



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

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Item 6 of the provisional agenda

**Consideration of reports of States parties to the Convention**

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

**Addendum**

**Replies by Kazakhstan to the list of issues\*\***

[Date received: 11 December 2015]

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\*\* The present document is being issued without formal editing.



## **Committee on Enforced Disappearances**

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

#### **1. 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. Article 31 of the Convention reads: "A State party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration."

3. The Convention was ratified by an act of Kazakhstan adopted on 15 December 2008. The act in question contains no provisions recognizing the competence of the Committee on Enforced Disappearances.

4. 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.

5. The country's courts take into consideration the specific categories of cases and case law falling under the scope of ratified international treaties when issuing decisions on them.

6. However, no official, separate account has been kept of cases in which the courts have applied the Convention to protect all persons from enforced disappearance. It is thus not possible to give specific examples of such judicial action.

7. Please provide information about activities carried out by the Human Rights Commissioner 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 (the Paris Principles).

8. In 2012, the Human Rights Commissioner received accreditation of B status (partial compliance with the Paris Principles) from the International Coordinating Committee of National Human Rights Institutions.

9. We should also point out that the activities of the Commissioner are in keeping with a number of the Paris Principles, as follows:

- The Commissioner is approved by the President, in consultation with the chambers of Parliament. The relevant regulations include a list of grounds for removing the Commissioner from his or her post;
- The Commissioner is authorized to obtain from officials any information regarding human rights and freedoms; to perform inspections of institutions, including custodial establishments; and, in circumstances of vital importance to the country, to appeal to the President, Parliament and the Government;

- The Commissioner's Office may receive and consider communications sent from any of the country's territorial entities, including through its website. Consideration is currently being given to establishing regional branches of the Commissioner's Office;
  - The Commissioner sends recommendations to government agencies. An annual performance report containing all the communications and recommendations made by the Commissioner is sent to the President so that their implementation may be monitored;
  - The Commissioner works actively with both civil society and international organizations on a broad range of issues;
  - The Commissioner's activities are in full public view and are widely reported in the media and on the Office's website ([www.ombudsman.kz](http://www.ombudsman.kz));
  - The Commissioner participates in the preparation and negotiation of bills relating to human rights when they are drafted and adopted by Parliament;
  - The Commissioner considers individual complaints of human rights violations;
  - The Commissioner initiates examinations of cases involving human rights violations;
  - The Commissioner's Office is independent in carrying out activities and is neither subordinate to nor subsumed within any given legislative, judicial or executive institution;
  - The Commissioner's annual report is published in hard copy and is freely accessible on the Office's website.
10. It is beyond the scope of the Commissioner's mandate to bring the Office fully into line with the Paris Principles, as there is no legislative basis to do so.
11. On 2 July 2013 the President signed the Act Amending Legislation concerning the Establishment of a National Mechanism to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The national preventive mechanism has been approved in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
12. The national preventive mechanism ensures that representatives of civil society have access to places of deprivation of liberty, including prisons, to monitor and prevent torture.

## **2. Definition and criminalization of enforced disappearance (arts. 1-7)**

13. 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).
14. Unlawful deprivation of liberty, abduction, trafficking in persons, genocide and violations of the laws and customs of war are criminal offences. Liability is increased if such acts are committed during war time or a state of emergency. The national legislation is thus conducive to preventive measures and to combating enforced disappearance.

15. There can be no derogation from any of the rights and/or procedural guarantees provided under the legislation on criminal procedure.

16. 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).

17. There were no acts in which the victim was the subject of an enforced disappearance as defined in article 2 of the Convention.

18. Issues relating to the tracing of disappeared persons and their extradition are covered by the treaties ratified by Kazakhstan relating to judicial assistance in criminal cases. We should note that there have been no convictions for the illegal arrest of persons in the territory of the country and that there has been no refusal to extradite or to bring criminal proceedings against the perpetrators of such acts.

19. We present below information on the number of cases brought to court and resulting in sentences for the crimes of abduction, illegal deprivation of liberty and trafficking in persons.

<i>Time</i>	<i>Article 125 Criminal Code</i>	<i>Article 126 Criminal Code</i>	<i>Article 128 Criminal Code</i>
2010	25	7	4
2011	25	8	8
2012	31	15	49
2013	45	18	3
2014	21	8	5
9 months of 2015	17	6	2

20. 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).

21. According to article 2 of the Convention, enforced disappearance means arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

22. In the national legislation of Kazakhstan, article 414 of the Criminal Code (Deliberate, unlawful detention or placement or maintenance of a person in custody) establishes responsibility for enforced abduction as defined by the Convention.

