



Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Visit to Kazakhstan undertaken from 20 to 29 September 2016: observations and recommendations addressed to the State party

Report of the Subcommittee*

Addendum

Replies of Kazakhstan, *****

[Date received: 16 November 2018]

* In accordance with article 16 (1) of the Optional Protocol, the report of the Subcommittee was transmitted confidentially to the State party on 1 February 2017. On 18 January 2019, the State party requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

** On 18 January 2019, the State party requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.

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



Additional information on the implementation of the recommendations of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment following its first visit to Kazakhstan, undertaken from 20 to 29 September 2016

Paragraphs 9 and 10

The authorities granted access to all places visited by the Subcommittee, and the delegation was able to conduct private interviews of its choice in all the places visited. However, at the Centre of Forensic Medicine in Astana and at the national anti-corruption bureau in Almaty, access was delayed until the officers in charge, at the request of the focal point, confirmed the credentials with their superiors.

The Subcommittee recalls that the purpose of Subcommittee visits is to be able to assess the everyday life of persons deprived of their liberty. It is of the view that additional preparations made by the authorities could distort the overall picture, thus making it more difficult for the Subcommittee to assess objectively the current situation in places of deprivation of liberty.

1. Under article 12 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 26 June 2008), States parties undertake to receive the Subcommittee in their territory and grant it access to the places of detention as defined in the Protocol.
2. In addition, article 4 of the Optional Protocol states that each State party is to allow visits by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence, and, in accordance with article 14, the States parties undertake to grant the Subcommittee unrestricted access to all places of detention and their installations and facilities and the liberty to choose the places it wants to visit and the persons it wants to interview.
3. For reference, these visits are to be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
4. Visits to places other than places of detention require an order or instruction from the State authorities, or notification thereof.
5. Under article 278 of the Code of Criminal Procedure and article 35 of the Act on Forensic Activity, persons who are not on the panel of forensic experts may only be present during the expert investigation with the written consent of the body that commissioned the investigation.
6. It should be noted that the Subcommittee does not have the right to unrestricted access to State-protected facilities, as listed in Government Decision No. 1151 of 7 October 2011. In that connection, the Centre of Forensic Medicine in Astana is a State-protected facility and access to this centre is granted in accordance with the security arrangements under the regulations contained in this decision.
7. For reference, in accordance with paragraph 6 of the above-mentioned regulations, strategic facilities include facilities of socioeconomic importance to the sustainable development of Kazakh society and which, if damaged, could have a negative impact on the national security of Kazakhstan and endanger the lives and health of its citizens.
8. Strategic facilities include the facilities of State organizations and agencies for developing, producing, testing, researching and storing particularly dangerous, bacteriological, biological, chemical and narcotic substances and precursors.
9. Similarly, security arrangements are provided for under the regulations on access and security arrangements for the anti-corruption service's office buildings, approved by

Order No. 42 of the Chair of the Civil Service and Anti-Corruption Agency, of 3 November 2016.

Paragraph 12

The Subcommittee reiterates the recommendations made in connection with its preliminary observations and stresses that those persons who provide information to or cooperate with national or international agencies or institutions should not be punished or otherwise penalized for having done so. The Subcommittee requests the State party to provide in its reply detailed information on what it has done to prevent the possibility of reprisals against anyone who was visited by, met with or provided information to the Subcommittee during the course of the delegation's visit, as well as information on measures taken to act upon such allegations.

10. The legislative and organizational measures adopted by the Government are intended to foster a culture of zero tolerance of all forms of violations of citizens' rights in public bodies and society. This principle underpins numerous reforms that have been undertaken in recent years. Places of detention may therefore be visited freely by representatives of United Nations committees, national preventive mechanisms, human rights organizations, consulates and diplomatic missions.

11. Persons who provided information during the visit by the members of the Subcommittee to places of deprivation of liberty were not subjected to any reprisals after the visit and no complaints were received from them about unlawful actions by the State authorities.

12. For reference, under article 9 of the Penal Enforcement Code, the Republic of Kazakhstan respects and safeguards convicted persons' rights, freedoms and legal interests and ensures that the correctional measures against them are lawful and their legal protection and personal safety are guaranteed.

13. In addition, article 14 (2) of the Penal Enforcement Code states that, in institutions and agencies responsible for enforcing sentences, complaints boxes must be available for the submission of applications by convicted persons regarding unlawful acts committed by officials.

14. Any such applications are collected by the procurator on a weekly basis, with the participation of representatives of the administration of the facility or body enforcing the sentence, and a report is drawn up.

