



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

Distr.: General
18 August 2010
English
Original: Russian

Committee against Torture

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

Fourth periodic reports of States parties due in 2000

Belarus*, **

[21 December 2009]

* The third periodic report submitted by the Government of Belarus is contained in document CAT/C/34/Add.12; it was considered by the Committee at its 442nd, 445th and 449th meetings, on 15, 16 and 20 November 2000 (CAT/C/SR.442, 445 and 449). For its consideration, see A/56/44, paras. 40–46.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–2	3
II. New measures and new developments with respect to the application of the Convention (arts. 1–16).....	3–60	3
III. Measures taken to implement the recommendations made by the Committee against Torture following its consideration of the third periodic report.....	61–92	10
Recommendation (a)	61–63	10
Recommendation (b)	64–65	11
Recommendation (c)	66–68	11
Recommendation (d)	69–79	12
Recommendation (e)	80–86	14
Recommendation (f).....	87–89	16
Recommendation (g)	90–91	17
Recommendation (h).....	92	17

I. Introduction

1. This report is submitted pursuant to article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was prepared in accordance with the general guidelines regarding the form and contents of reports to be submitted by States parties (CAT/C/14/Rev.1).
2. The report covers the period from 29 September 1999 to August 2009 and contains information on developments that have taken place since the submission of the third periodic report of Belarus (CAT/C/34/Add.12). It also takes account of the concluding observations adopted by the Committee against Torture following its consideration of the third periodic report (A/56/44, paras. 40–46).

II. New measures and new developments with respect to the application of the Convention (arts. 1–16)

3. The prohibition on torture and other ill-treatment is enshrined in the Constitution of Belarus, article 25 of which establishes that no one may be subjected to torture or cruel, inhuman or degrading treatment or punishment.
4. A number of legislative measures have been taken to implement the recommendations made by the Committee against Torture on the basis of the third periodic report of Belarus.
5. The Criminal Code, Penal Enforcement Code and Code of Criminal Procedure have been revised in order to bring them into line with the Convention; the amended codes entered into force on 1 January 2001.
6. Under article 3 of the Criminal Code, a criminal sanction may entail deprivation or restriction of the rights and freedoms of a convicted person but may not be aimed at causing physical suffering or at demeaning him or her.
7. Under article 64, paragraph 1, of the Code, where the commission of an offence involves particular cruelty or humiliation, this is regarded as an aggravating factor.
8. Article 128 of the Code provides that deportation, unlawful detention, delivery into slavery, mass or systematic punishment without a court hearing, abduction leading to the victim's disappearance, torture or other acts of cruelty committed on grounds of the racial, national or ethnic affiliation, political beliefs or religion of the civilian population are punishable by deprivation of liberty for a period of from 7 to 25 years, life imprisonment or death.
9. Pursuant to article 2 of the Convention, the Criminal Code provides, in article 135, paragraph 2, for liability for causing serious bodily harm to persons who have laid down their arms or who have no means of protection, wounded, sick or shipwrecked persons, medical or religious personnel, prisoners of war, civilians in occupied territory or in the vicinity of hostilities, or other persons enjoying international protection in time of war; for torture; or for conducting medical, biological or other experiments on such persons, even with their consent. These acts incur a penalty of deprivation of liberty for a period of from 5 to 15 years. In addition, in accordance with article 85 of the Code, there is no statute of limitations in respect of offences under articles 128 and 135 of the Code. Liability is also incurred when these offences are committed outside Belarus (art. 6, para. 3).
10. To provide methodological assistance to the courts in the correct application of the law and of international standards, the Supreme Court of Belarus adopted decision No. 9 of

17 December 2002 on judicial practice in murder cases. The decision takes account of the recommendations of the Committee against Torture and directs the attention of the courts to the fact that the concept of “particular cruelty”, used in categorizing murder under article 139, paragraph 2 (6), of the Code, encompasses both the method of taking life and other circumstances indicative of the manifestation of such cruelty by the perpetrator.

11. The Code contains specific provisions on liability for ill-treatment, in article 154 (Torture). Torture is punishable by short-term rigorous imprisonment for a period of up to 3 months, restriction of liberty for a period of up to 3 years or deprivation of liberty for the same period. If the victim is known by the perpetrator to be pregnant, or is a minor, or is in a helpless state or a position of dependence, the same act is punishable by restriction of liberty for a period of from 1 to 3 years or deprivation of liberty for a period of from 1 to 5 years.

12. As a means of protecting suspects and accused persons from torture or unlawful treatment, during evidentiary hearings all assertions concerning the use of torture against parties to criminal proceedings are scrutinized, evidence is gathered and the court takes special pains to verify that the right of suspects and accused persons to protection has been fully guaranteed. Under article 394, paragraph 3, the use of torture is regarded as an aggravating factor in cases involving the coercion of a suspect, accused person, victim or witness to testify (or of an expert to make a finding). The act envisaged in paragraph 1 of the article, when it involves the use of torture, is punishable by deprivation of liberty for a period of from 3 to 10 years, with or without forfeiture of the right to occupy certain posts or engage in certain activities.

13. Liability for the use of torture is also stipulated in article 426 (Exceeding of authority or official powers). Paragraph 3 states that the accompaniment of the offence by violence, cruel or degrading treatment of the victim, or the use of weapons or special restraining devices, constitutes a separate element. In such cases, the offence is categorized as serious and is punishable by deprivation of liberty for a period of from 3 to 10 years, with or without confiscation of property, and forfeiture of the right to occupy certain posts or engage in certain activities.

