



**TORTURE AND ILL-TREATMENT  
IN THE CONTEXT OF JUVENILE JUSTICE:  
Findings from Armenia, Azerbaijan, Georgia,  
Kazakhstan, Kyrgyzstan, Republic of Moldova,  
Tajikistan and Ukraine**



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# TORTURE AND ILL-TREATMENT IN THE CONTEXT OF JUVENILE JUSTICE:

## Findings from Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Tajikistan and Ukraine



### Background

UNICEF offices in the Central and Eastern European/Commonwealth of Independent States (CEE/CIS) region have been supporting juvenile justice system reforms for more than a decade. As their work on juvenile justice progressed, the issue of torture and ill-treatment emerged as one requiring further attention.

As a result of this observation, the European Commission<sup>[1]</sup> and UNICEF have conducted in 2011–2013 a research on torture and ill-treatment in the context of juvenile justice in eight countries of the region. The research had three main components: surveys of the experiences of children; effectiveness of mechanisms for the investigation of torture and ill-treatment; impact of torture and ill-treatment on victims.

The first component was designed to quantify the prevalence of torture and ill-treatment, identify the contexts in which it most often occurs, and determine the reasons it is used and the identity of perpetrators and victims. The second was intended to document whether cases of torture and ill-treatment are being reported to the competent authorities and, if so, whether they are investigated promptly and effectively and whether appropriate sanctions are being imposed on those found to have committed or tolerated these crimes. This information, it was hoped, would allow identifying mechanisms that contribute to impunity. Information on the impact of torture and ill-treatment on children was sought, in part, with a view to informing education and awareness-raising efforts. The third component was designed to be carried out only in countries where organizations providing medical and psychosocial assistance to torture victims existed and were willing to participate in the research.

<sup>1</sup> The European Instrument for Democracy and Human Rights.

The ultimate aims of the research were the following:

- raise awareness of torture and ill-treatment;
- increase the commitment of the authorities to combat these practices;
- identify factors that contribute to impunity; and
- map gaps in laws, procedures and services that prevent victims from being recognized and obtaining assistance and reparation.

The countries selected for the research were: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Tajikistan, and Ukraine. They were not selected because of any perception that torture and ill-treatment might be more widespread in them, but rather on the expectation that the relevant authorities would allow the research to be carried out without interference and, indeed, would cooperate by providing access to data and facilities, and in responding to requests for information.

Each of these eight countries has conducted research and prepared a national report.<sup>[2]</sup> The present paper consolidates the findings of all the national reports.<sup>[3]</sup>

In principle, the research was to be performed jointly by civil society organizations and autonomous statutory human rights or ombuds institutions. In Georgia and Kazakhstan, the research was conducted by ombuds institutions without the participation of civil society. The following table shows the participating organizations and institutions:

	Ombuds / human rights institution	Civil society
Armenia	Human Rights Defender's Office	Civil Society Institute
Azerbaijan	Ombudsperson	NGO Alliance for Children's Rights
Georgia	Public Defender	n/a
Kazakhstan	Commissioner for Human Rights (Ombudsman)	n/a
Kyrgyzstan	<i>Akyikatchy</i> (Ombudsperson)	Youth Human Rights Group and others <sup>[4]</sup>
Republic of Moldova	Center for Human Rights	Rehabilitation Center of Torture Victims 'Memoria'
Tajikistan	Ombudsperson's Office	Child Rights Centre
Ukraine	Parliamentary Commissioner for Human Rights (Ombudsman) <sup>[5]</sup>	Kharkiv Human Rights Protection Group, Kharkiv Institute of Social Research

A meeting to develop joint research tools and methodologies took place in Kyiv, in October 2011. Participants included ombuds offices and NGOs from the participating countries, staff of the concerned UNICEF country offices, staff of the UNICEF Regional Office, and several experts. Preliminary results were presented and plans for finalizing the research were discussed at a second meeting held in Bishkek, in September 2012.

2 In Ukraine, two reports were prepared (see Annex 2).

3 A revised version of the present report will be prepared once the Georgian report has been translated.

4 Other participating NGOs include the Independent Human Rights Protection Group and the Association of NGOs for the Promotion of Child's Interests.

5 Representatives of the Presidential Commissioner for Children's Rights, the State Penitentiary Service, Ministry of Internal Affairs, Ministry of Social Policy, Ministry of Education and Science, and the General Prosecutor's Office were involved in the research through participation in an Advisory Board.

# 1. The scope of the research

The research focused on torture and ill-treatment as defined in international human rights law.<sup>[6]</sup> Article 37 of the Convention on the Rights of the Child provides, “No child shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment,” but it does not define these terms. The definition of torture contained in Article 1.1 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is the most relevant definition in international law.<sup>[7]</sup> It has three elements: a material element, a subjective element, and an element with regard to the identity of the perpetrator.

The material element is defined as “any act by which severe pain or suffering, whether physical or mental, is ... inflicted.” Acts that cause severe mental or psychological suffering can be torture, even in the absence of physical violence.<sup>[8]</sup> *Threats* of physical violence are an example.<sup>[9]</sup>

The second element includes the intent of obtaining information or a confession, punishing, intimidating or coercing the victim or a third person, or for any reason based on discrimination of any kind.<sup>[10]</sup>

The third element is that 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.” If a parent punishes a child using violence that would be torture if used by a police officer or prison officer, it comes within the scope of Article 19 of the Convention on the Rights of the Child, which concerns violence inflicted on children while in the care of their parents or guardians, but it is not torture – at least, it is not torture as defined by international law.

The question of what constitutes cruel, inhuman or degrading treatment or punishment is more difficult. The Convention against Torture does not define it, except to describe it as treatment or punishment that is cruel, inhuman or degrading but does “not amount to torture as defined in Article 1.”<sup>[11]</sup> One distinction is that “In comparison to torture, ill-treatment may differ in the severity of pain and suffering...”<sup>[12]</sup> Acts committed for the purposes mentioned in Article 1 can be considered cruel and inhuman treatment or punishment even if the pain and suffering caused are not severe. The Committee against Torture also considers that ill-treatment – unlike torture – does not require proof of any specific intent.<sup>[13]</sup>

While torture and punishment normally consist of specific acts, the concept of ill-treatment is broader and includes neglect, failure to act, and failure to protect. Confinement in conditions that are dark, overcrowded or unhealthy, and deprivation of food, water or medical care can amount to cruel and inhuman treatment.<sup>[14]</sup> The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990) states, “...corporal punishment, placement in a dark cell, closed or solitary confinement [and] any other punishment that may compromise the physical or mental health” constitute “cruel, inhuman or degrading treatment [and] shall be strictly prohibited.”<sup>[15]</sup> This interpretation has been endorsed by the Committee on the Rights of the Child.<sup>[16]</sup>

It is States’ obligation to prevent ill-treatment by private actors, especially in contexts such as prisons and schools.<sup>[17]</sup> The State is responsible for violence committed by private persons in contexts where its failure to prevent and punish such violence “encourages and enhances the danger of privately inflicted harm.”<sup>[18]</sup>

‘Degrading’ treatment includes conduct that offends human dignity, even if it does not involve a violation of the physical or psychological integrity. The Committee on the Rights of the Child has commented that “punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child” is cruel and degrading.<sup>[19]</sup> Whether treatment or punishment is degrading depends more on its intrinsic nature, and perhaps sociocultural norms, than the suffering or injury of the victim. In Central Asia and the Caucasus, for example, verbal insults constitute a grave offence and, thus, may be considered degrading treatment. Obliging children to clean toilets is a form of punishment clearly intended to be degrading.

6 The present report focuses on these core issues, although many of the national reports also address broader contextual issues concerning due process and conditions of confinement.

7 The International Criminal Tribunal for the former Yugoslavia concluded that the definition contained in the Convention against Torture has become part of customary international law and can be used to interpret other international norms that prohibit torture without defining it. See *Prosecutor v. Anto Furundzija*, Judgement, 10 December 1998, para. 160.

8 Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 5.

9 Human Rights Committee, *Estrella Case*, No. 107/1986, para. 8.3.

10 The definition includes the words ‘such as’, indicating that these specific intentions are not necessarily exclusive and should not be interpreted narrowly.

11 Convention against Torture, Article 16.1.

12 Committee against Torture, General Comment No. 2 on ‘Implementation of Article 2 (prevention of acts of torture) by States parties’, CAT/C/GC/2, 24 January 2008, para. 10. (The term ‘ill-treatment’ is synonym for ‘cruel, inhuman or degrading treatment or punishment’.)

13 *Ibid.*

14 See, e.g., the sentence of the Inter-American Court of Human Rights in ‘*Juvenile Reeducation Institute v. Paraguay*, Judgement, 2 September 2004, Series C No. 112, para. 171.

15 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 67.

16 Committee on the Rights of the Child, General Comment No. 10 on ‘Children’s rights in juvenile justice’, CRC/C/GC/10, 25 April 2007, para. 89.

17 Committee against Torture, General Comment No. 2, *supra*, para. 15.

18 *Ibid.*

19 Committee on the Rights of the Child, General Comment No. 8 on ‘The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’, CRC/C/GC/8, 2 March 2007, para. 11.