Paragraph 15

The Subcommittee observes that the authorities, rather than adopting a separate law on the national preventive mechanism, amended about 16 legislative acts, which makes it difficult to ascertain the precise remit of the mechanism's mandate.

15. Kazakhstan is one of a handful of countries that have ratified the Optional Protocol to have carried out extensive work towards creating an effectively functioning national preventive mechanism, within a short period of time, by ensuring access to a significant number of closed institutions.

16. In accordance with the obligations under the Optional Protocol, on 2 June 2013, the Head of State signed a law to amend certain legislative acts of Kazakhstan concerning the establishment of a national preventive mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment, thereby establishing a national preventive mechanism in Kazakhstan.

17. The law introduced changes to the Code of Criminal Procedure, the Penal Enforcement Code, the Code of Administrative Offences and the Code on Public Health and the Health-Care System and the following four pieces of legislation: the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention

Facilities; the Prevention of Juvenile Delinquency Act; the Act on Compulsory Treatment of Persons Suffering from Alcoholism and Drug Addiction; and the Rights of the Child Act.

18. For reference, in order to ensure the effective functioning of the national preventive mechanism, the following orders of the Office of the Ombudsman have been approved:

- Statute of the Commission on the election of members of the Coordinating Council of the Office of the Human Rights Commissioner of Kazakhstan and its staff
- Statute on the Coordinating Council of the Office of the Human Rights Commissioner of Kazakhstan
- Regulations on the establishment of groups for preventive visits from among the national preventive mechanism's members
- Regulations on the selection of the national preventive mechanism's members
- Guidelines on preventive visits
- Regulations on the preparation of annual consolidated reports on the outcome of preventive visits

19. The establishment of the rules governing the national preventive mechanism's activities in specialized codes and laws has made it possible to ensure that the staff of institutions of concern to the mechanism are aware of its significance.

20. Furthermore, the Government of Kazakhstan has approved the regulations on the reimbursement of members of the national preventive mechanism for expenses related to preventive visits and the regulations on preventive visits by members of the mechanism.

21. The Coordinating Council of the Office of the Human Rights Commissioner is currently considering drafting separate legislation on the national preventive mechanism, which would cover issues relating not only to the mechanism's mandate but also the list of institutions of concern to the mechanism.

Paragraph 16

The Subcommittee welcomes the establishment of the national preventive mechanism and commends the participation of civil society organizations in the mechanism. It is of the view, however, that the fact that the President of Kazakhstan appoints the Human Rights Commissioner might affect the impartiality and independence of the mechanism.

22. In accordance with the amendments made to the Constitution of Kazakhstan by an Act of 10 March 2017, the status of the Human Rights Commissioner is established under the Constitution and he or she is appointed by the Senate, the upper house of parliament.

Paragraph 20

The Subcommittee further observes that there are no explicit provisions in the legislation related to the national preventive mechanism regarding earmarked funding; rather, it is stated that expenses incurred by the members of the mechanism are to be reimbursed in accordance with government orders. The Subcommittee underlines that the lack of budgetary independence may have a negative impact on the independent functioning of the mechanism.

23. The national preventive mechanism operates using funding from the national budget, which is approved under a separate, dedicated subprogramme, No. 106, concerning the implementation of the national preventive mechanism's activities. The funds are used only to reimburse members of the mechanism for expenses related to preventive visits and may not be used to cover other expenses.

24. Regarding the national preventive mechanism's institutional autonomy in the use of its funds, regional groups independently compile a list of institutions for preventive visits and send recommendations to the institution's administration following a visit, which

attests to the absence of government interference and the independence of the mechanism's members.

Paragraph 21

The Subcommittee recalls that under article 18 (3) of the Optional Protocol, States parties are required to undertake to make available the necessary resources for the functioning of the national preventive mechanisms. Therefore, it recommends that funding be provided for the effective functioning of the mechanism through a specific budget line in the national annual budget, and that the mechanism be granted institutional autonomy for the use of its resources.

25. The Ministry of Justice currently administers the budget subprogramme that covers the activities of the national preventive mechanism.

26. The Office of the Human Rights Commissioner and the National Centre for Human Rights are responsible for coordinating and supporting the work of the national preventive mechanism.

27. The national preventive mechanism operates using funding from the national budget. The funds are used only to reimburse members of the mechanism for expenses related to preventive visits and may not be used to cover other expenses.

