



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

Distr.: General
7 July 2010

Original: English

Committee against Torture

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

Initial reports of States parties due in 2001

Ghana*

[26 November 2009]

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

Contents

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–30	3
II. General legal framework for the prohibition of torture.....	31–101	7

I. Introduction

1. Ghana attained political independence from the United Kingdom of Great Britain and Northern Ireland on 6 March 1957, the first black African country south of the Sahara Desert to gain independence from colonial rule, with Dr. Kwame Nkrumah as the first Prime Minister. On 1 July 1960, Ghana became a republic within the Commonwealth of Nations under the Presidency of Dr. Kwame Nkrumah.

2. Since independence, Ghana has been governed by four civilian administrations (1957–1966; 1969–1972; 1979–1981 and 1993 to the present) and four military regimes (1966–1969; 1972–June 1979; June 1979–September 1979 and 1981–1992).

3. Since 7 January 1993, when the fourth Republican Constitution came into force, Ghana has experienced uninterrupted civilian administration. Transfer of power has been quite peaceful and the country has enjoyed relative political stability, which is quite uncommon on the continent of Africa. There have been two changes in government, with power being handed over by the incumbent administration to a new government elected by universal adult suffrage. The government of the National Democratic Congress (NDC) was in power from January 1993 until the transfer of power to the New Patriotic Party (NPP) in January 2001. In December 2008, the NPP lost power and handed over to the NDC in January 2009.

4. The country is made up of 10 regions and has a population of approximately 22 million. The 1992 Constitution, under which the fourth Republic is being administered, is a very liberal Constitution. It has ensured the separation of powers between the Executive, the Legislature and the Judiciary.

5. The executive authority of Ghana is vested in the President, who is elected by universal adult suffrage to hold office for a term of four years, beginning from the date on which he is sworn in as President. The President is assisted in the determination of the general policy of Government by a Cabinet consisting of the Vice-President and not less than 10 and not more than 19 Ministers of State. The Ministers of State are appointed by the President with the prior approval of Parliament from among members of Parliament or persons qualified to be elected as members of Parliament, except that the majority of Ministers of State are to be appointed from among members of Parliament.

6. The Constitution in article 88 created the post of Attorney General, who shall be the principal legal adviser to the Government. As the principal adviser to the State, the Attorney General provides legal advice to all government institutions and is responsible for the drafting of all legislation in the country. The Constitution requires that the Attorney General shall also be a Minister of State. Accordingly, the Attorney General is also the Minister for Justice. The Attorney General is responsible for the institution and conduct of all civil and criminal cases in which the State is involved and all civil actions against the State shall be instituted against the Attorney General.

7. The Legislature or Parliament of Ghana is made up of 230 members, who are elected by universal adult suffrage for a period of four years. The legislative power of Ghana is subject to the provisions of the Constitution vested in Parliament, which shall make laws through bills passed by Parliament and assented to by the President.

8. In the enactment of laws, article 107 does not give Parliament the power to enact laws to alter the decision or judgement of any court as between the parties subject to that decision or judgement or to pass laws that operate retroactively to impose limitations on or adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law in respect of withdrawal

from public funds, the Consolidated Fund, authorization of expenditure, loans and the public debt.

9. The Parliament during its sittings is presided over by a Speaker, who is elected by members of Parliament from among persons who are members of Parliament or who are qualified to be elected as members of Parliament. The tenure of Parliament is coterminous with that of the tenure of the President.

10. Article 125 (3) provides that the judicial power of Ghana is vested in the Judiciary and neither the President nor Parliament nor any organ or agency of the President or Parliament has or is given final judicial power. The Judiciary is headed by the Chief Justice, who is responsible for the administration and supervision of the Judiciary. The Judiciary has jurisdiction in all matters civil and criminal, including matters relating to the Constitution and such other jurisdiction as Parliament may by law confer on it.

11. The judicial system is a five-tier system made up of the Supreme Court at the apex, the Court of Appeal and the High Court, as the two other courts that form the Superior Court. The lower courts are made up of the Circuit and District Courts.