In considering what constitutes torture and cruel, inhuman or degrading treatment, it is necessary to bear in mind the greater vulnerability of children. As Sir Nigel Rodley, then United Nations Special Rapporteur on torture, pointed out,

*... Children are necessarily more vulnerable to the effects of torture [and other forms of ill-treatment] and, because they are in critical stages of physical and psychological development, may suffer graver consequences than similarly ill-treated adults.<sup>[20]</sup>*

## 2. Prohibition and criminalization of torture and ill-treatment in national law

The constitutions of all the countries covered by this research prohibit both torture and cruel, inhuman or degrading treatment or punishment.<sup>[21]</sup> Their codes of criminal procedure invariably ban torture and/or certain practices related to torture, such as the use of coercion or illegal means to obtain confessions or evidence.<sup>[22]</sup> Legislation on prisons and on the police also prohibits torture and ill-treatment.<sup>[23]</sup> In some countries, laws on the rights of children also forbid torture or contain broad prohibitions of violence.<sup>[24]</sup>

Under international law, States must not only prohibit torture but criminalize it. Article 4 of the Convention against Torture provides,

*Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.<sup>[25]</sup>*

The Committee against Torture considers that defining torture as a specific offence, rather than punishing acts of torture as crimes such as assault or abuse of power, is a more effective means of preventing torture.<sup>[26]</sup>

The criminal codes of all the countries covered by this research contain one or more articles on torture. Article 309-1 of the Criminal Code of the Republic of Moldova defines torture in terms similar to those of Article 1 of the Convention against Torture. It criminalizes severe physical or mental pain or suffering inflicted for the kind of purposes mentioned by the Convention against Torture, when caused by an official or other person acting in an official capacity or with the express or tacit consent of such persons.<sup>[27]</sup> Article 143-1 of the Criminal Code of Tajikistan does not require that the suffering inflicted be severe. The Committee against Torture called the definition contained in this Article “fully in line with Article 1 of the Convention,” although it also said that the sentence provided was not compliant with Article 4 of the Convention.<sup>[28]</sup>

The definition of torture included in the other codes differs significantly from the international definition. The Criminal Code of Armenia defines torture as the infliction of strong bodily or mental suffering, but it does not require direct or indirect involvement of public officials, nor does it require any specific motive.<sup>[29]</sup> This is what can be called torture as a common crime, as opposed to torture as a human rights violation.

The Criminal Code of Azerbaijan contains two articles on torture. One (Article 133) contains a definition that requires the use of physical violence; the other (Article 113) requires that the victim be deprived of liberty. Neither calls for the direct or indirect involvement of public officials.<sup>[30]</sup> The Criminal Code of Ukraine also includes two articles on

20 Economic and Social Council, Commission on Human Rights, Question of the Human Rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, E/CN.4/1996/35, 9 January 1996, para. 10.

21 Constitution of Armenia, Article 17; Constitution of Azerbaijan, Article 43.III (“tortures and torment, treatment or punishment humiliating the dignity of human beings”); Constitution of the Republic of Kazakhstan, Article 17(2); Constitution of the Kyrgyz Republic, Article 22.1; Constitution of the Republic of Moldova, Article 54(3); Constitution of the Republic of Tajikistan, Article 18 (“No one will be subjected to torture or cruel and inhuman treatment”); Constitution of Ukraine, Article 28.

22 Codes of Criminal Procedure, Armenia (Articles 9 and 11); Kazakhstan (Article 116.1(1)); Tajikistan (Article 10).

23 Armenia, Penitentiary Code, Article 6 and Law on Police, Article 5; Kazakhstan, Criminal Correctional Code, Article 10(9) and Law on ‘procedures and conditions of persons in detention in special institutions’, Article 4; Tajikistan, Criminal Executive Code, Article 10.

24 Armenia, Law on the Rights of the Child, Article 9; Kazakhstan, Federal Law on the Rights of the Child, Article 10.2 (“physical and mental abuse, cruel, inhuman or degrading treatment”); Children’s Code of the Kyrgyz Republic (2012), Article 90; Republic of Moldova, Law on Child Rights, Article 6.

25 Convention against Torture, Article 4, para. 1. (All the countries covered by this research are parties to the Convention against Torture.)

26 Committee against Torture, General Comment No. 2, supra, para. 11.

27 Republic of Moldova, Criminal Code, Article 309-1. In 2010, the Committee against Torture welcomed the adoption of Article 309-1, “which brings the State Party’s legislation in line with Article 1 of the Convention...” See Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the second periodic report of the Republic of Moldova, CAT/C/MDA/CO/2, para. 6(a).

28 Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the second periodic report of Tajikistan, CAT/C/TJK/CO/2, 21 January 2013, para. 6.

29 Armenia, Criminal Code, Article 119.1. In 2012, the Committee against Torture concluded that Article 119 was not compatible with Article 1 of the Convention against Torture. See Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the third periodic report of Armenia, CAT/C/ARM/CO/3, 6 July 2012, para. 10.

30 In 2009, the Committee against Torture urged Azerbaijan to amend Article 133. See Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the third periodic report of Azerbaijan, CAT/C/AZE/CO/3, 8 December 2009, para. 8.

torture. One (Article 127) requires severe pain or suffering and intent similar to that specified by the Convention against Torture, but neither entails that the perpetrator be an official or person acting with the knowledge or consent of an official or someone acting in an official capacity.<sup>[31]</sup>

The Criminal Codes of Kazakhstan, Kyrgyzstan and Tajikistan contain one article criminalizing torture that involves public officials – torture as a human rights violation – and another recognizing torture as a common crime, committed by any person for any reason.<sup>[32]</sup> Although the term used in English to translate the names of these offences often is the same ('torture'), different terms are used in Russian.<sup>[33]</sup>

Article 141-1 of the Criminal Code of Kazakhstan does not require that the pain or suffering caused be severe nor does it cover acts committed by 'other persons acting in an official capacity'.<sup>[34]</sup> Article 305-1 of the Criminal Code of Kyrgyzstan requires involvement of 'public officials', a term that is narrowly defined. Persons who are not officials may not be prosecuted for this crime, even if they act at the instigation or with the knowledge or consent of an official.<sup>[35]</sup> It covers suffering caused by physical violence but not acts committed with discriminatory intent.<sup>[36]</sup>

Article 144-1, incorporated into the Criminal Code of Georgia in 2005, criminalizes severe physical or mental pain or suffering inflicted for some of the purposes mentioned by the Convention against Torture but not discrimination. Torture is not defined as acts committed by officials, but the involvement of a public official or other person acting in an official capacity and discriminatory motives are both regarded as aggravating circumstances and punished with harsher sanctions (see below). Inhuman and degrading treatment is criminalized by Article 144-3 and carries a maximum prison sentence of five years, or six years with aggravating factors.

The definitions of torture contained in the codes of Armenia and Azerbaijan expressly exclude conduct that causes damage to health – i.e., acts that otherwise meet the definition of torture cannot be prosecuted as torture if an injury is caused.<sup>[37]</sup> Such definitions fail to recognize the unique gravity of the crime of torture. All acts meeting the definition of torture should be prosecuted as torture, according to the Committee against Torture, and when serious injury is caused it should be considered an aggravating factor.<sup>[38]</sup>

Many codes also have articles recognizing offences against the administration of justice that may include torture. Prosecution for offences of this kind sometimes allows officials who commit torture in the context of criminal investigations to be charged with a less serious offence.

The second paragraph of Article 4 of the Convention against Torture provides,

*Each State Party shall make these offences punishable by appropriate penalties, which take into account their grave nature.*

The Committee against Torture's interpretation of this obligation is evolving. At present, its comments on what is required for sentences for torture to be commensurate with the gravity of the offence can be summarized thus: the minimum sentence for torture without aggravating circumstances should be three to five years; the maximum sentence for torture without aggravating circumstances should not be less than 10 years; and the maximum sentence for torture with aggravating factors should be more than 10 years.<sup>[39]</sup>

The Committee against Torture's observation on aggravating factors refers to serious, permanent injury, but the Committee on the Rights of the Child has indicated that the minority of the victim should also be considered as an aggravating factor.<sup>[40]</sup> Most criminal codes recognize the minority of the victim as an aggravating factor.<sup>[41]</sup>

31 In 2007, the Committee against Torture recommended that Ukraine bring Article 127 into compliance with Article 1 of the Convention against Torture, in particular by recognizing discrimination as a motive. See Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the fifth periodic report of Ukraine, CAT/UKR/CO/5, 3 August 2007, para. 8.

32 Article 107 of the Criminal Code of Kazakhstan, for example, defines torture as a common crime, while Article 141-1 defines it as a crime committed by officials for specific purposes. Similarly, Article 111 of the Criminal Code of Kyrgyzstan criminalizes torture as a common crime, while Article 305-1 criminalizes torture by public officials. Article 117 of the Criminal Code of Tajikistan criminalizes torture as a common crime, while Article 143-1 criminalizes it as a crime by public officials. In the Criminal Code of Ukraine, Article 126(2) criminalizes torture by private persons when committed in order to intimidate or for discriminatory reasons.

33 The Russian term for torture as a common crime, 'Истязание', is sometimes translated as 'torment'; the term used in newer articles adopted to bring the national law into compliance with the Convention against Torture is 'Пытка'.

34 Report of Kazakhstan: Urzabayeva, A., and Urumova, I., Analysis of legislation and complaints on torture and violence against children in the context of juvenile justice, Commissioner for Human Rights in the Republic of Kazakhstan and UNICEF, Astana, 2013, p. 5. (References to page numbers of national reports refer to the English translation.)

35 Note by B. Albanov, legal consultant, UNICEF Kyrgyzstan, 26 March 2013.

36 In 2012, the Special Rapporteur on torture pointed out these inconsistencies between Article 305-1 of the Criminal Code of Kyrgyzstan and Article 1 of the Convention against Torture. See Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Addendum. Mission to Kyrgyzstan, A/HRC/19/61/Add.2, 21 February 2012, para. 14.

37 Criminal Code, Armenia (Article 119.1); Azerbaijan, (Article 133.1).

38 See Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the fourth periodic report of China with respect to the Macao Special Administrative Region, CAT/MAC/CO/4, 21 November 2008, para. 5 and Concluding observations on the third periodic report of Mauritius, CAT/MUS/CO/3, 15 June 2011, para. 8.

