



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

**Combined fourth and fifth periodic reports due in 2011,
submitted in response to the list of issues (CAT/C/MCO/Q/4)
transmitted to the State party under the optional reporting
procedure (A/62/44, paras. 23 and 24)**

Monaco*, **

[30 March 2010]

* The second periodic report submitted by the Government of Monaco is contained in document CAT/C/38/Add.2; it was considered by the Committee at its 596th, 599th and 609th meetings, on 5, 6 and 13 May 2004 (CAT/C/SR.596, 599 and 609). For the concluding observations, see CAT/C/CR/32/1.

** Annexes to the present document can be consulted in the files of the Secretariat.

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I. Introduction

1. At its thirty-ninth session, held in Geneva from 5 to 23 November 2007, the Committee against Torture, established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, sent the Government of the Principality of Monaco a list of issues (CAT/C/MCO/Q/4) in advance of the presentation of Monaco's fourth periodic report. The replies of the Government of Monaco to the Committee are set forth below.

II. Part I of the Convention

Article 1

Reply to paragraph 1 of the list of issues*

2. De jure, the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in which article 1 provides a definition of torture, form part of Monegasque law and may be directly invoked by a judge, as they require no implementing measures in the form of domestic laws.

3. Article 8, paragraph 2, of the Code of Criminal Procedure, which establishes the jurisdiction of the courts for acts of torture committed abroad, refers to the definition set forth in article 1 of the Convention and stipulates the following:

In addition to cases in which the jurisdiction of Monegasque courts stems from sovereign ordinances on the application of international conventions, the following persons may be prosecuted and tried in the Principality ... (2) Any person who, outside the territory of the Principality, is guilty of acts defined as a crime or offence constituting torture within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, if the person is found in the Principality.

Article 2

Reply to paragraph 2 of the list of issues

4. No provision of law can justify the use of torture. Furthermore, were it possible, under a law, to invoke an exceptional circumstance to justify acts of torture, that law would be adjudged contrary to article 20 of the Constitution — which prohibits cruel, inhuman or degrading treatment and abolishes the death penalty — and, therefore, repealed by the Supreme Court.

5. If an act of torture is ascribed to a judicial police officer, an auxiliary of the principal public prosecutor, the procedure whereby the Court of Appeal sitting in chambers exercises supervision may be instigated by the president of the Court of Appeal or the principal public prosecutor (Code of Criminal Procedure, arts. 48 et seq.).

6. The person concerned may be prohibited temporarily or permanently from carrying out their police duties, without prejudice to the administrative penalties that their superiors may impose upon them.

* For the text of the list of issues, see CAT/C/MCO/Q/4.

7. Criminal penalties are also provided for by article 126 of the Criminal Code, which deals with the abuse of authority by a police commander or deputy-commander who in the exercise of their functions has, for no legitimate reason, used or ordered the use of violence against individuals.

8. Criminal penalties for the unlawful arrest or illegal confinement of persons are also provided for by articles 275 et seq. of the Code of Criminal Procedure. Thus, any person who arrests, detains or confines an individual without being ordered to do so by the proper authorities, other than in cases in which the law orders the arrest of the suspect, is liable to 10 to 20 years' imprisonment.

9. Article 278 provides that the maximum term will apply if the person who has been illegally arrested and held has been tortured.

10. As regards Monaco's short-stay prison (*maison d'arrêt*), under article 78 of Sovereign Ordinance No. 69 of 23 May 2005 regulating the prison, staff are strictly prohibited from "engaging in acts of physical or mental violence against inmates" or "addressing them in a familiar or uncouth manner".

11. Article 79 of the ordinance adds that: "Any breach of the obligations set out in this ordinance shall give rise to disciplinary penalties, without prejudice, where appropriate, to the penalties laid down by law."

Article 3

Reply to paragraph 3 of the list of issues

12. Persons may be returned or expelled only to France, which has signed and ratified the Convention and therefore has put in place the domestic legal safeguards required under the Convention.

13. It is possible to appeal to the Supreme Court against return (refoulement) and expulsion orders, which are administrative decisions adopted by the Minister of State. The court has made one ruling on an expulsion and 16 on cases of refoulement since 2002.

14. The Supreme Court has largely based its decisions on article 13 of the International Covenant on Civil and Political Rights, given the force of law in Monaco by Sovereign Ordinance No. 13.330 of 12 February 1998, which stipulates that foreigners must "be allowed to submit the reasons against his expulsion". Moreover, under Act No. 1.312 of 29 June 2006, such measures must be justified.

15. An appeal to the Supreme Court has suspensive effect if combined with a successful motion to stay execution (articles 39 and 40 of Sovereign Ordinance No. 2.984 of 16 April 1963 on the organization and functioning of the Supreme Court).

16. In addition, article 26 of the aforementioned sovereign ordinance allows the president of the Supreme Court, of his or her own motion, at the request of the principal public prosecutor or on the application of one of the parties, to decide by reasoned order and in consideration of the urgency of the case to halve the time limit fixed under article 17 for the submission of replies and rejoinders. The party applying for the reduction must submit a special request before expiry of the time limit allowed for appeals, in the case of the plaintiff, or for submitting a defence, in the case of the defendant.

17. Finally, article 47 stipulates that, where there is a dispute over jurisdiction, all time limits for court procedures shall be suspended pending a decision by the Supreme Court.

Multilateral commitments

18. On 30 January 2009, Monaco signed and ratified the European Convention on Extradition (Paris, 13 December 1957) and its two additional protocols (15 October 1975 and 17 March 1978). As a result, the following treaty provisions are applicable between Monaco and the States parties to the Convention:

Article 3 – Political offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of their race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
3. The taking or attempted taking of the life of a Head of State or a member of their family shall not be deemed to be a political offence for the purposes of this Convention.
4. This article shall not affect any obligations that the contracting parties may have undertaken or may undertake under any other international convention of a multilateral character.

Article 11 – Capital punishment

If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out.

Bilateral commitments

19. Extradition treaties were signed with the Government of the French Republic on 11 May 1992 (article 7, paragraph 5, stipulates that “extradition may be refused if, for humanitarian reasons, the handing over of the requested person might have exceptionally serious consequences for that person because of their age or state of health”) and with the Government of Australia on 19 October 1988 (article 4, paragraph 2 (a) and (c), stipulates that “extradition may be refused ... if the offence for which extradition is requested is punishable by death under the law of the requesting State” or “if the surrender is likely to have exceptionally serious consequences for the person whose extradition is sought, particularly as regards that person's age or state of health”).

National legislation

20. In any event, most treaty provisions are compatible with the Extradition Act (No. 1.222) of 28 December 1999, article 1 of which stipulates that, in the absence of bilateral agreements or where such agreements are silent on the matter, “the provisions of this Act shall apply”. With regard to extradition, articles 4 and 6 of the Act stipulate as follows:

Article 4

Extradition shall be refused if the offence is regarded as a political offence. An attempt on the life of a Head of State or a member of their family shall not be deemed to be a political offence.

The offence shall be deemed to be a political offence if there are grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of their race or ethnic origin, religion, nationality or political opinion, or, more generally, for reasons that violate that person's dignity, or that that person's position may be prejudiced for any of these reasons.

Article 6

Extradition may be refused if the offence for which it is requested:

1. Was committed in Monaco; or
2. Is the subject of proceedings in Monaco; or
3. Has been tried in a third State.

Extradition may also be refused if the offence for which it is requested is subject to the death penalty under the law of the requesting State, unless that State gives assurances deemed adequate by the Principality that the person being prosecuted will not be sentenced to death or, if such a sentence has been passed, that it will not be executed or that the person being prosecuted will not be subjected to treatment that harms his or her physical integrity.

Domestic case law

21. In seeking to apply the prohibition on torture and cruel, inhuman or degrading treatment or punishment, the Court of Appeal, in a judgement of 7 November 2002, requested further information from the requesting State concerning the risk of a deterioration in the situation of Ms. X, within the meaning of article 4 of the aforementioned law, if she were extradited to Azerbaijan.

22. In a second judgement, handed down on 20 February 2004, the Court of Appeal ordered that all assurances should be given that, if the death penalty constituted one of the punishments that could be imposed for one of the offences cited by the requesting State, that punishment would not be called for, handed down or carried out.

