

## **Concluding observations on the third periodic report of Kazakhstan (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)**

### ***Unofficial translation***

Concluding observations of the Committee against Torture of 12 December 2014

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1. The Committee against Torture considered the third periodic report of Kazakhstan (CAT/C/KAZ/3) at its 1270th and 1273rd meetings, held on 17 and 18 November 2014 (CAT/C/SR.1270 and CAT/C/SR.1273), and adopted the following concluding observations at its 1286th and 1287th meetings (CAT/C/SR.1286 and CAT/C/SR.1287) held on 27 November 2014.

### **A. Introduction**

2. The Committee thanks the State party for submitting its third periodic report. The Committee appreciates the quality of its dialogue with the State party's large high-level multisectoral delegation and the responses provided orally and in writing to the questions and concerns raised during the consideration of the report.

### **B. Positive aspects**

3. The Committee welcomes the State party's accession to and ratification of the following international and regional instruments:

(a) International Convention for the Protection of All Persons from Enforced Disappearance, on 27 February 2009;

(b) First Optional Protocol to the International Covenant on Civil and Political Rights, on 30 June 2009.

4. The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including the adoption of:

(a) Supreme Court Regulatory Decision No. 7 on the application of the norms of criminal law and criminal procedural law concerning respect for individual liberty and the inviolability of human dignity and prevention of torture, violence and other cruel or degrading treatment or punishment, on 28 December 2009;

(b) Law of the Republic of Kazakhstan on Refugees (the Refugee Law), on 4 December 2009;

(c) Law on Prevention of Domestic Violence, on 4 December 2009;

(d) Adoption of the Law Enforcement Service Act, which requires temporary suspension from duty of persons accused under article 159 of the Code of Criminal Procedure, on 6 January 2011;

(e) Amendments to the Criminal Code (art. 141 para. 1, “Offences against constitutional and other human and civil rights and freedoms”) to increase the criminal sanctions for the use of torture, on 18 January 2011;

(f) Law on the National Preventive Mechanism, on 2 July 2013.

5. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including the adoption of:

(a) Joint Order No. 30 of the Ministry of Justice, No. 56 of the Ministry of Health, No. 41 of the Ministry of Internal Affairs, No. 15 of the Chairperson of the National Security committee, on mandatory participation of forensic medical specialists in the medical examination of persons, in January and February 2010;

(b) Order No. 7 of the Procurator General approving the instructions on the verification of reports of the use of torture or other unlawful methods and prevention of such practices, on 1 February 2010, which regulates the initial period of custody;

(c) Joint Order No. 31 of the Ministry of Justice, No. 10 of the Procurator General, No. 46 of the Ministry of Internal Affairs, No. 16 of the Chairperson of the National Security Committee and No. 13 of the Chairperson of the Economic Crimes and Corruption Agency, on cooperation in the verification of complaints and criminal prosecution of cases involving unlawful investigation methods, in February 2010;

(d) Order No. 9 of the Procurator General containing regulations on duty procurators at police stations, on 30 January 2012;

(e) Plan of Action for 2010–2012 on the implementation of recommendations of the Committee against Torture, on 4 February 2010;

(f) National Plan of Action on Human Rights for the period 2009–2012;

(g) National Concept of Legal Policy of the State for 2010–2020;

(h) Programme for the Development of the Penal Correction System for 2012–2015;

(i) Plan of action to combat and prevent offences involving trafficking in persons for 2012–2014, on 24 October 2012.

6. The Committee welcomes the amendments made in July 2014 to the Criminal Code, the Code of Criminal Procedure, the Penitentiary Code and the Code of Administrative Offences, which will enter into force on 1 January 2015.

### **C. Principal subjects of concern and recommendations**

#### **Torture and ill-treatment on the premises of criminal prosecution bodies**

7. While welcoming the measures taken by the State party aimed at strengthening laws and policies concerning its protection of human rights and prevention of torture and ill-treatment, described above, the Committee remains concerned at reports that those laws and policies are inconsistently implemented in practice. The Committee is particularly concerned about persistent allegations of torture and ill-treatment committed by law enforcement officials, including the threat of sexual abuse and rape, in temporary detention isolation facilities (IVSs) and remand centres (SIZOs) under the jurisdiction of the Ministry of Internal Affairs and the National Security Committee for the purpose of extracting “voluntary confessions” or information to be used as evidence in criminal proceedings (art. 2).