14. In accordance with article 3 of the Code of Criminal Procedure, Belarusian criminal procedural legislation and practice in respect of its application are based on strict observance of the guarantees of protection against torture, violence and other cruel or degrading treatment of convicted persons.

15. Under article 10 of the Code, convicted persons have the right to be treated politely by employees of penal institutions and agencies. They must not be subjected to cruel, inhuman or degrading treatment. Coercive measures used against them must be applied in strict compliance with the law. Convicted persons may not be subjected to medical or other experiments, even with their consent.

16. One of the safeguards against the use of torture and other cruel, inhuman or degrading treatment or punishment is the stipulation in article 13, paragraph 4, of the Code that requests, applications and complaints addressed by convicted persons to State bodies responsible for monitoring and overseeing the work of penal institutions may not be censored and must be forwarded as appropriate within 24 hours of receipt.

17. In 2003, article 113, paragraph 11, of the Code was revised so as to enshrine in law the right of convicted persons to appeal to a court against sanctions imposed on them.

18. Also in 2003, the Detention Procedures and Conditions Act was adopted. Article 2 of the Act guarantees that detention must be carried out on the basis of the principles of lawfulness, humanity, equality of all citizens before the law and respect for human dignity, in accordance with the Constitution, the generally recognized principles and standards of

international law and the international treaties to which Belarus is a party, and must not be accompanied by cruel or inhuman treatment that may harm the physical or mental health of the detainee. Under article 10, detainees have the right to submit petitions, requests, applications and complaints, including to a court, regarding the lawfulness and validity of their detention and violations of their rights and lawful interests. In addition, article 34 embodies the right of detainees to appeal to a higher-ranking official, a procurator or a court against sanctions imposed on them.

19. Article 5 of the Act on the Granting of Refugee Status and Subsidiary and Temporary Protection to Foreign Nationals and Stateless Persons in the Republic of Belarus, of 23 June 2008, guarantees that foreign nationals present in the territory of Belarus may not be returned or expelled against their will to the territory of a State where they are at risk of torture.

20. The decision of the Council of Heads of State of the Commonwealth of Independent States (CIS) of 5 October 2007 on proposals for a coordinated migration policy of the CIS member States requires the parties to prohibit torture and cruel or degrading treatment or punishment of migrant workers and their family members. Belarus ratified the Convention on the legal status of migrant workers and members of their families from CIS member States by Act No. 35-3 of 6 July 2009. Article 8 of the Convention stipulates that:

“The Parties shall prohibit slavery and any other form of servitude, forced labour, torture and cruel or degrading treatment or punishment of migrant workers and their family members.”

21. In order to improve living conditions in prisons and pretrial detention centres, substantial repair and construction work is being carried out, and conditions of detention are being brought into line with international standards. These efforts have been stepped up considerably since 2003. Thus, more than 100 structures and facilities of various types (accommodation for special category detainees, secure wings, canteens, bathroom and laundry facilities, short-stay prisons and infrastructure items) have been brought into use.

22. In the wake of the closure in 2007–2009 of 10 temporary holding facilities that did not meet national standards, planned construction of new facilities is being undertaken. A programme of investment for the reconstruction and construction of special militia establishments has been developed. Some 10 new temporary holding facilities have been brought into operation, and 8 are being built or rebuilt.

23. All local internal affairs agencies have taken steps to eliminate shortcomings in detainees’ living conditions and sanitary facilities, and in the provision of equipment to and supervision of the work of duty details. Cells and other areas in temporary holding facilities have been redecorated. Such facilities have now been supplied with sufficient quantities of crockery, insulated containers for serving hot food, disinfectants and detergents, and the requisite equipment has been installed in rooms set aside for washing dishes and heating food. Universal first-aid kits have been supplemented with the drugs necessary for administering basic medical care. Fire extinguishers are available. Video surveillance systems are used to monitor the work of duty details in temporary holding facilities, including at night.

24. All temporary holding facilities currently in operation have been supplied with bedding. Cells are equipped with individual bunks, lockers for storage of personal effects, tables, benches, pegs for clothing and radios. Bedclothes are laundered at enterprises providing domestic services and at health-care establishments, while detainees’ personal effects are cleaned and disinfected.

25. Within available resources, cells are being equipped with separate toilets; board games, loudspeakers, electric water heaters and hotplates are being obtained for temporary

holding facilities; work is being carried out to allow natural light into cells and to connect them to the water supply and sewerage systems; and controlled ventilation is being installed. However, in a number of temporary holding facilities, significant improvements to detainees' living conditions and sanitary facilities can be achieved only through capital repairs, reconstruction or construction of new buildings. These issues cannot be addressed immediately, owing to the inadequacy of the allocated funds. Efforts to bring technical and living conditions in temporary holding facilities into line with international standard minimum rules for the treatment of detainees are continuing.

26. In accordance with decision No. 1564 of the Council of Ministers of 21 November 2006 establishing standards of nutrition for detainees in temporary holding facilities of the internal affairs agencies, special establishments of internal affairs agencies carrying out sentences of administrative detention, institutions of the penal correction system and compulsory rehabilitation centres of the Ministry of Internal Affairs and standards for the provision of personal hygiene items to detainees in institutions of the penal correction system and compulsory rehabilitation centres of the Ministry of Internal Affairs, the daily food ration per detainee has been increased by an average of 20 per cent, and the range of foodstuffs provided to convicted persons has been significantly expanded. The daily food ration for convicted juveniles includes cooked meats, cottage cheese, soured cream, coffee, cocoa, confectionery, and fruit and berry juice; the quantities of butter, milk, eggs and cheese provided have been increased.

