



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Consideration of reports submitted by the States parties
under article 40 of the Covenant pursuant to the optional
reporting procedure**

Third periodic reports of States parties due in 2013

Monaco*

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* The present document is being issued without formal editing.

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Introduction

1. Under the optional reporting procedure the Committee sends a list of issues to the State party before the latter submits its periodic report. In line with this procedure, the current document contains written replies to the list of issues contained in CCPR/C/MCO/Q/3, which the Committee adopted at its 103rd session, and thus constitutes the third report of Monaco.

2. In order to draft this document, the Ministry of Foreign Affairs and International Cooperation of the Principality of Monaco collated the information received from the Ministry of Health and Social Affairs, the Ministry of Home Affairs, the Directorate for Legal Affairs and the Directorate of Judicial Services. The legislation referred to in this document is available at www.legimonaco.mc.

I. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

Please provide detailed information on any significant developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have taken place since the previous periodic report, including any relevant case law. Please also provide information on measures adopted to disseminate the Covenant among judges, lawyers and prosecutors.

Please provide information on significant political and administrative measures taken since the previous report to promote and protect human rights under the Covenant, and the resources allocated thereto, their means, objectives and results.

Legislative developments

3. Since its second periodic report in 2007, Monaco has continued its efforts to reform the national legislation and to fully comply with its international commitments.

4. Several pieces of legislation relating to the protection of human rights have accordingly been adopted in recent years, including:

- Act No. 1.344 of 26 December 2007 on tougher penalties for crimes and offences against children;
- Act No. 1.359 of 20 April 2009 which created a Prenatal Coordination and Family Support Centre and amended article 248 of the Criminal Code and article 323 of the Civil Code;
- Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence;
- Act No. 1.387 of 19 December 2011 amending Act No. 1.155 of 18 December 1992 on nationality;
- Act No. 1.399 of 25 June 2013 on the reform of the Code of Criminal Procedure relating to police custody.

5. Sovereign Decree No. 3.782 of 16 May 2012 on the organization of the prison and detention system¹ also provides that “the prison service guarantees respect for the human dignity and fundamental rights of all detainees to the extent set out in the decisions of the judicial authority”.

6. Lastly, the following two bills were submitted to the National Council (parliament):

- Bill No. 893 on the protection, autonomy and promotion of the rights and freedoms of persons with disabilities;
- Bill No. 908 on harassment and violence in the workplace.

International commitments

7. Since 2007, Monaco has signed the following international instruments:

- The Convention on the Rights of Persons with Disabilities, on 23 September 2009;
- The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, on 20 September 2012;
- The Council of Europe Convention on Cybercrime, on 2 May 2013.²

8. The following international instruments have been ratified:

- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 24 September 2008;
- The Protocol relating to the Status of Refugees, on 16 June 2010;
- The United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, on 28 August 2012;
- The Additional Protocol to the Council of Europe Criminal Law Convention on Corruption, on 10 July 2013.

9. Monaco is also about to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also known as the Lanzarote Convention.

New institutions

10. The Office of the High Commissioner for the protection of rights, freedoms and mediation was established in Monaco under Sovereign Order No. 4.524 of 30 October 2013.

11. In accordance with the High Commissioner’s own statutory and procedural guarantees, he or she will act as the protection mechanism focal point for all rights-based matters. Accordingly:

- Any person or corporate entity who considers that the rights and freedoms accorded to them in their dealings with the authorities have been violated by the Minister of State, the President of the National Council, the Director of Judicial Services, the Mayor, or by representatives of other public institutions, or by the activities of an administrative service relating to one of those authorities or public institutions, may refer the matter to the High Commissioner (Sovereign Decree No. 4.524 of 30 October 2013, art. 15);

¹ Decree No. 2012-8 of 4 June 2012, issued by the Director of Judicial Services, sets out the conditions under which Sovereign Order No. 3.782 applies.

² The process for ratifying this Convention is under way.

- Any complaint made by a person or corporate entity who claims to have experienced unjustifiable discrimination in the Principality can be referred to the High Commissioner (art. 28);
- Requests for advice or for investigation of any issue relating to the protection of the rights and freedoms accorded to citizens in their dealings with the authorities, or on combating unjustifiable discrimination, can be submitted to the High Commissioner (art. 33).

12. The High Commissioner remains neutral, impartial and independent in the performance of his or her duties, a principle that is set down in the first paragraph of article 6. The High Commissioner, in the exercise of his or her duties, does not receive any orders, instructions or directives of any description whatsoever from the authorities, which includes the Minister of State, the President of the National Council, the Director of Judicial Services or the Mayor (art. 6, para. 2).

13. The independence of the High Commissioner is, first and foremost, of financial nature; the resources and facilities necessary for the exercise of his or her duties are guaranteed by the State under article 13. In addition, specific provision is made in the State budget to set aside funding for the salaries of the High Commissioner and staff and, more generally, for the material resources necessary for the fulfilment of the duties of office (art. 46).

14. The High Commissioner's independence also relates to the fact that his or her functions are incompatible with those of the members of the National Council, the Municipal Council, the Social and Economic Council or with any other elected political office in Monaco or abroad (art. 10, para. 1). Similarly, those functions are incompatible with any other public office or any profit-making, professional or salaried activity, whether in Monaco or abroad (art. 10, para. 2).

15. In accordance with the clearly defined principle of independence, the High Commissioner shall have no direct or indirect interests, in any form or description, even through an intermediary, that are likely to compromise the independence of the Office (art. 11, para. 1).

16. The High Commissioner shall refrain from engaging in any actions, activities or demonstrations, whether in a personal capacity or on behalf of any individual or corporate entity, that are incompatible with the discretion and reserve required of the duties of office (art. 11, para. 2).

17. The High Commissioner's independence and autonomy are also linked to the various guarantees extended to citizens throughout the process of examining their complaint. This process includes an investigation phase, which guarantees conduct in line with the adversarial principle and ensures that the claimant is kept informed throughout (arts. 19 and 20). Direct contact with the claimant enables the High Commissioner to inform him or her of the likely consequences of the referral and to provide relevant information about mediation and, if applicable, any deadlines for entering an appeal (art. 19).

18. This functional independence also relates to the High Commissioner's investigatory powers, which include consulting and investigating the units concerned, reviewing case files and interviewing claimants. In addition, the High Commissioner has the power to request from the administrative authorities any and all documentation, information or assistance necessary for the fulfilment of his or her tasks. This includes making verbal requests for additional information from both the claimant and the authorities in order to resolve any dispute. He or she ensures respect for the principle of an adversarial process by,

if necessary and feasible to do so, listening to the version of events from the claimant, or appointed representative, and the administrative authority concerned (art. 20).

19. The High Commissioner also enjoys functional protection. As a result, the State must ensure, in accordance with the directives passed by sovereign decree, that he or she is protected from threats, physical or verbal abuse, defamation or attacks of any nature the like of which he or she might face in the exercise of his or her duties (art. 12, para. 1). For this purpose, the Administration is subrogated to the rights of the victim in order to recover from the perpetrators any compensatory damages paid out by the State. The Administration may also, in exercising this functional protection on behalf of the High Commissioner, take direct action to claim damages through the criminal courts (Act No. 975 of 12 July 1975 on the status of public servants, art. 14).

20. In line with his or her foreign counterparts — whether independent or institutional — the High Commissioner has the authority, under articles 23 and 30 of Sovereign Decree No. 4.524 of 30 October 2013, to make recommendations or proposals to the Minister of State, the President of the National Council, the Director of Judicial Services or the Mayor, based on the thorough analysis of evidence, and on law and due process. The High Commissioner also monitors, where necessary, any decisions or agreements made on the basis of his or her recommendations.

21. The High Commissioner's independence is therefore amply demonstrated in a variety of ways, whether in terms of the methods of referral, the procedural guarantees that apply during the investigation process, or the authority to investigate and make recommendations and to monitor the outcome of those recommendations.

- A Government official was appointed to represent people with disabilities in 2006;
- In the area of the protection of women and children, the new Princess Charlene Children's Home (formerly the Sainte Dévote Home) was inaugurated in 2012. The home comes under the authority of the Department of Health and Social Affairs and is intended to house children placed there by court order.