**The State party should take effective measures to fully implement its legislation in practice, particularly to:**

**(a) Apply its declared policy of zero tolerance of torture and cruel, inhuman or degrading treatment or punishment by publicly and unambiguously condemning torture in all its forms, directing the policy especially at police, accompanied with a clear warning that any person committing such acts or otherwise complicit or participating in torture or other ill-treatment will be held responsible before the law for such acts and subject to penalties proportional with the gravity of the crime;**

**(b) Amend the Code of Criminal Procedure to provide for mandatory video recording of interrogations and equip all places of deprivation of liberty with video and audio-recording devices;**

**(c) Conduct effective criminal investigations into all allegations of torture and provide investigators with adequate resources to carry out their mandate.**

#### **Effective investigation of allegations and prosecution of perpetrators of torture and ill-treatment**

8. While welcoming the creation of the Office of the Special Prosecutor with responsibility for overseeing investigations into allegations of torture and ill-treatment, including sexual violence, by State officials, the Committee is concerned at reports that most allegations of torture and ill-treatment continue to be referred for preliminary investigation to the same department as that in which the persons accused of torture are employed. The Committee is further concerned that allegations of torture and ill-treatment received from persons deprived of their liberty by members of the State party’s Public Monitoring Committees and the National Preventive Mechanism are reported back to the authorities with responsibility for the place of detention rather than to an independent investigating authority, with the result that individuals who complain of torture are made vulnerable to reprisals. The Committee is also concerned at the data based on official sources revealing that less than 2 per cent of the complaints of torture received by the State have led to prosecutions (arts. 12 and 13).

**The State party should:**

**(a) Establish an effective, fully resourced, independent and accountable body that is able to carry out prompt, impartial, thorough and effective investigations, including preliminary investigations, into all allegations of torture and ill-treatment, ensuring that such investigations are never undertaken by personnel employed by the same ministry as the accused persons;**

**(b) Ensure that such an independent body is also empowered to receive and act on complaints of alleged torture and ill-treatment by law enforcement officials, including complaints of sexual violence; ensure that persons deprived of their liberty are able to transmit confidential complaints to such bodies; and ensure that this body is able to protect effectively complainants from reprisal;**

**(c) Provide the Committee with information on the number of complaints of torture made by persons deprived of their liberty, the number of claims of acts of torture and ill-treatment that have been investigated and by which body (bodies); the number of persons prosecuted and under what charges; and the penalties applied for those found guilty.**

#### **Accountability for acts of torture**

9. While noting that acts of torture are outlawed by article 347-1 and 141-1 of the Criminal Code (art. 145 of the revised Criminal Code that will enter into force in 2015), the Committee is concerned that law enforcement officials accused of committing acts amounting to torture are frequently prosecuted under articles 307 and 308 of the Criminal Code (arts. 361 and 362 of the revised Criminal Code) for “abuse of official power” and “excess of authority or official powers”, which carry penalties of up to five years and for violations of article 107 of the Criminal Code which outlaws “the infliction of physical or psychological suffering through systematic beatings or other violent actions” and which mentions the use of torture as an aggravating circumstance. The Committee is also concerned at the low number of persons convicted for having committed acts of torture. The Committee is further concerned at reports of cases in which individuals convicted of torture under the Criminal Code have nevertheless received extremely lenient sentences such as conditional sentences and probation (arts. 2 and 4).

**The State party should ensure that all persons accused of acts amounting to torture as defined by the Convention are prosecuted for the crime of torture under articles 347-1 and 141-1 of the Criminal Code (article 145 of the revised Criminal Code that will enter into force in 2015) rather than for offences of lesser severity. The State party should ensure that those convicted are punished with appropriate penalties that are commensurate to the gravity of the crime of torture, as set out in article 4, paragraph 2, of the Convention.**

**Transfer of detention authority to the  
Ministry of Justice**

10. The Committee is gravely concerned that, despite its previous recommendation to the State party to complete the process of transferring control of all detention and investigation facilities from the Ministry of Internal Affairs to the Ministry of Justice, in 2011 the State party instead transferred authority over the penal correction system back to the Ministry of Internal Affairs. The Committee regrets that the State party's delegation indicated at the review its intention to maintain that arrangement. The Committee reiterates its concern that when places of detention are controlled by the same government ministry with responsibility for the police and internal security, that arrangement creates an incentive for the investigating authorities to seek to use detention as a tool of the investigative process or a means to compel prisoners to confess to the charges against them and thus amplifies the risk of torture and ill-treatment in such places of detention (arts. 2 and 11).