27. In order to improve health-care arrangements for special category detainees, in July 1998 a medical and veterinary service was set up within the Ministry of Internal Affairs Penal Correction Department. In 2002, the service was transformed into a dedicated health-care department for such detainees.

28. Medical wings and hospitals at institutions of the penal correction system are undergoing major reconstruction and construction. In 2004, the first stage of reconstruction work at the central hospital for prisoners was completed. Conditions in the renovated premises are in line with generally accepted standards in the national health-care system. Two new medical wings have come into operation, at women's correctional colony No. 24 and correctional colony No. 22. At correctional colony No. 22, a clinic has been established for continuing treatment of prisoners suffering from tuberculosis. Reconstruction of the medical wings is under way at correctional colonies Nos. 3 and 17, while construction of a new medical wing at women's correctional colony No. 4 is nearing completion. Construction plans are currently being developed for a new central hospital for convicted persons.

29. Planned replacement of medical items and equipment has been carried out over the reporting period. All medical wings are now equipped with modern digital x-ray and fluorographic devices, and disinfection chambers have been purchased, along with dry air sterilizers, centrifuges, stomatological devices, distilling apparatus, binocular microscopes, biochemical analysers, physiotherapy equipment and bacterial irradiators for air disinfection. Laboratory equipment at the central hospital for prisoners has been entirely replaced. The central tuberculosis hospital has been supplied with a state-of-the-art BACTEC system for detecting tuberculosis mycobacteria in liquid medium, with haematological and biochemical analysers, and with luminescent and binocular microscopes. Apparatus for polymerase chain reaction (PCR) diagnosis, a flow cytofluorimeter, up-to-date haematological and biochemical analysers, a coagulometer and blood gas analysis instruments have been installed in the laboratory of the central hospital at correctional colony No. 1 in Minsk. New endoscopic equipment has been purchased for hospitals.

30. The study of advanced methods and cooperation with authoritative international organizations in the prison system are important elements of efforts to enhance the penal

correction system in Belarus. A number of specialized projects have been carried out since 1999 with international participation, while others remain under implementation. In 2002–2003, a joint international technical assistance project for the social and psychological rehabilitation of offenders was carried out with the United Nations office in Belarus. In 2003–2004, a project on HIV prevention in prisons was implemented with the involvement of the United Nations Development Programme (UNDP). In 2005–2006, also with UNDP participation, a project aimed at strengthening capacity in the Ministry of Internal Affairs Penal Correction Department in respect of HIV prevention in prisons was carried out, resulting in the development and launching of a comprehensive programme for the prevention and treatment of HIV/AIDS in places where sentences are served.

31. A project for the prevention and treatment of HIV/AIDS in Belarus has been under way since 2006. The component devoted to creating conditions for the effective prevention of HIV in the country's prison system is funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM). A key aspect of the project is the introduction of antiretroviral therapy for HIV-positive prisoners (currently, 194 persons held in the country's correctional facilities are receiving antiretroviral therapy). Some 55 prison system doctors have received training in the administration of antiretroviral therapy at the Medical Academy of Postgraduate Education.

32. The project to support the Government tuberculosis programme, launched in 2007, is still being implemented. One component involves support to measures to combat tuberculosis in institutions of the prison system. As part of the project, observed treatment for tuberculosis is being introduced on the basis of the recommendations of the World Health Organization (WHO).

33. In 2007, implementation of a project aimed at developing civic literacy among inmates of young offenders' institutions, carried out jointly with the United Nations Children's Fund (UNICEF), was completed.

34. Measures to improve health care for convicted persons have been incorporated in a number of Government programmes, notably the HIV prevention programme, the tuberculosis programme and the programme to enhance the Ministry of Internal Affairs penal correction system.

35. During the reporting period, three international workshop conferences on topical issues in prison medicine were held, as well as two national workshop conferences on prevention and treatment of tuberculosis in the prison population.

36. An education centre for HIV prevention and a specialized ward for the treatment of HIV-positive women have been set up at correctional colony No. 4 under the component of the Global Fund project devoted to facilitating the implementation of effective prevention measures in the country's prisons. As part of the project to support the Government tuberculosis programme, a training and education centre has been established at the central tuberculosis hospital at correctional colony No. 12.

37. Over the past 10 years, a steady reduction has been achieved in the number of tuberculosis cases. The incidence of tuberculosis among convicted persons had declined by a factor of 5.5 in 2008 compared with 1998. Reconstruction work has begun at the central tuberculosis hospital, the goal being to provide prisoners suffering from tuberculosis with a standard of medical care approaching international norms.

38. As at 1 July 2009, there were 1,069 HIV-positive persons in prisons in Belarus, accounting for about 14 per cent of all registered cases. There are no data, however, on the number of cases of HIV infection occurring in correctional facilities themselves.

39. Particular attention is devoted to training of prison staff. Training of qualified personnel is conducted at the penal correction faculty of the Ministry of Internal Affairs

Academy. Graduates of the faculty receive higher education in the science of law and are assigned to posts across the prison system.