39 See Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the second periodic report of Albania, CAT/ALB/CO/2, 26 June 2012, para. 8; Concluding observations on the third periodic report of Turkey, CAT/TUR/CO/3, 20 January 2011, para. 5(b)(i); and Concluding observations on the third periodic report of Mauritius, CAT/MUS/CO/3, 15 June 2011, para. 8.

40 Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations on the third periodic report of Tunisia, CRC/TUN/CO/3, 16 June 2010, paras. 38–39.

41 Criminal Code, Armenia (Article 119.2(3)); Azerbaijan (Article 133.2.4); Georgia (Article 144.1(2)); Kazakhstan (Article 107.2(a)); Kyrgyzstan (Article 305-1); Republic of Moldova (Article 309-1(3)(a)); Tajikistan (Article 117(2)(c)).

The Criminal Codes of Armenia, Azerbaijan, Kazakhstan, and Tajikistan do not impose any minimum prison sentence for torture without aggravation.<sup>[42]</sup> This is clearly incompatible with the obligation to make torture punishable by sentences commensurate with the gravity of the offence. The following chart compares the sentences provided by the relevant criminal codes with the Committee’s interpretation of this principle.

	Minimum sentence for torture without aggravating factors	Maximum sentence for torture without aggravating factors	Maximum sentence for torture with aggravating factors
Internationally acceptable sentence	3 to 5 years	10 years	more than 10 years
Armenia (Article 119)	none	3 years	7 years
Azerbaijan (Article 133)	none	3 years	10 years
Georgia (Article 144-1))	<i>7 years</i>	<i>10 years</i>	<i>20 years</i>
Kazakhstan (Article 141-1)	none	5 years	5 to 10 years
Kyrgyzstan (Article 305-1)	<i>4 years</i>	8 years	<i>10 to 15 years</i>
Republic of Moldova (Article 309-1)	2 years	5 years	10 years
Tajikistan (Article 143-1)	none	5 years	<i>10 to 15 years</i>
Ukraine (Article 127)	<i>3 years</i>	5 years	5 to 10 years

As this chart shows, very few provisions of these criminal codes (those in *italics*) establish sentences that are commensurate with the gravity of torture.

The failure to recognize torture as a serious offence often authorizes the application of procedural measures that allow perpetrators to avoid prosecution or punishment. In Armenia, for example, charges may be dismissed if the victim and offender are reconciled, and persons convicted of torture can be amnestied. In fact, when three persons were convicted of torture in 2011, two were amnestied.<sup>[43]</sup>



42 Criminal Code, Armenia (Article 119.1); Azerbaijan (Article 133.1); Georgia (Article 144-1(2)); Kazakhstan (Article 141-1.1).

43 Report of Armenia: Civil Society Institute and Human Rights Defender, *Study on Ill-treatment and Torture of Juveniles in the Republic of Armenia in the Context of Juvenile Justice*, UNICEF, Yerevan, 2013, p. 16.

### 3. Children's experiences

A total of 427 children were interviewed in six of the countries covered by this research.<sup>[44]</sup> Interviews included children in correctional facilities, children in other closed facilities, and other children having had contact with the police (e.g., children in diversion programmes). An effort was made to interview both girls and boys and children from different parts of the countries covered.

Some of the children were, understandably, reluctant to speak openly about mistreatment. Their hesitation makes it difficult to estimate the prevalence of torture and ill-treatment in juvenile justice systems. However, in all countries where children were interviewed, some did provide information on torture and ill-treatment they suffered. Their testimony is sufficient to conclude that these practices are fairly common.<sup>[45]</sup> It is also sufficient to identify where torture and ill-treatment are most likely to occur and the reasons for them, what forms of ill-treatment are used, and which are most common.

Beatings appear to be the prevailing form of torture or ill-treatment in all countries, and they are most often used to force children to give information to the police or other investigators during questioning. In Ukraine, for example, 11 of 12 complaints of torture or ill-treatment made to the Ombudsman concerned beatings, and 7 concerned beatings during interrogation.<sup>[46]</sup>

Torture and ill-treatment seem to have been largely eliminated from juvenile correctional facilities in several countries, including Armenia, Azerbaijan, Republic of Moldova, and Ukraine.<sup>[47]</sup> One exception is the use of solitary confinement to punish disobedient prisoners, which is still allowed in all the countries covered by this research, with the exception of Georgia. The use of solitary confinement is itself a form of ill-treatment. In some countries, juveniles in solitary confinement are more likely to experience beatings or other forms of ill-treatment.<sup>[48]</sup>

The Kharkiv Human Rights Protection Group (KHPG) report of Ukraine indicates that some children are ill-treated in order to extort money or other material benefits from the child or his/her family.<sup>[49]</sup>

Psychological torture is also reported in several countries – for example, holding a gun to the head of a child during questioning or threatening to throw a child off a bridge. This form of torture is most frequently used during questioning by the police or other investigators to obtain confessions or other information. One report comments that, for a child's psyche, these threats from a legal representative of the power have presented a major source of stress.<sup>[50]</sup>

Cases of rape, sexual abuse, and threats of rape and sexual abuse were reported in some countries, not by children interviewed but by organizations that provide legal or medical assistance to victims. Most victims were girls, although in Georgia a boy in a juvenile facility reportedly was threatened with rape.<sup>[51]</sup> Information on this form of torture is too scarce to estimate how common it may be.

Ukraine was the only country where a significant number of girls were interviewed.<sup>[52]</sup> The information they provided suggests that girls experience other forms of physical violence less often than boys.<sup>[53]</sup>

44 This figure does not include 20 former juvenile prisoners interviewed in Ukraine. Children were not surveyed in Georgia and Kazakhstan.

45 The percentage of children who reported torture or ill-treatment during police interrogation ranged from 12 per cent in one country to 69 per cent in another. (The figure of 69 per cent in the Republic of Moldova is probably related to the fact that one third of the sample interviewed consisted of children receiving treatment for torture and ill-treatment, who would be more likely to report their experiences.)

46 KHPG report of Ukraine: Romanov, M., Tokarev, G., Pushkar, V., and Kartopol'tceva, N., Torture and ill-treatment of children in Ukraine, Kharkiv Human Rights Protection Group (KHPG), Kharkiv, 2013, pp. 131–132. See also report of the Republic of Moldova: Crestenco, T., Guzun, I., Mihailov-Moraru, V., Popovici, L., Popovici, L., Roman, D., Vacarciuc, O., and Visanu, S., *Research Study: The torture and ill-treatment of children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability*, Center for Human Rights of Moldova, Rehabilitation Center of Torture Victims 'Memoria', UNICEF Moldova, Chisinau, 2012, Table 7, p. 26 and Table 9, p. 27.

47 The report of Armenia indicates that all of the eight children surveyed who reported ill-treatment were ill-treated by the police, and one of them both in police custody and in the women's prison (supra, p. 34). The report of Azerbaijan indicates that, out of 86 children interviewed, 34 reported experiencing violence and all but one declared that violence was inflicted by the police when they were first taken into custody. (See Commissioner for Human Rights (Ombudsman) and NGO Alliance for Children's Rights, Investigation of torture and ill-treatment against juveniles in conflict with the law and analysis of national legislation regarding the children in conflict with the law, Baku, 2012, (mimeo), p. 8.) The report of the Republic of Moldova indicates that out of 93 complaints of torture or ill-treatment investigated by the General Prosecutor's Office during a recent period, 64 occurred in police stations and facilities and 25 occurred 'in the street'; only one took place in a correctional facility (supra, Table 6, p. 26). The KHPG report of Ukraine states, "Respondents did not mention cases of physical force in the [prison] colony; the regime and relations with personnel were described in neutral or positive terms" (supra, p. 138). Tajikistan, where a small number of children reported beatings in the juvenile prison, is an exception. Even in this country, however, the number of children who reported ill-treatment by the police is significantly greater than the number who reported ill-treatment in the juvenile prison. (See Child Rights Centre, Torture and Ill-Treatment in the Context of Juvenile Justice in Tajikistan: Report on results of legislation and practice review, Dushanbe, 2012, p. 31.)

48 See, e.g., report of Tajikistan, supra, p. 40.

49 KHPG report of Ukraine, supra, p. 155.

50 Report of the Republic of Moldova, supra, p. 34.

51 Video footage released on Georgian mass media in September 2012.

52 Twenty out of the sixty juvenile prisoners (KHPG report of Ukraine, supra, p. 134) and 10 of the 27 students in 'special schools' (KhISR report of Ukraine: Kobzin, D., Chernousov, A., Shcherban, S., and Kolokolova, M., The rights of children in social rehabilitation institutions in Ukraine, Kharkiv Institute of Social Research, Kharkiv, 2013, p. 1). In Armenia, 15 girls were interviewed, one of whom reported ill-treatment.

53 Twenty-five per cent of boys and 10 per cent of girls reported experiencing violence when being taken into custody (KHPG report of Ukraine, supra, pp. 135–136); nearly half of boys and one fifth of girls reported physical violence during interrogation or questioning (Ibid., p. 136).

Other forms of torture and ill-treatment reported, in particular during interrogation or while in police custody, include:

- holding the head under water; suffocation with plastic bags;
- forcing the victim to maintain stress positions;
- application of tear gas;
- deprivation of food and/or clean water;
- denial of access to toilets;
- confinement in small, cold and/or humid cells, sometimes without bedding;
- prolonged interrogation at night;
- shouting and verbal abuse; and
- failure to provide medical assistance to detainees suffering withdrawal.

Beatings, the most common form of ill-treatment during interrogation, are almost always accompanied with verbal abuse, whose impact on children should not be underestimated. (See section 7 on 'impact of torture and ill-treatment'.)

Methods of torture reported by children in a 'special school' in Kyrgyzstan include forcing children to stare at the sun and perform exhausting exercises. Denying children contact with their families for long periods, commonly used as a disciplinary measure in the special school, also causes severe suffering in some children, according to psychologists who interviewed children in the school.<sup>[54]</sup>

Interviews with children confirm that most cases of torture and ill-treatment are not reported, and why. (See section 6 on 'investigation of torture and ill-treatment'.)