28. After each visit, national preventive mechanism members are reimbursed for expenses related to transport, accommodation, subsistence, stationery, postage and payment for the preparation of the report.

29. Such expenses amounted to 18.6 million tenge in 2014, 48 million tenge in 2015, 66 million tenge in 2016 and 61 million tenge in 2017.

Paragraph 22

The legislation related to the national preventive mechanism does not contain a single, overarching definition of “deprivation of liberty”. Rather, the legislative changes to the 16 existing laws indicated that the mechanism would have access to prisons, army detention facilities, pretrial detention facilities, institutions for juveniles and a variety of health-care institutions, such as psychiatric institutions and centres for treatment of drug addiction, among others. However, the amendments appear not to cover centres where asylum seekers and refugees are held, social care homes and other places where persons may be deprived of their liberty.

30. The notion of “place of unfreedom” is absent from the legal terminology and practice of Kazakhstan. In addition, the national preventive mechanism's current legal framework has a number of significant advantages in this context. The approach taken, with the introduction of amendments to specific sectoral legislation, increases awareness about the work of the national preventive mechanism among the competent authorities and the institutions under their control and allows for a broad interpretation of the mechanism's mandate and the concept of “places of unfreedom”.

31. In practice and in legal terminology, Kazakhstan does not have a concept of a “place of deprivation of liberty”. The approach taken increases awareness about the work of the national preventive mechanism among the competent authorities and the institutions under their control and allows for a broad interpretation of the mechanism's mandate.

32. The national preventive mechanism currently monitors the special holding centres of internal affairs bodies for persons in administrative detention, where foreign nationals and stateless persons subject to such detention are held.

33. For reference, there are no detention centres for asylum seekers and refugees in Kazakhstan.

34. It should also be noted that parliamentary deputies are considering a bill that would expand the mandate to cover institutions for children, including social institutions. This

attests to the Government's commitment to fulfilling its obligation to prevent torture and gradually extending the national preventive mechanism's mandate to cover other closed institutions, including social institutions.

Paragraph 29

The Subcommittee learned that special urgent visits must be approved by the Commissioner, who also must approve any findings before their publication. This procedure may compromise the independence of the national preventive mechanism, as the Commissioner is appointed by the President and his or her activities are governed by presidential decree. The Subcommittee would like to recall the concern expressed by the Committee against Torture that the national preventive mechanism had not been able to undertake ad hoc visits owing to bureaucratic constraints.

35. As noted in the comments on paragraphs 16 and 18, the appointment process for the Human Rights Commissioner has undergone changes, in accordance with the amendments to the Constitution.

36. For reference, in accordance with the amendments made to the Constitution by an Act of 10 March 2017, the status of the Human Rights Commissioner is established under the Constitution and he or she is appointed by the Senate.

Paragraph 38

The Subcommittee notes the authorities' indications that a review of the definition of torture in the Criminal Code is under way. In that context, the Subcommittee reiterates the recommendation of the Committee against Torture to bring that definition into conformity with the one contained in the Convention and ensure that perpetrators convicted of having committed torture or ill-treatment are punished with appropriate penalties that are commensurate to the gravity of the crime.

37. The Procurator General and other relevant bodies have developed a bill aimed at amending certain legislative acts of Kazakhstan concerning the prevention of torture and other cruel treatment or punishment. The draft legislation contains a definition of the constituent parts of the crime of torture that is consistent with the definition in the Convention and prescribes harsh penalties for such acts.

Paragraph 42

The Subcommittee recommends that the State party reform the system of prosecution, ensure that only independent judges take decisions on restrictions on the human rights of suspects and accused persons, and reinforce oversight of the activities of investigators.

38. Under article 55 of the Code of Criminal Procedure, the investigating judge has the power to:

- (1) Authorize pretrial detention;
- (2) Authorize house arrest;
- (3) Authorize temporary suspension from duties;
- (4) Authorize a restraining order;
- (5) Authorize detention pending extradition;
- (5-1) Authorize or extend covert investigative actions;
- (6) Extend a period of pretrial detention, house arrest or detention pending extradition;

- (7) Authorize the use of bail;
- (8) Authorize the seizure of assets;
- (9) Approve the involuntary confinement of a person not currently in detention to a medical establishment for a forensic psychiatric or medical examination or both;
- (10) If mental illness is ascertained, approve the transfer of a person held in pretrial detention to a high-security psychiatric facility;
- (11) Approve the exhumation of human remains;
- (12) Declare an international search for a suspect or accused person;
- (13) Authorize inspections;
- (14) Authorize searches;
- (15) Authorize seizures;
- (16) Authorize body searches;
- (17) Authorize compulsory examinations;
- (18) Authorize compulsory sampling.