40. Where it is necessary to recruit graduates of other higher education establishments (teachers, psychologists) to work in correctional facilities, basic training courses are arranged at the penal correction faculty. The candidates selected are taught the specialized knowledge and skills required for employment in prisons. In addition to basic training, all employees of the penal correction system undergo mandatory refresher training every five years; advanced training courses are conducted regularly.

41. In order to ensure provision of qualified psychological assistance to convicted persons being held in custody and citizens in compulsory rehabilitation centres, the country's civilian higher education establishments have since 1991 been training psychologists for subsequent employment in the prison system. In the reporting period alone, 204 specialists were trained. Staff of rehabilitation and psychology services are encouraged to upgrade their skills through the holding of annual national professional skills competitions.

42. Currently, consideration is being given to the possibility of retraining a group of employees of the Ministry of Internal Affairs penal correction system as applied psychologists in the field of law enforcement, with financial support from the Minsk office of the Organization for Security and Cooperation in Europe (OSCE).

43. With a view to improving health care for prisoners, regular skills upgrading is arranged for medical staff of the Ministry of Internal Affairs penal correction system at the Medical Academy of Postgraduate Education. Seven doctors have undergone training at international centres abroad. The medical structures of the Ministry of Internal Affairs Penal Correction Department currently employ two staff with doctorates in medical sciences, while 51.5 per cent of the doctors have advanced qualifications, including 3.1 per cent who have higher category qualifications, 15.9 per cent category I qualifications and 32.5 per cent category II qualifications.

44. During the reporting period, employees of the penal correction system in Belarus studied the experience of the prison systems in Austria, Canada, Germany, Latvia, Lithuania, Poland, the Russian Federation, Sweden, Switzerland, Ukraine, the United Kingdom and the United States. Some 57 meetings were organized with representatives of foreign States, during which the international experts analysed the conditions in which sentences are carried out in Belarus and discussed aspects of international cooperation.

45. Systematic efforts are made in places of detention to render the correctional process more effective; ensure the requisite level of control and the maintenance of law and order in correctional facilities; improve the preparation of inmates for leading a law-abiding life on release; achieve successful social reintegration; and reduce reoffending rates.

46. Efforts for the social reintegration of prisoners begin from the moment they enter the correctional facility and continue, in a gradual manner, until their release. Newly arrived inmates receive assistance in developing plans for their life following release, and they are encouraged to participate in educational and work activities. Fifteen vocational colleges have been established at correctional facilities for that purpose. Training is available for inmates in 28 different trades.

47. Every correctional colony and young offenders' institution conducts group activities to prepare inmates for release (reintegration workshops). In the course of these activities, prisoners awaiting release are taught lawful and socially acceptable ways of dealing with difficulties they may encounter on their return to society.

48. As a first step towards preparing prisoners for successful social reintegration, issues relating to the issuance to them, or exchange, of passports during the period in which they

are serving their sentences have been resolved. Under Decision No. 316 of the Ministry of Internal Affairs of 5 October 2005 approving the Instructions on the issuance (exchange) of Belarusian passports to citizens of the Republic of Belarus serving sentences of deprivation or restriction of liberty, the cost of drawing up passports may be met by correctional facilities for inmates lacking their own means.

49. Decision No. 151 of the Ministry of Internal Affairs of 14 June 2007 approving the Instructions on the provision of assistance with resettlement and employment to persons released from serving sentences of deprivation of liberty was adopted with a view to improving the help available to such persons.

50. In order to implement the annual Government employment promotion programmes, and pursuant to agreements reached previously with the Ministry of Labour and Social Protection, convicted persons are informed systematically of vacancies in enterprises and organizations in Belarus.

51. Particular attention is given to issues relating to the performance of religious rites by inmates in places of detention. The relevant legal framework comprises article 31 of the Constitution, article 12 of the Penal Enforcement Code, article 10 of the Detention Procedures and Conditions Act, article 25 of the Freedom of Conscience and Religious Organizations Act and Order No. 232 of the Ministry of Internal Affairs of 26 November 1999 governing relations between correctional labour institutions, pretrial detention centres and compulsory rehabilitation centres and religious organizations and clergy.

52. Conditions have been created in all correctional facilities for the conduct of religious rites, rituals and ceremonies, and appropriate premises have been equipped for that purpose. Since the overwhelming majority of believers in Belarus class themselves as Orthodox, representatives of the traditional and most well-represented faiths, including the Belarusian Orthodox Church, the Roman Catholic Church and the Evangelical Christian Church, work most actively with inmates. Cooperation between the Belarusian Exarchate and the Ministry of Internal Affairs Penal Correction Department takes place within the framework of an agreement signed in 1999.

53. Joint seminars and meetings devoted to Orthodox service in places of deprivation of liberty have been held annually since 1994. The most recent such event took place on 28 and 29 February 2008 at correctional colony No. 1 in Vitsyebsk and covered issues relating to the spiritual and moral instruction of employees of correctional facilities and inmates.

54. There are 11 Orthodox churches and 5 chapels as well as specially equipped prayer rooms in places of detention.

55. In June 2007, the Ministry of Internal Affairs Penal Correction Department and the Belarusian Exarchate drafted and adopted the Instructions governing the work of Belarusian Orthodox priests in correctional facilities and pretrial detention centres of the penal correction system and compulsory rehabilitation centres of the Ministry of Internal Affairs. These Instructions set out the relations between priests serving correctional facilities and the administrations of such facilities and embody certain rights and duties of prison chaplains as well as requirements in respect of persons assisting them.