**The Committee reiterates that the State party should transfer authority for all detention and investigation facilities, including prisons, temporary holding facilities (IVSs) and remand centres (SIZOs) away from the Ministry of Internal Affairs. That step would be consistent with international standards and would reduce incentives for officials at such places of detention to commit torture and ill-treatment.**

#### **Events in Zhanaozen in December 2011**

11. The Committee is gravely concerned at reports that the State party did not effectively investigate allegations that officials committed torture and ill-treatment during interrogations of individuals detained in connection with violence in the context of protests in Zhanaozen on 16 December 2011. The Committee is particularly concerned at reports that most of the 37 defendants prosecuted in March 2012 in connection with the violence retracted their confessions at the trials, as did at least 10 witnesses, claiming that their confessions had been obtained through torture and ill-treatment while they were held incommunicado by the police. Nevertheless, those complaints of torture did not result in any prosecutions. The Committee reiterates its concerns at allegations by Rosa Tuletaeva who alleged that she was tortured by the police by being suffocated with plastic bags and hung by her hair. The Committee also reiterates its concern at the State party's failure to prosecute the individuals directly responsible for torturing Bazarbai Kenzhebaev, a bystander who died two days after being released from police custody following beatings in police interrogation; only one individual was prosecuted in connection with his death, for "allowing illegal detention and not arranging timely hospitalization". The Committee notes the 2012 assessment by the former United Nations High Commissioner for Human Rights that those allegations of torture and forced confessions "do not seem to have been properly investigated", leading to broader concerns about the fairness of the trials (arts. 2, 4 and 12–16).

**The Committee recalls the absolute prohibition of torture contained in article 2, paragraph 2, of the Convention, stating that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be**

invoked as a justification of torture”. The Committee also draws the attention of the State party to paragraph 5 of its general comment No. 2 (2007) on implementation of article 2 by States parties, which states that those “exceptional circumstances” include “any threat of terrorist acts or violent crime as well as armed conflict, international or non-international”. In the light of the above, the State party should:

(a) Document and undertake prompt, thorough and impartial investigations into all allegations of torture or other ill-treatment during the events in Zhanaozen;

(b) Authorize an independent international investigation into the events, their causes and their aftermath, as proposed by the former High Commissioner for Human Rights during her visit to the State party in 2012;

(c) Ensure that alleged perpetrators are duly prosecuted, including persons in position of command and, if found guilty, are punished with penalties commensurate with the seriousness of the crime, in accordance with article 4 of the Convention, including the individuals responsible for torturing and causing the death of Bazarbai Kenzhebaev;

(d) Re-examine the convictions of persons who claim to have been forced to confess as a result of torture and ill-treatment in order to verify that there is no violation of the Convention ;

(e) Provide redress and rehabilitation to the victims of torture and ill-treatment, in accordance with the Committee’s general comment No. 3 (2012) on the implementation of article 14 of the Convention by State parties.

### **Fundamental legal safeguards**

12. The Committee is concerned at reports that, in practice, detained persons do not enjoy all the fundamental legal safeguards against torture and ill-treatment provided for in the State party’s laws from the very outset of deprivation of liberty, such as the right of a detained person to be informed of his or her rights; the right to meet promptly and privately with a lawyer of his or her choice or to receive the services of a legal aid attorney; and the right to inform a relative or person of their choice of his or her detention and whereabouts. While the State party requires law enforcement officials to register detainees promptly and to hand them over to investigators within three hours of depriving them of liberty, the Committee has received numerous reports that State officials do not adhere to those regulations in practice. The Committee is further concerned at numerous reports that individuals deprived of their liberty are improperly denied access to a lawyer and contact with their family members in the period of time between the moment of their deprivation of liberty and the point of registration . The Committee regrets that it did not receive information requested from the State party on disciplinary sanctions made in cases where those safeguards were not observed. It is also concerned that the State party’s law does not provide for some of the essential fundamental safeguards, for example, persons deprived of their liberty do not have the right to be examined by an independent doctor, and the State party has not yet ensured the right of a

detained person or his or her representative to petition a court to review the lawfulness of detention through a habeas corpus procedure (arts. 2, 12, 13 and 16).

