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Совет по правам человека
Тринадцатая сессия
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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Вербальная нота Постоянного представительства Казахстана при Организации Объединенных Наций в Женеве от 22 февраля 2010 года на имя Верховного комиссара Организации Объединенных Наций по правам человека

Постоянное представительство Казахстана при Организации Объединенных Наций в Женеве свидетельствует свое уважение Верховному комиссару Организации Объединенных Наций по правам человека и Председателю Совета по правам человека и имеет честь настоящим препроводить ноту в связи с докладом Специального докладчика по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания и добавлением 3 к нему (A/HRC/13/39 и Add.3).

Постоянное представительство было бы признательно за распространение настоящей ноты и приложения к ней* в качестве документа тринадцатой сессии Совета по пункту 3 повестки дня.

* Воспроизводится в приложении в полученном виде только на том языке, на котором оно было представлено.

Annex

Proposals concerning the draft report of the United Nations Special Rapporteur on torture, Manfred Nowak, on mission to Kazakhstan

I. Objections

1. The Special Rapporteur refers in para. 18 of his report of the old wording of Article 15.2 of the Constitution of the Republic of Kazakhstan. In fact, the changes to Article 15.2, introduced as far back as 2007, have virtually eliminated any possibility of applying the death penalty as an extraordinary criminal sanction (the Law No. 254 of the Republic of Kazakhstan of 21 May 2007).

More specifically, according to the new wording of Article 15.2 of the Constitution, death penalty is established by law as an extraordinary measure for terrorist crimes involving the loss of life as well as for especially grave crimes committed in wartime, granting the sentenced person the right to appeal for pardon.

In fact, the death penalty has not been applied since 2003. The death sentences of 31 convicts held in places of deprivation of liberty have been commuted to life imprisonment.

Thus, no persons sentenced to death are currently held in places of pre-trial detention and deprivation of liberty.

2. In para. 19 UK-161/3 in Zhitykara in the Kostanai region is called “the Guantanamo of Kazakhstan.”

Read along with the description of cruel and inhuman treatment allegedly practiced in that institution, that characterization, quite understandably, creates an impression of absolute lawlessness prevailing in that correctional facility.

Yet that facility was never visited during the mission. Thus, such a characterization was made solely on the basis of allegations of persons who had been held in other institutions and who had never been to UK-161/3.

It seems that, under these circumstances, these allegations can not be treated as factually correct. Moreover, the world public is well aware of the human rights organizations' complaints about the way the United States has been holding inmates at Guantanamo, for many years, without any trial or investigation, i.e. in violation of the most basic human rights.

It is absolutely unacceptable to apply such analogies to institutions of the penal correctional system of the Republic of Kazakhstan because persons are placed there only on the basis of a valid court sentence (for convicts) or a court order (for detainees under investigation).

3. The Special Rapporteur expresses concern in para. 19 of his report about allegations that, following meetings with him during his visit, some people were sent to UK-161/3 in Zhitykara in the Kostanai region.

In fact, in 2009, after the Special Rapporteur’s mission to Kazakhstan, there were no cases when convicts had been sent to UK-161/3 from other facilities (including persons who had met the Special Rapporteur during his mission).

4. In para. 45 the Special Rapporteur expresses concern about the newly introduced punishment of life imprisonment, which gives prisoners very little hope of ever being released.

Yet, in accordance with Article 70 of Section 5 of the Criminal Code, a person serving an uncommuted court sentence in the form of a life-time deprivation of liberty may be conditionally released if the court finds that there is no need for that person to further serve the sentence, provided that he or she has served at least 25 years.

Thus, despite the word "life-time" used in the article, the legislation provides for specific conditions of release and this, in our view, disposes of the claim that that specific category of prisoners has very little hope of ever being released.

5. In para. 51 of the report the Special Rapporteur asserts that the almost total absence of official complaints raises suspicion that, in actual fact, there is no meaningful complaint mechanism in the country; on the contrary, it appears that most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals.

In actual fact, the data regarding complaints alleging offences committed by officials of the penal correctional system, received in the past 5 years, is as follows: 2005 - 17; 2006 – 54; 2007 – 219; 2008 – 280; 2009 – 288.

In other words, in the past 5 years, complaints alleging offences committed by officials of the penal correctional system have increased 16.94 times.

This data refutes the claim about the absence of official complaints and a meaningful complaint mechanism in the country.

6. The Special Rapporteur states in para. 68 that a major gap in this regard is the fact that the de facto apprehension and delivery to a police station is not recorded, which makes it impossible to establish whether the three hour maximum delay for the first stage of deprivation of liberty is respected.

In actual fact, all delivered persons are registered in a special logbook.

A stay in a police station should not exceed three hours. After that, a person is either released or a protocol regarding his or her detention is drawn up, in accordance with Article 132 of the Code of Criminal Procedure.

In addition, prosecution bodies carry out inspections, on an ongoing basis, of detention facilities and, if violations of provisions regarding the duration of detention are identified, illegally detained persons are released in compliance with Article 136 of the Code of Criminal Procedure whereas guilty officials are disciplined or prosecuted.

Moreover, each police directorate provides, on its premises, an office for a prosecutor where a prosecution officer is always on duty to prevent unlawful detentions and the conduct of investigations by unlawful means.

Permanent presence of prosecution officers in police directorates provides an opportunity to more effectively prevent, suppress and detect cases of unlawful detention and conduct of investigation by unlawful means.

7. In para. 80 d), the Special Rapporteur proposes to consider video and audio taping interrogations whereas video and audio taping interrogations has already been provided for in Article 219 of the Code of Criminal Procedure of the Republic of Kazakhstan.

8. The Special Rapporteur refers in para. 48 to sanctions, including criminal ones, imposed on prisoners who refuse to do the two hours of work on maintaining the colony. He also says that he learned of one case where a prisoner had more than 10 years added to his initial term.

It should be pointed out here that, in accordance with Article 360 of the Criminal Code of the Republic of Kazakhstan ("Incompliance with legitimate demands of the administration of a penitentiary institution"), sanctions can be imposed only for gross

incompliance. Besides, the maximum punishment can not exceed five years of deprivation of liberty.

In addition, the same article provides for criminal responsibility in the form of deprivation of liberty from three to seven years for staging group incompliance, entailing grave consequences, which, in our view, can not amount to a simple refusal to do work on maintaining the facility.

II. Follow-up to the mission

1. A Concept of the Legal Policy of the Republic of Kazakhstan for 2010-2020 was approved by a Decree of the President of the Republic of Kazakhstan on 24 August 2009.

Subsection 2.10 of that Concept is fully devoted to reforming the penal correctional system.

According to that Concept, to minimize citizens' contacts with the criminal justice environment and to use more sparingly criminal sanctions, it is necessary to create conditions for a more extensive use of criminal justice measures that do not involve isolation from the society.

Both the legislation and national jurisprudence should promote approaches that will make sure that the selection of the type of a criminal justice measure is based, first and foremost, on its effectiveness if applied to a particular person.

At the same time, in order to ensure a wider application by courts of measures that are alternative to deprivation of liberty, it is necessary to improve the effectiveness of their execution and that would require the institutionalization of a specialized body responsible for the application of such measures. Bearing in mind that deprivation of liberty still remains the main criminal sanction, it is necessary to adopt measures that enhance the educational component of deprivation of liberty where the retribution component still prevails.

In particular, it is necessary to further develop the content, the forms and the methods of correctional and educational impact on convicts, on the basis of an individualized execution of punishment.

How to ensure employment of persons sentenced to deprivation of liberty by involving them in socially useful work and/or training and social programmes of resocialization, including anti-drug and anti-alcohol programmes or through other forms of community work, is a relevant issue.

While maintaining high standards of discipline and order inside institutions of the penal correctional system, it is essential to strengthen the psychological and educational element of the execution (serving) of criminal sanctions, to enhance the status of the personnel of the penal correctional system and to ensure their social and legal protection.

Along with those measures, in places of deprivation of liberty, it is important to ensure personal safety and respect for the rights and legitimate interests of persons serving that particular type of sentences. In this regard, there is an important need of a step-by-step transition to a cell-type custodial regime where a convict, during daytime, has a chance to move and have interpersonal communication within the confines of the facility while being isolated in a separate cell at night.

Established mechanisms of public oversight, which should be promoted, contribute to striking a balance between protection of rights of the society and the state in sanctioning the guilty, on one hand, and ensuring respect for their rights and legitimate interests, on the other.

It is also important to improve the quality of medical care provided to persons held in places of deprivation of liberty, especially the system of disease prevention among inmates.

Systemic efforts are needed to carry out a targeted national policy in the area of resocialization of citizens released from places of deprivation of liberty in order to make them again members of the society with full rights.

On the whole, the penal correctional system should be further brought into line with universally accepted international standards.

Thus, policy papers providing for a reform of the penal correctional system, along the lines recommended by the Special Rapporteur, as a priority of the legal policy in the next decade have been adopted at the highest decision-making level.

2. The Supreme Court of the Republic of Kazakhstan adopted, on 28 December 2009, regulatory ruling No. 7 on the application of norms of criminal and criminal procedural legislation regarding respect for personal freedom and inviolability of dignity and combating torture, violence and other cruel or degrading treatment or punishment.

That regulatory ruling has been adopted to ensure adequate implementation of obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international instruments ratified by the Republic of Kazakhstan.

The regulatory ruling pays close attention to the correct qualification of cases of torture because, in practice, attempts have been made to requalify torture as exceeding authority (Article 308 of the Criminal Code of the Republic of Kazakhstan.

In particular, it makes a clear distinction between legal grounds for criminal responsibility for torture and exceeding authority.

In addition, that regulatory ruling specifies procedural mechanisms of review by a prosecutor or a court of complaints about torture received from detainees or arrested persons. It also provides clarifications regarding assessment of evidence, proper qualifications of offences, prosecution of not only the perpetrators but also of those who instigated torture or had knowledge of it or acquiesced to it as well as compensation of property and moral damage sustained by the victims of torture.

It also makes clear that a person suspected of a crime may be detained only under conditions, grounds and motives provided for in Articles 132 and 134 of the Code of Criminal Procedure.

De facto apprehension means that a person is deprived of a chance to move freely or commit other actions at his or her discretion (capture, physical holding, locking-up, forcing to go somewhere or to stay where he or she is).

Detention of a person in the absence of conditions, ground or motives provided for in Articles 132 and 134 of the Code of Criminal Procedure or for more than three hours without drawing up a protocol of apprehension as well as keeping a person under arrest for more than seventy two hours is illegal and the person should be released immediately. If the perpetrators committed unlawful acts deliberately, they are prosecuted under Article 346 of the Criminal Code.

When unlawful detention is established, the body handling the criminal case takes action to ensure rehabilitation and compensation for damages caused by unlawful actions. The right to claim compensation of property damage and moral injury is explained to the detainee, including by offering him or her an official apology, in writing, under Article 44 of the Code of Criminal Procedure.

The regulatory ruling, put into effect since the date of its official publication ("Kazakhstanskaya Pravda" No. 11 (26072) dated 19 January 2010), is incorporated into the current law and is binding.