12. The independence of the Judiciary has been guaranteed by the Constitution in article 127 and in the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions, including financial administration, is subject only to the Constitution and is not subject to the control or direction of any person or authority. The Constitution also ensures the security of tenure of the Judges such that any person exercising judicial power is not liable to any action or suit for any act or omission by him in the exercise of judicial power. Moreover, the salary, allowances, privileges and rights in respect of leave of absence, gratuity, pension and other conditions of service of a Justice of the Superior Court or any judicial officer or other person exercising judicial power is not to be varied to his disadvantage.

13. The Supreme Court has exclusive original jurisdiction in:

(a) All matters relating to the enforcement or interpretation of the Constitution; and

(b) All matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.

14. The Supreme Court has supervisory jurisdiction over all other courts. There is an appellate structure of the courts in which appeals lie from the decision or judgement of one lower court in the structure to a higher court and ultimately to the Supreme Court.

15. The Supreme Court has the power to review its own decisions on any of the following grounds:

(a) Exceptional circumstances which have resulted in miscarriage of justice;

(b) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decision was given.

16. The High Court, subject to the provisions of the Constitution, has original jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction conferred by the Constitution or any other law. In addition, article 33 gives the High Court original jurisdiction to enforce the fundamental human rights and freedoms guaranteed by the Constitution. Accordingly, where a person alleges that his fundamental human rights and freedoms has been or is being violated, that person may apply to the High Court for redress.

17. The High Court may issue such directions or orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and *quo warranto* as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person is entitled. The jurisdiction of the High Court is subject to appeal to the Court of Appeal with a further right of appeal to the Supreme Court.

18. Apart from the Judiciary, article 216 of the Constitution established the Commission on Human Rights and Administrative Justice (CHRAJ). The Commission is made up of a Commissioner and two Deputy Commissioners appointed by the President in consultation with the Council of State. The Commissioners shall be persons who shall be qualified to be appointed as Justices of the Court of Appeal and the High Court respectively and they enjoy similar conditions of service as such Justices of the Superior Court.

19. The Commission is mandated by the Constitution to deal, inter alia, with the following:

(a) To investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(b) To investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms;

(c) To educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia;

(d) To take appropriate action to call for the remedying, correction and reversal of instances of violations of fundamental freedoms, injustice, corruption and practices by both public officials and private persons through such means as are fair, proper and effective including negotiation, institution of proceedings in a competent court for a remedy to ensure the termination of the offending action or conduct, or abandonment or alteration of the offending procedures or bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires.

20. Ghana's commitment to international law and practice since independence has been unquestionable. Ghana joined the United Nations on 8 March 1957, two days after attaining independence. The 1992 Constitution in article 73 places an obligation on Government to conduct its international affairs in consonance with the accepted principles of public international law and diplomacy in a manner consistent with the national interest of Ghana.

21. The Constitution further provides in article 40 that in its international dealings, Government shall:

(a) Promote and protect the interests of Ghana;

(b) Seek the establishment of a just and equitable international economic and social order;

(c) Promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means;

(d) Adhere to the principles enshrined in or as the case may be, the aims and ideals of:

(i) The Charter of the United Nations;

- (ii) The Constitutive Act of the African Union;
- (iii) The Commonwealth;
- (iv) The Treaty of the Economic Community of West African States; (ECOWAS) and
- (v) Any other international organization of which Ghana is a member.

22. Ghana signed the Universal Declaration of Human Rights soon after independence. This commitment to uphold international law in general, and human rights in particular, is evidenced by the provisions of the 1992 Constitution. Article 12 (2) provides that every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual, but subject to respect for the rights and freedoms of others and for the public interest.

23. The Constitution recognizes a host of human rights and fundamental freedoms. Chapter 5, which covers article 12 to article 33, is devoted to fundamental human rights and freedoms. These include, but are not limited to, the following – protection of the right to life, protection of personal liberty, protection from slavery and forced labour, protection of privacy of home and other property, protection of the property rights of spouses, protection from deprivation of property, protection of women’s and children’s rights, protection of the rights of the sick and disabled persons, respect for human dignity, fair trial and general fundamental freedoms such as the right to freedom of speech and expression, thought and academic freedom, association, assembly, movement, economic and educational rights.