22. The home, which conforms to the updated standards, can house 24 children aged 6–18 years. In addition, three mother-and-child apartments were created on the top floor to provide a safe environment for female minors with children and for women who have been victims of violence or who need educational support in bringing up their children.

23. In respect of older people, the Rainier III Clinical Gerontology Centre was opened on 12 February 2013. The Centre provides preventive and specialized health-care services that reflect the progressive needs of ageing patients. The Rainier III Centre plays a central role in the field of geriatric medicine and works closely with the Monaco Gerontology Coordination Centre, the Spéranza-Albert II Centre and the community retirement homes in the Principality. The Centre aims not only to respond to the challenges posed by Monaco's increasingly ageing population, but also to the specific needs associated with old age, and to address issues such as multiple pathology treatment, social isolation, frailty and the loss of independence.

Please provide any other information on new measures taken to disseminate and implement the Committee's previous recommendations (CCPR/C/MCO/CO/2), including any necessary statistical data.

24. This document provides details of the measures Monaco has put in place as a result of the recommendations made by the Committee in 2008.

II. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to previous recommendations of the Committee

A. Constitutional and legal framework within which the Covenant is implemented and the right to an effective remedy (art. 2)

Does the State party envisage withdrawing its interpretative declarations and reservations entered upon ratification of the Covenant? If not, please provide detailed reasons why it does not intend to do so (CCPR/C/MCO/CO/2, para. 6).

25. Due to the ongoing nature of the grounds and justifications that led to their formulation, the Principality of Monaco does not, for the time being, envisage withdrawing its interpretative declaration and reservations.

26. The reasons behind the drawing up of the declaration and reservations were made explicit in the initial report submitted in 2000 (CCPR/C/MCO/99/1).

Please provide information on the first case of discrimination based on sexual orientation that was referred to the courts in July 2010. Has this case been concluded? If so, what was the outcome?

27. The case of discrimination based on sexual orientation of July 2010 led to the sentencing of the accused to 5 days' imprisonment, under article 25, subparagraphs 3 and 4, of Act No. 1.299 of 15 July 2005, and €5,000 in damages and interest.

In light of the Committee's previous concluding observations (CCPR/C/MCO/CO/2, para. 8), please indicate the measures taken to establish a national human rights institution that complies with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Furthermore, please indicate what measures, if any, have been taken to ensure that the office of the "Médiateur" (Ombudsman) is independent. Does it have powers to investigate complaints of human rights violations by individuals against law enforcement personnel?

28. See paragraphs 10 to 23 of the present report.

B. Measures to combat terrorism; respect for the rights guaranteed in the Covenant (arts. 7, 9 and 14)

In the light of the Committee's previous recommendations (CCPR/C/MCO/CO/2, para. 11), please provide information on the specific legislative measures taken to ensure that the broad definition of terrorist acts, particularly environmental terrorism, as provided by book III, title III, of the Criminal Code is clear and complies with the provisions of the Covenant.

29. In Monegasque law, terrorism is dealt with under articles 391-1 to 391-12 of the Criminal Code on the application of Act No. 1.318 of 26 June 2006 on terrorism, as well as Act No. 1.362 of 3 August 2009 on combating money-laundering, the funding of terrorism and corruption, and Act No. 1.299 of 15 July 2005 on freedom of public expression (art. 16).

30. With regard to the prevention of environmental terrorism³ in particular, under article 391-4 of the Criminal Code, “when the conditions set out in article 391-1 are met, the fact of knowingly introducing or releasing into the atmosphere, the soil, the subsoil or the water, including territorial waters, any substance or product that may endanger human or animal health or the safety of the natural environment shall constitute a terrorist act.”

31. The definition of an environmental attack is based on a deliberately broad concept, the legislator being concerned to prevent any possible scenario. This was achieved by selecting very open wording, which necessarily outlines anything that could contribute to harming the environment or creating environmental imbalance. The acts targeted consist of endangering human health or the environment by using potentially harmful substances.

32. A terrorist act is primarily characterized by the deliberate introduction of a substance that endangers the natural elements of the atmosphere, the soil, the subsoil or the waters, including the waters of the territorial sea. This concept is synonymous with anything that may infiltrate these elements, without any reservation as to the means employed, whether through insertion, spillage, projection or any similar means. At the same time, an operation that consists of sampling one or several of these elements and that could entail serious environmental imbalances is not necessarily a criminal act, due to the lack of a precise meaning of the term “introduction”, which is the act of introducing one thing into another. Although the scope of article 391-4 of the Criminal Code is very broad, it cannot be applied without review.

33. The substance introduced is also subject to comprehensive legal treatment. There is less clarity on what the substance consists of than on its impact on the environment, which must involve the possibility of harming health or the natural world. There is therefore no point in describing its physical or chemical properties, as long as it is potentially harmful. The concept in fact extends to all material: liquid, solid or gas; animal, vegetable or mineral; regardless of structure or composition; and whether it is enriched or untreated.

34. It is primarily the environmental impact of using the substance that serves as the deciding factor, as long as the substance endangers human or animal health or the environment.

35. It should be noted that terrorist acts are criminalized only in the form of potential risks, without taking into account their impact on the basis of actual pollution, actual harm to human or animal health or noticeable degradation of the environment. The act in itself constitutes an offence and the aim is more to punish a certain conduct than its effects, which does not preclude the latter serving as an aggravating circumstance when the act leads to the death of one or several persons.

36. Finally, the endangered object must be connected to either human or animal health, or to the environment. The term “health” refers here to anything liable to cause physical or biological harm to the body, which does not necessarily mean that life is directly or immediately threatened. Insofar as the entire food chain and environmental balance concerned find themselves threatened by environmental terrorism, it is important that not only health but also the environment is taken into consideration with regard to the risk. Environmental values are therefore reflected here, but less in defence of a principle than to illustrate the particular heinousness of certain types of crime.

³ See “La loi No. 1.318 du 29 juin 2006 sur le terrorisme – présentation et commentaires”, *Revue de droit monégasque*, No. 8, pp. 43–62, particularly pp. 48–50.

C. Equality and non-discrimination (arts. 2 and 26)

Please provide information on the legislative measures that have been taken to include nationality in the law as a ground for non-discrimination. Please specifically indicate the measures taken to ensure that the “system of employment priorities” in the employment sector does not have the effect of discriminating against people on the grounds of race, colour, nationality, religion and other grounds. What measures have been taken to make the conditions for acquiring and transferring nationality the same for men and women? Please indicate the measures that have been taken to revise the five-year residence requirement for non-Monegasques which restricts their enjoyment of the right to housing and access to social welfare and medical treatment. What measures have been taken to abolish the requirement for naturalized Monegasques to have been citizens for five years before being eligible for elections?

Discrimination based on race, colour, religion, etc.

37. In Monaco, no distinction, exclusion, restriction or preference is applied in the field of employment on the basis of race, colour, sex, religion, political opinion or social origin.

38. Thus, there is no gender discrimination with respect to remuneration,⁴ recruitment or dismissal⁵ in either the public or the private sectors. All employees, regardless of their nationality or place of residence, automatically receive legal aid in the event of a workplace accident.

39. Furthermore, Bill No. 895 amending Act No. 975 of 12 July 1975 on the status of civil servants was submitted to the office of the National Council on 14 December 2011, to introduce into the Act the principle of non-discrimination between civil servants on the basis of their political, philosophical, religious or trade union opinions, sexual orientation, state of health, disability, physical appearance or ethnicity.

40. This Bill will be submitted for consideration by the National Council in due course.

System of employment priorities

41. The system of employment priorities in Monaco cannot be equated with discrimination; the Government therefore has no plans to amend the law in this field.

42. Indeed, Monaco’s particular situation justifies certain differences in treatment according to nationality in order to give nationals priority and, among foreigners, according to place of residence, giving priority to those domiciled in neighbouring communes.

