



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Kazakhstan under article 29 (1) of the Convention*

I. General information

1. Please indicate whether the State party plans to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications.
2. Taking into consideration article 4 of the Constitution, please provide examples of case law, if available, in which any of the provisions of the Convention have been invoked before or applied by courts or other relevant authorities.
3. Please provide information about activities carried out by the Commissioner for Human Rights in relation to the Convention, including specific examples. Please also indicate whether the Commissioner has received any complaints concerning the rights and obligations contained in the Convention and, if so, please provide information about the action he or she has taken and the results thereof. Please also provide information on measures taken to bring the office of the Commissioner into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

II. Definition and criminalization of enforced disappearance (arts. 1-7)

4. Please indicate whether, during a state of war or a threat of war, internal political instability or any other public emergency, the national legal framework provides for the possibility of derogating from any of the rights and/or procedural guarantees that may be embodied in domestic law or international human rights instruments to which Kazakhstan is a party and that might be relevant for preventing and/or combating enforced disappearances. If so, please enumerate the rights and/or procedural guarantees from which it is possible to derogate and in which circumstances, under which legal provisions and for how long it is permissible to do so (art. 1).

* Adopted by the Committee at its ninth session (7-18 September 2015).



5. In relation to the information provided in the table on page 5 of the report (CED/C/KAZ/1), please clarify whether any of the victims were subjected to enforced disappearance, that is, criminal conduct that comprised all the elements of an enforced disappearance as defined in article 2 of the Convention. If so, please provide information about the investigations carried out and their results, including whether the fate and/or whereabouts of the victim have been ascertained and the perpetrators punished in accordance with the gravity of their acts (arts. 1 and 12).

6. Please indicate whether there are any initiatives to incorporate into domestic law enforced disappearance as an autonomous offence that is in line with the definition contained in article 2 of the Convention and punishable by appropriate penalties that take into account its extreme seriousness (arts. 2, 4 and 7).

7. Please indicate whether domestic law provides for a system of responsibility of superiors that is in line with article 6 (1) (b) of the Convention. If not, please indicate whether there are any initiatives in this respect. Please also indicate whether domestic law explicitly prohibits orders or instructions prescribing, authorizing or encouraging enforced disappearances (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

8. Taking into consideration the information provided in paragraphs 37 to 41 of the report, please indicate how it is ensured that, in the event of an enforced disappearance, the term of limitation for criminal proceedings commences from the moment when the enforced disappearance ceases (art. 8).

9. Please clarify whether current legislation grants Kazakh courts jurisdiction over cases of enforced disappearance in the instances referred to in article 9 (1) (c) and (2) of the Convention (art. 9).

10. Please indicate whether allegations of enforced disappearances could be investigated and/or tried by military authorities. If so, please provide information about applicable legislation (art. 11).

11. In relation to paragraphs 4 and 5 of the report, please provide additional information about: (a) the dedicated divisions that operate within law enforcement and specialized agencies to identify and prevent cases of abduction, unlawful deprivation of liberty and trafficking in persons, and (b) the internal security subunits established to detect and put a stop to offences by members of the military, police and security forces. In doing so, please include information about their structure, resources at their disposal and the effectiveness of their activities, and indicate whether their officials receive any kind of specialized training (art. 12).

12. Please provide information about the existing mechanisms for ensuring that victims of enforced disappearance are informed about the progress and results of investigations and can participate in proceedings. In this respect, and in relation to paragraph 64 of the report, please also indicate how complainants could participate in preliminary investigations and what remedies are available to them should the relevant authorities refuse to investigate or to take measures that may be conducive to resolving a case of enforced disappearance (arts. 12 and 24).

13. Please indicate: (a) whether domestic law provides for suspension from duties during an investigation into a reported enforced disappearance when the alleged offender is a State agent and (b) whether there are any mechanisms in place to exclude a law enforcement or security force, whether civilian or military, from an investigation into a

reported enforced disappearance when one or more of its members are accused of committing the offence or of having been involved in the commission of the offence. If so, please include information about the implementation in practice of the relevant provisions (art. 12).

14. Please clarify whether, in the absence of an autonomous offence, the provisions of the Criminal Code that could be applied in relation to a potential case of enforced disappearance may be regarded as political offences, as offences connected with a political offence or as offences inspired by political motives for the purpose of extradition and, if so, whether extradition could be refused on these grounds alone (art. 13).