24. Where it becomes necessary to curtail or impose restrictions on a person’s freedom or human rights, the Constitution requires that the imposition of restrictions shall be by order of a court of law and are reasonably required in the interest of defence, public safety, public health or public order or where the person has been found guilty of a criminal offence under the laws of Ghana or for the purposes of ensuring that he appears before a court at a later date for trial for a criminal offence or for proceedings relating to his extradition or lawful removal from Ghana.

25. Where the imposition of restrictions is as a result of criminal investigations, a person who is arrested, restricted or detained shall be informed immediately in a language that he understands of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice.

26. Where the person has been arrested, restricted or detained:

- (a) For the purpose of bringing him before a court in execution of an order of a court; or
- (b) Upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana, and he is not released, that person shall be brought before a court within 48 hours of the arrest, restriction or detention.

27. Where a person is arrested, restricted or detained and is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released, either unconditionally or upon reasonable conditions, including in particular conditions reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

28. The Constitution mandates that where a person is unlawfully arrested, restricted or detained by any other person, he shall be entitled to compensation from that other person. Furthermore, where a person convicted and sentenced to a term of imprisonment has served a whole or part of his sentence and he is subsequently acquitted on appeal by a court other

than the Supreme Court, the court may certify to the Supreme Court that the person acquitted should be paid compensation and the Supreme Court may order accordingly.

29. The protection of fundamental human rights and freedoms are enshrined in the Constitution as entrenched provisions under article 290 and amendment of these provisions is so laborious, requiring the referral of the matter to a national referendum to be held throughout Ghana with at least 40 per cent of the persons entitled to vote casting their ballots at the referendum and at least 75 per cent of the persons who voted casting their votes in favour of the passing of the bill to amend. This is very much in contrast to the amendment of a non-entrenched provision, which does not require a referendum.

30. Apart from the Universal Declaration, Ghana has ratified a host of international conventions on human rights. A few are worth mentioning:

- (a) The International Covenant on Civil and Political Rights;
- (b) The Optional Protocol to the International Covenant on Civil and Political Rights;
- (c) The International Covenant on Economic and Social Rights;
- (d) The Convention on the Rights of the Child;
- (e) The International Convention on the Elimination of All Forms of Racial Discrimination;
- (f) The Convention on the Elimination of All Forms of Discrimination against Women;
- (g) The Convention on the Prevention and Punishment of the Crime of Genocide;
- (h) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- (i) The African Charter on Human and Peoples' Rights;
- (j) The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- (k) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

II. General legal framework for the prohibition of torture

31. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (or CAT) came into force on 26 June 1987. Ghana acceded to the Convention on 7 September 2000. Under the Convention, States parties are required to take effective legislative, administrative, judicial or other measures to prevent acts of torture, etc. in any territory under their jurisdiction. States parties are required to submit to the Committee against Torture through the Secretary-General of the United Nations reports on measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. The State party is further required to submit supplementary reports every four years on any new measures taken or to submit other reports required by the Committee.

32. Regretfully, Ghana has not been able to fulfil these obligations which it undertook when it acceded to the Convention in 2000.

33. This Report is therefore the first Report to be submitted by Ghana and it is hoped that Ghana will continue from now on to meet its obligations under the Convention.

34. Since April 2009 when the Committee requested for the submission of Ghana's Report, and the subsequent postponement of the submission to November 2009 at the request of the Attorney General and Minister for Justice, the Attorney General has spared no effort to get the Report ready.

35. The Attorney General's Office embarked on a consultative process in which we invited both public service organizations and civil society organizations to discuss the human rights situation in the country generally, and to seek for information regarding cases of torture and other cruel or inhuman treatment or punishment that may be known to these organizations and the measures that have been taken to deal with such situations when they arise.

36. The consultative process involved such public institutions as the Ghana Police Service, the Ghana Prisons Service, the Ghana Armed Forces and the Commission on Human Rights and Administrative Justice. Civil society organizations were also involved in the preparation of this Report. They include such organizations as the Human Rights Advocacy Centre, the Commonwealth Human Rights Initiative and Amnesty International (Ghana Chapter).