## 4. Safeguards against torture and their effectiveness

The information provided by children, and by adult key informants, helps to identify factors that contribute to the persistence of torture and ill-treatment in the context of juvenile justice. In general, the national law recognizes the safeguards against torture required by international norms, such as obligatory notification of parents when a child is taken into custody, the right to have a lawyer present during interrogation, obligatory medical examinations on admission to closed facilities, prohibition of the use of confessions obtained illegally, and so on. One major exception concerns the rule that deprivation of liberty without judicial authorization should not exceed 24 hours.<sup>[55]</sup> The legislation of most of the countries included in this research allows juveniles to be held for questioning up to 72 hours without a court order.

The legislation of most countries also has a gap regarding the time when a suspect is apprehended and the time when custody is formally recognized.<sup>[56]</sup> In several countries, apprehension need not be registered until three hours after a suspect has arrived at the offices of a criminal investigator or prosecutor, and only when this is done does the individual formally become a suspect with the right to be informed of his/her rights and the reasons he/she has been apprehended.<sup>[57]</sup> Furthermore, the law often does not impose any specific time limit for delivery of apprehended persons to the criminal police.<sup>[58]</sup> These gaps are widely used to circumvent legal safeguards by questioning juveniles informally, without the presence of a lawyer or parent.

One safeguard that is not recognized by all countries, and only partially by others, is the obligatory medical screening on admission to any interrogation, detention or correctional facility.<sup>[59]</sup> Even where it is recognized, non-compliance reportedly is common.<sup>[60]</sup> In some countries where medical screening is mandatory, there is no specific obligation to record and report evidence of violence or ill-treatment.<sup>[61]</sup> (In Armenia, if a medical examination reveals evidence of physical, sexual or psychological abuse, medical staff informs the head of the facility, who in turn notifies the police officers responsible for the criminal investigation against the suspect or detainee.)<sup>[62]</sup> When medical screening does take place, it often occurs in inappropriate conditions, such as the presence of non-medical personnel.<sup>[63]</sup>

54 Report of Kyrgyzstan: Utesheva, N. A., and Korzhova, O. A., Protecting children from torture and cruel treatment in the context of juvenile justice: Research Report 2012, Bishkek, 2013, pp. 24–25, 45, 53.

55 See, e.g., Committee on the Rights of the Child, General Comment No. 10, supra, para. 83.

56 In Armenia, this is called the 'explanation' stage of proceeding. See report of Armenia, supra, pp. 49–50.

57 Ibid., pp. 41, 49. Report of Tajikistan, supra, pp. 19–20.

58 Report of Tajikistan, supra, p. 20.

59 In Armenia, medical screening on admission is required in detention centres and correctional facilities; but it is required in police stations only if a bodily injury is observed (report of Armenia, supra, pp. 52–53). The legislation of Tajikistan does not require medical screening on admission to police stations, pretrial detention centres, prisons or 'special schools' (report of Tajikistan, supra, p. 9).

60 In Armenia, for example, half of all juveniles surveyed indicated that they did not receive a medical examination on admission to a pretrial detention centre (report of Armenia, supra, p. 53).

61 In Tajikistan, medical screening must be performed when children are admitted to 'reception and referral centres' operated by the juvenile police, but the protocol used does not require examination of the child for evidence of violent treatment. In Ukraine, juvenile prisoners reported that "in cases where there were marks from beatings, these were not as a rule recorded" in medical examinations performed in pretrial detention centres (SIZO). (KHPG report of Ukraine, supra, p. 137.)

62 Report of Armenia, supra, p. 52.

63 In Armenia, for example, 20 per cent of juveniles interviewed indicated that police officers, guards or other non-medical staff were present during medical examinations (Ibid., p. 54).

In one country, children under age 16 lack competence to consent to medical examinations and, when they are institutionalized, authority to give approval is transferred from their parents to the head of the institution.<sup>[64]</sup> This creates a conflict of interest when ill-treatment occurs within the institution.

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***The statements from minors who were interviewed led to the conclusion that none of them was examined in order to identify signs and consequences of ill-treatments.***

Report of the Republic of Moldova, *supra*, p. 41.

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Another significant exception concerns children too young to be charged with criminal offences. In some countries, police regularly take young children into police stations for questioning about criminal matters. Younger children are particularly vulnerable to psychological pressure but, since they are below the 'age of criminal responsibility', safeguards recognized by the Code of Criminal Procedure, such as the right to the assistance of a lawyer, usually do not apply. Ukraine, where they do apply to children aged 11–14 years, is an exception.<sup>[65]</sup>

Procedures for assigning a lawyer often fail to ensure his/her presence at the crucial first interrogation. In Ukraine, for example, although the Code of Criminal Procedure requires that lawyers be present during all proceedings concerning juveniles, the Law on Free Civil Legal Aid requires that requests for legal assistance be decided within 10 days, which is far too late to ensure that juvenile suspects receive effective assistance.<sup>[66]</sup>

In Azerbaijan, for example, only 10 of the 86 juveniles surveyed indicated that they had met their advocates on the first day they were in police custody.<sup>[67]</sup> In Armenia, one third of the children surveyed declared that they had been interrogated without the presence of a lawyer.<sup>[68]</sup> Another practice used by some police is to call on a teacher or lawyer known to them, who fulfils the legal requirement of being present during questioning without providing any actual support to the child.<sup>[69]</sup>

Sometimes, although safeguards are recognized by law, they are acknowledged only in general terms, which undermines their effectiveness. An example mentioned by one report is that, while the law provides that parents must be notified immediately when a child is taken into custody, it does not specify who must inform the parents and the sanction for not fulfilling this requirement.<sup>[70]</sup>

In some countries, a significant number of juveniles accused of offences reside in homes for children without parental care.<sup>[71]</sup> Consequently, parental authority is exercised by the head of the home who, sometimes, shows little interest in defending the rights of the children concerned. In one case, the head of the home where an accused adolescent girl resided requested that she be detained before trial, even though her defence lawyer had filed a motion that her detention was illegal and likely to have adverse consequences for her mental health.<sup>[72]</sup>

The inadmissibility of evidence obtained through torture and ill-treatment is an essential safeguard. Legislation in the countries covered by this research invariably recognizes this principle but, in some, the way it is applied in practice greatly weakens its effectiveness. The report of Armenia indicates that, in trials concerning juvenile offenders, allegations that evidence should not be admitted because it was obtained through torture or ill-treatment are investigated by the court only if the alleged torturers can be identified, which often depends on the cooperation of the police.<sup>[73]</sup> Judges usually consider allegations that evidence was obtained through abuse to be unfounded, unless they are supported by a forensic examination carried out at the time.<sup>[74]</sup>

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64 Report of Kyrgyzstan, *supra*, p. 10.

65 Note by D. Kobzin, Kharkiv Institute of Social Research, May 2013.

66 KHPG report of Ukraine, *supra*, p. 47, citing Law No. 3460-VI of 2 June 2011 on Free Civil Legal Aid.

67 Report of Azerbaijan, *supra*, p. 5.

68 Report of Armenia, *supra*, p. 47.

69 *Ibid.*, pp. 47–48.

70 Report of Kazakhstan, *supra*, p. 14.

71 KHPG report of Ukraine, *supra*, p. 134.

72 *Ibid.*, pp. 178–179.

73 Report of Armenia, *supra*, p. 64.

74 *Ibid.*

## 5. Independent monitoring

Monitoring is a permanent, proactive effort to detect violations of human rights and, more generally, to assess the compliance of state institutions with relevant legal and administrative norms. Several institutions have responsibilities of this kind in the countries covered by this research, including ombudsmen, prosecutors, administrative authorities, children's commissions and NGOs.<sup>[75]</sup> This report focuses mainly on monitoring by ombudsmen and other statutory human rights bodies.

All of the countries covered by this research have statutory human rights bodies with competence to monitor human rights violations. None have statutory institutions devoted exclusively to the rights of children but, in most, the statutory human rights bodies have small, specialized units for child rights. Half of these institutions (in Armenia, Azerbaijan, Georgia, and Ukraine) are fully accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.<sup>[76]</sup> Accreditation requires compliance with the 'Paris Principles' concerning the independence of such bodies. The other institutions (in Kazakhstan, Kyrgyzstan, Republic of Moldova, and Tajikistan) are at present classified as 'not fully in compliance' with these Principles.<sup>[77]</sup>

All of the countries covered by this research, except Tajikistan, are parties to the Optional Protocol to the Convention against Torture, which obliges States parties to establish national preventive mechanisms (NMPs) to monitor the treatment of persons confined in closed facilities of any kind.<sup>[78]</sup> In most of them, the statutory human rights body has been designated the 'national preventive mechanism'.<sup>[79]</sup> In Kyrgyzstan, a National Centre for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment has been established.<sup>[80]</sup> In Kazakhstan, a law establishing a national preventive mechanism is under consideration by the Parliament.<sup>[81]</sup>

When they conclude that a human rights violation has occurred, most ombudsmen or human rights defenders inform the authority responsible and make recommendations as to what should be done to remedy the violation. Some are also able to help the victim take legal action.

To date, most these statutory bodies have not made significant contributions to efforts to protect juveniles from torture and ill-treatment in the context of juvenile justice. In several countries, this is due, at least in part, to lack of sufficient resources. In some, gaps in their authority also limit their effectiveness. In Kyrgyzstan, for example, authorities have no legal obligation to respond to recommendations of the Ombudsman, although they do now have an obligation to respond to the recommendations of the National Centre for the Prevention of Torture.