56. In addition to conducting religious services, rites and ceremonies, clergy in prisons provide spiritual and moral instruction to persons serving sentences (through addresses on prison radio, lectures on spiritual and moral themes, optional courses on religious studies in educational establishments of correctional facilities, and individual and group discussions with inmates). Provision has been made for the establishment of the position of spiritual and moral instruction study group leader. Orthodox priests assigned to correctional facilities or persons recommended by them may be appointed to these positions. The activities of such study groups are aimed at the spiritual and moral instruction of employees

of institutions of the penal correction system, members of their families and persons held in correctional facilities, pretrial detention centres and compulsory rehabilitation centres, and at the communication of Christian values to them. Currently, there are study groups at correctional colonies Nos. 2, 3, 4, 5, 8, 11, 12, 13, 14, 15, 19 and 20, young offenders' institutions Nos. 1 and 2, prisons Nos. 1, 4 and 8, pretrial detention centre No. 3 and compulsory rehabilitation centres Nos. 1 and 5.

57. Priests are working with prison administrations to create libraries of religious reading matter, video and audio recordings in churches and prayer rooms. Priests serving correctional facilities take an active part in the work of centres preparing inmates for release and offer assistance with employment and resettlement on inmates' return to society.

58. The Centre for the Social Rehabilitation of Released Prisoners, located in the village of Lyubcha in Borisov district, is a subdivision of the prison service department of the Minsk diocese of the Belarusian Orthodox Church. Released prisoners experiencing difficulties with employment and resettlement are referred to the Centre on the recommendation of priests serving in correctional facilities and administrations of such facilities. The Centre provides assistance with paperwork and job placement, and supplies released prisoners with basic necessities.

59. A civil society organization, Christian Service for the Spiritual Rebirth of Offenders, has been established to promote closer cooperation between institutions of the penal correction system and the Belarusian Orthodox Church. Tasked with facilitating the spiritual recovery of convicted persons, the organization imbues them with Christian values, ensures their all-round preparation for leading a law-abiding life after serving their sentences and provides them with social assistance. In addition, it runs programmes and projects aimed at the spiritual instruction of prisoners and the enhancement of their humanitarian and religious education.

60. The measures outlined above, including the legislative measures aimed at the effective implementation in Belarus of the Convention's provisions, demonstrate the importance our State attaches to this issue and its commitment to generally recognized norms and principles.

III. Measures taken to implement the recommendations made by the Committee against Torture following its consideration of the third periodic report (D. Recommendations)

Recommendation (a)

Amend domestic penal law to include the crime of torture, consistent with the definition contained in article 1 of the Convention and supported by an adequate penalty

61. In accordance with article 20 of Act No. 361-3 of 10 January 2000 on the Laws and Regulations of the Republic of Belarus, the rules of law contained in the international treaties to which Belarus is a party form part of domestic legislation; are directly applicable, except where it is specified in an international treaty that such application requires the adoption (promulgation) of a domestic legal act; and are supported by the legal act whereby Belarus expresses its consent to be bound by the international treaty concerned.

62. Thus, for the purpose of the prosecution of persons involved in carrying out torture, the definition of torture given in article 1 of the Convention applies.

63. The law states that persons who have been subjected to torture or to cruel or degrading treatment or punishment may file complaints or reports concerning such acts with the procuratorial and investigative bodies of Belarus. In addition, in accordance with the Procurator's Office Act, employees of procuratorial bodies carry out their functions with complete independence. Any interference in their work is prohibited and incurs the liability prescribed by law. At the same time, the independence of the judicial system from the other branches of power is established in the Constitution.

Recommendation (b)

Take urgent and effective steps to establish a fully independent complaints mechanism, to ensure prompt, impartial and full investigations into allegations of torture reported to the authorities and the prosecution and punishment, as appropriate, of the alleged perpetrators

64. In accordance with the Code of Criminal Procedure, investigations into complaints concerning the acts envisaged in article 1 of the Convention, as well as preliminary investigations in criminal cases involving misconduct in a public office, are conducted by the procuratorial bodies. This ensures that the complaints mechanism is independent and that investigations are prompt, impartial and full. As stipulated in the Constitution, the Procurator-General and the procurators reporting to him are responsible for overseeing the correct and uniform application of laws, decrees and other legal acts.

65. In addition, the right of convicted persons to submit applications, requests and complaints to parliamentary deputies is enshrined in law. Article 25 of Act No. 196-3 of 4 November 1998 on the Status of Deputies of the House of Representatives and Members of the Council of the Republic of the National Assembly of Belarus provides that deputies must consider requests, applications and complaints received from citizens, take measures to ensure that they are dealt with in a lawful and timely manner and in accordance with the legislation currently in force, study the factors giving rise to complaints by citizens and submit their own proposals to the House of Representatives, the Council of the Republic and their organs, to local councils of deputies, executive and administrative bodies and other State bodies, and to organs of civil society associations, institutions, organizations and enterprises. Deputies monitor the examination of communications they receive from citizens by State bodies, organs of civil society associations, institutions, organizations and enterprises, participate personally in the examination of such communications and monitor the implementation of decisions taken in respect of communications received from citizens. Deputies may address recommendations to officials of State bodies, organs of civil society associations, institutions, organizations and enterprises, as appropriate, based on the outcome of the examination of requests, applications and complaints received from citizens.