Reply to paragraph 4 of the list of issues

23. It is true that the granting of refugee status in Monaco is subject to approval by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) under agreements between Monaco and France on the movement and settlement of people. It is possible to appeal before the appropriate French courts against a refusal to grant refugee status.

24. There are no plans to review these agreements in the near future, for two reasons: firstly, Monaco, given its size, would have difficulty establishing the necessary specialized administrative service in this area; and, secondly, the lack of checks along its common border with France makes it imperative to ensure that the presence of applicants on French territory poses no problems of security or law and order.

25. Finally, it should be remembered that France has also acceded to the Convention.

Reply to paragraph 5 of the list of issues

26. The statement of reasons for administrative decisions is now governed by Act No. 1.312 of 29 June 2006 on the justification of administrative actions.

27. This key piece of legislation makes it mandatory under Monegasque public law to state the reasons for negative administrative decisions in each individual case. From now

on, unless otherwise provided for by law, administrative decisions to deny or withdraw rights must state the reasons, failing which they will be null and void. The Act reverses the previous situation, in which the administration had to state reasons for decisions only when expressly obliged to do so by law.

28. The Supreme Court has already overturned refoulement decisions adopted without a statement of reasons.

Reply to paragraph 6 of the list of issues

29. See annex (Prisoner statistics — Situation of the prison population — Prisoner movements in the short-stay prison).

Article 4

Reply to paragraph 7 of the list of issues

30. A bill designed to deal with specific forms of violence also aims to penalize inhuman acts such as genital mutilation, without prejudice to aggravating circumstances liable to be admitted by the criminal courts in cases of murder involving torture or cruelty.

31. In practice, no complaint or report of acts of torture or other cruel, inhuman or degrading treatment or punishment has been brought to the attention of the Monegasque administrative or judicial authorities.

32. A sentence of 15 years' imprisonment was nevertheless handed down in 2008 in a case of murder involving torture or cruelty.

33. The above does not preclude a possible future amendment to criminal legislation along the lines proposed in the list of issues.

Articles 5, 6, 7 and 8

Reply to paragraph 8 of the list of issues

34. With regard to the prosecution of crimes or offences committed outside Monaco, article 8, paragraph 2, of the Code of Criminal Procedure stipulates that it is possible to prosecute and try in Monaco "any person who, outside the territory of the Principality, is guilty of acts defined as a crime or offence constituting torture within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, if the person is found in the Principality".

35. Article 21, which was also amended by Act No. 1.173 of 13 December 1994, stipulates as follows:

The courts in the Principality have jurisdiction, under the rules set out below, to deal with all offences committed in its territory and those committed abroad in the cases specified in section II of the previous title.

A crime or offence is considered to have been committed in the territory of the Principality if an act comprising one of the elements constituting the infringement takes place there.

36. In addition, following the principle that an individual is governed by the system of criminal law to which he or she belongs as a citizen, Monegasque law penalizes offences and crimes committed outside the Principality in order to ensure the punishment or

protection of guilty or wronged Monegasque nationals. Article 5 of the Code of Criminal Procedure states that: “Any Monegasque person who, outside the territory of the Principality, is guilty of an act defined as a crime under Monegasque law may be prosecuted and tried in the Principality.”

37. Article 9-1 stipulates that:

A foreigner may be prosecuted and tried in the Principality if he or she is guilty outside its territory of:

- (1) A crime or an offence committed against a Monegasque person.
- (2) A crime or an offence committed against another foreigner, if he or she is found in the Principality in possession of objects obtained by the perpetration of the offence.

38. The institution of criminal proceedings against the perpetrator, joint perpetrators or accomplices does not require the arrest or extradition of the accused. Offenders facing prosecution in a criminal court may be sentenced in absentia (Code of Criminal Procedure, art. 378) or in adversarial proceedings (Code of Criminal Procedure, art. 374-1). If the offender is prosecuted in a criminal court and absconds, the court may convict the person in absentia (Code of Criminal Procedure, arts. 533 and 535).

39. Articles 8-2 and 9-2 of the Code of Criminal Procedure set forth the principle of universal jurisdiction, whereby Monegasque courts have jurisdiction to deal with an offence committed abroad by a foreigner that harms the interests of the international community, provided that the foreigner is in the territory of the Principality of Monaco.

Article 10

Reply to paragraph 9 of the list of issues

40. In Monaco, one of the tasks of the Human Rights Unit set up in the Department of Foreign Affairs is to run training programmes and campaigns to raise human rights awareness. A non-exhaustive list of activities aimed at promoting and protecting human rights in various sectors of society follows.

41. With regard to training for judges and other legal practitioners, several programmes have been made available to judges, mostly at the request of the Directorate of Judicial Services. They include:

- (i) 30 May 2005: general presentation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) by the Human Rights and Fundamental Freedoms Unit (open to all judicial staff);
- (ii) 20–25 June 2005: training session for Monegasque judges at the European Court of Human Rights in Strasbourg;
- (iii) 4–7 October 2005: training session for Monegasque judges at the European Court of Human Rights in Strasbourg;
- (iv) 21 October 2005: visit by Mr. Guy de Vel, Director-General of Legal Affairs of the Council of Europe, and Mr. Patrick Titium, legal adviser (open to all judicial staff);
- (v) 30 January–3 February 2006: human rights training session for Monegasque judges at the National College of the Judiciary in Paris;

- (vi) 10 February 2006: presentation in Monaco on the right to a fair trial by Judge Corneliu Birsan and Professor Jean-François Renucci (open to all judicial staff);
- (vii) March 2006: presentation in Monaco on the role of the court registry by Mr. Vincent Berger, section registrar at the European Court of Human Rights;
- (viii) 19 May 2006: training seminar for judges on judges' impartiality;
- (ix) 16 June 2006: presentation in Monaco on freedom of expression by Mr. Jean-Paul Costa, President of the European Court of Human Rights (open to all judicial staff);
- (x) 7 July 2006: training seminar for judges, lawyers and registrars on the admissibility of applications;
- (xi) 1 October 2009: conference on challenges facing the European Court of Human Rights and the shared responsibility for the implementation of the European Convention on Human Rights, led by Mr. Costa and Ms. Isabelle Berro-Lefèvre, a Monegasque judge at the European Court of Human Rights.

Training for judges

42. It will be recalled that judges in Monaco, whether of French or Monegasque nationality, receive the same initial and in-service training at the National College of the Judiciary (France's training college for judges).

43. That training naturally covers the subject of human rights. Thus, for instance, a module on the theory of the "judicial environment" dealing with exclusion and discrimination is included in the initial training course. In-service training courses have been organized on the European Convention on Human Rights and subjects such as ethics and judges' responsibilities.

44. In addition, the Directorate of Judicial Services regularly organizes lectures to create awareness of these issues among judicial staff and to broaden their field of knowledge (see also the checklist in the annex).

45. Finally, the case law of the European Court of Human Rights is closely monitored and the court's principal rulings, accompanied by analysis and commentaries, are regularly circulated to all judges.

46. The duties and obligations of prison staff and the concept of "appropriate training" are now being defined in a draft sovereign ordinance and draft decree of the Director of Judicial Services with a view to establishing new working practices for prison staff, including compliance with the European Prison Rules and, especially, rule No. 8, which states: "Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners." Rule No. 72.4 adds: "Staff shall operate to high professional and personal standards." Prior to entering service, prison warders must receive appropriate training.

Training for police officers

47. In conjunction with the Directorate of Public Security, the unit has organized information sessions on the European Convention on Human Rights and its application, with particular focus on the articles directly related to the work of the police.

48. A human rights module is an integral part of training for recruits selected through a competitive examination to attend Monaco's police academy.

49. Extracts from training modules: "In the context of police work in the area of criminal law, new recruits ... are constantly reminded of the fundamental human rights they

are responsible for enforcing, by protecting the physical integrity of persons in all circumstances without exception, such that these values become assimilated with the fundamental principles intrinsically recognized in the Monegasque Constitution.

50. “With regard to the detention of persons on police premises, new recruits are taught the need for the strictest application of the rules contained in the Code of Criminal Procedure and the Constitution, as well as respect for the constitutional principle of the presumption of innocence.