Many ombuds institutions report that they receive very few complaints of torture or ill-treatment in the context of juvenile justice. The Center for Human Rights of Moldova, for example, received only three complaints between 2009 and 2011.<sup>[82]</sup> The Ombudsman of Kyrgyzstan received three complaints in 2011.<sup>[83]</sup> The Armenian Human Rights Defender's Office received only two complaints of this kind from 2010 to May 2012.<sup>[84]</sup> The 2010 and 2011 annual reports of the Georgian Public Defender mention only one case. In Ukraine, the Parliamentary Commissioner for Human Rights received 19 complaints concerning torture or ill-treatment of children from 2010 to June 2012.<sup>[85]</sup> The largest number of complaints received was in Kazakhstan: 40 in 2010, 80 in 2011, and 52 in 2012.<sup>[86]</sup>

Most reports contain little information on results of complaints to ombudsmen. In one Armenian case, a police officer was given a disciplinary sanction for mishandling a juvenile's complaint of ill-treatment, although the complaint itself was considered unfounded.<sup>[87]</sup> In Kyrgyzstan, monitoring by the Ombudsman reportedly focuses more on conditions than on violence, and many of the recommendations made are not implemented because of financial and material obstacles.<sup>[88]</sup> In Kazakhstan, some cases have been resolved favourably: three in 2010, one in 2011, and two in 2012.<sup>[89]</sup> Although the number is small, this represents progress, compared to the weak evidence of positive results in other countries.

75 International standards provide that 'inspections' should be conducted by the agencies that operate detention or correctional facilities (see, e.g., section M of the Havana Rules). Reports from some countries indicate that, although such mechanisms exist, their reports usually are not public and are easily ignored. There also is a tendency to focus on material conditions rather than ill-treatment (see, e.g., the report of Kyrgyzstan, pp. 10 and 87–88). Children's Commissions – now called 'Child Rights Commissions' in some countries – also usually have a mandate to protect the rights of children. These are interministerial bodies that, as such, are not independent. In some countries, they have played a positive role in training or developing national standards but, in general, their main focus continues to be protection of children in the family. Many General Prosecutor's offices have a unit responsible for visiting prisons and detention centres in order to monitor compliance with the legislation in force. Some have played a positive role in advocating certain reforms concerning the treatment of prisoners and conditions of detention but, in general, their institutional culture is incompatible with vigorous efforts to eradicate torture and ill-treatment.

76 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). Chart of the status of national institutions as of 11 February 2013. Available at <<http://nhri.ohchr.org/EN/Documents/Chart%20of%20the%20Status%20of%20NHRIs%20%2811%20Feb%202013%29.pdf>>, accessed 20 May 2013.

77 Ibid.

78 Optional Protocol to the Convention against Torture (OPCAT), Articles 3–4 and 17–23.

79 See <<http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>>, accessed 20 May 2013.

80 Law No. 104 of 12 July 2012 on 'The National Centre of the Kyrgyz Republic for the Prevention of Torture and other Cruel, Inhuman and Degrading Treatments and Punishment'.

81 If adopted, it will authorize the Ombudsman and NGOs to monitor detention and correctional facilities as well as some closed educational facilities for children.

82 Report of the Republic of Moldova, supra, p. 23. (The outcome of these complaints is not reported.)

83 Report of Kyrgyzstan, supra, p. 89.

84 Report of Armenia, supra, p. 62.

85 KHPG report of Ukraine, supra, p. 130. (Four complaints of torture and 15 of ill-treatment.)

86 Report of Kazakhstan, supra, p. 28.

87 Report of Armenia, supra, p. 63.

88 Report of Kyrgyzstan, supra, pp. 88–89.

89 The Ombudsman found that a violation had occurred, and a suitable remedy was adopted. See report of Kazakhstan, supra, p. 28.

In some countries, legislation has been adopted giving NGOs a role in monitoring the treatment of juveniles deprived of their liberty and conditions in closed facilities. In Kazakhstan, for example, Public Monitoring Committees have the right to access police facilities, pretrial detention centres and prisons during the day, to receive complaints and to make recommendations to the responsible officials, but they are not authorized to interview prisoners and detainees privately.<sup>[90]</sup> NGOs also participate in an interministerial working group on torture and ill-treatment, which has visited 43 correctional facilities during the last three years.<sup>[91]</sup> In Kyrgyzstan, Public Supervisory Boards were established in 2011 by Presidential Decree.

In Armenia, two non-governmental monitoring bodies were established by order of the Minister of Justice in 2004 and Head of Police in 2005: one to visit correctional facilities and one to visit police detention facilities. The latter is not authorized to visit police stations, however. The Torture Prevention Expert Council, a third non-governmental body, was established by the Human Rights Defender's Office in 2011, when it was recognized as a 'national preventive mechanism' pursuant to the Optional Protocol to the Convention against Torture. In 2012, it visited more than 28 facilities, in cooperation with staff of the Human Rights Defender's Office.

In Georgia, a series of videos were released on national television and the internet in September 2012 depicting torture and ill-treatment of inmates. One appears to show a juvenile being threatened with rape.<sup>[92]</sup> The videos led to public demonstrations, the resignation of the Minister responsible for the prison system, and the opening of criminal investigations (see below). A temporary monitoring group of independent experts was given access to the correctional system, while options to strengthen monitoring were considered. It was decided to enhance the existing National Preventive Mechanism by incorporating more independent experts and representatives of human rights organizations, including specialized experts to monitor facilities for juvenile detainees and prisoners. The Public Defender also made a commitment to assign specialized staff of the Child Rights Centre to monitor juvenile penitentiary facilities jointly with the experts of the National Preventive Mechanism.<sup>[93]</sup>

## 6. The investigation of torture and ill-treatment

Any person who has been tortured or subjected to cruel, inhuman or degrading treatment has the right to make a complaint to the competent authorities, who have an obligation to examine promptly and impartially the allegations made and to initiate criminal proceedings if sufficient evidence is found.<sup>[94]</sup> States also have an obligation to carry out a prompt and objective investigation of all suspected cases of torture and ill-treatment, regardless of whether or not a complaint has been made.<sup>[95]</sup>

The reluctance of victims to make complaints may well be the most significant obstacle to the investigation of torture and ill-treatment. Interviews with children suggest that there are two main reasons for the reluctance to make complaints. One is the fear of consequences.

States have an obligation to protect victims of torture and ill-treatment. The Convention against Torture provides, "Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."<sup>[96]</sup>

The Committee against Torture recommends, "Suspected perpetrators should as a rule be subject to suspension or reassignment during the process of investigation."<sup>[97]</sup> The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime provides, "special strategies are required for child victims ... who are particularly vulnerable to recurring victimization," including those confined in institutional settings.<sup>[98]</sup>

In practice, however, such measures are rarely taken to protect children who make complaints about torture or ill-treatment. In the Republic of Moldova, for example, where prosecutors may solicit the temporary suspension of civil servants accused of abuses, only 20 per cent of a sample of prosecutors interviewed indicated that they make such requests.<sup>[99]</sup> In contrast, in Georgia, all prison staff positively identified as participants in the abuses mentioned above were dismissed, and others against whom allegations were made have been suspended. Almost all the staff of the juvenile prison and main juvenile detention centre has been replaced.

90 Ibid., p. 21. (Legislation to strengthen their powers is under consideration.)

91 Ibid., p. 29.

92 It is unclear, at present, whether this took place in the juvenile prison or a pretrial detention centre.

93 The Child Rights Centre and the National Preventive Mechanism are both part of the Office of the Public Defender; the Ministry of Corrections and Legal Assistance reportedly is also in the process of establishing an internal child protection mechanism.

94 Convention against Torture, Articles 13, 6.1 and 16.1; see also Human Rights Committee, General Comment No. 20, supra, para. 14.

95 Convention against Torture, Articles 12 and 16.1.

96 Ibid., Articles 13 and 16.1.

97 Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Concluding observations on the second periodic report of Kazakhstan, CAT/C/KAZ/CO/2, 12 December 2008, para. 17. A similar recommendation was made in the Conclusions and recommendations on the initial report of Tajikistan, CAT/C/TJK/CO/1, 7 December 2006, para. 17.

98 United Nations Economic and Social Council Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, E/RES/2005/20, 22 July 2005, Guidelines 38 and 39. See also United Nations, High Commissioner for Human Rights, Istanbul Protocol, Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2000, A/RES/55/89, Principle 3.b: "Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families..."

99 Report of the Republic of Moldova, supra, p. 58.

In addition, many children (and parents) simply feel that making a complaint will serve no useful purpose, given the culture of impunity that prevails in the countries covered by this research. The Ukrainian report on special schools states,

*Victims of unlawful violence did not complain about the actions of the police... Primarily, this is due to the fact that people feel that the current system of investigating such cases is totally ineffective.<sup>[100]</sup>*

The culture of impunity that leads many victims to believe that there is no point in complaining about torture and ill-treatment is described thus in one report:

*... it is unfortunate that, among the children who have used the right to file a complaint against police officers on ill-treatment and torture actions, there has not been a single case in which a prompt and efficient investigation was carried out, with a positive result. It seems that the approach on the part of law enforcement agencies was similar in all cases: to ignore the complaints, persuade the victim to drop the complaint, the lack of prompt and selfless reaction on the part of prosecutors, the lack of protection mechanisms for victims, the lack of information on the possibilities of appeal against inaction, the lack of prompt professional legal assistance.<sup>[101]</sup>*

The report also indicates that perceptions of social, financial and cultural inferiority contribute to victims' distrust of justice,<sup>[102]</sup> in particular the persistence of the idea that everything can be bought, and without money you cannot prove anything.

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***Who can I complain to?  
All of them are the same and nothing is going to change.***

Report of Armenia, *supra*, p. 59, citing one of the children surveyed.