Recommendation (c)

Consider establishing an independent and impartial governmental and non-governmental national human rights commission with effective powers to, inter alia, promote human rights and investigate all complaints of human rights violations, in particular those pertaining to the implementation of the Convention

66. The following structures have been assigned powers to promote human rights and investigate complaints of human rights violations:

- The Commission for Human Rights, Community Relations and the Mass Media, formed by a decision of the House of Representatives of the National Assembly of Belarus of 22 November 2000. The Commission's mandate covers issues relating to

the rights, freedoms and obligations of citizens, national referendums, citizenship, community relations, information policy and the mass media, parties, trade unions and other civil society associations, religious organizations, and the rights of victims of the repression of the 1920s to 1980s, among others.

- The CIS Human Rights Commission, established pursuant to article 33 of the CIS Charter. The Commission's Statute, which was approved by a decision of the CIS Council of Heads of State of 24 September 1993 and entered into force on 11 August 1998, regulates the Commission's activities. The Commission is an advisory body, monitoring the fulfilment by the CIS member States of their human rights obligations. The Commission is based in Minsk.

The Public Advisory Council in the Office of the President of Belarus, which has a broad range of civil society representatives among its members, began its work on 28 January 2009. Its main task is to draft recommendations for the Belarusian leadership on issues relating to the development of the State and society. On 17 June 2009, an off-site meeting of the Council on the theme "Humanization of the penal correction system in Belarus: public oversight of human rights safeguards in places of detention" was held at the correctional facility in Zhodzina. The participants in the meeting spoke in favour of the further enhancement of the country's prison system. The recommendations made will be sent to the appropriate Government bodies for follow-up.

67. To protect the rights of detainees, pursuant to article 21 of the Penal Enforcement Code a National Public Watchdog Commission has been established in the Ministry of Justice, as well as local watchdog commissions attached to the central justice departments of the provincial executive committees and the Minsk Municipal Executive Committee. Since their establishment two years ago, the commissions have conducted 38 visits to bodies and institutions carrying out sentences and other criminal sanctions. Issues raised by the commissions concerning the serving by detainees of their sentences are studied and referred to the Ministry of Internal Affairs and other competent bodies for possible action. A number of steps have been taken to improve the organizational arrangements for the commissions and their working methods. Together with the OSCE office in Minsk, the Ministry of Justice in 2008–2009 implemented an international technical assistance project focusing on practical cooperation between civil society associations and institutions of the penal correction system in foreign countries. An international seminar on the theme "Public oversight of penal correction system institutions: international practice and experience for Belarus" was organized.

68. Article 61 of the Constitution establishes that everyone has the right, in accordance with the international instruments ratified by Belarus, to apply to international organizations for the defence of his or her rights and freedoms, provided that all available domestic remedies have been exhausted. Belarus ratified the Optional Protocol to the International Covenant on Civil and Political Rights by a decision of the Supreme Soviet of 10 January 1992, thereby recognizing the competence of the Human Rights Committee to consider individual communications (complaints) about violations of the rights set forth in the Covenant, including those concerning the implementation of the Convention.

Recommendation (d)

Take measures, including the review of the Constitution, laws and decrees, to establish and ensure the independence of the judiciary and lawyers in the performance of their duties, in conformity with international standards

69. Article 60 of the Constitution guarantees everyone the protection of his or her rights and freedoms by a competent, independent and impartial court within the time periods

specified by law. This provision represents an important safeguard for the protection of citizens' rights and freedoms against any actions or decisions that violate them. The right to judicial protection is among those rights that may not be restricted, including in the case of persons whose right to appeal to a court is not explicitly provided for in the legal acts of Belarus. Functional independence of the courts signifies that the very process whereby justice is administered must guarantee the consideration and disposal of cases by judges free of any outside influence or pressure; this includes the expression of their views on cases during judicial deliberations. The independence of judges and their subordination only to the law is a crucial constitutional principle. It is enshrined not only in the Constitution (art. 110), but also in the Code on the Judicial System and the Status of Judges (arts. 2 and 85), the Code of Criminal Procedure (art. 22), the Code of Civil Procedure (art. 11) and the Code of Economic Procedure (art. 12).

70. Article 22 of the Code of Criminal Procedure states that, in administering justice, judges must be independent and subject only to the law. Any interference in the work of judges in administering justice is prohibited and incurs criminal liability. Article 85 of the Code on the Judicial System and the Status of Judges likewise specifies that, in administering justice, judges and lay judges must be independent and subject only to the law. The independence of judges and lay judges is guaranteed through the legally established system for their appointment (selection and confirmation), suspension and removal, their inviolability, the procedure for the consideration of cases and issues, the confidentiality of judges' deliberations when judicial decisions are handed down and the ban on requests for disclosure of such deliberations, the liability for contempt of court or interference in the work of a court, and other guarantees corresponding to the status of judges and lay judges, as well as the establishment of appropriate organizational and technical arrangements for the work of the courts.

71. The exertion of any form of pressure on judges or lay judges with a view to obstructing the thorough, full and objective consideration of a specific case or obtaining the handing down of an unlawful judicial decision is punishable as prescribed by law.

72. The media do not have the right to prejudge in their coverage the outcome of judicial proceedings in specific cases or otherwise influence a judge or lay judge.