3. A law of the Republic of Kazakhstan on prevention of domestic violence was adopted on 4 December 2009 and put into effect on 22 December 2009.

The law establishes the legal, economic, social and institutional framework of activities of government agencies, local governments, entities and citizens of the Republic of Kazakhstan to prevent domestic violence.

Its main purpose is to ensure progressive improvement of prevention of crimes and offences in the area of family and domestic relations.

The law also establishes the way state bodies have to carry out their activities to counter domestic violence; the rights and responsibilities of persons placed under preventive control; and liability for their violations.

In accordance with the law, domestic violence is an intentional wrongful act (action or inaction) of one person, within family and domestic relations, to other (s) causing or presenting a threat of physical and (or) mental suffering.

Domestic violence mean physical, psychological, sexual and (or) economic violence.

Prevention of domestic violence is based on the following principles:

(1) Legality;

(2) Guaranteed respect for rights, freedoms and legitimate interests of a person or citizen;

(3) The inadmissibility of inflicting physical and (or) mental suffering on a person or citizen;

(4) Support for and preservation of the family;

(5) Confidentiality;

(6) An individualized approach to every person and citizen in a difficult situation;

(7) Precedence of preventive measures to prevent domestic violence over repressive measures;

(8) a comprehensive and systematic approach.

The law was published in "Kazakhstanskaya Pravda" № 293 (26037) on 12 December 2009.

In addition, a law of the Republic of Kazakhstan on state guarantees of equal rights and equal opportunities for men and women was adopted on 8 December 2009.

4. On 1 February 2010, the Prosecutor General of the Republic of Kazakhstan approved a directive on ensuring participation in the verification of allegations and criminal investigation of torture and other illegal methods of inquiry and investigation.

The directive regulates the procedure for implementing oversight powers of the prosecution to protect constitutional human rights and freedoms in the criminal justice system and for proper compliance with the obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international instruments ratified by the Republic of Kazakhstan.

The directive provides for a set of measures to prevent and suppress torture and other ill-treatment at all stages of criminal proceedings and the execution of sentences.

In particular, the prosecution will monitor any signal about the use of prohibited methods of investigation and, if needed, proceedings will be handled directly by a prosecutor.

According to that directive, when a court authorizes an arrest and when the main proceedings are conducted, the prosecution is required to establish whether torture or other forms of ill-treatment were used during the interrogation of a detainee. In places of pre-trial detention and in institutions of the penal correctional system, prosecutors will meet confidentially, on a weekly basis, with all suspects, accused, defendants and convicted persons who were taken to participate in investigation and operational action.

The directive provides for a mandatory medical examination each time detainees and arrested persons are delivered from a temporary detention isolator to an investigation isolator, each time a request to authorize an arrest of the suspect (and/or the accused) is under consideration and each time an allegation of torture is made.

If the use of torture and other forms of ill-treatment is established, the prosecution will raise the question of admissibility of evidence obtained by prohibited methods of inquiry and investigation. The prosecution's stand on each such case is subject to adjustment, to the extent of dropping the charges if no other evidence of the defendant’s guilt is available.

Each documented case of torture will entail criminal responsibility of both the officials who resorted to prohibited methods of interrogation and the officials who condoned or instigated such actions.

That directive also establishes measures to prevent and suppress torture and other ill-treatment in specialized institutions of health, education and social protection systems as well as of internal affairs bodies.

We believe that the implementation of the provisions of that directive will ensure effective protection of constitutional rights of citizens to inviolability of their dignity and inadmissibility of cruel and inhuman treatment or punishment.

5. By a Presidential Decree No. 896 dated 30 November 2009, it was decided to sign a Declaration of the Republic of Kazakhstan postponing the implementation of its obligations, as provided for in Article 24 of the Optional Protocol to the Convention against Torture. The Ministry of Foreign Affairs forwarded that Declaration to the UN Secretary-General in December of 2009.

6. The Committee of the Penal Correctional System of the Ministry of Justice of the Republic of Kazakhstan completed, in 2004-2009, work to establish or modernize correctional institutions in the cities of Atyrau (2009), Taraz (2006), Solnechny settlement in Eastern Kazakhstan (200.) and to open start-up facilities in Kyzyl Orda (2005), and Zarechny settlement in the Almaty region (2000). New investigation isolators were established in Almaty (2009), Pavlodar (2006), and Shimkent (2008). Convicts in all of these facilities, which meet international custody control standards, are held in cells (para. 30 of the report).

7. As a result of measures taken to improve employment among convicts, the number of employed persons in correctional facilities increased, in 2009, by 511 persons, as compared to 2008 (8,783 people).

In this regard and in accordance with the requirements of the penal enforcement legislation of the Republic of Kazakhstan, today vocational training is provided in 42 correctional institutions.

In 2009, 3 vocational schools were opened in institutions EC-166 /5 in Astana, LA-155/8 in Almaty and the Almaty region and KA-168/5 in the Aktobe region.

Following 2008-2009 academic year, 3,646 inmates learned various trades that are in demand in the labor market (para. 47 of the report).

8. Public monitoring commissions (PMCs), composed of 91 members and overseeing institutions of the penal correctional system, have been established in all regions of Kazakhstan (15 PMCs). Since the start of the year, they have made more than 800 visits to institutions.

PMCs monitor, on a regular basis, places of deprivation of liberty, meet with convicts, receive their complaints, which are later followed-up, including by forwarding them to criminal prosecution bodies in case of evidence of ill-treatment or torture (para. 67 of report).

9. A law of the Republic of Kazakhstan on refugees was adopted on 4 December 2009.

10. On 1 February 2010, a joint order of the National Security Committee, Ministry of the Interior, Ministry of Justice and Ministry of Health on mandatory participation of forensic medical experts in bodily injuries medical examinations of persons held in temporary detention isolators, investigation isolators and penal correctional institutions, was put into effect.

That order provides for a medical examination, conducted independently from law enforcement agencies, of persons in custody in order to determine whether they have sustained or not bodily injuries.

In addition, the same order requires the Ministry of Health to verify cases of low-quality medical services to persons in custody.

III. Actions planned for the near future

1. In his address to the people of Kazakhstan on 29 January 2010, the President of the Republic of Kazakhstan Nursultan Nazarbayev expressed concern about inadequate use of sanctions not involving deprivation of liberty.

In particular, the President of Kazakhstan said: "A lot has to be done to reform the law enforcement system... This sector still has many of the deficiencies of the old system. In the system of sanctions, fines account for less than 5 percent, correctional works – for 0.4 percent and community work for 0 percent. Deprivation of liberty remains the principal form of sanction."

Thus, political support for a wider application of sanctions not involving deprivation of liberty has been expressed at the highest decision-making level in the Republic of Kazakhstan.

2. The Ministry of the Interior has drafted and sent to the Parliament's Majlis a bill of the Republic of Kazakhstan on amendments and additions to certain legislative acts that establish the grounds for and conditions of holding citizens in custody. It provides for amending the Law of the Republic of Kazakhstan on Procedures and Conditions for Holding Persons Suspected or Accused of a Crime in Custody through an article that would regulate the grounds for and procedures of public oversight in special institutions of the Ministry of the Interior.

3. A bill on amendments and additions to the certain legislative acts of the Republic of Kazakhstan on a probation service will provide for the establishment of a probation service, within a legislative framework, as envisaged in paragraph 30 of the Forward-looking Plan

of Lawmaking Activities of the Government of Kazakhstan for 2010-2011, which was approved by the Resolution No. 185 of the Government of the Republic of Kazakhstan dated 18 February 2009.

In addition to that, this year a request was made to consider expanding conditions for execution of non-custodial punishment by adding to the staffing table of the Inspectorate 1,183 new posts and establishing a probation service on that basis. By its decision No. 14 dated 21 July 2009, the Republican Budgetary Commission provisionally approved a stage-by stage increase in the staffing table of the Inspectorate by 591 posts in 2010 and by 592 posts in 2011 (para. 80 d of the report).

4. Kazakhstan intends to consider, at a session of the Interdepartmental Commission, proposals designed to bring Article 347-1 of the Criminal Code further into line with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (para. 13 of the report).

5. Kazakhstan plans to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Thus, work is under way to phase out the death penalty (para. 18 of report).

6. There are plans to build, in 2011-2012, another 8 institutions of the penal correctional system that meet international standards, which will allow to address the issue of placing inmates closer to their homes (para. 30 of the report).

7. Work is under way to draft a new concept of the development of the penal correctional system within the framework of the Concept of Legal Policy of the Republic Kazakhstan for 2010-2020, which provides for a transition from a punitive approach to resocialization of persons held in places of deprivation of liberty (para. 75 of the report).

Information on the planned activities on the report UN Special Rapporteur Mr. Manfred Nowak

№	Comments	Planned Activities
2.	The Special Rapporteur is fully aware of the fact that Kazakhstan inherited many difficult features of the Soviet criminal justice system, which had a punitive character and were aimed at providing a source of cheap labour rather than at individual rehabilitation.	In accordance with the 2010-2020 Legal Policy Concept of the Republic of Kazakhstan will be adopted a legislative changes to improve the penitentiary system in line with international standards.
5.	Respect for established fact-finding methods, including unannounced visits, is of utmost importance not only because it is crucial for a full assessment of the situation; it is also of particular significance in the light of the recent ratification of the Optional Protocol to the Convention against Torture, which foresees the establishment of a national preventive mechanism, a body independent from the Government mandated to undertake unannounced visits to all places of detention at any time and to speak in private with all persons deprived of their liberty. Whereas this constitutes a decisive step forward, it will befully effective only if fact-finding methods are fully respected in practice and their independence is guaranteed.	Currently, the Ministry of Justice established a working group to develop the concept and the relevant bill, with the participation of nongovernmental and international organizations. Accelerating the adoption of the bill is not possible because of its costliness. In addition, NPM issues closely related to draft laws "On introducing amendments and addenda to some legislative acts of the Republic of Kazakhstan on ensuring activities of Ombudsman" and "On Making Amendments and Addenda to the Law of the Republic of Kazakhstan" On Public Associations" (a submission to Government - 4 quarter of 2011).
13.	Torture is outlawed by article 347-1 of the criminal code. Its definition is more restrictive than the one contained in article 1 of the Convention against Torture, as it limits criminal responsibility to public officials and does not criminalize torture committed by any other person acting in an official capacity or by individuals acting at the instigation or with the consent or acquiescence of public officials. Furthermore, unlike article 1 of the Convention against Torture, which refers to “lawful sanctions”, the note to article 347-1 states that “physical and mental suffering caused as a result of legitimate acts on the part of officials shall not be recognized as torture”. The use of the term “legitimate acts” is of concern because of its vagueness.	In the near feature Kazakhstan is going to consider in Inter-Ministerial Commission the issue of bring fully the article 347-1 of the Penal Code in line with article 1 of the CAT.
18.	Article 15.2 of the Constitution provides that “the law shall establish the death penalty as an extraordinary measure of punishment for especially grave crimes and grant the sentenced person the right to appeal for pardon”. Article 49 of the criminal code specifies these crimes. An indefinite presidential moratorium on the death penalty entered into force on 1 January 2004. According to official sources, the last execution of a death penalty took place on 1 December 2003. The last death sentence was pronounced on 31 August 2006. On 6 December 2007, the remaining 31 death sentences were commuted to life imprisonment.	There are plans to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Work is under way to gradually abolish the death penalty.