**The State party should take effective measures to guarantee that all detained persons are afforded, by law and in practice, all fundamental legal safeguards against torture and ill-treatment from the very outset of deprivation of liberty, in particular to:**

**(a) Ensure that officials register the exact date, time and place of detention of all persons deprived of their liberty, and particularly that the time of de facto apprehension is accurately recorded to ensure that the first unrecorded hours of unacknowledged detention between the arrest and delivery to a police station cannot be used by law enforcement officials to obtain confessions by means of torture;**

**(b) Ensure officials' compliance with that requirement and subject the administration of the system to rigorous monitoring, with the application of sanctions for falsification;**

**(c) Ensure that officials respect the three-hour maximum delay for the first stage of deprivation of liberty between de facto arrest and the handing over of the detained person to the investigator;**

**(d) Ensure that all persons deprived of their liberty have the right to effectively and expeditiously challenge the lawfulness of their detention through a habeas corpus procedure and that the authorities are required to bring the petitioner before a judge in person in every such case;**

**(e) Ensure that all persons deprived of their liberty are informed of their rights, including the right to a legal aid lawyer, immediately upon deprivation of liberty;**

**(f) Ensure that persons deprived of their liberty are able to contact a relative or other person of their choice promptly after deprivation of liberty in practice; ensure that any official that fails to allow notification of relatives promptly is disciplined or sanctioned;**

**(g) Ensure in law and practice that persons deprived of their liberty are able to request and receive independent medical assessments promptly following arrest.**

#### **Human Rights Commissioner (Ombudsman) and the National Preventive Mechanism**

13. While welcoming the State party's designation of the Human Rights Commissioner (Ombudsman) as the National Preventive Mechanism under the Optional Protocol to the Convention within the "Ombudsman plus" formula, the Committee is concerned that the National Preventive Mechanism has not been able to undertake ad hoc visits owing to bureaucratic constraints. The Committee is also concerned that the National Preventive Mechanism's mandate does not provide for visits to all places of deprivation of liberty, such as offices of police departments and of the National Security Service, orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes and military barracks. It is concerned that the findings and recommendations of the National Preventive Mechanism will only be made public in the form of an annual report that

is subject to prior review and approval by the President. Recalling its previous concluding observations (CAT/C/KAZ/CO/2, para. 23) adopted in November 2008, the Committee is concerned at continued reports regarding the limited competence and lack of independence of the Office of the Human Rights Commissioner (Ombudsman) (art. 2).

**The State party should ensure the independence of the Office of the Human Rights Commissioner (Ombudsman) by establishing it through a constitutional or legal text, and should broaden its mandate to enable it to function effectively in all parts of the country in its expanded role as both the national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and as the national preventive mechanism in compliance with the Optional Protocol to the Convention. The mandate of the National Preventive Mechanism should be broadened to include monitoring of all places of deprivation of liberty, such as offices of police departments and of the National Security Service, orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes and military barracks, and examining the conditions and treatment of children in penitentiary and non-penitentiary institutions. Measures should be taken to improve the ability of the mechanism to carry out urgent and unannounced visits to places of detention upon its request. The State party should consider authorizing the mechanism to publicize its findings and recommendations shortly after undertaking visits rather than only on an annual basis and to ensure that the mechanism's members and the public can assess whether their recommendations have been acted upon. The annual and other reports of the mechanism should not be subject to review and approval by the President before publication.**

#### **Monitoring of places of detention**

14. The Committee welcomes the State party's continued support for the work of 14 Public Monitoring Committees with 101 members from a diverse group of non-governmental organizations and the information received that such committees carried out hundreds of visits to places of detention annually. The Committee is concerned at reports that Public Monitoring Committees have encountered obstacles to access that prevent them from carrying out their work owing to their limited mandate, their ability to hold private meetings and that they are not permitted to make unannounced visits.

**The State party should legally empower members of Public Monitoring Commissions to speak privately with individuals in the detention facilities that they visit to inquire about whether they have experienced torture or ill-treatment and to ensure, in practice, that detainees and prisoners are not subject to reprisals following any communication by them with members of the Public Monitoring Committees.**

**The State should empower the Public Monitoring Committees to undertake unannounced visits to places of detention, hold private meetings and publicize their findings so that the**



**results of monitoring are known and officials can be held accountable for addressing the concerns that they raise.**

### **Administration of justice**

15. While taking note of the State party's assertion that the bases of the administration of criminal justice are "adversariality" and "equality of parties", and that "the issue of permitting defence counsel to collect evidence" is currently being considered, the Committee is concerned at the reported lack of balance between the respective roles of the procurator, the defence counsel and judges. The Committee is particularly concerned about the dominant role of the procurator throughout judicial proceedings and the lack of power of defence lawyers to collect and present evidence, which reportedly results in court decisions relying disproportionately on evidence presented by the prosecution, an allegation that the Committee previously raised in the context of the trial of human rights defender Evgeniy Zhovtis. It is also concerned at reports of cases in which defendants were not permitted to attend appeal proceedings in person and that investigators can handpick State-appointed defence lawyers, which serves as a disincentive for those lawyers to defend their clients. The Committee remains concerned at reports that there is a lack of judicial control over the actions of prosecutors and that judges are overly deferential to prosecutors owing to their lack of independence from the executive branch (arts. 2 and 10).