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Children's ignorance of their rights and remedies for the violation of their rights also contributes to the failure to investigate torture and ill-treatment. The report of Azerbaijan, for example, indicates that children do not consider ill-treatment to be violence unless physical injury results.<sup>[103]</sup> Although defence lawyers should explain their rights to children who are being investigated or accused of an offence, in some countries many lawyers, especially those who are assigned to handle cases of poor children, fail to do so.<sup>[104]</sup>

The limited role of courts in responding to complaints and evidence of torture is a major obstacle to the effective investigation of torture and ill-treatment, according to most reports. Allegations of torture and ill-treatment that arise when a defendant complains of torture or ill-treatment usually are referred to prosecutors for investigation.<sup>[105]</sup> However, the role of prosecutors in the investigation and prosecution of common crimes and their responsibility for investigating torture and ill-treatment that occur during criminal investigations create a conflict of interest. One report concludes, "This conflict of interest affects very adversely [the] impartiality of prosecutors and makes ... an investigation of unlawful violence by the police ineffective."<sup>[106]</sup>

In some countries, prosecutors who receive complaints about torture or ill-treatment rely on the police to investigate them. This, too, creates an obvious conflict of interest. In Armenia, a separate body specializing in the investigation of cases of abuse by public officials, known as the Special Investigation Service (SIS), was established in 2007 to avoid the conflict of interest involved in asking the criminal police to investigate their peers. However, there are no guidelines requiring cases to be forwarded to this body and, in practice, most cases of suspected torture and ill-treatment are still referred to ordinary criminal police investigators.<sup>[107]</sup>

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***The requirement for a proper investigation into communications concerning torture is jeopardized from the very beginning ... because communications about torture are investigated within the framework of the very entity to which the perpetrators of such acts of torture themselves belong.***

Report of Armenia, *supra*, p. 22.

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100 KhISR report of Ukraine, *supra*, p. 3.

101 Report of the Republic of Moldova, *supra*, p. 46.

102 *Ibid.*, p. 47.

103 Report of Azerbaijan, *supra*, p. 8.

104 See, e.g., the report of the Republic of Moldova, *supra*, pp. 37, 46.

105 See, e.g., the report of Kazakhstan, *supra*, p. 27.

106 KhISR report of Ukraine, *supra*, p. 3; see also the report of Kazakhstan, *supra*, p. 14.

107 Report of Armenia, *supra*, p. 21.

Although States have an obligation to investigate and, when appropriate, prosecute torture and ill-treatment even in the absence of a complaint by the victim, in practice investigations are terminated when the victim fails to cooperate. Efforts to force victims or their parents to withdraw complaints are reported in almost all countries.<sup>[108]</sup> Too often, prosecutors and even judges are involved. In one country, a former juvenile prisoner reported that a judge said,

*I have a choice: to give you a minimum sentence and you'll be let out immediately, or to initiate a case against four people who put you in detention. What do you think, which should I choose?*<sup>[109]</sup>

The implications of this statement are that, in case the defendant insists on accusing the officers who violated his rights during the investigation, the trial against the defendant will continue until the end of the investigation of the complaint against the police, and the defendant will remain in detention during this time. Even if the judge does not 'hint' that complaining of ill-treatment will result in more severe punishment, the prospect of remaining in custody for an indeterminate time is usually sufficient motivation for the accused detainee to admit guilt in exchange for immediate release and drop allegations of ill-treatment.<sup>[110]</sup>

In another country, two children reported that prosecutors insisted that they withdraw complaints of ill-treatment, saying, "You will not be able to prove anything."<sup>[111]</sup>

In Georgia, a major scandal concerning ill-treatment of prisoners, including at least one juvenile, erupted in September 2012. The minister responsible for the prison system resigned, and steps were taken to reinforce monitoring mechanisms (see above). An NGO was given access to juvenile facilities to provide assistance to victims and witnesses. Criminal investigations were undertaken, and a number of trials are pending. The energetic response to this situation thus far can be seen as positive, although the crisis that provoked this response serves as a warning of the consequences of years of impunity.

In the Republic of Moldova, special prosecutors responsible for investigating allegations of torture and other human rights violations have been assigned to every prosecutor's office.<sup>[112]</sup> In order to avoid conflicts of interest, they have no responsibility for criminal cases that would involve cooperation with the police. A special department for the fight against torture has been established within the General Prosecutor's Office to coordinate activities on the national level. This is a promising development, although the specialized prosecutors need further training. Assessing the impact of this initiative would be premature.

Ninety-three complaints concerning torture or ill-treatment were recorded by the General Prosecutor's Office during 2010, 2011 and the first six months of 2012. In more than 90 per cent of the cases, the prosecutor decided not to prosecute on the grounds that the facts were not proven or did not constitute an offence.<sup>[113]</sup> Of the 16 cases in which criminal proceedings were initiated, charges were dropped in four cases for lack of evidence; three accused were found not guilty; two were convicted.<sup>[114]</sup> One of the convicted offenders was given a fine, and the other, a suspended sentence.<sup>[115]</sup>

The failure to perform proper medical examinations in a timely manner is one of the reasons that so many criminal investigations are dropped, according to the report of the Republic of Moldova.<sup>[116]</sup> By the time a complaint is made any evidence of physical injury may no longer be perceptible, especially because the methods of torture used do not leave injuries that can be easily detected.<sup>[117]</sup> Many factors contribute to the failure to perform thorough medical examinations when juveniles are admitted to places of detention, including lack of adequate professional training, lack of independence and lack of motivation. Of 93 cases of torture and ill-treatment investigated in the Republic of Moldova only one was reported by a medical assistant; a number of children informed interviewers that the medical personnel who examined them noticed traces of ill-treatment but did not note them in the examination records.<sup>[118]</sup>

Administrative investigations and sanctions also have a role to play. They may help reduce torture and ill-treatment, provided they are applied firmly when criminal prosecution is not feasible. The absence of effective administrative mechanisms for holding public servants accountable for their treatment of juveniles can contribute to an institutional culture of arbitrariness and impunity that encourages ill-treatment and even torture.<sup>[119]</sup> However, a policy of applying administrative sanctions instead of criminal prosecution, when the evidence indicates that a crime has been committed, amounts to tolerance of torture and ill-treatment.<sup>[120]</sup>

108 See, e.g., report of Armenia, *supra*, pp. 60–61.

109 KHPG report of Ukraine, *supra*, p. 145.

110 Note by G. Tokarev, KHPG, 18 May 2013.

111 Report of the Republic of Moldova, *supra*, p. 37.

112 *Ibid.*, p. 17. (They also investigate abuse of power.)

113 *Ibid.*, Table 10, p. 28.

114 Ten cases remained pending at the time the data were reported; some involved more than one accused.

115 *Ibid.*, p. 29.

116 *Ibid.*, p. 73.

117 *Ibid.*, p. 45.

118 *Ibid.*, pp. 25 and 59.

119 See, generally, the report of Kyrgyzstan, *supra*.

120 The Committee against Torture has stated, "Disciplinary action alone shall not be regarded as an effective remedy within the meaning of Article 14." (General Comment No. 3 on 'Implementation of Article 14 (redress for victims of torture) by States parties', CAT/C/GC/3, 13 December 2012, para. 26.)

There are some indications that impunity is beginning to erode. In Tajikistan, for example, a police inspector was convicted in September 2012 for the torture of a 17-year-old suspected of theft, and sentenced to seven years in prison. The beatings came to light when the victim was hospitalized after a suicide attempt. This is believed to be the first time a police official has been convicted of torture or ill-treatment of a child in Tajikistan. The Child Rights Centre, one of the civil society organizations participating in this research, provided the victim with legal and psychological assistance – a good example of cooperation between ombuds institutions and civil society.

In Kazakhstan, a local chief of police and one of his officers were convicted of beating with a truncheon a boy suspected of stealing a cell phone in order to obtain a confession, in 2011. The senior officer was sentenced to three years and six months of deprivation of liberty, and the other officer was sentenced to two years and six months in prison.<sup>[121]</sup> The number of complaints increased the following year, and criminal investigations were opened with regard to more than half of the complaints received in 2012.<sup>[122]</sup>

## 7. The impact of torture and ill-treatment

Experienced medical doctors and psychotherapists participating in this research provided information on the impact of torture and ill-treatment on children, based on cases they and their colleagues have treated.

Physical injuries caused by torture and ill-treatment depend on the type of violence used. Beatings can cause injuries to internal organs or organs such as the eye or ear. Children beaten on the head – a common form of torture or ill-treatment – often suffer cognitive difficulties.<sup>[123]</sup>

The report of the Republic of Moldova contains a detailed analysis of the impact of torture and ill-treatment experienced by children in the context of juvenile justice. The most common forms of psychological torture and ill-treatment were threats (especially threats of murder or physical violence), humiliating treatment, solitary confinement, and denial of contact with the child's parents and lawyer.<sup>[124]</sup> The unnecessary use of handcuffs for children involved in non-violent offences is a form of psychological abuse that contributes to their sense of vulnerability and anxiety, according to another report.<sup>[125]</sup> Prolonged confinement in detention centres where organized activities are almost non-existent can be considered psychological ill-treatment as well.<sup>[126]</sup>

"The humiliation to which children were subjected often has profound destructive effects on their personality, and intensifies the impact of physical ill-treatment," according to the report of the Republic of Moldova.<sup>[127]</sup> More than half of the child victims surveyed experienced anxiety, depression and excessive nervousness.<sup>[128]</sup> Child victims often suffer from post-traumatic stress disorder (PTSD) and exhibit symptoms such as:

- nightmares, insomnia;
- impulsiveness, heightened alertness, compulsive need to control one's environment;
- withdrawal, incommunicativeness, difficulty in trusting others;
- poor ability to concentrate, frequent headaches, fatigue;
- aggressiveness;
- suicide and attempted suicide.<sup>[129]</sup>

The psychological impact of torture and ill-treatment on children also has social consequences. More than half the children receiving assistance from the Moldovan Rehabilitation Center of Torture Victims 'Memoria' present deterioration of social relations, including family relations, alienation from friends, carelessness in communicating with other people, and increased risk of social exclusion.<sup>[130]</sup> Forty per cent interrupted studies or experienced difficulties in pursuing their education; nearly forty per cent manifested a decrease of creativity;<sup>[131]</sup> and one in four had a lower likelihood for successful social and professional reintegration after release.<sup>[132]</sup>

These consequences do not only reveal the gravity of any torture and ill-treatment for children themselves but also the long-term costs of this practice for society as a whole.