23. In our view, there is no need to incorporate into domestic law enforced disappearance as an autonomous offence.

24. 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).

25. The responsibility of superiors under article 6 (1) (b) of the Convention is covered by the following articles of the Criminal Code: articles 361 (Abuse of official authority), 362 (Exceeding authority or official powers), 363 (Misappropriation of official powers), 370 (Nonfeasance), 371 (Dereliction of duty), 414 (Deliberate, unlawful detention or placement or maintenance of a person in custody), 432 (Concealing a crime), 433 (Hiding a criminal offence) and 434 (Failure to report an offence).

26. In addition, article 28 of the Criminal Code defines the persons complicit in an offence. Alongside the perpetrators, the definition includes the organizers, instigators of and accessories to the offence.

27. Thus, the fact that there are such standards in the domestic legislation ensures the principle of inevitability of punishment for anyone carrying out a crime related to enforced disappearance, including superiors, if their guilt is proven.

28. The Law Enforcement Service Act of 6 January 2011 explicitly establishes that officials are obliged to follow the law and must benefit from its protection if they receive orders or instructions that are at variance with the law.

29. In addition, article 80 of the Act establishes that when heads of units allow crimes to be committed by their subordinates, they bear responsibility for the acts in question.

### **3. Judicial procedure and cooperation in criminal matters (arts. 8-15)**

30. 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).

31. Under article 71 of the Criminal Code (Exemption from criminal liability by time barring), the term of limitation for criminal liability is counted from the day of commission of the offence, i.e., the beginning, not the end, of the criminal act. The countdown of the term of limitation is suspended if the perpetrator evades the investigation or the judicial proceedings.

32. 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).

33. The Convention stipulates that each State party shall take measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance. The scope of the cases covered by the country's jurisdiction is described in detail in the part of the report applicable to article 9 of the Convention.

34. In cases of extradition or deportation of persons to another State, Kazakhstan takes all measures to ensure their rights and freedoms. Deportation does not take place if there are grounds to believe that the person in question may be subjected to torture in the country in question.

35. Kazakh legislation gives the courts jurisdiction to handle cases of this category in accordance with the following articles of the Criminal Code: articles 7 (Effect of criminal law with respect to persons who have committed an offence in the territory of the Republic of Kazakhstan); 314 (Territorial jurisdiction of courts in criminal cases); 316 (Referral of criminal cases, by jurisdiction, by courts that have taken them up); 317 (Referral of criminal cases from courts with jurisdiction over them to other courts); and 318 (Settlement of disputes about jurisdiction). They are applicable throughout the country's territory, in line with article 9 of the Convention.

36. 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).
37. Reports of enforced disappearance are investigated in accordance with the established criminal procedure. The legislation in force contains no reference to the possibility of investigations of such reports by the military authorities.
38. However, in order to ensure that the investigation is objective and proper, the procurator responsible for supervising the legality of the pretrial investigation and for the criminal prosecution of a case may, in exceptional circumstances and at the written request of the criminal prosecution body, or at his or her own initiative, transfer the case from one body to another; he or she may also take the case up and investigate it, irrespective of the procedure established by the Code of Criminal Procedure. Thus, there is the possibility for such proceedings to take place.
39. In addition, when a case arises involving the commission of an offence by persons within the military, the jurisdiction is assigned by a military court.
40. 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).
41. To identify, prevent and solve crimes associated with trafficking in persons, the criminal police service of the Ministry of Internal Affairs and the internal affairs services in the cities of Astana and Almaty and in the provinces have human trafficking units, which operate under the Organized Crime Department.
42. Every law enforcement agency has a unit to carry out internal investigations.
43. At the Ministry of Internal Affairs, the services in question are called internal security units. Such units were set up in 1995.
44. The activities of the internal security units are aimed at ensuring the security of the Ministry and are based on the principles of legality and the need to penalize internal affairs personnel for any crimes committed by them.
45. The internal security units carry out activities to prevent the commission by police officers of offences and crimes, in particular the violation of citizens' constitutional rights or the use of torture or other types of violence.
46. The service in question includes an internal security department that reports directly to the Minister of Internal Affairs and also local units reporting directly up to the head of that department.
47. 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 can participate in pretrial 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).
48. Article 71 of the Code of Criminal Procedure sets out the rights of persons recognized as victims of enforced disappearance.

49. Victims are also provided with compensation for material and moral damages caused by an offence, including offences addressed in the Convention, as well as reimbursement of expenses incurred owing to their participation in pretrial investigations and in court hearings, including expenses for their representation.

50. Courts and criminal prosecution bodies must take all the measures stipulated by law for the rehabilitation of victims of enforced disappearance and provide reparation for harm caused by unlawful actions, including compensation for damages caused by the unlawful actions of a body carrying out the criminal proceedings.