**The State party should undertake structural reform of the system of administration of justice with a view to balancing in practice and ensuring equality of arms between the respective roles of the procurator and the defence counsel in judicial proceedings and ensuring the independence of the judiciary. The State party should reform the system of prosecution and subject procurators to greater oversight by judges. Defence lawyers should be allowed to collect and present evidence from the outset of judicial proceedings and to call defence witnesses, and should have prompt, effective and unimpeded access to all evidence in the hands of the prosecution.**

### **Non-refoulement**

16. While noting the adoption of the Refugee Law, the Committee is concerned that current procedures and practices on expulsion, refoulement and extradition, including the acceptance of diplomatic assurances, may not be in conformity with the State party's obligations under article 3 of the Convention. The Committee is concerned that asylum applications by Syrian and Ukrainian nationals are routinely rejected and that individuals continue to be extradited under bilateral or multilateral extradition agreements and international and regional instruments such as the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and the Shanghai Convention on Combating Terrorism, Separatism and Extremism. It is also concerned that asylum seekers and refugees

from Uzbekistan and China are particularly vulnerable to expulsion, return and extradition. The Committee notes reports that it has received concerning instances in which asylum seekers registered with the Migration Police Department were forcibly returned to their countries of origin before the decisions on their asylum claims and before decisions on appeals of rejected asylum claims had been issued. The Committee is also concerned at the State party's admission that it solicits and relies on diplomatic assurances from Governments that individuals returned to their custody will not be subjected to torture or ill-treatment, as in the case of the 28 asylum seekers returned by the State party to Uzbekistan in 2012 pursuant to diplomatic assurances, and whom the Committee decided should be returned to Kazakhstan and provided with redress (art. 3).

**The State party should:**

**(a) Take all the necessary measures to ensure the effective implementation of the principle of non-refoulement, inter alia by bringing its legislation, procedures and practices into line with article 3 of the Convention;**

**(b) Ensure the equal treatment of all asylum seekers and refugees without discrimination and introduce complementary protection status for persons who are not formally recognized as refugees;**

**(c) Ensure that adequate judicial mechanisms exist for the review of decisions and provide sufficient legal defence and guarantees for persons subject to extradition or return, establish administrative and judicial guidelines and criteria for determining the risk of torture and allow such persons to lodge an effective appeal with suspensive effect on the extradition or return;**

**(d) Ensure that no person is expelled, extradited or returned to a country where there are substantial grounds to believe that he/she would be in danger of being persecuted or subjected to torture and other ill-treatment;**

**(e) Ensure effective post-return monitoring arrangements concerning persons who have been expelled, extradited or returned from the State party;**

**(f) Refrain from the use of and reliance on diplomatic assurances, which should not be used to alter the absolute prohibition of non-refoulement;**

**(g) Implement the decision of the Committee in cases in which it has found the State party to be in violation of its obligations under article 3 of the Convention, including case No. 444/2010 (Toirjon Abdussamatov et al. v. Kazakhstan) by securing the return of the complainants to Kazakhstan and providing redress, including adequate compensation, for torture or ill-treatment resulting from their return to Uzbekistan.**

**Conditions of detention**

17. While welcoming the reduction in the number of detained persons as a result of decriminalization of certain acts, release on parole, amnesties, presidential pardons and resort to non-custodial penalties, the Committee is concerned about the high number of persons in detention facilities. It is also concerned at the dilapidated infrastructure and poor material

conditions in a number of remand facilities and penal correctional institutions which are not in conformity with international standards, such as poor quality and quantity of nutrition and inadequate health care, in particular regarding inmates with serious illnesses and infectious diseases such as tuberculosis and HIV/AIDS and their high mortality rate. The Committee is further concerned at reports that persons in detention have been held in solitary confinement for long periods and denied necessary medical care in retaliation for engaging in expression of opinions that are protected by human rights law. The Committee particularly reiterates its concern at reports that Aron Atabek has been held in solitary confinement and denied needed medical care (arts. 2, 11–13 and 16).