37. Even though the information has been scant, the available information shows that Ghana has made significant efforts to deal with such abuses when they occur (a catalogue of some of the cases are annexed to this Report).

38. It is instructive to note that even before Ghana became a State party to CAT, the country, under the 1992 Constitution, had outlawed torture by making it a constitutional principle. The Constitution in article 15 upholds respect for human dignity and provides that "[n]o person shall, whether or not he is arrested, restricted or detained, be subjected to:

- (a) Torture or other cruel, inhuman or degrading treatment or punishment;
- (b) Any other condition that detracts or is likely to detract from his dignity and worth as a human being."

39. Secondly, as far back as 1975 the Evidence Decree (NRCD 323) made it impossible to obtain information from a person through involuntary confession. Accordingly, a court is not required to admit evidence that has been obtained as a result of the use of torture or other cruel means.

40. The Constitution provides in article 11 that the laws of Ghana shall comprise:

- (a) The Constitution;
- (b) Enactments made by or under the authority of Parliament;
- (c) Any orders, rules and regulations made by any person or authority under a power conferred by the Constitution;
- (d) The existing law; and
- (e) The common law, which shall comprise of the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.

41. In terms of article 11 of the Constitution, international law rules, including principles of human rights enunciated in international conventions do not form part of the laws of Ghana. Such principles of law have to be incorporated into the Ghana legal system by an Act of Parliament. CAT has not been so domesticated, however, as indicated earlier, the definition of torture and other cruel, inhuman or degrading treatment or punishment has

been elevated into a constitutional principle under the human rights provisions of the Constitution. Moreover, these principles are entrenched provisions in the Constitution. Accordingly, the State cannot derogate from the principles established under the CAT.

42. Again, as indicated earlier, the human rights principles stated in the Constitution can be enforced before the High Court, which has been given exclusive original jurisdiction in such matters, with the right of appeal to the Court of Appeal and the Supreme Court.

43. Even though some domestic laws do not directly emanate from CAT, the principles enshrined in them are in alignment with the principles stated under the CAT. These laws include, but are not limited to the following:

- (a) The Children's Act, 1998 (Act 560) – protection of the rights of the child;
- (b) The Criminal Offences (Amendment) Act, 1998 (Act 554) – protection of the child from sexual offences, abduction and abandonment;
- (c) The Domestic Violence Act, 2007 – protection of individuals against violence in domestic settings;
- (d) The Persons with Disability Act, 2006 (Act 715) – reiterates the rights of the disabled enshrined in the Constitution;
- (e) The Human Trafficking Act, 2005 (Act 694) – protection of personal liberty;
- (f) The Legal Aid Scheme Act, 1997 (Act 542) – provision of legal aid;
- (g) The Criminal Code (Repeal of Criminal Libel and Sedition Law) Act, 2001 (Act 602) – promotes freedom of the press and expression;
- (h) The Criminal Code (Amendment) Act, 2007 (Act 741) – protection of Women and Children's Rights;
- (i) The Juvenile Justice Act, 2003 (Act 653) – protection of the rights of the child.

44. It may be appropriate at this point to mention also that Ghana is in the process of acceding to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Cabinet of Ghana has already considered the OPCAT and an instrument has been laid before Parliament in accordance with the Constitution, article 75 for approval.

45. Even though the Convention has not been incorporated into the domestic legal order, the Criminal Code, 1960 (Act 29) as variously amended has some provisions which take care of situations involving torture, cruel or inhuman treatment or punishment. An agent or official of State who uses his position to engage in such act could find himself liable for offences ranging from assault, causing harm, use of offensive weapons, manslaughter or in the extreme case, murder. Moreover, Ghana like most common law jurisdictions does not have a statute of limitations with respect to criminal offences. Anybody who commits an offence can when arrested be prosecuted and punished in accordance with the criminal code at any time.

