



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Third periodic reports of States parties due in 2012**

**Kazakhstan\* \*\***

[3 July 2013]

\* The second periodic report of Kazakhstan is contained in document CAT/C/KAZ/2; it was considered by the Committee at its 842nd and 845th meetings (CAT/C/SR.842 and 845), held on 6 and 7 November 2008. For its consideration, see the Committee's concluding observations (CAT/C/KAZ/CO/2).

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



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## I. Introduction

1. This report is the third periodic report of the Republic of Kazakhstan to the United Nations Committee against Torture and is submitted in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984 and ratified by Kazakhstan on 25 September 1998.
2. The report has been compiled in accordance with the United Nations general guidelines for preparing national reports under international human rights instruments and the conclusions and recommendations of the Committee against Torture.
3. This report covers the period 2008–2012.
4. The report was prepared by the Ministry of Internal Affairs in cooperation with the Ministry of Justice and the Office of the Procurator-General of Kazakhstan.

## II. General information

5. Over the past four years, Kazakhstan has implemented a number of significant reforms with a view to improving national legislation to prevent torture and other cruel, inhuman or degrading treatment or punishment. Kazakhstan has thereby confirmed its commitment to observing the principles of democracy and protecting human rights, as well as its commitment to universal principles.
6. Issues relating to the prevention and suppression of torture and unauthorized methods of investigation are strictly monitored by the State.
7. Law enforcement and other State agencies have established special units to address questions of internal security. The units are tasked with preventing, identifying and dealing with offences committed by personnel, including cases of torture.
8. Kazakhstan is making use of all available resources and opportunities to conduct a resolute, uncompromising struggle against all human rights violations, particularly torture.
9. It has ratified the International Convention for the Protection of All Persons from Enforced Disappearance, of 2006, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, of 2000, and the Optional Protocol to the International Covenant on Civil and Political Rights, of 1966.
10. The prison system has become more open to civil society institutions and the mass media.
11. Over the period 2008–2012, Kazakhstan has made persistent efforts to improve its legislation. It has adopted new laws and regulations and consolidated a number of important provisions with a view to further implementing the Convention, as follows:
12. The Act of 10 December 2009 on amendments to certain legislative acts of Kazakhstan aimed at further improving the system for the enforcement of penalties and the penal correction system, which provides for the holding of convicted persons subject to different types of regime in locked quarters (cells) within the same correctional colony through the creation of separate wings guaranteeing strict segregation. These arrangements will both resolve the issue of the remoteness of institutions from the homes of next of kin and allow convicted persons to have more regular contact with them.

13. The Act also provides for more effective non-custodial penalties, the establishment of conditions for the social rehabilitation of persons released from places of detention, and the enhancement of legal and social safeguards for penal correction system staff.
14. The Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings.
15. Constitutional Council Regulatory Decision No. 2 of 27 February 2008 on the constitutionality of article 361, paragraphs 1 and 4, of the Criminal Code, which was reviewed on the basis of an application by the Kapshagay municipal court in Almaty province.
16. By this decision, the Constitutional Council declared the paragraphs in question, which established the elements of the offence referred to in article 361, paragraph 1, of the Criminal Code (as amended by the Act of 26 March 2007 on amendments to certain legislative acts of Kazakhstan concerning issues relating to the system for the enforcement of penalties), to be unconstitutional.
17. The Constitutional Council confirmed that the expression of an opinion — as recognized by the States members of the Organization for Security and Cooperation in Europe (OSCE) — may take a broad range of forms, including protest, provided that such behaviour “is essentially aimed at expressing an opinion”.
18. The Constitutional Council concluded that “the commission of acts of self-mutilation may constitute one form of expressing an opinion (protest) and may be regarded as a means for persons deprived of liberty to defend their rights. In such cases, holding a person liable for an act of self-mutilation should be seen as a restriction on the right to freedom of expression, which is a constituent part of the right to freedom of speech guaranteed by article 20 of the Basic Law”.
19. Constitutional Council Regulatory Decision No. 2 of 13 April 2012 on the official interpretation of the Constitution’s provisions concerning the calculation of constitutionally established time limits.
20. Supreme Court Regulatory Decision No. 7 of 28 December 2009 on the application of the norms of criminal law and criminal procedure law concerning respect for individual liberty and the inviolability of human dignity and prevention of torture, violence and other cruel or degrading treatment or punishment.
21. This decision clearly delimits the legal bases for criminal liability for the use of torture and for improper exercise of authority. To ensure that the three-hour time limit on the initial period of custody is observed, it stipulates that an individual who is detained must be handed over to the investigator or the person conducting the initial inquiry without delay, but not later than three hours from the moment of the actual arrest, so that a decision can be taken on whether to detain him or her further. The time of the actual arrest, indicated to the nearest minute, must be reflected in the record of arrest.
22. In addition, the Supreme Court clarified, in paragraph 15 of the decision, that the other officials referred to in article 141-1 (torture) of the Criminal Code include not only officials of criminal prosecution bodies, but also those of the other bodies listed in paragraph 3 of the note to article 307 of the Code (other State bodies, local government bodies, the Armed Forces, and other military forces and units).
23. The decision also addresses issues relating to the consideration and verification of complaints concerning the use of torture, the differentiation of torture from offences with similar elements, and redress for harm caused as a result of torture.

24. Order No. 7 of the Procurator-General of 1 February 2010 approving the Instructions on the verification of reports of the use of torture or other unlawful methods involving cruel treatment of persons who are parties to criminal proceedings and are being held in specialized facilities, and on the prevention of such practices. The Order guarantees the direct participation of a procurator in the verification of such reports and in investigations in criminal cases concerning the use of torture or other unlawful investigative methods involving cruel treatment of persons who are parties to criminal proceedings.

25. Order No. 93 of the Procurator-General of 13 August 2012 approving the Instructions on procuratorial oversight of respect for legality in the enforcement of penalties, the custody of persons in specialized facilities and the supervision of persons released from places of detention.

26. The Joint Order of the Ministry of Justice (No. 30 of 1 February 2010), the Ministry of Health (No. 56 of 29 January 2010), the Ministry of Internal Affairs (No. 41 of 1 February 2010) and the Chairperson of the National Security Committee (No. 15 of 30 January 2010), coordinated with the Office of the Procurator-General (1 February 2010), on ensuring the mandatory participation of forensic medical specialists in the medical examination of persons held in temporary holding facilities, remand centres and institutions of the penal correction system for signs of bodily injury. The Order provides for the prompt and proper examination of persons held in temporary holding facilities and remand centres who lodge complaints concerning bodily injuries inflicted on them.

27. The Joint Order of the Ministry of Justice (No. 31 of 2 February 2010), the Procurator-General (No. 10 of 3 February 2010), the Ministry of Internal Affairs (No. 46 of 2 February 2010), the Chairperson of the National Security Committee (No. 16 of 2 February 2012) and the Chairperson of the Economic Crimes and Corruption Agency (No. 13 of 2 February 2010) on cooperation between law enforcement agencies and civil society actors in the verification of complaints concerning the use of torture or other unlawful investigative methods and in the criminal prosecution of such cases.

28. Ministry of Internal Affairs Order No. 182 of 29 March 2012 on certain issues relating to the penal correction system of the Ministry of Internal Affairs approving:

- Rules governing visits to penal institutions and remand centres;
- Rules governing the imposition of special regimes in correctional institutions under the Committee on the Penal Correction System of the Ministry of Internal Affairs;
- Rules governing the supervision of convicted persons in institutions of the penal correction system and the conduct of inspections;
- Rules governing the protection and supervision of persons held in remand centres of the penal correction system.

29. Order No. 184 of the Ministry of Internal Affairs of 30 March 2012 approving the Rules governing the conduct of re-education work with convicted persons deprived of their liberty.

30. Order No. 185 of the Ministry of Internal Affairs of 30 March 2012 approving the Rules governing transfers of convicted persons deprived of their liberty.

### **III. Information in respect of the articles of part I of the Convention**

#### **Articles 1, 4 and 5**

31. Torture, as defined in the Convention, was made an offence under Kazakh criminal law in 2002, with commensurately severe penalties, and the concept of torture and elements of the offence were captured more fully (Criminal Code, art. 347-1 (unamended)).

32. The elements encompass the most common purposes for which the offence is committed.

33. The law enforcement and judicial agencies have gained significant experience, in the course of their work, of investigating and reviewing criminal cases involving torture.

34. Thus, on 20 March 2010, an assault on convicted person Z.Z. Sagatov was reported at institution LA-155/8 of the Penal Correction Department for Almaty and Almaty province. Criminal proceedings were instituted under article 347-1, paragraph 3 (b), and article 308, paragraph 4 (b), of the Criminal Code against the deputy governors of the institution, K.B. Syzdykov and Z.S. Abdimuratov, the head and deputy head of the regime and supervision section, K.Z. Urkimbaev and U.K. Akhmetov, and Officer S.Z. Kurmanov.

35. In a court judgement of 18 March 2011, Mr. Syzdykov was sentenced to deprivation of liberty for a term of 6 years and 8 months, Mr. Abdimuratov to 5 years, and Mr. Urkimbaev, Mr. Akhmetov, and Mr. Kurmanov to 6 years and 7 months; all were stripped of their special ranks.

36. In recognition of the primacy and inalienability of human rights and freedoms, which are the highest social values protected by the law, and in consideration of the fact that torture breaches the constitutional rights of citizens, pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, the target of the offence of torture has been amended in the Criminal Code and the corresponding article moved from the chapter entitled "Offences against justice and penalties enforcement procedures" to the chapter "Offences against constitutional and other human and civil rights and freedoms" (Criminal Code, art. 141-1), as recommended by the Committee against Torture.

37. In addition, the range of acts covered by the elements of the offence has been expanded. Thus, liability is established in respect of investigators, persons conducting initial inquiries and other officials for the commission of torture "at their instigation or with their acquiescence by others, or with their consent".

38. Recognition of, respect for, observance and protection of human rights and fundamental freedoms are basic principles proclaimed by the Constitution of Kazakhstan. Violations of these rights, including through the use of torture, are recognized as constituting gross and flagrant disregard for constitutional norms.

39. Various forms of punishment are envisaged for the offence of torture, as a breach of constitutionally established human and civil rights, including deprivation of liberty for a term of from 5 to 10 years.

40. In addition, as stipulated in the general part of the Criminal Code, liability is also incurred for planning or attempting the offence.

41. Article 6 of the Criminal Code provides that liability may be incurred by persons who commit the offence in the territory of Kazakhstan, on the continental shelf or in the

exclusive economic area of Kazakhstan, on a craft registered in a port of the Republic and located on the open sea or in airspace beyond the country's borders, or on a military vessel or aircraft of Kazakhstan irrespective of its location.

42. Over the past four years, the law enforcement agencies have considerably stepped up their investigations into criminal cases involving torture.

43. Whereas, in 2009, 3 criminal cases were brought, in 2010, 13 cases were brought, while the figures were 15 in 2011 and 18 in 2012.

44. Of the cases referred to above, 36 were brought against officials of internal affairs agencies and the remainder against officials of the penal correction system.

45. Given that article 141-1, paragraphs 2 and 3, of the Criminal Code concern serious offences, a high proportion of the sentences handed down involved deprivation of liberty. According to the analyses conducted:

- Of all persons convicted, 27, or 82 per cent, were sentenced to actual deprivation of liberty;
- Non-custodial sentences (conditional discharge, restriction of liberty) were passed on 6 persons, or 18 per cent.

## Article 2

46. The basic safeguard ensuring individual liberty is the constitutional provision to the effect that no one may be arrested or held in custody except in the cases provided for by law.

47. Constitutional Council Regulatory Decision No. 2 of 13 April 2012 sets out an important legal position, namely, that in constitutional law "detention" should be understood to mean a coercive measure taking the form of short-term restriction of an individual's liberty, that is not exceeding 72 hours, for the purpose of preventing an offence, ensuring that criminal, civil or administrative proceedings can be brought or applying other measures of a coercive nature and carried out by a State body authorized thereto, a public official or other person on the grounds and under the procedure provided for by law.