№	Comments	Planned Activities
21.	In women's and the minors' colonies, officials appear to be involved in cases of corporal punishment. Such punishment includes beatings with hands and fists and police truncheons, but also more "subtle" measures, such as leaving convicts lying in cold punishment cells without bed sheets during the night.	Kazakhstan intends to draft, at a meeting of the Interdepartmental Commission on the Improvement of the Existing Legislation (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture), proposals to prevent torture and other cruel, inhuman and degrading treatment or punishment of citizens deprived of liberty by officials of state bodies and agencies.
26.	The "colony" type of facilities for convicts (in which 20 to 100 people sleep in large dormitories) generally allow for convicts to freely move around within a certain area and to stay in contact with other convicts, which is definitely positive. On the other hand, the dormitory system might jeopardize individual security of detainees. The Special Rapporteur also visited a special regime colony in Arshaly (EC-166/5), where convicts take shifts (half are confined to their cells while the other half can walk around a small courtyard).	A law was signed on 10 December 2009 providing for a conceptual overhaul of the custodial regime in closed-type correctional facilities. Thus, it provides for an opportunity to hold in cells, within the same correctional colony, of convicts under different regimes, through the establishment of isolated zones and by ensuring strict isolation. Thus at same time will be resolved issue of remoteness of institution from the residence of relatives and give opportunity for regular visit.
27.	Although most investigation isolators are under the authority of the Ministry of Justice, four remain under the National Security Committee. In general, they consist of cells containing three to eight beds and do not allow for much movement (convicts are usually confined to their cells for 23 hours a day), with 1 hour of exercise together with their cellmates in tiny courtyards with walls all around and bars above. Although there is running water in most isolator cells and the sanitary facilities have been renovated, many still do not allow for much privacy. In most places, access to showers is restricted (between once per week or every 10 days).	Transmission of the tasks of the custody of these individuals to another entity would require changes and additions to legislation on admission to state secrets of citizens, who are in co-custody of detained for espionage and treason by persons. As well as the statutory assignment to the specified body who provides protection of state secrets.
29.	Problems relating to medical care persist. The Special Rapporteur received complaints that complicated diseases are not treated or that treatment is delayed for long periods; it was also alleged that some doctors, penitentiary and medical staff demanded money for following up on requests for medical treatment, sometimes even regarding serious illnesses. According to official figures, in the first three months of 2009, 99 people died in penitentiary institutions (14 fewer than in 2008), of whom 35 from tuberculosis, 16 from trauma, poisoning and suicides, and 48 from somatic pathologies. In addition, the number of persons with HIV grew from 1,675 in the first three months of 2008 to 2,073 in the same period in 2009. In this regard, the Special Rappor-	To improve medical care, plans are being drawn up to procure new medical equipment. To control tuberculosis in penitentiary institutions and as well as in line with implementation of the tasks put by President in area of health for 2010 a pilot project is being introduced to treat tuberculosis patients with multiple drug resistance in institutions located in Karaganda and Pavlodar oblasts. Given the nature of the epidemic of HIV in Kazakhstan where the main reason of infection is the use of injecting drug, while ensuring universal access to HIV testing, counseling, treatment

№	Comments	Planned Activities
	teur expresses his concern that no needle exchange programme and drug substitution therapies are available in places of detention in Kazakhstan.	and care it is possible to proceed of substitution maintenance therapy for addicted persons detained in prisons after replication of the pilot project as a whole.
30.	One concern recognized by several officials from the penitentiary administration related to the fact that many convicts serve their sentences far from their homes and families. On the one hand, the traditional concentration of facilities in the north of the country means that many people from the south of Kazakhstan are transferred to the north. On the other hand, it is often the remote location of facilities that makes family visits difficult; for example Arkalyk prison, the only facility with a cell system for highly dangerous individuals, is so remote that it was impossible for the Special Rapporteur to visit it within the limited time available.	There are plans to build in 2011-2012 another 8 institutions of the penal correctional system that meet international standards, which will allow to address the issue of placing inmates closer to their homes.
38.	The Special Rapporteur received a number of allegations of threats against women accused of crimes, targeting in particular, their children. He received reports about women suspected or accused of drug-related crimes, and foreign women who are subjected to beatings and other forms of violence, including hooding and electroshock by law enforcement agents. Within the penitentiary system, he received credible allegations of corporal punishment against women. Since there are fewer colonies for women, they tend to be cut off from their families and friends even more than male prisoners.	Kazakhstan (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture) with the contribution of non-governmental organizations is expected to undertake activities for the prevention of crime associated with the use of torture by state authorities and institutions where the citizens taken into custody and deprived of their liberty
46.	The access of pretrial detainees to the outside world appears equally restricted (articles 17 and 19 of the law on procedures and conditions for holding persons suspected or accused of a crime in custody). In addition, the Special Rapporteur was informed that authorization was often denied. The fact that police detainees are prevented from receiving visits for prolonged periods of up to several months puts unnecessary hardship on detainees.	Kazakhstan (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture) is drafting a law of the Republic of Kazakhstan on amendments and additions to certain legislative acts of the Republic of Kazakhstan that establish the grounds for and conditions of holding citizens in custody, in particular the right to notification of family members and others within the 72 hours about the detention and access to detainees by independent medical doctors, lawyers, relatives

№	Comments	Planned Activities
53.	A person in detention is clearly unable to collect and document proof if he or she does not have access to independent medical examination. While medical personnel employed by the Ministry of the Interior and the penitentiary administration do perform check-ups upon arrival, they clearly lack the independence to take action against colleagues with whom they work on a daily basis.9 An examination by these staff members can therefore not be considered independent; consequently, it needs to be done by an outside medical expert.	A joint order has been drafted on mandatory participation of medical personnel of healthcare institutions or forensic medical experts in medical examinations of persons held in temporary detention isolators, investigation isolators and penal correctional institutions, which provides for the participation of a designated healthcare institution in medical examinations of persons held in temporary detention isolators, investigation isolators and correctional institutions, who have complained about sustaining bodily injuries.
67.	With regard to civil society, public monitoring commissions, composed of 91 civil society representatives, were established in each of the 15 regions. The commissions are mandated to carry out monitoring visits to detention facilities under the authority of the Ministry of Justice…. While these existing mechanisms do valuable work, they do not seem to cover the whole territory, and appear to focus on monitoring conditions rather than conduct torture fact-finding.	According to the implementation of the requirements of the Optional Protocol to the Convention against Torture, Kazakhstan is continuing to adopt measures to establish a national preventive mechanism. Creation of Kazakhstan's model of NPM will give new impetus to the activities of nongovernmental organizations in the penal system and strengthen measures of prevention of torture in prisons.
68.	Overall, the Special Rapporteur found that most existing safeguards are formally respected. All places he visited had registers, and most detainees indicated that they had seen judges, prosecutors and lawyers at the various stages of custody and judicial process, as required by law. At the same time, many safeguards are not effective in practice: a major gap in this regard is the fact that the de facto apprehension and delivery to a police station is not recorded, which makes it impossible to establish whether the three hour maximum delay for the first stage of deprivation of liberty is respected. Indeed, the Special Rapporteur received many allegations that the first hours of (unrecorded) detention were used by law enforcement organs to obtain confessions by means of torture. The situation is exacerbated by the fact that, at that stage, there is no right of access to a lawyer.	Kazakhstan (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture) is considering measures that ensure the right to an access to a lawyer within the framework of its efforts to draft a law of the Republic of Kazakhstan on amendments and additions to certain legislative acts of the Republic of Kazakhstan that establish the grounds for and conditions of holding citizens in custody.
69.	One crucial safeguard in the context of the prevention of torture and ill-treatment is a review by an independent judge of detention at an early stage. Even though Kazakhstan, handed over the process of sanctioning arrest to the judiciary in 2008, the Committee against Torture expressed the view that the new process was not a fully-fledged habeas corpus proceeding in line with international standards (CAT/C/KAZ/CO/2, para. 9 (c)).	Kazakhstan is considering measures to ensure practical application of the principle of adversary court proceedings and absolute independence and fairness of the judicial power by guaranteeing the division of power (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture).

№	Comments	Planned Activities
71.	Many sources indicated that individual policemen have an unofficial quota of cases that they are required to "resolve" in order to be positively evaluated. Such an evaluation system may tempt police officers to resort to unlawful methods to resolve cases. Many interlocutors in fact indicated that, although the law requires supporting evidence, confessions are still considered the most valuable form of proof. Moreover, supporting evidence, including testimonies, are sometimes obtained by force and intimidation as well.	It is planned to work out methodological recommendations to identify, prevent, suppress and solve crimes involving torture committed by law enforcement officers and personnel of penitentiary institutions (with the participation of the OSCE experts (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture).
73.	Extensive preparations by the authorities of the places of detention to be visited by the Special Rapporteur, and intimidation of and instructions to detainees on which information to provide made it very difficult for the Special Rapporteur to draw objective conclusions. With this caveat in mind and on the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with people deprived of their liberty, often supported by forensic medical evidence, the Special Rapporteur concludes that the use of torture and ill-treatment certainly goes beyond isolated instances. He received many credible allegations of beatings with hands and fists, plastic bottles filled with sand, police truncheons and of kicking and asphyxiation with plastic bags and gas masks in order to obtain confessions from suspects. In several cases, the allegations were supported by forensic medical evidence.	Kazakhstan is considering measures to ensure timely and fair investigation of crimes involving torture by services not belonging to law enforcement agencies whose officers commit offences in question and to relieve them of their official duties for the duration of the investigation and court proceedings (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture).
75.	Conditions in penitentiary institutions and police custody have improved over recent years. However, the Special Rapporteur remains concerned about the overall highly punitive approach taken to penitentiary policies and practice, including overly long prison terms and the use of regimes that effectively use restrictions on contacts with the outside world as punishment.	At the present time a new concept of criminal executive system is considering within the framework of the Concept of the Legal Policy of the Republic of Kazakhstan for 2010-2020 which provides the transition from a punitive approach to the resocialization of persons held in detention.
77.	The Special Rapporteur observed that some independent monitoring is being conducted in Kazakhstan, but it is patchy and does not cover a large number of institutions. He very much welcomes the ratification of the Optional Protocol to the Convention against Torture and the planned creation of a national preventive mechanism.	Currently, the Ministry of Justice established a working group to develop the concept and the relevant bill to create Kazakhstan's model of NPM, with the participation of NGOs and international organizations.