51. “Students are also taught that the prosecution service must be informed immediately of any crime or offence in which offenders are apprehended in *flagrante delicto* and of any offence that might lead to their being placed in custody, a measure that is now explicitly referred to in the Code of Criminal Procedure [see below], which clearly sets forth all the rights enjoyed by persons placed in police custody.

52. “In the course of their training, recruits are also reminded of the content of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which forbids any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or a third person have committed or are suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

Courses for pupils at the Lycée Albert 1er

53. High school students in their final year attend courses aimed at acquainting them with the Council of Europe and the European Court of Human Rights, and with the practical implications of Monaco’s accession to the Council. The courses are always held on 10 December, Human Rights Day, or 26 January, the eve of the International Day of Commemoration in Memory of the Victims of the Holocaust.

54. It should be noted that the Human Rights Unit is systematically consulted on bills that have repercussions for fundamental rights, enabling it to propose any necessary amendments, especially to protect persons against racism and racial discrimination. Judicial and administrative practices, as well as legislation, are also examined from a human rights perspective.

Article 11

Reply to paragraph 10 of the list of issues

55. Particular note should be taken of Act No. 1.343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure, which has led to the restructuring and rationalization of police custody and pretrial detention procedures.

56. This law provides for: direct supervision by the principal public prosecutor or investigating judge (art. 60-3); a 24-hour limit on police custody (art. 60-4); the notification and enforcement of rights (arts. 60-5, 60-7, 60-8 and 60-9); and audio-visual recording (art. 60-10). These rules are strictly enforced and adherence to them constantly monitored.

57. The principle of legal assistance is applicable to persons held in police custody and whose financial circumstances justify it. In such cases, a lawyer is assigned to them.

58. Police registers and files may be scrutinized by the courts and the Commission for the Monitoring of Personal Information.

59. More precisely, with regard to questioning, the appointment of a defence counsel and the handover of case files for inspection, the following provisions of the Code of Criminal Procedure apply:

Article 166. When the accused first appears before the investigating judge, the latter shall ascertain their identity, notify them of the acts attributed to them and take statements from them, after informing them that they are free to refrain from making one.

The record must mention that the accused has been so informed, failing which subsequent proceedings shall be null and void.

At this first examination, the judge shall notify the accused that they are entitled to choose a defence counsel from among the defence lawyers or lawyers practising at the Court of Appeal in Monaco or one will be officially assigned to them if they so request.

The completion of this formality shall be mentioned in the record, failing which all subsequent proceedings shall be null and void.

A defence counsel must be appointed for minors under 18 years of age and persons facing criminal charges who do not choose one for themselves, failing which the proceedings shall be null and void.

The appointment shall be made, in all cases, by the president of the court.

A party claiming damages that has duly associated itself with the prosecution shall also be entitled to legal assistance.

Article 167. The accused and the party claiming damages may, at any time during the judicial investigation, provide the name of the lawyer chosen by them from among the defence lawyers or lawyers practising at the Court of Appeal in Monaco.

An accused person who demonstrates a lack of means may, if they have not already done so, request that a lawyer be assigned to them.

If, subsequent to the appointment of a lawyer, the accused or, in the case of a minor, their legal representative chooses a different defence counsel, the task of the court-appointed lawyer shall end as soon as the latter has been notified.

Article 168 (Act No. 1.200 of 13 January 1998)

Unless they explicitly forgo this right, the accused, whether in detention or at liberty, and the party claiming damages may be examined or confronted only in the presence of their defence counsel or once the latter has been duly summoned.

The defence counsel shall be summoned no later than two days before the examination, by registered letter or orally, as attested by a signature in the margin of the case file.

Article 169. The case file must be made available to the defence counsel the day before each examination of the accused. It must also be made available to counsel for the party claiming damages the day before the latter is heard.

Article 170. If, in the case of a crime or offence in which the offender is apprehended in *flagrante delicto*, the investigating judge visits the scene of the crime, he or she may question the accused immediately and proceed with any pertinent confrontations without regard for the provisions of articles 166, 168 and 169.

The same shall apply should an urgent situation, noted in the record of proceedings, arise either because the life of a witness is in danger or because evidence may be about to disappear.

Article 175. The record of proceedings shall be read out to the accused and signed by the accused at the foot of each page; if the accused is unable or unwilling to sign, this shall be mentioned, along with the reasons for refusal.

The investigating judge, court registrar and, where appropriate, the interpreter shall also sign the record.

Article 180 (Act No. 1.200 of 13 January 1998, replaced by Act No. 1.343 of 26 December 2007)

60. With regard to police custody, the following articles of the Code of Criminal Procedure apply:

Article 60-1 (established by Act No. 1.343 of 26 December 2007)

Police custody shall be applied in accordance with the provisions of this title under the supervision of:

- The principal public prosecutor or
- The investigating judge when there is a request for judicial assistance

Article 60-2 (established by Act No. 1.343 of 26 December 2007)

Any person in respect of whom there is good reason to believe that they have committed or attempted to commit a crime or offence may, if required for the purposes of an investigation, be placed in custody by a judicial police officer. They may be subjected to a body search, subject to the provisions of the following article with regard to intimate body searches.

Throughout the period of police custody, such persons shall remain at the disposal of the judicial police officer.

Article 60-3 (established by Act No. 1.343 of 26 December 2007)

The placement of a person in police custody shall be made known immediately to the principal public prosecutor or the investigating judge, who may end it at any time.

The principal public prosecutor or the investigating judge may visit or summon a person placed in police custody. They may appoint a doctor to examine the person. They must appoint a doctor to carry out intimate body searches on a person held in custody when such searches are essential for ascertaining the truth.

Article 60-4 (established by Act No. 1.343 of 26 December 2007)

A person may not be held in police custody for longer than 24 hours.

However, that period may be extended by a further 24 hours.

In that case, the principal public prosecutor or investigating judge must make an application, accompanied by all relevant documents, to the custodial judge for approval to extend the period of custody.

The custodial judge is a judge appointed by the president of the court of first instance, who may establish a rota for this purpose.

The rulings of the custodial judge shall be reasoned and immediately enforceable.

The decision of the custodial judge must be notified to the person in custody prior to the expiry of the initial 24-hour period of custody.

A further extension of 48 hours may be authorized on the same conditions in cases where the investigations concern either the laundering of a gain derived from an offence, as set out and penalized in articles 218 and 219 of the Criminal Code, or an infringement of the law on narcotics, or offences against the State security, as set out and penalized in article 50 et seq. of the Criminal Code, or any offence to which this section applies according to the law.

Article 60-5 (established by Act No. 1.343 of 26 December 2007)

When notifying a person of their placement in police custody, the judicial police officer shall inform them of their rights under articles 60-6 to 60-9, providing them with a written copy of these articles, if need be translated into a language they understand.

A record of the completion of this formality shall be signed by the judicial police officer and the person concerned. If the latter is unable or unwilling to sign, the record shall so indicate.

The judicial police officer shall allow the person concerned to exercise their rights immediately.

Article 60-6 (established by Act No. 1.343 of 26 December 2007)

Any person placed in police custody shall be informed immediately by the judicial police officer about the acts under investigation that the person must explain and about the nature of the offence.

The second paragraph of article 60-5 shall be applied.

Article 60-7 (established by Act No. 1.343 of 26 December 2007)

Persons placed in police custody are entitled to telephone the person with whom they normally live or a parent, brother or sister, or employer, in order to notify them of the custodial measure.

If the judicial police officer considers that such communication could adversely affect the investigations, the matter shall be referred to the principal public prosecutor or investigating judge, who shall decide whether or not to grant the request.

The second paragraph of article 60-5 shall be applied.

Article 60-8 (established by Act No. 1.343 of 26 December 2007)

A person placed in police custody is entitled, at their own request or that of a person whom they have been able to notify under the preceding article, to be examined by a doctor designated by the principal public prosecutor, investigating judge or judicial police officer. If detention is extended, the person is entitled to be examined a second time.

The principal public prosecutor, investigating judge or judicial police officer may at any time designate a doctor to examine a person held in police custody.