51. Compensation for damages caused as a result of unlawful detention, arrest or other procedural coercive measures is funded in full from the State budget, irrespective of whether the body conducting the criminal proceedings is at fault. In the event of the death of the victim, the right to compensation is transferred to the victim's heirs.

52. In addition, legislation has been drawn up to establish a victims' compensation fund. The bill in question calls for the immediate payment of financial compensation to persons recognized as victims of criminal offences.

53. Under its terms, the State is to ensure that victims, including victims of trafficking in persons, receive monetary compensation.

54. As for the question of the means available for investigation and the adoption of measures to make it easier to resolve cases of enforced disappearance, article 180 of the Code of Criminal Procedure sets out the grounds for the initiation of pretrial investigations. Sufficient information must be available indicating the existence of elements of a criminal offence, along with the absence of circumstances precluding an investigation. Specifically, the information may consist of:

- A statement by a physical person, or a report by an official of a State body or a person performing an administrative function in an organization, reporting a criminal offence or a person's disappearance;
- An admission of guilt;
- Reports in the media;
- A report by an official of a criminal prosecution agency of a criminal offence that is in preparation, is being committed or has been committed.

55. Order No. 89, issued by the Procurator General on 19 September 2014, sets out the procedure for receiving and registering statements and reports of criminal offences and also the procedure for keeping the unified registry of pretrial investigations.

56. Paragraph 5 of the Order states that officials of criminal prosecution bodies must accept information on criminal offences at any time of day or night.

57. 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).

58. Article 158 of the Code of Criminal Procedure establishes that, in the absence of grounds for the imposition of pretrial detention, the investigating judge or, during judicial proceedings, the judge, has the right to suspend from their posts accused persons, defendants and suspects if there are reasonable grounds to believe that they

would obstruct the investigation or the trial, impede redress for the harm caused by the offence or continue to engage in criminal activity should they remain in their posts.

59. There is no procedural mechanism to exclude an entire security force or law enforcement service. However, articles 87 to 89 of the Code of Criminal Procedure make it possible to recuse investigators or detectives, judges and procurators.

60. Please clarify whether, in the absence of an autonomous crime, the provisions of the Criminal Code which are invoked to deal with cases of enforced disappearances may be regarded as a political offence, or as an offence connected with a political offence, or as an offence inspired by political motives, for the purpose of extradition, and whether extradition may be refused on any of those grounds (art. 13).

61. The domestic legislation does not allow the use of the absence of an autonomous crime of enforced disappearance to qualify such acts as political crimes.

62. The extradition of persons who commit crimes is governed by article 590 of the Code of Criminal Procedure. Citizens of Kazakhstan who commit criminal offences in other States cannot be extradited unless an international treaty applicable to Kazakhstan stipulates otherwise. The execution of requests to extradite citizens of other States too is regulated by the law on criminal procedure. Foreigners and stateless persons who have committed an offence outside Kazakhstan and are present in Kazakhstan may be extradited to a foreign State for criminal prosecution or to serve their sentence, in accordance with an international agreement of Kazakhstan.

63. In the reporting period, no one accused of crimes related to enforced disappearance has been arrested for extradition and no criminal proceedings relating to such crimes have been brought in the country.

#### **4. Measures to prevent enforced disappearances (arts. 16-23)**

64. Taking into consideration article 532, paragraph 1, of the Code of Criminal Procedure (see report, 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. Please also provide information on the authorities who determine the expulsion, removal or return of persons and the criteria on which such determinations are based. Please indicate whether it is possible to appeal a decision authorizing an expulsion, return, surrender or extradition and, if so, before which authority and using which procedure this may be done. Please also indicate whether the appeal has suspensive effect. Lastly, please provide information on mechanisms to guarantee that each case is assessed on an individual basis prior to the extradition, surrender, return or expulsion of a person (art. 16).

65. See the information under paragraph 14.

66. Extradition is governed by chapter 60 of the Code of Criminal Procedure. Rulings relating to extradition are taken by the Procurator General or his deputy, in the form of a decision, a copy of which is delivered to the person in question. The decision may be appealed before the Supreme Court. In the event of an appeal, the decision on the extradition is not enforced until the entry into force of the decision handed down by the judges of the Supreme Court.

67. The mechanism and criteria used to consider requests for extradition are set out in detail in articles 586 (Rights of persons whose extradition is requested), 591

(Decision on extradition requests) and 592 (Procedure for appeal against a decision to extradite). In addition, when a decision is taken regarding extradition, diplomatic assurances may be obtained from the foreign State, along with guarantees of the safety of the person in question and of the non-use of torture or other acts, including enforced disappearance, that would threaten the person's life or well-being.