№	Comments	Planned Activities
80.	The Special Rapporteur recommends that the appropriate bodies take the following measures: (a) Publicly condemn torture and ill-treatment and unequivocally state that torture is a serious crime, in order to rebalance the current situation, where criminals are easily deprived of their liberty, often for very long periods, whereas law enforcement officials who break the law receive lenient sentences;	To prevent such incidents and to ensure public court proceedings involving torture, plans are being developed to hold public circuit court sessions to try law enforcement officers who used torture.
	(b) Amend the law to ensure that torture is established as a serious crime, sanctioned with appropriate penalties13 and fully brought into line with the definition provided for in the Convention against Torture;	Kazakhstan intends to consider at a session of the Interdepartmental Commission proposals designed to bring Article 347-1 of the Criminal Code further into line with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture).
	c) Introduce complaints channels that are accessible in practice, ensure that any signs of torture are investigated ex officio, and protect complainants against reprisals;	Proposals are to be developed to suppress the use by officials of state bodies and agencies of torture and other cruel, inhuman or degrading treatment or punishment against citizens deprived of liberty, including by the establishment of an effective mechanism to review complaints (petitions) (Plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture).
	d) Establish an effective and independent criminal investigation and prosecution mechanism that has no connection to the body investigating or prosecuting the case against the alleged victim;	Measures are being considered to ensure timely and unbiased investigation of crimes of torture committed by services not belonging to law enforcement agencies whose officers commit offences in question and to relieve them of their official duties for the duration of the investigation and court proceedings.

№	Comments	Planned Activities
	e) Allow access to independent medical examinations without the interference or presence of law enforcement agents or prosecutors at all stages of the criminal process, and provide independent medical check-ups of persons deprived of their liberty, particularly after entry to or transfer between places of detention;	An order has been drafted on mandatory participation of medical personnel of healthcare institutions or forensic medical experts in medical examinations of persons held in temporary detention isolators, investigation isolators and penal correctional institutions, which provides for the participation of a designated healthcare institution in medical examinations of persons held in temporary detention isolators, investigation isolators and correctional institutions, who complained of sustaining bodily injuries.
81.	The Special Rapporteur recommends that the appropriate bodies take the following measures: (a) Register persons deprived of their liberty from the very moment of apprehension, and grant access to lawyers and allow for notification of family members from the moment of actual deprivation of liberty;	the Ministry of the Interior, in the context of its work on a draft law of the Republic of Kazakhstan on amendments and additions to certain legislative acts of the Republic of Kazakhstan that establish the grounds for and conditions of holding citizens in custody, is considering a right to notify relatives and other persons about the apprehension and to provide an access to independent doctors, lawyers and relatives in less than 72 hours.
	b) Reduce the period of police custody to a time limit in line with international standards (maximum 48 hours);	The Ministry of the Interior has drafted a law on procedures for holding citizens in custody, which is now under consideration by the Parliament's Majlis. That document provides for the reduction of a time limit for holding in custody to 24 hours, prior to authorization.
	c) Strengthen the independence of judges and lawyers, ensure that, in practice, evidence obtained by torture may not be invoked as evidence in any proceedings, and that persons convicted on the basis of evidence extracted by torture are acquitted and released, and continue the court monitoring led by the Organization for Security and Cooperation in Europe;	That paragraph is to be further implemented within the framework of the Concept of the Legal Policy of the Republic of Kazakhstan for 2010-2020, approved by a Decree of the President of the Republic of Kazakhstan dated 24 August 2009.
	e) Incorporate the right to reparation for victims of torture and ill treatment into domestic law, together with clearly set out enforcement mechanisms.	Kazakhstan is considering a mechanism of reparation, compensation and rehabilitation by the state of victims of torture, followed by recovery of corresponding expenses from those found guilty of torture (draft plan of action by the Government of the Republic of Kazakhstan for 2009-2012 to implement the recommendations made by the United Nation Committee on Torture).

№	Comments	Planned Activities
82.	Institutional reforms. The Special Rapporteur recommends that the appropriate bodies take the following: (a) Continue and accelerate reforms of the prosecutor's office, the police and the penitentiary system with a view to transforming them into truly clientoriented bodies that operate transparently, including through modernized and demilitarized training;	Under the Message of the President of Kazakhstan on January 29, 2010 "New Decade - New Economic Growth - New Opportunities in Kazakhstan" The Government of Kazakhstan instructed to proceed to a comprehensive and systematic work to improve the legal space. Submit to Parliament a bill to reform the judicial system.
	b) Transfer temporary detention isolators from the Ministry of the Interior, and investigation isolators from the National Security Committee15 to the Ministry of Justice and raise the awareness of Ministry of Justice staff regarding their role in preventing torture and ill-treatment**;**	Such a step might be possible after some preparatory work to separate temporary detention isolators from the Ministry of the Interior and to transfer them, in stages, to the Ministry of Justice, including through construction of new buildings and facilities both for places of detention of the penal correctional system and special institutions of the Ministry of the Interior (special reception centers and reception-distribution centers).
	c) Design the system of execution of punishment in a way that truly aims at rehabilitating and reintegrating offenders, in particular by abolishing restrictive prison rules and regimes, including for persons sentenced to long prison terms, and maximizing contact with the outside world;	A programme of reforming the penal correctional system to bring it into line with international standards is being drafted within the Concept of Legal Policy of the Republic of Kazakhstan for 2010-2020.
	d) Strengthen further non-custodial pre- and post-trial measures, in particular, but not exclusively, in relation to minors, and equip the probation service with sufficient human and other resources	In order to improve conditions for the execution of punishment alternative to imprisonment drafted a decree of the Government of the Republic of Kazakhstan "On the reorganization of public institutions of the Committee of the correctional system of the Ministry of Justice of the Republic of Kazakhstan". A draft law on amendments and additions to the certain legislative acts of the Republic of Kazakhstan on a probation service which planed for 2011 will provide for the establishment of a probation service.
	e) Design the national preventive mechanism as an independent institution in full compliance with the Paris Principles and equip it with sufficient human and other resources;	A working group to develop a concept and appropriate legislation has been established under the Ministry of Justice, involving NGOs and international organizations.
	f) Ensure that medical staff in places of detention are truly independent from the organs of justice administration, that is by transferring them from the Ministry of Justice to the Ministry of Health.	This issue is under consideration by the Ministry of Justice, in coordination with state bodies concerned.

№	Comments	Planned Activities
84.	Children 84. The Special Rapporteur recommends that the appropriate bodies take the following measures: (c) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime, the United Nations Children's Fund, OHCHR and nongovernmental organizations, to implement these reforms.	Jointly with the United Nations Children's Fund (UNICEF) work is under way to further develop juvenile justice in the Republic of Kazakhstan.
85.	b) Initiate harm-reduction programmes for drug users deprived of their liberty, including by providing substitution medication to persons and allowing needle exchange programmes in detention.	In the 1st quarter of 2010 will be held a meeting of the Interministerial Working Group on the implementation of harm reduction programs.

Information on follow-up to the report submitted by the UN Special Rapporteur Manfred Nowak

No.	Comments	Actual situation (agreement/objection)
5.	Respect for established fact-finding methods, including unannounced visits, is of utmost importance not only because it is crucial for a full assessment of the situation; it is also of particular significance in the light of the recent ratification of the Optional Protocol to the Convention against Torture, which foresees the establishment of a national preventive mechanism, a body independent from the Government mandated to undertake unannounced visits to all places of detention at any time and to speak in private with all persons deprived of their liberty. Whereas this constitutes a decisive step forward, it will be fully effective only if fact-finding methods are fully respected in practice and their independence is guaranteed.	As a Party to the Protocol, Kazakhstan has recognized the competence of the Subcommittee on Prevention Torture, including the visits in the territory of states to designated places, and assumed an obligation to establish a national preventive mechanism, a body independent from the Government. According to that obligation, each State Party establishes, designates or maintains at the national level one or several bodies to undertake visits in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The establishment of such a mechanism will require funding from the state budget and introduction of legislative changes. In the regard, by a Presidential Decree No. 896 dated 30 November 2009, it was decided to sign a Declaration of the Republic of Kazakhstan postponing the implementation of its obligations, as provided for in Article 24 of the Protocol. The Ministry of Foreign Affairs forwarded that Declaration to the UN Secretary-General in December of 2009.
28.	The Special Rapporteur learned that a hierarchical order among prisoners had been inherited from Soviet times. Those who do not comply with the hierarchy and the “shadow law” it represents are subjected to violence and discrimination by fellow prisoners, with the consent and sometimes active approval and solicitation of prison administrations. Moreover, in Kazakhstan, there are two types of prison colonies: the “black” and the “red” zones.	Certain hierarchy does exist both inside the special population of institutions of the penal correctional system and outside of it. Its existence is due to that fact that Kazakhstan's organized crime has been historically linked to criminal traditions, the so-called thiefs' subculture of the former USSR. The Committee of the Penal Correctional System is taking action to erradicate thiefs's tradition within the special population. In this regard, a range of preventive measure are taken to discourage compliance with thiefs' traditions.
29.	Problems relating to medical care persist. The Special Rapporteur received complaints that complicated diseases are not treated or that treatment is delayed for long periods; it was also alleged that some doctors, penitentiary and medical staff demanded money for following up on requests for medical treatment, sometimes even regarding serious illnesses. According to official figures, in the first three months of 2009, 99 people died in penitentiary institutions (14 fewer than in 2008), of whom 35 from tuberculosis, 16 from trauma, poisoning and suicides, and 48 from somatic pathologies. In addition, the number of persons with HIV grew from	To improve medical care and to develop joint plans of action to protect health of persons held in institutions of the penal correctional system of the Ministry of Justice, an interdepartmental working group has been established composed of representatives of the Ministry of Health, the ***Committee of the Penal Correctional System*** of the Ministry of Justice and the Committee of State Sanitary and Epidemiological Control of the Ministry of Health. To reduce morbidity and mortality among convicts, preventive medical check-ups are carried out each year, with a case follow-up, targeted treatment and reasonable gradual rehabilitation. Action

No.	Comments	Actual situation (agreement/objection)
	1,675 in the first three months of 2008 to 2,073 in the same period in 2009. In this regard, the Special Rapporteur expresses his concern that no needle exchange programme and drug substitution therapies are available in places of detention in Kazakhstan.	plans have been drawn up to improve the health of persons with increased risk of disease. Those who are sick frequently and for a long period of time undergo medical treatment. Seriously ill patients held in institutions of the penal correctional system are monitored, on a weekly basis, and consultations with specialists from local health-care institutions are arranged. The Ministry of Justice and the Ministry of Health, together with international NGOs, continue to improve the quality of management of a programme to combat tuberculosis in penitentiary institutions. Each year, antituberculosis activities and prevention and treatment assistance to convicts are being monitored in psychiatric and somatic hospitals of the penal correctional system. On 12 January, members of the ***Committee of the Penal Correctional System met*** with representatives of the Ministry of Health and discussed the feasibility of substitution therapy programmes for drug addicts among convicts. Pilot methadone substitution projects carried out among civil population of Pavlodar and Temirtau are being analyzed. (In Pavlodar, a substitution methadone therapy programme has been in effect since 29 October 2008 and in Temirtau – since 10 November 2008).
30.	One concern recognized by several officials from the penitentiary administration related to the fact that many convicts serve their sentences far from their homes and families. On the one hand, the traditional concentration of facilities in the north of the country means that many people from the south of Kazakhstan are transferred to the north. On the other hand, it is often the remote location of facilities that makes family visits difficult; for example Arkalyk prison, the only facility with a cell system for highly dangerous individuals, is so remote that it was impossible for the Special Rapporteur to visit it within the limited time available.	In accordance with the requirements of the Penal Enforcement Code of the Republic of Kazakhstan (Article 68, paragraph 1), persons sentenced to deprivation of liberty should serve their sentences in the region where they lived prior to his arrest or conviction. To comply with that legal requirement, the Committee of the Penal Correctional System completed, in 2004-2009, work to establish or modernize correctional institutions in the cities of Atyrau (2009г.), Taraz (2006г.), Solnechny settlement in Eastern Kazakhstan (2004г.) and to open start-up facilities in Kyzyl Orda (2005г.), and Zarechny settlement in Almaty oblast (2009г.). New investigation isolators were established in Almaty (2009г.), Pavlodar (2006г.), and Shimkent (2008г.). Convicts in all of these facilities, which meet international custody control standards, are held in cells.