48. In accordance with the constitutional provision stating that "no one may be detained for more than 72 hours without court authorization", a court must decide, within the stipulated period, to remand a detainee in custody or impose another measure provided for by law, or the person must be released.

49. The Constitutional Council noted that shorter periods may be established in legislation for the adoption of the relevant decision (less than 72 hours).

50. When a citizen is detained, the period of detention begins from the moment that his or her freedom of movement is restricted, that is from the moment that he or she is forcibly detained in a given location, brought to an internal affairs office or taken into custody, thus restricting his or her individual and civil liberties. When the record of arrest is drawn up, the time of the actual arrest, indicated to the nearest minute, must be reflected.

51. Furthermore, citizens are entitled to know by whom they have been detained or arrested. They also have the right to be informed of the reason for their detention or arrest, the right to a lawyer, the right to make a telephone call to notify a relative or acquaintance of their whereabouts and the right to communicate with the outside world.

52. The Constitutional Council has thus set clear time limits for detention without court authorization.

53. The overall limits on the length of custody, the procedures and conditions for the custody of suspects and accused persons, the guarantees of their rights and legitimate interests, and the rights and duties of officers of custodial facilities are regulated in the Code of Criminal Procedure, the Act on procedures and conditions for the custody of persons in special temporary detention facilities, the Internal Regulations of remand centres, which were approved by Ministry of Internal Affairs Order No. 182 of 29 March 2012 on certain issues relating to the penal correction system of the Ministry of Internal Affairs, and other laws and regulations.

54. In accordance with articles 4 and 5 of the Act on procedures and conditions for the custody of persons in special temporary detention facilities, custodial measures in such facilities must be carried out in conformity with the principles of legality, the presumption of innocence, equality before the law, humanism, respect for the honour and dignity of the individual, and the norms of international law, and must not be accompanied by acts intended to cause physical or mental suffering to suspects or accused persons held there.

55. The bases for placing a person in a special facility are as follows:

- A suspect or accused person in respect of whom the preventive measure of remand in custody is applied may be placed in a remand centre on the decision of a judge;
- A person detained on suspicion of committing an offence may be placed in a temporary holding facility on the basis of a record of arrest drawn up by an investigator or a person conducting an initial inquiry. A suspect, accused person or defendant in respect of whom the preventive of measure of remand in custody is applied may be placed in a temporary holding facility on the decision of a judge if his or her transfer to a remand centre is not possible owing to distance or lack of suitable transport connections;
- A person subject to administrative detention may be placed in a special holding centre on the decision of a judge;
- A person who has no fixed abode and (or) identification may be placed in a holding and processing centre on the decision of an internal affairs agency, with court authorization.

56. In accordance with article 6 of the Act, persons held in special facilities enjoy the rights and freedoms and bear the duties established for citizens of the Republic, subject to the restrictions provided for in the country's Constitution and laws. Foreigners and stateless persons held in special facilities enjoy the rights and freedoms and bear the duties established for Kazakh citizens except as otherwise provided by the country's Constitution and laws or the international instruments ratified by Kazakhstan.

57. Article 7, paragraph 4, of the Act states that the person or body handling a criminal case is required, within 12 hours, to inform a relative of the suspect or accused person of the place where he or she is being detained, and of any change in the place of detention, as stipulated in the Code of Criminal Procedure.

58. The Internal Regulations of remand centres establish the procedures for the custody of suspects and accused persons and include provisions on facilities and living conditions, receipt and distribution of packages and parcels, receipt and dispatch of telegrams, letters and money orders, transmittal of proposals, statements and complaints, performance of religious rites, provision of medical assistance, taking of daily exercise, arrangement of meetings, participation of suspects, accused persons and defendants in investigative measures and court hearings, and personal interviews for suspects and accused persons with the director of the administration of the custodial facility or persons the director authorizes to represent him or her.



59. One sign of the commitment to the Convention's principles and provisions is the preservation of the independence of the penal correction system. Notwithstanding the transfer of this structure to the Ministry of Internal Affairs, the prison system has retained its own independent administrative body: the Ministry's Committee on the Penal Correction System at national level and the Committee's provincial departments at local level.

60. The Programme for the Further Development of the Penal Correction System of Kazakhstan for 2007–2009 was adopted by Government Decision No. 673 of 6 August 2007 with a view to making the work of the prison system more effective. Implementation was completed in 2009.

61. The Programme, for which a sum of more than 3.1 billion tenge was set aside, was intended to improve the conditions of detention in institutions of the penal correction system, along with facilities and health care, and to make work and other activities available.

62. Within the framework of the Programme, 4 correctional institutions and 2 remand centres were rebuilt, and repairs were carried out on 134 installations at 48 institutions. To facilitate early diagnosis of infectious and other diseases in inmates, in 2008 alone some 43.9 million tenge was spent on equipment for medical units.

63. As a result of the measures taken to improve health care, over the past four years the mortality rate among inmates has fallen by an average of 15 to 17 per cent.

64. To raise standards of health care in institutions of the penal correction system, the Ministry of Internal Affairs and the Ministry of Health are implementing a comprehensive plan of action for the prevention, diagnosis and treatment of tuberculosis and HIV and a plan of action for the registration, treatment and observation as outpatients of persons with active tuberculosis who are released from institutions before completing their course of treatment.

65. Similar efforts are being undertaken by local penal correction and health-care agencies in cooperation with regional centres for preventing and combating AIDS.

66. The State Programme for the Development of Health Care in Kazakhstan for 2011–2015, "Salamatty Qazaqstan", the purpose of which is to enhance the provision of medical assistance, was approved by Presidential Decree No. 1113 of 29 November 2010. Under the Programme, since 2011 correctional institutions have been purchasing medical equipment (digital X-ray and photofluorographic devices, electrocardiogram machines, ultrasound equipment, etc.); 31 X-ray and photofluorographic devices have been acquired; and over 19,000 visual aids promoting healthy lifestyles, which include information on tuberculosis and HIV/AIDS prevention, have been published and distributed to remand and convicted prisoners.

67. Rules on health-care provision for citizens whose liberty has been restricted, citizens serving court-imposed sentences in places of detention and citizens placed in special facilities were approved by Government Decision No. 430 of 7 April 2012.

68. The issue of medical assistance in correctional institutions and how to enhance it is the focus of constant attention from the National Coordinating Council on Health Care reporting to the Government of Kazakhstan.

69. In 2012, the Government approved the Programme for the Development of the Penal Correction System for 2012–2015. The Programme provides for the adoption, in the medium term, of an additional set of measures for:

- The provision of equipment and drugs to medical institutions of the penal correction system;

- The study of the issues raised by the construction of tuberculosis facilities and the establishment, within existing phthisiosurgical departments, of units for the treatment of tuberculosis;
- The establishment of a system to monitor and evaluate the drug situation in correctional institutions and the training of psychiatrists in the principles of drug and motivational counselling.

70. An interdepartmental working group comprising representatives of interested States bodies has been set up to study in depth the organizational, legal and financial issues raised by the gradual transfer of the medical service of the penal correction system to the jurisdiction of the Ministry of Health.

71. To ensure appropriate conditions for the serving of sentences, each year an average of 60–70 million tenge is spent on acquiring domestic equipment (disinfection chambers, fridges, washing machines, etc.).

72. The issue of guaranteeing, in remand facilities and places of detention, secure and dignified conditions that comply with the Standard Minimum Rules for the Treatment of Prisoners is being addressed.

73. Drawing on experience in countries of the European Union, where the surface area per convicted prisoner is about 7 square metres, the Government is phasing in legislative measures to increase the square metreage of cells in correctional institutions and remand centres.

74. Every year, the Government significantly increases the budgetary resources allocated to meet the needs of special facilities (in 2009–2010, the allocation stood at 195 million tenge, in 2011, 900 million tenge and, in 2012, 722 million tenge).

75. Temporary holding facilities are gradually being moved from basements and semi-basements.

76. Thus, construction of a new temporary holding facility in Ust-Kamenogorsk with a capacity of 28 has been completed. Construction of a facility in Taldykorgan with a capacity of 35 is in progress.

77. Plans and estimates have been developed for the building of a new temporary holding facility with 35 places in Kostanay. It is planned to build such facilities in Almaty, Kostanay and Pavlodar, with construction due to begin in 2013 in Kostanay and in 2014 in Pavlodar.

78. The following projects, part of efforts to optimize and strengthen the infrastructure of the penal correction system, are currently under way:

- Reconstruction of the general- and strict-regime correctional institutions in Uralsk and Kyzylorda;
- Development of plans and estimates for the building of separate life-support installations at correctional institutions in Akmola, Atyrau and Mangistau provinces;
- Major repairs to the security technology and equipment at 10 correctional institutions.

79. Major repairs have been completed to the dining areas at institutions in Karagandy province, the medical unit for the treatment of inmates with tuberculosis at Novoukrainka settlement in North Kazakhstan province, the hostels at the strict-regime correctional institution in Astana and the vegetable store at a facility in Zhambyl province.

80. In 2012, resources were allocated for the development of plans and estimates and the carrying out of major repairs to the security technology and equipment at 19 correctional

institutions and to buildings and installations at 40 institutions of the penal correction system.

81. The State is taking measures to reduce the number of persons held in institutions of the penal correction system, and the number of convicted and remand prisoners has declined each year.

82. While in 2009 there were more than 63,000 such prisoners, on 1 January 2013 the figure stood at 48,684. The number of inmates in places of detention has fallen by 13,000 over the four-year period.

83. The State's policy of humanizing the criminal law has contributed significantly to this process. Under the first phase of the policy, which is regulated by the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, 1,316 prisoners convicted of acts that had been decriminalized were released, the sentences of 697 persons were reduced and non-custodial penalties were imposed on 378 persons.

84. To mark the twentieth anniversary of the country's independence, on 28 December 2011 an amnesty act was adopted, under which persons who had committed minor or ordinary offences were exempted from criminal liability or released from punishment.

85. In application of the amnesty act, more than 3,300 persons (including 76 women, 16 persons with disabilities, 13 persons of pensionable age, 14 minors and 2,561 convicted persons who had served at least one quarter of their court-imposed sentences) were released from remand centres or correctional institutions, and 859 convicted persons had their sentences reduced.

86. Furthermore, 38 convicted prisoners were released between 2008 and 2012 having received presidential pardons.

87. To prevent overcrowding in correctional institutions:

- In 2010, a new general-regime correctional institution for female first-time offenders was brought into operation in Almaty;
- Separate facilities in Akmola and Pavlodar provinces were converted into general-regime correctional institutions for convicted persons not previously sentenced to deprivation of liberty;
- Three young offenders' institutions were converted into open prisons for inmates with a record of good behaviour and, in order to reduce overcrowding in women's colonies and accommodate women from central or northern regions serving sentences, a facility in Petropavlovsk was converted into a women's colony.

88. New ways of supervising convicted persons are being introduced in the work of agencies of the penal correction system.

89. Pursuant to the Act of 18 January 2011, persons serving non-custodial sentences are now being supervised using electronic monitoring devices, so-called "electronic bracelets".

90. The Act of 15 February 2012 on amendments to certain legislative acts of Kazakhstan concerning the probation service was adopted with a view to the establishment and operation of the probation service as a legal institution intended to prevent reoffending by persons given conditional discharges and to provide social support and legal assistance to such persons.

91. To implement the Act, laws and regulations governing issues relating to the enforcement of non-custodial penalties have been prepared and adopted.

92. For example, the Rules on the provision of social support and legal assistance to persons given conditional discharges were approved by Government Decision No. 542 of 28 April 2012.

93. Rules on enforcing non-custodial penalties were approved by Ministry of Internal Affairs Order No. 141 of 14 March 2012 on certain issues relating to the enforcement of non-custodial penalties.

94. Rules on organizing the work of the probation services of penalties enforcement inspectorates were approved by Ministry of Internal Affairs Order No. 157 of 19 March 2012.