39. Furthermore, investigating judges have the power to authorize specific actions in a covert investigation. The investigating judge:

- (1) Considers complaints about the actions (or inaction) and decisions of the official or agency conducting initial inquiries, the investigating official or the procurator;
- (2) Considers any physical evidence subject to rapid deterioration or for which prolonged storage pending the resolution of the criminal case on the merits would entail considerable material cost;
- (3) Takes statements from a victim or witness during pretrial proceedings;
- (4) Imposes fines on persons, except for lawyers and prosecutors, who either fail to comply with or do not fully comply with procedural obligations in pretrial proceedings;
- (5) On the proposal of the prosecutor, considers whether to recover procedural costs in a criminal case;
- (6) On a reasoned request from a lawyer acting as defence counsel, considers whether to requisition or admit in a criminal case any information, documents or objects of importance to the criminal case, with the exception of information that constitutes State secrets, in cases of refusal or failure to take action on such a request within three days;
- (7) On a reasoned request from a lawyer acting as defence counsel, considers the appointment of an expert, or the conduct of investigative actions by the criminal prosecution authority, except covert investigations, if, in responding to such an application, the authority has unreasonably refused the request or takes no decision within three days;
- (8) On request from a lawyer acting as defence counsel, considers whether to compel to appear before the authority in charge of the criminal proceedings a witness who has previously been questioned where it is difficult to ensure that person's attendance to give evidence;
- (8-1) On a reasoned request by the pretrial investigative body, considers whether to extend the period in which to notify an individual of covert investigative actions carried out against him or her to one year;
- (8-2) On a reasoned request by the pretrial investigative body, allows the pretrial investigative body not to notify the person concerned of any covert investigative actions taken against him or her;
- (9) Exercises other powers, as stipulated in the Code.

40. The previous version of article 131 of the Code of Criminal Procedure (Procedure for the custody of a person suspected of having committed an offence) provided for the

suspect to be examined by a doctor in order to establish his or her general state of health and the presence of any bodily injuries only at the suspect's request. If no request was made and no examination was conducted, then no medical certificate was included with the record of arrest.

41. Under the new version of this article, the suspect is subject to an examination, in accordance with the procedure established in article 223 of the Code of Criminal Procedure, in order to establish his or her general state of health and the presence of any bodily injuries, and the findings of the medical examination are attached to the record of arrest.

42. Amendments introduced to several different articles of the Code of Criminal Procedure are also aimed at preventing torture; for example, under the new version of article 133 (2) of the Code of Criminal Procedure, the length of detention of a suspect is limited to 48 hours, and 24 hours in the case of minors.

Paragraph 48

Persons deprived of liberty must have access to legal counsel of their choice, and if needed, a State-provided lawyer. The Subcommittee recommends that the system and remuneration of State-provided lawyers be reviewed to ensure effective assistance is provided to suspects. Lawyers must be provided with unhindered access to their clients, without the need for any approval from prosecutors or investigators.

43. The previous version of article 131 of the Code of Criminal Procedure (Procedure for the custody of a person suspected of having committed an offence) provided for the suspect to be examined by a doctor in order to establish his or her general state of health and the presence of any bodily injuries only at the suspect's request. If no request was made and no examination was conducted, no medical certificate was included with the record of arrest.

44. In addition, under the new version of this article, the suspect is subject to a medical examination, in accordance with the procedure established in article 223 of the Code of Criminal Procedure, in order to establish his or her general state of health and the presence of any bodily injuries. The results of the examination are attached to the record of arrest.

45. Amendments introduced to several different articles of the Code of Criminal Procedure are also aimed at preventing torture. For example, under the new version of article 133 (2) of the Code of Criminal Procedure, the length of detention of a suspect is limited to 48 hours, and 24 hours in the case of minors.

Paragraph 50

The Subcommittee recommends that initial medical screenings be carried out rigorously, and that clear and detailed records be established, which should be accessible at all times as part of the record of any detention facility. Medical personnel conducting such screenings should be independent from the administration of the detention facility to allow for impartial results and proper follow-up. The Subcommittee recommends that the State party improve its training of medical personnel, particularly on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and other international standards. In addition, the Subcommittee recommends that health professionals immediately report suspicions of torture and ill-treatment to appropriate authorities so that an independent examination may be conducted in accordance with the Istanbul Protocol. The confidential medical report should be made available to the detainee and to his or her counsel.