73. The system of safeguards of judicial independence also encompasses provisions of the Code on the Judicial System and the Status of Judges, which stipulates, inter alia, that:

- Judges of all courts in Belarus enjoy the same status and differ only in respect of their powers. They occupy public functions, are civil servants and are covered by the Civil Service Act of 14 June 2003 (art. 84).
- Judges may not be transferred to another position or to another court without their consent. Judges' powers may not be suspended or terminated other than under the procedure and on the grounds established in the Code on the Judicial System and the Status of Judges (art. 86).
- Judges are inviolable during their term of office. The inviolability of judges extends to their residence, place of work, transport and means of communication, correspondence, property and documents used by them. Judges and lay judges may not be held liable for opinions they express in administering justice or for decisions they hand down, unless they are convicted of criminal malpractice in a court judgement that has become enforceable (art. 87).
- Judges have the right to require State bodies and other organizations, as well as officials and citizens, to enforce judicial decisions connected with the fulfilment of the duties entrusted to them, and to request information from State bodies and other organizations, as well as from officials and other citizens (art. 89).

- Judges and lay judges are subject to State protection (art. 128).
- Judges are subject to mandatory State insurance funded from the national budget (art. 129).

74. The procedure for the appointment of judges, specified in article 99 of the Code on the Judicial System and the Status of Judges, precludes the exertion of influence by the executive bodies on the country's judicial system. Thus, judges of the Supreme Court and the Supreme Economic Court are appointed by the President of Belarus with the agreement of the Council of the Republic of the National Assembly of Belarus on the recommendation of the President of the Supreme Court or the President of the Supreme Economic Court, as the case may be. In accordance with the Code, judges are inviolable during their term of office.

75. Great efforts are being made in Belarus to improve the organization of the work of the courts, strengthen the safeguards of judicial independence, enhance the material and social guarantees for judges and court employees, and recruit additional qualified personnel to serve in the judicial system. Steps are being taken to prevent corruption among judges and court employees. Judges receive a decent salary, an official residence and other social guarantees.

76. The courts in Belarus are funded from the national budget, and provision has been made for the effective and independent administration of justice as prescribed by law. The above-mentioned system of safeguards of judicial independence is fully consistent with international standards and is intended to ensure that judges are genuinely independent in administering justice.

77. Under the Bar Act of 15 June 1993, the bar is an independent legal entity tasked with carrying out professional human rights activities in accordance with the Constitution.

78. Article 62 of the Constitution states that everyone has the right to legal assistance to exercise and defend his or her rights and freedoms, including the right to make use, at any time, of the assistance of lawyers and other representatives in court and before other State bodies, local government bodies, enterprises, institutions, organizations and civil society associations, and in dealings with officials and citizens. Furthermore, in the instances specified by law, legal assistance is provided from public funds. Lawyers are functionally independent and subject only to the law. Lawyers do not incur criminal liability for failure to report an offence (Criminal Code, art. 406). It is prohibited to interfere in the professional activities of a lawyer, to request him or her to disclose any information subject to lawyer-client confidentiality or to seek such information from officials or employees of lawyers' self-governing bodies and associations. Information subject to lawyer-client confidentiality may not be obtained from a lawyer and used as evidence in civil, administrative or criminal proceedings.

79. The State ensures the functional independence of lawyers, access to legal assistance and cooperation between State bodies and lawyers' self-governing bodies in safeguarding the rights, freedoms and lawful interests of citizens and providing legal assistance to natural and legal persons (Bar Act, arts. 1, 16 and 29).

Recommendation (e)

Take steps to improve conditions in prisons and pretrial detention centres, and establish a system allowing for inspections of prisons and pretrial detention centres by credible impartial monitors, whose findings should be made public

80. The comprehensive set of measures taken by the State during the reporting period to improve conditions in prisons and pretrial detention centres is described in detail in chapter

II of this report. Efforts are continuously under way to enhance the prison system. In particular, a State programme to enhance the Ministry of Internal Affairs penal correction system for 2006–2010 has been approved. The prison system in Belarus is funded entirely from the national budget.

81. With regard to the establishment of a system for inspecting prisons and pretrial detention centres, the following should be noted. Article 21 of the Penal Enforcement Code defines the forms of civil society participation in the work of bodies and institutions carrying out sentences and other criminal sanctions. In accordance with the article, civil society associations may conduct monitoring of the activities of such bodies and institutions on the basis and under the procedure prescribed by law.

82. Civil society associations take part in the reform of convicted persons and provide assistance to bodies and institutions carrying out sentences and other criminal sanctions. The watchdog commissions attached to local executive and administrative bodies participate in the reform of convicted persons and in public monitoring of the work of the aforementioned bodies and institutions; in the case of juvenile offenders, these functions are assumed by children's commissions.

83. The watchdog commissions operate on a voluntary basis. Their main tasks are as follows: overseeing the work of bodies carrying out sentences and of compulsory rehabilitation centres, the procedure and conditions for the serving of sentences and the application of rehabilitative measures; identifying violations and providing assistance in addressing them; and helping bodies carrying out sentences with the reform and reintegration of convicted persons, and local executive and administrative bodies with the resocialization of persons released from prisons or discharged from compulsory rehabilitation centres.