**The State party should:**

**(a) Improve the material conditions of detention in conformity with the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners, including by providing adequate quality and quantity of nutrition; ensuring living space in accordance with existing international norms; renovating existing prison facilities, building new ones and closing those unfit for use; and, in particular, closing without delay the basement and semi-underground temporary holding facilities;**

**(b) Provide appropriate and effective medical care of prisoners and detained persons, including adequate medicines and examination by independent doctors, as well as prompt referral to specialist treatment for persons with serious illnesses and infectious diseases such as tuberculosis and HIV/AIDS, and establish special facilities for the care of such patients;**

**(c) Transfer the administration of health care in temporary holding facilities and the penal correctional system to the Ministry of Health;**

**(d) Establish an independent mechanism to receive the complaints of inmates about their conditions of detention, ensure the confidentiality of complaints placed in prison letterboxes and provide effective follow-up to such complaints for the purpose of remedial action and ensure that inmates who file complaints are not subjected to reprisals;**

**(e) Ensure that independent monitoring bodies referred to in paragraph 13 above regularly monitor, have access to and visit all places of detention;**

**(f) Boost the use of alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

**(g) Undertake an independent review of the conditions of confinement in which Aron Atabek is being held and ensure that no person is subjected to solitary confinement or denied necessary medical care for exercising the right to freedom of expression.**

**Inter-prisoner violence and self-mutilation**

18. The Committee is concerned at reports that the penitentiary system is conceived in a punitive way, not with the aim of the rehabilitation and reintegration of offenders and that it is run in a military manner, with the use of troops from the Ministry of Internal Affairs wearing masks and shields to maintain security. It is also concerned at the incidence of inter-prisoner

violence in the penal correctional system and is alarmed at reports of the existence of a hierarchy among prisoners whereby convicts pressure fellow inmates, including through the use of rape, with the consent and sometimes active approval and solicitation of prison administrations, which results in violence and discrimination. It is concerned that, in addition to physical abuse, inmates are threatened with additional criminal charges which would prolong their prison terms. The Committee is gravely concerned at incidents of self-mutilation by prisoners in order to draw public attention to their treatment. It is also concerned at the number of deaths in custody, including suicides (arts. 2, 11–13 and 16).

**The State party should take measures to:**

**(a) Reform the penal correctional system with the general aim of rehabilitation and reintegration of offenders and de-militarize the way it is managed;**

**(b) Issue a clear warning that any person committing acts of violence or intimidation or who is otherwise complicit or participating in them will be held responsible before the law for such acts and subject to penalties proportional with the gravity of the crime;**

**(c) Enhance steps to reduce inter-prisoner violence, including that resulting from the active approval and solicitation of prison officials, by launching prompt, impartial, thorough and effective investigations into all allegations of such incidents, and prosecute and punish those responsible;**

**(d) Establish an independent mechanism to deal freely and independently with any complaints of inmates about their treatment and conditions of detention, provide effective follow-up to such complaints for the purpose of remedial action and ensure that inmates who file complaints are not subjected to reprisals. Ensure that if any cases of reprisals arise, an investigation will be launched, the victims provided with protection and the perpetrators sanctioned;**

**(e) Reduce overcrowding, improve prison management and the prisoner/staff ratio, train prison staff and medical personnel on communication with and managing of inmates and on detecting signs of vulnerability and strengthen the monitoring and management of vulnerable prisoners;**

**(f) Ensure that all cases of deaths in custody are investigated promptly, thoroughly, effectively and impartially and that persons suspected of having committed acts of torture, physical or psychological ill-treatment and wilful negligence are prosecuted and, if found guilty, punished in accordance with the gravity of their acts; allow independent forensic examinations of all cases of death in custody, permit family members of the deceased to commission independent autopsies and ensure that their results are accepted by the State party's courts as evidence in criminal and civil cases;**

**(g) Recalling the decision of the Constitutional Council, consider self-mutilation as a form of self-expression and protected speech and not as a punishable offence so that it is de-criminalized under both the current Criminal Code (art. 360, part 3) and the new Criminal Code (art. 428).**

## **Forced psychiatric detention of human rights defenders**

19. The Committee is gravely concerned at the reports of a number of cases of forced psychiatric detention of human rights defenders. Notwithstanding the clarifications presented by the representatives of the State party, it continues to be concerned about the forced hospitalization of Zinaida Mukhortova against her will at the Balkhash psychiatric clinic, and at reports alleging that Ms. Mukhortova's detention was ordered as a reprisal for her human rights activities. The Committee notes the appeal with regard to her case by seven United Nations special procedure mandate holders who expressed concern that the allegation of forced confinement might be related to her human rights work, and that the issue was raised in the context of the universal periodic review of the Human Rights Council (arts. 2, 11–13 and 16).