43. These rules make it possible to promote the full employment among citizens without depriving non-Monegasques of the opportunity of recruitment in the Principality, since the local working population is by way too small to take up all vacant posts.

44. It should also be noted that there are 8,675 Monegasque nationals among 36,000 residents. The population of Monaco comprises 129 different nationalities.

45. Although, among equally skilled workers, priority in employment is given to nationals, they do not represent more than 2.06 per cent of those employed in the private sector (45,441 employees as at 31 December 2012).

⁴ Article 2-1 of Act No. 739 of 16 March 1963 on wages, amended; Sovereign Decree No. 5.392 of 4 July 1974 implementing Act No. 948 of 19 April 1974 supplementing and amending equality of remuneration between men and women, Act No. 739 of 16 March 1963 on wages.

⁵ Act No. 975 of 12 July 1975 on the status of public servants of the State; Act No. 1.096 of 7 August 1986 on the status of public servants of the municipality; Act No. 629 of 17 July 1957 regulating the conditions of recruitment and dismissal in Monaco.

46. All other posts are occupied by non-nationals:

- French – 65.5 per cent;
- Italian – 13.5 per cent;
- Nationals of the European Economic Community – 11.75 per cent;
- Other European nationals – 1 per cent;
- Nationals of the Maghreb countries – 1.75 per cent;
- Nationals of sub-Saharan Africa – 0.7 per cent;
- Nationals of the countries of the Indian Ocean Rim – 1.2 per cent;
- Other regions and countries – 4.6 per cent.

47. It should also be noted that more than 4,000 occupied posts have recently been added in the public sector (public servants and State officials) and that 85 per cent of employees live outside Monaco.

Rights to housing and social protection

48. In terms of access to social protection and health care, these are granted without any discrimination as to nationality. The rules on affiliation are set out solely in relation to place of work, place of residence and social security agreements.

49. Certain social rights are granted to foreign nationals under conditions of residence. In fact, these are most often rights that were reserved for nationals prior to their extension to foreign nationals, accompanied by length-of-residence conditions which are essential, given the generous nature of the Monegasque social security system.

Right to stand for election

50. In direct application of the Constitution, naturalized Monegasques are fully legally eligible for parliamentary and communal election.

51. Articles 54 and 79 of the Constitution include only one condition, related to age and date of acquisition of nationality.

52. The Principality of Monaco has no intention of amending the Constitution in this regard.

Acquisition and transmission of nationality

53. With respect to gender equality in the acquisition and transmission of nationality, the following legislative developments should be emphasized:

(a) Act No. 1.276 of 22 December 2003 amending Act No. 1.155 of 18 December 1992 on nationality;

Article 1, paragraphs 2 et seq., of Act No. 1.276 of 22 December 2003 provides that Monegasque nationality is acquired by:

- Any person born of a mother who is Monegasque by birth and still held that nationality on the day of birth;
- Any person born of a Monegasque mother with one ancestor who was Monegasque by birth;

- Any person born of a Monegasque mother who acquired Monegasque nationality by naturalization, recovery or in accordance with the provisions of article 6, second subparagraph, or article 7, fourth subparagraph of this Act;
- Any person born of a mother who acquired Monegasque nationality by declaration following simple adoption;
- Any person born in Monaco of unknown parents.

(b) Act No. 1.296 of 12 May 2005 on transmission of nationality by mothers pursuant to article 3 of Act No. 572 of 18 November 1952 (repealed);

(c) Act No. 1.387 of 19 December 2011 amending Act No. 1.155 of 18 December 1992 on nationality.

54. Monegasque nationality law has also been adapted to respond to new family situations and avoid cases of stateless children, where paternal filiation has not been established, for instance.

55. Previously, Monegasque nationality was mainly transmitted through paternal filiation or naturalization based on a decision by the Sovereign Prince. Women of Monegasque nationality were not able to transmit this nationality to their husbands, who could only become Monegasque by way of naturalization.

56. The new legislation is structured around four key measures:

- Monegasque men and women who have acquired nationality through filiation or naturalization will now be able to transmit it to their spouse;
- The period required for transmission by marriage has been extended to 10 years for both men and women;
- In order to avoid cases of stateless children, a foreign spouse who has acquired Monegasque nationality through marriage must retain his or her original nationality. Divorced persons who have acquired nationality through marriage may not transmit it to children born subsequently or to future spouses;
- As a transitional measure, all women who were married before the entry into force of the Act continue to benefit from the previous transmission period of five years.

D. Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 3, 6 and 7)

With regard to the Committee's previous recommendations (CCPR/C/MCO/CO/2, para. 10) to provide information on measures taken to help women avoid unwanted pregnancies so that they do not need to resort to abortions that are illegal or that take place in unsafe conditions such as may endanger their lives. In this regard, specify the initiatives taken to review the issue of the general prohibition on abortion. Provide up-to-date information on progress made concerning the bill on medical interruption of pregnancy.

57. Firstly, it is important to note that sexual and reproductive health education forms part of the curriculum under life and earth sciences which is taught in the Principality of Monaco and that awareness-raising activities are provided for secondary-school students each year in order to combat sexually transmitted infections, in partnership with Monegasque associations (Red Cross, Fight Aids, the main hospital, school nurses).

58. On 20 April 2009, Act No. 1.359 of 20 April 2009 was passed, establishing a prenatal and family support coordination centre and amending articles 248 of the Criminal Code and 323 of the Civil Code.

59. The Act established a prenatal and family support coordination centre in order to provide pregnant women and their families with the information and support needed during the prenatal period and up to the birth of the child, and in particular where the woman is faced with physical, psychological or social difficulties linked to her pregnancy.

60. The Prenatal and Family Support Coordination Centre has a multidisciplinary team comprised of specialists: obstetrician-gynaecologists, paediatricians, ultrasound technicians, psychiatrists, midwives, psychologists, social workers, etc. The Prenatal and Family Support Coordination Centre has the following role in organizing the care and medical and social monitoring of pregnant women:

- Welcome, counselling and information for pregnant women and their families;
- Medical, psychological and social assessment of pregnant women attending the centre;
- Information concerning and referral to the appropriate services and facilities;
- The provision of psychological care where this is recommended;
- Information on financial assistance in conjunction with the Social Welfare Office and welfare agencies where the mother or the household has social problems. This detailed information relates to the rights of pregnant women, mothers, fathers and their children to allowances and other benefits. Detailed information should also be provided on support mechanisms for children with disabilities and on the monitoring of assistance provided during the period following the birth of the child;
- Coordination of the professionals who will provide post-partum care for women and their families.

61. In addition, the above-mentioned Act No. 1.359 of 20 April 2009 sets out three specific cases in which it would be possible to have a medical termination of pregnancy: in order to preserve the life of the pregnant woman; where a serious condition is detected in the unborn child that is acknowledged to be incurable at the time of the prenatal diagnosis; and where a rape has been committed, irrespective of the identity of the perpetrator.

62. An abortion may not be performed unless two physicians belonging to a medical panel whose membership is regulated by law certify that there are valid medical grounds for doing so.

63. The medical panel shall be composed of three physicians, two of them from the public hospital medical staff, namely the Coordinator of the Prenatal Coordination and Family Support Centre or a physician designated by the Coordinator; and two appropriately qualified physicians.

64. The Act guarantees that the views of the pregnant woman will be taken into consideration by allowing her to appear before all or some members of the medical panel before it meets and to designate a physician who may confer with the panel but who will have no decision-making power.

65. The Act provides that the medical panel's opinion may include input from any other physician and include any other opinion that it deems necessary.

66. Where the pregnancy is the result of an alleged criminal act, the Act requires that the certification of the criminal complaint filed with the police and, where appropriate, the relevant documents, including the medical analyses and examinations, must be recorded in the medical file.

67. In addition, the Act requires that abortions in such cases must be performed no later than 12 weeks from the beginning of the pregnancy.

68. In all cases in which an abortion is permitted, the Act requires the prior written consent of the woman, except in the event of an emergency or when the woman is not capable of expressing her wishes.

69. The Act provides another guarantee by stipulating that the procedure may only be carried out by a physician in a public hospital.