46. The Constitution has also made provision to protect the lives and liberties of persons who find themselves in detention for one reason or the other. The rules regarding the period of detention of a suspect in police custody, incommunicado detentions and access of suspects to lawyers of their choice have been stated supra and would not be repeated here. There is provision for medical examination of persons restricted or detained. The Police Service Instructions 171 provides in sections 10 to 13 the following instructions with regard to the treatment of restricted persons:

(a) Where any person taken into custody by the police appears to be seriously ill, or is suffering from any considerable recent injury, the officer in charge of the station shall see that a Medical Officer examines him as soon as possible, even though he has made no complaint regarding illness or injury;

(b) Where a person in police custody complains of illness, he should be given an opportunity to see the Medical Officer. Due precaution shall be taken, however, to avoid risk of escape when under medical examination or when on his way to or from examination;

(c) When any person has been taken into custody for an offence of drunkenness, or for driving or being in charge of a motor vehicle when drunk, every possible step shall be taken by the Officer in charge of the station to ensure that he is immediately examined by a Medical Officer;

(d) When a person in these circumstances states that he desires to see a doctor other than the Government Medical Officer in the district if such doctor is immediately available, he shall be informed at once of the prisoner's request. It shall be made quite clear to both the person in custody and the doctor that the police are not responsible for any fee incurred in respect of such medical examination and the Government Medical Officer shall be requested to be present at the examination.

47. With regard to emergency legislation, the Constitution provides in article 32 that a person restricted or detained by a law pursuant to a declaration of a state of emergency:

(a) Shall as soon as practicable and in any case not later than 24 hours after the commencement of the restriction or detention, be furnished with a statement in writing specifying in detail the grounds upon which he is restricted or detained and the statement shall be read or interpreted to that person;

(b) The spouse, parent, child or other available next of kin of the person restricted or detained shall be informed of the detention or restriction within 24 hours after the commencement of the detention or restriction and be permitted access to the person at the earliest practicable opportunity, and in any case within 24 hours after the commencement of the restriction or detention;

(c) Not more than 10 days after the commencement of the restriction or detention, a notification shall be published in the Gazette and in the media stating that he has been restricted or detained and giving particulars of the provision of the law under which his restriction or detention is authorized and the grounds of his restriction or detention;

(d) Not more than 10 days after the commencement of his restriction or detention, and after that, during his restriction or detention, at intervals of not more than three months, his case shall be reviewed by a tribunal composed of not more than three Justices of the Superior Court of Judicature appointed by the Chief Justice; except that the same tribunal shall not review more than once the case of a person restricted or detained;

(e) He shall be afforded every possible facility to consult a lawyer of his choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the restricted or detained person;

(f) At the hearing of his case, he shall be permitted to appear in person or by a lawyer of his choice.

48. Article 32 provides further that on a review by a tribunal of the case, the tribunal may order the release of the person restricted or detained and the payment to him of adequate compensation or uphold the grounds of the restriction or detention.

49. The Constitution again provides that in every month in which there is a sitting of Parliament, a Minister of State authorized by the President (who is very likely to be the Minister for the Interior) shall make a report to Parliament of the number of persons restricted or detained and the number of cases in which the authority that ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under article 32.

50. The Minister is also required to publish monthly in the Gazette and in the media the following:

- (a) The number and the names and addresses of the persons restricted or detained;
- (b) The number of cases reviewed by the tribunal;
- (c) The number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under article 32.

51. This will ensure that any information put out by the Minister or the authority which ordered the restriction or detention can be challenged. In any case, article 32 (5) of the Constitution provides that a person restricted or detained as a result of a declaration of the emergency shall be released immediately after there is a declaration of an end to the emergency.

52. As set out in the Convention relating to the Status of Refugees (1951), to which Ghana is a party, no refugee should be returned in any manner whatsoever to any country where he or she would be at risk of persecution. Ghana is also a party to the Protocol relating to the Status of Refugees (1967) and the AU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969). Article 3 of the Convention against Torture also extends the same protection where there are substantial grounds for believing that a person to be returned would be in danger of being tortured.

53. As a State party to the Convention relating to the Status of Refugees and the Convention against Torture, Ghana respects the principle of non-refoulement and would therefore not return a person who would be in danger of being tortured. The Refugee Act, 1992 (PNDCL 305D) provides in section 1 that a person who is a refugee within the meaning of the Act shall not be refused entry into the Republic, expelled or extradited from the Republic or returned to the frontiers of a territory if as a result of that refusal, expulsion or return that person is compelled to return to or remain in a country where:

- (a) That person's life or freedom would be threatened on account of that person's race, religion nationality, membership of a particular social group or political opinion; or
- (b) That person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in that country or any part of it.