68. The Code of Criminal Procedure has a section entitled "International cooperation in criminal judicial matters", section 12.

69. Under article 557 of the Code, as part of judicial assistance, the competent bodies of a foreign State with which Kazakhstan has concluded an international agreement may be given the power to serve documents and carry out specific procedural actions, to perform criminal prosecutions, to extradite or temporarily extradite persons, to transfer or temporarily transfer persons in transit, to transfer convicted persons and persons suffering from psychological disorders who are subject to compulsory medical treatment, and to recognize sentences and enforce them.

70. In accordance with the requirements of article 569 of the Code, the requesting country's request (order or petition) calling for judicial assistance may be denied in cases specified under international agreements concluded by Kazakhstan.

71. In the absence of an international agreement, execution of the request (order or petition) must be refused if:

(a) The execution would violate Kazakh law or could undermine the sovereignty, security, public order or other interests of Kazakhstan;

(b) The requesting country does not ensure reciprocity in the field in question;

(c) The request (order or petition) relates to actions that are not a criminal offence in Kazakhstan; or

(d) There are sufficient grounds to consider that the request (order or petition) has been issued with the aim of persecuting, condemning or punishing a person on the basis of his or her origin, social, official or material status, sex, race, ethnicity, language, relationship to religion, beliefs, place of residence or any other circumstances.

72. Please provide information on measures taken to ensure that persons deprived of liberty have the right to communicate with and be visited by their family, lawyers and any other persons. Please also indicate whether they apply to foreign persons deprived of liberty so that they can communicate with their family members, lawyers and consular representatives. 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.

73. Under article 135 of the Code of Criminal Procedure (Notification of relatives of a suspect's arrest), the person responsible for the pretrial investigation is obliged to immediately provide information on the arrest and whereabouts of suspects to an adult member of the suspect's family, and in the absence of such family members, to other relatives or persons close to the suspect, or to give the suspects the opportunity to do so themselves. The arrest of foreigners must be reported immediately, or if this is not possible, then within 24 hours, to their embassy, consulate or other representation of their State, through the Ministry of Foreign Affairs of Kazakhstan, in accordance with a procedure established by a joint order issued by the Ministry and the Office of the Procurator General.

74. The provisions relating to the notification mechanism are contained also in Decision No. 7, issued by the Supreme Court of Kazakhstan on 28 December 2009 under the title "Application of the provisions of criminal law and criminal procedure

law to ensure respect for personal freedoms and the inviolability of human dignity and to combat torture, violence and other cruel and degrading forms of treatment or punishment”.

75. Also, under article 473 of the Code of Criminal Procedure, after the entry into force of a sentence imposed on a convict held in custody or assigned to detention barracks or deprivation of liberty, the administration of the place of detention is obliged to inform the convict’s family of the place where the sentence will be served.

76. Wilful failure to inform a suspect’s relatives of his or her detention and whereabouts, unlawful refusal to provide information on the place where a person is being held in custody to a person who has the right to receive such information and falsification of the time at which an arrest record was drawn up or of the time of the actual arrest are crimes punishable under article 414 of the Criminal Code.

77. Under article 104, paragraph 1, subparagraph 4, of the Penal Enforcement Code, persons sentenced to deprivation of liberty have the right to maintain their ties with their spouses and relatives.

78. Additionally, under article 106 of the Code, they may receive short and long visits.

79. To ensure that convicts can receive qualified legal assistance, paragraph 6 of that article stipulates that, upon request submitted in writing or orally, they are granted visits with lawyers, without any limitation on the number or length of visits, and in conditions ensuring their confidentiality.

80. Article 9 of the Code stipulates that convicted foreigners and stateless persons enjoy the same rights and freedoms and bear the same responsibilities as citizens unless stipulated otherwise by the Constitution, domestic law or international treaties.

81. Article 10, paragraph 2, of the Code establishes that convicted foreigners and stateless persons have the right to maintain contact with the accredited diplomatic representation and consular institutions of their country in Kazakhstan. Citizens of countries without such accredited institutions have the right to maintain contact with the diplomatic representations of States that assume the defence of their interests, or with international organizations defending them.

82. Under article 4 of the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, custodial measures at such facilities must be carried out in conformity with the principles of legality, the presumption of innocence, equality before the law, humanism, respect for the honour and dignity of the individual and the norms of international law. They must not be accompanied by acts intended to cause physical or mental suffering to suspects or accused persons held there.