46. From 24 to 27 July 2017, the United Nations Development Programme, within the framework of the second stage of its project on improving national human rights mechanisms and facilitating the effective fulfilment of the international obligations of Kazakhstan, together with the Organization for Security and Cooperation in Europe, carried

out training for law enforcement personnel and forensic experts on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment, in accordance with the recommendations of the Istanbul Protocol, the Criminal Code, the Code of Criminal Procedure and the Police Operations Act. In addition, from 2 to 4 October 2017, in cooperation with the Council of Europe, a seminar was held for regional forensic medical experts.

47. In order to increase the professional development of medical personnel, training for 73 doctors and 127 nurses in the prison system was planned in 2018.

48. For reference, in 2017, 62 doctors and 148 nurses took a professional development and retraining course, with a certificate of completion received at the end of the course.

Paragraph 55

The Subcommittee recommends that detainees be brought before a judge as soon as possible, without waiting for the 72 hours authorized by law to lapse, and to reduce that period from 72 to 48 hours as an additional safeguard against torture and ill-treatment. It also recommends that all hearings regarding initial detention and its prolongation be conducted in the presence of the detained persons and their lawyers. During the hearings, judges should inquire into the well-being of detainees and, where there is suspicion of torture, order an immediate and effective investigation. Detained persons must be able to challenge their detention at any time, at reasonable time intervals. The procedure for the initial detention and its periodic review and prolongation should be under judicial supervision and beyond the control of investigators, prosecutors and detaining authorities.

49. The Act of 21 December 2017 amending certain legislative acts of Kazakhstan concerning the modernization of the procedural framework for law enforcement activities provides for the reduction of the length of detention from 72 to 48 hours, and 24 hours in the case of minors.

50. Regarding the judicial review of the pretrial detention procedure by the investigating judge, in accordance with article 128 of the Code of Criminal Procedure, the actual time and place of detention and other circumstances affecting the length of detention must be established without fail.

51. In accordance with Supreme Court statutory decision No. 7 of 28 December 2009 on the application of the rules of criminal and criminal-procedural law on the observance of personal freedom and inviolability of human dignity and the prevention of torture, violence and other cruel or degrading treatment or punishment (as amended on 31 March 2017), if it is found that a false report has been filed on the length of time for the handing over of a person to the law enforcement agencies or the detention of the suspect, i.e. there is evidence of an offence covered under article 369 of the Criminal Code, the investigating judge or the court is required under article 185 (3) of the Code of Criminal Procedure, by an interim order, to bring this fact to the attention of the procurator for verification and a decision on the proceedings.

52. For reference, according to article 101 of the Code of Criminal Procedure, the administration of the place of detention immediately refers to the procurator any complaints by persons who have been detained or remanded in custody about torture and other cruel, inhuman or degrading treatment or punishment or the actions or decisions of the investigator or person or head of the agency conducting the initial inquiries. Complaints over the actions and decisions of the procurator are referred to procurators at a higher level.

53. Article 14 of the Code of Criminal Procedure states that no one involved in criminal proceedings may be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

54. Furthermore, Act No. 118-VI amending certain legislative acts of Kazakhstan concerning the modernization of the procedural framework for law enforcement activities, adopted on 21 December 2017, provides for measures to expand judicial control, including

the authorization of covert investigative actions, and the opportunities afforded to lawyers involved in proceedings and for the reduction of the length of police custody from 72 to 48 hours and other amendments aimed at increasing the protection of citizens in criminal proceedings.

Paragraph 60

The Subcommittee views with concern the many transfers between different institutions. Transfers of detainees should be kept to a minimum. As the default option, investigators should travel to the pretrial or temporary detention facilities to question detainees. If investigators consider transfers elsewhere strictly necessary, they should be required to justify those transfers. The Subcommittee recommends that movements of suspects be recorded accurately in order to track their whereabouts.

55. The Subcommittee recommends that movements of suspects be recorded accurately in order to track their whereabouts. This is currently carried out using the penal correction system's central automated database.

56. This database enables a record to be kept of the movements of all convicted prisoners and prisoners on remand, not only between institutions but also between cells.

57. As a result, the movements of suspects are currently recorded accurately and their whereabouts are monitored.

Paragraph 64

The Subcommittee concludes that, in practice, there are no effective complaints avenues, which leads to a total absence of trust and, in combination with fear of reprisals, a low number of complaints. The Subcommittee therefore recommends ensuring that complaints reach relevant authorities and that the confidentiality of those complaints is respected.