54. By section 11 of the Act, a person granted refugee status in the Republic is entitled to the rights and is subject to the duties specified in:

- (a) The articles of the Convention relating to the Status of Refugees of 1951;
- (b) The Protocol relating to the Status of Refugees of 1967; and
- (c) The AU Convention Governing the Specific Aspects of Refugee Problems in Africa.

55. The three international instruments have been given effect under the laws of Ghana by being annexed as Schedules to the Refugee Act.

56. Facilities exist in the criminal justice system for apprehended non-nationals to make contact with officials of the Embassy or High Commission of their country. This enables the Embassies to extend consular services to the affected persons. According to the statistics for September 2009, a total of 663 non-Ghanaians were held at 18 different detention centres nationwide.

57. Where a non-Ghanaian whose country is represented by an Embassy or High Commission, is arrested on a criminal charge, detained at a police station on suspicion, or proceeded against by criminal summons, the facts shall be reported immediately to the Senior Officer in charge of the District who shall inform the Commissioner/CID immediately by wireless message or by telephone if necessary, stating the brief facts of the case, and reporting to the Senior Officer in charge of the Region that he has done so.

58. Any non-Ghanaian in police custody or under arrest shall be allowed to communicate immediately, if he so desires, by letter, telegram or telephone, with the Embassy or High Commission responsible for the country to which he belongs.

59. If an interview with an officer of the Embassy or High Commission is desired, every facility shall be given for such interview to take place, and it may be permitted, if desired to take place out of hearing but not out of sight, of a police officer.

60. If a request is made that the interview may take place out of sight of a police officer, the decision as to whether such interview shall be permitted shall depend on circumstances, such as the nature of the charge on which the non-Ghanaian is detained. Any such request shall be referred to a Senior Officer before a decision is made.

61. The Ghana Armed Forces as an institution is governed by the Armed Forces Act, 1962 (Act 105). The Armed Forces Act does not in any way sanction torture. There are no reported cases of command sanctioned torture in the Ghana Armed Forces in the period under review.

62. Part II of the Act 105 deals with discipline and provides the form and measure of the punishment to be meted out for breach of regulations.

63. There are two forms of detention. A member of the Armed Forces could be under closed detention or open detention.

64. There have been instances, though, where soldiers have on their own been involved in acts of torture against members of the general public. In all these instances, however, the Military High Command has acted with dispatch to discipline them to serve as a deterrent. Some instances of incidents involving soldiers who were on a frolic on their own, are in respect of the following: the 37 Hospital Mortuary Case, the Swedru Case and the Kwame Nkrumah Circle incident in Accra.

65. The Ghana Armed Forces is made up of the Army, the Navy and the Air Force and such other services as Parliament may prescribe. The Armed Forces are generally to be equipped and maintained to perform their role of the defence of Ghana as well as any other functions that are assigned to them. The Armed Forces have a military/public hospital which is generally known as the 37 Military Hospital. The hospital itself is zoned as a military area requiring some measure of security.

1. The 37 Military Hospital Mortuary Case

66. This was a case in which some soldiers were alleged to have arrested some commercial minibus (commonly called *tro-tro*) drivers and their assistants or mates and subjected them to molestation including forcing them to kiss and fondle corpses at the 37 Military Hospital Mortuary.

67. The Ghana Armed Forces High Command set up a Board of Inquiry to ascertain the facts of the case. After the Inquiry, it was realized that the matter had been blown out of proportion not only to engender media uproar and support, but also to elicit compensation. It also came to light that some of the supposed victims of the incident had been given the impression that they could attract so much compensation depending on the gravity of their suffering.

68. The facts of the case that emerged are that the drivers were in the habit of parking and picking passengers haphazardly at the hospital entrance. This action tends to block the access way to the hospital and also caused collisions.

69. Some soldiers, without instructions from their superiors, arrested the drivers and took them to the entrance of the mortuary and showed them how the outcome of their actions had caused the death of people.

70. It also emerged from the inquiry that those who put the drivers to work were civilians working as mortuary attendants. They tasked the drivers to sweep and mop up water from the floor of the mortuary.

71. After the incident, the alleged perpetrators were all punished. The soldiers had their ranks reduced and the civilians had their appointments terminated. Also the alleged victims were paid compensation by the Ghana Armed Forces.

2. The Issah Mohammed aka Molbila Case

72. Alhaji Issah Mohammed, otherwise known as Molbila, was a Burkinabe national who had been living in Tamale in the Northern Region of Ghana for over forty (40) years until his untimely death on the night of 9 December 2004.

73. The evidence available suggests that on 9 December 2004, following information that the deceased was responsible for the supply of arms and ammunition to the youth of Tamale, the Northern Regional Police Command despatched some policemen to his house to arrest him. He was not at home but he subsequently went to the offices of the Bureau of National Investigations (BNI) where he was picked up by the police to the Regional Headquarters and placed in a police cell.

74. Following reports that his supporters were mobilizing to rescue him, the Regional Security Council ordered that he should be placed in military custody. He was accordingly sent to the military barracks and placed in guardroom No. 3. Those on guard duty were Corporal Appiah, Private Eric Modzaka and Private Seth Goka. During the night of 9 December 2004, the police received information that Issah Molbila had collapsed and died at the military guardroom.

75. A post mortem examination conducted on the body showed that there were marks of violence on the body. The cause of death was given as collapse at left lung with haemothorax; fractured ribs and severe multiple abrasions. The three suspects admit receiving him into custody but deny being responsible for his death. The three soldiers have since been charged with his murder and the Attorney General has initiated criminal prosecutions against them.

3. The Ghana Police Service

76. The Ghana Police Service performs the role of maintaining law and order in the country. The Ghana Police Service is the law enforcement agency of the Republic which

has the function of preventing and detecting crime, apprehending offenders, and maintaining public order and the safety of persons and property.

77. The relevant international treaties and conventions signed and ratified by the Republic to promote human rights have a direct impact on the functions of the Police Service.

78. The Ghana Police Service in ensuring that all officers fulfil their obligations and perform their duties whilst promoting, protecting and respecting the human rights of individuals have developed certain policies within the organization to reflect the adherence to international human rights standards. The Ghana Police Service has embarked on a series of training programmes to ensure that personnel all over the country are sensitized and trained in the tenets of international and regional human rights standards.

79. A Police Intelligence and Professional Standards Bureau has been created and mandated to check incidents of misconduct by officers. This Unit investigates human rights abuses and police misconduct. There have been a number of complaints relating to harassment, unlawful arrest, and detention with human rights violations. This Unit ensures that individuals who fall victim to abuse by officers or need to make complaints against officers, have an identifiable body from which to seek redress. Records available at the Bureau indicate that reports made at the Unit, when investigated and dealt with has resulted in dismissals, reduction in rank and the transfer of officers. Where these officers are criminally liable, they are dealt with in accordance with law.

80. To enhance the performance of police prosecutors, the Ghana Police Service in collaboration with Fordham University, USA, and the Kwame Nkrumah University of Science and Technology (KNUST), has trained over 100 police prosecutors in order to sharpen their prosecutorial skills. A series of training programmes continue to be organized for officers serving with the Domestic Violence and Victims Support Unit (DOVVSU), in the wake of the coming into force of the Domestic Violence Act.

4. The Prisons Service

81. The Ghana Prisons Service is one of the main components for the administration of criminal justice in Ghana. The functions of the Service are contained in section 1 (1) of the Prisons Service Decree, 1972 (NRCD 46). In carrying out its functions, the Prisons Service operates within the scope of national laws, international treaties and conventions.

82. The Prisons Service makes every effort to ensure that the rights of those detained are respected whilst they serve their sentence. Consequently, all efforts are made to treat prisoners in a humane and dignified manner from the time of admission to the time of discharge. Prisoners are informed of the regulations governing them, their rights and obligations while in prison.

83. Physical or mental torture of a prisoner by prison officers is proscribed. Section 25 of NRCD 46 states that any prison officer who in any way tortures or subjects a prisoner to cruelty shall be guilty of an offence and liable on conviction to imprisonment not exceeding five years (ref. article 15 (2) of the Constitution).

84. The use of force by a prison officer on a prisoner is strictly regulated. Under section 46 of NRCD 46, force can only be used on a prisoner if such force is reasonably necessary in order to make the prisoner obey a lawful order which the prisoner has refused to obey. Corporal punishment is forbidden.

85. The health needs of prisoners are generally taken care of. Sick prisoners are treated at prison infirmaries and where their conditions are serious they are referred to hospitals and health specialists.

86. Prisoners are allowed to observe their religious beliefs without any hindrance and those who are willing and desirous of acquiring academic education are provided the opportunity to do so.

87. Prisoners enjoy visitors' rights and are allowed to communicate with their relatives.

88. The prisons in the country are presently inadequate to cater for the population of prisoners. The Attorney General's Office, working in collaboration with the Judiciary, the Police and Prisons Services has instituted the "Justice for All" Programme. This is a programme aimed at decongesting the prisons by holding trial sessions in the prisons. The accused are represented by legal aid lawyers.

89. The Legal Aid Scheme provides legal assistance to the indigent in society for the protection and defence of their human rights. They have offices in all the regional capitals and in addition to this, community mediation centres have been set up in various communities to handle legal issues for the indigent.

5. Challenges

90. The detention facilities where persons are held for the commission of crime are overcrowded and are in very deplorable state. Indeed 26 out of the 42 detention centres nationwide have exceeded the authorized capacities for the centres. A Situation Report for September 2009 indicates that the percentage of the overcrowding is 75.1 per cent. Currently the total prison population exceeds the authorized prison population by a little over 100 per cent. The situation may hopefully improve with the construction of a new and modern prison facility at Ankaful in the Central Region, which could take in a prison population of 3,000.

91. Inmates in the detention centres are fed by the State once a day, because the stipend for their upkeep is below one United States dollar (US\$ 1.00). Relatives of the prisoners supplement their feeding by bringing in food during visiting hours.

92. The likelihood that torture occurs in the detention centres is very high, which has led the State to establish interrogation rooms on a pilot scale in some detention centres. Interrogations at these facilities are conducted under the supervision of senior officers who ensure that torture does not take place. The facilities are yet to be replicated nationwide.

93. The service instructions of the Police Service ensures that persons held in their detention facilities are monitored on an hourly basis and are stripped of all things that may be used by the detained person to harm or injure themselves. This measure may be interpreted by some to be a form of emotional torture but the Service is of the view that it is in the best interest of the person or other persons held in the detention facilities.

94. According to statistics available in September 2009 from 42 detention facilities nationwide, juveniles are separately held from adults.

95. Most of the prison buildings are old and not suitable for habitation. These structures were put up during the colonial era and were meant for a small prison population. Some of the castles built by the Europeans during the fifteenth to seventeenth centuries and which were used as prisons have been handed back to the National Commission on Culture as cultural sites. Examples include the Ussher and James Fort prisons. This has cut down on the facilities available for use as prisons. There is now an increase in the prison population without a corresponding expansion of prison infrastructure resulting in overcrowding in the prisons.

96. The issue of remand prisoners is still of great concern to the development of human rights of prisoners. These categories of prisoners have not been convicted of any crime but are kept in prison for long periods, thereby infringing on their rights.

97. To decongest the prisons, the Prison Service is opening a number of Prison Camps. These camps are not walled and this is to make the prison environment less hostile. This is also to reduce the overcrowding in walled prisons.

98. As stated earlier, The Attorney General's Department, in collaboration with the Prisons Service and the Judiciary, has introduced a system referred to as "Justice for All" where judges go to the prisons to hear cases of remand prisoners and dispense justice expeditiously.

99. It is hoped that these and other efforts would go some way in reducing the number of prisoners in the prisons and thereby ameliorate the inhuman conditions under which prisoners find themselves.

100. It can be seen from the above that the Republic of Ghana takes its obligations under the CAT seriously. Legislative, administrative and judicial measures have been put in place to ensure that the provisions of the law are carried out.

101. The lack of specific legislation regarding the domestication of the Convention in Ghana will be addressed. It is hoped that by the time Ghana submits its supplementary report, the legislation will be in place.