121 Report of Kazakhstan, *supra*, p. 27.

122 Only one complaint of ill-treatment of a juvenile was made in 2011; nine were registered in 2012, and five of them were submitted to the competent investigation authorities. (Cases are not investigated when the factual allegations do not contain all the elements of an offence.) *Ibid.*, p. 27.

123 For example, the report of the Republic of Moldova found that almost one third of the child victims of torture or ill-treatment surveyed presented cranio-cerebral and/or cervical trauma, with a high risk of complications (*supra*, pp. 3 and 35–36).

124 *Ibid.*, Table 19, pp. 34–35.

125 KhISR report of Ukraine, *supra*, p. 3.

126 KHPG report of Ukraine, *supra*, p. 164; see also pp. 141, 143.

127 Report of the Republic of Moldova, *supra*, pp. 3, 34.

128 *Ibid.*, Tables 22 and 23, pp. 36–37.

129 *Ibid.*, Table 28, pp. 71–72 (95 per cent of the children receiving treatment for torture presented symptoms of post-traumatic stress disorder).

130 *Ibid.*, p. 72.

131 *Ibid.*

132 *Ibid.*

## 8. The right of victims to assistance and reparation

The Convention against Torture provides, “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.”<sup>[133]</sup> The Committee against Torture considers that this right applies to victims of ill-treatment as well as torture.<sup>[134]</sup> It has also stated, “Access to rehabilitation programmes should not depend on the victim pursuing judicial remedies” and “Torture victims should be provided access to rehabilitation programmes as soon as possible following an assessment by qualified independent medical professionals.”<sup>[135]</sup>

The right to assistance independent of legal remedies is also recognized by the Convention on the Rights of the Child, which obliges States parties to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of... torture or any other form of cruel, inhuman or degrading treatment or punishment...”<sup>[136]</sup> Such assistance must be provided “in an environment which fosters the health, self-respect and dignity of the child.”<sup>[137]</sup>

Most countries covered by this research have no special law or procedure for providing assistance or compensation to victims of crimes such as torture or ill-treatment committed by public officials. The only remedies are those that are available for any wrong. In some countries, this means a civil action against the torturer in his/her personal capacity.<sup>[138]</sup> In others, the victim may become a party to a criminal case against the torturer and seek damages.<sup>[139]</sup> In some countries, the victim may choose between these remedies.<sup>[140]</sup>

The Committee against Torture considers that “a civil proceeding and the victim’s claim for reparation should not be dependent on the conclusion of a criminal proceeding. ... compensation should not be delayed unduly until criminal liability has been established.”<sup>[141]</sup> Furthermore, the right to seek damages from a torturer individually does not fully satisfy victim’s right to redress. Because torture by definition involves the direct or indirect responsibility of the State, “the State bears responsibility for providing redress for the victims.”<sup>[142]</sup>

In some countries, the law only recognizes the right to compensation for expenses and monetary losses.<sup>[143]</sup> Reimbursement of the costs of medical or other treatment does not satisfy the obligations of the State; compensation must also be made for the physical and mental harm suffered.<sup>[144]</sup>

The reports prepared in the framework of this research identified only one case in which a child victim of torture was given any compensation. In Tajikistan, a boy who attempted suicide after being beaten and insulted during interrogation was awarded Somoni 1,619 (some € 260) for medical expenses.<sup>[145]</sup>

The Republic of Moldova appears to be the first of the countries covered by this research to adopt a special law on the reparation of damage caused by wrongful conduct of criminal prosecution authorities, prosecutors and courts.<sup>[146]</sup> No fees are charged, but claims must be submitted within three years of the alleged offence. Compensation may be obtained for psychological suffering and moral as well as material harm.<sup>[147]</sup>

In principle, medical personnel working in detention and correctional facilities should play a vital role in identifying victims of torture and ill-treatment and ensuring that they receive appropriate assistance. However, most of the reports conclude that medical personnel do not recognize this responsibility or do not perform it effectively. In the Republic of Moldova, for example, only one of 93 complaints investigated by the General Prosecutor’s Office over a period of 30 months was made by a medical assistant.<sup>[148]</sup>

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***Medical workers are not interested in and do not document the possible consequences of torture.***

Report of the Republic of Moldova, *supra*, p. 42.

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133 Convention against Torture, Article 14.1.

134 Committee against Torture, General Comment No. 3, *supra*, para. 1.

135 *Ibid.*, para. 15.

136 Convention on the Rights of the Child, Article 39.

137 *Ibid.*

138 See, e.g., report of Armenia, *supra*, p. 17; report of Kazakhstan, *supra*, p. 24; KHPG report of Ukraine, *supra*, p. 66.

139 Note, UNICEF Tajikistan, 17 May 2013.

140 See, e.g., report of the Republic of Moldova, *supra*, p. 19, and Note by B. Albanov, legal consultant, UNICEF Kyrgyzstan, 15 May 2013.

141 Committee against Torture, General Comment No. 3, *supra*, para. 26.

142 *Ibid.*, para. 7.

143 See, e.g., report of Armenia, *supra*, pp. 17–18.

144 Committee against Torture, General Comment No. 3, *supra*, para. 10.

145 Report of Tajikistan, *supra*, p. 36.

146 Report of the Republic of Moldova, *supra*, p. 20, citing Law No. 1545 of 25 February 1998 on ‘Reparation of damage caused by illegal actions of prosecution authorities, the Prosecutor’s Office and the judicial courts’.

147 *Ibid.* See also KHPG report of Ukraine, *supra*, p. 67.

148 Report of the Republic of Moldova, *supra*, Table 2, pp. 24–25.

Social workers employed in juvenile prisons and other closed institutions do not play an effective role either in identifying victims of torture and ill-treatment. None of the 93 complaints investigated by the Moldovan General Prosecutor's Office was submitted by a social worker.<sup>[149]</sup>

## 9. Conclusions

This research confirms that torture and ill-treatment in the context of juvenile justice are a serious problem in all the countries covered. Beatings are the most common form of torture or ill-treatment. They are invariably accompanied by psychological violence, which aggravates their impact on the victims.

Psychological violence is also employed separately – perhaps because the perpetrators consider it less serious than physical violence, perhaps because it leaves no physical injury and is harder to detect. Whatever the reasons may be, practitioners who assist victims confirm that the gravity of this form of torture and ill-treatment should not be underestimated. Psychological violence often has profound, long-lasting consequences for the personality and development of the victim.

Sexual torture and ill-treatment are less common, according to the information obtained from children and other sources, and most often take the form of threats of rape.<sup>[150]</sup>

The percentage of children who report having experienced one or another form of torture or ill-treatment varies from country to country. Given the reluctance of many child victims to speak freely of such experiences, it would be inappropriate, at this point, to attach too much importance to the percentage of children who report torture or to compare the prevalence of reported torture and ill-treatment in different countries. One challenge that needs to be faced is to develop the services, skills and mechanisms that will contribute to an atmosphere in which more children feel empowered to speak out about the violence they have experienced in the context of juvenile justice.

The factors that contribute to torture and ill-treatment are many and varied, and include:

- the persistence of Soviet-era practices, such as excessive reliance on confessions and evaluation of police officers and prosecutors by the number of crimes solved and convictions obtained;
- the power of police to hold suspects up to three days without a court order;
- judicial reliance on prosecutors and police investigators to investigate claims that evidence has been obtained illegally;
- lawyers' lack of training in communication with adolescents and torture victims;
- lack of independence of medical staff;
- lack of psychologists;
- poor working conditions;
- heavy caseloads;
- lack of training in the identification and treatment of torture and ill-treatment;
- widespread violation of legal safeguards, such as the questioning of juvenile suspects without the presence of a lawyer;
- sentences for torture that have little or no deterrent value; and a culture that tolerates violence against children, and children's acceptance of violence as normal.

These factors, and many more, create a culture of impunity, the ultimate reason why torture and ill-treatment continue. One report states,

*Impunity convinces most victims that the risks involved in making a complaint – the risk of punishment and retaliation – far outweigh the very small possibility that the perpetrator will be punished, and the lack of complaints contributes to the false perception that the problem is not a serious one.<sup>[151]</sup>*

Poverty, ignorance and powerlessness increase the risk of torture and ill-treatment. In one country, most prosecutors interviewed agreed that a "social background is a factor in the use of torture" because

*Juveniles from vulnerable families are less protected and often do not have adequate assistance and support from their parents. At the same time, vulnerable families have limited access to information, and are often unaware of what their options are in response to cases of violence against a minor.<sup>[152]</sup>*

There is one positive sign. Reports from many of the countries covered by this research indicate that torture and ill-treatment have been largely eliminated from correctional facilities for juveniles. Material conditions may be poor, disciplinary measures that violate international standards are still in use and protection from peer violence sometimes is insufficient, but the kind of torture and ill-treatment described above is largely confined to the police

149 Ibid.

150 It may be that adolescents find sexual ill-treatment even more difficult to talk about than other kinds of torture and ill-treatment, although this appears to be an issue that has not been researched, particularly in extrafamilial contexts and in this region.

151 Report of Armenia, *supra*, p. 35.

152 Report of the Republic of Moldova, *supra*, p. 58.

and criminal investigators and used during apprehension and interrogation. Political leaders and the public must ask the question: If torture can be eliminated from the juvenile prison, why can't it be eliminated from the police station?