In the absence of a request by the person held in police custody or by the principal public prosecutor, the investigating judge or the judicial police officer, a medical examination must be carried out if a family member requests one; the doctor shall be designated by the principal public prosecutor, investigating judge or judicial police officer.

The doctor shall examine the person held in police custody without delay. The certificate on which the doctor must express an opinion on the person's fitness to be held in custody shall be included in the case file.

While awaiting the doctor's arrival, questioning of the detained person shall continue, as the request for a medical examination may not stay proceedings.

The second paragraph of article 60-5 shall be applied.

Article 60-9 (established by Act No. 1.343 of 26 December 2007)

A person held in police custody is entitled to consult a lawyer from the moment they are detained. If they are unable to choose one or if the chosen lawyer cannot be contacted, they may apply to have one assigned to them by the president of the court from a rota established by the President of the Bar Association. The judicial police officer shall inform the lawyer chosen of the nature and legal basis of the offence. A record of the completion of this formality shall be signed by the judicial police officer and the lawyer. After the meeting, which must be held in conditions that guarantee confidentiality and which may not exceed one hour, the lawyer shall, if warranted, submit written comments for inclusion in the case file.

In the event that the period of police custody is extended, the person may request a meeting with a lawyer as soon as the new period starts, under the conditions and arrangements outlined above.

Article 60-10 (established by Act No. 1.343 of 26 December 2007 to take effect on 28 December 2008)

The hearing of a person held in police custody on the premises of the Directorate of Public Security shall be recorded on an audio-visual medium, failing which it shall be considered null and void. The recording may be consulted during the investigation or trial only if the written record of the hearing is contested, by order of the investigating judge or trial court judge, either of their own motion or at the request of the prosecution or one of the parties.

Article 60-11 (established by Act No. 1.343 of 26 December 2007)

In the record of the ending of police custody, the judicial police officer must mention:

- (1) The starting date and time of placement in custody and, where applicable, of its extension;
- (2) The date and time at which the person in custody was informed of their rights, as provided for in the first paragraph of article 60-5;
- (3) The date and time at which the person in custody exercised the rights set out in articles 60-6 to 60-9, and the response to their requests;
- (4) The duration of hearings and the periods of rest between them, as well as time allowed for meals;
- (5) The date and time at which the person was released or brought before the principal public prosecutor or investigating judge.

Each of these details must be signed by the person in custody. Refusal to do so shall be recorded by the judicial police officer.

Reply to paragraph 11 of the list of issues

61. Article 180 of the Code of Criminal Procedure, which, like the aforementioned articles, stems from Act No. 1.343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure, stipulates that: “The accused, who is presumed innocent, shall remain free. However, for the purposes of the investigation or as a security measure, the investigating judge may place the accused under judicial supervision. If this measure proves inadequate for the purpose, the investigating judge may, exceptionally, place the accused in pretrial detention. The investigating judge shall take this decision after hearing the submissions of the principal public prosecutor.”

62. Articles 190 to 202-4, introduced by the same Act, deal with pretrial detention. The following points can be made in this respect.

63. Article 190 sets out the cases in which pretrial detention can be used. This form of deprivation of liberty may be ordered or extended only if the accused is liable to a penalty for a serious offence or misdemeanour of not less than 1 year’s imprisonment.

64. Under the new article 191, the investigating judge must set out the grounds on which he or she proposes to imprison the accused (these grounds may be concerned with facilitating the administration of justice or keeping the peace):

Article 191 (Act No. 1.200 of 13 January 1998, replaced by Act No. 1.343 of 26 December 2007)

Pretrial detention may be ordered or extended when it is the only way to:

- (1) Preserve material proof or evidence or prevent pressure on witnesses or victims, or collusion between the accused and their accomplices;
- (2) Protect the accused, ensure that they remain at the court’s disposal and put an end to the offence or prevent its repetition;
- (3) Put an end to breaches of the peace resulting from the seriousness of the offence, the circumstances of its commission or the degree of harm caused.

65. The new article 192 focuses on the conditions and criteria to be met before pretrial detention can be applied, and provides for the immediate release of suspects in pretrial detention if the conditions set forth in the preceding two articles are not met.

66. Article 194 deals with the duration of pretrial detention and is therefore the de facto and de jure keystone of this measure. Since pretrial detention constitutes a deprivation of liberty, particular attention must be paid to how it is applied, especially with regard to its duration.

67. This article applies, in its first paragraph, the principle of “reasonableness” to the duration of pretrial detention, in light of the seriousness of the offences and the complexity of the investigations required to ascertain the truth.

68. The following paragraphs establish the maximum periods of detention for misdemeanours and serious crimes, as well as the conditions under which it can be extended.

69. The new article 195 deals specifically with the modus operandi of pretrial detention (such as the separation of detainees and restrictions on communication, especially correspondence). Aside from written correspondence, the investigating judge may prohibit all forms of communication by the accused. Given the exceptional nature of this measure, strict rules on its use are needed. Therefore, such a prohibition requires a special order giving reasons – judges must provide justification, notably on the basis of the seriousness of the matter and/or the danger posed by the accused; it must be limited in time – eight

days, renewable once; and it must be open to challenge by the person concerned before a court of appeal.

70. The (new) articles 202 to 202-4 contain one of the most important innovations of the 2007 Act, the establishment of a system of compensation for unjustified pretrial detention:

Article 202 (replaced by Act No. 1.343 of 26 December 2007)

A person placed in pretrial detention on the grounds of evidence that ultimately leads to their definitive release or acquittal is entitled to compensation for harm suffered. Compensation may also be awarded in cases where the evidence that provided the grounds for pretrial detention ultimately leads to a definitive decision not to commit the accused for trial.

71. The rights of the defence are also observed during detention. Indeed, draft provisions (a draft sovereign ordinance) on security and discipline for prisoners have been prepared with a view to providing a proper regulatory framework for disciplinary action (to bring it under the jurisdiction of the courts).

72. The hallmarks of these tighter regulations are the strict definitions of violations and disciplinary sanctions (set forth in general terms in the ordinance and in full detail and hierarchical order in the decree) and a bolstering of the detainee's rights of defence (such as legal assistance throughout disciplinary proceedings, including during the detainee's hearing before the institution's disciplinary committee, and the mandatory presence of an interpreter for foreign detainees who do not speak French).

73. Moreover, these disciplinary regulations will allow detainees to challenge disciplinary sanctions before a board of appeal. The task of the board, the composition of which is set out in article 98 of the draft sovereign ordinance, will be to verify that disciplinary cases are handled in accordance with internal rules and outside legislation and to confirm, amend or annul the disciplinary committee's decisions.

Reply to paragraph 12 of the list of issues

74. See the provisions on police custody described in the reply to paragraph 10 of the list of issues (Code of Criminal Procedure, art. 60).

Reply to paragraph 13 of the list of issues

75. Act No. 1.343 of 26 December 2007 on justice and liberty, amending certain provisions of the Code of Criminal Procedure, introduced a new article 60-9, which states: "A person held in police custody is entitled to consult a lawyer from the moment they are detained. If they are unable to choose one or if the chosen lawyer cannot be contacted, they may apply to have one assigned to them by the president of the court from a rota established by the President of the Bar Association."

76. The Act also stipulates that the meeting with the lawyer must be held in conditions that guarantee confidentiality and must not exceed one hour: "In the event that the period of police custody is extended, the person may request a meeting with a lawyer as soon as the new period starts, under the conditions and arrangements outlined above."

77. The official appointment of a lawyer after a person has been charged with an offence is governed by the Code of Criminal Procedure (arts. 167 and 399):

Article 167. The accused and the party claiming damages may, at any time during the judicial investigation, provide the name of the lawyer chosen by them from among the defence lawyers or lawyers practising at the Court of Appeal in Monaco.

An accused person who demonstrates a lack of means may, if they have not already done so, request that a lawyer be assigned to them.

If, subsequent to the appointment of a lawyer, the accused or, in the case of a minor, their legal representative chooses a different defence counsel, the task of the court-appointed lawyer shall end as soon as the latter has been informed.

Article 399. Any person arrested after being caught in the act of committing an offence shall be brought immediately, and within 24 hours at the latest, before the principal public prosecutor, who will question them and, if necessary, bring them before the criminal court either immediately or at one of its upcoming hearings, but within the three-day limit. The court shall be convened for a special session if necessary.