No.	Comments	Actual situation (agreement/objection)
47.	Furthermore, only a very small percentage of the prison population appears to have access to meaningful activities. While it is laudable that, in some places, schools and vocational training are available, few of the Special Rapporteur's interlocutors indicated that they benefited from any of them.	As a result of measures taken to improve employment among convicts, the number of employed persons in correctional facilities increased, in 2009, by 511 persons, as compared to 2008 (8,783 people). In this regard and in accordance with the requirements of the penal enforcement legislation of the Republic of Kazakhstan, today vocational training is provided in 42 correctional institutions. In 2009, 3 vocational schools were opened in institutions EC-166 /5 in Astana, LA-155/8 in Almaty and Almaty region and KA-168/5 in Aktobe region. Following 2008-2009 academic year, 3,646 inmates learned various trades that are in demand in the labor market.
67.	With regard to civil society, public monitoring commissions, composed of 91 civil society representatives, were established in each of the 15 regions. The commissions are mandated to carry out monitoring visits to detention facilities under the authority of the Ministry of Justice…. While these existing mechanisms do valuable work, they do not seem to cover the whole territory, and appear to focus on monitoring conditions rather than conduct torture fact-finding.	Public monitoring commissions (PMCs), composed of 91 members and overseeing institutions of the penal correctional system, have been established in all regions of Kazakhstan (15 PMCs). Since the start of the year, they have made more than 800 visits to institutions. PMCs monitor, on a regular basis, places of deprivation of liberty, meet with convicts, receive their complaints, which are later followed-up, including by forwarding them to criminal prosecution bodies (in case of evidence of ill-treatment or torture).
69.	One crucial safeguard in the context of the prevention of torture and ill-treatment is a review by an independent judge of detention at an early stage. Even though Kazakhstan, handed over the process of sanctioning arrest to the judiciary in 2008, the Committee against Torture expressed the view that the new process was not a fully-fledged habeas corpus proceeding in line with international standards (CAT/C/KAZ/CO/2, para. 9 (c)).	Certain measures have been taken in the Republic of Kazakhstan in the area of prevention of torture and other forms of ill-treatment. In particular, international jurisprudence and norms of international law are being studied and regulatory acts of the Supreme Court are being published. In fact, the Supreme Court has recently adopted a regulatory ruling on application of norms of criminal and criminal procedural legislation regarding respect of personal freedoms and inviolability of dignity and combating torture, violence and other cruel or degrading treatment or punishment. That regulatory ruling makes a clear distinction between legal grounds for criminal responsibility for torture and excess of authority.

No.	Comments	Actual situation (agreement/objection)
		In addition, that regulatory ruling specifies procedural mechanisms of review by a prosecutor or a court of complaints regarding torture received from detainees or arrested persons. It also provides clarifications regarding assessment of evidence, proper qualifications of offences, prosecution of not only the perpetrators but also of those who instigated torture or had knowledge of it or acquiesced to it as well as compensation of property and moral damage sustained by the victims of torture. Authorization of arrests by a court is an important step that effectively ensures fairness of procedural enforcement decisions. Such a decision brings national legislation much closer to international legal standards.
77.	The Special Rapporteur observed that some independent monitoring is being conducted in Kazakhstan, but it is patchy and does not cover a large number of institutions. He very much welcomes the ratification of the Optional Protocol to the Convention against Torture and the planned creation of a national preventive mechanism.	The establishment of such a mechanism will require funding from the state budget and introduction of legislative changes. In the regard, by a Presidential Decree No. 896 dated 30 November 2009, it was decided to make a Declaration of the Republic of Kazakhstan postponing the implementation of its obligations, as provided for in Article 24 of the Protocol. The Ministry of Foreign Affairs forwarded that Declaration to the UN Secretary-General in December 2009.
78.	With regard to violence against women, the Special Rapporteur is concerned about the inadequate prevention and protection afforded by the State to victims of domestic violence and about the lack of awareness of this problem. Children are extremely vulnerable to corporal punishment and need strengthened protection.	A law of the Republic of Kazakhstan on prevention of domestic violence was adopted on 4 December 2009. Its main purpose is to ensure progressive improvement of prevention of crimes and offences in the area of family and domestic relations. The law also establishes the way state bodies are to carry out their activities to counter domestic violence; the rights and responsibilities of persons placed under preventive control; and liability for their violations.
80.	d) Establish an effective and independent criminal investigation and prosecution mechanism that has no connection to the body investigating or prosecuting the case against the alleged victim;	The Ministry of the Interior has drafted and sent to the Parliament's Majlis a bill amending the Law of the Republic of Kazakhstan on Procedures and Conditions for Holding Persons Suspected or Accused of a Crime in Custody through an article that would regulate the grounds for and procedures of public oversight in special institutions of the Ministry of the Interior.

No.	Comments	Actual situation (agreement/objection)
	e) Allow access to independent medical examinations without the interference or presence of law enforcement agents or prosecutors at all stages of the criminal process, and provide independent medical check-ups of persons deprived of their liberty, particularly after entry to or transfer between places of detention**;**	To bring certain legislative act into line with Article 39 of the Constitution of the Republic of Kazakhstan, the Ministry of the Interior has drafted a bill on amendments and additions to certain legislative acts that establish the grounds for and conditions of holding citizens in custody, according to which human rights and freedoms of citizens can be restricted only by laws. That bill was designed to provide a legislative framework for establishing the grounds for and procedures of holding citizens in custody in centers of temporary isolation, adaptation and rehabilitation of minors; sobering-up stations; reception and distribution centers; special reception centers for persons under an administrative arrest; specialized treatment and prevention institutions for compulsory treatment of alcoholism, drug addiction and substance abuse, currently regulated by by-laws.
	f) Ensure that future refugee legislation duly takes into account the principle of non-refoulement enshrined in article 3 of the Convention against Torture.	A law of the Republic of Kazakhstan on refugees was adopted on 4 December 2009.
82.	Institutional reforms. The Special Rapporteur recommends that the appropriate bodies take the following: (a) Continue and accelerate reforms of the prosecutor's office, the police and the penitentiary system with a view to transforming them into truly client-oriented bodies that operate transparently, including through modernized and demilitarized training;	Currently, a working group composed of representatives of all state bodies is meeting, tasked with an administrative reform of law enforcement agencies aimed at their demilitarization and bringing them into line with international standards.
	c) Design the system of execution of punishment in a way that truly aims at rehabilitating and reintegrating offenders, in particular by abolishing restrictive prison rules and regimes, including for persons sentenced to long prison terms, and maximizing contact with the outside world;	In the context of humanization of criminal justice, the adoption of the Law dated of 21 December 2002 on amendments and additions to the Criminal Code, the Code of Criminal Procedure and the Penal Enforcement Code of the Republic of Kazakhstan has considerably expanded the range of rights and benefits provided to convicts serving their sentences. Outdated and degrading restrictions and prohibitions have been abolished, for instance unjustified restrictions and prohibitions concerning correspondence, phone calls and the wearing of watches and sports clothes in free time have been abolished. Work is under way to develop a concept of reforming the penal correctional system, which will make it possible to bring it closer to the international standards

No.	Comments	Actual situation (agreement/objection)
	d) Strengthen further non-custodial pre- and post-trial measures, in particular, but not exclusively, in relation to minors, and equip the probation service with sufficient human and other resources	A draft law on amendments and additions to the certain legislative acts of the Republic of Kazakhstan on a probation service will provide for the establishment of a probation service, within a legislative framework, as envisaged in paragraph 30 of the Forward-looking Plan of Lawmaking Activities of the Government of Kazakhstan for 2010-2011, which was approved by the Resolution No. 185 of the Government of the Republic of Kazakhstan dated 18 February 2009. This year, a request was made to consider expanding conditions for execution of non-custodial punishment by adding to the staffing table of the Inspectorate 1,183 new posts and establishing a probation service on that basis. By its decision No. 14 dated 21 July 2009, the Republican Budgetary Commission provisionally approved a stage-by stage increase in the staffing table of the Inspectorate by 591 posts in 2010 and by 592 posts in 2011.
	e) Design the national preventive mechanism as an independent institution in full compliance with the Paris Principles and equip it with sufficient human and other resources;	The establishment of such a mechanism will require funding from the state budget and introduction of legislative changes. In the regard, by a Presidential Decree No. 896 dated 30 November 2009, it was decided to make a Declaration of the Republic of Kazakhstan postponing the implementation of its obligations, as provided for in Article 24 of the Protocol. The Ministry of Foreign Affairs forwarded that Declaration to the UN Secretary-General in December 2009. A working group to draft a bill on national preventive mechanism has been established under the Ministry of Justice, involving NGOs and international organizations.
83.	Women The Special Rapporteur recommends that the appropriate bodies adopt a law on domestic violence in full compliance with international standards. The law should not focus on prosecution, but also foresee preventive measures; provide for ex officio investigations of alleged acts of domestic violence and ensure adequate funding for the infrastructure to support victims of domestic violence and trafficking; and create a national database on violence against women.	A law of the Republic of Kazakhstan on prevention of domestic violence and a law on amendments and additions to certain legislative acts of the Republic of Kazakhstan on prevention of domestic violence were adopted on 4 December 2009. The law on prevention of domestic violence establishes a legal and institutional framework of activities of state bodies, entities and citizens to prevent domestic violence and provides for the establishment of a mechanism to prevent and suppress offences in the area of family and domestic relations.

No.	Comments	Actual situation (agreement/objection)
85.	b) Initiate harm-reduction programmes for drug users deprived of their liberty, including by providing substitution medication to persons and allowing needle exchange programmes in detention.	In order to prevent HIV in the penal correctional system, the Minister of Justice of the Republic of Kazakhstan approved a programme to combat the AIDS epidemic in the Republic of Kazakhstan for 2006-2010. In accordance with it, measures are being taken to provide persons held in institutions of the penal correctional system with information materials and disinfectants. The Ministry of Justice and the Ministry of Health have drafted and signed a joint order on measures to improve prevention of HIV infection in institutions of the penal correctional system of the Ministry of Justice of the Republic of Kazakhstan relating to confidential screening for HIV for all persons held in investigation isolators and correctional facilities.