This research has also identified some good practices, such as NGO-ombudsman cooperation in monitoring non-governmental programmes for providing assistance to victims of torture, as well as some new and promising developments, namely, the establishment of specialized units for investigating and prosecuting torture and other serious human rights violations.<sup>[153]</sup> Much remains to be done, however. The recommendations summarized in Annex 1 to this research point to the long list of problems that must be fixed in order to eliminate torture and ill-treatment in the context of juvenile justice in the CEE/CIS region.

The challenge of overcoming impunity for torture and ill-treatment is not a minor side issue that concerns only a limited number of marginalized young people; it is an issue that concerns the core values of a society. Judges interviewed in one country perceived the phenomenon of torture and ill-treatment as one of the most serious crimes against a human being, "a characteristic vice of developing countries", concluding,

*The presence of this phenomenon in society demonstrates the inability of the state to ensure respect for rights and freedoms.*<sup>[154]</sup>

The reports prepared on the national level in the context of this research have often generated considerable attention in the press and public opinion. The path to the elimination of torture and ill-treatment of children in the context of juvenile justice will be arduous. Hopefully, this research and the action that will follow on the national level shall take us closer to the day when every child who comes into contact with juvenile justice systems

*... will be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*<sup>[155]</sup>



153 See descriptions of NGO-ombudsman cooperation in Armenia and Tajikistan, pp. 12–13 of this report; the Moldovan Rehabilitation Center of Torture Victims 'Memoria', report of the Republic of Moldova, p. 14; the Armenian Special Investigation Service (SIS), p. 12; and Moldovan specialized prosecutors, p. 13.

154 Report of the Republic of Moldova, supra, p. 30.

155 Convention on the Rights of the Child, Article 40.1.

## Annex 1. Selected recommendations

The reports prepared as part of this research contain well over a hundred recommendations. The following are some of the most important ones, together with a small number of additional recommendations based on international standards and positive practices identified through this research.

### **A. Legal framework (criminalization and related matters)**

1. To bring the definitions of torture in criminal codes into conformity with Article 1 of the Convention against Torture.
2. To bring the sentences for torture and ill-treatment into conformity with the Committee against Torture's interpretation of Article 4 of the Convention against Torture, and to recognize the minority of victims as an aggravating factor, in accordance with the recommendation of the Committee on the Rights of the Child.
3. To ensure that persons responsible for torture cannot avoid responsibility and punishment by reconciliation, suspended sentences, amnesties and similar procedures.
4. To ensure that persons convicted of torture or ill-treatment are permanently removed from employment in law enforcement, correctional facilities or similar positions.
5. To prohibit the use of solitary confinement and suspension of contact with family as a disciplinary measure for juvenile detainees and prisoners.

### **B. Legal and other safeguards**

6. To strengthen judicial control over the investigation of allegations of torture and ill-treatment of juvenile suspects and defendants, and over respect for procedural guarantees such as the right to a lawyer.
7. To require, in all trials of juveniles, some evidence of guilt other than a confession.
8. To amend legislation to require the presence of a lawyer from the time of actual apprehension of a child and during any questioning, formal or informal.
9. To require that parents or guardians be notified and the child be informed of his/her rights as from the time of actual apprehension and before any formal or informal questioning.
10. To reduce the length of time that a child can be held by police without a court order to 24 hours, as recommended by the Committee on the Rights of the Child.
11. To review legislation and practice with a view to avoiding detention before trial except when it is strictly necessary and, when it is unavoidable, to ensure that proceedings are given priority so that detention will be as brief as possible.
12. To create specialized groups of criminal investigators to handle cases involving juveniles.
13. To cease using the number of cases closed as criterion for evaluating the performance of police officers.
14. To require video recording of questioning of juveniles by the police or criminal investigators.
15. To prohibit the use of handcuffs on juvenile suspects.
16. To require and ensure that all law enforcement and correctional personnel involved with juveniles have adequate training on torture and ill-treatment, including training on symptoms and behaviour that indicate the need for prompt medical or psychosocial assistance.
17. To require periodic professional and psychological assessments of the staff of juvenile prisons.
18. To allow juvenile detainees and prisoners to have free, confidential telephone conversations with their families.
19. To establish confidential procedures for juvenile detainees and prisoners to make complaints to the competent authorities.

### **C. Monitoring**

20. To monitor on a regular basis all facilities in which children are deprived of liberty, and to interact with children in ways that will help establish a relationship of trust in the monitoring bodies and their staff.
21. To converse with children in private and respect the confidentiality of information provided, when appropriate.
22. To require all ministries and other state agencies to respond to requests for information and to recommendations made by ombudsmen or other bodies having a legal mandate to monitor the treatment of children deprived of liberty and to investigate complaints of torture or ill-treatment.
23. To publicize findings in cases concerning the torture and ill-treatment of children.

### **D. Criminal investigations**

24. To consider the establishment, in countries where they do not exist, of separate, specialized units of criminal investigators and prosecutors to investigate cases of torture, ill-treatment and other serious human rights violations.
25. To make referral of cases to specialized investigative and prosecutorial units mandatory, where they exist.
26. To recognize the right of juvenile suspects, defendants, detainees and prisoners to have access to independent medical examination.
27. To adopt regulations requiring the suspension of officers accused of ill-treatment during criminal investigations.
28. To adopt legal provisions requiring public officials to report evidence of torture and ill-treatment.
29. To create a system for monitoring the quality of legal assistance provided to juveniles.
30. To review procedures for the investigation and prosecution of cases of suspected torture or ill-treatment of children with a view to bringing them into compliance with the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

### **E. Identification of victim, assistance to victims and reparations**

31. To require medical screening of all juveniles upon admission to any police station, detention centre, correctional facility or similar institution, and to require that screening include an evaluation of the child's emotional state and that any evidence of physical or psychological injury or trauma be registered.
32. To ensure that all juvenile detainees and prisoners have access to qualified psychological services.
33. To ensure the functional independence of the medical staff of juvenile correctional facilities or to transfer responsibility for medical services to the Ministry of Health.
34. To ensure that juveniles in correctional facilities, and any juvenile who claims to be a victim of torture or ill-treatment, have access to free legal assistance.
35. To ensure that the medical and psychological staff of detention and correctional facilities have appropriate training, equipment and working conditions and reasonable workloads, including training in the identification of torture victims and documentation of the consequences, as per the Istanbul Protocol.
36. To establish state-funded programmes for the medical, psychological and social rehabilitation of child victims of torture and ill-treatment.
37. To establish state-funded mechanisms to compensate victims of torture and ill-treatment.

### **F. Other**

38. To introduce training related to torture and ill-treatment into relevant professional courses at the university level, in particular in departments of law, psychology and medicine.

## Annex 2. List of national reports

### Armenia

Civil Society Institute and Human Rights Defender, *Study on Ill-treatment and Torture of Juveniles in the Republic of Armenia in the Context of Juvenile Justice*, UNICEF, Yerevan, 2013. Available in English at <[http://unicef.studio-one.am/images/Study\\_on\\_Ill-Treatment\\_and\\_Torture\\_of\\_Juveniles\\_in\\_the\\_RA.pdf](http://unicef.studio-one.am/images/Study_on_Ill-Treatment_and_Torture_of_Juveniles_in_the_RA.pdf)>, accessed 20 May 2013

### Azerbaijan

Commissioner for Human Rights (Ombudsman) and NGO Alliance for Children's Rights, *Investigation of torture and ill-treatment against juveniles in conflict with the law and analysis of national legislation regarding the children in conflict with the law*, Baku, 2012, (mimeo)

### Georgia

Public Defender's Office of Georgia, *The research on torture, ill-treatment and punishment in the context of juvenile justice in Georgia*, Tbilisi, 2013

### Kazakhstan

Urazbayeva, A., and Urumova, I., *Analysis of legislation and complaints on torture and violence against children in the context of juvenile justice*, Commissioner for Human Rights in the Republic of Kazakhstan and UNICEF, Astana, 2013. Available in English at <[http://www.ombudsman.kz/en/publish/docs/doklad\\_spec/detail.php?ID=2146](http://www.ombudsman.kz/en/publish/docs/doklad_spec/detail.php?ID=2146)>, accessed 4 June 2013

### Kyrgyzstan

Utesheva, N. A., and Korzhova, O. A., *Protecting children from torture and cruel treatment in the context of juvenile justice: Research Report 2012*, Bishkek, 2013

### Republic of Moldova

Crestenco, T., Guzun, I., Mihailov-Moraru, V., Popovici, I., Popovici, L., Roman, D., Vacarciuc, O., and Visanu, S., *Research Study: The torture and ill-treatment of children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability*, Center for Human Rights of Moldova, Rehabilitation Center of Torture Victims 'Memoria', UNICEF Moldova, Chisinau, 2012. Available at <[http://www.unicef.org/moldova/ro/Memoria\\_Report\\_Torture\\_EN\\_web.pdf](http://www.unicef.org/moldova/ro/Memoria_Report_Torture_EN_web.pdf)>, accessed 20 May 2013

### Tajikistan

Child Rights Centre, *Torture and Ill-Treatment in Context of Juvenile Justice in Tajikistan: Report on results of legislation and practice review*, Dushanbe, 2012

### Ukraine

Romanov, M., Tokarev, G., Pushkar, V., and Kartopol'tceva, N., *Torture and ill-treatment of children in Ukraine*, Kharkiv Human Rights Protection Group (KHPG), Kharkiv, 2013 (*cited as KHPG report of Ukraine*)

Kobzin, D., Chernousov, A., Shcherban, S., and Kolokolova, M., *The rights of children in social rehabilitation institutions in Ukraine*, Kharkiv Institute of Social Research, Kharkiv, 2013 (*cited as KhISR report of Ukraine*)

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