95. Probation services have been established within penalties enforcement inspectorates and a total of 1,183 new staff have been appointed, 591 in 2010 and 592 in 2011. The increase reflects efforts to strengthen probation services.

96. The following changes have been made pursuant to the Act of 9 November 2011 on amendments to certain legislative acts of Kazakhstan aimed at improving law enforcement and further humanizing the criminal law:

- The mechanism for the release of convicted persons on parole has been simplified to allow such persons to apply for parole directly to a court;
- Persons sentenced to deprivation of liberty for the first time for periods not exceeding 1 year now serve their sentences in open prisons. As a result, these persons will not be incarcerated alongside long-term prisoners and will not be exposed to negative influences;
- The number of long and short visits has been increased, as has the number of packages and the amount of printed matter that may be received by juvenile offenders.

## **Article 6**

97. The place of detention of a foreigner suspected or accused of committing an offence, and any change in the place of detention, must be notified within 12 hours by the body conducting the criminal prosecution to the Office of the Procurator-General, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the National Security Committee and the embassy, consulate or other mission of the State of which he or she is a national.

98. In accordance with article 17 of the Act on procedures and conditions for the custody of persons in special temporary detention facilities, from the moment a suspect or accused person is detained, he or she has the right to meet with counsel in private and confidentially. There are no restrictions on the number or length of such meetings. Official representatives of diplomatic missions of foreign States are entitled to visit a foreigner suspected or accused of committing an offence who is a national of the relevant State with the authorization of the Office of the Procurator-General of Kazakhstan.

99. In accordance with article 10 of the Penalties Enforcement Code, foreigners who have been sentenced to deprivation of liberty have the right to maintain contact with the diplomatic missions and consular offices of their States, and nationals of countries that do not have diplomatic missions or consular offices in Kazakhstan are entitled to maintain contact with the diplomatic missions of the State that has assumed responsibility for protecting their interests, or with international organizations involved in their protection.

## Article 7

100. In the period 2008–2012, no persons accused of torture were detained in Kazakhstan in the context of extradition proceedings, no requests were lodged with foreign States for the surrender of such persons and no criminal prosecutions were conducted at the request of other States.

## Articles 8 and 9

101. In the period 2008–2012, Kazakhstan signed the following international instruments on mutual judicial assistance in criminal and civil matters:

- (1) Agreement between Kazakhstan and the United Arab Emirates on Mutual Judicial Assistance in Criminal Matters, of 16 March 2009;
- (2) Agreement on Mutual Assistance and Cooperation among the Customs Agencies of the States Members of the Customs Union in Cases involving Criminal and Administrative Offences, of 5 July 2010;
- (3) Treaty between Kazakhstan and India on Mutual Judicial Assistance in Civil Matters, of 16 April 2011;
- (4) Convention between Kazakhstan and Spain on Mutual Judicial Assistance in Criminal Matters, of 17 June 2011;
- (5) Agreement between Kazakhstan and Viet Nam on Mutual Judicial Assistance in Civil Matters, of 31 October 2011;
- (6) Treaty between Kazakhstan and the Islamic Republic of Iran on Extradition, of 29 April 2012;
- (7) Treaty between Kazakhstan and Spain on the Transfer of Convicted Persons and on Extradition, of 16 November 2012.

## Article 10

102. The treatment of persons held in institutions of the penal correction system is governed by the Code of Criminal Procedure and the Penalties Enforcement Code.

103. The Internal Regulations of remand centres and the Internal Regulations of correctional institutions, approved by Ministry of Internal Affairs Order No. 182 of 29 March 2012, regulate the right of convicted and remand prisoners to courteous — and not degrading — treatment by the staff of such institutions.

104. Within the penal correction system, there is a training centre administered by the Ministry of Internal Affairs Committee on the Penal Correction System, which conducts courses on international standards in respect of human rights protection and the treatment of offenders.

105. Special courses on international standards in respect of human rights protection and the treatment of detainees are arranged by the training institutes of the Ministry of Internal Affairs.

106. In addition, the in-house counsel of institutions of the penal correction system regularly organize legal education initiatives, both for persons held in places of detention — lectures, seminars, training courses — and for penal correction system staff. Every year,

more than 15,000 lectures and classes on legal topics take place, as well as legal consultations.

## **Article 11**

107. With a view to implementing article 11 of the Convention, which provides for the systematic review of the rules, instructions, methods and practices relating to the custody and treatment of persons subjected to any form of arrest, detention or imprisonment, Kazakhstan has adopted the following texts:

- (1) Government Decision No. 430 of 7 April 2012 approving the Rules on health-care provision for citizens whose liberty has been restricted, citizens serving court-imposed sentences in places of detention and citizens placed in special facilities;
- (2) Ministry of Health Order No. 164 of 12 March 2010 approving the Instructions on the conduct of forensic psychiatric assessments;
- (3) Ministry of Health Order No. 368 of 20 May 2010 approving the Instructions on the organization and conduct of forensic medical examinations;
- (4) Ministry of Internal Affairs Order No. 232 of 23 May 2011 approving the Rules for the activities of special holding centres operated by the internal affairs agencies;
- (5) Ministry of Internal Affairs Order No. 233 of 23 May 2011 approving the Rules for the activities of holding and processing centres operated by the internal affairs agencies;
- (6) Ministry of Internal Affairs Order No. 10 of 9 January 2012 approving the Internal Regulations of holding and processing centres operated by the internal affairs agencies;
- (7) Ministry of Internal Affairs Order No. 11 of 9 January 2012 approving the Internal Regulations of special holding centres operated by the internal affairs agencies.

## **Article 12**

108. Experience has shown that torture and other cruel, inhuman or degrading treatment may be tolerated in premises of criminal prosecution bodies during investigations and initial inquiries.

109. To ensure that efforts to counter violations of constitutionally established rights in the criminal justice system are effective, the Office of the Procurator-General is implementing a project entitled “The duty procurator at the police station – guarantor of citizens’ rights”, the main goals of which are to protect the rights of citizens brought to internal affairs offices and to outlaw torture and unlawful detention.

110. Procurators are now present in the premises of criminal prosecution bodies, and a system for electronic registration of all persons brought to or detained in such premises is to be introduced, along with observation cells.

111. The duties of duty procurators include: identifying violations of citizens’ rights by monitoring reports and video recordings; taking immediate action to stop such violations; releasing persons who are detained in or brought to the relevant premises unlawfully; in the

event that cases of torture are identified, implementing urgent measures and forwarding the relevant materials for further investigation; and receiving complaints from the public.

112. The Regulations on duty procurators at police stations were approved by Order No. 9 of the Procurator-General of 30 January 2012.

113. Every year, approximately 38,000 persons suspected of committing offences are placed in temporary holding facilities by criminal prosecution bodies. While this figure topped 46,000 in 2008, in 2012, it was 31,836.

114. These statistics demonstrate that investigative bodies are taking a more considered approach to the application of this procedural coercive measure.

115. The results of the monitoring carried out by procurators also reflect a positive situation with respect to the protection of human rights and freedoms. Thus, 823 individuals were released by procurators from temporary holding facilities in 2008 owing to a lack of grounds for their arrest; in 2009, the figure was 1,243; in 2010, 1,224; in 2011, 1,423; and, in 2012, 1,770.

116. Procurators verify the legality of the detention and custody of citizens in temporary holding facilities and in official and other premises of criminal prosecution bodies on a continuous basis, including at night, on public holidays and at weekends, notably with the use of video recordings.

117. In the event that signs of torture are identified, the procuratorial authorities have the right, under the Code of Criminal Procedure, to decide to institute criminal proceedings against the perpetrators and to determine the appropriate investigative authority.

118. Furthermore, in order to prevent officials from closing ranks and to preclude the influence of vested interests during inquiries into such cases, pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, article 192 of the Code of Criminal Procedure has been amended to provide for inquiries to be transferred to alternative investigative authorities; thus, if an act of torture is committed by an official of an internal affairs agency, the case is investigated by the financial police, and vice versa.

119. Since, in most cases, the offences in question are committed by agents of the authorities, in accordance with article 159 of the Code of Criminal Procedure, bodies conducting criminal proceedings have the right, with the authorization of a procurator, to suspend an accused person from his or her post if there are reasonable grounds to believe that he or she would obstruct the investigation or trial in the case, impede redress for the harm caused by the offence or continue to engage in criminal activity should he or she remain in post.

120. The relevant decision is transmitted to the workplace of the accused person, whose supervisor must implement it and notify the person or body that took the decision within three days of the action undertaken.

121. The Law Enforcement Service Act, adopted on 6 January 2011, also includes a requirement for temporary suspension from duty in the cases provided for in the criminal procedure law and for the conduct of an internal inquiry.

122. The observance of citizens' constitutionally established rights is the most important task of all law enforcement agencies in Kazakhstan. The procuratorial authorities, the internal affairs agencies and the financial police have public councils consisting of prominent statesmen, public figures, human rights defenders and journalists to counsel and advise them in this regard.

123. The Act of 10 December 2009 on amendments to certain legislative acts of Kazakhstan aimed at further improving the system for the enforcement of penalties and the penal correction system grants the Human Rights Commissioner the right to visit institutions enforcing penalties, as well as remand centres, without special authorization.

124. In the Act of 29 December 2010 on amendments to certain legislative acts of Kazakhstan concerning the grounds, procedure and conditions for the custody of persons in temporary detention facilities, members of public monitoring commissions are given the right to unimpeded access to such facilities.

125. Previously, there were cases in which the administration of an institution, in violation of the established procedure, refused, without good reason, to submit an inmate's application for early release on parole or for transfer to an open prison.

126. To prevent such violations, pursuant to the Act of 9 November 2011 on amendments to certain legislative acts of Kazakhstan aimed at improving law enforcement and further humanizing the criminal law, article 169 of the Penalties Enforcement Code was amended to allow inmates to apply directly to a court for parole or for commutation of the unserved portion of their sentence to a milder form of punishment after having served the portion of their sentence stipulated by law.

127. Once inmates have served the legally stipulated portion of their sentence, the body enforcing the penalty is required to inform them in writing, within five days, that they now have the right to submit an application for parole or commutation of sentence for consideration by a court.

128. Within 10 days of receiving of such an application, the body enforcing the penalty must transmit it to the relevant court, attaching the appropriate materials, along with the inmate's personal file, and inform the procurator thereof.

### **Article 13**

129. The right of all persons to judicial protection of their rights and freedoms is guaranteed by article 13 of the Constitution.

130. In accordance with articles 16 and 20 of the Act on procedures and conditions for the custody of persons in special temporary detention facilities, suspects and accused persons held in custodial facilities have the right to make suggestions and requests, which may be submitted to the relevant court, concerning the legality of and the grounds for their detention, or violations of their legitimate rights and interests.

131. The suggestions, requests and complaints that suspects and accused persons address to central and local government bodies, voluntary associations and the mass media are transmitted through the administration of the relevant custodial facility.

132. Complaints concerning actions and decisions of courts, persons conducting initial inquiries, heads of the bodies conducting initial inquiries, investigators or procurators are transmitted without delay in accordance with the procedure set out in the Code of Criminal Procedure.

133. Suspects and accused persons may not be harassed in any way for their submission of suggestions, requests or complaints in connection with the violation of their rights and legitimate interests. Officials of custodial facilities guilty of such harassment are liable to the penalties provided for by law.

134. Article 10 of the Penalties Enforcement Code regulates the right of convicted persons to make oral and written suggestions, requests and complaints to the administration of the institution or body enforcing their penalty, to higher bodies responsible for



administering institutions and bodies enforcing penalties, courts, procuratorial authorities and other State bodies, to voluntary associations and to international organizations involved in the protection of human rights and freedoms.

135. The Committee on the Penal Correction System may also take up complaints and appeals directly. Thanks to the legal education work carried out in the prison system, the number of complaints and appeals has fallen. While the Committee received 5,327 appeals from natural and legal persons in 2008, that figure was 4,285 in 2012 (5,288 in 2009, 4,889 in 2010 and 4,686 in 2011). At the same time, there has been a reduction in the proportion of complaints concerning unlawful actions by officers of the penal correction system, from 5.4 per cent in 2008 to 3.2 per cent in 2011.