Information on factually incorrect assertions in the report submitted by the UN Special Rapporteur Manfred Nowak

No.	Comments	Actual situation
4.	Notes that considerable efforts had been made to prepare detention facilities and the detainees for his inspections. While he assumes that most preparations were well intended, they contradict the very idea of unannounced visits and independent fact-finding. The latter is only possible if one has the chance to observe day-to-day practices in places of detention in an undistorted way. Many of the places were freshly painted when he arrived; in some colonies, prisoners had been moved out of the quarantine and punishment cells when it became clear that the Special Rapporteur was on his way, concerts (without any listeners) had been set up, and so on. He also noted with concern that some of the detainees may have been intimidated into not speaking openly to him.	The visit by the UN Special Rapporteur Manfred Nowak in May of 2009 coincided with pre-summer maintenance work (site improvements), routinely carried out across the penitentiary system. This maintenance work is performed, on a regular basis, in the spring and in the fall and was not in any way related to the visit by the Special Rapporteur. Besides, it was the Special Rapporteur himself who made decisions on what institutions had to be visited, without any coordination with the government authorites. The administration of these institutions got no advance notice of his visits. During the visits, the administartion of the penal correctional institutions provided unrestricted access to any premises and an opportunity to have a confidential contact with any convict or detainee, at the discretion of the Special Rapporteur and experts.
14.	Domestic legislation does not contain any provisions implementing the principle of universal jurisdiction in accordance with articles 5 (2) and 7 of the Convention against Torture.	In accordance with Articles 527 and 528 of the Code of Criminal Procedure of the Republic of Kazakhstan, in case a foreigner, who left the territory of the Republic of Kazakhstan, had commited a crime in the territory of the Republic of Kazakhstan, the files of the case are sent to the Prosecutor General of the Republic of Kazalkhstan or a designated prosecutor, with a request to institute criminal proceedings in order to obtain a decision to refer the case to another state, under an international treaty.
18.	Article 15.2 of the Constitution provides that “the law shall establish the death penalty as an extraordinary measure of punishment for especially grave crimes and grant the sentenced person the right to appeal for pardon”. Article 49 of the criminal code specifies these crimes. An indefinite presidential moratorium on the death penalty entered into force on 1 January 2004. According to official sources, the last execution of a death penalty took place on 1 December 2003. The last death sentence was pronounced on 31 August 2006. On 6 December 2007, the remaining 31 death sentences were commuted to life imprisonment.	The Special Rapporteur’s report refers to the old wording of Article 15.2 of the Constitution of the Republic of Kazakhstan that established death penalty for especially grave crimes with the right to appeal for pardon. According to the new wording of the Article 15.2 (with changes introduced by the Law No. 254 of the Republic of Kazakhstan of 21 May 2007), death penalty is established by law as an extraordinary measure for terrorist crimes involving the loss of life as well as for especially grave crimes committed in wartime, granting the sentenced person the right to appeal for pardon. Currently, no persons sentenced to death are held in places of pre-trial detention and deprivation of liberty.

No.	Comments	Actual situation
19.	The Special Rapporteur received allegations of ill-treatment and corporal punishment in penitentiary institutions.1 One colony mentioned repeatedly in this regard (and called "the Guantanamo of Kazakhstan" by many detainees) is UK-161/3 in Zhitykara. The Special Rapporteur received reports that "difficult" detainees were sent there, subjected to beatings and other forms of physical and psychological violence in order to "break" them. According to some accounts, rape by fellow inmates is used to pressure prisoners. He is very concerned about allegations that some people were sent there following meetings with him during his visit.	UK-161/3 is a special regime correctional facility located in Zhitykara in the Kostanai region. In accordance with Article 48 of the Criminal Code of the Republic of Kazakhstan, persons with especially criminal recidivism as well as persons sentenced to a life-time deprivation of liberty are held in that facility. Given the particular nature of that facility's population, information included in the above-mentioned paragraph has been disseminated in order to disrupt its functioning and to make its custodial regime less restrictive as well as to attract public attention. In 2009, after Mr. Nowak's visit, there were no cases when convicts had been sent to UK-161/3 as a punishment. Since 1 May to 31 December 2009, that facility accepted 168 convicts sentenced by courts to serve their terms in a special regime institution.
20.	Many reports indicate that in one colony, Stepnogorsk Prison Hospital (EC-166/18), officials, including the highest levels of management, participate in what is described as brutal medical "check-ups" for newcomers. The Special Rapporteur received consistent descriptions of how the personnel, with the support of convicts cooperating with the management, beat newcomers and would forcibly insert a rubber tube into their anus, officially for medical and hygiene purposes. There were also reports of rape. This treatment is exacerbated by the fact that many of the people arriving in the hospital are ill. Some interviewees indicated that the "welcome treatment" was adapted to target their "weak points", that is their illness. Detainees in several institutions indicated that they were so afraid of going back to the prison hospital that they would rather not get any medical treatment at all.	EC-166/18 in Stepnogorsk is a strict custodial regime medical facility treating convicts with tuberculosis and other somatic diseases. In 2009, there were no cases of the use of special means against inmates held in that facility. When convicts or detainees ask for medical help in the medical facility of the institution, that medical help is provided immediately. When a case is not clear, specialists from local healthcare institutions are invited to take part in the examination of the patient, who is hospitaized, if warranted. There have been no cases of refusal to go to the Interregional somatic hospital of the institution EC-166/18 in the Akmola region. The total number of convicts admitted to that hospital is 444.
21. 22.	In women's and the minors' colonies, officials appear to be involved in cases of corporal punishment. Such punishment includes beatings with hands and fists and police truncheons, but also more "subtle" measures, such as leaving convicts lying in cold punishment cells without bed sheets during the night. 22. On the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, the Special Rapporteur concludes that the use of torture and ill-treatment certainly goes beyond isolated instances. In spite of	In accordance with para. 2 of Article 31 of the Law on Justice Agencies, it is prohibited to apply special means and techniques to women and persons with evident disabilities and to minors, except in cases of attacks by them, which threaten the lives and health of others, group attacks or armed resistance. In 2009, there were no cases of the use of special means against convicted women. Punishment in the form of incarceration is imposed by a motivated decision taken by the head of the investigation isolator. In punishment cells or solitary confinement cells, the suspected or accused persons are provided with an individual sleeping place and bedding only during the established sleeping hours. Incarceration is carried out only when a medical officer certifies that the

No.	Comments	Actual situation
	the fact that his fact-finding was hampered by preparations and intimidation of detainees, he received many credible allegations of beatings with hands and fists, plastic bottles filled with sand and police truncheons, and of kicking, asphyxiation with plastic bags and gas masks, to obtain confessions from suspects. In several cases, these allegations were supported by forensic medical evidence. Torture and ill-treatment are most often inflicted in such a way as to avoid making visible marks (by beating on soles and kidneys with flexible tools) and frequently accompanied by threats to add additional charges to the one the person is suspected of, which would prolong the prison terms. Also, many threats against family members were reported.	suspected or accused person can be held in a punishment cell. In accordance with para.149 of the Internal Regulations of Correctional Institutions, adopted by the Order No. 148 of the Minister of Justice dated 11 December 2001, "bedding is provided to convicted persons held in punishment and disciplinary isolation cells or transferred to cell-type premises or solitary confinement cells, only during the sleeping hours. " There were no documented cases of corporal punishment or ill-treatment of convicted women and minors in 2007-2009. In addition to that, institutions of the penal correctional system are being monitored by bodies of the Prosecutor's Office, which have an unimpeded access to any facility within correctional institutions. In accordance with an instruction on monitoring the legality of investigation and inquiry, approved by the Order No. 47 of the Prosecutor-General dated 27 August 2008, prosecutors conduct inspections checking the legality of detention and custodial control in cells, detention centers and other premises of the penal system. During such inspections, there were no complaints from detainees.
26.	Overall physical conditions and the food supply have been brought into line with international minimum standards. The Special Rapporteur found that most of the places he visited (which were prepared for his visit) were clean and well maintained. The "colony" type of facilities for convicts (in which 20 to 100 people sleep in large dormitories) generally allow for convicts to freely move around within a certain area and to stay in contact with other convicts, which is definitely positive. On the other hand, the dormitory system might jeopardize individual security of detainees. The Special Rapporteur also visited a special regime colony in Arshaly (EC-166/5), where convicts take shifts (half are confined to their cells while the other half can walk around a small courtyard).	Since 2004, practical steps have been taken to construct cell-type facilities. Such facilities are already operational in the Eastern Kazakhstan and Almaty regions, in Atyrau, Shimkent, Taraz and Kyzyl Orda. As for EC-166/5, it is a special regime correctional colony reporting to the Astana office of the Committee of the Penal Correctional System, located in Arshaly settlement of the Arshaly district of the Akmola region. In accordance with Article 69 (6) of the Penal Enforcement Code of the Republic of Kazakhstan, special regime colonies are for males with especially criminal recidivism and males sentenced to a life-time deprivation of liberty as well as convicts whose death sentences have been commuted to a deprivation of liberty. In this regard, according to Article 121 of the country's Penal Enforcement Code, convicts serving their sentences under normal and less restrictive conditions in special regime correctional colonies reside in dormitories or locked premises. Convicts serving sentences under strict custodial control occupy cell-type premises. They are allowed to have a 90-minute daily walk.

No.	Comments	Actual situation
27.	Although most investigation isolators are under the authority of the Ministry of Justice, four remain under the National Security Committee. In general, they consist of cells containing three to eight beds and do not allow for much movement (convicts are usually confined to their cells for 23 hours a day), with 1 hour of exercise together with their cellmates in tiny courtyards with walls all around and bars above. Although there is running water in most isolator cells and the sanitary facilities have been renovated, many still do not allow for much privacy. In most places, access to showers is restricted (between once per week or every 10 days).	The issue of legality of investigation isolators being maintained under the authority of the National Security Committee has been discussed over the recent years on numerous occassions and at different levels. Taking into account the well-substantiated position of the National Security Committee, it was agreed by the state bodies involved, after an official exchange of correspondence and clarifications, to leave investigation isolators under the authority of the national security agencies. In addition to many other law enforcement motives, the fact that persons under custody for crimes involving treason and espionage possess state secrets represents the main reason for investigation isolators being placed under the authority of national security bodies. Those persons must be held in places of deprivation of liberty of a certain type, under mandatory increased security to protect state secrets. Conditions under which the suspects are held in those facilities are regulated by statutory acts of the Republic of Kazakhstan and meet their requirements.
38.	The Special Rapporteur received a number of allegations of threats against women accused of crimes, targeting in particular, their children. He received reports about women suspected or accused of drug-related crimes, and foreign women who are subjected to beatings and other forms of violence, including hooding and electroshock by law enforcement agents. Within the penitentiary system, he received credible allegations of corporal punishment against women. Since there are fewer colonies for women, they tend to be cut off from their families and friends even more than male prisoners.	There is no provision for corporal punishment in the penal enforcement legislation of the Republic of Kazakhstan. In cases of attacks by convicts, including women, which threaten the lives and health of others, group attacks or armed resistance, special means are used to suppress unlawful actions. The use of special means and physical force against the special population is allowed only if all other forms of preventive intervention have been applied and failed. The use of special means and physical force is regulated by the Law No. 31 on Justice Agencies and the Order No. 146 of the Minister of Justice dated 11 December 2001. Prosecution bodies are notified about each case of the use of special means and physical force and internal investigations are carried out. At the same time, over the last several years, there have been no cases of attacks or armed resistance so no special means have been used against convicted women.
42.	The Special Rapporteur visited an educational colony in Almaty (LA-155/6), the physical conditions of which seemed to be good (taking into account the extensive preparations made before the visit). The children attended school and leisure activities, and had no major complaints regarding the food or health care. The Special Rapporteur did, however, receive allegations of corporal punishment of minors in the colony, notably of severe, regular beatings with fists and truncheons by	In accordance with Article 31 of the Law on Justice Agencies, it is prohibited to apply special means and techniques to minors, except in cases of attacks by them, which threaten the lives and health of others, group attacks or armed resistance. In addition to that, there have been no complaints from minors themselves or their relatives or representatives, lodged with superior agencies within the penal correctional system or other state or non-state entities, against the administration of that institution regarding physical violence or torture.