83. Article 17 of the Act establishes that from the moment a suspect or accused person is detained, he or she has the right to meet with counsel in private and confidentially. There are no restrictions on the number or length of such meetings. With the authorization of the Office of the Procurator General of Kazakhstan, the official representatives of diplomatic missions of foreign States are entitled to visit foreigners suspected or accused of committing offences who are nationals of the States they represent.

84. To date, no complaints have been received regarding a failure to observe these rights.

85. At the same time, many of the complaints lodged with the Human Rights Commissioner in relation to the rights of convicts address the established practice of

sending convicts to serve their sentences at prisons located far from their places of residence.

86. Article 88 of the Penal Enforcement Code states that convicts sentenced to deprivation of liberty are to be sent to institutions taking into account requirements for correctional purposes, maintenance of socially useful ties, the safety of the convicts and prevention of recidivism.

87. By decision of the authorized body of the penal correction system, convicts may be sent to serve their sentences at appropriate facilities in another province in the following cases:

- (a) When there is no corresponding facility at the person's place of residence;
- (b) When the number of persons serving time at a facility exceeds its capacity.

88. Rule 59 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) adopted at the twenty-fourth session of the United Nations Commission on Crime Prevention and Criminal Justice on 21 May 2015 establishes that prisoners are to be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.

89. The rights of prisoners are still often violated owing to the failure to find places for them at local facilities.

90. For information:

- In 2013, 77 complaints of this type were submitted to the Commissioner, including 40 requesting assistance for extradition to the person's State of citizenship and 37 asking for help to send and hold prisoners at facilities near their places of residence;
- In 2013, following requests from the Office of the Commissioner, the authorities restored the right of three prisoners to serve sentences at facilities near their places of residence;
- In 2014, out of 26 requests for such transfers, 3 were granted, 2 of which related to requests to allow prisoners to serve their sentences in their States of citizenship. Just 1 request was granted for a transfer within Kazakhstan;
- Nine requests were filed in the first 9 months of 2015; one was granted.

91. Often, overcrowding at local facilities or a lack of facilities of the necessary type makes matters worse and renders it impossible to transfer prisoners so that they can serve sentences near their places of residence.

92. Taking into consideration the latest concluding observations of the Committee against Torture, in which it is indicated that the mandate of the Human Rights Commissioner 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).

93. Under paragraph 15 of the Statute of the Office of the Human Rights Commissioner, adopted by Presidential Order No. 947 on 19 September 2002, the Commissioner has the right, in accordance with a procedure established by law, to enter and remain within the confines and premises of State agencies and organizations, including military bases and units, and to visit places of deprivation of liberty and meet with and interview persons held therein.

94. In order to prevent torture and other cruel, inhuman or degrading treatment or punishment, a system is currently being set up for regular visits to special facilities by independent members of the national preventive mechanism. Their activities are coordinated by the Human Rights Commissioner, through a coordination council.

95. With the exception of the Commissioner, the other members of the coordinating council are selected among citizens of Kazakhstan by a commission established by the Commissioner.

96. Article 45 of the Penal Enforcement Code stipulates that members of the national preventive mechanism have the right to carry out urgent and unannounced visits to facilities of the penal correction system, as follows:

(a) Periodic preventive visits carried out regularly, at least once every four years;

(b) Intermediate preventive visits carried out in the intervals between the periodic visits to monitor implementation of the recommendations issued during the preceding visit and to prevent reprisals against interviewed prisoners by the administrations of the facilities and bodies enforcing the punishment;

(c) Special preventive visits carried out in response to reports of torture or other cruel, inhuman or degrading treatment or punishment.

97. In their work, the members of the national preventive mechanism visit special temporary detention facilities and other organizations designated by the domestic law for their visits, including:

- Facilities for the execution of sentences (correctional facilities, remand centres, including those of the National Security Committee, military detention barracks and military detention units);
- Compulsory treatment facilities (specialized tuberculosis treatment centres, compulsory drug rehabilitation centres and psychiatric institutions providing compulsory medical care);
- Special temporary detention facilities and institutions (temporary police holding facilities, special holding centres, holding centres and police stations);
- Juvenile adaptation centres, special education organizations and educational establishments with a special custodial regime (special custodial centres for juveniles).

98. All visits by the members of the national preventive mechanism are carried out without advance notice. When a request for an urgent, unannounced visit is received, a decision is taken immediately and there are no constraints limiting the effectiveness of the response.

99. Work is currently under way with members of the country's Parliament to amend the law so as to enlarge the range of places visited by the national preventive mechanism.

100. As for the powers of public monitoring commissions:

101. Since 2011, the Ministry of Internal Affairs has established public monitoring commissions to monitor special facilities at internal affairs departments.