136. Local departments regularly arrange qualified legal assistance for persons held in correctional institutions. Officials of local judicial bodies, lawyers and notaries, and representatives of branches of the Kazakhstan International Bureau for Human Rights are engaged to provide such assistance to convicted persons.

## Article 14

137. Kazakh legislation contains norms guaranteeing victims of torture the right to redress for harm caused and to fair and adequate compensation, including the means for as full rehabilitation as possible.

138. Thus, article 75 of the Code of Criminal Procedure guarantees victims compensation for damage to property caused by offences, including torture, and to the reimbursement of expenses incurred as a result of their participation in pretrial investigations and trials, including lawyers' fees.

139. In accordance with articles 39 and 40 of the Code of Criminal Procedure, persons acquitted by a court, as well as accused persons and suspects in respect of whom charges are withdrawn and criminal proceedings terminated, are deemed innocent and may not be subjected to any kind of restriction on their constitutionally guaranteed rights and freedoms.

140. The court and the criminal prosecution body must take all measures stipulated by law for the rehabilitation of the person concerned and provide redress for harm caused by unlawful actions of the body conducting the criminal proceedings.

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

## Article 15

142. The Act of 10 December 2009 on amendments to the Criminal Code, the Code of Criminal Procedure and the Code of Civil Procedure concerning improvements to the judicial system introduced new provisions in the Code of Criminal Procedure:

- Establishing that courts are not bound by the views of the parties concerning the need to examine the evidence available in a case and introduced by the parties in court, or the adequacy of such examination, except in the cases specified in article 361, paragraph 2, of the Code of Criminal Procedure;
- Making it a requirement for bodies conducting criminal proceedings to verify all reports concerning the use of unlawful investigative methods during the gathering

and substantiation of evidence in a case (Code of Criminal Procedure, art. 24, para. 4).

143. Pursuant to the Act of 11 December 2009 on amendments to certain legislative acts of Kazakhstan concerning the provision of qualified legal assistance, additions were made to article 125 of the Code of Criminal Procedure setting out ways to obtain evidence needed for the conduct of a defence.

144. As stated in these provisions, statements obtained from a person during an interview carried out by defence counsel may be used as evidence once the person has been questioned by the body conducting the criminal proceedings under the procedure established in the Code. If it is not possible to question a person previously interviewed by defence counsel, the statements obtained may be directly used as evidence; however, the authenticity of the person's signature must be certified following the legally established procedure.

145. In addition, statements, both oral and written, as well as items and documents, may be submitted for entry in evidence in criminal cases by suspects, accused persons, defence counsel, private individuals bringing charges, victims, civil plaintiffs, civil respondents and their representatives, and by any citizen or organization. Such items and documents are entered in evidence in criminal cases following an evaluation conducted in accordance with article 128 of the Code of Criminal Procedure, and a record to this effect is drawn up as required in article 122, paragraph 2, of the Code.

146. Pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, article 38, paragraph 3, of the Code of Criminal Procedure has been deleted. The article provided that, in exceptional circumstances, when so required by the special nature of a case, the procurator or his or her deputy could authorize the non-disclosure of a suspect's detention for 72 hours from the moment of his or her arrest in order to ensure the confidentiality of the first phase of the investigation, except in cases where the suspect was a minor.

147. The Act of 9 November 2011 on amendments to certain legislative acts of Kazakhstan aimed at improving law enforcement and further humanizing the criminal law clarified the provisions of article 121 of the Code of Criminal Procedure: specifically, the words "the handing down of the judgement or termination of the proceedings" in paragraph 3 were replaced with "the decision not to institute criminal proceedings or to terminate criminal proceedings or the handing down of the judgement".

148. The Code contains a provision, article 116, stipulating that factual data obtained through the use of torture must be declared inadmissible as evidence.

#### **IV. Information in respect of part IV of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

149. By ratifying the Optional Protocol to the Convention against Torture in June 2008, Kazakhstan undertook to establish a national preventive mechanism by 21 November 2009.

150. It was not possible, against the backdrop of the financial crisis, to establish the mechanism within the deadline stipulated in the Optional Protocol, on account of the expense involved: in accordance with article 18, paragraph 3, of the Optional Protocol, States parties must make available the necessary resources for the functioning of the national preventive mechanism.

151. Kazakhstan therefore availed itself of the extension provided for in article 24, paragraph 2, of the Optional Protocol, and a decision was adopted by Presidential Decree No. 896 of 30 November 2009 postponing the implementation of the obligation to establish a national preventive mechanism for three years.

152. In this context, a bill on amendments to certain legislative acts of Kazakhstan concerning the establishment of a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment was introduced in the Majilis, the lower house of Parliament, by Government Decision No. 400 of 30 March 2012.

153. The purpose of the bill was the institution of a national preventive mechanism comprising a system of regular visits to special facilities, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

154. The bill defines the places that are to receive regular visits, as follows: correctional institutions and remand centres, institutions for the compulsory treatment of alcoholism and drug addiction, special temporary detention facilities, and educational establishments with a special custodial regime.

155. The visits are to be undertaken by members of the national preventive mechanism, which will comprise the Human Rights Commissioner, members of public monitoring commissions and members of civil society associations that have concluded agreements to implement social projects connected with the activities of the national preventive mechanism.

156. There are no restrictions on the number or length of the visits conducted by the Human Rights Commissioner. Other members of the national preventive mechanism must conduct at least two visits per year to special facilities, in teams consisting of no more than four persons.

157. Following the visits, the members of the national preventive mechanism must submit to the procuratorial authorities and the bodies responsible for the institutions:

- Recommendations on improving the treatment of the persons held in the institutions visited and on preventing torture;
- Proposals on improving the relevant legislation.

158. The State bodies concerned are required to inform the members of the national preventive mechanism of the consideration given to the recommendations and proposals made. The bill also establishes the rights and duties of members of the national preventive mechanism and the grounds for terminating their activities. To ensure the functional independence of the mechanism and its members from the authorities, the bill provides for their activities to be financed from the State budget.

159. In May 2009, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, visited Kazakhstan.

160. Mr. Nowak gave his opinion on the establishment of a legal mechanism to prevent torture and other violence in relations between the individual and the State. The issues raised in his report were reflected in Supreme Court Regulatory Decision No. 7 of 28 December 2009 on the application of the norms of criminal law and criminal procedure law concerning respect for individual liberty and the inviolability of human dignity and prevention of torture, violence and other cruel or degrading treatment or punishment, which was adopted on the basis of a study carried out by the Court of judicial practice in torture cases between 2007 and 2008.

161. The Special Rapporteur had indicated that the time at which persons were arrested or brought to a police station was not being recorded, which made it impossible to establish

whether the three-hour limit on the initial period of custody was being respected. The first hours of detention were being used by law enforcement agencies to extract confessions by means of torture.

162. To avoid such a situation, the Supreme Court decision stipulates that an individual who is detained must be handed over to the investigator or the person conducting the initial inquiry without delay, but not later than three hours from the moment of the actual arrest, so that a decision can be taken on whether to detain him or her further. The time of the actual arrest, indicated to the nearest minute, must be reflected in the record of arrest.

163. The Special Rapporteur had also expressed concern about the failure to take appropriate action against officials of bodies conducting investigations and initial inquiries who acquiesced to the use of torture.

164. Accordingly, lawmakers, in article 141-1 (torture) of the Criminal Code drew a distinction between torture committed directly by an official and torture committed at the instigation of an official or with his or her acquiescence by others, or with his or her consent.

## **V. Information about specific cases and cooperation with non-governmental organizations**

165. According to data from the Committee for Legal Statistics and Special Records in the Office of the Procurator-General, the law enforcement agencies opened 3 criminal investigations into cases of torture in 2009, 13 in 2010, 15 in 2011 and 18 in 2012.

166. On 25 March 2011, the procurator's office for the town of Saran in Karagandy province instituted criminal proceedings under article 141-1, paragraphs 2 (a) and 2 (d), of the Criminal Code on the basis of a report by V. Lutoshkina that her brother M. Lutoshkin, a minor, had suffered physical injuries at the hands of Saran internal affairs officers. By a judgement of the Saran municipal court of 25 July 2011:

- V.V. Koryaka, the chief of the criminal police service of the Saran internal affairs office, was convicted of offences under article 28, paragraph 3, and article 141-1, paragraphs 2 (a) and 2 (d), of the Criminal Code and sentenced to deprivation of liberty for a term of 3 years and 6 months, to be served in a general-regime correctional colony, with forfeiture of the right to occupy posts in the civil service, in local government bodies, and in administrative and economic organizations for 3 years;
- P. Aukenov, an officer in the criminal police service of the Saran internal affairs office was convicted of offences under article 141-1, paragraphs 2 (a) and 2 (d), of the Criminal Code and sentenced to deprivation of liberty for a term of 2 years and 6 months, to be served in a general-regime correctional colony, with forfeiture of the right to occupy posts in the civil service, in local government bodies, and in administrative and economic organizations for 3 years.

167. On 16 September 2011, the appeals chamber of the Karagandy provincial court upheld the judgement and rejected the convicted men's appeal.

168. In addition, prompt action was taken by the appropriate State bodies in a case of inhuman treatment and improper exercise of authority involving police officers in North Kazakhstan province.

169. On 28 January 2012, at about 3 p.m., in a building of the Yasnovka village secondary school in Yesil district, North Kazakhstan province, district internal affairs officers K.R. Sarsenbaev and R.K. Kozyrev attempted to coerce I.I. Rozhnov into

confessing to the theft of a notebook computer from the school, threatening him with physical violence.

170. At 8.30 p.m. on the same day, Mr. Rozhnov was taken by police officers to the Yesil district internal affairs office, where he was held unlawfully overnight in the gym. Mr. Rozhnov, who feared that he would continue to be subjected to unlawful methods of interrogation, was then forced to incriminate himself and to confess that he had stolen the notebook computer.

171. On 29 January 2012, as investigations were being carried out, Mr. Rozhnov ran away from the officers and subsequently, having become lost in the forest, got frostbite in his legs. On 1 February 2012, he was admitted to the Kyzylzhar central district hospital with a diagnosis of third- to fourth-degree frostbite of the upper and lower legs and underwent surgical amputation of both legs.

172. On 14 February 2012, the internal security unit of the Internal Affairs Department for North Kazakhstan province opened a criminal investigation into the case under article 308, paragraph 4 (a), of the Criminal Code (improper exercise of authority).

173. By a judgement of the Petropavlovsk municipal court of 26 November 2012, K.R. Sarsenbaev and R.K. Kozyrev were found guilty of the charges against them and were sentenced to deprivation of liberty for terms of 5 years and 6 months, to be served in a general-regime correctional colony, with forfeiture of the right to occupy posts in State bodies for 3 years and confiscation of all property belonging to them personally.

174. As part of its penal reform efforts, the State is taking measures to bring the prison system into line with international norms and standards.

175. To date, constructive cooperation has been initiated with 42 voluntary associations, which are implementing joint projects involving the provision of legal assistance, counselling, and social and psychological support to remand and convicted prisoners.

176. In 2012, 283 round tables, meetings and exercises were organized.

177. With a view to developing public monitoring of respect for the rights of persons who are remanded in custody and combating torture and other cruel or degrading treatment more effectively, since 2006 the Ministry of Internal Affairs, together with the Charter for Human Rights Foundation, has been carrying out a project entitled "Monitoring respect for the rights of detainees, suspects and accused persons held in temporary holding facilities and police stations" in Almaty, Ust-Kamenogorsk, Taraz, Shymkent and Aktobe.

178. In April 2010, all procurator's offices in the provinces and in the cities of Astana and Almaty, along with local law enforcement agencies, approved action plans with NGOs covering the period 2010–2012 and aimed at preventing the commission of offences involving torture by officers of State bodies and personnel of institutions holding citizens remanded in custody or convicted prisoners.