Please provide an update on the legislative, administrative and other measures taken to eliminate all forms of violence against women, including prompt investigations, prosecutions of perpetrators and provision of effective remedies to victims in the State party. Please provide statistical data on domestic violence disaggregated by the number of (a) complaints received, (b) cases prosecuted, (c) convictions secured and acquittals, and (d) reparation provided to victims.

Please comment on the status of Act No. 869 on the prevention of domestic violence which was submitted to the National Council in October 2009.

The Act on the prevention and punishment of specific forms of violence

70. Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence has been established in order to provide greater protection for women, children and persons with disabilities.

71. The purpose of the law is to prevent and punish forms of violence that require or justify specific methods of prevention or punishment or serious or specially adapted sentences in view of the particular vulnerability of the victims or the situations in which the violence was perpetrated.

72. In the case of punishment *stricto sensu*, the Act has enriched the domestic regulatory framework by specifically encompassing all forms of violence or threats of physical, psychological, sexual or economic violence, particularly against women. In order to ensure the effectiveness of this increased protection, specific measures concerning prevention, protection and punishment have been introduced into Monegasque law and concern “honour crimes”, female genital mutilation, forced marriages, spousal rape and harassment.

73. In all cases where the acts are committed by a spouse or by a person living under the same roof or who have lived together on a long-term basis, substantially increased sentences have been introduced under Act No. 1.382 of 20 July 2011, either the sentence corresponding to the offence under ordinary law is doubled or the maximum sentence is applied.

74. In addition, failure to fulfil the obligation to make reparations counts as an aggravating circumstance with respect to the penalty to be imposed; this may lead, *inter alia*, to the revocation of the suspension of a sentence or of probation. This provision also applies to the perpetrators of female genital mutilation, honour crimes or rape of a spouse or domestic worker. The bill covers domestic slavery and harassment as well.

75. With regard to assistance and protection for victims, the Government has decided to allow the judicial authority to hand down decisions specifically to protect victims. As a result, the Act gives the court the option of imposing on perpetrators, under penalty of between 1 to 6 months’ imprisonment and a fine of between 9,000 and 18,000 euros:

- A fixed-term ban on entering into contact with the victims by any means whatsoever, including electronic communication;
- A fixed-term ban appearing in certain places.

76. Under that provision, the judge has complete discretion to take a decision in line with the needs and situation of the victims. For example, the perpetrator could be banned from appearing in the vicinity of schools, gymnasiums and other places of work, leisure or residence including, of course their home, frequented by the person or persons they assaulted. This prohibition takes on a number of forms over the course of the various procedural stages that are likely to follow acts of violence:

- An emergency measure taken by the prosecutor during the preliminary investigation;
- A measure taken by the investigating judge with a view to protecting the victims for the duration of the investigation;
- A supplementary punishment to a main sentence.

77. In the more specific context of criminal procedure, it should be noted that the legislation endeavours to provide support for the victim from the investigation phase onwards by enabling either the Public Prosecutor or the investigating judge to order a medical and psychological examination in order to determine the nature of the damage suffered and whether there is need for an appropriate programme of care.

78. Following the lead of international standards in this area, the aforementioned Act No. 1.382 of 20 July 2011 also provides for mandatory initial and in-service training for all professionals who deal with cases of violence, whether they are staff of the justice system, the police force, medical professionals or social workers. The Government sets great store by ensuring that victims have access to qualified professionals and that professionals working in this area have the best training so that they provide the best and most appropriate support to victims, taking into account in particular the psychological distress they have suffered.

79. The training provided for in article 46 of Act No. 1.382 of 20 July 2011 for professionals who come into contact with victims of violence, including judges, health professionals and police officers, has been in place since 2012.

Victim support

80. The Department of Health and Social Affairs is one link in the chain of care provided by Monaco to women victims of domestic violence.

81. Its Social Unit is made up of a team of staff trained in different areas (social workers-special needs assistants) as well as a female psychologist able to respond in this type of situation.

82. On arrival at the Social Unit, women are met by a multi-skilled social worker.

83. The aim of this initial meeting is to:

- Help the woman talk about her experience;
- Inform her of her rights;
- Evaluate the situation in order to propose appropriate support measures (accommodation, financial assistance, professional support, family mediation, etc.).

84. It is important to stress that the Social Unit is able to implement the majority of these measures, thus guaranteeing a responsive approach in dealing with this type of situation, especially in emergency situations.

85. In particular, in the following areas:

- Accommodation: the Social Unit can provide emergency social accommodation and, where none is available, alternatives will be found;

- Financial assistance: social services can dispense State benefits;
- Professional support: a social worker and a special needs assistant can help the woman to find work, in partnership with the job centre;
- Family mediation.

86. With respect to the protection of children, it is now recognized that witnessing violence has the same effect on children as if they were victims of the violence.

87. Therefore, depending on the seriousness of the situation, it may also be necessary to introduce protection measures such as educational support. This type of measure, which is ordered by the court (acting on a report), is imposed on parents and consists of the educational monitoring of the child in the family. This type of child protection is also provided by the Social Unit.

88. The Social Unit also works as part of a network:

- With hospital and outpatient facilities (mobile psychiatry unit, medical and psychological support centre for children and adolescents) which report, with the social services unit, to the Directorate of Health and Social Welfare;
- With the various agencies involved in social welfare (justice, police, municipal services, social insurance funds, etc.).

89. Thus cases of domestic violence are dealt with using the resources available at the units' disposal and working in a network, which is facilitated by the proximity of all those involved.

90. Furthermore, the number of situations allows for individualized care as close as possible to the victims.

Payment of compensation to victims

91. There is no specific system for awarding damages to victims under Monegasque law. Common law is applied in cases affecting them.

92. Following the Roman-Germanic tradition, the legal system in Monaco upholds the principle of full reparation and consequently the principle of assessing the most appropriate and fairest compensation possible for the harm suffered. The damages awarded in no way constitute a type of civil punishment or civil fine in addition to the criminal sentence already handed down.

93. Once the damages have been established, the judge proceeds to consider whether harm was inflicted and whether it was direct. The judge verifies the relationship between the harm suffered and the damages to be paid.

94. The judge has full discretion to assess the harm done and may be guided by case law or the regularly published lists of assessments of harm, particularly in the event of physical injury, thereby basing his or her assessment on a national statistical frame of reference.

95. The judge takes a decision on that basis bearing in mind the amount of the compensation requested by the victim.

96. A higher court may still intervene on appeal to decrease or increase the amount by the first judge's award, thereby helping to standardize compensation awards among different courts and different judges and ensure greater equality before the law.

97. It should be noted that this personal action is the only course available to the victim and it limits the judge's assessment. Under the rules of civil procedure, the judge cannot award an amount in excess of that demanded by the victim except, as may happen occasionally, by one symbolic euro.

98. There is no compensation commission or guaranteed fund.

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

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

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

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

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

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

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

105. Article 16, paragraph 2, of Act No. 1.355 of 23 December 2008 on associations and federations stipulates that an accredited association “can bring legal proceedings to defend common interests related to its activities without having to give proof of direct and personal harm”. Act No. 1.382 on the prevention and punishment of specific forms of violence enables certain associations to sue for damages, with the victim’s consent, including those whose purpose is to combat discrimination, sexual violence, child abuse or sexual violence against minors, etc. (article 20 of the Act establishing article 2-1 of the Code of Criminal Procedure).

106. Protection measures for victims, including a measure allowing victim-defence associations to sue for damages under article 20 of Act No. 1.382 on the prevention and punishment of specific forms of violence.

Statistics

Statistics from the Directorate of Public Security

107. The Directorate of Public Security, as at 27 August 2013, had dealt with 15 cases based on violence, as established in article 238-1 of the Criminal Code:

- Eight cases that did not involve a temporary incapacity to work (four were withdrawn by the Prosecutor's Office, one was discontinued following the withdrawal of the complaint, one was forwarded to a prosecutor at the police court, one is currently being examined and one is being dealt with by an external prosecutor's office);
- Six cases that involved a temporary incapacity to work, none of which exceeded eight days (three were withdrawn by the Prosecutor's Office, one was discontinued following the withdrawal of the complaint, one was heard by the Court of Appeal, one led to the sentencing of the perpetrator by the Criminal Court on 26 February 2013 to 15 days' imprisonment (suspended) and a fine of €1,000);
- One case of reciprocal violence between spouses was discontinued following the withdrawal of the complaint;
- One case of violence against a child involving a family dispute between a half-brother and his minor sister.

Statistics from the Monegasque courts

108. 2009 – two cases:

- One forwarded to a prosecutor at the police court;
- One discontinued due to insufficient grounds.

109. 2011 – two cases were referred to the Criminal Court:

- One sentence of 3 months' imprisonment (suspended), handed down on 22 May 2012;
- One sentence of a fine of €1,000, handed down on 31 January 2012.

110. 2012 – two cases sent back to the Criminal Court:

- One sentence of 10 days' imprisonment (suspended) handed down on 29 May 2013;
- One sentence of 8 days' imprisonment and a ban on entering the marital home, handed down on 17 December 2012;
- One case forwarded to a prosecutor at the police court;
- One case discontinued due to insufficient grounds.

111. 2013:

- Two cases discontinued due to insufficient grounds;
- Three cases discontinued due to withdrawal of the complaint;
- One case that is ongoing;

- Five cases prosecuted in the Criminal Court.⁶

Please provide information on measures taken to ensure that the revised Criminal Code includes a definition of torture that fully accords with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Covenant. Please indicate the measures being taken to ensure that the law prohibits the invocation of exceptional circumstances or an order from a superior officer as a justification of torture. Furthermore, please indicate the measures taken to ensure that the law specifically provides for redress and compensation for victims of torture and ill-treatment.

Definition of torture

112. Firstly, it should be noted that Monegasque domestic law already deals with the concept of torture at various levels and, given that other urgent reforms are under way, there are no immediate plans to include a definition of torture in criminal legislation.

113. Article 20⁷ of the Constitution expressly sets forth the prohibition of cruel, inhuman or degrading treatment.

114. Furthermore, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was brought into force for Monaco by Sovereign Decree No. 10542 of 14 May 1992 and is therefore fully part of the body of Monegasque legal instruments which Monegasque judges may invoke.

115. Article 8, paragraph (2), of the Code of Criminal Procedure, which establishes that the courts have jurisdiction over cases of torture committed abroad, makes reference to the definition contained in article 1 of the Convention. It states: "In addition to cases in which the jurisdiction of the Monegasque courts arises from the sovereign orders adopted to give effect to international conventions, the following may also be prosecuted and tried in the Principality: ... (2) Anyone who commits, outside the territory of the Principality, acts classified as crimes or offences that constitute torture under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, if he or she is found in the Principality."

116. In addition, the Monegasque Criminal Code provides that certain crimes and offences can be classified or punished more severely if acts of torture have been committed.

117. Article 228 of the Criminal Code on intentional homicide thus provides that "anyone who uses methods of torture or commits acts of cruelty in the commission of a crime shall receive the same punishment as a person found guilty of murder".

118. Article 278 of the Criminal Code on detention and abduction provides that "Those found guilty shall be punished with the maximum fixed-term prison sentence in each of the following three cases: ... 3. If [the victim] is subjected to torture. The penalty shall be life imprisonment if, as a result of torture, the person suffers mutilation, amputation or deprivation of the use of a limb, blindness, loss of an eye or some other serious and permanent disability."

⁶ Criminal Court decision of 16 April 2013: €3,000 fine; Criminal Court decision of 19 February 2013: acquittal; Criminal Court decision of 26 February 2013: 15 days' imprisonment (suspended); Criminal Court decision of 5 March 2013: 8 days' imprisonment (suspended); Criminal Court decision of 21 May 2013: €5,000 fine.

⁷ No penalty may be established and applied other than pursuant to the law. Criminal laws must ensure respect for human personality and dignity.

No one may be subjected to cruel, inhuman or degrading treatment. The death penalty is abolished. Criminal laws may not be applied retroactively.

119. Furthermore, articles 236⁸ and 245⁹ of the Criminal Code provide for a harsher penalty for violence and intentional assault not classified as homicide and other intentional crimes and offences if they have been followed by “mutilation, amputation or deprivation of the use of a limb, blindness, loss of an eye or some other serious and permanent disability”.

120. In addition, article 247¹⁰ of the Criminal Code provides for the maximum fixed-term prison sentence for the crime of castration and attacks on the genital integrity of females.

121. Secondly, it should be pointed out that the courts adopt a broad approach to interpretation of the term “torture and cruel, inhuman or degrading treatment” and, therefore, that the definitions in the Convention against Torture and the Covenant are effectively covered by Monegasque law.

122. It should also be noted that the definition given in the Convention against Torture is part of the domestic legal order and that the jurisprudence of the highest courts (Supreme Court, Court of Review, Court of Appeal) show that they do not hesitate to refer directly to the texts of covenants and conventions.

123. In practice, no complaints or reports of acts of torture or other cruel, inhuman or degrading treatment have been registered recently.

124. Only one conviction, incurring a sentence of 15 years’ imprisonment, was handed down in 2008 for murder using methods of torture or committing acts of cruelty.

Order from a superior officer or public authority

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

⁸ “Any person who commits intentional assault and battery, or any other act of violence or assault, if it causes an illness or total incapacity to work of more than eight days, shall be punishable by imprisonment of 1 to 5 years and [a fine of €18,000–90,000].

If the aforementioned acts of violence result in mutilation, amputation or the loss of function of a limb, blindness, loss of an eye or some other serious and permanent disability, the guilty party shall be punishable by a prison term of 5 to 10 years.

If the intentional assault and battery causes death, but there was no intent to kill, the guilty party shall be punishable by a prison term of 10 to 20 years.”

⁹ “The punishment shall be a prison term of 10 to 20 years if the acts established in article 243 (intentional assault and battery that does not qualify as homicide and other intentional crimes and misdemeanours) result in mutilation, amputation or the loss of function of a limb, blindness, loss of an eye or some other serious and permanent disability, or cause death, despite the lack of intention to kill [...]”

¹⁰ “Any person who is guilty of the crime of castration shall incur the maximum prison term.

If it led to death, the guilty party shall be sentenced to life imprisonment.

The same punishment shall be applicable to any person who has attacked the genital integrity of a female, through total or partial removal, notably through excision or infibulation or any other mutilation.

The provisions of the present article are not applicable to genital surgery performed in accordance with the law or to professional rules or the medical code of ethics governing pharmaceutical, medical or surgical activities.”

126. If an act of torture is ascribed to a judicial police officer, an auxiliary of the principal public prosecutor, the procedure whereby the Court of Appeal sitting in chambers exercises supervision may be instigated by the president of the Court of Appeal or the principal public prosecutor (Code of Criminal Procedure, arts. 48 et seq.). The person concerned may be prohibited temporarily or permanently from carrying out their police duties, without prejudice to the administrative penalties that their superiors may impose upon them.

127. Criminal penalties are also provided for by article 126¹¹ of the Criminal Code, which deals with the abuse of authority by a police commander or deputy-commander who in the exercise of their functions has, for no legitimate reason, used or ordered the use of violence against individuals.

128. Criminal penalties for the unlawful arrest or illegal confinement of persons are also provided for by articles 275 et seq. of the Code of Criminal Procedure. Thus, any person who arrests, detains or confines an individual without being ordered to do so by the proper authorities, other than in cases in which the law orders the arrest of the suspect, is liable to 10 to 20 years' imprisonment. Article 278 provides that the maximum term will apply if the person who has been illegally arrested and held has been tortured.

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

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

131. Regarding the recourse available to subordinates, they are not obliged to carry out an order (referred to as the theory of intelligent bayonets) and may report any irregularity to a superior. This doctrinal and case-law principle — which is a general principle in this field — may then be applied by the Monegasque courts.

132. In addition, under article 61 of the Code of Criminal Procedure, any authority, civil servant or public official who, in the course of their duties, learns of a crime or an offence is required to notify the Public Prosecutor immediately and forward to this official all information, documents and certificates that might be of use in punishing it.

Reparation to victims

133. See paragraphs 91 to 106 of the present report.

134. Specific provisions also exist for victims of terrorism. Indeed, article 3, of Act No. 1.318 of 29 June 2008 provides that:

- The victims of terrorist acts committed on Monegasque territory or their beneficiaries, and Monegasque nationals who are victims of terrorism abroad, shall receive reparation from the State;
- The State assumes the rights of the victim against the person responsible for the damage;
- An action for reparation, admissible without distinction for all categories of damage, both material and physical or mental, may be pursued at the same time and before the same judges as criminal proceedings (Code of Criminal Procedure, art. 3).

¹¹ Abuse of authority is covered in articles 127 to 130 of the Criminal Code.

E. Elimination of slavery and servitude (art. 8)

Please provide updated information on measures taken (a) to prevent and combat sexual exploitation and trafficking in human beings, (b) to prosecute and punish such acts, and (c) to assist and protect the victims of trafficking, *inter alia*, by providing remedies to or facilitating the granting of residence permits to them regardless of their cooperation in investigations. Please also provide relevant statistical data, disaggregated on the basis of gender, age and country of origin on this phenomenon.

135. No cases of trafficking in persons or of sexual exploitation have been recorded in Monaco. Monaco has, nonetheless, already carried out extraditions based on this offence.

136. Furthermore, the following points can be made with respect to prevention.

Monegasque legislation

137. Cruel, inhuman or degrading treatment is proscribed by article 20 of the Constitution.

138. Moreover, Monaco acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 1984) on 6 December 1991.

139. Additionally, Monaco acceded to the Slavery Convention (Geneva, 25 September 1926) on 12 February 1928 and accepted the Protocol amending the Slavery Convention (New York, 7 December 1953) on 12 November 1954.

140. The significant contribution of Act No. 1.344 of 26 December 2007 on stiffer penalties for crimes and offences against children should be emphasized.

141. The body of standards thereby introduced into domestic criminal legislation has amended and supplemented the criminal provisions currently in force on congruent legal measures providing increased protection to child victims of violence, abuse or sexual exploitation.

142. This includes harmonizing the concept of the best interests of the child and the definition of the criminal offences of which children are the victims by increasing — through new or amended criminalization — the punishment for multiple crimes or misdemeanours against children. The relevant criminal offences are the following.

143. The complex area of sexual abuse is covered by articles 261 to 264 of the Criminal Code, by the crimes of aggravated indecent assault and rape.

144. Article 261 of the Criminal Code stipulates:

“Any indecent assault, perpetrated or attempted without violence, in respect of a minor of either sex under the age of 16 years shall be punishable by a prison term of 5 to 10 years.

The same penalty shall be handed down for indecent assault committed by any ascendant in respect of a minor, including a minor of over 16 years not emancipated by marriage.”

145. Article 263 of the Criminal Code stipulates:

“Any person who commits an indecent assault, perpetrated or attempted with violence, against an individual of either sex shall be liable to a prison term of 5 to 10 years.

If the crime was committed in respect of a minor under the age of 16 years, the guilty party shall be sentenced to 10 to 20 years’ imprisonment.”

146. Moreover, article 264 of the Criminal Code stipulates that:

“If the guilty parties are ascendants of the victim of the assault, if they have authority over the person, if they are schoolteachers or paid servants, or paid servants of the persons indicated above, if they are civil servants or ministers of religion or if the guilty parties, whoever they may be, have been assisted in their crime by one or more persons, the punishment shall be a prison term of 10 to 20 years in the cases covered by article 261, subparagraph 1, and 263, subparagraph 1, and the maximum prison term in the cases covered by articles 262, subparagraph 1, and 263, subparagraph 2.”

147. Article 262 of the Criminal Code stipulates:

“Rape is defined as any act of sexual penetration, of any kind and using any means, committed in respect of another person, using violence, coercion, intimidation or surprise.

Rape has been committed when sex has been imposed on the victim under the circumstances outlined in the previous subparagraph, no matter the relationship between the aggressor and the victim, even if they are united by the bonds of marriage.

In addition, rape includes any act of sexual penetration, of any kind and using any means, committed against a minor by:

1. Any person related to the victim, whether legitimate, natural or adoptive or by marriage;
2. Any person living with the minor under the same roof or having lived there for a time and who exercises or has exercised legal or actual authority over the minor.

Anyone who commits the crime of rape shall be punishable by a prison term of 10 to 20 years.

If the rape was of a minor under the age of 16, or in the circumstances established in subparagraph 3, the guilty party shall incur the maximum prison term.

The same applies if the rape was of a person whose vulnerability or dependency was apparent or known to the perpetrator.”

148. With respect to combating child pornography, article 294-3 of the Criminal Code criminalizes each element of the production, possession and distribution of child pornography, in order to protect minors from all forms of sexual exploitation; children must also be protected as actors and spectators in this regard.

149. To that end, the present article punishes several acts — in particular capturing, recording and producing child pornography — as well as all forms of distribution and transmission of child pornography. In addition, article 294-3 of the Criminal Code provides for stiffer sentences when a communications network has been used to distribute an image or representation of a minor, stipulating that:

“Distributing, capturing, recording, producing, obtaining or transmitting an image or representation of a minor when that image or representation is of a pornographic nature shall be punishable by imprisonment of 3 to 5 years and the fine established in figure 3 of article 26.¹² Attempts carry the same penalties.

¹² Of €9,000–18,000.

Knowingly supplying or distributing such an image or representation, by whatever means, importing or exporting it, or causing it to be imported or exported is punishable in the same manner.

The fact of knowingly possessing such an image or representation is punishable by imprisonment of 6 months to 2 years and the fine established in article 26, figure 2.¹³

Accessing, in full knowledge, such an image or representation is punishable in the same manner.

The provisions of the present article are increased to 5 to 10 years' imprisonment and the fine established in article 26, figure 4,¹⁴ when an electronic communications network has been used to distribute the image or representation of a minor to an undefined public.

The provisions of the present article are also applicable to pornographic images of persons who have the physique of a minor, unless it is established that they have reached 18 years on the day of capturing or recording of their image.

Under the present article, images of a pornographic nature are considered to be:

1. An image or representation of a minor submitting to or engaging in sexually explicit behaviour;
2. An image or representation of a person who appears to be a minor submitting to or engaging in sexually explicit behaviour;
3. A realistic image representing a minor engaging in sexually explicit behaviour.

The expression 'realistic image' refers, in particular, to a falsified image of a physical person that was fully or partially created using digital technology.

The provisions of the present article are not applicable if the images or representations of images have been collected for the investigation, examination or prosecution of criminal offences.”

150. Regarding the more specific question of offences linked to the participation of a child in pornographic performances, article 294-5, subparagraph 1, of the Criminal Code also covers crimes relating to the participation of children in pornographic performances, stipulating:

“Punishable by imprisonment of 3 to 5 years and the fine established in article 26, figure 3,¹⁵ are:

1. Coercing a minor to watch or participate in pornographic scenes or performances or taking advantage of or exploiting a minor in any other manner for this purpose;
2. Recruiting, through coercion, violence or deceit, a minor to assist or participate in pornographic scenes or performances, or encouraging a minor to participate in such performances;
3. Assisting with pornographic performances involving the participation of minors [...].”

¹³ Of €2,250–9,000.

¹⁴ Of €18,000–90,000.

¹⁵ Of €9,000–18,000.

151. Regarding child prostitution, article 268 of the Criminal Code, in the version issued following Act No. 1.344 of 26 December 2007, cited above, covers, in the first instance, the offence of procurement, stipulating:

“The following persons are considered to be procurers and are punishable by imprisonment of 6 months to 3 years and the fine established in article 26, figure 3,¹⁶ if they, in any way:

- Procure, entice or lead away a person for prostitution or exert pressure on a person to engage or continue engaging in prostitution;
- Aid or abet the prostitution of another or encourage it;
- Share the product of prostitution or knowingly receive, in any form, financial support from persons engaging in prostitution;
- Cannot provide evidence of resources corresponding to their lifestyle while living with one or several persons engaging in prostitution.

The following, carried out by any person in any manner, are viewed as procurement and are punishable in the same manner:

- Acting as intermediary between two persons, one of whom is engaging in prostitution and the other of whom exploits or remunerates the prostitution of another;
- Facilitating a procurer to provide evidence of fabricated resources.”

152. Given these stipulations, article 269 of the Criminal Code sets out a series of aggravating personal circumstances — linked to the personality of the perpetrator or the victim — that permit the effective suppression of the exploitation of the prostitution of another person in all its forms and, more particularly, when it involves a minor. Article 269 of the Criminal Code stipulates:

“Procurement is punishable by 5 to 10 years’ imprisonment and the fine established in article 26, figure 3,¹⁷ when it is committed:

- Against a minor;
- Against a person whose particular vulnerability, notably due to age, illness, infirmity, physical or psychological deficiency or pregnancy, is apparent or known to the perpetrator;
- Against several persons;
- By legitimate, natural or adopted ascendants of the person engaging in prostitution or by any persons who have authority over that person or who abuse the authority conferred on them in the course of their duties, or a state of material or psychological dependence on them by the person engaging in prostitution;
- Using coercion, violence or deceit;
- By several persons acting as perpetrators or accomplices, without constituting an organized group.

Procurement is punishable by 10 to 20 years’ imprisonment and the fine established in article 26, figure 4,¹⁸ when committed against a minor under 16 years or by an organized group.”

¹⁶ Of €9,000–18,000.

¹⁷ Of €9,000–18,000.

153. Article 269-1 of the Criminal Code stipulates:

“Using a minor for the purposes of sexual activity by offering or promising money or any other form of remuneration, payment or advantage, or offering that remuneration, payment, promise or advantage to a minor or a third party, is punishable by imprisonment of 3 to 5 years and the fine established in article 26, figure 3.”¹⁹

154. Regarding the corruption of children, article 294-5, subparagraph 2, of the Criminal Code provides for the effective criminalization of such acts, stipulating:

“Intentionally leading a minor to assist or participate in sexual activities is punishable in the same manner.”

155. The solicitation of children for sexual purposes or “grooming” is covered in article 294-6 of the Criminal Code:

“An adult intentionally proposing, through an electronic communications network, a meeting with a person, in the knowledge of the person’s status as a minor, for the purpose of committing against that minor any offence of a sexual nature punishable by a prison term equal to or more than 3 years, is liable to imprisonment of 6 months to 2 years and the fine established in article 26, figure 2.”²⁰

156. All the elements given above complement the developments previously highlighted with respect to Act No. 1.382 of 20 July 2011 on the prevention and punishment of specific forms of violence, introduced to strengthen protection for women and children.

Measures to combat domestic slavery

157. The concept of domestic slavery is not specifically established in Monegasque social law. Nonetheless, each time the services of the Directorate of Labour have been made aware of threats to non-declared employees, instructions have been issued immediately and reports have been transmitted to the Public Prosecutor.

158. Over the course of the last 10 years, the Directorate of Labour has been made aware of two or three cases of domestic slavery, which have led to the conviction of the employers.

Measures to monitor prostitution

159. Sexual offences are punished under articles 265 to 270 of the Criminal Code.

160. In Monaco, the prevention of sexual exploitation is based on knowledge of all persons engaging in prostitution in the country.

161. The staff of the Directorate of Public Security patrols at night in order to make contact with these persons, check their identities and ensure that they possess valid documents.

162. They are also regularly monitored and are obliged to register with the concierge of each Monegasque hotel establishment prior to accessing the rooms.

163. Furthermore, intelligence and observational work undertaken by the Directorate of Public Security, where appropriate, locating, identifying and questioning of perpetrators of sexual exploitation.

¹⁸ Of €18,000–90,000.

¹⁹ Of €9,000–18,000.

²⁰ Of €2,250–9,000.

164. With respect to observations from the ground, information collected and the results of checks on financial transfers, it appears that the great majority of prostitutes on Monegasque territory are not under the control of any individual or group of individuals.

165. Most of them spend the majority of the year next to the Monegasque border and no prostitute known to the police is officially registered in Monaco.

F. Freedom of movement and freedom of association (arts. 12, 18 and 22)

In the light of the Committee's previous recommendations (CCPR/C/MCO/CO/2, para. 12), please provide an update on the measures taken to repeal the provisions in the Criminal Code that authorize banishment.

166. Although enshrined in Monegasque legislation, banishment is never applied in practice.

167. The Government of the Principality is currently considering a bill repealing the provisions of the Criminal Code on banishment.

Please provide information on the measures taken to ensure that Ordinance Law No. 399 of 6 October 1944 authorizing the establishment of trade unions, which provides that the executive committees of trade union federations shall consist of a general secretary and a general treasurer (of Monegasque nationality), is compatible with the Covenant.

168. Amendments to that law are currently under consideration.

In the light of the Committee's previous recommendations (CCPR/C/MCO/CO/2, para. 13), please indicate the measures taken to ensure that the law defines the conditions required for setting up corporate bodies, ensuring that the discretion conferred on the Administration are exercised in accordance with the provisions of the Covenant. Please specifically address the concerns of the Committee relating to the notion of "sectarian purposes" regarding the registration of corporate bodies.

169. Article 7 of Act No. 1.355 of 23 December 2008 on associations and federations states that:

"Any association wishing to acquire the legal personality and legal capacity provided for under article 5 shall be declared and made public."

170. However, article 6 states that:

"Any association whose purpose is unlawful or which undermines the independence or institutions of the Principality, infringes the fundamental rights and freedoms recognized therein, presents a threat to public order or morals, or is of a sectarian nature shall be deemed null and void.

Any association pursuing activities with the purpose or effect of inducing, maintaining or exploiting the psychological or physical subjection of persons participating in its activities shall be deemed to be sectarian in nature."

171. The definition established in the Act thus provides a framework for the discretionary powers conferred upon the Administration.

G. Freedom of expression and prohibition of incitement to hatred (arts. 19 and 20)

Please provide information on measures taken to establish an independent mechanism to deal with complaints against the media.

172. There are very few media outlets (television, radio and press) in the Principality of Monaco.

173. Article 15 of Law No. 1.299 of 15 July 2005 on public freedom of expression states that: "Persons who, through speeches, calls or threats made in public places or at public gatherings, or through written works, printed matter, drawings, engravings, paintings, symbols, images or any other written, oral or visual medium, that is sold, distributed or exhibited in public places or gatherings, or through publicly exhibited posters or notices, or through any method of audiovisual communication, have directly incited the perpetrator(s) to commit an act classified as a serious crime or serious offence, shall be punished as accessories to the act, if the incitement had effect. This provision shall also apply where incitement resulted only in an attempt, as provided for by article 2 of the Criminal Code."

Please provide information on the status of bills, particularly Bill No. 818 concerning offences involving information systems, such as the making of threats via telecommunications networks, and the sports bill aimed at combating expressions of intolerance at sporting events.

174. Bill No. 818 was withdrawn on 28 June 2010. A number of its provisions were included in other legal texts, particularly Act No. 1.383 of 2 August 2011 on the digital economy, which contains the following measures: articles 24 and 25, assigning evidential value to electronic documents; article 29 et seq., establishing the liability of service providers who knowingly host illegal content; and article 34, under which data identifying content creators must be stored.

175. Act No. 1.394 of 9 October 2012 reforming the Criminal Code and the Code of Criminal Procedure concerned with corruption and special investigation techniques includes new provisions on criminal procedure to facilitate efforts to combat the use of communication networks for illegal purposes. In particular, the Act provides for the use of listening and surveillance devices to target specific locations or vehicles where justified on the grounds of information needs. The Act supplements article 106-1 et seq. of the Code of Criminal Procedure (created by Act No. 1.343 of 26 December 2007), which provided that "Where justified on the grounds of information needs, the investigating judge may order the interception, recording and transcription of correspondence transmitted via telecommunications or electronic communications channels, in the case of a serious crime or serious offence punishable by a sentence equal to or greater than 1 year. The decision to allow interception shall be issued in writing, shall not be of a judicial nature and shall not be subject to appeal. Operations ordered in the light of the first paragraph shall be carried out under the authority and supervision of the investigating judge."