102. In addition, in order to provide for this kind of public oversight, on 29 December 2010 articles 50 and 51 were added to the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, thus legally defining the status of the commissions.

103. For the implementation of that law and to provide for public monitoring at such facilities, a set of rules for the establishment of public monitoring commissions in the provinces, cities of national status and the capital was approved under Government Decision No. 702 of 24 June 2011.

104. The Ministry of Internal Affairs also issued Order No. 312 of 22 May 2012 approving rules for visits by the commissions to special holding facilities at internal affairs offices.

105. Public oversight is ensured by public bodies with the aim of assisting persons held at special holding facilities to defend their rights and legal interests, as defined in the national legislation, in terms of the conditions of detention, medical care, the organization of work, leisure and study.

106. The public monitoring commissions are empowered to assist the administrations of the special holding facilities so as to establish conditions for their inmates' enjoyment of their rights and freedoms and for the defence of their legal interests.

107. The public monitoring commissions and their members have the power to:

- Visit correctional facilities and bodies as a group established in accordance with the Penal Enforcement Code;
- Meet with the officials of such facilities and bodies and receive information on subjects relating to the activities of the commissions;
- Taking into consideration article 38 (3) of the Penal Enforcement Code, conduct interviews without witnesses with inmates held at such facilities, either personally or, if need be, with an interpreter, and receive complaints about violations of their rights, freedoms and legal interests;
- With the written consent of the inmate, take cognizance of the case file relating to his or her complaint;
- Raise issues related to the respect of the rights, freedoms and legal interests of inmates at correctional facilities and bodies with their respective administrations, supervisory bodies and procurators' offices;
- Take part in judicial proceedings relating to the activities of the commission;
- Inform the administration of the correctional facility or body of the results of their work. In the event that shortcomings noted by the commission are not addressed by the administration, report them to its supervisory body or to a procurator's office;
- With the consent of the procurators' offices, take part in their verifications of the activities of custodial facilities and bodies.

108. In carrying out their tasks, commission members are obliged to observe the provisions of the laws relating to the work of the special holding facilities and to comply with the legal requirements set by their administrations. Public oversight activities must not create obstacles to legal proceedings.

109. 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).

110. The right to judicial protection is a constitutional principle and is reflected in the Code of Criminal Procedure.

111. Irrespective of the provisions of the Convention, the Code of Criminal Procedure contains general provisions ensuring that persons deprived of liberty, and also their counsel or close relatives acting in their defence, can file complaints against judicial decisions.

112. Chapter 9 of the Code (Participants in the proceedings defending their own rights and interests or representing others) sets out the rights and obligations of the participants in legal proceedings, including suspects and accused persons.

113. Article 64 (9) of the Code stipulates that suspects have a wide range of rights, including the right to:

- (a) Be informed of their rights by the person responsible for their custody;
- (b) Know what they are suspected of;
- (c) Independently, or through their relatives or authorized representatives, engage defence counsel. In cases where counsel is not thus engaged, the criminal prosecution body is obliged to ensure the participation of counsel, in accordance with article 67 (3) of the Code;
- (d) Have confidential visits in private with their chosen or assigned defence counsel, including prior to trial;
- (e) Give testimony only in the presence of counsel, unless counsel has been refused;
- (f) Receive copies of decisions designating them as suspects or civil respondents, of the legal qualification of the act in question, of the record of arrest, of the application and decision relating to the choice or extension of the preventive measure and of decisions relating to diversion of the criminal case;
- (g) Refuse to give testimony;
- (h) At any stage of the proceedings, either file an application with the procurator for a plea bargain or express their consent to such arrangements, proposing the type and extent of punishment, and conclude plea bargains;
- (i) Have access to the records of investigations conducted with their participation and comment on them;
- (j) File complaints regarding actions, omissions and decisions by investigators, detectives, public procurators or courts.

114. Article 65 of the Code provides similar rights to accused persons and those standing trial.

115. In addition, suspects and/or accused persons are provided with the services of a qualified defence lawyer, who also has broad powers.

116. Under article 67 of the Code, the participation of a defence lawyer in criminal procedures is mandatory if:

- (a) The suspect, accused person, person standing trial, convict or acquitted person requests it;
- (b) The suspect, accused person, person standing trial, convict or acquitted person has not reached the age of majority;
- (c) The suspect, accused person, person standing trial, convict or acquitted person is unable, owing to physical or psychological impairments, to defend himself or herself;
- (d) The suspect, accused person, person standing trial, convict or acquitted person does not have a command of the language in which the proceedings are conducted;
- (e) The person is suspected or accused of a crime punishable by deprivation of liberty exceeding 10 years or by life imprisonment or the death penalty;
- (f) The suspect, accused person, person standing trial or convict is held in custody as a preventive measure or is subjected to a compulsory psychiatric evaluation;
- (g) There are contradictory interests between suspects, accused persons, persons standing trial, convicts or acquitted persons, one of whom has counsel;
- (h) The proceedings include the participation of a representative of a victim (a private individual bringing charges) or a civil plaintiff;
- (i) The proceedings include the participation of a procurator supporting charges brought by the State (as State prosecutor);
- (j) The suspect, accused person, person standing trial, convict or acquitted person is outside Kazakhstan and refuses to appear before a criminal prosecution body or a court; or
- (k) A plea bargain is requested or concluded.