IV. Measures to prevent enforced disappearances (arts. 16-23)

15. Taking into consideration article 532, paragraph 1, of the Code of Criminal Procedure (see CED/C/KAZ/1, para. 57), please indicate whether the State party plans to also incorporate into its domestic legislation an explicit prohibition against carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance. In addition, please provide information about the mechanisms and criteria applied in the context of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance. In this respect, please clarify whether, before proceeding to an expulsion, return or extradition, a thorough individual assessment on whether the person concerned is at risk of being subjected to enforced disappearance is undertaken in all cases, even in connection with States with which Kazakhstan has signed international agreements on mutual assistance or that are parties to treaties on legal assistance on criminal matters to which Kazakhstan is also a party. Please also indicate whether it is possible to appeal a decision on expulsion, return, surrender or extradition and, if so, please indicate before which authorities, what the applicable procedures are and whether they have suspensive effect. Furthermore, please indicate whether diplomatic assurances could be accepted when there is reason to believe that there is a risk that a person might be subjected to enforced disappearance (art. 16).

16. Please provide information about the measures taken to guarantee that the right of persons deprived of liberty to communicate with and be visited by their family, counsel or any other person of their choice are observed in practice from the outset of the deprivation of liberty. Please also indicate whether any conditions and/or restrictions could be applied to the right of persons deprived of liberty to communicate with and be visited by family members; counsel; consular representatives, in the case of foreign nationals; or any other person of their choice. In addition, please indicate whether there have been any complaints with regard to the observance of this right and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed (art. 17).

17. Taking into consideration the latest concluding observations of the Committee against Torture, in which it is indicated that the mandate of the Commissioner for Human Rights as the national preventive mechanism does not provide for visits to all places of deprivation of liberty (see CAT/C/KAZ/CO/3, para. 13), please provide information about the measures taken, or planned, to ensure that the mandate of the Commissioner in his or her capacity as national preventive mechanism includes the monitoring of all places, irrespective of their nature, where persons may be deprived of their liberty. Please also provide information about the existing guarantees to ensure that the Commissioner has immediate and unrestricted access to all places of deprivation of liberty and indicate whether he or she can conduct unannounced visits. With respect to the public monitoring commissions (see CED/C/KAZ/1, paras. 119 to 121), please indicate what the special

facilities that they can visit are and whether the commissions can conduct unannounced visits (art. 17).

18. Please provide information about the measures taken to guarantee, in accordance with article 17 (2) (f), of the Convention, that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, are entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful (art. 17).

19. While taking into account the information provided in the report, in particular in paragraphs 90-91, 94 and 123, the Committee would also appreciate receiving information on whether up-to-date registers that include all the information listed in article 17 (3) of the Convention are kept of all persons deprived of their liberty, regardless of the nature of the place of deprivation of liberty. Please also provide information on the measures taken to guarantee that in practice all records of persons deprived of liberty are properly and immediately completed and kept up to date. In addition, please indicate whether there have been any complaints concerning delays or failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed and the measures taken to ensure that such omissions are not repeated (arts. 17 and 22).

20. Please provide information about measures taken to guarantee to any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the information listed in article 18 (1) of the Convention. In this respect, please also provide information about the procedures to be followed to gain access to such information and indicate whether any restrictions to such access could be applied and, if so, for how long and by which authorities (arts. 18 and 20).

21. In relation to paragraph 15 of the report, please indicate whether article 414 of the draft criminal code has been adopted and is in force. If so, please provide detailed information about its content and the penalties it provides for. Please also provide examples, if any, of case law where it has been implemented (art. 22).

22. While taking note of the information provided in paragraphs 141 to 145 of the report, the Committee would also appreciate receiving information on whether the State party provides, or plans to provide, specific training on the Convention, in the terms set out in article 23 thereof, to all law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice (art. 23).

V. Measures for reparation and for the protection of children from enforced disappearance (arts. 24 and 25)

23. Please indicate whether the State party has incorporated into domestic law a definition of victim that is in line with that contained in article 24 (1) of the Convention and, if not, whether measures have been taken in that regard. In relation to paragraphs 148 to 151 of the report, please clarify who would be responsible for providing compensation and reparation under domestic law in the event of an enforced disappearance when the perpetrator is not identified or the offence is perpetrated by a person acting with the authorization, support or acquiescence of the State. Please also clarify whether it is

necessary to initiate a criminal procedure in order to obtain compensation and/or reparation in conformity with article 24 (4) and (5) of the Convention in the event of an enforced disappearance (art. 24).

24. Please provide information about applicable law with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in matters such as social welfare, financial matters, family law and property rights (art. 24).

25. Please provide information on the legislation applicable to the acts referred to in article 25 (1) of the Convention. In addition, please indicate whether there are any procedures in place to review and, if necessary, annul an adoption or placement of children that originated in an enforced disappearance. If such procedures have not been set up to date, please indicate whether there are any initiatives to bring national legislation into line with article 25 (4) of the Convention (art. 25).