179. In implementation of the plans, the NGOs helped to conduct compulsory instruction for all law enforcement officers on international human rights instruments, as well as training sessions, seminars and round tables on this topic.

180. Regular monitoring has been carried out at all custodial facilities and places of detention with the participation of NGO representatives.

181. While in 2008 NGOs made 697 visits to custodial facilities and places of detention, in 2011 the figure was 1,377. In addition, in 2011 members of public monitoring commissions conducted 884 visits to such institutions.

182. Public monitoring commissions numbering representatives of human rights NGOs among their members are active throughout the country.

183. A working group on the prevention of torture has been set up under the auspices of the Human Rights Commissioner (Ombudsman) with the involvement of representatives of human rights NGOs; the working group's mission is to visit custodial facilities and make recommendations on the procedure for the establishment of a national preventive mechanism and on the model to be applied.

184. In 2011, internal affairs officers, accompanied by representatives of the Human Rights Charter Foundation, conducted 280 inspections of units run by the internal affairs agencies, including 134 inspections of special facilities, for the purpose of preventing offences involving torture.

185. No instances of the use of torture by officers of special facilities against detainees were recorded.

186. The Act of 29 December 2010 on amendments to certain legislative acts concerning the grounds, procedure and conditions for the custody of persons in temporary detention facilities takes account of international standards and of recommendations made by human rights voluntary associations.

187. The Act provides for public oversight of the situation of detainees in special facilities of the internal affairs agencies to help ensure that their rights and legitimate interests in relation to conditions of detention, health care, leisure and study are observed.

188. The Rules on constituting public monitoring commissions in provinces, cities of national status and in the capital to conduct oversight of special facilities were approved by Government Decision No. 702 of 24 June 2011 as part of efforts to implement the legislative amendments.

189. In accordance with the Rules, the commissions have the right to make unimpeded visits to special facilities, conduct interviews with detainees, and receive appeals and complaints from them concerning violations of their rights and legitimate interests.

190. In addition, members of commissions have the right to make reports to the administrations of special facilities and the procuratorial authorities on issues connected to the safeguarding of the rights and legitimate interests of persons held in special facilities.

## **VI. Information on the implementation by Kazakhstan of the recommendations made by the Committee against Torture on the basis of the second periodic report**

### **Paragraph 6**

191. Pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, the article of the Criminal Code dealing with torture was moved from the chapter entitled "Offences against justice and penalties enforcement procedures" to the chapter "Offences against constitutional and other human and civil rights and freedoms".

192. Furthermore, the definition of the concept of "torture" has been clarified by inserting the phrase "or at their instigation or with their acquiescence by others, or with their consent", where the word "their" means investigators, persons conducting initial inquiries and other officials.

## Paragraph 7

193. To address the special vulnerability of persons who are deprived of their liberty or whose liberty is otherwise restricted and to ensure that they are able to exercise their rights in criminal proceedings, the Constitution states that no one may be subjected to torture, violence or other cruel or degrading treatment or punishment; this provision is consistent with common formulations of this right in international law.

194. Every case of the use of torture, special restraining devices or physical force in places of deprivation of liberty must be reported to the procuratorial authorities, and an official investigation or preliminary inquiry must be conducted.

195. In 2010, nine criminal cases were opened against 21 prison officers for the commission of acts of torture or violence against convicted persons or for improper exercise of authority, under articles 347-1 (torture) and 308 (improper exercise of authority) of the Criminal Code, respectively.

196. In 2011, 12 persons were convicted of these offences. In 2012, criminal proceedings were instituted against officers of facility AK 159/25, which is operated by the Penal Correction Department for Karagandy province, for the use of torture against convict O.A. Imronshoev.

197. A total of 11 officers were convicted of using violence in 2012.

198. In 2012, a practice was introduced whereby sentences handed down by courts against officers found guilty of offences are read out in front of the entire staff at the offender's workplace. This practice is applied not only in cases of torture, but in respect of all offences.

199. The general procedure for the submission of complaints and appeals is regulated by the Act on procedures and conditions for the custody of persons in special temporary detention facilities, according to which suspects and accused persons held in custodial facilities have the right to make suggestions and requests, which may be submitted to the relevant court, concerning the legality of and the grounds for their detention, or violations of their legitimate rights and interests.

200. Action is currently being taken in all special facilities and institutions of the penal correction system to prevent the commission of sexual violence, including by personnel of these institutions.

201. The Kazakh prison system takes account of the specific needs of men, women, juveniles and other categories of person serving sentences; at the same time, discrimination is prohibited.

202. Furthermore, rehabilitation and reintegration programmes reflect the needs and capacities of convicts, both male and female.

203. In this connection, detained women, both those who have been remanded in custody as a preventive measure and those whose sentences have become enforceable, are held in conditions that afford them security and, in the case of those serving sentences, in institutions located close to their families; arrangements are in place to support regular contact with families, which includes telephone calls and meetings. The specific needs of pregnant women and nursing mothers are recognized and met, and there are nurseries in women's colonies.

204. To ensure that complaints may be submitted in confidence, letterboxes have been installed in all agencies of the penal correction system for complaints and statements addressed to public monitoring commissions, procuratorial authorities and other such bodies, and are emptied by representatives of these bodies.

205. In addition, the Committee on the Penal Correction System and all its counterparts at local level operate telephone helplines, as well as Internet help sites.

206. No criticism of police actions goes unaddressed. Every violation of citizens' constitutional rights and freedoms is considered an extraordinary incident, and officials who tolerate such violations are liable to the severest penalties.

207. The observance of citizens' constitutional rights is a priority for all units of the internal affairs agencies, including the investigative bodies, in conducting criminal prosecutions.

208. All investigators and persons conducting initial inquiries have been made aware that the use of torture against parties to criminal proceedings must be stamped out.

209. As a result of the measures taken, not one case of the use of torture by an investigator or a person conducting an initial inquiry was recorded in 2009–2012.

210. Article 47 of the Law Enforcement Service Act, of 6 January 2011, stipulates the certification procedure for law enforcement officers, which entails an evaluation of their level of professional training, legal awareness and ability to work with members of the public. Officials of the investigative services must also meet these requirements.

211. In 2012, the first special certification exercise for officers of all law enforcement agencies, including investigators, was carried out.

## **Paragraph 8**

212. Between 2002 and 2011, the penal correction system was under the jurisdiction of the Ministry of Justice. During this period, the crime situation in the majority of correctional institutions, contrary to expectations, did not improve. Furthermore, the incidence of self-mutilation increased, as did the number of cases of non-compliance with the lawful demands of representatives of the administration.

213. These circumstances played a role in the return of the penal correction system to the jurisdiction of the Ministry of Internal Affairs in July 2011.

214. The transfer of temporary holding facilities (IVSs) and remand centres (SIZOs) to the jurisdiction of the Ministry of Justice would at present be premature, since investigative measures would then be carried out by officials of another department, which could lead to breaches of procedural deadlines and the filing by detainees of well-founded complaints that were being held in custody unlawfully.

215. Moreover, at district level, temporary holding facilities are operated by the internal affairs agencies, and virtually all such facilities are located within the buildings of district internal affairs offices. In the event of their transfer to the jurisdiction of the justice agencies, new facilities would have to be built and additional resources allocated for the purpose.

216. In February 2009, the Government approved a plan of action for 2010–2012 for the coordination and implementation of efforts to fulfil the country's obligations under the Convention against Torture and the Optional Protocol thereto.

217. To implement the plan, in April 2010 all procurator's offices in the provinces and in the cities of Astana and Almaty, along with local law enforcement agencies, approved action plans with NGOs covering the same period and aimed at preventing the commission of offences involving torture by officers of State bodies and personnel of institutions holding citizens remanded in custody or convicted prisoners.



218. The action plans provide for a range of organizational, informational and preventive measures intended to avert torture and cruel treatment.

219. Currently, there are 14 public monitoring commissions active in all regions of the Republic and comprising 101 representatives of voluntary associations and State bodies, legal specialists from human rights organizations, health-care professionals and representatives of the Council of Former Officers of the Penal Correction System.

220. Every year, the number of initiatives taken and visits conducted jointly with public monitoring commissions grows, which is a very positive development: while in 2006 there were 146 such initiatives, in 2012 there were 420.

221. In 2012, the national security agencies conducted more than five counter-terrorism operations.

222. There were no operations, however, targeting vulnerable groups or groups perceived as a threat to national and regional security, such as asylum seekers and members or suspected members of banned Islamic groups or Islamist parties. Persons detained in the context of the war on terror are guaranteed the same rights and bear the same duties as other persons, and no restrictions connected with their membership of banned radical or extremist associations are permitted.

223. The use of torture or other forms of ill-treatment in temporary holding facilities and remand centres operated by the internal agencies is prohibited.

## **Paragraph 9**

224. Article 1, paragraph 1, of the Constitution, states that the human person, human life, and human rights and freedoms constitute the supreme values of the State. Accordingly, the State has no more important task than caring for the welfare of the human person, and it is obliged to do all it can to create conditions for the dignified existence of the human person.

225. The right of everyone to individual liberty is a fundamental human right (Constitution, art. 16). It attaches to every person from birth, is recognized as absolute and inalienable, and, in accordance with article 39, paragraph 3, of the Basic Law, is among the rights and freedoms that are not subject to restriction under any circumstances, with the exception of those established by the Constitution itself.

226. Under article 16, paragraphs 2 and 3, of the Constitution, arrest and detention in custody are permitted only in the cases specified by law and with the authorization of a court, and are subject to appeal by the arrested person. Without court authorization, a person may be detained for no more than 72 hours. Every person who is detained, arrested or charged with committing an offence has the right of access to a lawyer (defence counsel) from the moment that he or she is detained, arrested or charged, as the case may be.

227. To prevent violations when citizens are detained by officers of law enforcement or specialized agencies, State bodies have adopted various acts governing detention, as follows:

228. Constitutional Council Regulatory Decision No. 2 of 13 April 2012 on the official interpretation of the Constitution's provisions concerning the calculation of constitutionally established time limits.

229. This Decision clearly states that, in constitutional law, "detention" should be understood to mean a coercive measure taking the form of short-term restriction of an individual's liberty, that is not exceeding 72 hours, for the purpose of preventing an offence, ensuring that criminal, civil or administrative proceedings can be brought or applying other measures of a coercive nature and carried out by a State body authorized

thereto, a public official or other person on the grounds and under the procedure provided for by law.

230. In accordance with the constitutional provision stating that “no one may be detained for more than 72 hours without court authorization”, a court must decide, within the stipulated period, to remand a detainee in custody or impose another measure provided for by law, or the person must be released.

231. In addition, the Constitutional Council noted that shorter periods may be established in legislation for the adoption of the relevant decision (less than 72 hours).

232. The period of detention begins from the moment, counted to the nearest minute, that the detainee’s liberty, including his or her freedom of movement, is effectively restricted, that is from the moment that he or she is forcibly detained in a given location, taken by force to the body conducting the initial inquiry or investigation (apprehended, confined, compelled to go to, or remain in, a given place, etc.) or subjected to any other measure that significantly restricts his or her individual liberty, irrespective of the procedural status he or she is accorded or the other formalities carried out. The period of detention ends when the 72-hour deadline expires, counting from the moment of the actual arrest without interruptions.

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

234. To ensure that the three-hour limit on the initial period of custody is observed, this decision stipulates that an individual who is detained must be handed over to the investigator or the person conducting the initial inquiry without delay, but not later than three hours from the moment of the actual arrest, so that a decision can be taken on whether to detain him or her further. The time of the actual arrest, indicated to the nearest minute, must be reflected in the record of arrest.

235. When a citizen is detained, the period of detention begins from the moment that his or her freedom of movement is restricted, that is from the moment that he or she is brought to the relevant authority or taken into custody, thus restricting his or her individual and civil liberties. When the record of arrest is drawn up, the time of the actual arrest, indicated to the nearest minute, must be reflected.