No.	Comments	Actual situation
	guards. The Special Rapporteur is also very concerned about the extensive restrictions on family visits (the norm was three two day visits and three short-term visits a year). Such restrictive policies in relation to minors are definitely in contravention of the key requirement that their best interest should be placed at the centre of all measures taken by the State.	Educational colonies are systematically inspected by specialized prosecution bodies and they are frequently visited by representatives of the Parents Committee, Board of Trustees and public oversight commissions. As required by the legislation, convicts serving their sentences in educational colonies have the right to receive visits (short term and long term), depending on conditions of custody: from 12 short-term or 4 long-term visits a year, under less restrictive regime, to 4 short-term visits, under strict regime. Those on eased terms, can receive unlimited short-term visits and 6 long-term visits with a stay outside the colony. Furthermore, for their good conduct, good-faith attitude to training and labour, active participation in inmate organizations and educational activities inmates are allowed, as a reward, to go outside the colony, accompanied by parents or other close relatives.
45.	Of concern in this regard is the newly introduced punishment of life imprisonment, which gives prisoners very little hope of ever being released.	In accordance with Article 70 of Section 5 of the Criminal Code, a person serving an uncommuted court sentence in the form of a life-time deprivation of liberty may be conditionally released if the court finds that there is no need for that person to further serve the sentence, provided that he or she has served at least 25 years without any gross violations of the established procedures and conditions of serving sentences in the 3 preceding years, in line with article 112 of the Penal Enforcement Code.
46.	The access of pretrial detainees to the outside world appears equally restricted (articles 17 and 19 of the law on procedures and conditions for holding persons suspected or accused of a crime in custody). In addition, the Special Rapporteur was informed that authorization was often denied. The fact that police detainees are prevented from receiving visits for prolonged periods of up to several months puts unnecessary hardship on detainees.	In accordance with Article 17 of the Law of the Republic of Kazakhstan on Procedures and Conditions for Holding Persons Suspected or Accused of a Crime in Custody, from the moment a suspect or accused is apprehended, he or she is given an opportunity to meet with a counsel in private and confidentially. There are no restrictions on the number or length of such meetings. By a written authorization from an official or a body handling the criminal case, suspects and accused persons may be granted each month no more than two – and in the case of a minor – not more than three meetings with relatives or other persons, each meeting lasting up to three hours.
47.	Furthermore, only a very small percentage of the prison population appears to have access to meaningful activities. While it is laudable that, in some places, schools and vocational training are available, few of the Special Rapporteur's interlocutors indicated that they benefited from any of them.	In should be kept in mind that, unlike compulsory secondary education, vocational training is voluntary and offered only when a convict asks for it.

No.	Comments	Actual situation
48.	One of the main reasons for disciplinary punishment appeared to be that prisoners refused to do the two hours of work on maintaining the colony, which is prescribed by the rules. In response to this refusal, the prison administration may impose sanctions, including criminal ones that result in additional terms of imprisonment (article 360 of the criminal code). The Special Rapporteur learned of one case where a prisoner had more than 10 years added to his initial term. Such excessive punishment for disciplinary violations clearly suggests that the penitentiary system is deficient when dealing with offences by detainees.	In accordance with Article 102 of the Penal Enforcement Code, convicts are required to do unpaid work only related to the improvement of correctional facilities and the adjacent territory as well as social amenities and living conditions. In this regard, in accordance with Article 112 of the Penal Enforcement Code, convict's unjustified refusal to do the unpaid work constitutes a gross violation of the established procedure of serving sentence and entails a sanction. In accordance with Article 360 of the Criminal Code of the Republic of Kazakhstan, criminal sanctions for gross incompliance with legitimate demands of the administration of a penitentiary institution can be imposed on a convict only when he or she, on a systematic basis, violated the established procedures of serving sentences. According to Article 360 of the Criminal Code of the Republic of Kazakhstan, the maximum term of imprisonment is 7 years. There have been no cases of extension of that term to up to ten years.
51.	The Special Rapporteur asked all police and National Security Committee chiefs and directors of penitentiary facilities whether they had received any complaints of ill-treatment in the preceding five years. The overwhelming majority of them denied ever having heard of such allegations. The almost total absence of official complaints, however, raises suspicion that, in actual fact, there is no meaningful complaint mechanism; on the contrary, it appears that most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals.	The data regarding complaints received in the past 5 years is as follows: 2005 - 1,774 complaints, including 17 complaints alleging offences committed by officials of the penal correctional system; 2006 – 2,482 (54); 2007 – 4,320 (219); 2008 – 5,327 (280); 2009 – 5,288 (288). Each complaint is registered and sent to appropriate authorities for a procedural follow-up. In this context, it should be pointed out that in 60 percent of cases, complaints alleging offences are made against those officials of the institutions of the penal correctional system who stick to a principled position in ensuring strict enforcement of the established procedures of serving sentences by convicts. As a rule, those complaints come from hard-core violators of the custodial regime and constitute a form of opposition to regulations established by the existing legislation.

No.	Comments	Actual situation
53.	A person in detention is clearly unable to collect and document proof if he or she does not have access to independent medical examination. While medical personnel employed by the Ministry of the Interior and the penitentiary administration do perform check-ups upon arrival, they clearly lack the independence to take action against colleagues with whom they work on a daily basis.9 An examination by these staff members can therefore not be considered independent; consequently, it needs to be done by an outside medical expert. Since independent medical examinations must, however, be authorized by the supervising authority — such as the investigators, the prosecutors, or the penitentiary authorities — that authority has ample opportunity to delay authorization so that injuries deriving from torture are healed by the time the examination takes place. Moreover, the Special Rapporteur was informed that, when an examination is conducted outside the detention facility, the law enforcement officer in charge of the case normally accompanies the detainee and stays with him or her during the examination. Another impediment is the fact that the detainee must bear the costs. This is clearly not a situation conducive to finding out the truth. An additional problem is that the forensic expert has to indicate the seriousness of the injuries, which will determine the classification of the potential crime, and therefore ample possibility to force medical personnel to understand the nature of the injuries. Indeed the Special Rapporteur received allegations of this taking place.	When the Special Rapporteur raised the issue of access to independent medical examination and determination of seriousness of bodily injury, he did not seem to bear in mind that it was a primary responsibility of each law enforcement officer to ensure the rule of law in each sphere of life of the state and the society, thus one cannot claim that the personnel of penitentiary institutions display bias in conducting body check-ups, which is supported by the results of inspections of these procedures by oversight bodies. In accordance with the existing legislation of the Republic of Kazakhstan, on the day of their admittance to an investigation isolator, in any case within the first 24 hours, persons concerned undergo initial medical check-up and sanitization. The results of that check-up are reflected in the medical records. In addition, upon entering the investigation isolator, the suspected or accused persons undergo, within the first three days, mandatory medical examination by medical doctors - a surgeon, general internist, phtisiologist (TB specialist), psychiatrist, dermatologist-venerologist - as well as fluography and lab tests. Those who have not undergone medical examination, are held separately from other suspects or accused persons. When suspects or accused persons sustain bodily injuries, medical examinations are conducted, without delay, by the medical personnel of the penitentiary institution. The results of medical examinations are duly logged and conveyed to the victim. By a decision of the head of the place of detention or an official or body handling the criminal case, medical examination can be conducted by the personnel of healthcare establishment.
54.	Although most investigation isolators have been brought under the authority of the Ministry of Justice, from the conversations the Special Rapporteur held in isolators, it became clear that the staff there did not consider it their responsibility to detect torture or ill-treatment perpetrated by law enforcement agencies, and even less to address it.	By law, it is a primary responsibility of each law enforcement officer to ensure the rule of law in each sphere of life of the state and the society. Thus, one cannot claim that the personnel of penitentiary institutions display bias in conducting body check-ups, which is supported by the results of inspections of these procedures by oversight bodies.

No.	Comments	Actual situation
56.	Although several steps have been taken to raise the awareness of judges in relation to torture, they are widely seen as formally present at certain points of the criminal process, but mainly to rubberstamp prosecutorial decisions rather than taking an interest in discovering the truth and meaningfully following up on torture allegations. The overwhelming majority of interviewees stated that, neither at the first hearing to sanction pretrial detention nor during the trial itself had any judge asked about the treatment during the initial period of custody. Moreover, if victims raised allegations of torture or ill treatment, they were routinely silenced. The Special Rapporteur heard many times that the court monitoring project led by the OSCE was helpful in ensuring that trials were fairer, notably in the only acquittal based on the finding that torture had been used during the investigation (see case of Mr. Polienko, appendix).	According to the Constitution of the Republic of Kazakhstan, the judicial power is exercised on behalf of the Republic of Kazakhstan and is called upon to protect the rights, freedoms and legitimate interests of citizens and entities and to ensure compliance with the Constitution, laws and other statutory acts and international treaties concluded by the state. In administration of justice, a judge acts independently and follows only the Constitution and the law. Any interference in the work of a court to administer justice is unacceptable and punishable by law. As for dealing with specific cases, a judge is accountable to no one. For example, according to the UAIS (Unified Automated Information System), in 2009, the courts received 25,097 requests to authorize, extend, revoke or change an arrest (house arrest or extradition arrest). The courts considered 25,072 of these requests and approved 24,137 of them or 96.2 percent. As a result of the consideration of requests to authorize an arrest or a house arrest, the national courts made 518 special rulings addressed to heads of criminal prosecution bodies. In fact, refusals to approve requests to authorize a preventive measure of arrest or extension of arrest only go to show that the courts do not treat such a review as a mere formality and do not rubberstamp decisions made in advance by prosecutors.
68.	Overall, the Special Rapporteur found that most existing safeguards are formally respected. All places he visited had registers, and most detainees indicated that they had seen judges, prosecutors and lawyers at the various stages of custody and judicial process, as required by law. At the same time, many safeguards are not effective in practice: a major gap in this regard is the fact that the de facto apprehension and delivery to a police station is not recorded, which makes it impossible to establish whether the three hour maximum delay for the first stage of deprivation of liberty is respected. Indeed, the Special Rapporteur received many allegations that the first hours of (unrecorded) detention were used by law enforcement organs to obtain confessions by means of torture. The situation is exacerbated by the fact that, at that stage, there is no right of access to a lawyer.	All delivered persons are registered in a special logbook. A stay in a police station shall not exceed three hours. After that, a person is either released or a protocol regarding his or her detention is drawn up, in accordance with Article 132 of the Code of Criminal Procedure. In addition, prosecution bodies carry out inspections, on an ongoing basis, of detention facilities and, if violations of provisions regarding the duration of detention are identified, illegally detained persons are released in compliance with Article 136 of the Code of Criminal Procedure whereas guilty officials are disciplined or prosecuted.