The principal public prosecutor may issue a warrant for the arrest of an accused person brought before the court in this way.

The summons and arrest warrant are issued orally, without formalities.

If the accused is destitute, they may ask the principal public prosecutor to appoint an official defence counsel for them from among the defence lawyers or lawyers practising at the Court of Appeal.

The special case of youth offenders

78. A third party is systematically informed in cases where the person in custody is a minor. This measure could easily be extended in the future, regardless of the age of the individual concerned.

79. Alternatives to prosecution are provided for minors, so that imprisonment is a last resort (Act No. 740 of 25 March 1963, art. 9).

80. Article 7 of Act No. 740 also stipulates that where it is in the interest of the minor and where the injured party decides not to enter a claim for damages, the guardianship judge may, on application from the principal public prosecutor, discharge the minor and order, if appropriate, one of the measures referred to in article 9, paragraph 2.

81. Consequently, if the minor is found to have committed the offence, the court hearing the case may take one of the following decisions:

- (i) The president of the court may give the minor a simple reprimand;
- (ii) The minor may be returned to their parents or to the person who had custody of them or to a person specified in the decision, either without conditions or subject to supervision until the minor reaches the age of 21, or for a shorter period;
- (iii) Order, subject to the same time frame, that the minor be placed in a Monegasque or French institution authorized to take care of youth offenders;
- (iv) Impose on the minor, if they are at least 13 years of age, the penalty provided for under the criminal law establishing the offence, bearing in mind both the need for punishment and the possibilities for the offender's moral reform and rehabilitation.

Foreigners

82. Article 60-12 of the Code of Criminal Procedure provides that an interpreter should be present from the moment the person is taken into custody in cases where the person does not speak or understand French. The notifications and hearings provided for in the Code of

Criminal Procedure must be in a language that the person understands. If needed, the services of an interpreter are requested by the judicial police officer.

83. During the investigation proceedings, article 139 of the Code of Criminal Procedure provides that if the witness does not speak French or any other language understood by the investigative judge and used in the Principality of Monaco, the investigating judge shall appoint an interpreter who is over 21 years of age and is neither the registrar nor a witness in the case. The interpreter shall swear under oath to faithfully translate the witness's statement, the questions and the witness's answers. Articles 142 and 143 stipulate that the interpreter must sign the official record of the statement along with any corrections or references. Article 175 stipulates that the interpreter must sign the official record of the charges.

84. When the case is referred to a criminal court, the committal order is followed by the questioning of the accused, which is recorded in a report signed by the interpreter (Code of Criminal Procedure, art. 277).

85. Article 328 of the Code of Criminal Procedure provides that, during the proceedings, if the accused or one or more witnesses do not speak the same language, the president of the court shall appoint an interpreter over the age of 21 who shall swear under oath to faithfully translate the statements to be relayed to those who speak different languages. The principal public prosecutor, the accused or the party claiming damages may object to the interpreter, though they must provide a reason for their objection. The court will rule on the objection.

86. Article 329 of the Code of Criminal Procedure stipulates that neither the judges of the criminal court, the registrar nor the parties to the case may act as an interpreter. In exceptional cases, when necessary and with the express consent of the parties, the interpreter may be chosen from among the witnesses.

87. The costs incurred in implementing the above provisions are paid by the Directorate of Judicial Services.

Reply to paragraph 14 of the list of issues

88. Follow-up to requests for conditional release submitted by the detainee to the Director of Judicial Services is guaranteed under article 14 of the Convention on Good-Neighbourliness between France and Monaco of 18 May 1963. The requests are considered on the basis of the evidence sent by the French prison authorities.

Reply to paragraph 15 of the list of issues

89. One should first recall the Convention on Good-Neighbourliness between France and Monaco signed in Paris on 18 May 1963 and given the force of law in Monaco by Sovereign Ordinance No. 3.039 of 19 August 1963, and more specifically article 14 of that Convention, quoted below:

Persons sentenced to imprisonment for crimes under ordinary law shall be held in penal institutions in France; they shall be subject to the system applied in these institutions, in accordance with the provisions of the Code of Criminal Procedure. Minors in respect of whom a rehabilitation order has been handed down shall be admitted to French reform centres.

Pardons or reductions of sentence granted by His Serene Highness the Prince of Monaco shall be communicated through the diplomatic channel to the French Government, which shall make the necessary arrangements to see that those measures are carried out.

The French authorities shall indicate to the Government of Monaco, as appropriate, which prisoners, in its view, are deserving of pardon or parole and which minors can, based on their behaviour in the reform centres, be granted a provisional release or any other favourable treatment.

Individuals transferred from Monaco to France who serve out in French penal institutions sentences pronounced by the Monegasque courts, in accordance with the provisions of paragraph 1 of this article, and who are prosecuted or convicted by the French courts, shall, upon completion of their sentence, be handed over without formalities to the competent judicial authorities of France.

90. Regarding the monitoring of conditions of detention for prisoners in French penal institutions, negotiations will soon be opened between the relevant authorities of the two States to establish an agreement enabling a representative of the Monegasque judicial authority to visit French penal institutions. This procedure is intended to provide information for the Monegasque judicial authorities on the one hand, and also to justify, if necessary, the steps taken by the French legal authorities.

Reply to paragraph 16 of the list of issues

91. See annex (“Status of transfers from the short-stay prison” regarding individuals imprisoned in France).

Reply to paragraph 17 of the list of issues

92. See annex (“Statistics on detainees – Situation of the prison population”).

Articles 12 and 13

Reply to paragraph 18 of the list of issues

93. Cases of torture by a judicial police officer: see paragraphs 4 to 7 above (reply to paragraph 2 of the list of issues).

94. If a complaint is made against a staff member of the short-stay prison, a detainee may, in accordance with article 32 of the internal rules of the short-stay prison, draft a letter to any Monegasque administrative or judicial authority, to their lawyer or to the authorities of the Council of Europe, a list of the latter being included in the internal rules of the short-stay prison. That letter is given in a sealed envelope to the governor of the short-stay prison, and its dispatch may not be delayed on any pretext.

95. In principle, the complaint is addressed to the Director of Judicial Services, who is responsible for disciplining short-stay prison staff, but it may also be addressed to the principal public prosecutor, who must keep the Director of Judicial Services informed.

96. Consequently, in cases where a detainee makes a complaint against a member of the prison staff, the Director of Judicial Services (who is the equivalent of the Minister of Justice and has authority over the governor of the short-stay prison) asks the governor of the short-stay prison to draw up an incident report, pursuant to article 80 of the short-stay prison rules, if they have not yet done so. Before any penalty is imposed, the duly summoned officer must be permitted to give an explanation. They have, in any event, the right to consult their case file. The Director or, where appropriate, the Secretary-General of Judicial Services, draws up a record of the hearing and a detailed report of the facts and of the circumstances in which they took place.

97. Any disciplinary measure will be announced, depending on its severity, by the Director of Judicial Services or the Secretary-General and notified to the person concerned.

98. Generally speaking, the Director of Judicial Services or the Secretary-General may impose penalties under the conditions laid down by Act No. 957, that is to say, a warning, reprimand, downgrading or demotion, suspension for between three months and one year, compulsory retirement or removal from post. In cases of misconduct, be it a failure to comply with professional obligations or a breach of ordinary law, the person concerned may be suspended by decision of the Director of Judicial Services. If the person concerned is subject to criminal proceedings, their situation will not be permanently resolved until the decision handed down by the trial court has become final.

99. For staff of the short-stay prison, the procedure laid out in the general regulations applicable to contract staff of the Directorate of Judicial Services and the short-stay prison will apply in the event of a complaint against one of them. Consequently, any misconduct on the part of a staff member in the exercise of their duties will render them liable, without prejudice to any penalties provided for by law, to the following disciplinary measures: warning, reprimand, delayed promotion, suspension without pay for a maximum of one month, with the retention of family benefits, or dismissal without notice or compensation.

100. The Secretary-General issues a warning or reprimand and notifies the person concerned by letter, while the more serious penalties are a matter for the Director of Judicial Services and are notified by registered letter with acknowledgement of receipt.