236. Furthermore, citizens are entitled to know by whom they have been detained or arrested. They also have the right to be informed of the reason for their detention or arrest, the right to a lawyer, the right to make a telephone call to notify a relative or acquaintance of their whereabouts and the right to communicate with the outside world; this is mandatory.

237. The procedure for notifying the relatives of a detained or arrested person of his or her whereabouts is regulated by article 138 of the Code of Criminal Procedure.

238. A record is kept of all persons brought to internal affairs offices, and procurators are assigned to those offices to verify the grounds on which persons are brought in and to receive complaints and statements. The time at which persons are placed in temporary holding facilities is entered in the logs of those facilities.

239. If it is discovered that bodily injuries have been inflicted on a person held in a temporary holding facility, remand centre or correctional institution and he or she has made a complaint in that regard, the procuratorial authorities must be informed thereof within 24 hours.

240. Furthermore, a medical examination for signs of bodily injury is conducted by experts from the Ministry of Health's Centre for Forensic Medicine.

### **Paragraph 10**

241. Pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, article 138, paragraph 3, of the Code of Criminal Procedure, which granted law enforcement agencies the right, in exceptional circumstances, to delay notification of a person's close relatives of his or her detention for up to 72 hours, has been deleted.

242. In addition, the Supreme Court has adopted Regulatory Decision No. 7 of 28 December 2009 on the application of the norms of criminal law and criminal procedure law concerning respect for individual liberty and the inviolability of human dignity and prevention of torture, violence and other cruel or degrading treatment or punishment, in which it provides the necessary clarifications on issues arising in judicial and investigative practice in this area.

### **Paragraph 11**

243. There is adequate regulation in the legislation currently in force in Kazakhstan of issues relating to the detention and custody of suspects, the conduct of interrogations and so forth.

244. These measures are carried out in accordance with, and following the procedures stipulated in, articles 132, 134 and 137 of the Code of Criminal Procedure.

245. When a person is detained, the investigator or the person conducting the initial inquiry must, within three hours of the moment of the actual arrest, draw up a record indicating the basis and grounds for the arrest, and the place and time of arrest (given to the nearest minute). The record is shown to the detainee, who, at the same time, is informed of his or her rights, including the right of access to a lawyer and the right to be questioned in the presence of defence counsel; this is then noted in the record. The person conducting the initial inquiry or the investigator is required to inform the procurator of the arrest, in writing, within 12 hours of drawing up the record of arrest. It should also be noted that detainees are granted a private, confidential interview with defence counsel prior to being questioned.

246. The Act on procedures and conditions for the custody of persons in special temporary detention facilities establishes the grounds for placement in special facilities operated by law enforcement or specialized agencies. No one may be placed in a special facility without the authorization of the relevant State bodies. The rights of persons held in special facilities and issues relating to their living conditions are regulated by chapter 2 of the Act.

247. The activities of special facilities are regulated by the Act and by departmental regulations.

248. For example, the Internal Regulations of temporary holding facilities were approved by Ministry of Internal Affairs Order No. 385 of 1 June 2002.

249. As required in the Laws and Regulations Act, these regulations were registered in the State register of laws and regulations on 13 June 2010, as No. 1883, and published in the bulletin of laws and regulations (2003, No. 16).

250. The Rules for the activities of special holding centres operated by the internal affairs agencies were approved by Ministry of Internal Affairs Order No. 232 of 23 May 2011, registered in the State register of laws and regulations on 22 June 2011, as No. 7030, and published in the newspaper *Kazakhstanskaya pravda*, No. 272-274 (26693-26695) of 27 August 2011.

251. The activities of holding and processing centres are regulated by the Rules for the activities of holding and processing centres operated by the internal affairs agencies, which were approved by Ministry of Internal Affairs Order No. 233 of 23 May 2011, registered in the State register of laws and regulations on 22 June 2011, as No. 7031, and published in *Kazakhstanskaya pravda*, No. 272-274 (26693-26695) of 27 August 2011.

252. The Internal Regulations of remand centres operated by the national security agencies were approved by Order No. 171/DSP of the Chairperson of the National Security Committee of 17 September 2002 and registered in the State register of laws and regulations on 28 October 2002, as No. 2026.

253. Issues relating to medical assistance for persons placed in special facilities operated by law enforcement or specialized agencies are regulated by:

- Government Decision No. 430 of 7 April 2012 approving the Rules on health-care provision for citizens whose liberty has been restricted, citizens serving court-imposed sentences in places of detention and citizens placed in special facilities;
- The Joint Order of the Ministry of Justice (No. 30 of 1 February 2010), the Ministry of Health (No. 56 of 29 January 2010), the Ministry of Internal Affairs (No. 41 of 1 February 2010) and the Chairperson of the National Security Committee (No. 15 of 30 January 2010) on ensuring the mandatory participation of forensic medical specialists in the medical examination of persons held in temporary holding facilities, remand centres and institutions of the penal correction system for signs of bodily injury.

## **Paragraph 12**

254. In addition to the general conditions for preliminary investigations, special arrangements are in place for pretrial proceedings involving minors, notably in respect of the imposition of coercive procedural measures and the conduct of interrogations.

255. Thus, while the law specifies that the preventive measures provided for in the Code of Criminal Procedure may be applied to minors who are suspected or accused of committing an offence, it emphasizes the need for the body conducting the criminal proceedings to consider, in every case, the possibility of applying alternative measures, such as the transfer of the child concerned to the supervision of his or her parents, tutors or guardians, other persons of trust or the administration of the special institution in which he or she has been placed.

256. It is also provided that remand in custody, as a preventive measure, along with detention, may be applied to minors — where there are grounds for so doing — only in exceptional circumstances, that is when a serious or especially serious offence has been committed; at the preliminary investigation stage, the period of custody for a minor may be extended for up to six months. Minors are held separately; the detention or remand in custody of a minor, or the extension of the period of custody, must be notified without delay by the body conducting the criminal proceedings to his or her parents or other legal representatives or, in their absence, a close relative.

257. Chapter 52 of the Code of Criminal Procedure, “Proceedings in cases involving offences committed by minors”, governs the specific features of proceedings in this type of criminal case.

258. In accordance with article 491 of the Code, remand in custody, as a preventive measure, along with detention, may be applied to minors only in exceptional circumstances, that is when a serious or especially serious offence has been committed.

259. Criminal procedure law has been amended to allow the courts henceforth to exempt minors from criminal liability in the event of the reconciliation of the parties even when a serious offence has been committed, provided that it did not entail loss of life or serious harm to health.

260. Article 17 of the Act on procedures and conditions for the custody of persons in special temporary detention facilities provides that a minor who is suspected or accused of committing an offence may, with the written permission of the person or body conducting the criminal proceedings, be granted up to three visits per month from his or her relatives or other persons lasting up to three hours each. Suspects and accused persons are granted private and confidential meetings with defence counsel from the moment that they are detained. There is no limit on the length of these meetings.

261. In addition, pursuant to the Act of 23 November 2010 on amendments to certain legislative acts of Kazakhstan concerning the protection of the rights of the child, the penalties for offences against children have been increased.

### **Paragraph 13**

262. Article 14 of the Code of Criminal Procedure provides that persons not held in custody may be subjected to compulsory placement in medical institutions for the conduct of forensic psychiatric expert evaluations only on the decision of a court and that such evaluations may be carried out only on the decision of a court or with the authorization of a procurator.

263. Furthermore, pursuant to the Act of 20 January 2010 on amendments to certain legislative acts of Kazakhstan concerning forensic expert evaluations, article 247 of the Code of Criminal Procedure has been revised and now clearly specifies the duration of placements in medical institutions and the procedure for obtaining extensions.

264. Article 244-1, which was inserted in the Code of Criminal Procedure further to the Act, sets out guarantees in respect of the rights and legitimate interests of persons undergoing forensic expert evaluations; it establishes, inter alia, a prohibition on the use of such persons as subjects in clinical trials of medical equipment, drugs and medicines and on the use of investigatory techniques involving surgical intervention.

265. In addition, this article requires the body requesting the forensic expert evaluation to inform the person to be evaluated, in terms that are accessible to him or her, of the investigatory techniques to be used, including any alternative techniques, and any pain or side effects that he or she may experience.

266. This information is also provided to the legal representative of the person to be evaluated, at his or her request. The possibility of submitting complaints and petitions is guaranteed to persons placed in medical institutions.

## Paragraphs 14 and 15

267. Expulsion (deportation), return and extradition are carried out on the basis of various legislative acts. For example, the general rules on the extradition of foreign nationals and on the submission of requests to government bodies of foreign States for the extradition of Kazakh nationals are set out in the Code of Criminal Procedure.

268. Foreign nationals may be deported for breaches of the laws on migration if the Code of Administrative Offences provides for such a penalty.

269. Kazakhstan is developing bilateral cooperation and signing agreements regarding procedures for the extradition of foreign nationals.

270. In keeping with its commitment to the observance of human and civil rights and freedoms, Kazakhstan is taking measures, including legislative measures, to safeguard those rights and freedoms.

271. Thus, pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, a new provision has been inserted in article 532, paragraph 1, of the Code of Criminal Procedure stipulating that a person may not be extradited to a foreign State if there are grounds for believing that he or she would be in danger of being subjected to torture in the requesting State.

272. According to statistical data, over the entire period under review, 576 persons were extradited by Kazakhstan at the request of foreign agencies thus authorized to face criminal prosecution or serve sentences (108 in 2008, 81 in 2009, 151 in 2010, 114 in 2011, and 122 in 2012).

273. The extradition of 63 persons to foreign States was refused (22 in 2008, 7 in 2009, 4 in 2010, 22 in 2011, and 8 in 2012). The main grounds for refusal were as follows: the person whose extradition was sought was a Kazakh national; the statutory limitation for criminal liability had expired; the acts in connection with which extradition was sought were not criminal offences in Kazakhstan.

274. In addition, further to the Act, article 531-1 was inserted in the Code of Criminal Procedure; this provision grants a right of judicial appeal against decisions of the Office of the Procurator-General to extradite a foreign national.

275. With regard to the extradition of Uzbek nationals to Uzbekistan, 29 Uzbek nationals sought by the law enforcement agencies of that State for terrorism, membership of religious extremist, separatist or other prohibited organizations, murder, and formation or membership of criminal associations were extradited in 2010.

276. The Office of the Procurator-General of Uzbekistan provided written assurances that the detainees' rights and freedoms would be observed and that they would not be subjected to torture or other inhuman treatment following their extradition.

277. The Kazakh side was assured that representatives of the International Committee of the Red Cross, the World Health Organization and other international human rights organizations had free access to prisons in the Republic.

278. In order to obtain additional confirmation of these assurances, from 3 to 14 August 2012 representatives of the Kazakh diplomatic service held meetings with 18 of the extradited persons, who are now serving sentences in Uzbekistan.

279. Kazakhstan is consistently taking legislative measures on issues relating to refugees.

280. On 15 December 1998, Parliament ratified the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees.

281. On 4 December 2009, the Refugees Act was adopted to implement the Convention and to safeguard and regulate the rights of refugees.

282. A cooperation agreement between the Government of Kazakhstan and the Office of the United Nations High Commissioner for Refugees has also been ratified.

283. In the light of the obligations it has undertaken, Kazakhstan is making every effort to implement the fundamental principle of non-refoulement of asylum seekers.

284. As at 1 January 2013, the number of persons granted refugee status was 491. Nine persons had applied for refugee status as at the start of January 2013. In 2012, 10 persons were denied refugee status, and another 11 were refused at the application stage.

285. Most persons applying for refugee status, a total of 484, were nationals of Afghanistan.

## **Paragraph 16**

286. Kazakhstan is not currently in a position to respond to the call made by the Coalition for the International Criminal Court, on 6 April 2012, for it to accede to the Rome Statute of the International Criminal Court, since the provisions of the Statute concerning the exercise of the Court's jurisdiction over persons irrespective of their official capacity and the rejection of immunities or special procedural rules restricting criminal prosecutions of certain officials are not in conformity with the Constitution of Kazakhstan.