58. In 2017, 92 applications were received (41 in 2016), with the procuratorial authorities' providing clarifications on 46 of those applications (25 in 2016) and transmitting 35 applications from convicted persons to other bodies for review (7 in 2016).

59. In addition, unscheduled visits to institutions have been made by the Procurator's Office on, for example, alternating days of the week, weekends and holidays and in the evening or at night without providing notice to the administration. These visits involve inspecting units and living quarters, reviewing the footage of surveillance cameras, going over daily schedules, checking on the activities of prisoners not involved in work or study, ensuring the legality of disciplinary actions against prisoners and the suitability of incentives and reviewing any unlawful actions carried out by the institution's officials against prisoners.

60. For example, on 30 January 2017, the Atyrau Province Procurator's Office found evidence during rounds of the UG-157/9 facility of abuse of authority by the prison staff, including the beating of prisoners, and two officers of the facility were sentenced to different terms of deprivation of liberty. Similarly, on 19 April 2017, during a private reception held by the Procurator's Office in Almaty for convicted persons who had been held in a remand centre, it was revealed that the institution's staff had overstepped their authority (one staff member received a suspended sentence of imprisonment, with deprivation of the right to hold a post in the State service for 5 years).

61. In 2017, 84 instances of torture were registered in the single pretrial investigation register, in accordance with article 146 of the Criminal Code (78 in 2016). There were also 37 instances of improper exercise of authority (27 in 2016) registered under article 362 of the Criminal Code.

62. Moreover, it should be noted that the Procurator General, together with the Committee on the Penal Correction System of the Ministry of Internal Affairs, are

introducing amendments to the laws and regulations governing the powers and responsibilities of prison staff (head of units and supervisors) for receiving, registering, recording and transmitting applications, statements, complaints and petitions from convicted persons addressed to the procuratorial authorities, law enforcement agencies and other State bodies, organizations and the courts.

Paragraph 68

The Subcommittee recommends that prompt, impartial, effective and independent ex officio investigations be undertaken in response to all allegations of torture or where there are reasonable grounds to believe that an act of torture has been committed, irrespective of whether a formal complaint has been received.

63. The mechanism for legal criminal proceedings is provided for by Kazakh legislation, under which courts, procurators, investigators and agencies conducting initial inquiries act within their jurisdiction and make their own decisions, independently of one another.

64. Article 179 of the Code of Criminal Procedure establishes that pretrial investigations into all allegations and reports of torture must be immediately recorded in the single pretrial investigation register.

65. In order to prevent officials from closing ranks and the vested interests of departments from interfering in investigations of torture cases, amendments were introduced to article 192 of the Code of Criminal Procedure by an Act of 18 January 2011 to prohibit the investigation of such cases by the department whose staff member committed the offence.

66. Alternative investigative jurisdiction was introduced so that, if an act of torture has been committed by an officer of an internal affairs body, the case is investigated by the anti-corruption service and vice versa.

67. This rule is retained in the new Code of Criminal Procedure, which entered into force on 1 January 2015. According to article 187 (4) of the Code of Criminal Procedure, the pretrial investigation of criminal offences covered under article 146 of the Criminal Code (Torture) is carried out by either the internal affairs agency or anti-corruption service that initiated the investigation against the person in question, who must not be a staff member of the investigating body.

68. Under Act No. 91-VI of 11 July 2017 on amendments to certain legislative acts of Kazakhstan for their harmonization with the Constitution, torture investigations are placed under the procurator's jurisdiction.

69. Amendments were introduced to article 93 (12-1) of the Code of Criminal Procedure (Powers of the procurator during pretrial investigations) to the effect that the procurator overseeing the legality of pretrial investigations and the criminal proceedings has the right to conduct pretrial investigations into cases of torture and criminal offences covered under chapter 17 of the Criminal Code.

70. The procurator also registers criminal complaints and either refers them to the criminal prosecution authority or takes on the proceedings and conducts pretrial investigations (Code of Criminal Procedure, art. 193 (1) (1)). In addition, in exceptional cases and to ensure the objectivity and adequacy of the investigation, at the written request of the prosecuting authority or upon his or her own initiative, the procurator is to transfer a case from one authority to another or take on the proceedings to launch investigations, irrespective of the investigative jurisdiction established in the Code of Criminal Procedure (art. 193 (1) (12)).

71. The provisions in article 105 of the Code of Criminal Procedure requiring the procurator to verify complaints of torture without a pretrial investigation have been repealed. This makes it possible for all applications relating to torture to be registered immediately in the single pretrial investigation register, for evidence to be gathered in a timely manner and for the necessary investigations to be carried out.