176. Articles 230 et seq. of the Criminal Code deal with any threats made using a telecommunications network or, in particular, text messaging:

"Article 230.- Any person making anonymous or signed threats, in writing, symbols or material signs, of assassination, poisoning, murder or any other form of assault constituting a serious indictable offence, shall be punishable by 1 to 5 years' imprisonment and the fine provided for under article 26 (4), should the threat be accompanied by an order to deposit a sum of money at a specified location or under certain conditions.

Article 231.- Threats not involving orders or conditions shall be punishable by a sentence of 6 months' to 3 years' imprisonment and the fine provided for under article 26 (3).

Article 232.- Perpetrators of verbal threats involving orders or conditions shall be liable to 6 months' to 3 years' imprisonment and the fine provided for under article 26 (3).

Article 233.- Perpetrators of verbal threats not involving orders or conditions shall be liable to 1 to 6 months' imprisonment and the fine provided for under article 26 (2), or to only one of those penalties.

Article 234.- Any person issuing verbal or written threats of assault or violence other than those covered by article 230 shall, if the threat involved orders or conditions, be liable to 1 to 6 months' imprisonment and the fine provided for under article 26 (2), or to only one of those penalties.

The judge shall have the power to apply article 27 for the same duration.

Article 234-1.- (Created by Act No. 1.382 of 20 July 2011)

Where the threats provided for under articles 230 to 234 have been made against the partner of the perpetrator or any other person living or having lived for a significant period of time under the same roof as the perpetrator, the penalties provided for under the above-mentioned articles shall be doubled, although the duration of the period of imprisonment shall not exceed the maximum period incurred under the above-mentioned articles.

The same conditions shall apply where the threats provided for under articles 230 to 234 are made against a person whose vulnerable or dependent status is obvious or is known to the perpetrator.”

177. The following provisions of Act No. 1.344 of 26 December 2007 shall also apply in cases of crimes or offences involving children:

“Article 294-3.- (Created by Act No. 1.344 of 26 December 2007)

The act of capturing, recording, producing, procuring or transmitting, for the purposes of dissemination, images or representations of a minor that are pornographic in nature shall be punishable by 3 to 5 years' imprisonment and the fine provided for under article 26 (3). Any person attempting to carry out such acts shall be liable to the same penalties.

Any person who knowingly, by any means whatsoever, offers, disseminates, imports, exports or causes to be imported or exported such images or representations, shall be liable to the same penalties.

Any person knowingly possessing such images or representations shall be liable to 6 months' to 2 years' imprisonment and the fine provided for under article 26 (2).

Any person knowingly accessing such images or representations shall be liable to the same penalties.

In cases where an electronic communications network has been used to disseminate images or representations of a minor to an unspecified audience, the penalties shall be increased from 5 to 10 years' imprisonment, together with the fine provided for under article 26 (4).

The provisions of this article shall also apply to pornographic images of persons physically resembling minors, unless it has been established that the persons in question were 18 years of age on the day on which their images were captured or recorded.

For the purposes of this article, the following shall be deemed to be images of a pornographic nature:

- (1) Images or representations of a minor being subjected to or engaging in sexually explicit behaviour;
- (2) Images or representations of a person with the appearance of a minor being subjected to or engaging in sexually explicit behaviour;
- (3) Realistic images representing minors engaging in sexually explicit behaviour.

The term 'realistic image' shall designate, in particular, altered images of a natural person created entirely or partially using digital technology.

The provisions of this article shall not apply if the images or representations have been compiled for the purposes of ascertaining that a criminal offence has been committed, or investigating or prosecuting a criminal offence.

Article 294-4.- (Created by Act No. 1.344 of 26 December 2007)

Where images or representations provided for under this article have been brought to their attention in the course of their professional activities, service operators or providers responsible for exploiting telecommunications and electronic communications networks and services, or agents thereof, shall take the necessary steps to block public access to such images and to make them available to the judicial authority, for the purposes of investigation, ascertaining that a criminal offence has been committed and prosecution.

Failure to take the steps set forth in the preceding paragraph shall be punishable by 1 year's imprisonment and the fine provided for under article 26 (4), without prejudice to the penalties incurred by perpetrators, co-perpetrators or accomplices involved in the offences referred to in paragraphs 1 to 5 of this article.

Article 294-7.- (Created by Act No. 1.344 of 26 December 2007)

The act of either making, producing, conveying or disseminating, by any means and through any medium, a message that is violent or pornographic or likely to constitute a grave affront to human dignity, or of engaging in business concerning such a message, is punishable by a term of imprisonment of 6 months to 2 years and the fine prescribed in article 26 (3), where the message is targeted at minors. Any attempt to commit such an offence carries the same penalties.

Article 294-4.- (Created by Act No. 1.344 of 26 December 2007)

Where images or representations provided for under this article have been brought to their attention in the course of their professional activities, service operators or providers responsible for exploiting telecommunications and electronic communications networks and services, or agents thereof, shall take the necessary steps to block public access to such images and to make them available to the judicial authority, for the purposes of investigation, evaluation and prosecution.

Failure to take the steps set forth in the preceding paragraph shall be punishable by 1 year's imprisonment and the fine provided for under article 26 (4), without prejudice to the penalties incurred by perpetrators, co-perpetrators or accomplices involved in the offences referred to in paragraphs 1 to 5 of this article."

178. Lastly, the criminal provisions of the 2005 Act on freedom of expression shall also apply:

“Article 15.- Persons who, through speeches, calls or threats made in public places or at public gatherings, or through written works, printed matter, drawings, engravings, paintings, symbols, images or any other written, oral or visual medium that is sold, distributed or exhibited in public places or gatherings, or through publicly exhibited posters or notices, or through any method of audiovisual communication, have directly incited to commit an act classified as a serious crime or serious offence, shall be punished as accessories to the act, if the incitement has had effect.

This provision shall also apply where the incitement resulted only in an attempt, as provided under article 2 of the Criminal Code.

Article 16.- Any person who, by one of the methods listed in the preceding article, directly, but without effect, incites another person to commit one of the offences listed below shall be sentenced to 5 years’ imprisonment and to pay the fine provided for under article 26 (4) of the Criminal Code or to only one of those penalties:

- (1) Deliberate attempts to kill or harm another person and sexual assault;
- (2) Theft, extortion and deliberate actions resulting in the destruction, damage or deterioration of property that poses a threat to others;
- (3) Acts of terrorism or justification of such acts.

Any person, who, by any of the means listed in article 15, incites hatred or violence towards an individual or group on account of their origin, membership or non-membership of a particular ethnic group, nation, race or religion, or on account of their real or supposed sexual orientation, shall be liable to the same penalties. Where a conviction is handed down for any of the acts listed in the preceding paragraph, an order may also be given to post or disseminate all or part of the decision, or in the form of a statement, at the expense of the convicted person. The decision thus posted or disseminated may only include the name of the victim with the victim’s consent or that of his or her legal representative or beneficiaries

179. The sports bill is currently under consideration, along with measures to combat expressions of intolerance at sporting events.

180. In 2003, the Principality of Monaco ratified the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches.

Please provide information on measures taken to ensure that articles 58 and 60 of the Criminal Code, which prohibit public denunciations of the ruling family are punishable by a term of 6 months’ to 5 years’ imprisonment, comply with the provisions of the Covenant, in the light of general comment No. 34 (2011) on article 19: freedoms of opinion and expression.

181. Given that the grounds and justification for the above-mentioned penalties remain relevant, the Government of the Principality has no plans to amend the provisions in question.

182. However, freedom of opinion is enshrined in article 23 of the Constitution.

183. The penalty for denouncing the Royal family is generally proportionate to the offence. Judges impose symbolic penalties (usually fines), ensuring that this provision is applied in line with the freedoms of opinion and expression.