## **Paragraphs 17 and 18**

287. To reflect the fact that human and civil rights and freedoms represent the highest values of the State, as stated in the Constitution, the target of the offence of torture has been amended in criminal law.

288. Thus, torture is now held to be a breach of the fundamental constitutionally established human and civil rights and freedoms, and the offence is defined accordingly.

289. The acts envisaged in article 141-1, paragraph 1, of the Criminal Code are categorized as ordinary offences and the maximum penalty inflictible is deprivation of liberty for up to 5 years.

290. However, given the importance of respect for individual liberty and the inviolability of human dignity and of efforts to prevent torture, violence and other cruel or degrading treatment or punishment, when the elements set out in article 141-1, paragraphs 2 and 3, are present, the offence is categorized as serious and the maximum penalty is deprivation of liberty for up to 10 years.

291. Furthermore, in order to ensure that investigations into offences of torture are objective, pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, amendments have been made to allow for the designation of an alternative investigative authority in criminal cases involving torture, depending on the departmental affiliation of the perpetrator.

292. The relevant norms stipulate that pretrial investigations in criminal cases involving torture must be carried out by a criminal prosecution body of which the person under investigation is not an employee (Code of Criminal Procedure, art. 192).

## Paragraph 19

293. Issues relating to extradition are regulated by articles 528 to 536 of the Code of Criminal Procedure, which are in conformity with the *aut dedere aut judicare* (extradite or try) principle established in customary international law.

294. Each year, the Committee on the Penal Correction System executes more than 300 instructions from the Office of the Procurator-General concerning the reception or surrender of persons detained pending extradition (380 in 2008, 388 in 2009, 325 in 2010, 362 in 2011 and 369 in 2012).

## Paragraph 20

295. As part of efforts to implement the United Nations World Programme for Human Rights Education and the National Plan of Action for Human Rights Education, the Kazakh International Bureau for Human Rights and Rule of Law, together with the OSCE centre in Astana and the Ministry of Internal Affairs, and with support from the United Nations Democracy Fund, has introduced — as from 1 September 2010 — a 16-hour dedicated course on human rights in the special initial training programme for candidates for service with the internal affairs agencies.

296. In 2012, the Ministry of Internal Affairs, in cooperation with the Kazakh International Bureau for Human Rights and Rule of Law, held master classes on the methodology for teaching the dedicated human rights course for staff from the Ministry's training centres and the internal affairs departments in the provinces, as well as training seminars for instructors from the Ministry's departmental educational institutions. The seminars took place in Astana on 25 and 26 April 2012, in Almaty on 28 and 29 May 2012 and in Karagandy on 30 and 31 May 2012.

297. In April 2012, the Ministry of Justice organized seminars, with the participation of international experts from the European Union, on the theme "Current issues in harmonizing national legislation: implementation of international law in national legislation". Ministry of Internal Affairs personnel took part in one seminar.

298. On 18 April 2012, the Central Asia office of Penal Reform International led a training course as part of a project entitled "Rehabilitation of ex-prisoners and protection of their rights through joint efforts by civil society and the State", in which staff of the Ministry of Internal Affairs Committee on the Penal Correction System participated.

299. As part of the OSCE human dimension initiatives, a seminar took place in Warsaw from 14 to 16 May 2012 on the Rule of Law Framework for Combating Trafficking in Human Beings and was attended by a staff member of the Ministry of Justice Committee on Criminal Policy.

## Paragraph 21

### Subparagraphs (a) and (b)

300. The Programme for the Further Development of the Penal Correction System of Kazakhstan for 2007–2009 was approved by Government Decision No. 673 of 6 August 2007.

301. The Programme for the Development of the Penal Correction System of Kazakhstan for 2012–2015 was approved by Government Decision No. 775 of 9 June 2012.



302. Within the framework of the Programme for 2012–2015, the agencies of the penal correction system pursued their large-scale efforts in the areas of training and further training. The programme also provided for the construction of new correctional institutions.

**Subparagraph (c)**

303. Construction of new temporary holding facilities that conform to international standards is under way.

304. Construction of a new temporary holding facility in Ust-Kamenogorsk with capacity for 28 persons has been completed. A facility with 35 places is under construction in Taldykorgan, while the design construction documents have been drawn up for a new facility in Kostanay with 35 places. It is planned to build temporary holding facilities in the cities of Almaty, Kostanay and Pavlodar.

**Subparagraph (d)**

305. Article 70 of the Criminal Code provides for the release on parole of inmates who demonstrate good behaviour, take a conscientious approach to work or study, participate actively in the activities of prisoners' organizations and in re-education initiatives, and take steps to make reparation for the injury caused by their offences.

**Subparagraphs (e) and (g)**

306. Taking into account the exceptional individuality of the human psyche, of the manner in which we perceive our environment and of the ways in which we are raised, the many systems and methods of evaluation, and the aspects of human psychological and physical functioning that have yet to be investigated, it is not possible to establish all the reasons for which people take their own lives.

307. Nevertheless, with a view to putting in place a unified procedure for reviewing statements, reports and other information concerning cases of suicide among detainees and remand and convicted prisoners, ensuring the lawfulness of investigations into the circumstances of such cases and developing suicide prevention measures, the Procurator-General adopted Special Order No. 42r/17 of 20 May 2011, which obliges procurators in the provinces to take, without delay, the measures stipulated by law to ensure full, thorough and objective investigations of the circumstances of suicides and the elucidation of the contributory causes and conditions, and to conduct a careful inquiry into every case of suicide in a correctional institution.

308. As part of efforts to implement the Programme for the Further Development of the Penal Correction System for 2012–2015, posts of prison psychologist have been established and are currently being filled.

**Subparagraph (f)**

309. The enhancement of medical assistance for convicted and remand prisoners is kept constantly under review by the National Coordinating Council on Health Care reporting to the Government of Kazakhstan.

310. Financial resources in an amount of 1,167 million tenge were provided in the national budget for 2012 for the purchase of medical equipment and for efforts to raise the standard of health care:

- 31 X-ray and fluorographic devices were purchased for the early detection of tuberculosis;

- 229 health-care professionals employed by the penal correction system took advanced training courses in educational institutions of the Ministry of Health, which will allow the medical facilities of the penal correction system to obtain the appropriate licences.

311. The transfer of responsibility for health-care functions from the agencies of the penal correction system to the Ministry of Health is being considered.

## **Paragraph 22**

312. Under articles 50 and 51 of the Act on procedures and conditions for the custody of persons in special temporary detention facilities, the voluntary associations represented on public monitoring commissions may make unimpeded visits to special facilities, without any restriction on the number of visits, conduct interviews with detainees, and receive appeals and complaints from them concerning violations of their rights and legitimate interests.

313. To implement the Act, the Government adopted Decision No. 702 of 24 June 2011 approving the Rules on constituting public monitoring commissions in provinces, cities of national status and in the capital to conduct public oversight of special facilities.

314. Kazakhstan, which became a State party to the Convention against Torture in 1998, ratified the Optional Protocol thereto in 2008, thus assuming the obligation to establish a national preventive mechanism.

315. As part of the efforts undertaken to that end, a bill on amendments to certain legislative acts of Kazakhstan concerning the establishment of a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment was introduced in the Majilis by Government Decision No. 400 of 30 March 2012.

## **Paragraph 23**

316. The national human rights institution is fully compliant with the Paris Principles.

317. The Ombudsman is appointed by the President in agreement with both chambers of Parliament. The Statute of the Office of the Human Rights Commissioner specifies the grounds on which the Commissioner may be dismissed, thus guaranteeing the incumbent's independence during his or her term of office; the Statute was approved by Presidential Decree No. 947 of 19 September 2002 on the establishment of the post of Human Rights Commissioner.

318. According to the Statute, the Human Rights Commissioner carries out his or her activities independently, and no one has the right to assign him or her tasks not provided for in the Statute. Any unlawful interference in the Commissioner's work is prohibited. The Statute further states that, during his or her term of office, the Commissioner may not be a member of political parties or other voluntary associations, or engage in political activities.

319. The Ombudsman has the right to request officials and organizations to provide the information on human rights and freedoms he or she needs for reviewing complaints and to visit sites and premises of State bodies and organizations, including closed ones (prisons, military units), in order to conduct monitoring. The Ombudsman has the right to petition the State bodies and officials authorized thereto to bring disciplinary or administrative proceedings or to open criminal cases against officials who violate human and civil rights and freedoms. In cases that are of great social significance, the Ombudsman has the right to petition the President, Parliament or the Government directly.

320. The Ombudsman's recommendations are transmitted to all State bodies without exception. The Ombudsman receives and reviews individual and group appeals from all parts of the country, including via the Internet.

321. The Ombudsman has the right to be received, without delay, by heads and officials of State bodies and other organizations and to petition the State bodies or officials authorized thereto to bring disciplinary or administrative proceedings or to open criminal cases against officials who breach human and civil rights and freedoms.

322. Since 2008, a working group for the consideration of cases of torture and other cruel treatment or punishment has functioned effectively under the auspices of the Ombudsman. The working group includes high-level representatives of relevant State bodies and prominent Kazakh human rights defenders.

323. The working group monitors the observance of the rights of detainees in closed institutions. Its work was positively evaluated by the United Nations Special Rapporteur on the question of torture, Mr. Manfred Nowak, in his 2010 report to the Human Rights Council on the outcome of his inspection visit to Kazakhstan.

324. The Ombudsman's activities are funded from the overall budget of the Office of the Ombudsman (National Human Rights Centre), which receives an allocation from the national budget, approved annually as a separate budget line in the law adopted by Parliament.

## Paragraph 24

325. Kazakhstan is making every effort to ensure the prompt and impartial investigation of cases of torture.

326. In accordance with the Procurator's Office Act and the Code of Criminal Procedure, the procuratorial authorities, besides carrying out supervision of criminal proceedings, have since 2010 acted as criminal prosecution bodies.

327. Thus, when evidence of offences involving torture is uncovered, the procuratorial authorities have the right to decide whether to institute criminal proceedings, which they may either conduct themselves or refer to an appropriate investigative authority.

328. In addition, pursuant to the Act of 18 January 2011 on amendments to certain legislative acts of Kazakhstan aimed at further humanizing the criminal law and strengthening guarantees of legality in criminal proceedings, principle-based amendments have been made to article 192 of the Code of Criminal Procedure in order to prevent officials from closing ranks and to preclude the influence of vested interests during inquiries into torture cases. Now, if an act of torture is committed by an official of an internal affairs agency, the case is investigated by the financial police, and vice versa.

329. Furthermore, various acts regulating the application of the law when such cases are investigated and reviewed, as well as other issues in this area, have been adopted, as follows:

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

(2) Order No. 7 of the Procurator-General of 1 February 2010 approving the Instructions on the verification of reports of the use of torture or other unlawful methods involving cruel treatment of persons who are parties to criminal proceedings and are being held in specialized facilities, and on the prevention of such practices;

(3) The Joint Order of the Ministry of Justice (No. 30 of 1 February 2010), the Ministry of Health (No. 56 of 29 January 2010), the Ministry of Internal Affairs (No. 41 of 1 February 2010) and the Chairperson of the National Security Committee (No. 15 of 30 January 2010), coordinated with the Office of the Procurator-General (1 February 2010), on ensuring the mandatory participation of forensic medical specialists in the medical examination of persons held in temporary holding facilities, remand centres and institutions of the penal correction system for signs of bodily injury;

(4) The Joint Order of the Ministry of Justice (No. 31 of 2 February 2010), the Procurator-General (No. 10 of 3 February 2010), the Ministry of Internal Affairs (No. 46 of 2 February 2010), the Chairperson of the National Security Committee (No. 16 of 2 February 2012) and the Chairperson of the Economic Crimes and Corruption Agency (No. 13 of 2 February 2010) on cooperation between law enforcement agencies and civil society actors in the verification of complaints concerning the use of torture or other unlawful investigative methods and in the criminal prosecution of such cases.

### **Paragraph 25**

330. The independence and impartiality of judges and the judiciary as a whole are guaranteed in article 77 of the Constitution.

331. Moreover, any kind of interference in the work of the courts in administering justice is prohibited and is punishable by law. Judges are not answerable to any authority in respect of individual cases.

332. Similar provisions are contained in the Constitutional Act on the judicial system and the status of judges and in articles 21 and 22 of the Code of Criminal Procedure.

333. The principles on which the administration of criminal justice is based are adversariality and equality of the parties (Code of Criminal Procedure, art. 23) and the thorough, full and objective investigation of the circumstances of cases (Code of Criminal Procedure, art. 24).

### **Paragraph 26**

334. Issues relating to the redistribution of procuratorial functions in criminal proceedings are addressed in the draft new code of criminal procedure. With regard to the claims concerning the possible “restriction” by procurators of the independence of the courts, the participation of procurators in legal proceedings as the representatives of the State and the right of procurators to challenge judicial acts are institutions that have been developed and reinforced over time throughout the legal world. The role of procurators in proceedings in Kazakhstan is consistent with international standards. The sole function of procurators is to help the courts to reach lawful and just decisions and to challenge unlawful judicial acts. However, any such challenge is then considered by a court of law. There is thus no kind of restriction of judicial independence by procurators in the Republic, nor can there be.

### **Paragraph 27**

335. The issue of permitting defence counsel to collect evidence is being considered by the interdepartmental working group responsible for preparing the draft new code of criminal procedure.

336. Furthermore, a draft programme for the further development of the legal profession is under review by the State bodies concerned.

## **Paragraph 28**

337. In accordance with articles 39 and 40 of the Code of Criminal Procedure, persons who are acquitted by a court, as well as accused persons and suspects in respect of whom charges are withdrawn and criminal proceedings terminated, are deemed innocent and may not be subjected to any kind of restriction on their constitutionally guaranteed rights and freedoms.

338. The court and the criminal prosecution body must take all measures stipulated by law for the rehabilitation of the person concerned and provide redress for harm caused by unlawful actions of the body conducting the criminal proceedings. Compensation for harm incurred as a result of unlawful detention, arrest or other procedural coercive measures is funded in full from the State budget, irrespective of whether the body conducting the criminal proceedings is at fault. In the event of the death of the victim, the right to compensation is transferred to his or her heirs.

339. By way of example, Officers N.K. Bekildekov and M.N. Unchibaev of the Satpayev municipal internal affairs office in Karagandy province, in the course of an investigation into a criminal case, subjected A.K. Usentaev to unlawful methods of interrogation, inflicting serious bodily injuries. The officers were sentenced to deprivation of liberty by a court judgement of 1 March 2007.

340. With regard to redress for harm caused by torture, the Ministry of Internal Affairs was ordered, in a decision of the Zhezkazgan municipal court in Karagandy province of 21 March 2008 and a ruling of the court of 9 September 2008, to pay Mr. Usentaev 5,099,430 tenge, as well as monthly compensation for loss of earnings in an amount of 30,034 tenge.

## **Paragraph 29**

341. Issues relating to the admissibility and relevance of evidence are regulated by the Code of Criminal Procedure.

342. Kazakh legislation stipulates that statements or information of any kind obtained during an investigation or trial by violating the rights of the parties to the proceedings or breaching other rules of criminal procedure must be declared inadmissible as evidence if such violations or breaches have affected, or could affect, the reliability of the information in question.

343. In implementation of the Convention, since 2002 information obtained through the use of torture has been deemed inadmissible as evidence in Kazakh law (Code of Criminal Procedure, art. 116).

## **Paragraphs 30 and 31**

344. In Kazakhstan, men's and women's rights are afforded equal protection.

345. In 2008, Kazakhstan ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the International Convention for the Protection of All Persons from Enforced Disappearance.

346. With a view to the effective prevention of crime in the domestic sphere, in 2008 provisions were inserted in the Code of Administrative Offences establishing liability for unlawful acts in the context of family and domestic relations, namely article 79-5 (unlawful acts in family and domestic relations) and article 79-1 (battery).

347. Since the insertion of these provisions, administrative proceedings have been brought against more than 102,000 persons under article 79-5 and against 8,701 persons under article 79-1 (between 2010 and 2012).

348. Overall, the innovations made have had a positive impact on the prevention of crime in the domestic sphere. According to statistics, the level of such crime has been falling since 2005 (the number of murders has halved, from 578 in 2005 and to 285 in 2012).

349. The Domestic Violence Prevention Act was adopted on 4 December 2009 in order to further enhance prevention in this area. The adoption of the Act and, in particular, the introduction of new preventive measures, such as restraining orders, has enabled the internal affairs agencies to undertake preventive work as soon as conflict begins to develop in families.

350. Restraining orders are measures directed at persons who have committed acts of domestic violence. The main aim of such orders is to ensure without delay (that is, in the immediate aftermath of an incident) the safety of victims when there is a genuine threat that they will be subjected to physical and/or mental suffering.

351. Persons subject to a restraining order are prohibited, for a period of 10 days, from:

- Committing acts of domestic violence;
- Pursuing, harassing, speaking to, telephoning or otherwise contacting victims against their will.

352. On application by the victim, the period during which a restraining order is in force may be extended to 30 days.

353. The law provides for fines of up to five monthly notional units for breaches of the terms of a restraining order (Code of Administrative Offences, art. 355-1).

354. In 2012, more than 44,000 restraining orders were issued against persons who had committed offences in the domestic sphere (in 2011, there were over 36,000 such orders).

355. The bulk of the restraining orders (92 per cent) were imposed on men, with 4.4 per cent being imposed on women and 2.7 per cent on minors.

356. The restraining orders issued against more than 1,941 offenders were extended, compared with 1,059 in 2011.

357. Administrative proceedings were brought against over 1,000 persons for breaches of restraining orders; the figure was 700 in 2011.

358. In addition, the courts established more than 4,000 special requirements regarding the conduct of perpetrators of administrative offences, as against over 3,000 in 2011.

359. Overall, approximately 147,000 preventive interviews took place with persons who had committed offences in the domestic sphere (the figure was 180,000 in 2011) and more than 68,000 persons were brought to internal affairs offices (58,000 in 2011), of whom 36,000 were detained under article 620 of the Code of Administrative Offences, which deals with administrative detention (compared with 23,000 in 2011).

360. The 2012–2016 Plan of Measures for Implementing the Gender Equality Strategy for 2006–2016 was approved by Government Decision No. 24 of 11 January 2012.

361. Internal affairs agencies personnel work with crisis centres to help women victims of violence. Currently, there are 29 crisis centres in the country providing assistance to women affected by violence. Some centres are able to accommodate women and their children on their premises; they include the Teen Challenge Centre in Almaty and the Korgay Centre in Astana.

362. In 2012 alone, more than 16,000 women complained to the internal affairs agencies of violations of their rights; over 1,000 were referred to crisis centres and provided with legal and psychological assistance.

363. The police department of the internal affairs office in Astana has a telephone helpline — 1415 — for victims of domestic violence. In 2012, the helpline received more than 1,000 calls (in 2011, the figure was over 180).

364. The internal affairs agencies, working with NGOs, have carried out preventive measures in the homes of dysfunctional families, as well as making visits in response to offences occurring in a family or domestic setting.

365. More than 500,000 sets of informational materials (booklets, posters, billboards, stands and brochures) have been distributed for display in apartment building entrance halls, retail outlets, markets, mass leisure venues and State institutions.

366. In enterprises and organizations, more than 38,000 talks have been arranged to explain the new legislative provisions on domestic violence prevention (37,000 in 2011), and over 16,000 round tables and training events have taken place (15,000 plus in 2011).

367. In October 2011, the Ministry of Internal Affairs, together with the Pravo Voluntary Foundation and the Korgay-Astana Private Foundation, and with support from the National Commission on Women's Affairs and Family and Demographic Policy reporting to the President of Kazakhstan, organized a conference entitled "More effective cooperation between State bodies, organizations and voluntary associations dealing with violence against women".

## Paragraph 32

368. There are 94 institutions in the Kazakh penal correction system: 76 correctional institutions and 18 remand centres.

369. The correctional institutions comprise 22 general-regime facilities, 21 strict-regime facilities, 5 special-regime facilities, 7 hospitals, 18 open prisons, 1 young offenders' institution and 1 prison.

370. As at 1 January 2013, there were 48,684 convicted and remand prisoners in institutions of the prison system, including 3,822 women, 194 juveniles, 1,976 foreigners and 155 stateless persons.

371. In 2012, a bill on amendments to certain legislative acts of Kazakhstan concerning efforts to counter trafficking in persons was submitted to Parliament for consideration. The purpose of the bill is to refine the country's laws in line with international standards, in particular by enhancing the protection afforded victims of trafficking-related offences.

372. The bill also provides for restrictions on the conclusion of employment contracts (in the fields of education, culture and sport, among others) with persons having previous convictions for trafficking-related offences against minors.

373. The Government's plan of action to combat and prevent offences involving trafficking in persons for 2009–2011 was approved by Government Decision No. 462 of 2 April 2009 and has been carried out.

374. A plan of action for 2012–2014 has been approved by Government Decision No. 1247 of 24 October 2012.

375. The plan provides for efforts to enhance legislation, for preventive and practical measures by State bodies, and for cooperation between such bodies and NGOs.

376. In 2011, 287 criminal cases were opened in connection with trafficking-related offences (267 in 2012), including 25 cases of trafficking in persons (19 in 2012), 21 of which involved sexual exploitation (11 in 2012). Criminal proceedings were instituted in 21 cases of trafficking in minors, 10 of which involved sexual exploitation (2 in 2012).

377. Measures are taken to bring perpetrators, including officials who are complicit in trafficking in persons, to justice.

378. In 2012, 34 persons were prosecuted for trafficking-related offences (37 in 2011), including 4 officials (3 in 2011).

379. With a view to preventing, suppressing and detecting such offences, the internal affairs agencies conduct “Stop trafficking” operations each quarter. Over 120 cases of trafficking in persons were uncovered in the course of the operations conducted in May and August 2011.

380. In 2012, operations were carried out in May and October, uncovering more than 130 cases.

### **Paragraph 33**

381. In 2008, Kazakhstan ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

382. On 11 December 2008, the Head of State signed Decree No. 711 on signature of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, thus confirming the country’s readiness to implement additional international human rights standards and establish a legal framework conducive to more effective realization of the rights of persons with disabilities.

383. At present, the ground is being laid in the country for ratification of the Convention and its Optional Protocol.

384. The first phase (2012–2013) of the plan of action to ensure the rights and improve the quality of life of persons with disabilities in Kazakhstan for 2012–2018 was approved by Government Decision No. 64 of 16 January 2012. As part of the first phase, efforts are under way to harmonize the legislation on the protection of the rights, freedoms and interests of persons with disabilities, a process entailing amendments to more than 30 laws and regulations.

385. Concerning ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:

386. It may be concluded, on the basis of the impact analyses undertaken, that it would be premature for Kazakhstan to become a State party to the Convention, given the following factors:

- The existing legislation on migration policy is insufficiently developed and needs revision, while new, more precise laws and regulations are called for on specific issues;



- The Convention is not included in the list of documents that States must have signed in order to become members of the World Trade Organization, and acceding to it now would require significant amendments to the legislation currently in force;
- The majority of countries that have signed the Convention are sending countries seeking to protect their own nationals abroad. The reservations entered by a number of countries on acceding to the Convention concern social and political rights and freedoms;
- The world's developed States have not acceded to the Convention, as the safeguards in respect of rights and freedoms in their legislation meet the requirements of the Convention or, in many cases, exceed them.

387. The Convention essentially places legal and illegal labour migration on the same footing, in terms of migrant workers' rights. This could lead to increased competition on the local labour and housing markets; the formation of entire employment sectors not subject to legislative regulation; confrontations between ethnic and sub-ethnic stereotypes and norms of behaviour; social and cultural marginalization and crime; and the emergence of hotbeds of tension.

### **Paragraph 34**

388. The common core document of Kazakhstan was drafted in accordance with the general guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties.

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