72. Investigations into cases where the constitutional rights of citizens have been violated through the use of violence of any kind by law enforcement officers are specifically monitored and are a priority for procuratorial supervision.

73. In order to conduct independent investigations into illegal actions committed by law enforcement officers, including torture, Order No. 128 of the Procurator General of 7 November 2017 established new instructions on organizing pretrial investigations within the procuratorial system. Furthermore, under paragraph 96 of the instructions, on organizing supervision of the legality of the pretrial stages of criminal investigations (Order No. 50 of the Procurator General of 30 March 2015), the procurators are required to receive complaints and conduct investigations themselves.

74. The consideration of reports and applications about torture received by the procuratorial authorities is handled exclusively by special procurators authorized to conduct pretrial investigations.

75. Priority is given to the investigation by special procurators of criminal offences committed by law enforcement officials.

76. The instructions also establish that, in the event of bias and red tape in the investigation of torture cases by other criminal prosecution bodies, further pretrial investigations are entrusted to a special procurator.

77. These measures, together with the 2012 reform of the crime reporting system, which was incorporated into the Code of Criminal Procedure in 2015, improved the transparency of the process for registering reports and applications with the law enforcement authorities.

78. The autonomy and independence of the special procurators when it comes to taking decisions in criminal proceedings involving torture is regulated under existing legislation. Under article 58 (5) of the Code of Criminal Procedure, the procurator may independently exercise his or her procedural powers and is subject to the law only.

79. As a result, the exclusion of pretrial checks and the immediate start of pretrial investigations from the moment that a case is registered in the single pretrial investigation register, and the investigation of cases by special procurators and procurators or potentially by internal affairs bodies or the anti-corruption service that has initiated a pretrial investigation against a person who is not an officer of that body, makes it possible to ensure the impartial, prompt and full disclosure and investigation of criminal offences related to torture and ill-treatment.

80. With the aim of improving the quality of investigations into criminal cases of torture, the Law Enforcement Agencies Academy of the Procurator General's Office has developed guidelines on investigating reports of torture on the basis of the Istanbul Protocol.

81. The following is laid down in the guidelines:

- Adoption of urgent measures to protect victims, including the provision of necessary medical assistance
- Immediate performance of forensic medical and psychological examinations
- Carrying out of urgent investigative measures within 48 hours (interviewing of witnesses, crime scene investigations, seizure of physical evidence, in-depth interviewing of victims in accordance with the interview procedure for victims of torture, in-depth interviewing of suspects and so on)

82. The guidelines are sent to all law enforcement agencies and procurators and specialized higher education establishments and are available online at both official and unofficial portals.

83. Another of the legislative amendments is the addition to article 209 of the Code of Criminal Procedure (Place, time and length of interrogations) of rules governing interrogations in special investigation rooms, if there are such rooms.

84. There are currently 490 such rooms, known as "transparent" rooms (including those with video surveillance), for conducting legal proceedings.

85. The criminal investigation units with the largest number of transparent rooms equipped with video surveillance systems are found in the provinces of Qostanay (97 rooms), East Kazakhstan (90) and South Kazakhstan (44).

86. In 2017, the use of transparent investigation rooms led to reductions in the number of complaints relating to:

- (1) Police actions and decisions, by 25 per cent (from 38,000 to 27,000);
- (2) Unlawful investigative methods, by 50 per cent (from 4,720 to 2,623);
- (3) Unlawful handing over of persons to the law enforcement agencies, by 50 per cent (from 112 to 54).

87. It has been suggested that transparent rooms used for questioning should be gradually introduced to all law enforcement buildings.

88. Effective measures to do so have been adopted. The requirements of international standards on rooms used for legal proceedings are taken into account without fail when developing standard designs for the buildings and facilities of law enforcement agencies and carrying out major repairs, with a view to increasing the protection of citizens.

89. The investigation rooms are located on the ground floor, have transparent walls and are equipped with video surveillance systems, telephones and duress alarms.

90. Relatives are able to monitor the course of interrogations online without sound.

Paragraph 70

The Subcommittee recommends setting up a formal system to address the protection of, compensation for and rehabilitation of victims of torture. In accordance with international standards, victims of torture must have an enforceable right to fair and adequate compensation. Even where perpetrators of torture have not been identified, the State party must provide adequate compensation when a civil lawsuit is brought against it. In addition to affirming the formal status of a victim of torture, the State party must provide as full rehabilitation as possible. When an act of torture has been established to have been committed, compensation should automatically be paid.