117. Taking into account the information submitted specifically in paragraphs 90, 91, 94 and 123 of the report, please specify in detail the information that must be recorded in registers of persons deprived of liberty that are kept in prison centres, and that include information in accordance with article 17 (3) of the Convention. Please also provide information on measures taken to ensure that these are duly completed and kept up to date. In addition, indicate whether there have been complaints that some cases of deprivation of liberty have not been properly registered. If this is the case, please provide information on the procedures followed, the punishments imposed and the measures taken to ensure that such omissions are not repeated (arts. 17 and 22).

118. The Instructions on the organization of the work of special records units in remand centres of the penal correction system of the Ministry of Internal Affairs and the Instructions on the organization of work of departments, units and groups for the special records for correctional institutions of the penal correction system of the Ministry of Internal Affairs, approved by Ministry Orders Nos. 565 and 551, respectively of 19 October 2012 and 10 October 2012, specify all types of registration of detained persons under investigation and of persons sentenced to deprivation of liberty.

119. The following information is included in the journal of arrivals: date of arrival, individual case number, serial number, full name, place of birth and where the person has arrived from. If more details are required, an excerpt of the individual file is

included for the case number in question (indicated in the journal); it contains full information on the person in question and an F-1 card, which additionally indicates the article of law invoked and the term to be served, etc.

120. To date, no complaints have been received of improper registration of persons sentenced to deprivation of liberty.

121. The Office of the Human Rights Commissioner has received no complaints corresponding with the situation described above.

122. 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).

123. See the information under paragraph 16.

124. 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 fines it provides for. Please also provide examples, if any, of case law where it has been implemented.

125. From 1 January 2015 a new Criminal Code entered into force, article 414 of which stipulates that deliberate, unlawful arrest, detention or remand in custody constitutes a criminal offence.

126. Article 414. Deliberate, unlawful detention or placement or maintenance of a person in custody.

(a) Deliberate, unlawful detention shall be punishable by a fine of 3,000 times the monthly notional unit or punitive deduction of earnings of the same amount, or restriction of liberty of up to 3 years, or deprivation of liberty of the same duration, with forfeiture of the right to hold certain posts or engage in certain activities for up to 3 years;

(b) Deliberate, unlawful placement or maintenance of a person in custody shall be punishable by a fine of 3,000 times the monthly notional unit or punitive deduction of earnings of the same amount, or restriction of liberty of up to 5 years, or deprivation of liberty of the same duration, with forfeiture of the right to hold certain posts or engage in certain activities for up to 3 years;

(c) Acts referred to in paragraphs 1 and 2 of this article that result in serious consequences shall be punishable by deprivation of liberty of 3 to 8 years, with forfeiture of the right to hold certain posts or engage in certain activities for up to 5 years;

(d) Wilful failure to inform a suspect's relatives of his or her detention and whereabouts, unlawful refusal to provide information on the place where a person is being held in custody to a citizen who has the right to receive such information and falsification of the time at which an arrest record was drawn up or of the time of the actual arrest are punishable by fines of up to 300 times the monthly notional unit or punitive deduction of earnings of the same amount, or the imposition of up to 240 hours of community service work, or detention of up to 75 days, with or without forfeiture of the right to hold certain posts or engage in certain activities for up to 2 years.

127. In the first nine months of 2015, 114 pretrial investigations were initiated in cases involving deliberate, unlawful detention or placement or maintenance of a person in custody, covered by article 414 of the Criminal Code. Of these, 2 were sent to court, 83 were discontinued with removal from the record and in 17 cases the term for the pretrial investigation expired. In 2015, 3 pretrial investigations were initiated in relation to amended part 4 of article 414; of these, 1 was suspended with removal from the record and 2 are currently the subject of proceedings.

128. 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, as set out in article 23 of the Convention.

129. Regarding the further training of judges.

130. In Kazakhstan, judges applying the law applicable to remand in custody and penalties involving removal of people from society and those in any way dealing with persons deprived of liberty receive specific training, as specified in the Convention.