Reply to paragraph 19 of the list of issues

101. Since 2004, three convictions have been handed down (in 2007, 2008 and 2009) for procuring (an offence that may be connected with human trafficking).

Reply to paragraph 20 of the list of issues

102. No complaints have been received to date, but detainees in France, like those in Monaco, have the option of lodging a complaint directly with the Director of Judicial Services on any issue regarding the conditions of their detention.

103. See reply to paragraph 15 of the list of issues.

Article 14

Reply to paragraph 21 of the list of issues

104. The ordinary law governing compensation for victims of serious acts of violence applies to victims of torture, and thus guarantees their rights.

105. Following the Roman-Germanic tradition, the legal system in Monaco upholds the principle of full reparation and consequently the principle of assessing the most appropriate and fairest compensation possible for the harm suffered. The damages awarded do not in any way constitute a type of civil punishment or civil fine in addition to the criminal sentence already handed down. Once the damages have been established, the judge proceeds to consider whether harm was inflicted and whether it was direct. The judge also verifies the relationship of cause and effect between the harm suffered and the damages to be paid.

106. The judge has full discretion to assess the harm done and may be guided by case law or the regularly published lists of assessments of harm, particularly those concerning bodily injury, thereby basing his or her assessment on a national statistical frame of reference. The judge takes a decision on that basis, bearing in mind the amount of compensation requested by the victim.

107. One cannot ignore, however, the sometimes significant differences between the awards made by one court and another or one judge and another. In order to try to eliminate these differences, a higher court can intervene on appeal to increase or decrease the first judge's award, thereby helping to standardize compensation awards among different courts and different judges and ensure greater equality before the law.

108. In this regard, it should be noted that this action in person is available only to the victim and limits the judge's assessment. Under the rules of civil procedure, the judge can never exceed the requested amount, even if that amount is a symbolic one of only one euro, as is sometimes the case.

109. The victim of an offence, regardless of the nature of that offence (be it an infraction, a misdemeanour or a serious offence), has the right to appeal for compensation under article 2, paragraph 1, of the Code of Criminal Procedure, which states that "anyone who has personally suffered harm directly caused by an act constituting an offence may bring an action for compensation".

110. An action for compensation, admissible "without distinction, for all categories of damage, both material and physical or mental", can be heard by the court at the same time and before the same judges as the criminal proceedings (Code of Criminal Procedure, art. 3). This illustrates the two facets of the criminal proceedings mentioned above.

111. Article 73 of the Code of Criminal Procedure makes a key clarification by stating that "any person harmed by a crime, an offence or an infraction, or permitted under article 68 to lodge a complaint on behalf of someone else, may enter a claim for damages before the competent court, at least until the hearing is terminated". This is an interesting option when compared with practice in other States, where the victim must formally enter such a claim before any substantive proceedings have begun. This noteworthy provision is very advantageous for the victim, but it raises questions about the delicate balance between the victim's right to compensation and the defence rights of the accused, particularly the adversarial principle and the right to a fair trial. The judge must always protect those rights, by ordering an extension of the proceedings if necessary.

112. Another noteworthy provision that is favourable to the victim concerns private prosecution; that is, when the victim brings the action on their own initiative. Article 75, paragraph 2, of the Code of Criminal Procedure stipulates that, in cases of offences and infractions, "the plaintiff is deemed to have entered a claim for damages by the sole fact of summoning" the perpetrator to appear before the competent court. When a case is brought to court in this way, the victim is not required to formally state that they wish to enter a claim for damages.

113. In addition to the submission of a claim for damages in due form — which generally involves an expression of intent — two other conditions must be met for the plaintiff to receive compensation:

- (a) The perpetrator of the offence must be convicted by the criminal court;
- (b) Real and direct harm must have been suffered.

114. Regarding the requirement that the perpetrator must be convicted, there is a noteworthy exception to this in article 392 of the Code of Criminal Procedure, which states that: "In the case of a dismissal [i.e. acquittal], the party claiming damages may, in relation to the same acts, request compensation for harm on the basis of a fault committed by the accused other than the fault cited in the charge, or on the basis of a provision of civil law." This action is brought before the same judge who heard the criminal proceedings and is an essential guarantee for the victim. While it is an exception to the system unifying criminal and civil offences, it helps to avoid certain injustices.

115. Article 16, paragraph 2, of Act No. 1.355 of 23 December 2008 on associations and federations stipulates that an accredited association “can bring legal proceedings to defend common interests related to its activities without having to give proof of direct and personal harm”. The bill to combat and prevent specific forms of violence that was submitted to the National Council on 13 October 2009 also enables certain associations to sue for damages *ex officio*, including those whose purpose is to combat discrimination, sexual violence, child abuse or sexual violence against minors.

116. Protection measures for victims, including a measure allowing victim-defence associations to sue for damages, with the victim’s consent, are provided for in article 32 of the bill to combat and prevent specific forms of violence.

Article 16

Reply to paragraph 22 of the list of issues

117. First of all, it is important to point out that to date there has not been a single event or situation in Monaco that can be said to have resulted in a serious breach of the peace, rioting, group rebellion or other demonstrations necessitating the mobilization and use of the forces of law and order and requiring the use of handcuffs.

118. It might also be noted that technical training in the use of security and defence equipment covers all necessary instructions and precautions. Handcuffs are removed during medical examinations.

119. Article 7 of the draft sovereign ordinance setting out the regulations of the short-stay prison stipulates that “the prison staff shall perform their duties with respect for ethical standards and must treat all detainees humanely” (article 3 concerns the functions of the prison service, while this article concerns the duties and obligations of staff in the short-stay prison).

120. “In the short-stay prison, staff must in all circumstances behave and perform their tasks in such a way that they set a good example for the detainees and command their respect.”

121. Article 8 stipulates that the prison staff and anyone working with them may not “commit acts of physical or mental violence against detainees”.

122. Article 90 adds that “detainees may only be searched by staff of the same sex and in conditions that, while ensuring an effective search, guarantee respect for the inherent dignity of the human person”.

Reply to paragraph 23 of the list of issues

123. In addition to the international instruments specifically devoted to the fight against crimes targeting children (see the reply below to paragraph 25 of the list of issues), Monaco is a party to the Convention on the Rights of the Child (New York, 20 November 1989), as modified by the amendment to article 43, paragraph 2 (New York, 12 December 1995, accepted on 17 May 1999).

Reply to paragraph 24 of the list of issues

124. Punishment for offences has been strengthened by Act No. 1.344 of 26 December 2007, on stiffer penalties for crimes and offences against children (which amended the time limit for bringing a prosecution and broadened the range of penalties to cover multiple criminal offences). Prevention, on the other hand, involves identifying child victims of domestic violence.

125. Several public and private bodies that care for children at risk now have trained staff who can identify and report a child at risk or in difficulty:

(a) In the maternity ward: identification of new mothers and babies who are in difficult situations. If supervision by the hospital staff and later by the midwife at home cannot alleviate the situation, a report is drawn up on the family;

(b) In day care: the multidisciplinary team is able to identify children who may be at risk or who exhibit a developmental delay;

(c) At school: every school has a social worker, a psychologist and a nurse to whom students with questions can talk on a one-to-one basis.

126. Any act of violence committed at school against a child is immediately reported to the Government Councillor for Internal Affairs (the minister) who then informs the judge. In an emergency, the Directorate of National Education, Youth and Sport directly notifies the principal public prosecutor's office. In any event, the penalties imposed are those provided for in the Criminal Code.

127. The various services of the Directorate of Health and Social Welfare are responsible for caring for child victims of violence, monitoring them and implementing measures to help reintegrate and rehabilitate them. As soon as the prosecution service receives a report that a minor's safety or health is at risk, a request for educational measures, including all necessary protection measures, is sent to the guardianship judge.

128. In urgent cases, the principal public prosecutor can order that a child or youngster whose safety, health, education or morality is compromised be placed in the local shelter. This urgent measure has to be officially approved as soon as possible by the guardianship judge. The children are cared for in an appropriate facility, the Foyer Saint-Dévote, where the necessary social workers, specialized teachers, psychologists and doctors can attend to them.