No.	Comments	Actual situation
70.	The Special Rapporteur received numerous and consistent allegations that corruption is deeply ingrained in the criminal justice system. Several sources indicated that, at every stage, from the police and the judiciary through to detention centres and prisons, corruption is a quasi-institutionalized practice.	To eradicate manifestations of corruption, counter measures are being taken, including at the legislative level. The Republic of Kazakhstan was among the first CIS countries to adopt, in 1998, a law on combating corruption whereas the Criminal Code establishes strict criminal liability for crimes involving corruption. In view of that, the Special Rapporteur's allegation that corruption in the criminal justice system is a quasi-institutionalized practice is factually incorrect.
71.	Many sources indicated that individual policemen have an unofficial quota of cases that they are required to "resolve" in order to be positively evaluated. Such an evaluation system may tempt police officers to resort to unlawful methods to resolve cases. Many interlocutors in fact indicated that, although the law requires supporting evidence, confessions are still considered the most valuable form of proof. Moreover, supporting evidence, including testimonies, are sometimes obtained by force and intimidation as well.	According to the resolution of the Plenary of the Supreme Court of 9 July 1999 (No. 7) on the practical application of the legislation on the compensation for the harm caused by unlawful actions of the bodies in charge of the criminal process, a list of unlawful actions of the bodies in charge of the criminal process has been compiled to prevent recurrence of such actions. When cases of the use of unlawful methods of investigation are identified, those responsible are held accountable in accordance with law. Confessions alone without other proofs of the suspect's guilt can not constitute a basis for an indictment. In accordance with Article 116 of the Code of Criminal Procedure of the Republic of Kazakhstan, factual evidence obtained through illegal means is deemed unacceptable as evidence.
72.	Kazakhstan has made good progress in reforming its legal framework and its institutions since independence in 1991. By acceding to international instruments, it has signalled to its citizens, but also to the international community, that human rights should be considered a priority. Some steps have been taken to integrate these international standards into the national legal framework, including through the criminalization of torture (even if the definition is too narrow and penalties are not commensurate). However, considerable gaps between the law and reality remain.	Since 2006 to the present time, there have been 9 documented cases of torture, which have been prosecuted. Out of that number, 6 cases were referred to courts while in 2 cases proceedings were suspended due to a search for the accused person and failure to identify a person to be held acoountable as an accused person and 1 case was dismissed for lack of elements of a crime. This data shows that guilty officials are prosecuted when cases of torture are documented. When criminal proceedings are instituted against officials, a thourough and unbiased investigation of cases of ill-treatment is conducted.
73.	Extensive preparations by the authorities of the places of detention to be visited by the Special Rapporteur, and intimidation of and instructions to detainees on which information to provide made it very difficult for the Special Rapporteur to draw objective conclusions. With this caveat in mind and on the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with people deprived of their	The Internal Security Department of the Ministry of the Interior and its offices on the ground take every measure to prevent inhuman treatment of citizens. When such cases are identified, those responsible are held accountable. For instance, in cases of torture (Article 347-1 of the Criminal Code of the Republic of Kazakhstan), 2 criminal proceedings were instituted in 2007, 2 – in 2008 and 2 – in 2009. All officials found guilty have received long sentences.

No.	Comments	Actual situation
	liberty, often supported by forensic medical evidence, the Special Rapporteur concludes that the use of torture and ill-treatment certainly goes beyond isolated instances. He received many credible allegations of beatings with hands and fists, plastic bottles filled with sand, police truncheons and of kicking and asphyxiation with plastic bags and gas masks in order to obtain confessions from suspects. In several cases, the allegations were supported by forensic medical evidence.	This data shows that when there is evidence of the use of physical force or inhuman treatment of suspects by law enforcement officers, they are strictly sanctioned. Yet it would be groundless to claim that such practices are pervasive. These cases are isolated. They are identified in a timely manner while criminal proceedings are instituted against the perpetrators.
74.	The commission of acts of torture is facilitated by the inaction of prosecutors, judges, staff of the Ministry of Justice, the medical profession and lawyers in the face of allegations of torture and ill-treatment, and by the lack of effectiveness of inspection and monitoring mechanisms. In the Special Rapporteur's assessment, evidence obtained through torture (including threats) or ill-treatment is commonly used as a basis for conviction.	Oversight inspections of detention facilities are conducted by the prosecution bodies on an ongoing basis. During those inspections, prosecutors meet with detainees and accused persons who have filed a complaint. When a complaint is filed, each case is duly reviewed, followed by a procedural decision. In fact, in sentencing, the courts are guided by a principle enshrined in the Constitution of the Republic of Kazakhstan (Article 77 (9) according to which "evidence obtained by illegal means shall have no legal force. No person shall be sentenced on the basis of his or her own admission of guilt alone." Thus, when trying a case, a court establishes all circumstances that prove the accused person's guilt.
76.	Although the Special Rapporteur recognizes that impunity is not total, he found that existing complaints mechanisms are ineffective. The burden of proof rests on the alleged victim of ill-treatment; therefore, only a small minority of perpetrators are actually brought to justice. He also identified significant gaps with regard to the State's obligations in the areas of compensation and rehabilitation.	In accordance with Article 23 of Section 3 of the Code of Criminal Procedure, the burden of proof rests on the prosecutor. Norms established in the Code of Criminal Procedure (Chapter 4) guarantee rehabilitation and compensation of damage to a victim of torture. On the basis of a constitutional right of everybody to have legal remedies, persons who have been rehabilitated, without a prior referral to other bodies, may go, in a civil procedure, directly to courts to seek compensation for damages and restoration of their rights.
80.	The Special Rapporteur recommends that the appropriate bodies take the following measures: (a) Publicly condemn torture and ill-treatment and unequivocally state that torture is a serious crime, in order to rebalance the current situation, where criminals are easily deprived of their liberty, often for very long periods, whereas law enforcement officials who break the law receive lenient sentences;	According to Article 308 of the Criminal Code of the Republic of Kazakhstan on excess of authority or official powers, the maximum punishment is deprivation of liberty for a period of up to ten years with deprivation of the right to hold certain posts or engage in certain activities for a period of up to seven years. In accordance with Article 347-1, entitled "Torture", the maximum punishment is deprivation of liberty for a period from five to ten years with deprivation of the right to hold certain posts or engage in certain activities for a period of up to three years. In this regard, punishment for torture and ill-treatment provided for in the Criminal Code of the Republic of Kazakhstan is rather harsh.

No.	Comments	Actual situation
	b) Amend the law to ensure that torture is established as a serious crime, sanctioned with appropriate penalties13 and fully brought into line with the definition provided for in the Convention against Torture;	Article 347-1 of the Criminal Code establishes criminal responsibility for the deliberate infliction of physical or mental suffering by an investigator, the person conducting the initial inquiry or any other official in order to obtain from the person being tortured or a third party information or a confession, or to punish such person for an act that he or she committed or is suspected of having committed, and also to intimidate or coerce him or her or a third party, or for any reason based on discrimination of any kind.
81.	The Special Rapporteur recommends that the appropriate bodies take the following measures: (a) Register persons deprived of their liberty from the very moment of apprehension, and grant access to lawyers and allow for notification of family members from the moment of actual deprivation of liberty;	In accordance with the requirements of Article 134 of the Code of Criminal Procedure of the Republic of Kazakhstan, an investigator or an inquiry officer draws up a protocol, within of no more than three hours, listing the grounds and motives, place and time of apprehension (indicating hour and minute), the results of the body search as well as the time of drawing up the protocol. Article 68 of Section 2 of the Code of Criminal Procedure of the Republic of Kazakhstan allows the apprehended suspect to immediately inform someone at the place of his or her residence or work, by telephone or by other means, about his or her apprehension and place of detention.
	c) Strengthen the independence of judges and lawyers, ensure that, in practice, evidence obtained by torture may not be invoked as evidence in any proceedings, and that persons convicted on the basis of evidence extracted by torture are acquitted and released, and continue the court monitoring led by the Organization for Security and Cooperation in Europe;	In sentencing, the courts are guided by a principle enshrined in the Constitution of the Republic of Kazakhstan (Article 77 (9) according to which “evidence obtained by illegal means shall have no legal force. No person may be sentenced on the basis of his or her own admission of guilt alone.” Thus, when trying a case, a court establishes all circumstances that prove the accused person’s guilt.
	d) Shift the burden of proof to prosecution, to prove beyond reasonable doubt that the confession was not obtained under any kind of duress, and consider video and audio taping interrogations;	In accordance of Article 23 of Section 3 of the Code of Criminal Procedure, the burden of proof is placed on prosecution. Article 219 of the Code of Criminal Procedure of the Republic of Kazakhstan provides for video and audiotaping of interrogations.
	e) Incorporate the right to reparation for victims of torture and ill treatment into domestic law, together with clearly set out enforcement mechanisms.	Article 42 of the Code of Criminal Procedure of the Republic of Kazakhstan provides for recognition of the right to reparation of damages. *See*. The resolution of the Plenary of the Supreme Court of 9 July 1999 (No. 7) on the practical application of the legislation on the compensation for the harm caused by unlawful actions of the bodies in charge of the criminal process.
84.	Children 84. The Special Rapporteur recommends that the appropriate bodies take the following measures:	By now, the Republic of Kazakhstan has ratified the Convention on the Rights of the Child and the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.

No.	Comments	Actual situation
	(a) Explicitly prohibit by law corporal punishment of children in all settings; (b) Raise the age of criminal responsibility and establish a juvenile justice system that puts the best interests of the child at its core, and abolish the use of temporary isolators for minors; (c) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime, the United Nations Children's Fund, OHCHR and nongovernmental organizations, to implement these reforms.	In accordance with Article 27 of the Constitution of the Republic of Kazakhstan, marriage and family, motherhood, fatherhood and childhood shall be under the protection of the state. The President of the Republic of Kazakhstan signed, on 8 August 2002, a Law on the Rights of the Child, which ensures equality of children and prohibits restriction of their rights. Article 49 of the Law on the Rights of the Child in the Republic of Kazakhstan specifies that, in the exercise of their parental rights, parents and other lawful representatives may not harm the child's physical and psychological health and his or her moral development. Methods of bringing up a child should exclude derogatory, cruel, abusive, degrading or insulting treatment and exploitation. Article 59 of the Law of the Republic of Kazakhstan on Marriage and Family provides for a right of the child, upon reaching the age of 14, to seek legal recourse independently. By a Presidential Decree dated 23 August 2007, permanent specialized interdistrict juvenile courts were set up in Astana and Almaty.