131. Such training is provided through direct education: courses (including special courses) are given by the Institute of Justice of the Academy of Public Administration to enhance judges' qualifications; seminars and training sessions are conducted, along with round tables and international conferences; study events are organized through the provincial study centres and the corresponding courts; and internships are organized at provincial courts and at the Supreme Court.

132. Regarding the further training of internal affairs personnel.

133. Internal affairs personnel receive systematic further training at the Ministry's own specialized training centres: the Almaty, Karagandy and Kostanay academies and the Aktobe legal institute.

134. In the first nine months of 2015, 2,183 officials underwent training at such establishments, including 1,985 who took further training courses and 198 who took part in retraining.

135. The curricula of further training courses include subjects under the titles "Combating crime and corruption today: Problems and how to solve them" and "Particularities of procedure in cases of corruption".

136. In addition, seminars, conferences and round tables are organized in cooperation with the Office of the Organization for Security and Cooperation in Europe (OSCE) in Astana on the following subjects: human rights; activities of Kazakh internal affairs bodies in defence of human rights and freedoms; and police activities in multi-ethnic Kazakhstan.

137. Every year, internal affairs officials take part in overseas study, for example in the Russian Federation, Turkey, Hungary, Belarus and the United States of America.

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

138. 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.

139. In domestic law, there is no definition of victim in line with the one in article 24 (1) of the Convention. In accordance with article 71 of the Code of Criminal Procedure, victims are ensured reparation for material and moral damages caused by a crime, including crimes covered by the Convention, as well as compensation for expenses incurred in connection with their participation in the pretrial investigation and in court proceedings, including legal expenses. Courts and the criminal prosecution bodies must take all measures stipulated by law for the rehabilitation of victims of enforced disappearance and for reparation for damages caused to them as a result of unlawful acts, including those of law enforcement bodies and/or special bodies conducting criminal proceedings. Reparation for damages incurred by a person as a result of unlawful arrest, detention or other procedural coercive measures is funded in full from the State budget, irrespective of whether the body conducting the criminal proceedings is at fault. In the event of the death of the victim, the right to reparation is transferred to the victim's heirs.

140. In cases where the injured party cannot wait for law enforcement bodies to find the perpetrator and conclude the investigation, the State is responsible for promptly paying the guaranteed compensation to the victim.

141. The right to receive compensation takes effect from the moment that the person is recognized as a victim.

142. The mechanism for compensating damages and for establishing a fund are the subject of a separate law. A bill has been drawn up on a victims' compensation fund; it calls for the fund to make payments immediately.

143. 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).

144. The search for disappeared persons is carried out as stipulated by law by internal affairs bodies, including in cases where foreign agencies assist in the search on the basis of international agreements. The disappearance of a person does not nullify that person's basic rights before the circumstances of the disappearance and the person's whereabouts are established.

145. Please provide information on the legislation applicable to the acts described in article 25 (1) of the Convention. Please provide information on the procedures that have been established to review, and if necessary, annul any adoption, placement or guardianship that originated in an enforced disappearance. If no such procedures have been established yet, please indicate whether an initiative has been taken to bring the national legislation into conformity with article 25 (4) of the Convention (art. 25).

146. In March 2010 Kazakhstan ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, the aim being to establish a new system for inter-State cooperation in intercountry adoption to provide, in the interests of the child, for a safe and monitored system and the prevention of corrupt practices.

147. Domestic legislation has been brought into line with the standards of the Hague Convention. Under the Convention, the country's domestic law must give priority to domestic adoption.

148. There are a number of types of family placement for orphans and children deprived of parental care. These include tutorship/guardianship, foster care and adoption.

149. The preferred form of family placement is adoption, as it is most effective not only at defending the interests of the child, but also those of adults who for one reason or another cannot have their own children.

150. Under the current legislation, children are eligible for adoption when their sole parent, or both parents:

- (a) Have deceased;
- (b) Have renounced the child;
- (c) Have been deprived of their parental rights and have not had them restored;
- (d) Have agreed to the child's adoption;
- (e) Have been recognized by a court as unfit, missing or presumed dead; or
- (f) Are unknown.

151. Parental consent is not required for the adoption of a child if the parents:

- (a) Are unknown;
- (b) Have been recognized by a court as unfit;
- (c) Have been deprived by a court of their parental rights; or
- (d) Do not live with the child and shirk their responsibility to raise and support the child for more than six months, for reasons recognized as unfounded by a court.

152. The final decision regarding adoption is taken by a court.

153. An adoption may be recognized as invalid or nullified by a decision of a court.

154. The adopting party, his or her spouse and others may call for an adoption to be recognized as invalid or to be nullified.

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