**The State party should establish close supervision and monitoring by judicial organs of any placement in institutions of persons with intellectual or psychosocial disabilities, with appropriate legal safeguards and visits by independent monitoring bodies. Institutionalization and treatment should be clearly defined in law, based on free and informed consent and determination by qualified health-care professionals. The Committee urges the State party to ensure a prompt and independent investigation by a recognized impartial expert representative of an international organization, such as the World Health Organization, into allegations that the forcible detention of Zinaida Mukhortova at the Balkhash psychiatric clinic was unjustified. The Committee requests that it be informed of the results through its secretariat as soon as they are available.**

## **Domestic violence**

20. While welcoming the adoption of the Law on Domestic Violence in 2009, the Committee is concerned at the continued prevalence of violence against women, in particular domestic violence, the low number of investigations into cases of domestic violence, the absence of a definition of rape in criminal legislation, lack of data collection and the fact that most shelters for victims of domestic violence are run by non-governmental organizations (arts. 2, 12–14 and 16).

**The State party should:**

**(a) Strengthen efforts to prevent and combat violence against women, and in particular domestic violence, and ensure the effective implementation of legislation on domestic violence in practice;**

**(b) Facilitate and ensure that complaints from victims are promptly, thoroughly and impartially investigated, that perpetrators are prosecuted and, if found guilty, punished with appropriate and effective penalties;**

- (c) Ensure that victims of domestic violence benefit from protection and effective remedies, including access to medical and legal services, psychosocial counselling, redress — including rehabilitation — and safe and adequately funded shelters in all parts of the country;**
- (d) Ensure that law enforcement and judicial authorities and medical and social workers are provided with appropriate training to deal with cases of domestic violence;**
- (e) Enhance awareness-raising efforts in order to sensitize members of the general public;**
- (f) Compile and provide the Committee with disaggregated data on the number and nature of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts.**

### **Trafficking in persons**

21. The Committee welcomes the progress in combating trafficking in persons made by the State party by amending its legislation in a variety of ways. It also welcomes the adoption of the plan of action to combat and prevent offences involving trafficking in persons for 2012–2014. However, the Committee is concerned at continuing reports of trafficking, in particular within the State party, for labour and sexual exploitation. It is also concerned that only a small fraction of criminal cases on trafficking are opened under article 128 of the Criminal Code, entitled “Human Trafficking”, and that many cases are charged under crimes carrying less serious punishments. In addition, the Committee is concerned by the alleged low rate of reporting and the low rate of indictments and prosecutions, as well as claims of corruption among law enforcement officials (arts. 2, 10, 12, 13 and 16).

#### **The State party should:**

- (a) Continue taking measures to prevent and eradicate human trafficking, including vigorous enforcement of anti-trafficking legislation, and provide sufficient funds for the implementation of the plan of action;**
- (b) Enhance international cooperation to combat human trafficking, including through bilateral agreements, and monitor its impact;**
- (c) Provide specialized training to public officials, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and on effective prevention, investigation, prosecution and punishment of acts of trafficking, and conduct nationwide awareness-raising and media campaigns about the criminal nature of such acts;**
- (d) Promptly, effectively and impartially investigate, prosecute and punish trafficking in persons and related practices;**
- (e) Provide effective remedy to all victims of the crime of trafficking;**
- (f) Provide the Committee with comprehensive disaggregated data on the number of investigations, prosecutions and sentences handed down for human trafficking, on the**

**provision of redress to the victims and on measures taken to combat alleged corruption among law enforcement officials.**

#### **Redress, including compensation and rehabilitation**

22. The Committee welcomes the ruling of the city court in Kostanai in November 2013, upheld by the Court of Appeals in January 2014 and confirmed on 24 April 2014 by the Supreme Court, to implement the Committee's decision taken in May 2012 regarding compensation for acts of torture to Aleksandr Gerasimov. The Committee is concerned, however, that the new Code of Criminal Procedure does not explicitly make victims of torture or ill-treatment eligible for fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention (art. 14).

##### **The State party should:**

**(a) Amend its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention. It should, in practice, provide all victims of torture or ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible, and should allocate the necessary resources for the effective implementation of rehabilitation programmes;**

**(b) Ensure comprehensive follow-up and institutionalize the implementation of decisions on individual communications adopted by the United Nations treaty bodies under treaties to which it is a party.**

The Committee draws the attention of the State party to its general comment No. 3, which clarifies the content and scope of the obligations of States parties to provide full redress to victims of torture.