84. In order to carry out the tasks entrusted to them, watchdog commissions have the right:

- Under the legally established procedure, to visit bodies carrying out sentences and organizations employing persons sentenced to community service, punitive deduction of earnings or restriction of liberty with a view to observing the implementation of the correctional process in respect of such persons
- To request and obtain, from the administrations of bodies carrying out sentences, the documents and information necessary for the conduct of their work
- With the consent of the administrations of bodies carrying out sentences, to meet with convicted persons to discuss issues relating to the serving of their sentences, and to receive from them and examine requests, applications and complaints
- Jointly with the administrations of bodies carrying out sentences, to submit petitions for pardon
- To examine at their meetings information from the administrations of bodies carrying out sentences and heads of organizations employing persons sentenced to community service, punitive deduction of earnings or restriction of liberty concerning the efforts being made to reform convicted persons and to make proposals to address any shortcomings identified
- To submit for consideration by the relevant local executive and administrative bodies proposals for the improvement of the correctional process in bodies carrying out sentences
- To investigate employment opportunities for persons released from prisons, persons having served sentences of restriction of liberty and persons discharged from compulsory rehabilitation centres

- To make proposals to local executive and administrative bodies for the setting of quotas for the employment of persons released from prisons, persons having served sentences of restriction of liberty and persons discharged from compulsory rehabilitation centres
- At their own initiative, to apply to a court to release a convicted person from serving his or her sentence, to reduce his or her sentence or otherwise to improve his or her situation in view of the entry into force of a law with retroactive effect
- To agree to a court application by a correctional facility administration for a change in the type of facility in which a person sentenced to deprivation of liberty is held
- To give their agreement to the transfer by a correctional facility administration of an inmate serving a sentence in an ordinary-regime facility to one with a strict regime, or vice versa
- To agree to a decision by a correctional facility administration for a woman inmate to reside outside a colony during the period in which she is released from work owing to pregnancy and childbirth and until her child reaches the age of 3 years
- To give their agreement to the transfer of an inmate by the administration of a secure hospital to a special ward for up to six months in the event that disciplinary measures applied in respect of him or her are unsuccessful
- To participate, through their representatives, in the consideration by the courts of issues relating to the parole of convicted persons, the replacement of unserved portions of sentences with lesser penalties and changes in the type of correctional facility in which persons sentenced to deprivation of liberty are held
- To visit compulsory rehabilitation centres and examine the medical and social rehabilitation of the persons held there, the conditions of detention and the work activities available to those persons
- To assist the penal correction inspectorate in carrying out specific aspects of preventive supervision of persons released from places of deprivation of liberty

85. Media representatives and others have the right to visit places where sentences are served with the permission of the administration concerned or of relevant higher-ranking bodies administering institutions carrying out sentences. The cinematic, photographic and video recording of inmates and the conduct with them of interviews, including with the use of audio and video recording equipment, may be authorized by the administration of the institution concerned or by relevant higher-ranking bodies administering institutions carrying out sentences, with the written consent of the inmates themselves. Authorization is required from the administration of the institution concerned or from relevant higher-ranking bodies administering institutions carrying out sentences for the cinematic, photographic and video recording of installations guaranteeing the security of institutions or the protection of inmates.

86. In the period from January 2007 to September 2008, institutions of the penal correction system were visited more than 30 times by representatives of foreign States. No comments were made regarding the arrangements made for carrying out sentences by bodies and institutions of the penal correction system.

Recommendation (f)

Provide independent judicial oversight of the period and conditions of pretrial detention

87. The independence of judges and their subordination only to the law is a crucial constitutional principle. It is enshrined not only in the Constitution (art. 110), but also in the Code on the Judicial System and the Status of Judges (arts. 2 and 85), the Code of Criminal Procedure (art. 22), the Code of Civil Procedure (art. 11) and the Code of Economic Procedure (art. 12). Independent judicial oversight of the period and conditions of pretrial detention is provided for in articles 33, 139 and 143 of the Code of Criminal Procedure.

88. Article 33 stipulates that if, when a criminal case is considered by a court, violations of citizens' rights and freedoms are identified or breaches of the law that have occurred during the conduct of the initial inquiry or pretrial investigation or during the examination of the case by a lower court, the court may hand down an interim ruling (decision), which must be considered within one month of receipt, along with a written notification addressed to the lower court concerning the measures taken pursuant to the ruling (decision).

89. Article 139 of the Code governs the procedure for the filing of complaints with a court during a preliminary investigation; article 143, the procedure for appealing to a court against detention, remand in custody or house arrest or the extension of the period of custody or house arrest; and article 144, the procedure for the verification by a court of the legality of the imposition of detention, remand in custody or house arrest or of the extension of the period of custody or house arrest.

Recommendation (g)

Consider making the appropriate declarations under articles 21 and 22 of the Convention

90. Belarus is considering the possibility of making the declarations under articles 21 and 22 of the Convention. At the same time, article 61 of the Constitution guarantees everyone the right, in accordance with the international instruments ratified by Belarus, to apply to international organizations for the defence of his or her rights and freedoms, provided that all available domestic remedies have been exhausted.

91. Belarus ratified the Optional Protocol to the International Covenant on Civil and Political Rights by a decision of the Supreme Soviet of 10 January 1992, thereby recognizing the competence of the Human Rights Committee to consider individual communications (complaints) about violations of the rights set forth in the Covenant, including those concerning the implementation of the Convention.

Recommendation (h)

Distribute the Committee's conclusions and recommendations, and the summary records of the review of the third periodic report of Belarus, widely in the country, including by publishing them in both the Government-controlled and independent media

92. The conclusions and recommendations based on the review of the third periodic report of Belarus were transmitted to the competent Government bodies to be taken into account in their work. Information on the third periodic report was publicized during a briefing given by the press secretary of the Ministry of Foreign Affairs for Belarusian and foreign media.