Reply to paragraph 25 of the list of issues

129. First of all, it is important to note that the small size of the country and the surveillance system in place (police, workplace inspections) facilitate surveillance and thus the prevention of trafficking.

130. In view of the mainly transnational nature of this criminal activity, Monaco generally takes a practical and targeted approach that focuses on developing cooperation projects in areas prioritized by the Government, namely, trafficking in persons and the protection of children in particular.

131. It should also be pointed out that, as part of the effort to combat transnational organized crime, Sovereign Ordinance No. 16.025 of 3 November 2003 gave the following instruments the force of law in Monaco:

(a) The United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000;

(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000;

(c) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000. Sovereign Ordinance No. 605 of 1 August 2006 also gave effect to the aforementioned Convention and its two additional protocols.

132. Monaco signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted by the United Nations General Assembly on 25 May 2000) on 26 June 2000 and ratified it on 24 September 2008; it entered into force on 24 October 2008.

133. In addition, offences involving the exploitation and sexual abuse of children, including child pornography, are punished by Act No. 1.344 of 26 December 2007 on stiffer penalties for crimes and offences against children. The Act increased the time limit for bringing a prosecution to 20 years from the time the victim reaches the age of majority and introduced penalties for the criminal offences described below.

134. **Sexual abuse.** This includes:

(a) The act of engaging in sexual activities with a child who, under the relevant provisions of domestic law, has not yet reached the legal age for sexual activities (Criminal Code, art. 265);

(b) The act of engaging in sexual activities with a child by: making use of coercion, force or threats; abusing a recognized position of trust, authority or influence over the child, including within the family; abusing a situation where the child is particularly vulnerable, including owing to a physical or mental disability or a situation of dependence (Criminal Code, art. 266).

135. **Child pornography.** This encompasses the following conduct (Criminal Code, art. 294-3):

- (i) Producing child pornography;
- (ii) Producing child pornography for distribution by electronic means;
- (iii) Supplying child pornography, including by electronic means;
- (iv) Making child pornography available, including by electronic means;
- (v) Distributing child pornography, including by electronic means;
- (vi) Transmitting child pornography, including by electronic means, as well as obtaining child pornography for oneself or for others;
- (vii) Obtaining child pornography for oneself or for others by electronic means;
- (viii) Possessing child pornography;
- (ix) Possessing child pornography in the form of electronic files or in an electronic storage system;
- (x) Knowingly accessing child pornography through communication and information technologies.

136. **Participation of a child in pornographic performances.** This encompasses the following conduct (Criminal Code, art. 294-5):

- (i) Recruiting or encouraging a child to participate in pornographic performances;
- (ii) Forcing a child to participate in pornographic performances;
- (iii) Profiting from or exploiting a child in any other way for such purposes;
- (iv) Knowingly attending pornographic performances involving children.

137. **Child prostitution.** This encompasses the following conduct (Criminal Code, arts. 268 and 269):

- (i) Recruiting a child for prostitution or encouraging a child to engage in prostitution;
- (ii) Forcing a child to engage in prostitution;
- (iii) Profiting from or exploiting a child in any other way for such purposes;
- (iv) Engaging the services of a child prostitute.

138. **Corruption of a child.** This involves intentionally, for sexual purposes, exposing a child who has not yet reached the legal age for sexual activities to sexual abuse or sexual activities, even if the child does not participate (art. 294-5 of the Criminal Code).

139. **Solicitation of children for sexual purposes, or “grooming”.** This consists of (Criminal Code, art. 294-6):

- (i) The act whereby an adult intentionally proposes, by means of communication and information technologies, a meeting with a child who has not yet reached the legal age for sexual activities, with the intent of committing one of the following offences against the child, when the proposal is followed by concrete action leading to such a meeting:
- (ii) The act of engaging in sexual activities with a child who, under the relevant provisions of domestic law, has not yet reached the legal age for sexual activities;
- (iii) The production of child pornography.

140. Under the current legislation in Monaco, the term “child pornography” includes (Criminal Code, art. 294-3) any material depicting:

- (i) A minor engaged in explicit sexual activities;
- (ii) A person who appears to be a minor engaged in explicit sexual activities;
- (iii) Realistic images representing a minor engaged in explicit sexual activities;
- (iv) Any material depicting a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

141. In addition, the Monegasque Criminal Code contains specific provisions on the protection of children against exploitation and sexual abuse over the Internet (arts. 266, 294-3 and 294-6).

142. A bill designed to help combat and prevent specific forms of violence by providing greater protection to women, children and persons with disabilities was submitted to the office of the National Council on 13 October 2009.

143. The passage of this bill would provide Monaco with a legal instrument which takes into account the extent of a victim’s vulnerability and many different forms of violence. The bill would afford greater protection for women, children and persons with disabilities by introducing specific measures for prevention, protection and punishment. The proposed law focuses on domestic violence involving spouses or persons living together under the same roof on a long-term basis, “honour crimes”, female genital mutilation and forced marriage.

144. Under this bill, as under Bill No. 190, in cases where such offences are committed by a spouse or a person living under the same roof on a long-term basis, the penalties are increased substantially; either the sentence corresponding to the offence under ordinary law is doubled, or the maximum sentence is applied. In addition, a failure to fulfil the obligation to make reparations counts as an aggravating circumstance with respect to the penalty to be imposed; this may lead, inter alia, to the revocation of the suspension of a sentence or of

probation (art. 10). This provision also applies to perpetrators of female genital mutilation, honour crimes and rape of a spouse or a domestic worker (art. 12). The bill covers domestic slavery and harassment as well.

145. The bill provides for measures to protect victims and for the training of judges and other persons who deal with victims of such acts.

146. Victims of the acts of violence covered in the first article will be entitled to be kept fully informed and to receive personal counselling. Officers and officials of the judicial police are to inform victims orally and by any other appropriate means of: their right to reparations for the harm suffered; their right to sue for damages if criminal proceedings are initiated by the prosecution service, to bring charges against the perpetrator before the corresponding court or to lodge a complaint with the investigating judge; and their right to receive assistance from the appropriate Government agency or from a Government-approved victims' aid association.

147. The victim is also to be furnished with ministry-approved documentation for that purpose. All public and private hospitals and medical practices in the Principality of Monaco are to have free and anonymous access to that documentation as well. Persons with disabilities who become victims of such acts of violence will have full access to all relevant information in a form that is suited to their disability.

148. Training within the corresponding field is to be provided to persons whose occupations bring them into contact with victims of violence, including judges, health professionals, and officers and officials of the judicial police, in order to assist them to improve the manner in which they deal with such victims. The relevant training procedures are to be established by ministerial order.

III. Other

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149. Regarding the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is important to recall that Monaco has only one short-stay prison, where each year about 30 detainees on average serve short sentences; it is not a detention centre in the true sense.

150. In addition, there have been no reported or even alleged cases of ill-treatment or poor physical conditions for several decades.

151. With regard to minors in conflict with the law, the short-stay prison in Monaco is equipped to hold minors in detention (mostly detention pending investigation or trial). Fewer than 10 minors per year are imprisoned there, for an average stay of less than 28 days. Everything possible is done to protect minors, who never come into contact with adults and who have twice as much exercise time as adults. Educational activities are conducted by some of the Principality's best teachers, according to the minor's level of schooling.

152. In any event, the establishment of an independent body to monitor prisons would seem ill-suited to the situation in Monaco and would be unlikely to improve the protection guaranteed to detainees. This is why the Government of Monaco has not made any commitments regarding the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Reply to paragraph 27 of the list of issues

153. There are currently no plans to establish an independent national human rights institution, because in Monaco the duties generally assigned to such an institution are distributed among the various institutions mentioned below, which have proven to be effective.

154. **Human Rights Unit.** This has many duties, all of which are related to the promotion of human rights. To that end, the unit:

- (i) Examines all bills drafted by the Government from the viewpoint of human rights principles;
- (ii) Conducts training and awareness programmes on human rights for judges, police officers and students;
- (iii) Helps draft the national reports requested by international human rights bodies and the replies to their questions.

155. **Mediator attached to the Minister of State.** This person is responsible in particular for reviewing applications for reconsideration, regardless of the object or basis of the application, and for finding an amicable settlement according to law or equity.