#### **Statements made as a result of torture**

23. While noting that domestic legislation provides for the inadmissibility of evidence obtained through torture or cruel, inhuman or degrading treatment, or the threat of such treatment in criminal proceedings, the Committee is concerned at the persistent allegations of methods of criminal investigation whereby confessions obtained as a result of torture and ill-treatment are relied on as the principal element of proof in criminal prosecution, in some cases in the absence of any other evidence of violations (arts. 2, 15 and 16).

##### **The State party should:**

**(a) Bring domestic legislation and practice fully into line with international standards and in particular the provisions of article 15 of the Convention;**

**(b) Take the steps necessary to ensure in practice that any information or confessions obtained as a result of torture and ill-treatment are not admissible in court in all cases and**

may not be used as evidence in any proceedings except those brought against the alleged perpetrators;

(c) Improve the methods of criminal investigation to end practices whereby confession obtained as a result of torture and ill-treatment is relied on as proof in criminal prosecution;

(d) Submit information on the application of the provisions prohibiting the admissibility of evidence obtained under duress and on whether any officials have been prosecuted and punished in cases of violation or threat thereof.

### **Definition of torture**

24. While noting that the definition of torture in the Criminal Code has been extended to bring it into greater compliance with article 1 of the Convention, the Committee is concerned that it does not cover acts of torture committed by any “other person acting in an official capacity”, which may create loopholes for impunity, as outlined in general comment No. 2. The Committee reiterates its concern that the definition of torture in the Criminal Code continues to exclude physical and mental suffering caused as a result of “legitimate acts” on the part of officials (arts. 1, 2 and 4).

**The Committee reiterates its recommendation that State party should amend its legislation to include a definition of torture in the Criminal Code that is in full conformity with the Convention and covers all the elements contained in article 1, in order to ensure that all public officials or any other person acting in an official capacity can be prosecuted for acts of torture . The State party should ensure that only pain or suffering arising from, inherent in or incidental to lawful sanctions are excluded from the definition, and should remove the reference to “legitimate acts” in that context.**

### **Hazing and ill-treatment in the Army**

25. The Committee is concerned at reports of the continued prevalence of hazing in the Armed Forces, some of which has resulted in deaths (arts. 2 and 16).

**The State party should:**

(a) Reinforce measures to prohibit and eliminate ill-treatment in the Armed Forces and ensure prompt, impartial and thorough investigation of all allegations of such acts; establish the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed, make the results of such investigations public and provide the Committee with information on the follow-up to the confirmed cases of hazing in the Army;

(b) Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with general comment No. 3.

### **Training**



26. While taking note of the human rights training programmes provided to public officials, the Committee is concerned at the alleged high prevalence of torture and ill-treatment committed by law enforcement officials and prison staff. It is also concerned at the absence of specific methodologies to evaluate the effectiveness and impact of human rights training currently provided to public officials on the number of cases of torture and ill-treatment. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) is not provided to all medical professionals dealing with persons deprived of liberty and asylum seekers (art. 10).

**The State party should:**

**(a) Further develop and strengthen human rights training programmes to ensure that all public officials, including law enforcement, prison and immigration officers, as well as prosecutors, judges and lawyers, are aware of the absolute prohibition of torture and receive training on the provisions of the Convention;**

**(b) Provide training on the Istanbul Protocol for medical personnel and other officials involved in dealing with detainees and asylum seekers in the investigation and documentation of cases of torture;**

**(c) Develop methodologies to assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture and ill-treatment.**

**Data collection**

27. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security and prison personnel, including in detention facilities.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, including in detention facilities, as well as on means of redress, including compensation and rehabilitation, provided to the victims.

**Other issues**

28. The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Convention relating to the Status of Stateless Persons, the Convention on the Reduction of

Statelessness, the Convention against Discrimination in Education and the Rome Statute of the International Criminal Court.

29. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages through official websites, the media and non-governmental organizations.

30. The Committee requests the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations relating to: (a) the effective investigation of allegations of torture; (b) transfer of detention authority to the Ministry of Justice; (c) the Human Rights Commissioner (Ombudsman) and National Preventive Mechanism; and (d) the administration of justice, as contained in paragraphs 8, 10, 13 and 15, respectively, of the present document.

31. The State party is invited to submit its next report, which will be the fourth periodic report, by 28 November 2018. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting.