, and prohibits any person from being held for a longer period without orders of such authority).	According to Article 24 (3) of the Interim Constitution 2007, detainees must be presented before a judge within 24 hours of arrest. ***Non-governmental sources:*** *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.* *In practice, Article 24 (3) is not respected. In many cases detainees are not provided with arrest warrants and are held in police custody for up to several weeks.* *The Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) 2006 – under which many detainees were held without charge or trial under the previous Government – expired at the end of October 2006 and has not been renewed. Most detainees held under TADO were gradually released after April 2006.*	***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 .*
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	Detainee registers were poorly kept, if at all.	***Non-governmental sources:*** *In March 2006 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, Armed Police Force (APF)*	***Non-governmental sources:*** *According to the Police Act, the police authorities are obliged to maintain a standardized register indicating all complaints and charges, the names of the arrested persons, the name of the complainants, the offense for which persons were arrested, the arms or*

compulsory medical examinations upon being brought to a detention centre and upon transfer;		*and Nepal Police (NP) staff were assigned to the office and were starting to develop a detention database, but by the end of 2006, no data had been entered for the over 7,000 detainees and prisoners officially recognized as being held throughout Nepal. The office never became fully functional and ceased to function shortly after the change of Government in April 2006.* *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 and if someone is released without charge after a short period of detention (which could exceed 24 hours), their names often do not feature in police registers.* *The Armed Police Force (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.*	*property recovered from them or from other sources, as well as the names of the witness summoned.* *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 on holding an individual without bringing the person before a judicial authority.* *OHCHR continues to document instances of Armed Police Force personnel participating in the detention and interrogation of suspects, particularly those suspected of involvement in armed groups.*
(f) All detained persons be **effectively guaranteed the ability to challenge the lawfulness of their detention,** e.g.	The right of habeas corpus was denied by virtue of Article 14 (7) of the Constitution to any person	In June 2007, the Supreme Court issued a groundbreaking ruling in relation to disappearances resulting	***Non-governmental sources:*** *The June 2007 decision of the Supreme Court has not been implemented. The*

through habeas corpus. Such procedures should function effectively and expeditiously;	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.	from the conflict, based on the work of its Task Force set up for a group of petitions of habeas corpus. As of January 2008, the ruling had yet to be implemented. A credible commission of inquiry had yet to be set up. ***Non-governmental sources:*** *In 2006 and 2005, 64 and 640 cases of habeas corpus, respectively, were lodged at the Supreme Court. While the denial of detainees' rights to habeas corpus to challenge their detention is not as serious as during the conflict, concerns remain as to delays in bringing detainees before a court within 24 hours as stipulated by the Constitution.*	*government has, however, prepared a draft bill to criminalize disappearances and to set up a Commission of Inquiry into Enforced Disappearances. The current draft has been criticized, including by OHCHR, for being inconsistent with international standards in a number of respects.* *Misrepresentations by police and other state officials, apparently to hide detainees or cover-up the fact that their detention is illegal, continue to present an obstacle to the effective functioning of the habeas corpus remedy. Weak sanctions for perjury and contempt of court are contributing factors in relation to the way in which the authorities respond to habeas corpus petitions. Despite obvious and repeated lies and misinformation from officials in court (including by the Nepal Army during the conflict), no one has ever been prosecuted or otherwise disciplined by the courts for perjury.*
(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, and that they constitute the main and sometimes almost the exclusive part of an investigation. Reportedly, some*	***Non-governmental sources:*** *Detainees rarely, if ever, have a lawyer present during interrogation. If they are represented at all, their lawyers usually become involved in their case only after the case has been filed at court. 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*

		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.	*beatings and ill-treatment during interrogation are widespread. In addition, it is very common in Nepal for detainees to be forced to sign statements (whether "confessions" or other documents) without being able to read them beforehand. This is sometimes due to illiteracy but mainly because the police refuse to give detainees an opportunity to read their statement.* *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 (Section 28, State Cases Act). 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. In addition, the law is not clear as to the exact procedure to be used by courts in order to establish whether or not a confession was extracted under torture.* *In the course of detention monitoring, OHCHR-Nepal documented 93 cases of torture and ill-treatment, as well as a number of cases of unlawful detention. Reports of ill-treatment sometimes amounting to torture are widespread especially during*

			interrogation. *There is no provision made for video and audio-taping of proceedings in Nepal.*
(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:*** *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 them about their treatment at the hands of the police, such practice has not become uniform and in any case is inadequate to detect whether torture or other ill-treatment has been committed, particularly with regard to methods which do not leave physical marks, including psychological torture or ill-treatment. Judges do not systematically test the voluntary nature of a confession and many confessions extracted under duress are still admitted as evidence. This is exacerbated in cases in which the victim fears telling the court about torture or ill-treatment in front of the police officers involved in whose custody they remain.*	***Non-governmental sources:*** *Article 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.* *Prosecutors and judges rarely question detainees brought before them about their treatment in police custody, although it has been observed that judges and court staff have been more cooperative with victims of torture and their lawyers. In many cases however, detainees do not appear before a judge directly, with the judge relying on police reports.* *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 prison or release, although it can be crucial to proving that any physical injuries or mental suffering were sustained during the time in custody.* *OHCHR has been working with the Nepal Police, the National Human Rights Commission and other partners to develop a programme to increase the quality of detainee health examinations and their documentation.*
(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.	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, including excessive use of force during the April 2006 protests, was made public in August 2007. Although Article 136 (3) (c) of the Interim Constitution specifies that the Attorney General has the power	***Non-governmental sources****: Despite repeated commitments to end impunity and to enforce the rule of law, no visible steps have been taken to hold accountable any individual responsible for serious cases of torture during the conflict.* *The recommendations of the reports of the Rayamajhi Commission, as well as other ad hoc commissions formed by the Government to look into specific instances of torture or death-in-custody, have neither been made public or implemented.* *In the case of Maina Sunuwar, a 15-year-old girl who died in 2004 after being tortured in custody of the Nepal Army, the Nepal Army continues to*

		to, on the basis of complaints or information received by him by any means, investigate allegations of inhuman treatment of any person in custody, no reports of any investigations were received. ***Non-governmental sources:*** *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*	*withhold its cooperation with the Nepal Police investigation.* *Despite repeated requests by OHCHR to the Government to conduct a thorough and impartial investigation into allegations of torture at the Maharajgunj barracks under the control of the Nepal Army's Bhairabnath Battalion, no proper investigation has been undertaken.* *In December 2008, OHCHR published a report documenting torture and ill-treatment in Bardiya District during the conflict and has called on the Government to investigate and take action against the perpetrators. No investigation has been initiated, and at least one known perpetrator continues to serve with the Nepal Army.* *The National Human Rights Commission of Nepal (NHRC), mandated to investigate alleged violations of human rights, rarely sees its recommendations to the Government implemented in practice. In its annual report 2007-2008, the NHRC cited this inaction on the part of the Government as one of the major challenges in its work.* *Some NGOs also regularly file complaints to the Nepal Police Human Rights Cell and to the Attorney General's Department. However, the Human Rights Cell's definition of "investigation" appears to comprise merely of sending a letter with details of the complaint to the*

		forensic experts visited the country in January 2008 and assisted local experts in the exhumation of some of the remains.	*relevant District Police Office and to ask that DPO to respond to the allegations, without actually visiting the detainees and interviewing them privately. Moreover, no police officer has been suspended pending the outcome of Human Rights Cell investigations.*
(j) **Any public official indicted for abuse or torture**, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately **suspended from duty pending trial, and prosecuted**	The 1996 Compensation Relating to Torture Act is not in line with the Convention's requirements for effective remedies.	In the period from 1996 to 2007, Nepalese 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:*** *Torture suspects are not prosecuted or punished. In a few cases, police have been suspended briefly pending an internal inquiry. Impunity for current and past crimes continues. Not a single member of the security forces or the CPN-M has been held criminally accountable or convicted for acts of torture, other ill-treatment or other human rights abuses committed during the conflict. Instead, attempts to grant amnesties for severe human rights violations continue despite the Government's plan to set up the TRC and the Disappearances Commission.*	***Non-governmental sources****: OHCHR has called upon the Government to suspend military personnel alleged to have been involved in conflict-related human rights violations, including torture, pending investigation. Instead, the Nepal Army has continued to promote or extend the terms of personnel against whom there are credible allegations. This includes personnel alleged to have been involved directly or by virtue of command responsibility in the violations documented in OHCHR's public reports on disappearances, torture and ill-treatment at the Nepal Army's Maharajgunj Barracks (report published in May 2006) and in Bardiya District (report published in December 2008).* *In October 2008, 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.
(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.	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 National Human Rights Commission. 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.	***Non-governmental sources:*** *The guidelines for compensation to conflict victims do not have provisions for compensating victims of torture.* *Compensation amounts are very small compared to the gravity of the harm the victims suffered. Furthermore, prompt payment of compensation to victims who file cases under the Torture Compensation Act continues to be a problem.*

		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.	
(l) The **declaration be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals** who claim to be victims of a violation of the provisions of the Convention;	No action taken.		
(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.		
(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.	Under the Interim Constitution of 2007, the NHRC was transformed into a constitutional body. In October 2007 the IC restored the 'A' status accreditation. In 2006 the Commissioners of the NHRC, who had been appointed by the then Royal Government, resigned in July. However, the work of the NHRC, already undermined	***Non-governmental sources:*** *The NHRC remained vacant for 14 months before the Government established the new Commission on September 2007. However, as advocated by civil society members and OHCHR-Nepal, the establishment of the Commission was not based on a transparent and broad consultative process. Although NHRC has been established as a*

		by the manner in which the previous commissioners were appointed, has been hampered by long delays in appointing new commissioners.	*Constitutional body as per the Interim Constitution 2007, the new Human Rights Commission Act is yet to be tabled at the Legislature Parliament.*
(o) The **Rome Statute of the International Criminal Court be ratified;**	No ratification.	On 25 July 2006, the House of Representatives adopted a resolution directing the Government of Nepal to ratify the Rome Statute. On 14 December 2006, a task force established by the Council of Ministers to examine the House of Representatives' July 2006 resolution directing the Government to ratify the Rome Statute, submitted its report to the Minister of Foreign Affairs.	***Non-governmental sources:*** *In 2008, the National Human Rights Commission recommended that the Government ratify the Rome Statute. In February 2009, the Minister of Foreign Affairs tabled the issue before the Cabinet, which has yet to consider the proposal.*
(p) Police, the armed police and RNA recruits undergo extensive and **thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment,** and that existing personnel receive continuing education;		In 2007 training on human rights issues directly concerning police work and on protection mechanisms was provided to 35 NP trainers. Specialized sessions were provided to around 100 NP officials, including on human rights and the elections. Five regional trainings for some 150 APF were given by APF trainers trained and monitored by OHCHR and ICRC, focusing on human rights standards pertaining to law enforcement and crowd control. The OHCHR and ICRC, together with the Prison Management Department, conducted a first-ever workshop on prison-related human rights issues for prison managers from throughout the country. Other regular training and orientation programmes on various	***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 Nepal Police and Armed Police Force on a serious of human rights training programmes – including targeted trainings on detention issues such as health examinations for detainees, and the use of force. With the support of OHCHR, the Nepal Police produced a 'Human Rights Standing Order' and the Armed Police Force has produced a Human Rights*

		aspects of international human rights and humanitarian law (IHL) were conducted in partnership with the US and British Armies, as well as with NGOs and INGOs. An IHL classroom was established in the army headquarters with the help of ICRC. Furthermore, training with regard to scientific methods of investigations was provided to law enforcement officials and to police officers. In 2006 the Nepal Police Human Rights Cell issued circulars to police instructing them not to use torture. The APF also issued a booklet on human rights promotion and protection which includes a section on state responsibility to prevent torture.	*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 Nepal Army.*
(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;		In 2007 the Ministry of Law, Justice and Parliamentary Affairs, the Ministry 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.	***Non-governmental sources:*** *OHCHR has conducted programmes throughout the country on the rights of detainees, in cooperation with various partners, including the Government.* *Several non-government organizations have also drafted an 'alternative bill' criminalizing torture.*
(r) Security forces personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve, and that any concerns raised by OHCHR in respect of individuals or units be taken into consideration.		According to the Government, since 15 May 2005, the Nepalese Army has implemented the policy that those who are found guilty of human rights violations are disqualified from participating in UN peacekeeping missions. However,	***Non-governmental sources:*** *The Nepal Army claims to have implemented a policy to vet individuals alleged to have been involved in human rights violations from participating in UN Peacekeeping missions. However, the*

		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.*	*Nepal Army has been unwilling to make public the information relating to internal vetting processes.* *Nepal Army as well as police officials against whom there are credible allegations of human rights violations continue to be nominated for UN posts or for participation in DPKO 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.	The instances of extortion, kidnapping and intimidation by the Maoists have declined significantly after the signing of the peace agreement. ***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 Comprehensive Peace Agreement and further reduced after April 2008, reports of such abuses by the Young Communist League (YCL) have continued.*	***Non-governmental sources:*** *The number of abductions, assaults, ill-treatment and other abuses by the CPN-M dropped significantly immediately after the signing of CPA and after elections. However, abusive activities continue to be reported particularly intimidation, and interference in decision making processes at the local level. There has been no accountability for past acts of violence, including torture, by Maoist cadres during the conflict. The CPN-M has failed to cooperate with ongoing police investigations into incidents of torture and killings.*
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*	***Non-governmental sources:*** *Mistreatment of women in police custody continues to be an issue of concern.*

		sexually harassed with abusive language, stripped naked, beaten and threatened with rape. In many cases, male police officers were found to have tortured female detainees. Moreover, during incommunicado detention, women are often sexually abused and then threatened in order not to disclose what happened.	
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; furthermore, juveniles are detained in inappropriate conditions.*	***Non-governmental sources:*** *25.5% of juveniles held in police custody in the period from October 2008 to June 2009 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 January to September 2008.* *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.* *The youngest age where torture was reported during this period was 8 years old.* *In May 2008, 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.

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)

58. On 23 October 2009, 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 his recommendations and he reaffirms that he stands ready to assist in efforts to prevent and combat torture and ill-treatment.

59. The Special Rapporteur notes with concern the continuing allegations of torture committed by Nigerian police forces. Welcoming recent public condemnations of torture and the Government's plans to prohibit such practices, the Special Rapporteur urges Nigeria to promptly pass legislation in accordance with Article 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). He remains concerned about the fact that corporal punishment remains lawful in parts of the country.

60. The Special Rapporteur is worried about the lack of accountability of the perpetrators of torture. He expresses his concern about a lacking effective and independent complaints system and the restricted right to legal counsel. He regrets that the bill providing for the establishment of an anti-torture commission and the bill to extend the mandate of the Legal Aid Council (LAC) have been pending in the Senate for a long time and calls upon the members of Parliament to work for its expeditious adoption and effective implementation. He emphasizes the need for prompt and thorough investigations of all torture allegations by an independent authority and notes with concern that the majority of investigations are conducted internally within the Nigerian Police Force, contributing to a persisting culture of impunity in police institutions.

61. The Special Rapporteur expresses concern about the prolonged pre-trial detention before judicial review and that the ability to challenge the lawfulness of detention is dependent on the financial capacity of detainees. He reiterates that the power to order and approve arrest should be vested solely with independent courts. The Special Rapporteur welcomes the reviews of criminal procedure laws in some States to increase the use of non custodial measures.

62. The Special Rapporteur notes with satisfaction Nigeria's ratification of the Optional Protocol to the Convention against Torture (OPCAT) and encourages the Government to promptly establish an independent and effective national preventive mechanism in full accordance with 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)	**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.*
(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	There was no unequivocal condemnation of torture or its qualification as a serious crime.		***Non-governmental sources****: There have been some recent 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, 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*

sentences;			*Nigeria Police Force to stop using torture.*
(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.	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 'Torture prevention and prohibition act', which defines torture in accordance with Article 1 of the CAT.*
(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.	A draft bill on the establishment of an anti-torture commission was pending in the Senate.	***Non-governmental sources**: Although the National Human Rights Commission has been receiving complaints about torture and abuse, no cases have yet been prosecuted. A 'Bill for an Act to Provide for the Establishment of the Anti-Torture Committee' is still pending in the Senate.*
(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	A bill to extend the mandate of the Federal Legal Aid Council (LAC) has been pending before the National Assembly for over three years.	***Non-governmental sources**: The right to legal counsel is rarely realized in practice, and in many police stations, the police continue to deny suspects' access to a lawyer. In some cases, lawyers have even been threatened with arrest for making inquiries at the police station about their clients. The bill to extend the mandate of*

	vast majority of detainees did not have legal counsel.		*the Legal Aid Council (LAC) is 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 have 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**: No action has been taken toward implementing this recommendation.*
(g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings	De facto, the vast majority of detainees did not have the ability to challenge the lawfulness of their detention due to the lack of financial means, the overload of the entire judicial system as well as a climate of fear.		***Non-governmental sources**: A detainee's power to challenge their detention is dependent on their financial capacity, and poverty restricts the ability of detainees to obtain adequate legal representation.*
(h) Judges and prosecutors should routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance 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 do not routinely ask detainees how they have been treated.*
(i) Those legally arrested should not be held in	While legal provisions foresaw that persons arrested or detained		***Non-governmental sources**: Following an amendment to the Magistrate Court Law*

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	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.		*by Lagos State, magistrate courts can open on Saturdays to ensure suspects can be brought before a court within 24 hours. Despite this, many detainees still spend weeks in police detention after their arrest without being seen by a judge.*
(j) The maintenance of custody registers should be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time at which the family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer	The Criminal Code requires the proper maintenance of records of any person in confinement and punishes neglect or deliberate false entries. However, in practice these records were frequently incomplete or inaccurate.	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 court, not at the point of arrest.	***Non-governmental sources**: Reports have been received that in some police stations the police register detainees on a piece of paper for bribery purposes. Once the detainees have paid the so called "police bail", they are released.*
(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	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	The new criminal procedures in Lagos State provide for video taping of interrogations; where no video is available, the lawyer of the suspect should attend the interrogation.	***Non-governmental sources**: Under the Evidence Act, confessions extracted under inducement, threat or promise cannot be used in court. However, in practice, confessions are often allowed to be used in court. When allegations of torture arise in*

against the persons who made the confession. Serious consideration should be given to video and audio taping of interrogations, including of all persons present	confessions. The Special Rapporteur encountered cases in which the courts did not take into account allegations of torture when issuing their verdicts.		*court, a trial within a trial is held, but according to information received, the jury generally decide in favour of the police officer.*
(l) All allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or 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 successful criminal prosecutions of perpetrators of torture, payment of compensation, or statistics on disciplinary sanctions meted out to officers.		***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 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.*
(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	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		***Non-governmental sources**: Concerns remain 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*

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	sanctions meted out to officers.		*crimes.*
(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.	In some cases, courts have awarded compensation to be paid to victims of torture. However, the ordered payments are still pending.	***Non-governmental sources**: There has been no reported case of compensation awarded or the state providing rehabilitation to victims of torture.*
(o) The declaration should be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention	Nigeria has not recognized the competence of the Committee against 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.	The vast majority of detainees are held pending their trial or without charge for as long as 10 years.	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 as a matter of	***Non-governmental sources**: The impact of the prison decongestant scheme is yet to be observed.*

guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement)		routine or in any coordinated manner across the federation. It is dependent on the mercy committees of individual states and the benevolence of the state governor.	
(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**: In most prisons visited there was still no strict separation of pre-trial and convicted prisoners.*
(r) Detainees under 18 should be separated from adult ones	Section 419 of the Criminal Procedure Code requires that imprisoned minors shall not be, so far as it is deemed practical, allowed to associate with adult prisoners. However, there was no strict separation of juveniles and adults.		***Non-governmental sources**: Young children are often detained in the same cell as adult males, partly due to overcrowding. Detainees under 18 are not routinely separated from adults.*
(s) Females should be separated from male detainees	Males and females were separated in most cases.	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.*
(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,	Pre-trial detention was ordered by default.	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.	***Non-governmental sources**: A Criminal Law of Lagos State is before the House State Assembly, and other states have begun preliminary reviews of their criminal procedure laws.*

minor or less serious offences			
(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 fail to conform to international standards of fairness and do not respect due process.*
(v) Abolish the death penalty de jure, commute the sentences of prisoners on death row to imprisonment, and release those aged over 60 who have been on death row for 10 years or more	Capital punishment was still in the national legislation, but there was a policy not to carry out executions. However, persons continued to be sentenced to death, which led to the steady growth in numbers of 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.		***Non-governmental sources**: The Minister of Foreign Affairs' statement on the outcome of the UPR in June 2009 indicated that the country had set up a National Committee on the Review of death penalty, and at the meeting of the National Council of State in March and 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.*
(w) Establish effective mechanisms to enforce the	Nigeria has legislation prohibiting discrimination	Several states have adopted bills prohibiting domestic violence, including	***Non-governmental sources**: During its review in the UN UPR Working Group,*

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	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.	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.	*Nigeria accepted the recommendations to domesticate CEDAW, to repeal all laws that allow violence and discrimination against women and to continue awareness raising campaigns to eradicate traditional practices as FGM.* *A bill is pending before the National Assembly.*
(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.	Some human rights training is offered to senior personnel. Some interrogation techniques training is provided, but the extreme lack of investigative equipment and facilities risks rendering any training obsolete.	***Non-governmental sources****: The Nigeria Police Force is currently reviewing their training curriculum.*
(y) Security personnel recommended for United Nations, as well as regional, peacekeeping operations should be scrupulously vetted for their suitability to serve			
(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	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 yet.*

period of time and not subject to dismissal - to carry out unannounced visits to all 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.		*NGO: The National Human Rights Commission has started an awareness-raising campaign on torture.*

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)

63. El 23 de octubre de 2009, el Relator Especial envió la tabla que se encuentra abajo 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 21 de noviembre de 2009. El Relator Especial quisiera agradecerle al Gobierno por la información proporcionada, le invita a enviar información sobre todas las recomendaciones emitidas, y le reitera su disposición para ayudarle en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

64. El Relator Especial lamenta que la definición de la tortura y la criminalización de la tortura en la legislación aún no cumplen los requisitos de los artículos 1 y 4 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, inhumanos o degradantes (CAT).

65. El Relator Especial aplaude el rol de seguimiento y, en algunos casos la presentación misma de denuncias por violaciones de derechos humanos de la Defensoría del Pueblo. También considera como un paso positivo creación de nuevas defensorías en el área penal, y espera que en un futuro próximo éstas puedan asegurarle el derecho a la asistencia letrada a todos aquellos que lo necesiten.

66. El Relator Especial toma nota con satisfacción del Proyecto de Ley del Mecanismo Nacional de Prevención contra la tortura que se encuentra en estudio en el Congreso Nacional y exhorta a los miembros del Congreso a trabajar para su rápida aprobación y efectiva aplicación.

Recomendación (A/HRC/7/3/Add.3)	**Situación durante la visita** (A/HRC/7/3/Add.3)	**Medidas para la implementación de las recomendaciones**
Ajustar la definición del Código Penal al artículo 1 de la CAT (a)	No está en línea con la definición.	***Fuentes no gubernamentales:*** *Sigue sin adecuarse al CAT.* Gobierno: Si bien se mantiene la definición de tortura, se debe aplicar la definición contenida en la Convención ya que estos forman parte del derechos positivo nacional desde el momento de su ratificación.
Tipificar la tortura como delito en el Código Penal Militar (b)	No existe tipificación.	***Fuentes no gubernamentales****: No se ha tipificado la tortura.* Gobierno: Existe un proyecto de modificación del Código Procesal Penal a fin de incluir esa figura.
Establecer una autoridad independiente para investigar denuncias de tortura (c)	No existe ningún mecanismo eficaz e independiente.	***Fuentes no gubernamentales****: El órgano encargado es el Ministerio Público, donde actualmente existen unidades especializadas en derechos humanos.* Gobierno: 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.
Suspender de sus cargos a funcionarios públicos acusados de tortura/ despedir a aquellos condenados (d)		***Fuentes no gubernamentales****: Por lo general no se suspende a los funcionarios mientras dure el proceso de investigación.*
Investigaciones ex-officio rápidas e imparciales (e)	Por lo general no son iniciadas.	***Fuentes no gubernamentales****: Por lo general son iniciadas a partir de la formulación de la denuncia.* Gobierno: 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.
Indemnización, tratamiento médico y rehabilitación a las víctimas de tortura y malos tratos (f)	Disposiciones limitadas de la época de la dictadura.	***Fuentes no gubernamentales****: La legislación paraguaya carece de un ordenamiento específico por el cual se establezca indemnización a víctimas de Torturas, salvo a aquellas personas que sufrieron hechos de tortura en época de la dictadura.* Gobierno: 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.
Apoyo político y financiero suficiente a la Comisión de Verdad y Justicia (g)		***Fuentes no gubernamentales****: Fue presentado el capítulo de Conclusiones y Recomendaciones del Informe Final de la Comisión de la Verdad y Justicia.* Gobierno: A la fecha se encuentra concluido el objetivo de la Comisión de Verdad y Justicia y la misma ha 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.
Papel más dinámico del Ombudsman para investigar denuncias de tortura e iniciar diligencias penales (h)		***Fuentes no gubernamentales****: La ley orgánica de la Defensoría del Pueblo establece que el Defensor del Pueblo es el encargado de velar por la vigencia de los Derechos Humanos, no obstante la detección de hechos que vulneren tales derechos deben ser canalizados al fuero penal a cargo del Ministerio Público y los Juzgados Penales.* Gobierno: 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.
Asegurar el derecho a la asistencia letrada desde el momento del arresto (i)	No se garantiza efectivamente.	*Fuentes no gubernamentales: No se garantiza de manera eficaz.* Gobierno: Se han creado nuevas defensorías en el área penal, aunque aún no existe 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.
Capacitación, incluida sobre derechos humanos, para personal encargado de hacer cumplir la ley (j)		***Fuentes no gubernamentales****: No se garantiza en su totalidad la capacitación en derechos humanos del personal encargado de hacer cumplir la ley.* Gobierno: 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. 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.
Inadmisibilidad de confesiones realizadas por personas arrestadas sin la presencia de un abogado (k)	No se garantiza efectivamente la prohibición constitucional.	***Fuentes no gubernamentales****: Se mantiene la misma situación.*
Exámenes médicos realizados por profesionales médicos calificados (l)	Descuido general en exámenes.	***Fuentes no gubernamentales****: Los exámenes médicos son realizados por profesionales de la materia.* Gobierno: Ante una denuncia por hecho punible del maltrato o tortura, el examen médico es realzado por un médico forense que dictamina dentro del proceso penal.
Mantener registros exactos de los detenidos (m)		***Fuentes no gubernamentales****: En cierta medida se registra a los detenidos, aunque esta práctica no se realiza de manera sistemática.* Gobierno: 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.
Designar un mecanismo nacional preventivo (n)		***Fuentes no gubernamentales****: Sigue en el Congreso el proyecto para la creación del Mecanismo Nacional de Prevención de la Tortura.* Gobierno: Un Proyecto de Ley del Mecanismo Nacional de Prevención (MNP) contra la tortura y otros tratos o penas crueles, inhumanos o degradantes se encuentra en estudio en el Congreso Nacional.

Condiciones de detención conforme a las normas mínimas sanitarias y de higiene; eliminar hacinamiento (o)		***Fuentes no gubernamentales**: Sigue siendo una tarea pendiente del Estado* Gobierno: A raíz de las observaciones y recomendaciones preliminares formuladas por el Subcomité para la Prevención de la Tortura (SPT), en su visita realizada en marzo de 2009, se conformó la comisión especial encargada del monitoreo y ejecución de las mencionadas observaciones y recomendaciones, que verificó las observaciones formuladas en el terreno. Su informe fue presentado al Ministro de Justicia y Trabajo. El 9 de julio de 2009, por medio de la Resolución DGRRHH No. 157/2009, "Por la cual se establecen disposiciones relativas a la prestación de servicios de los profesionales médicos, otros especialistas y enfermeros/as, en distintas especialidades asignados a las Unidades Penitenciarias, Correccionales de Mujeres, Centros Educativos para Adolescentes Infractores y Hogares de Niños/as dependientes del MJT", se resolvió aumentar la carga horaria hasta un máximo de 40 horas semanales y elevar informes en forma mensual relacionados a la asistencia médica. 59 internos fueron capacitados mediante el Curso "Desarrollo Personal", que abarca primeros auxilios básicos y psicología básica.
Limitar el recurso a la detención preventiva (p)	Uso casi exclusivo.	***Fuentes no gubernamentales**: Se sigue utilizando este mecanismo.*
Atender las necesidades básicas de los detenidos (q)		***Fuentes no gubernamentales**: No se cumple a cabalidad.*
Erradicar la corrupción en el sistema penitenciario y de justicia penal (r)	Corrupción endémica.	***Fuentes no gubernamentales**: Sigue persistiendo la corrupción dentro del sistema penitenciario y de justicia penal.*
Separación de presos en prisión preventiva y los convictos/ separación de menores y adultos (s)	No existe separación efectiva.	***Fuentes no gubernamentales**: No se cumplen dichos mecanismos a cabalidad.*
Empleo de suficiente personal de prisiones (t)		***Fuentes no gubernamentales**: No hay suficiente personal penitenciario en todas las penitenciarías.*
Limitar el uso de celdas de castigo (u)	Uso excesivo.	***Fuentes no gubernamentales**: Se sigue utilizando en todas las penitenciarías.*
Garantizar la capacidad de impugnar la		***Fuentes no gubernamentales**: Se garantiza, pero de manera*

legalidad de la detención (v)		*insuficiente.*
Asistencia en la aplicación de las recomendaciones de agencias de la ONU, gobiernos y organismos de desarrollo (91)		***Fuentes no gubernamentales****: Se cuenta con la asistencia de agencias y organismos de desarrollo para su aplicación.* Gobierno: Si bien existe asistencia en algunos campos, no podría considerarse suficiente para conseguir un relevante mejoramiento de la situación. Por tanto, se exhorta a los posibles cooperantes a colaborar de manera a ir progresivamente elaborando trabajos tendientes a garantizar los derechos de los ciudadanos.
Apoyo de donantes para el mecanismo nacional de prevención (92)		***Fuentes no gubernamentales****: Actualmente existe un proyecto de ley para la prevención de la Tortura, en el cual se contempla la ayuda de organizaciones no gubernamentales e internacionales.* Gobierno: La creación del MNP se encuentra en estudio en el Congreso de la Nación.

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)

67. By letter dated 23 October 2009, the Special Rapporteur sent the following report 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 a letter dated 26 November 2009. Furthermore, the Special Rapporteur wishes to thank the Government for sharing relevant information during his visit to the country in September 2009.

68. The situation with regard to torture and ill-treatment in the Republic of Moldova in 2009 was marked by the general elections held in April 2009, which were followed by violent clashes between security forces and demonstrators. In a communication sent on 17 April 2009, the Special Rapporteur expressed his concern about reports of alleged beatings and other forms of ill-treatment reportedly inflicted to more than one hundred persons (including minors) during arrest and in police custody in the context of the demonstrations. Two persons died, allegedly of injuries sustained in the course of the demonstrations or shortly afterwards.

69. In violation of the law establishing the Consultative Council as National Preventive Mechanism under OPCAT, the Council was denied access to several police detention facilities in Chisinau after the clashes. The members of the Council were granted access to penitentiary institution No.13 only after considerable delay. A number of detainees in that institution allegedly showed physical marks which corroborated their allegations of torture and ill-treatment. Furthermore, some of the detainees reported that they were held in inhuman conditions in police stations; they were denied food for two days and had only limited access to water and basic sanitary facilities.

70. The Special Rapporteur thanks the Government for commenting on the above allegations. By letter dated 23 September 2009, the Government informed that in the course of the demonstrations, 111 persons had been arrested. According to the Government, immediately after the transfer of these persons from the police detention facilities to Penitentiary No. 13, they were examined by medical staff. 27 detainees bore various physical injuries. A group of prosecutors specifically tasked for investigating the April events has been created. According to the Government, the group examined 91 cases of physical injuries. During the visit of the Special Rapporteur in September 2009, the General Prosecutors' Office (GPO) reported that 101 complaints were submitted, 51 for "application of force while detained" and 50 for "ill-treatment in police commissioners' facilities". The GPO has initiated 25 cases, and begun inquiry proceedings in 66 cases. Most of the cases are still under investigation.

71. Regarding conditions of detention, the Deputy Interior Minister acknowledged that seven preventive isolator facilities were not in compliance with the respective norms. A main recommendation by the Special Rapporteur – that of transferring isolators to the competence of the Ministry of Justice – has not yet been carried out because of a lack of resources.

72. With respect to the Transnistrian region, the Special Rapporteur remains highly concerned of persistent allegations of human rights violations in places of detention and psychiatric hospitals. He urges the de-facto authorities to implement 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 since January 2008**
(a) Impunity **i) Abolish the statute of limitations for crimes of torture;** **ii) Establish effective and accessible complaints mechanisms; and protect complainants** **against reprisals;** **iii) An independent authority with no connection to the body investigating or prosecuting the case against the alleged victim should investigate promptly and thoroughly all allegations of torture and ill-treatment ex-officio; an independent forensic expert should carry out an examination in respect of all allegations of torture and ill-treatment;** **iv) The Forensic institute should be equipped accordingly.**	A statute of limitation of five years was applicable to the crime of torture; The law provided for several complaints avenues, but the large majority of complaints were rejected quasi-automatically; Ex-officio investigations did not function in practice; The system of internal remedies was dysfunctional due to: a)The routine use of threats and reprisals by the police in order to deter detainees from filing complaints; b)the non-action of the staff of penitentiary institutions in cases of allegations of torture; c) the wide discretion and inaction of the prosecutor's office when he receives complaints; d) the lack of independent medical examination; e) the lack of independence of judges who in many cases continue to follow the arguments of the prosecutor; The State Forensic Institute was underequipped.	**Government:** i) The statute of limitations is not an impediment to investigations, since crimes of torture are investigated vigilantly and in a timely manner. ii) Since 1996 prosecutors are obliged to make daily spot checks at the places of temporary detention. This includes personal and direct control of the legality of detention, discussions with detainees, as well as reporting the results of these actions, including where necessary, issuing orders to release the persons detained illegally on remand. Thus, there is a mechanism to record, control and monitor the practice of coercive procedural measures and the conditions of detention. iii) In 2007, 1,258 complaints were submitted, 50 criminal proceedings being initiated. In the same year, 87 criminal proceedings were initiated for excess of power, 55 cases of which were sent to the court, 63 persons being convicted, including 14 persons imprisoned. In 2008, 1,128 complaints were submitted, 51 criminal proceedings being initiated. In the same year, 73 criminal proceedings were initiated for excess of power, 46 of which were sent to court, as a result of which 36 persons were convicted and 5 persons were imprisoned. In 2009, 554 complaints have been submitted, 33 criminal proceedings were initiated. The same year, 31 criminal proceedings have been initiated for excess of power, 20 of which were sent to court, 16 persons convicted and 1 person was imprisoned. Most cases investigated concerned the use of force during interrogation for the purpose of securing a confession to improve prosecution statistics. The Interior Ministry has internally examined 135 criminal cases, including 39 cases regarding excess of power, 17 cases regarding torture and 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 December 2008, 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 December 2007. In 2009 no cases of torture were registered in the penitentiary system. During this year the Penitentiary Institutions Department of the Ministry of Justice initiated 2 internal investigations regarding the alleged ill-treatment of two detainees, from which one of the cases was sent to the Prosecutor Office. The facts alleged in the second case have not been confirmed. Of 473 petitions examined in 2008 by the Ministry of Internal Affairs (MIA), 38 concerned cases of ill-treatment and illegal detention of citizens. In 18 cases false facts were reported; in 15 cases the facts have been confirmed (employees have been sanctioned disciplinarily); in 19 cases the files were submitted to the prosecution bodies (for criminal procedure), and in 6 cases the petitions were sent to judicial courts (for examination of criminal cases filed by the petitioners). During the first 10 months of 2009 the MIA examined 334 petitions, of which 33 cases concerned mistreatment of persons by police employees. In 11 cases the alleged mistreatment was not confirmed; in 4 cases the court applied an administrative fine to both sides of the conflict; in 2 cases the investigation was suspended until 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 November 2007 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 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.*
(b) Safeguards and prevention **i) Reduce the period of police custody to a time limit in line with international standards (maximum 48 hours), after which transfer the detainees to a pre-trial facility, where no further unsupervised contact with the interrogator or investigator should be** **permitted;** **ii) Ensure that no confessions made by persons in custody without the presence of a** **lawyer that are not confirmed before a judge are admissible as evidence against the persons who made the confession; Shift the burden of proof to the prosecution to prove beyond reasonable doubt that the confession was not obtained under any kind of**	The law provided for a limit of 72 hours of custody, after which the person is to be brought before a judge, which could be prolonged by 6 to 12 months depending on the crime; Police detention of minors could be prolonged by 30 days up to 4 months; Prolongation of police detention was decided by the investigating judge upon request of the prosecutor; De-facto, most detainees were kept in police custody for several weeks/months and regularly returned there for "further investigation" or for their trial or appeal, which made them vulnerable to reprisals; Many allegations that confessions obtained under torture were not excluded as evidence during court proceedings, in contravention of the national legislation; numerous reports	***Observations of the Special Rapporteur during his visit in September 2009*****:** The NPM still faces a number of challenges: firstly, the legal basis for this mechanism is rather ambiguous, which has led to different interpretations regarding which entity constitutes the NPM. From the side of the Ministry of Justice, it is argued that the Parliamentary Ombudsperson is the NPM. However, even the Ombudsman in charge, as well as other relevant actors, including international bodies such as the Council of Europe's Commissioner on Human Rights, have clearly stated that the NPM is comprised of the Consultative Council, under the chair of the Parliamentary Ombudsperson. The Special Rapporteur reiterates that only the latter interpretation is in line with OPCAT and the Paris Principles. Another problem is that although the NPM is meant to be comprised of 11 members, currently only six members serve on this mandate (including the Ombudsman). Finally, and closely linked to the above, is the issue of financial resources allocated to the NPM. In this respect, 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*

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 allocation of budgetary and human resources.**	that judges, prosecutors and other actors in the criminal law cycle routinely ignored allegations of torture; The burden of proof was on the victim; No tape or video recording during interrogations; Paramedics were present in detention facilities of the police and the penitentiary system during working hours on weekdays, but the rules did not spell out when medical examinations should take place; Amendments to the Law on Parliamentary Advocates adopted had led to the establishment of an independent "Consultative Council", which has been designated as National Preventive Mechanism (NPM); complaints about insufficient resources.	*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.* **Government**: In order to develop collaboration between the representatives of the healthcare and internal affairs authorities, the Order of the Ministry of Health and MIA no. 372/388 of 3 November 2009 was issued. According to its provisions, the healthcare facility managers shall inform immediately the police authorities regarding the healthcare assistance granted to persons with injuries acquired as a result of an offence, traffic accident or sudden death. In cases when injuries derive from illegal actions of law enforcement authorities, the health care facility managers shall inform immediately the territorial or specialized prosecutor office. Concerning the medical certification of detainees who claim physical injuries, all the cases referring to the incidents from the penitentiary institutions, including cases of detecting physical injuries, are compulsorily to be sent to the Prosecutor's Office and to the Ombudsmen. The Medical Service examines the detainees on their arrival to the penitentiary in view of proving the presence of any physical injuries or other signs of violence, in accordance with article 251 (3) of the Enforcement Code and article 25 of the Statute on the Execution of Sentences by Convicts. The administration of the institution is obliged to inform, in writing and in the shortest time possible, the Penitentiary Institutions Department, the territorial Prosecutor's Office and the Human Rights Centre about the physical injuries of detainees arriving in the penitentiary. The notes received by the Penitentiary Institutions Department and delivered to the Medical Division are included in a special database. From the beginning of 2009, 13 cases of physical injuries have been registered, of which 2 cases were reported by the MIA. Police officers are obliged to supervise the work of the paramedics during the medical examination of the detainees of the temporary detention facilities (isolators), issuing two copies of medical records. These activities and organizational practices confirm where the person was detained, and that the detained person was not tortured or

		mistreated. The paramedics employed are cumulatively paid by the police stations, at a rate of 0.5% of their salary. The NPM has carried out approximately 90 visits to places of detention in 2009. They met 10 persons who stated that they had been ill-treated and 27 persons with visible marks. Some members of the Consultative Council have been restricted access to places of detention or have been confronted with considerable delays. Regarding the legal basis of the NPM, on 26 July 2007, the Moldovan 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.
(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**	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	***Non-governmental sources:*** *The criminal investigation bodies continue to have a punitive attitude.* **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 2009-2010, 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

with regard to torture prevention; **iii)Conceive the system of execution of punishments and its legal framework in a way** **that truly aims at rehabilitation and reintegration of offenders, in particular through** **abolishing restrictive detention rules and maximizing contact with the outside world;** **iv) Take further steps to improve food and access to health care;** **v) Strengthen further non-custodial measures before and after trial.**	care and lack of medication as well as risk of contamination with tuberculosis and other diseases; The periods of pre-trial detention were extensive; several of his interviewees had spent up to three or four years in detention without a final judgment.	methodological seminars for leadership and personnel of subdivisions of the criminal prosecution. The seminars concerned different topics, the main emphasis being on the observance of the law by police officers in the criminal investigation work. The Ministry set up a committee on fundamental rights and freedoms of citizens. In the same context, it issued an ordinance on procedural time limits, according to which prosecution officers must provide a report to the Ministry with a view to control and coordinate the extension of periods of arrest. Furthermore, billboards on rights and obligations of persons suspected, detained, arrested and prosecuted were set up. Similarly, all sections of the prosecution authorities were provided with models of procedural documents, such as minutes/process-verbaux of apprehension and explanations of the rights and obligations of the detained persons, compiled by the General Prosecutor's Office. The preliminary report regarding the respect of rights of detained persons, elaborated by the Institute for Penal Reform within the project "Strengthening Criminal Justice System Reform in Moldova", was sent to the heads of criminal prosecution bodies of territorial subdivisions, in order to undertake measures to eliminate any violations in the future. The MIA participated in the working group set up by the General Prosecutor's Office, where the draft of the 'Instructions on how to grant visits and telephone conversations to persons detained in preventive arrest' was elaborated. A law was drafted to amend some legislative acts for the re-examination of the applicable disciplinary regime for judges, which represents a balance between the guarantee of the judges' independence and the necessity of sanctioning a judge in case his or her behaviour necessitates such action. In order to ensure the impartiality of judges, an amendment to the law is proposed, introducing an obligation of the judge to inform the president of the court and the Superior Council of Magistrates about any attempt to influence the process of decision making. Regarding conflicts of interest, a draft law is proposed to complete article 15 of the Law on the Status of Judges, which would stipulate the obligation of the judge to present a declaration regarding his or her personal interests. A reform of the judicial organizational system is proposed, which

		includes the abolition of specialized law courts (Chisinau Economical District Court, Military Court, Economical Appeals Court). The specialized courts' duties shall be taken over by the courts of common jurisdiction. In March 2009, a decision of the Plenum Supreme Court was issued, clarifying many aspects of case law concerning Article 3 ECHR. There have been 24 ECtHR judgments against Moldova under Article 3. Aspects of the Plenum decision include the requirement that detainees are registered; the registration of officials present; that the person not be interrogated in the absence of an "escort"; and an unbiased investigation into allegations of ill-treatment. The Superior Council has held seminars on Article 3 and the case law against Moldova. One of the objectives of the continuous training of judges is their conscious involvement in the eradication of torture. In this context, thematic seminars on preventive arrest were organized, especially for instruction judges, judges, prosecutors and lawyers. From the beginning of 2008 the Ministry of Justice has undertaken numerous activities in the field of promotion of human rights. Within the Training on Human Rights the following topics were included: "The minimum standards of maintenance of convicted persons", "The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", "The Universal Declaration of Human Rights" and "The national, regional and international mechanisms of human rights protection". The regimes in the penitentiaries have been established according to the Execution Code and are characteristic to each type of penitentiary, which represents different stages of the punishment of deprivation of liberty. Thus, the practice envisages different stages within the respective process. The first one (the initial regime), a reduced period compared to the total term of the sentence, represents the stage of 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 Council of Europe 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 (articles 269 to 273 of the 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 or her behaviour and his or her attitude towards labour (both remunerated and unremunerated), the convicted person may benefit from 22 long- and short-term visits during a year. The penitentiary program includes also educational training, labour and sport activities etc., which, along with social assistance granted by the administration, contribute to the reintegration of the convicted persons into society. According to articles 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 (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.
(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".	***Non-governmental sources:*** *Severe problems in securing funding to assist with the rehabilitation of torture victims exist.* **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.
(e) Women **i) Ensure adequate funding for the existing infrastructure to support victims of domestic violence and**	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	**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 twelve Youth Friendly Health Centres provide a psychologist, consultancy 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.**	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).	educational discussions, healthcare services for detecting diseases, as well as supervision and medical and psychological rehabilitation of victims of trafficking. During 2009, the Maternal Centre of Placement and Rehabilitation for young children from Chisinau municipality accepted a victim of trafficking and other five persons facing the risk of being trafficked. They have been provided with psychological counselling, medical examinations and rehabilitation assistance. A priority in the field of combating and preventing domestic violence is the creation and consolidation of the services that are currently underdeveloped and are provided mainly by NGOs. Three centres are highlighted: - the Maternal Centre “Pro Femina” (Hincesti) provides temporary placement and counselling services (psychological, social, legal) to mothers and children as victims of domestic violence; - the Family Crisis Centre “SOTIS” (Balti) provides counselling to victims of domestic violence (psychological, social, legal, medical); - the Centre for temporary placement of children at risk “The Way Home” (Balti) provides rehabilitation services to mothers and children as victims of domestic violence or victims of human trafficking. In the framework of the Project „Better Opportunities for Youth and Women”, financially supported by the International Agency for Development of the USA (USAID), ten multifunctional centres for social reintegration (with placement) were set up, which provide services for victims of human trafficking and victims of domestic violence. According to a Disposition by the Ministry of Health (no. 373-d of 15 June 2009), the Directors of Family Doctors Centres of Anenii Noi, Şoldăneşti, Rezina and Vulcăneşti districts shall ensure that deputy directors, responsible for providing healthcare to mothers and children, legal doctors, family doctors, and family doctors’ medical assistants participate in the course: “Protection and rehabilitation of victims of domestic violence and victims of trafficking in human beings. Multidisciplinary teams at the communitarian level” within the “Protection and rehabilitation of domestic violence victims” project. The participation in the above mentioned course strengthened the

		medical staff's capacities to solve issues related to domestic violence and trafficking in human beings. The Law on Prevention and Elimination of Violence in the Family entered into force on 18 September 2008. It includes important provisions on domestic violence, establishes an institutional framework with detailed responsibilities of the relevant authorities, provides for the creation of centres/services for the rehabilitation of victims and aggressors, and for complaints mechanisms, protection orders and punishment of aggressors. In order to implement this law, a draft law regarding the amendment and modification of a number of legal acts shall be enacted. The objective of this draft law is to amend the following normative acts: Criminal Code: - Introducing an article on the definition of the family member; - Introducing a new offence: violence in the family; - Introducing a new offence: sexual harassment; - Introducing an article related to rape in order to include matrimonial rape; - Introducing a new offence related to the violation of a protection order. Criminal Procedure Code: - Introducing a new article on the protection of the victim of domestic violence; - Stipulating the obligation of the prosecutor and court to verify if the victim of domestic violence expressed freely his or her consent for reconciliation. Civil Procedure Code: - Introducing a new chapter on special procedures for the application of protection actions in cases of domestic violence. The Ministry of Labour, Family and Social Protection has developed a draft of a Government Decision on approval of the Regulations regarding the organization and operation of centres for assistance and protection of victims of family violence which is also in the process of

		finalization. In the context of the development of a joint methodology for collecting statistical data regarding domestic violence, the project "Development of an integrated information system for management of data on violence within the family in the Republic of Moldova" was launched on 1 July 2008. It is funded by the Agency for International Assistance of the 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.
(f) Health-care facilities/psychiatric institutions **i) Consider ratifying the Convention on the Rights of Persons with Disabilities and** **ensure respect for the safeguards available to patients, in particular their right to free and informed consent in compliance with international standards (see also report A/63/175);** **ii) Allocate funds necessary to reform the system of psychiatric treatment.**	Persons in the psychiatric clinic visited by the Special Rapporteur, in particular those serving court sentences were held in apathy, subject to excessive use of tranquilizers; Lack of clarity of whether the use of tranquilizers ways based on free and informed consent by the patients; The medication given to the partly very young children, especially in terms of tranquilizers, was clearly not suitable; The Ministry of Health recognized that the treatment, which consisted almost exclusively of the use of strong neuroleptics was inadequate and indicated that psychiatric care would	**Government**: Currently the Ministry of Labour, Family and Social Protection undertakes a number of actions in order to prepare the ratification of the Convention on the Rights of Persons with Disabilities, including drafting a strategy on social inclusion of persons with disabilities and adjusting national legislation to international standards in this respect. Within the psychiatric medical institutions, patients are treated with minimum therapeutic doses of psychotropic substances and are involved in the rehabilitation process that includes ergo-therapy through attending the reading room and the gym. The reforms adopted by the administration of the psychiatric medical institutions led to creating and extending the recreational space. The patient is informed of the methods of treatment and the prescribed medicine and is asked to sign the "Consent on hospitalization, investigation and therapeutic procedures provided within the psychiatric hospital". If the patient is unable to sign the form, it will be signed by his or her close relative or legal representative.

	be individualized, new treatments developed, and modern drugs purchased once the necessary funds were made available;	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.
(g) Transnistrian region of the Republic of Moldova **i) In addition to the introduction and implementation of legal safeguards, such as *inter alia* the reduction of the length of police custody to a maximum of 48 hours and the medical examination of newly arrived detainees in places of detention, establish independent monitoring of places of detention;** **ii) Criminalize torture and abolish the death penalty de-jure.** **iii) Stop immediately the practice of solitary confinement for persons sentenced to death and to life imprisonment.**	Conditions in custody of the militia headquarters in Tiraspol were in violation of minimum international standards (overcrowded cells with few sleeping facilities, almost no daylight and ventilation, 24 hours artificial light, restricted access to food and very poor sanitary facilities); A "Human Rights Commissioner" had been instituted, but does not undertake monitoring visits to places of detention. Most of the Special Rapporteur's interlocutors expressed distrust in this institution; Whereas the Transnistrian "Criminal Code" did not 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	**Government**: The existence of a secessionist regime in the Eastern part of the Republic of Moldova 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 Moldovan Government periodically raises awareness of international organizations on cases of violations of human rights and fundamental freedoms by the separatist regime in Tiraspol, aiming at determining it to comply with the rigors of international standards in this matter.

	capital punishment and to life imprisonment and prescribed draconic restrictions on contacts with the outside world.	

Romania

Follow-up of the recommendations of the Special Rapporteur (Nigel Rodley) on Torture pursuant his visit to Romania from 19 to 29 April 1999 (E/CN.4/2000/9/Add.3, para. 57)

73. On 23 October 2009, the Special Rapporteur sent the table below to the Government of Romania requesting information and comments on the follow-up measures taken with regard to the implementation of the recommendations of his predecessor's visit in 1999. The Special Rapporteur regrets that the Government has not provided any input. He looks forward to receiving information on Romania's efforts to follow-up to his recommendations and reaffirms that he stands ready to assist the Government of Romania in its efforts to prevent and combat torture and ill-treatment.

74. The Special Rapporteur welcomes Romania's legislative, regulatory and institutional efforts in combating torture and ill-treatment and improving the situation of persons deprived of their liberty. However, he is concerned about reports of ill-treatment and police brutality against members of the Roma minority and urges Romania to undertake effective and impartial investigations of such allegations.

75. The Special Rapporteur regrets that he has not been provided with information about the implementation of his recommendations. He has not received any statistics on the number of pre-trial and convicted prisoners, the application of non-custodial measures and the use of video and audio taping in interrogation rooms. He has furthermore obtained no information on the availability of ex officio lawyers and a legal aid scheme.

76. Welcoming the work of the Ombudsman, the Special Rapporteur reiterates the need to grant the Office of the Ombudsman the power to investigate judicial decisions and to sanction any official who refuses to cooperate with the investigation of a complaint.

77. He furthermore repeats the need for institutional changes to prevent torture and ill-treatment. Pre-trial detention centres should be placed under the authority of the Ministry of Justice and the Forensic Institute under the jurisdiction of the Ministry of Health. Regrettably, no information on legislative steps in that regard has been received.

Recommendation (E/CN.4/2000/9/Add.3)	**Situation during visit** (E/CN.4/2000/9/Add.3)	**Steps taken in previous years** (see E/CN.4/2006/6/Add.2 and A/HRC/4/33/Add.2)	**Information received in the reporting period**
(a) As a matter of immediate priority, action should be taken to remove from confinement in detention centres on remand all persons detained in excess of the officially proclaimed capacity of existing institutions. This recommendation could probably be substantially achieved by ordering the release pending trial of all non-violent first-time offenders.	Extreme overcrowding existed in all prisons and created conditions which may be described as inhumane. In some cases prisons housed more than double their capacity. There were not enough beds for the number of persons per cell, requiring the inmates to sleep in shifts. In general, the most severe overcrowding involved males over the age of 21.	There has been a significant decrease in the number of remand prisoners. This reduction is due in part to amendments to the provisions on remanding a person in custody in the Penal Procedure Code. At the end of 2004, the overall number of persons detained in detention facilities had decreased to 39.031, compared with 49.790 in 1999. Temporary police detention facilities, which did not meet the minimum conditions, were definitively or temporarily closed down. Law No. 543/2002 provided for the release of more than 3,000 non-recidivist prisoners, who had been sentenced to up to five years imprisonment. In order to eliminate overcrowding at temporary police detention facilities, a protocol was concluded between the Ministry of Administration and Interior and the National Administration of Penitentiaries, regulating the transfer of convicted persons to penitentiaries. Following amendments to the criminal procedural legislation, minor offenders, first time offenders and persons who committed non-	

		violent crimes who do not pose a concrete threat to public safety may be released on bail during the investigation. The responsibility to order pre-trial arrest was passed from the prosecutor to the judge. Act no. 275/2006 establishes special sections for preventive detention within penitentiaries. It also prescribes that preventive temporary police detention during a criminal investigation must be executed in special facilities for preventive, temporary detention under the authority of the Ministry of Interior and Administration. Preventive detention during trial proceedings is administered in special facilities under the authority of the National Administration of Penitentiaries.	
(b) Much greater use should be made of existing provisions in the law for the release of suspects on bail, especially suspected first-time, non-violent offenders. Instructions or guidelines to this effect should be given by the Minister of the Interior to investigators from his Ministry, and by the Minister of Justice to all prosecutors and judges.	The Minister of Justice indicated to the Special Rapporteur that overcrowding could be reduced by changing sentencing to allow for bail. In this regard, he pointed out that both the Senate and the Chamber of Deputies had passed a law to have misdemeanours punished by community service.	Romanian legislation has been amended in this respect. Currently, during criminal investigation and the trial period, the suspect is detained only exceptionally during these periods. Only a judge has the right to detain a suspect in accordance with the existing legal framework. According to article 1604 of the Criminal Procedure Code, release on bail can be granted by the court upon request, both during criminal investigation and during trial. The amendments to the Criminal Procedure Code have led to a decrease in the number of persons detained in	

		police detention facilities from approximately 4.181 in 1999 to 1.639 at present.	
(c) The 1974 order regulating conditions of detention in police lock-ups should be immediately repealed and replaced with legislation that is available to the public.	Order 0410, on the regulation of conditions of pre-trial detention, which dates from 1974, remained classified. The Minister of State of the Ministry of the Interior informed the Special Rapporteur that a draft law has been presented to Parliament which would be available to the public. In the meantime, the current law, which is secret, remained in effect.	Order no. 0410/1974 was repealed by instructions of the Minister of Interior and was replaced by Order no. 988/2005, on the Regulations governing detention and the functioning of preventive detention facilities in police units under the Ministry of Administration and Interior, which publicly available. Currently, sentences concerning deprivation of liberty are executed in accordance with Act no. 275/2006, which entered into force on 18 October 2006, repeals both Act no. 23/1969, with the exception of the provisions on the execution of sentences at the work place and the Emergency Ordinance no. 56/2003 on the rights of persons carrying out sentences of deprivation of liberty. A new set of regulations on detention and preventive detention facilities is being drafted. In preparing them, recommendations by the European Commission and the Council of Europe's Committee on the Prevention of Torture (CPT), as well as international provisions in the field of protecting human rights were taken into account.	
(d) Prosecutors should regularly carry	Civilian prosecutors may inspect the	The public prosecutor's offices	

out inspections, including unannounced visits, of all places of detention. In this regard, a protocol should be established to provide guidelines on the measures to be taken during such visits. Written reports should be submitted for each visit. Similarly, the General Police Inspectorate should establish effective procedures for internal monitoring of the behaviour and disciplining of their agents, in particular with a view to eliminating practices of torture and ill-treatment. In addition, non-governmental organizations and other parts of civil society should be allowed to visit prisons.	police lock-ups or prisons at any time. Similarly, the General Inspectorate of Police carries out spot-checks of police lock-ups. However, the Prosecutor General admitted to the Special Rapporteur that the heavy caseloads of the civilian prosecutors have made it more difficult to carry out such inspections.	attached to first instance courts and tribunals organize monthly checks on compliance with procedural requirements in places where custodial penalties are being served. At all territorial structures and subordinated educational units, the "Guide on Best Practices in police work" issued by the Committee for Human Rights and Humanitarian Law of the General Inspectorate of Police (GIRP), regarding forbidden practices such as torture and ill treatment has been distributed. Furthermore, various programs have been developed at the Institute for Crime Prevention and Research, aimed at training police officers in human rights and conflict resolution in multicultural communities, conflict management and preventing discrimination. According to the provisions of article 135 of the Regulations governing detention and preventive detention facilities in Police Units subordinated to the Ministry of Administration and Interior, "detention facilities may be inspected also by representatives of human rights nongovernmental organizations, in their territorial area of responsibility and with the approval of the general inspector of Romanian police". Article 3 of Act no. 218/2002 on	

		the Romanian Police provides that "in order to carry out its mission, the Romanian police cooperates with public institutions and collaborates with non-governmental organizations and associations, as well as with physical and legal persons, within the existing legal framework". Following these provisions, GIRP has signed protocols with several human rights NGOs allowing them to visit the arrest facilities subordinated to GIRP. Through GIRP Order no. 408/2004, the Committee for Human Rights and Humanitarian Law was established. This Committee is responsible for analysing and answering the requests submitted by persons, structures or national and international organisations acting in this field, by presenting them with materials and opinions related to the claims of human rights infringements committed by Romanian police officers.	

(e) Legislation should be amended to place pre-trial detention centres under the authority of the Ministry of Justice.	Several government interlocutors expressed the view that the pre-trial detention centres should be placed under the authority of the Ministry of Justice, rather than the Ministry of the Interior. A suspect may not feel secure in retracting his confession when he knows he will be returned to police custody following his interrogation by the prosecutor.	The Government informed that Act no. 275/2006 establishes special sections for preventive detention within penitentiaries. It also prescribes that preventive temporary police detention during criminal investigation must be executed in special facilities for preventive temporary detention under the authority of the Ministry of Interior and Administration. Preventive detention during trial proceedings is administered in special facilities under the authority of the National Administration of Penitentiaries.	
(f) Video and audio taping of proceedings in police interrogation rooms should be considered.		Article 64(1) and Article 91 of the Penal Procedure Code permit the use of video and audio recordings as evidence in court proceedings. According to information received from NGOs, legislation on the use of video and audio taping has not been introduced. In practice, video and audio taping does not take place in police interrogation rooms. The Government claims that this is due to lack of technical means.	
(g) Legislation should be amended to transfer the power to investigate claims of police abuse and torture from military to civilian prosecutors. The investigation of allegations should be conducted by the prosecutor himself or herself and the necessary staff should be provided for this	The investigation of police abuse is under the jurisdiction of military prosecutors. This system was widely criticized by non-governmental organizations and lawyers because there is a perception that the military prosecutors are not independent of the police.	The adoption of Laws No. 218 and No.360 led to the demilitarization of police structures in 2002. As a result, civilian prosecutors are now responsible for investigating claims of police abuse. Allegations of police abuse that stem from the period before the demilitarization	

purpose.	It was also of concern that the military prosecutors are assisted by the police in these investigations, and that there are only 80 military prosecutors in the entire country, each of whom on average works on over 100 active files.	of the police are still investigated by military structures.	
(h) In the interim, civilian prosecutors should refer all allegations of police abuse to the military prosecutor in an expeditious manner; military prosecutors should diligently investigate all allegations of police abuse made by detainees.	A number of the detainees spoken to had filed allegations against the police, but had not had any response.	As a result of Law No. 360/2002 and Law No. 281/2003, the power to investigate all offences committed by police officers has been transferred from the military prosecutor to the civilian prosecutor.	
(i) Prosecutors and the judiciary should speed up the trials and appeals of public officials indicted for torture or ill-treatment; sentences should be commensurate with the gravity of the crime.	While there have been a few cases in which police officers have been prosecuted and sentenced, in most cases the investigations result in decisions not to prosecute.	The Government informed that the new Criminal Code and the new Criminal Procedure Code, which are to be elaborated by the Ministry of Justice, will include measures to increase the speed of criminal cases, including those relating to torture.	***Non-governmental sources:*** *Several cases of ill-treatment and police brutality, particularly against members of the Roma minority, are not effectively and impartially investigated. Criminal investigations often lead to a decision not to prosecute cases or are lost in the Romanian courts.* *Not one perpetrator has been prosecuted for human rights violations committed during the 45 years of the communist regime.*
(j) Civilian prosecutors should disregard any evidence obtained by illegal means and judges should be diligent in ensuring that all incriminating evidence obtained by such means is identified and excluded from the trial.	Article 68 of the Code of Criminal Procedure provides that "it is forbidden to use violence, threats, or any other constraints, as well as promises or encouragement, for the purpose of obtaining evidence". Evidence obtained by torture or ill-treatment is inadmissible	Article 68 of the Criminal Procedure Code prohibits the use of force with the aim of obtaining evidence. Therefore, the evidence obtained by violating legal provisions cannot be taken into account while examining cases.	

	in a court of law. The Procurator General indicated that if a suspect complains to a prosecutor that he has been subjected to violence in order to coerce a confession, the prosecutor may not use that statement, but he may take another statement.		
(k) Any public official indicted for abuse or torture should be suspended from duty pending trial.		Article 65 of Law No. 360/2002 was amended in 2004 to provide that the decision as to whether a police officer is to be removed from his post will not be made until after a final judgment has been rendered. According to Act no. 293/2004 "On the Status of Public Officers of the National Administration of the Penitentiaries due to the reorganization of the General Directorate of Penitentiaries and its units" an officer of the penitentiary administration against whom charges have been brought who is on temporary release on bail, can work only with the written approval of the head of the unit. The officer continues to be paid according to his professional background but at the basic level of salary. When in preventive detention, an officer of the penitentiary administration is suspended from his duties, has to hand over his weapons and badge, and does not enjoy any rights foreseen by the aforementioned	

		law.	
(l) Priority should be given to enhancing and strengthening the training of all police officials, including non-commissioned officers; the Government should give consideration to requesting assistance from the Office of the High Commissioner for Human Rights to train police officials.	Incidents of torture were most common among those non-commissioned officers who receive little training. This view would seem to be corroborated by the fact that there appears to be a more serious problem in rural communities, where the police have less training.	At all territorial structures and subordinated educational units, the "Guide on Best Practices in police work" has been distributed. Furthermore, various programs have been developed at the Institute for Crime Prevention and Research, aimed at training police officers in human rights and conflict resolution in multicultural communities, conflict management and preventing discrimination.	
(m) Given the numerous reports of inadequate legal counsel provided by ex officio lawyers, measures should be taken to improve legal aid services.	Although suspects have a right to an attorney at any time, many claimed they were not made aware of that right and that the ex officio lawyer was only present when the suspect was brought before the prosecutor to make a statement. In several cases, the suspects were not even aware at the time that a lawyer was present, because the ex officio lawyers did not provide any legal advice or guidance.	Following the conclusion of a Protocol between the Ministry of Justice and the National Union of the Lawyers of Romania, on 23 June 2005, financial expenditures for ex officio lawyers have increased significantly. Moreover, judicial assistance has been extended to all fields, including individual complaints against the state.	
(n) Legislation should be amended to allow for the presence of legal counsel in the first 24 hours of detention prior to the issue of an arrest warrant; moreover, police need to be issued guidelines on informing criminal suspects of their right to defence counsel.	Romanian law provides that a lawyer must be present throughout the criminal procedures. However, the criminal procedure does not formally begin until an arrest warrant has been issued by the prosecutor, and therefore, an individual does not have access to a lawyer while being held for the first 24 hours under a police custody warrant. Suspects have also claimed that they were not informed by the police of their right to counsel.	According to article 6 of the Criminal Procedure Code, the judicial authorities, including police officers, have the obligation to inform the suspects or the accused immediately, before their interrogation, about the charges brought against them, the legal qualification of the charges and their rights, including the right to be assisted by a defence lawyer. The minutes of the interrogations have to expressly record the above	

		mentioned obligation. According to article 137 (1-1) of the Criminal Procedure Code, any person who is detained or arrested should be immediately informed about the reasons of the arrest. The arrestee must be informed about the charges brought against him/her in the presence of a defence counsel, as soon as possible. In the case of a preventive arrest of a suspect or accused, the judge informs a member of his family or another person designated by the suspect or accused within 24 hours. The same right applies to a person in police detention who can ask for a member of his family or another person designated by him/her to be informed. According to article 143 (1-1) of the Criminal Procedure Code, at the moment of arrest, the criminal investigators have the obligation to inform the accused about his/her right to hire a defence lawyer, as well as about the right not to make any declaration and to warn him/her that any declaration he/she makes could be used against him/her.	
(o) The Forensic Institute should be placed under the exclusive jurisdiction of the Ministry of Health, independent of the Ministry of the Interior and the Ministry of Justice. All forensic	Very few cases of police ill-treatment are submitted to the Forensic Institute, and only a medical certificate issued by a forensic doctor is admissible in court. A medical certificate obtained from a		

doctors should be properly trained in identifying the sequelae of physical torture or ill-treatment. The examinations of medical doctors selected by the detainees should be given weight in any court proceedings (relating to the detainees or to officials accused of torture or ill-treatment) equivalent to that accorded to officially employed doctors having comparable qualifications. Protocols should be established to assist forensic doctors to ensure that the medical examination of detainees is comprehensive. Medical certificates should never be handed to the police or to the detainee while in the custody of the police, but should be made available to the detainee once out of their hands and to his or her lawyer immediately.	private physician or a civil hospital should, however, be taken into account by the forensic doctor when he issues his or her own certificate. The Special Rapporteur received numerous reports alleging that medical certificates were frequently falsified to cover-up ill- treatment by the police. The police may request a new certificate to be issued by a higher-ranking forensic doctor if they are not satisfied with the initial forensic certificate issued. The alleged victim may also request the Forensic Institute to issue a new certificate, but must pay the cost of 8,500 lei.		
(p) The Ombudsman should be granted powers to sanction any official who refuses to cooperate with the investigation of a complaint. The Office of the Ombudsman should be provided with the necessary financial and human resources to carry out its functions. A public awareness campaign should be established to make the public at large aware of the role that the Office can play in investigating complaints of police abuse.	The Ombudsman has the power, inter alia, “to take up and distribute complaints filed by persons who have been aggrieved by public administration authorities through violations of their civic rights and freedoms, and to decide on such complaints”. He or she may take up cases on his or her own initiative or on the basis of complaints lodged by persons. However, the Office is forbidden to investigate judicial issues and, therefore, it may not review a decision of a court or prosecutors. The Office may only bring a case to the attention of the Prosecutor General if this is deemed necessary. Furthermore, despite a law mandating public authorities to comply with the	Some progress was achieved with regard to the relationship of the People’s Advocate with the executive power, so that it is now in steady contact with the Minister in charge of the relationship with the Parliament, with the Public Finances Ministry, as well with the police authorities and the Penitentiary Administration. Raising the awareness of both citizens and public authorities towards the People’s Advocate Office is dealt with by a MATRA Project, in cooperation with the National Ombudsman of the Netherlands. Twelve territorial	

	Office of the Ombudsman, it has no capacity to sanction a public authority that fails to cooperate, and any decision taken by the Ombudsman is a non-binding recommendation. Only a small percentage of the cases that the Office of the Ombudsman handles involve allegations of police abuse, as the majority of cases concern the restitution of private property.	offices have been established in order to facilitate the access of citizens to the People's Advocate Institution and to better fulfil its mandate.	

Spain

Seguimiento a 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)

78. El 23 de octubre de 2009, el Relator Especial envió la tabla que se encuentra abajo al Gobierno de España solicitando información y comentarios sobre las medidas adoptadas con respecto a la aplicación de sus recomendaciones. El Gobierno proporciono información extensa el 20 de noviembre de 2009. El Relator Especial quisiera agradecerle al Gobierno por la información detallada proporcionada, y le reitera su disposición para ayudarle en los esfuerzos para prevenir y combatir la tortura y los malos tratos.

79. Haciendo eco de las observaciones del Comité contra la Tortura de 19 de noviembre de 2009 (véase CAT/C/ESP/CO/5), el Relator Especial toma nota de los esfuerzos positivos para reformar la legislación, las políticas y los procedimientos de protección de los derechos humanos, en particular aquellos relacionados con la prohibición de la tortura y los malos tratos, incluyendo las medidas relevantes del Plan de Derechos Humanos y la reforma a la definición de tortura en el Código Penal. También toma nota de las disposiciones adoptadas para mejorar las garantías de los detenidos bajo el régimen de incomunicación. En concordancia con el Comité, el Relator Especial considera que existen dos elementos adicionales deben incluirse en la definición para que sea plenamente conforme al artículo 1 de la Convención, incluido que el acto de tortura pueda ser cometido por "otra persona en el ejercicio de funciones públicas" y que la finalidad de la tortura puede incluir el fin "de intimidar o coaccionar a esa persona o a otras". Asimismo, con relación a la detención incomunicada, coincide en "que el régimen de incomunicación utilizado por el Estado parte en los delitos de terrorismo y banda armada, que puede llegar a los 13 días, vulnera las salvaguardas propias de un estado de derecho contra los malos tratos y actos de tortura" y reitera su preocupación por la limitación de ciertas garantías durante este periodo.

80. El Relator Especial toma nota de las observaciones del Relator Especial sobre la promoción y la protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo (A/HRC/10/3/Add.2), en particular las relacionadas con: la posibilidad de que se inflija un trato prohibido al detenido al mantener el régimen de incomunicación; los informes de que la tortura y los malos tratos durante la incomunicación tiendan a producirse durante los interrogatorios, o en algunos casos durante el traslado a Madrid; sentencias recientes del Tribunal Constitucional en las que se recoge la doctrina de la obligación de actuar con especial diligencia en las investigaciones judiciales dada la gravedad del delito de torturas y su dificultad probatoria; y con la dispersión de los detenidos del País Vasco, lo cual presenta un riesgo y una carga económica para la familia y en algunos casos presenta un obstáculo para la preparación de la defensa.

81. El Relator Especial encomia la inclusión de la erradicación de la tortura como uno de los objetivos concretos de la política exterior en el Plan de Derechos Humanos. El Relator Especial también agradece las estadísticas presentadas por el Gobierno en relación con la aplicación de los tipos penales de torturas, sin embargo, agradecería información sobre las decisiones del Tribunal Supremo al respecto, debido a que, según los informes recibidos, no habría habido ninguna denuncia de tortura que hubiera terminado en una condena judicial.

82. El Relator Especial toma nota con satisfacción del Proyecto de Ley del Mecanismo Nacional de Prevención contra la tortura que se encuentra en estudio en el Congreso Nacional y exhorta a los miembros del Congreso a trabajar para su rápida aprobación y

efectiva aplicación. Una comisión verdaderamente independiente y eficaz sería un paso adelante decisivo en la lucha contra la tortura y los malos tratos.

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 y A/HRC/7/3/Add.2)	**Medidas para la implementación de las recomendaciones tomadas desde diciembre 2007/situación actual**
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.		**2008:** El Gobierno confirma su compromiso con la defensa y ultranza 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 par 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. En general, las "fuentes no gubernamentales" confirman plenamente la asunción por las autoridades del Estado español de una política de "tolerancia cero" contra la tortura, a través de distintas iniciativas y declaraciones institucionales, tanto a nivel nacional como internacional. El Gobierno precisa que no tiene competencias sobre las Policías locales que dependen de los Ayuntamientos y de los Alcaldes, los cuales son elegidos democráticamente. **2008: Fuentes no gubernamentales:** No se observaron avances significativos durante el	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).

		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. **2007: Fuentes no gubernamentales:** A nivel nacional se han producido algunas declaraciones institucionales en los últimos dos años. Sin embargo, siguen produciéndose declaraciones públicas de altos responsables políticos y policiales que niegan que en España se torture o que minimizan la gravedad de la situación. Son habituales las declaraciones públicas de apoyo a funcionarios denunciados o inculpados por tortura y/o malos tratos. **2006: Fuentes no gubernamentales:** Las autoridades no cuestionan el régimen de incomunicación y tachan de falsa todas las denuncias por tortura presentadas en los Juzgados. **2005:** El Gobierno informó que la defensa y promoción de los derechos humanos constituye uno de los ejes fundamentales de la política exterior. **2005: Fuentes no gubernamentales:** Las valoraciones de representantes políticos en declaraciones públicas tras la visita, así como el tratamiento de los principales medios de comunicación fueron en todo momento de ocultación.	

Elaborar un plan general para impedir y suprimir la tortura y otras formas de tratos o castigos crueles, inhumanos o degradantes		**2008:** El Gobierno informó que estaba prevista la elaboración de un nuevo manual para la actuación operativa en supuestos de custodia policial. La elaboración del Plan Nacional de Derechos Humanos está siendo dirigida y coordinada por la Vicepresidencia. 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. Existen dos modalidades de régimen cerrado: a) Primer grado: protagonistas o inductores de alteraciones regimentares muy graves que hayan puesto en peligro la vida o integridad de los funcionarios, autoridades, otros internos o personas ajenas a la Institución, y en los que se evidencia una peligrosidad extrema. b) Módulos cerrados: penados clasificados en primer grado que muestren una manifiesta inadaptación a los regímenes comunes. 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	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 de los mismos, incluyendo la tortura. El Plan señala la erradicación de la tortura como uno de los objetivos concretos de la política exterior. El Plan establece 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 Fuerzas y Cuerpos de Seguridad del Estados (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). *El Plan de Derechos Humanos, de diciembre de 2008, indica que "el Ministerio del Interior asume con firmeza la decisión de fomentar la cultura del respeto a ultranza de los derechos humanos". Las medidas 94 a 97 y 101 a 104 se orientan a reforzar las garantías legales del detenido, mejorar la eficacia de la Inspección de Personal y Servicios de Seguridad del Ministerio del Interior y promover la formación en derechos humanos de los miembros de las Fuerzas y Cuerpos de Seguridad.*

		de Internos de Especial Seguimiento (FIES). En la actualidad no hay dudas sobre la posible ilegalidad o influencia automática sobre el régimen o el tratamiento penitenciario del FIES. En 2006 se actualizó la instrucción sobre los ficheros. Esta no ha sido impugnada por oponerse al ordenamiento jurídico. El primer borrador del Plan de Derechos Humanos se envió el 16 de enero de 2008 a diversas Instituciones y ONGs, pidiendo la formulación de comentarios y sugerencias para su mejora. **2008: Fuentes no gubernamentales:** Durante el 2007 continuaron sin recibir ninguna información sobre la evolución del "Plan Nacional de Derechos Humanos", anunciado en junio de 2006. **2007:** El Gobierno afirma que los derechos de las personas detenidas cuentan ya con un marco protector. Los casos de desviación en la actuación policial son escasísimos y se han reforzado los instrumentos para garantizar su erradicación. **2007: Fuentes no gubernamentales:** El protocolo que el Gobierno Vasco puso en marcha no ha impedido la aparición de nuevas denuncias. No existe información sobre el protocolo para determinar la actuación de los Mossos d'Esquadra en la atención a enfermos mentales. El régimen de FIES sigue en vigor después de que un recurso interpuesto ante la	

		Audiencia Nacional fuera desestimado. La sentencia que desestimó este recurso ha sido recurrida en casación ante el Tribunal Supremo. **2006: Fuentes no gubernamentales:** No se ha implementado esta recomendación. En torno al Protocolo diseñado por el Gobierno Autónomo Vasco, en ningún caso restringirían la aplicación de la incomunicación y los familiares de los denunciantes se han quejado de su inoperatividad. **2005:** El Gobierno informó que proseguiría la política de colaboración con las instituciones internacionales que trabajan en el ámbito de la tortura. **2005: Fuentes no gubernamentales:** No se habría implementado esta recomendación. El Protocolo puesto en marcha por el Gobierno Autónomo vasco presenta deficiencias.	
Suprimir el régimen de incomunicación.	La evolución jurídica reciente en España parece ignorar la opinión internacional contra la detención en régimen de incomunicación y tiende a ir en dirección opuesta.	**2007:** 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 los siguientes derechos: a procurarse comodidades u ocupaciones compatibles con el objeto de su detención; a ser visitado por ministro de su religión, médico de su elección, parientes o personas que le puedan dar consejos; a	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, entre otras, el riesgo de que se alerte a personas sospechosas de participación en el delito y todavía no arrestadas. El régimen de incomunicación es sumamente garantista, pues exige que en

		correspondencia y comunicación; a que no se adopte contra él ninguna medida extraordinaria de seguridad; a designar abogado de su elección; a que se ponga en conocimiento del familiar el hecho de la detención y lugar de custodia; y a que el abogado que le defienda se entreviste con él una vez terminada la diligencia en la que hubiere intervenido. 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 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.	todo caso una 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 por parte del Juez de la situación del detenido. 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 las siguientes medidas para mejorar las garantías de los detenidos sometidos al régimen de incomunicación. Estas incluyen: a) prohibir expresamente la aplicación del régimen de incomunicación a los menores de edad; b) dar cumplimiento a la recomendación de organismos de derechos humanos al grabar, en video u otro soporte audiovisual, todo el tiempo de permanencia en dependencias policiales del detenido sometido a régimen de incomunicación; c) garantizar el derecho de ser reconocido por otro médico adscrito al sistema publico de salud, además del médico forense libremente designado por el titular del futuro MNP. *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.*

		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 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.	*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 recientemente rechazó una propuesta de ley que solicitaba la derogación del régimen de incomunicación.* Pese a que en la legislación española se han establecido ciertas salvaguardias jurídicas al respecto, como la asistencia de un abogado designado de oficio, el Relator Especial opina que el mantenimiento de ese régimen resulta altamente problemático y abre la posibilidad de que se inflija un trato prohibido al detenido y, al mismo tiempo, expone a España a tener que responder a denuncias de malos tratos a detenidos (A/HRC/10/3/Add.2).

		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: Fuentes no gubernamentales:** durante el periodo que dura la detención incomunicada, los médicos forenses de la Audiencia Nacional o de los Juzgados ordinarios examinan a los detenidos. **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 por parte de funcionarios de policía 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	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. En la práctica, no existen casos en los que la incomunicación dure más de 5 días, y ninguno en 2009. Para lograr un adecuado equilibrio entre los intereses de prevención de atentados terroristas y la defensa del detenido, la legislación prevé: 1) Que la asistencia se lleve a cabo por un abogado de oficio designado por una corporación profesional independiente; y 2) Que el abogado de oficio elegido posea unos especiales requisitos de cualificación profesional. 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

		mayoría de estos incidentes para evitar perjuicios a las personas a las que se pretende defender. Existen denuncias de que el abogado de oficio no se identifica ante el detenido en régimen de incomunicación. Existen determinadas irregularidades en la prestación de la asistencia letrada. **2007:** El Gobierno señala que el sistema legal español garantiza el acceso rápido y 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 ya que el sistema vigente se asienta en la imparcialidad y la pericia de la asistencia médica que proporciona el médico forense, como institución adscrita a la administración de justicia. 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 el médico de una entidad privada. 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	tribunales, además de poder presentar las denuncias correspondientes. Resultaría ingenuo desconocer el hecho de que las organizaciones terroristas cuentan con su propia red de apoyo y asistencia letrada a los miembros de la organización. La desconexión del detenido de esta red resulta, en muchos casos, necesaria para garantizar una declaración libre y sin coacciones. Los médicos forenses prestan servicio a la Administración de Justicia tras ser seleccionados mediante concurso público conforme a los principios de mérito y capacidad y a sus conocimientos técnicos y legales. 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. Si el detenido presenta algún signo de violencia externa durante el reconocimiento, el médico tiene que hacerla constar en el parte de lesiones, que será remitida al Juez. 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 para su evaluación. En la práctica, los Jueces Centrales de Instrucción acuerdan sistemáticamente la comunicación a las familias de los

		investigación. En estos casos, el retraso en la comunicación a los familiares ha encontrado plena justificación en el Tribunal Constitucional. **2007: Fuentes no gubernamentales:** Siguen sin garantizarse estos derechos. No se les permite ser asistidas por un letrado de su elección. Se continúa impidiendo que el abogado se comunique con su cliente antes de la declaración o durante ella. Se han registrado casos en que los abogados defensores son amenazados por los jueces que interrogan al detenido. El reconocimiento de la persona detenida por un médico de su elección es sistemáticamente rechazado. Los informes emitidos por los médicos forenses estatales siguen siendo deficientes. Finalmente, la Guardia Civil y la Policía Nacional no informan a los familiares de los detenidos sobre su paradero o las circunstancias de la detención. La Policía Autónoma Vasca es la única que dispone de un sistema telefónico de atención a las familias de los detenidos bajo incomunicación. **2006: Fuentes no gubernamentales:** no se ha observado ninguna variación en referencia a esta recomendación. El derecho de acceso a abogado se ve suprimido en cualquier detención bajo régimen de incomunicación. No se permite la visita de ningún otro médico externo ni de la confianza del detenido. **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	detenidos del lugar de la detención y de los traslados que se llevan a cabo. *Fuentes no gubernamentales: Al final del interrogatorio policial, el abogado de la persona detenida está autorizado a hacerle preguntas y a registrarlas como parte de la declaración formal. Sin embargo, en ocasiones los agentes del ordenan a los abogados a que se abstengan de intervenir. Los abogados que intentan hablar o que piden el número de identificación a los agentes presentes reciben un trato agresivo e intimidatorio.* *Es frecuente que haya policías presentes durante el examen médico del detenido, por lo que puede sentirse intimidado y guardar silencio sobre los malos tratos sufridos. Por ello, los informes médicos no siempre reflejan de manera exacta y completa el estado 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.*

		la asistencia letrada, pero no de su contenido esencial. El abogado de oficio está presente en las diligencias policiales y judiciales de declaración y puede solicitar la declaración o ampliación de los extremos que considere convenientes, así como presentar quejas o denuncias por cualquier incidencia sucedida durante las diligencias; solicitar que se informe al detenido de sus derechos; solicitar que se proceda al reconocimiento médico forense; y recurrir en nombre de su cliente los distintos autos que hasta la fase de imputado gobiernen su situación. De acuerdo con el artículo 479 de la Ley Orgánica del Poder Judicial, los Médicos Forenses son profesionales de la medicina constituidos en un Cuerpo Nacional de Titulados Superiores al servicio de la Administración de Justicia. Son destinados a los juzgados mediante un sistema objetivo basado en la antigüedad. La decisión judicial que acuerda la incomunicación impone, al menos, una visita diaria del médico forense al incomunicado, practicar los reconocimientos en un lugar apropiado y a solas con el detenido y emitir un informe escrito que se remite al Juzgado y consta en la causa. **2005: Fuentes no gubernamentales:** No se habría observado ninguna variación en referencia a esta recomendación.	
Todo interrogatorio debería comenzar con la identificación de las personas presentes. Los interrogatorios deberían ser	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	**2008:** Actualmente existe un proyecto en fase de estudio con relación a la viabilidad de extender la video-vigilancia a determinadas dependencias policiales. Con respecto a los derechos del detenido en	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

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.	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.	la toma de declaración, el Gobierno informó sobre las garantías incluidas en la Instrucción 12/2007 de la Secretaría de Estado de Seguridad. El ordenamiento jurídico prohíbe terminantemente el uso de la tortura o cualquier exceso físico o psíquico para obtener una declaración del detenido. El empleo de tales medios constituye una infracción y será perseguida. Si tales hechos delictivos se cometen por funcionarios policiales, es imprescindible que las denuncias contengan datos 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. Existe la necesidad de cumplir con la legislación española en materia de protección de la intimidad y custodia de registros que contengan datos personales. **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 que 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	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 de propuesta de instalar cámaras de video-vigilancia durante el periodo de incomunicación, no prevé la grabación en las salas de interrogatorio. Asimismo, la grabación no es obligatoria, y sólo se realiza 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

		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. La utilización de vendas o capuchas durante los interrogatorios no sólo está expresamente prohibida, sino que tal actuación constituye un delito. **2007: Fuente no gubernamentales:** No ha habido modificación en este punto y las propuestas que se han efectuadas han sido rechazadas por algunos sindicatos policiales. Diversas causas contra funcionarios públicos por torturas y/o malos tratos, han tenido que ser archivadas porque se "extravían" o se "borran" las cintas en las que se habían 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	Madrid (A/HRC/10/3/Add.2).

		identificar a los intervinientes se aplica no sólo respecto al interrogatorio policial de un detenido, sino a cualquier diligencia practicada en dependencias policiales. La grabación del desarrollo del interrogatorio contravendría disposiciones sobre el derecho a la intimidad. **2005: Fuentes no gubernamentales:** No se habría observado ninguna variación en referencia a esta recomendación en las diligencias efectuadas por la Policía Nacional o por la Guardia Civil.	
Investigar las denuncias e informes de tortura y malos tratos. Tomar medidas legales contra los funcionarios públicos 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.	**2008: Fuentes no gubernamentales:** 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. **2008:** El Gobierno informó sobre la Instrucción 12/2007, relativa a la inmediata detección, seguimiento y control de aquellos casos o asuntos donde pudiera haber una extralimitación o vulneración de los derechos de las personas bajo custodia. Los retrasos durante la investigación de las denuncias de malos tratos responden a problemas estructurales del sistema de Justicia español. Según el ordenamiento jurídico español, los Jueces gozan de plena autonomía y capacidad de decisión.	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 correspondiente. En la investigación judicial, el Juez ordena a la Policía Judicial la realización de las diligencias de averiguación oportunas. Los funcionarios policiales responden solamente a las órdenes e instrucciones del Juez, sin tener que dar cuenta de ellas 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

		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. **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. La Inspección General Penitenciaria para funcionarios de instituciones penitenciarias se encarga de velar por el cumplimiento de los derechos humanos en lo que se refiere a la actuación de las Fuerzas y Cuerpos de la Seguridad. **2007: Fuentes no gubernamentales:** No se aprecia ningún avance en este sentido. Es habitual que transcurran varios meses o más de un año entre el momento en que se formula una denuncia por torturas y el momento en que el juzgado comienza la investigación, toma declaración al denunciante y ordena su reconocimiento por un médico forense. La aplicación de medidas cautelares contra los funcionarios imputados por tortura y/o malos tratos no es habitual. Incluso en casos de imputación, estos son reincorporados al servicio debido la larga duración de la investigación judicial. En ocasiones, son los tribunales de justicia quienes ordenan su reincorporación, anulando la resolución administrativa apartándolos del servicio. En varios casos, la investigación es encomendada a los propios agresores o a	tribunales supera los 250. No se critica la utilización de los instrumentos estadísticos y epidemiológicos, sino la poca representatividad de los datos sobre los que se aplican. La caída del número de denuncias en 2006 es compatible con una retirada temporal de la instrucción por parte del grupo terrorista ETA durante ese periodo. *Fuentes no gubernamentales: Entre 2000 y 2008, 634 de las 957 personas detenidas en régimen de incomunicación alegaron malos tratos. De estas, el 70 por ciento interpusieron una denuncia judicial.* *En 2008, 95 personas fueron detenidas en régimen de incomunicación. El 68 por ciento alegaron malos tratos. En 2009, 37 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.*

		funcionarios del mismo cuerpo. 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. Todo ciudadano español que tuviere conocimiento de la comisión de un presunto delito de torturas está obligado a ponerlo en conocimiento de los poderes públicos. Cualquier otra persona física o jurídica puede también entablar la acción popular aunque no sea la víctima. 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.	*Las denuncias son debidamente investigadas por la fiscalía, jueces, inspección interna y el Defensor del Pueblo.* *Ha habido acusaciones de injurias a los cuerpos y fuerzas de seguridad del estado, en contra de abogados y personas que denuncian torturas, aún cuando sus propias denuncias son archivadas sin haberse efectuado las debidas diligencias para investigar los hechos.* Existen sentencias recientes del Tribunal Constitucional en las que se recoge la doctrina de que la gravedad del delito de torturas y la especial dificultad probatoria en esos casos obligan a actuar con especial diligencia en las investigaciones judiciales (A/HRC/10/3/Add.2).

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.	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 de acuerdo con la legislación española. **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 no son suspendidos, constituyen una nueva agresión a las víctimas de torturas y malos tratos. **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 a quienes los denuncian. **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	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 la indemnización de daños y perjuicios al Estado por "funcionamiento normal o anormal de los servicios públicos".

		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 los terroristas de ETA de los presos que se reinsertarán en la sociedad.	**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, salvo la Comunidad Autónoma Vasca, la Murciana, y la de Castilla-La Mancha. El Gobierno informó sobre su política de dispersión y las condiciones de reclusión especialmente severas. Los internos en régimen cerrado, representan un conjunto de población más vulnerable, por lo que cuentan con una intervención más directa e intensa. **2008: Fuentes no gubernamentales:** No se observa ningún avance. Actualmente, sólo 22	Las circunstancias tenidas en cuenta para la asignación del centro penitenciario a los reclusos son, principalmente: a) intervención penitenciaria o razones de seguridad; b) criterios para la reinserción; y c) evolución personal del preso. *Fuentes no gubernamentales: Los derechos de las víctimas y la reeducación y reinserción social son la finalidad de la pena. Por tanto, puede ser positiva la dispersión de presos para salvaguardar dichos propósitos.* 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).

		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 exactamente 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 tanto de los establecimientos como de los propios internos y funcionarios. 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 respecto a estos mismos hace inviable por el momento su concentración en establecimientos penitenciarios cercanos al domicilio de sus	

		familias. **2005: Fuentes no gubernamentales:** Se habría producido un mayor alejamiento de los presos de sus lugares de origen.	
Considerar la posibilidad de invitar al Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia a visitar el país.	Se recibieron denuncias de tortura y malos tratos de personas no originarias de Europa occidental o por miembros de minorías étnicas. Esas personas pueden también tropezar con dificultades para formular una denuncia o sostenerla durante la tramitación judicial.	**2008:** El Gobierno reitera su opinión favorable a la invitación al Relator Especial sobre las Formas Contemporáneas de Racismo. La Comisaría General de Extranjería y Documentación ha informado que no tiene constancia del alto número de denuncias. **2008: Fuentes no gubernamentales:** No hay constancia de que se haya cursado esta invitación, aunque existe un alto número de denuncias por torturas y/o malos tratos con trasfondo xenófobo. Los migrantes afrontan más dificultades que los nacionales cuando pretenden denunciar agresiones por parte de funcionarios de policía. **2007: Fuentes no gubernamentales:** No existe información con relación a una visita futura de dicho Relator Especial. **2006: Fuentes no gubernamentales:** No se ha cursado la invitación. **2005: Fuentes no gubernamentales:** No hay información de las gestiones para su invitación.	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).
Ratificar el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles,		**2008:** El Gobierno afirma que se han llevado a cabo numerosas reuniones para definir la estructura del Mecanismo Nacional de Prevención de Tortura (MNP). Las reuniones son una prueba de los esfuerzos del Gobierno de incluir a todos los actores relevantes de la sociedad civil en el proceso de creación del	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*

Inhumanos o Degradantes.		MNP. **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. Sin embargo, dichas reuniones fueron infructuosas. El Gobierno no ha dado pasos efectivos para la pronta implementación del MNP, y estaría obstaculizando el acceso de organizaciones de derechos humanos a los centros de detención. **2007:** El Gobierno español informa de que el Protocolo Facultativo entró en vigor el 22 de junio de 2006. El Ministerio del Interior está abordando la materialización de los compromisos que supone la puesta en marcha del referido Protocolo. **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 pero no ha completado su ratificación. Constatan la cooperativista de organismos internos para monitorear la situación de las personas detenidas y prevenir así la práctica de la tortura. **2005:** Se han iniciado los trámites internos para la firma y la ratificación por España del Protocolo Facultativo.	*de 2009 se anunció el modelo de Mecanismo Nacional de Prevención de la Tortura, integrado al Defensor del Pueblo.*

		2005: Fuentes no gubernamentales: El Gobierno español todavía no ha dado ningún paso práctico para su ratificación.	

Sri Lanka

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

83. By letter dated 23 October 2009, the Special Rapporteur sent the following report 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 his request. He looks forward to receiving information on its endeavours to implement his recommendations and he reaffirms that he stands ready to assist Sri Lanka in its efforts to prevent and combat torture and ill-treatment.

84. The Special Rapporteur, who visited the country in October 2007 when the armed conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) was at its height, is concerned about the reported continuing application or even broadening of emergency laws created during the conflict. Although the war ended, the Government reportedly continues to use sweeping emergency regulations that promote or allow arbitrary arrest and detention, prolonged and incommunicado detention, and torture. The Special Rapporteur on Torture appeals to the Government to repeal the emergency regulations or to review them thoroughly with a view to bringing them into line with internationally accepted standards of personal liberty, due process of law and the humane treatment of prisoners.

85. Equally, the Special Rapporteur is concerned about non-governmental information regarding persisting impunity for perpetrators of torture and ill-treatment, including members of the TMVP/Karuna group. In addition, the Special Rapporteur urges the Government of Sri Lanka to seriously consider introducing the recommended safeguards, such as the right to legal counsel, access to independent medical examinations, effective and independent investigations into allegations of torture, and a functioning monitoring mechanism into the legal system. The Special Rapporteur was encouraged by information that a draft Law on Witness and Victims of Crime Protection was presented to Parliament and hopes for its timely implementation.

86. Regarding prisons, the Special Rapporteur was alarmed about reports of continuing severe overcrowding, the non-separation of convicted and remand prisoners and in particular the detention of children together with adult detainees. The Special Rapporteur wishes to re-emphasise his recommendation to legally abolish the death penalty and to establish rehabilitation centres for the treatment of torture survivors.

87. Finally, the Special Rapporteur wishes to reiterate his recommendation to consider the ratification of the OPCAT and the establishment of a National Preventive Mechanism.

Recommendation (A/HRC/7/3/Add.6)	**Situation during visit** (A/HRC/7/3/Add.6)	**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, Vinayagamoorthi Muralitharan, otherwise known as Karuna, was sworn into Parliament, with the full support of the President and the 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.*
(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. The 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. His observation was that this privilege was afforded, if at all, only to the elite. Where the emergency laws were concerned, the situation was even worse. Since lawyers did not visit army camps or STF camps, persons detained under emergency regulations did not receive legal assistance.* *Detainees are denied confidential information with their legal counsel and interviews take place in the presence of law enforcement personnel, which undermines reporting of ill-treatment.*
(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	***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.*

	did not inquire into whether the suspect was mistreated in custody.	
(d) Ensure that magistrates routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol	Detainees face various obstacles in filing complaints and having access to independent medical examinations, which are frequently alleged to take place in the presence of the perpetrators, or are performed by junior doctors with little experience. The fact that a system of Judicial Medical Officers (JMO) is in place in the country is a positive sign. Obstacles for victims of torture to access the JMOs result in loss of important medical evidence, impeding criminal proceedings against perpetrators. There is also no obligation for law enforcement officials or judges to investigate cases of torture ex officio.	***Non-governmental sources:*** *Detainees may complain of ill-treatment and request a medical examination by a JMO. However, detainees rarely complain due to their fear of retribution by the custodial officers, to whose charge they are returned after production in court. Furthermore, detainees have little access to independent medical examinations; in many instances victims of torture are accompanied to the examination by the alleged perpetrators. In addition, doctors and JMOs often fail to record evidence of torture or provide false reports, and some doctors provide treatment to victims without disclosing the evidence of torture in official records. JMOs have been found to be complicit in covering up acts of torture.*
(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	*NGO: 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*

	and the PTP. The indictments by the Attorney General have lead so far to only three convictions and eight acquittals. Senior police officers with regional command responsibilities also conduct inquiries into torture allegations. The National Police Commission (NPC) is in charge of disciplinary control over all officers except the Inspector General. However, this procedure was only established in January 2007. The legitimacy and credibility of the NPC has been questioned because of the appointments of the Commissioners by the President. The CID was given the mandate to handle all criminal investigations into complaints of alleged torture, other than complaints relating to allegations against CID officers. However, complaints of torture recorded at police stations are first referred to the Assistant Superintendent of Police (ASP) or the Superintendent of Police (SP) of the relevant area. The SIU also handles allegations of torture referred to the Government by the National Human Rights Commission, NGOs and the Special Rapporteur on Torture.	*of the investigations.* *The National Police Commission's long-term effectiveness is threatened by the lack of a strong constituency supporting its independence and by the fact that it has failed to improve police accountability.* *The police routinely fabricate information and alter reports to support their version of the facts. The period within which a crime is investigated by the police is susceptible to abuse of the parties associated with this process in several ways.* *Despite Government commitments to address impunity, perpetrators of human rights violations do not face a serious threat of prosecution. There were no such convictions violations in 2008.*
(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 Article 12 of the Convention against	In general, the Special Rapporteur noted with concern the absence of an effective ex officio investigation mechanism in accordance with Article 12 of the Convention against Torture.	***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.*

Torture		
(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	Articles 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 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.	*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 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.*
(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		
(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.*
(j) Allow judges to be able to exercise more discretion in sentencing perpetrators	The Special Rapporteur appreciates that, by enacting the 1994 Torture Act, the Government has	

of torture under the 1994 Torture Act	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.	
(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, or Emergency Miscellaneous Provisions and Powers Regulations, EMPPR)	***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 sixty days during this period. After operating for several months, this Regulation was suspended by order of the Supreme Court on 15 December 2008, 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 thirty days following arrest and can thereafter be kept up to ninety days in detention, in a place "authorised by the Inspector General of Police" (IGP). Following the expiration of the ninety 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 decided to indict him/her or alternatively ask for the suspect's discharge.*

	were imposed on 14 August 2005. 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.	
(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 was also 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 situation and follow-up on past cases of violations	The NHRC is empowered to conduct investigations into complaints of violations of fundamental rights. However, it can only make recommendations and is not empowered to approach courts directly. In October 2007, 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	***Non-governmental sources:*** *The NHRC is mandated to investigate fundamental rights violations. In practice however, its investigative powers have had marginal impact because the Commission has no enforcement powers, has been unable to put clear policies into place, as well as effective and consistent practices in relation to investigations. It also suffers from a lack of resources and qualified staff. Its independence and integrity has been negatively affected as a result of its members being unilaterally appointed by the President, bypassing the pre-condition of approval by the Constitutional Council. The current Commissioners have no demonstrated record of commitment to human rights protection and are mainly lawyers and retired judges.* *The NHRC is still under special review of the ICC; until a decision has been reached, it will remain under "B" status.*

	failure to issue annual reports on human rights, as required by the Paris Principles.	
(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.*
(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.*

(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.	
(q) Design and implement a comprehensive structural reform of the prison system, aimed at reducing the number of detainees, increasing prison capacities and modernizing the prison facilities	The Government provided the Special Rapporteur with statistics indicating severe overcrowding of prisons. While the total capacity of all prisons amounts to 8,200, the actual prison population has reached 28,000. The combination of severe overcrowding and the antiquated infrastructure of certain prison facilities places unbearable strains on services and resources, which for detainees in certain prisons, such as the Colombo Remand Prison, where the lack of space was most obvious amounts to degrading treatment.	***Non-governmental sources:*** *The prisons are faced with severe overcrowding. There is a lack of adequate sanitation, food and water, and inadequate medical treatment, and the prisoners have little exposure to sunlight. The buildings are old, and the possibility of the spread of contagious disease remains a serious problem.*
(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.*
(s) Ensure separation of remand and convicted prisoners	The lack of adequate facilities also leads to a situation where convicted	***Non-governmental sources:*** *Section 48 of the Prisons Ordinance states that convicted prisoners, whenever practical, shall be*

	prisoners are held together with pre-trial detainees in violation of Sri Lanka's obligation under Article 10 of the International Covenant on Civil and Political Rights.	*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.*
(t) Ensure separation of juvenile and adult detainees, and ensure the deprivation of liberty of children to an absolute minimum as required by Article 37 (b) of the Convention on the Rights of the Child	In the TID facilities in Colombo the Special Rapporteur met eight children who were being held on account of being child soldiers for the LTTE. He strongly condemns 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.	***Non-governmental sources:*** *Section 48 of the Prisons Ordinance states that juvenile prisoners, whenever practical, shall be separated from adults; Section 13 of the Children and Young Persons Ordinance No 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 release of children to their parents or placement 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.*
(u) Abolish capital punishment or, at a minimum, commute death sentences into prison sentences	The death penalty is foreseen by Article 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 against Torture, and establish a truly independent monitoring mechanism to visit all places where persons are deprived of their liberty	A number of shortcomings remain and, most significantly, the absence of an independent and effective preventive mechanism mandated to make regular and unannounced visits	Sri Lanka has not signed or ratified the Optional Protocol to the Convention against Torture. ***Non-governmental sources:*** *The Release of Remand Prisoners Act No. 8 of 1991 provides for monthly visits to prisons by a Magistrate,*

throughout the country, and carry out private interviews	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.	*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 actually took 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 a 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 International Committee of the Red Cross (ICRC), non-governmental organisations and university institutions. However, the quality of the training is poor and the training facilities are sub-standard. The State has not adopted a national human rights plan.*
(y) Establish a field presence of the Office of the United Nations High Commissioner for Human Rights with a mandate for both monitoring the human rights situation in	During the visit of the Special Rapporteur, two technical cooperation officers of the OHCHR were located in Colombo. The establishment of a	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.

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	field presence of the OHCHR with a mandate to monitor the human rights situation was strictly refused by the Government.	

Togo

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

88. Le 23 octobre 2009, le Rapporteur Spécial a envoyé ce rapport 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 12 novembre 2009, le Gouvernement a répondu à cette demande et a fourni des informations détaillées.

89. Le Rapporteur Spécial note avec grande satisfaction que l'Assemblée Nationale a entériné la loi abolissant la peine de mort en juin 2009.

90. Le Rapporteur Spécial est conscient que le Togo manque de moyens matériels et humains pour faire face à la surpopulation carcérale, mais prend note des grands efforts du Gouvernement dans ce domaine et réitère qu'il est prêt à aider le Togo dans le processus d'amélioration des conditions pénitentiaires et dans sa lutte contre la torture et autres mauvais traitements. Le Rapporteur Spécial félicite également le gouvernement togolais pour sa mise en œuvre de programmes d'apaisement sociopolitique et de réconciliation nationale.

91. Le Rapporteur Spécial note avec satisfaction que les membres de la Commission Vérité, Justice, Réconciliation ont été nommés et installés en mai 2009, mais regrette cependant que le décret présidentiel portant création de cette commission comporte des lacunes quant à l'autorité de ses membres, leur indépendance ou la protection des victimes et témoins, et espère que le décret pourra être amendé de façon à répondre à ces exigences.

92. Le Rapporteur Spécial remarque que le Togo n'a pas encore ratifié le Protocole Facultatif à la Convention contre la Torture et Autres Peines ou Traitements Cruels, Inhumains ou Dégradants (OPCAT), mais note avec intérêt que le Gouvernement a pris des mesures concrètes en vue d'une ratification rapide, et de la mise en place d'un Mécanisme National de Prévention au Togo qui pourra effectuer des visites inopinées dans tous les centres de détention.

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)	**Information reçue sur mesures prises récemment/situation actuelle**
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 : Certains projets de textes, en particulier ceux qui visent à mettre en conformité le Code pénal avec les normes internationales relatives aux crimes de guerre, aux crimes contre l´humanité, à la torture, au terrorisme et à la criminalité internationale, ont été validés au cours d´un atelier national de validation les 24-26 novembre 2008 à Lomé.	**Gouvernement :** Le Togo est respectueux des droits et libertés fondamentales énoncés dans les instruments internationaux relatifs aux droits de l'homme. C'est pourquoi il les a intégrés dans sa loi fondamentale et a même consacré leur primauté sur la législation interne. En dehors de ces instruments internationaux, le Togo a prévu dans sa législation interne des dispositions tant dans la Constitution que dans les codes pénal et de procédure pénale pour dissuader d'éventuels candidats à des actes de torture.
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.	
95. Le Gouvernement devrait interdire expressément les châtiments	Malgré l´interdiction dans l´article 376 du code de l´enfant, dans les lieux de	Gouvernement : Aucun texte de loi ni de mesures réglementaires n´autorisent l´usage du châtiment corporel.	

corporels et mettre en place des mécanismes efficaces pour lutter contre ces pratiques.	détentions les châtiments corporels semblent toujours être appliqués de manière régulière.		
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.	
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 des bailleurs UNFPA et l´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).	
98. Le Gouvernement togolais devrait soutenir la Commission Nationale des Droits de l´Homme dans les efforts qu'elle déploie pour		Gouvernement : En 2008, le Comité international de coordination des institutions nationales (ICC) a accrédité la Commission nationale des droits de l´homme (CNDH) au	

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.		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 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 détenues furent libérées.	
99. Le Gouvernement	Un fort pourcentage de détenus	Gouvernement : Depuis novembre 2007, le	**Gouvernement :** L'inspection des

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.	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.	Programme National de Modernisation de la Justice 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.	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 (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.
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	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.	Gouvernement : En 2008, des mesures ont été prises pour améliorer la prise en charge judicaire des détenus et les conditions de détention. Ainsi, 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 (concours de recrutement) sur 5 ans suivant les objectifs fixés par le Programme Nationale de Modernisation de la Justice. Les magistrats en fonction suivent des formations continues avec le Programme Nationale de	**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.

des inspections indépendantes.	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.	Modernisation de la Justice. En outre, la révision du code de procédure pénale était en cours (voir recommandation 93). La réhabilitation des prisons est faite (appui Union Européenne) et celle des infrastructures juridictionnelles était en cours (appui Union Européenne) en vue de permettre, entre autre, la tenue régulière et en temps réel des audiences pénales.	
101. Le Gouvernement devrait 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.	Souvent les aveux constituent le 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.	Gouvernement : En 2008, la révision du code de procédure pénale était en cours. De plus, la Commission Nationale des Droits de l´Homme (CNDH) appuyé par le HCDH-OHCHR organisait des sessions de sensibilisation à l´interdiction de la torture et des mauvais traitements et de renforcement des capacités des magistrats et des officiers de police judiciaire (OPJ).	
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		Gouvernement : la révision du code pénal prévoit l´introduction des peines alternatives non privatives de liberté pour les infractions mineures.	

détention.			
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 discrimination.	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 services médicaux.	Gouvernement : 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 (par ex. « Prisonnier sans frontières » ; « Santé pour l´Afrique » ») pour la prise en charge sanitaire des détenus. Des équipes médicales venaient périodiquement consulter les détenues et font des examens médicaux et mettent à leur disposition des médicaments. Le budget de la santé pénitentiaire avait été sensiblement revu à la hausse dans la loi des finances 2009.	**Gouvernement :** Le gouvernement togolais est conscient que les conditions de détention dans les prisons restent à améliorer notamment sur les plans de l'hygiène, de l'alimentation, de la santé et du logement. Il existe au Togo 14 prisons dont deux ne sont plus fonctionnelles, et le surplus carcéral se monte à 1140 détenus. Cette surpopulation est due au fait que les populations des villes ont connu une progression numérique importante, de même que la criminalité, alors que les infrastructures restent statiques et datent de la période coloniale. Le sous-programme 2 du Programme National de Modernisation de la Justice, 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 dans le cadre de la relecture et de la réécriture du code de procédure pénale du 2 mars 1983. Ils auront certainement un grand rôle à jouer en matière d'inspection des prisons et plus particulièrement pour des problèmes nés de l'exécution des peines.
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	Gouvernement : 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.	**Gouvernement :** dans les prisons, les commissariats de police ou les brigades de gendarmerie, il existe du personnel féminin même si la proportion de ce personnel est faible par rapport à celle des hommes. De plus, la législation pénitentiaire sera mise en conformité avec la règle 55 de l'ensemble des règles pour le traitement

	en train d´être résolu avec la création d´un corps spécial de surveillants relevant du Ministère de la justice, qui comprendrait des surveillants des deux sexes.		des détenus, en instituant une garde féminine dans les centres de détention. Le texte créant le corps des gardiens de prisons est adopté en conseil des ministres et le processus de recrutement des surveillants des deux sexes s'inscrit dans cette perspective.
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.	
106. Le Gouvernement togolais devrait veiller à ce que le principe de non-discrimination soit respecté à tous les niveaux du système de justice pénale, lutter contre la corruption, qui touche particulièrement les pauvres, les groupes vulnérables et les minorités, et prendre des mesures efficaces pour lutter contre la corruption des agents de l´État, mais également des hauts responsables de l´administration		Gouvernement : En 2008, le projet de loi anti-corruption était en cours d´examen au conseil des ministres.	

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, délibéré et adopté par l´Assemblée nationale et promulgué par le Président de la République, fixe le statut général des personnels militaires des Forces Armées Togolaises duquel découle le statut particulier de la gendarmerie nationale. Ce statut fixe clairement et distinctement 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. La gendarmerie opère en zone rurale. Les missions essentielles sont : les missions de police judicaire, missions de police administrative, missions 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.	
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 militaires et peu à la préparation aux tâches complexes liées à l´enquête pénale ou au maintien de	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 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-	

correspondants.	l´ordre.	militaires, le droit international humanitaire (DIH), le droit relatif à la femme (phénomène) et de l´enfant. Tous ces modules sont en vigueur dans les centres de formation, dans tous les stages des forces de l´ordre sous l´appui et l´assistance du système des Nations Unies tel que le HCDH, UNREC, UNIDIR et le CICR accrédités au Togo. 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.	
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 du protocole à la Convention contre la torture et la mise en place du mécanisme national, un atelier a été organisé conjointement par le OHCHR-Togo et l'APT les 16 et 17 juin 2009. Cet atelier a connu la participation des représentants des ministères, des institutions de la République, dont la CNDH, et de la société civile. 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 de ratification et la mise en œuvre de la feuille de route.
110. S´agissant des mineurs, le Togo devrait sans tarder prendre des	Le Togo ne dispose pas d´un système de	Gouvernement : En 2007, le ministère de la justice a commandé une étude sur l´état de la justice des mineurs au Togo dont les	

mesures pour que la privation de liberté ne soit utilisée qu´en dernier recours, pour la durée la plus courte possible et dans des conditions appropriées.	justice pour mineurs compatible avec les dispositions et principes de la Convention relative aux droits de l´enfant, ce qui signifie qu´il n´y a pratiquement pas d´alternative à la détention pour les mineurs en conflit avec la loi et qu´il n´existe aucune mesure de protection particulière à l´égard des personnes de moins. de 18 ans.	recommandations serviront à formuler un programme de prise en compte de la justice pour mineurs. Ce programme complétera le Programme Nationale de Modernisation de la Justice. 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.	
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.	
112. Le Gouvernement devrait mettre en place un système de justice pénale au sein duquel exerceraient des policiers, des procureurs et des juges dûment formés, et créer toutes les garanties utiles, notamment l´aide juridictionnelle.		Gouvernement : La formation continue des magistrats, des OPJ (gendarmes et policiers) qui se fait déjà est rendue systématique par le Programme Nationale de Modernisation de la Justice.	
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	Gouvernement : Le projet de la loi visant l´abolition de la peine de mort a été adopté par conseil des ministres le 10 décembre	En juin 2009, l´Assemblée Nationale a adopté la loi sur l´abolition de la peine de mort.

	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.	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.			
115. Les tribunaux devraient sans délai se prononcer sur les plaintes pour actes de	Une impunité entoure tous les actes de violence politique perpétrés au fil des années	Gouvernement : En 2007, un ministère délégué à la Présidence chargé de la réconciliation et des institutions ad hoc a été	***Gouvernement :*** *les membres de la Commission Vérité, Justice, Réconciliation, au nombre de onze, ont*

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.	depuis 1958 et, en particulier, les événements liés aux élections de 2005.	créé afin de résoudre le problème de l´impunité. Ce département ministériel 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 à caractère politique commis par le passé. Un ensemble de plus de 100 victimes de violations de droits de l´homme commises pendant les élections présidentielles de 2005 ont déposé des plaintes au cours de l´année 2008. Les autorités ont déclaré publiquement leur volonté d´en finir avec l´impunité, mais aucun examen des plaintes ne semble avoir été fait. En vue de régler définitivement la question de l´impunité, le Gouvernement a initié en avril 2008 des consultations nationales pour la mise en place de la commission vérité, justice et transition. Un rapport extensif avec des recommandations a été publié en juillet 2008. Selon les informations reçues en janvier 2009, le Togo était à l´étape de mise en place de la commission vérité, justice et réconciliation. Le projet de décret portant création du comité d´appui à la mise en œuvre des recommandations issues des consultations nationales est à l´étude au niveau du Gouvernement aux fins de son adoption en conseil des ministres. Ce comité procédera à l´élaboration du texte portant création de la commission vérité, justice et réconciliation.	*été nommés et installés respectivement les 27 mai 2009 et 29 mai 2009.* ***Des sources non-gouvernementales:*** *Les victimes des événements de 2005 et leurs familles attendent toujours que la justice leur soit rendue. Rien ne semble avoir été mis en place pour prévenir la répétition des violations graves aux droits humains dans la perspective de la prochaine élection présidentielle de 2010.* *Depuis 2006, 37 plaintes ont été déposées à Lomé, Atakpamé et Amlamé. Pour certaines d'entre elles, les cautions, permettant l'ouverture d'une enquête, ont été versées mais 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 vérité réellement efficace, telles que reconnues par les principes internationaux, et comporte de graves lacunes. Il ne précise pas les pouvoirs de la future commission. Il ne confère pas à cet organisme l'autorité nécessaire pour recueillir toutes les informations qu'il juge pertinentes et convoquer des personnes lorsque cela s'avère nécessaire. Rien n'est dit non plus sur la nécessité de traduire en justice les responsables présumés des violations et atteintes aux droits humains.* *En outre, ce texte ne comporte aucune garantie en ce qui concerne la protection*

			des témoins, des victimes et de leurs familles, malgré le fait que de nombreux citoyens togolais qui ont témoigné devant des organes d'enquête internationaux aient été l'objet de menaces et d'intimidations durant les dix dernières années. *De plus, les dispositions prévoyant la nomination des membres de la commission ne présentent pas les garanties suffisantes quant à leur compétence en matière de droits humains, leur indépendance et leur impartialité. Par ailleurs, le décret ne prévoit pas que les travaux de cette commission devront être rendus publics, ce qui semble contraire aux objectifs de vérité et de justice de cette commission.* *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.*

Uzbekistan

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

93. By letter dated 23 October 2009, the Special Rapporteur sent the following table to the Government of Uzbekistan, requesting information and comments on the follow-up measures taken with regard to the implementation of his predecessor's visit in 2002. He would like to thank the Government for providing information by letter dated 5 December 2009.

94. The Special Rapporteur acknowledges the various legislative amendments to the Criminal and Criminal Procedural Codes, which include the progressive introduction of the right to habeas corpus, the aim of establishing equality of arms between the prosecutor and the defence throughout judicial proceedings and obliging judges to issue a separate decision regarding allegations of torture or ill-treatment once invoked during a criminal trial. However, the Special Rapporteur continues to receive reports that show that these legislative amendments are not being implemented in practice.

95. The Special Rapporteur reiterates that an effective and independent mechanism still remains to be established to promptly, independently and thoroughly investigate all allegations of torture and ill-treatment. Such mechanism must also be able to effectively prosecute the alleged perpetrators, including police officials. In this connection, the Special Rapporteur notes that the reported numbers of initiated procedures against alleged violations by members of the law-enforcement bodies appears to be inexplicably low.

96. The Special Rapporteur calls upon the Government to urgently make the declaration provided for in article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention. He also reiterates the importance of ratifying the Optional Protocol to the Convention (OPCAT).

97. The Special Rapporteur further expresses his concern that in practice non-governmental organizations appear not to have access to penitentiary facilities for the purpose of monitoring, despite relevant orders issued by the Government. He remains further concerned that relatives still require written permission to visit arrested or detained family members.

98. Finally, the Special Rapporteur wishes to reiterate his request made in 2006 to conduct a follow-up visit to the country to which he has thus far not received a positive reply. He believes it is crucial to make an assessment of the various legislative amendments and their implementation in practice 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** (E/CN.4/2003/68/Add.2)	**Steps taken in previous years** A/HRC/7/3/Add.2 and E/CN.4/2006/6/Add.2	**Steps taken since December 2007**
(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 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 torture 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, with 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 would necessarily be accused, go through the investigation, face trial, be convicted and sentenced to punishment.* *Based on this approach, the highest officials encourage the use of torture in the system of criminal justice in order to obtain confessions as evidence.* *Concerning the 2004 National Action Plan against Torture, a set of formal actions were included.* **Government**: A number of steps have been taken. First, 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. Second, the concluding observations of the Committee against Torture were the subject of several sessions of a number of Senate Committees. Third, 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 than in 2007), among which 1643 concerned staff were from the Ministry of Internal Affairs, 7 regarding servants of the Security Service and 104 regarding judges. 104 of the complaints related to allegations of torture and other cruel, inhuman or degrading treatment or punishment. 9 criminal cases were opened against members of the law enforcement bodies; the concerned persons were suspended from their functions.
(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	***Non-governmental sources:*** *Article 235 of the Criminal Code of the Republic of Uzbekistan is not applied in practice; in no official judicial proceedings have been conducted on the basis of article 235 of the Criminal Code, as judges are not independent in decision-making.* *Torture is normally applied with the consent or at the request of higher officers, officials or other public figures. Those who use torture are encouraged, awarded or promoted in rank.* *There have not been cases of exclusion of*

		public official and as such does not contain all the elements of article 1 of the Convention."	*testimonies extorted under torture.* **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.
(c) Amend the domestic penal law to include the right to habeas corpus;	No habeas corpus.	Government: Article 19 of the Constitution holds that the rights and freedoms of citizens are inviolable and only a court has the right to restrict them; Presidential Decree "On the transfer of the right to sanction pre-trial detention to the courts" of 8 August 2005 transferred the right to sanction pre-trial detention of suspects and accused persons to judges starting from 1 January 2008; it also provides that pre-trial detention should only be applied in exceptional cases, when other legal prevention measures would be ineffective; 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 from officials of the executive branch. In 99% of all cases, the requests by prosecutors to sanction pre-trial detention are granted by courts.* *The courts do not have the right to verify the legality of detention. Reconsideration of the decision of the court can be done only through an appeal within 3 days. The detainee does not have the right to periodically apply to a court within a reasonable time period asking for the detention order to be revoked; the participation of the lawyer at this stage is not mandatory; and 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.* **Government**: The recourse to 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 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, and year by the Prosecutor-General in case of serious difficulties in the investigation. In 2008, 453 individuals were released from custody. In the first six months of 2009, 240 individuals were

			released from custody: 127 by the investigators, 77 by the court and 36 by prosecutors. In the same period in 2008, 216 individuals were released from custody. The proposal to shorten the maximum period of custody from 72 hours to 48 hours is being considered.
(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".	***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 or 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 as well as appointment of judges for a comparatively short period of five years. Though the law guarantees the independence of the judiciary, 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 accusatory bias and very often the verdicts of the courts repeat the accusations, sometimes even including spelling mistakes and misprints contained in the initial accusations. The judges demonstrate with all their appearance that nothing depends on them, that they can not 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 force*

			(which constitutes a violation of the principle of double accusation of one and the same person for one and the same offense). *The material status of judges of general jurisdiction has partially improved.* **Government**: 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, analytic 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 the powers of the lawyer in criminal trials, the improvement of the execution of judicial decisions and the limitation of the powers of the prokuratura in the area of supervision ('nadzor') over the investigation of criminal cases. In 2008, the prokuratura sent 14.407 criminal cases in relation to 21.865 individuals to the courts. It closed 1.088 cases in relation to 199 individuals and sent 415 cases in relation to 495 individuals to the courts where the parties had reached an agreement. The Ministry of Internal Affairs opened 30.343 cases in relation to 38.890 individuals. It closed 2149 cases in relation to 449 individuals and sent 9.879 cases in relation to 10.430 individuals to the courts where the parties had reached an agreement.

(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 Interior, created in September 2005, is in charge of examining complaints about unlawful acts, including torture by ministry staff; It has regional representatives; Also, a human rights unit within the Ministry of	***Non-governmental sources:*** W*hen 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 group that investigates cases of torture do not allow for any involvement of civil society or representatives of the International Committee of the Red Cross.* *Usually the report of the Government to the Human Rights Committee contains 3 or 4 cases which confirm a massive absence of such cases.* *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 and not for profit organizations in terms of revealing cases of torture 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 a detained person has the right to a lawyer from the moment of their detention (i.e. at least 24 hours after their arrest) as well as the right to have confidential meetings 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*

		Justice has been created;	*capital of Uzbekistan i.e. Tashkent, and it is no longer working.* *According to the official statements, the Government of Uzbekistan has recently formed new divisions within several key ministries (a Department on Human Rights within the Ministry of Justice, a Commission on Human Rights within the Ministry of Internal Affairs, and a Division on Human Rights and International Norms within the Office of the Prosecutor Genera).* *The newly established Department on Human rights with the Ministry of Justice of Uzbekistan was created with the same purpose of receiving individual complaints on alleged cases of human rights violations, including alleged case of torture.* *Nevertheless, all these measures remain of a formal character, 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. It is very difficult to obtain information on measures and mechanisms of internal control in respect of behaviour 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 the ministries themselves both seriously lack transparency in their activities. Moreover, the staff of these subdivisions do not have specialized professional training for the receipt and handling complaints and petitions relating to the acts of torture and other human rights violations. They are overloaded with other tasks, as many of them are still involved in other types of law-enforcement work.*

			Government: 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 for 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.
(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; Non-governmental sources: impunity is wide-spread; reprisals against complainants and intimidation is wide-spread;	***Non-governmental sources:*** *Articles 256, 257 and 266 of the Criminal and Procedural Code are not applied; judges and prosecutors do not suspend officials accused of torture. Rather, disciplinary measures and transfers to other positions are used and repressions, prosecutions and threats against complainants and civil society members are widely used. There were practically no cases when an official accused of using torture was suspended. The so*called principle of protecting the "esprit de corps" is in operation.* *There are many cases where 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 withdrawing their complaint. Independent observers and human rights activists can confirm frequent cases when an officer from the 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. The victims of torture and their relatives very often state that the officers who use torture are promoted 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 are not true, and that it is the intention of an arrested, suspected or accused person to avoid punishment. This irresponsible approach towards complaints of torture is very frequently observed among judges. At best, when the traces of torture are visible and they are properly documented by the defence, disciplinary proceedings are launched against the perpetrator, 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 defence on the initiation of a criminal prosecution on the basis of article 235 (torture) of the Criminal Code remain unsatisfied in 99.9% of cases.* **Government**: In 2008, as a result of an examination by the 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.
(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;	***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 that control the performance of their officers, but their activity is inefficient, as the professional achievements and effectiveness of a law-enforcement agency are assessed not on the basis of the number of complaints or petitions of torture 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 activity of officials and staff of the law enforcement agencies.* **Government**: 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 of Parliament, 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 with: the Ombudsman in 2004; the National Centre for Human Rights the Office of the General Prosecutor and the Ministry of Justice in 2008 in order to take joint measures for the protection of the rights of individuals deprived of liberty. In September 2008, a Human Rights Unit was established within the system of the Ministry of Internal Affairs and their territorial departments which are called upon to examine allegations of human rights violations by staff of the organs of internal affairs, including complaints about torture.
(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	***Non-governmental sources:*** *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 ineffective and 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 examine traces of torture.* *The system of execution of punishments is*

		Representatives of the Diplomatic Corps, International and Local nongovernmental Organizations and Media Representatives" of 30 November 2004; Ministry of Interior's Order n. 346 contains the right of persons seeking to visit a prison to appeal a denial to the courts and limits the delays within which decisions about visits have to be taken. Ministry of Interior order n. 268, of 8 October 2004 "On the Approval of Instructions with regard to a model agreement on cooperation between institutions and organs of the penitentiary system with NGOs" Amendments to the Administrative Code of December 2005 strengthen the transparency of NGOs and seek to reinforce their responsibility for the implementation of their own statutes to ensure that the State can take legal action against persons or organisations that violate national legislation; On 13 December 2004 the ICRC decided to stop their visits; although the Uzbek side has asked them to take up the visits again, the ICRC so far has denied to do so; *Non-governmental sources: no such mechanism is in place;*	*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 NGOs and penitentiary institutions, NGOs and other independent observers have the opportunity to visit the colonies of the system of execution of punishment.* *This statement is absolutely far from the reality. This model agreement was never published and the NGOs and independent ob-servers willing to visit penitentiary institutions were not aware of this agreement and were never informed. Currently, the penitentiary system of Uzbekistan remains completely closed and not accessible to independent observers from international organizations, NGOs and human rights groups.* *The Government also claims that "On December 13, the International Committee of the Red Cross decided to stop their visits despite the fact that the Uzbek counterparts asked the committee to resume its visits, so far the ICRC refuses to do so". The International Committee of the Red Cross asked permission from the Uzbek authorities several times to visit penitentiary institutions. Until now the ICRC is still waiting for a positive reply.* **Government**: 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. In 2008, the ICRC conducted 19 visits to colonies and SIZOs, 10 of which were repeat visits. Since the beginning of 2009, the ICRC visited 3 institution*s of the penitentiary system.*
(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 treated during investigation and interrogation; Government 2006: 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.	***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 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") states 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" states that: "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 interrogated by the public prosecutor, civic prosecutor, as well as the complainant, the civil claimant, and their representatives, the defence attorney, the civic defence attorney, the civil defendant and his representative". In general, investigations and proceedings in court are conducted with an*

			accusatory bias. **Government**: 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.
(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	***Non-governmental sources:*** *Allegations of torture by the accused and their lawyers are routinely ignored by judges.* *Prosecutors interrogate the suspected and accused in the absence of lawyers.* *While the Criminal and Procedural Code of Uzbekistan is the main document which regulates criminal proceedings, it does not contain any direct prohibition on the use of evidence extorted under torture. 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 evidence obtained illegally. The Resolution of the Plenary of the Supreme Court No 17 of 2003 also states that evidence received by means of torture, force, threat, deceit or any other cruel and degrading human dignity treatment, and other illegal means 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 a person coming from a pre-trial prison or detention centre how he/she was treated there. Each complaint of torture from a*

		been obtained under torture, violence or deceit; *Non-governmental sources: Judges regularly dismiss torture complaints without investigations;*	*pre-trial prison or detention centre on torture or any other illegal method of investigation should be fully checked and verified, including through medical and legal examinations. Based on the results of this study, appropriate decisions should be taken, including the decision to institute a criminal prosecution on torture. But in practice, the above-mentioned requirements are not implemented.*
(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.	In accordance with the Prosecutor General's order no. 41 of 31 May 2004, if it is suspected that torture has been committed or traces potentially stemming from torture are detected during the investigation or during trial, a forensic examination and a preliminary investigation have to be conducted; if the suspicion is confirmed, a criminal case must be opened; Point 19 of Resolution No. 17 of the Supreme Court of 19 December 2003 establishes that evidence obtained under torture etc., violating the rights of a person to legal aid, cannot form the basis of an accusation; Point 3 of Resolution No. 12 of 24 September 2004 of the plenary of the Supreme Court "On Some Questions Related to the Norms of the Criminal Procedure Legislation about the Permissibility of Proofs" provides, that evidence obtained under torture etc. are not permissible.	***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 or petitions relating to torture and ill-treatment are attempts to escape justice. The Criminal and Criminal Procedure Codes do not contain a norm prohibiting the use of evidence obtained in a detention facility of the National Security Service or the Ministry of Internal Affairs in the absence of a lawyer or not confirmed in the presence of a judge. The response of the Government to the recommendation (k) of the UN Special Rapporteur refers to an order of the Prosecutor General as well as the Resolution of the Plenary of the Supreme Court of Uzbekistan, which are not laws but rather recommendations.* **Government**: 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 need 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 in criminal cases revealed that in 2008, violations of the right to defence were established in only two cases. In those cases, the judicial decision was declared void and sent for additional investigation or for a new procedure.
(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.	***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 detainee were explained to the person at the moment of his/her detention since the only a record is the transcript of interrogation.* **Government**: 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 defence lawyer and to meet with him/her in person, confidentially, as many times as desired and the right to request for the first interrogation no 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 the case of a detained person from the moment of the factual arrest. A number of other rights of the defence counsel are provided by the amended legislation. Access to relatives or other persons, with the exception of the defence counsel, is only granted with written permission of the respective investigator.
(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;	***Non-governmental sources:*** *The reform of the bar conducted recently effectively deprived the lawyers of their independence. The Chamber of defence lawyers with mandatory membership which was established instead of the Bar Association was turned into a quasi-ministry or department within 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 their license. They also have the right to make a submission for the purpose of cancelling a lawyer's license.* **Government**: The 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 education; (4) the establishment of unified ethical rules; (5) the oversight of the Chamber of the professional conduct of lawyers; and (6) the strengthening of the disciplinary

			responsibility of lawyers.
(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; *Non-governmental sources: pathology institutes and institutions of execution of sentences remain under the Ministry of Internal Affairs;*	***Non-governmental sources:*** *Pre-trial detention centres and prisons remain under the Ministry of Internal Affairs. Pre-trial detainees lack access to independent doctors as well as to relatives.* **Government**: 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 2009, 64 court medical experts participated in a training at the Tashkent University during which they familiarised themselves with the Istanbul Protocol.
(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;	***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, 15 forensic experts of the Ministry of Health and 15 prison staff, from both the regime and security departments of the prison administration of the Ministry of Internal Affairs participated. UNODC requested judges and prosecutors to also participate in the*

			training, but this request did not receive a positive response from the Uzbek authorities. The medical specialists received training on the medical aspects of torture prevention, detection, assessment and documentation. Prison staff received training on selected prison management topics related to the prevention of ill-treatment and torture. *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 and very often they are formal and do not really influence the mentality of the staff of law-enforcement agencies. An analysis of educational activities and courses which are regularly organized for law-enforcement officers shows that these activities and courses focus on propaganda activities.* **Government**: 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 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 Prosecutor General 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 supervisory procedure of the ("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 in accordance with the Criminal Procedural Code.
(p) Consider amending existing legislation to place correctional facilities (prisons and colonies) and remand centres (SIZOs) under the authority of the Ministry	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 has been adopted, where the transfer figures prominently.	***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.* **Government**: The National Action Plan on the implementation of the concluding observations

of Justice;			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. Different European practices 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.
(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;	***Non-governmental sources:*** *The existing criminal law provides for compensation in case of rehabilitation of the accused person. 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.* **Government**: With the objective of establishing a system of adequate compensation for victims of torture, the Supreme Court and the Office of the Prosecutor-General are studying the courts' practices on compensation for victims of torture and other cruel, inhuman or degrading treatment or punishment, which is within the framework of the National Action Plan, as recommended by the Universal Period Review of Uzbekistan.
(r) Provide the Ombudsman office with the necessary financial and human resources; grant the authority to inspect at will, as necessary and without	Ombudsman office under-resourced.	"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	***Non-governmental sources:*** *The National Human Rights Centre does not conduct monitoring of detention facilities.* *The Ombudsman, which is part of the Parliamentary system, has the right to conduct surprise visits to penitentiary establishments, but inmates are warned by the administration*

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;		implementation of CAT is in place; *Non-governmental sources: Ombudsman conducts prison visits, but they do not meet standards essential for detecting and preventing ill-treatment since meetings are not private and take place in the presence of officials;*	*to keep silent about their problems, otherwise the situation may become even worse after the visit of the Ombudsman.* *Whereas the Ombudsman institution has the right to meet and talk with detained and accused persons in private and confidentially, it can officially start an investigation of a particular case of human rights violations only after the applicants use all forms of appeal envisaged by the law, which renders the mechanism 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.*
(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;	***Non-governmental sources:*** *Following the abolition of the death penalty, two new concepts were introduced in the criminal legislation: life imprisonment and long-term imprisonment. However, with regard to previously executed death penalties, information remains de-facto and de-jure a state secret, the relatives of persons that were executed by shooting in Uzbekistan had no opportunity to bear farewell to the condemned, as no last meeting with them was envisaged in the legislation. Until now, many people do not know the date of the executions and cannot visit their grave, as the place of burial is not disclosed. The law that was adopted does not provide for the disclosure of the places of burial or informing the relatives of the sentenced persons of the date of execution. Many people still do not know what happened to their relatives or when they were executed. This approach can be considered as cruel and*

			inhuman. *The section of the Law on life imprisonment has a number of mutually exclusive provisions which leave room for the interpretation.* *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 to submit 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. "An application of pardon may be submitted by a person sentenced to life imprisonment after having served twenty five years of the imposed penalty, or after having served 15 years if he/she has firmly embarked on the path of correction, has had no disciplinary punishments for the violation of the established regime, has a good attitude to labour and training and actively participates in correctional measures – after having served twenty years of the imposed penalty. An application for pardon may be submitted by a person sentenced to long term imprisonment after having served twenty years of the imposed penalty, if 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.* *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 they are bound to serve this sentence in a*

			strict regime colony. Therefore, it is possible to release those who benefited from presidential clemency only after 45 years. *Moreover, the possibility of a pre-term submission of an application of pardon is dependent on the desire of the administration of the colony. 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 above-mentioned powers of the administration of the colony on the execution of punishment will be implemented on an arbitrary basis.* *The Government in Uzbekistan 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.* *According to 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. *The law does not provide for the possibility to have a criminal case reviewed. The risk of sentencing an innocent person to life imprisonment is still possible. In case all instances of appeal have been exhausted and the presidential clemency remains the only hope for the restoration of justice, the right to appeal for pardon can emerge only after serving 20 years.* *According to paragraph 2 article 136 of the Criminal and Criminal Procedural Codes, those sentenced to life imprisonment must be put in prison cells with at least two other persons. Upon the request of inmates or in case of necessity they may be placed in solitary confinement.* *Overall, the rules imposed on persons convicted to long-term and life imprisonment are very restrictive and contradict the principle of rehabilitation and reintegration.* **Government**: The death penalty was abolished and 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. The Government underlines 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.
(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;	***Non-governmental sources:*** *A new colony was built in Jaslyk in 2008. The Government has interpreted this recommendation 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 persons sentenced to life or long term imprisonment.* **Government**: 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.
(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		Government: the Supreme Court takes the decisions about interim measures;	***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*

Nations monitoring mechanisms regarding persons whose life and physical integrity may be at risk of imminent and irreparable harm;			*in colonies.* *At least 50-80 persons die annually in colonies from ill-treatment and disease.* **Government**: 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 were sent to the Human Rights Committee in relation to 11 citizens of Uzbekistan and 10 replies were sent to special procedures in relation to 39 citizens of the country.
(v) Make the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention, as well as to ratifying the Optional Protocol to the Convention, whereby a body shall be set up to undertake regular visits to all places of detention in the country in order to prevent torture; invite		Government: the question of making a declaration under article 22 of the Convention against Torture is currently 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. None of the Special Procedures has been invited.	***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. There were no developments or news on this matter since then. Rather, in contradiction to that commitment, the Government made another statement, which indicated 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.* **Government**: A Working Group is studying and elaborating proposals for the implementation of article 22 of the UN Convention Against Torture, which provides for an individual complaint procedure. The

the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders as well as the Special Rapporteur on the independence of judges and lawyers to carry out visits to the country.			Government notes that the country ratified the Optional Protocol to the International Covenant on Civil and Political Rights in 1995, which also provides for an individual complaint mechanism. Studies are being undertaken on the practice 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.

Annex I

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; and A/HRC/7/3/Add.2
Brazil	E/CN.4/2001/66/Add.2	E/CN.4/2006/6/Add.2
Cameroon	E/CN.4/2000/9/Add.2	E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2 and A/HRC/7/3/Add.2
China	E/CN.4/2006/6/Add.6	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; and A/HRC/10/44/Add.5
Denmark	A/HRC/10/44/Add.2	
Georgia	E/CN.4/2006/6/Add.3	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2 and A/HRC/10/44/Add.5
Indonesia	A/HRC/7/3/Add.7	

Jordan	A/HRC/4/33/Add.3	A/HRC/7/3/Add.2 and A/HRC/10/44/Add.5
Kenya	E/CN.4/2000/9/Add.4	E/CN.4/2002/76/Add.1; A/HRC/4/33/Add.2; and A/HRC/7/3/Add.2
Mongolia	E/CN.4/2006/6/Add.4	
Nepal	E/CN.4/2006/6/Add.5	A/HRC/4/33/Add.2; A/HRC/7/3/Add.2; and A/HRC/10/44/Add.5
Nigeria	A/HRC/7/3/Add.4	A/HRC/10/44/Add.5
Paraguay	A/HRC/7/3/Add.3	
Republic of Moldova	A/HRC/10/44/Add.3	
Romania	E/CN.4/2000/9/Add.3	E/CN.4/2006/6/Add.2 and A/HRC/4/33/Add.2
Spain	E/CN.4/2004/56/Add.2	E/CN.4/2005/62/Add.2; E/CN.4/2006/6/Add.2; A/HRC/4/33/Add.2; and A/HRC/7/3/Add.2
Sri Lanka	A/HRC/7/3/Add.6	
Togo	A/HRC/7/3/Add.5	A/HRC/10/44/Add.5
Uzbekistan	E/CN.4/2003/68/Add.2	A/HRC/7/3/Add.2 and E/CN.4/2006/6/Add.2

Annex II

Statistical information on Georgia

Penitentiary establishment	*Limit*	*New Limits Defined by Order #242 of 1 June 2009*	*Total number (2009)*	*Number*							
				Women		*Men*		*Juveniles*		*Foreign citizens*	
				Convicted	*Pre-trial*	*Convicted*	*Pre-trial*	*Convicted*	*Pre-trial*	*Convicted*	*Pre-trial*
N1 Establishment (Rustavi)	1 846	2 380	540	536	4						
N2 Establishment (Rustavi)	1 801	2 744	3 239					3 239			
N 3 Establishment (Tbilisi)		700	690					690			
N5 Establishment (Tbilisi)	942	970	289	123	102	57	7				
N7 Establishment (Mtsketa)	1 336	1 600	2 480					2 480			
N8 Establishment (Tskaltubo)	917	2 500	2 341					2 341			
N9 Establishment (Khoni)	600	650	661					661			
N10 Establishment (Tbilisi, Avchala)	370	370	336					336			
Juvenile Establishment (Tbilisi)	160	160	157			157					
TB	537	540	644					644			

Number

Penitentiary establishment	*Limit*	*New Limits Defined by Order #242 of 1 June 2009*	*Total number (2009)*	*Women*		*Men*		*Juveniles*		*Foreign citizens*	
				Convicted	*Pre-trial*	*Convicted*	*Pre-trial*	*Convicted*	*Pre-trial*	*Convicted*	*Pre-trial*
Establishment											
Prison Hospital	314	250	231			2		229			
Prison N1 (Tbilisi)	750	750	971					966	5		
Prison N2 (Kutaisi)	1 840	1840	775	11	21	4	19	423	297	1	2
Prison N3 (Batumii)	503	557	761	6	19	1	7	496	232	9	14
Prison N4 (Zugdidi)	305	305	454	6	6		3	315	124		4
Prison N6 (Rustavi)	830	1300	1 316					1 307	9		
Prison N7 (Tbilisi)	108	108	43					43			
Prison N8 (Tbilisi, Gldani)		3672	3 576					2 061	1 515		
Total:	1 3159	21 396	19 504	682	152	221	36	16 231	2 182	10	20