156. **Judicial remedies.** The protection of human rights is also ensured through the free exercise of judicial remedies for alleged violations of one or more provisions of the International Covenant on Civil and Political Rights. These provisions have been incorporated into the domestic legal order through the ratification by Monaco of the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

157. These remedies are open to all natural or legal persons domiciled in Monaco, regardless of nationality or financial standing. A lawyer is appointed by the court if necessary.

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158. Monaco signed the Rome Statute of the International Criminal Court in July 1998, thereby showing its commitment to the legal principles enshrined therein. Since then, several legal studies have been conducted to verify the compatibility of the Statute's provisions with the Constitution and with domestic legislative provisions. These studies have brought to light various incompatibilities requiring substantial changes to several Monegasque legal norms, including the Constitution and its fundamental principles, the Criminal Code and the Code of Criminal Procedure, in order to establish the necessary definitions of offences, set up the required procedures and establish international cooperation in this area. Implementing all these changes will require a wide-ranging reform process.

Reply to paragraph 29 of the list of issues

159. Given the public monitoring mechanisms and mechanisms requiring prior authorization that broadly regulate every stage of the establishment, development and operation of every kind of company, any commercial activity involving such material would be blocked from the outset in the name of public order, in either a general or economic sense. Given this armoury of general regulations, the authorities of Monaco do not deem it appropriate to enact specific regulations on this issue.

Reply to paragraph 30 of the list of issues

160. The legislative measures taken to combat terrorism are based on the following domestic legislation:

- (i) Sovereign Ordinance No. 15.319 of 8 April 2002 implementing the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999;
- (ii) Sovereign Ordinance No. 15.320 on the suppression of the financing of terrorism (8 April 2002);
- (iii) Sovereign Ordinance No. 15.321 on procedures for freezing funds in order to combat terrorism (8 April 2002);
- (iv) Act No. 1.253 of 12 July amending Act No. 1.162 of 7 July 1993 relating to the participation of financial institutions in countering money-laundering;
- (v) Sovereign Ordinance No. 15.453 of 8 August 2002 amending Sovereign Ordinance No. 11.160 of 24 January 1994 setting the conditions for application of Act No. 1.162 of 7 July 1993 as amended, relating to the participation of financial institutions in countering money-laundering and the financing of terrorism;
- (vi) Sovereign Ordinance No. 15.454 of 8 August 2002 amending Sovereign Ordinance No. 11.246 of 12 April 1994 constituting the Financial Circuits Information and Control Service (SICCFIN);
- (vii) Sovereign Ordinance No. 15.655 implementing various international treaties relating to the fight against terrorism (7 February 2003);
- (viii) Sovereign Ordinance No. 16.552 creating a liaison committee for countering money-laundering and the financing of terrorism (20 December 2004);
- (ix) Sovereign Ordinance No. 16.615 amending Sovereign Ordinance No. 11.160 of 24 January 1994 setting the conditions for application of Act No. 1.162 of 7 July 1993 as amended by Act No. 1.253 of 12 July 2002 relating to the participation of financial institutions in countering money-laundering, as amended by Sovereign Ordinance No. 15.453 of 8 August 2002 (11 January 2005);
- (x) Act No. 1.318 of 29 June 2006 on terrorism;
- (xi) Sovereign Ordinance No. 631 of 10 August 2006 implementing article 10 bis of Act No. 1.162 of 7 July 1993 relating to the participation of financial institutions in countering money-laundering and the financing of terrorism;
- (xii) Sovereign Ordinance No. 632 of 10 August 2006 amending Sovereign Ordinance No. 11.160 of 24 January 1994 setting the conditions for application of Act No. 1.162 of 7 July 1993 as amended by Act No. 1.253 of 12 July 2002 relating to the participation of financial institutions in countering money-laundering and the financing of terrorism, as amended by Sovereign Ordinance No. 16.615 of 11 January 2005;
- (xiii) Sovereign Ordinance No. 633 of 10 August 2006 amending Sovereign Ordinance No. 15.321 of 8 April 2002 on procedures for freezing funds in order to combat the financing of terrorism;
- (xiv) Act No. 1.362 of 3 August 2009 on countering money-laundering, the financing of terrorism and corruption.

161. All criminal legislation in Monaco is enacted and implemented with respect for the fundamental rights and freedoms of constitutional rank listed below.

162. The Constitution of 17 December 1962 stipulates that: “The Principality is a State governed by the rule of law committed to the respect of fundamental rights and freedoms”. This protection is ensured by title III, entitled “Fundamental rights and freedoms”, which comprises articles 17 to 32 and includes in particular:

- (i) The abolition of the death penalty (art. 20);
- (ii) Article 19, which provides that: “Individual freedom and security are guaranteed. No one may be prosecuted except in cases provided for by law, before legally appointed judges and in the manner prescribed by law”;
- (iii) Article 20, according to which: “No penalty may be introduced or applied except by law” and “Criminal legislation must ensure respect for human personality and dignity. No one may be subjected to cruel, inhuman or degrading treatment.” The same provisions also state that “criminal laws may not have retroactive effect”;
- (iv) Under article 21: “The home is inviolable. No home may be searched except in the cases and manner prescribed by law”;
- (v) Similarly, under article 22: “Every individual has the right to respect for their private and family life and the confidentiality of correspondence”;
- (vi) Article 24 states that: “Property is inviolable. No one may be deprived of their property except on the grounds of the public interest, as duly recorded, and in return for fair compensation established and paid under the conditions set out by the law.”

163. With regard to the international legal instruments protecting rights and freedoms in relation to the fight against terrorism, it is important to note the norms in force in Monaco (listed below) to prohibit cruel, inhuman or degrading treatment and offences against human dignity. This prohibition (see above) is a principle enshrined in the Constitution (art. 20, paras. 2 and 3).

164. Monaco has acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in New York on 10 December 1984, and has given it the force of law by Sovereign Ordinance No. 10.542 of 14 May 1992.

165. Also given the force of law (by Sovereign Ordinance No. 13.330 of 12 February 1998) are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly in New York, on 16 December 1966. Article 7 of the latter stipulates that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

166. On 28 March 2000, Monaco submitted its instruments of accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New York, 15 December 1989). The Protocol was given the force of law in Monaco by Sovereign Ordinance No. 14.529 of 17 July 2000 (Official Gazette of 21 July 2000).

167. The provisions of all the aforementioned instruments have therefore been incorporated in the Monegasque legal order.

168. It should be noted that no cases concerning allegations of acts of torture or inhuman or degrading treatment or punishment have ever been brought before the courts of Monaco.

169. In the context of combating terrorism, foreigners are treated no differently from Monegasque nationals. The exercise of the fundamental freedoms guaranteed by the

Monegasque Constitution of 1962, as revised in 2002, is not subject to any differentiated treatment on the grounds of race, colour, sex, language, religion, political opinion or any other criterion. Indeed, the Principality of Monaco is a State governed by the rule of law committed to the respect of fundamental rights and freedoms (Constitution, art. 2).

170. Individual remedies are available to anyone who believes they have been wronged by the implementation of anti-terrorist measures. The law of Monaco recognizes the principle of the independent and specific responsibility of the public authorities on the one hand, and, on the other, the responsibility of public officials, as established by Act No. 983 of 26 May 1976.

171. Complaints lodged against the State by an individual claiming damages caused by anti-terrorist measures can be processed under ordinary law, as set out in Act No. 783 of 15 July 1965 on the organization of the judiciary and the Code of Criminal Procedure.

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172. See paragraphs above.

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173. Any examination of Monaco by a monitoring mechanism is systematically disseminated by the Government through a press release explaining the working methods of the mechanism in question and summarizing the observations formulated within the framework of that examination. An Internet link to the official and institutional documents is also made available.

174. While it is not possible to communicate this information in each of the languages spoken by the 121 nationalities represented in the country, it is disseminated as widely as possible.

175. With regard to determining whether it is appropriate to plan projects or programmes in cooperation with NGOs, there is no demand for this on the part of civil society; this is demonstrated by the statistics showing that there are no prosecutions or convictions for offences involving torture, despite the freedom of association enjoyed by NGOs and associations.