91. On 10 January 2018, the Victims Compensation Fund Act was adopted, which established the legal basis for compensation to be paid for unlawful criminal prosecution.

92. The Act provides for the creation of favourable legal conditions in which to develop a mechanism to protect the rights of victims, provide a fixed level of financial assistance for victims and their legal representatives and systematize the procedure for financing and disbursing resources by accumulating capital in the fund.

93. For reference, the law provides for the establishment of a fund in the form of a cash control account allowing the designated central authority for the execution of the budget to allocate and make payments to victims.

94. In accordance with the law, the State guarantees monetary compensation for victims or their successors, as follows:

- Minors who are victims of sexual violence, trafficking in persons or torture (30 monthly notional units, or 63,630 tenge)
- Persons who have suffered serious harm to their health or have become HIV-positive (40 monthly notional units, or 84,840 tenge)
- The successors of victims who died as a result of a criminal offence (50 monthly notional units, or 212,100 tenge)

95. Citizens are entitled to receive this compensation as soon as they have been declared victims.

96. The fund is financed from non-tax revenues, including:

- Fixed payments imposed by a court

- Financial penalties imposed by a court on a victim, witness, expert, interpreter or other person, excluding lawyers, procurators and defendants, for non-fulfilment of procedural obligations or breach of order in the courtroom
- Sums withheld by court order from a person against whom a guilty verdict has acquired legal force and who has been sentenced to punitive work
- Sums collected under the recourse procedure

97. In accordance with article 71 of the Code of Criminal Procedure, victims are made aware of their right to bring a civil claim during criminal proceedings, and compensation is awarded for damage to property caused by a criminal offence and any expenses incurred in connection with participation in criminal proceedings, including expenses for representation, according to the rules established in the Code.

98. Victims' claims for moral damages are considered in criminal proceedings. Persons who have not brought claims in criminal proceedings or whose claims have not been considered are entitled to bring them under the civil procedure.

99. As part of the implementation of the plan of comprehensive measures to combat torture, consideration is being given to the possibility of amending article 167 of the Code of Criminal Procedure in order to establish the State's exclusive responsibility for torture, which would give effect to its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, increase the responsibility of public bodies for the actions of their officials and provide guarantees for the non-repetition of torture in accordance with the Convention: "Civil claims in cases concerning the criminal offences established under articles 146 and 146-4 of the Criminal Code".

Paragraph 88

The Subcommittee recommends that medical care and assistance be guaranteed and accessible to all detained persons upon their request and that medical personnel not be under the same authority as the investigating, prosecuting and detaining ministry.

100. The provision of medical care for inmates is regulated by article 117 of the Penal Enforcement Code (Provision of medical care).

101. Medical services are administered to convicted prisoners in accordance with national legislation on health care.

102. Prison hospitals (hospitals for the treatment of physical and mental diseases and tuberculosis, medical units and medical clinics) have been set up in the penal correction system to administer medical care to convicted prisoners. The medical unit in an institution administers compulsory treatment for convicted prisoners suffering from alcoholism or drug or substance addiction.

103. The administration of the institution is responsible for implementing the sanitary and epidemiological requirements set out in legislation.

104. Tuberculosis services, epidemiological surveillance in institutions and medical examinations of convicted prisoners put forward for remission of sentence on grounds of illness are organized in accordance with national legislation.

105. In the case of the death of a person serving a sentence, the administration of the institution concerned immediately notifies, in writing, the procurator, the deceased person's spouse or relatives and, if the deceased is a foreign national, the Ministry of Foreign Affairs.

106. The response to the Subcommittee's recommendation concerning the ministerial reporting lines of medical personnel is contained in paragraph 91.

Paragraph 102

The Subcommittee welcomes efforts to occupy detainees with meaningful activities and to create training and employment opportunities for prisoners, and recommends intensifying these efforts as there are more detainees who wish to work than jobs available.

107. Of the convicted prisoners who are fit to work, 12,400 (78 per cent) have paid jobs.

Paragraph 136

The Subcommittee recommends that consent for hospitalization be requested separately from consent for treatment and that an independent commission be established to deal with complaints. A special register for the use of restraint measures should be introduced, and should include all necessary data, for example, who ordered the restraints, for what reason, for how long and the supervision provided, and the approach to treatment should be individualized. The medical centre for mental health in Astana should also facilitate privacy and decorations in patients' rooms.

108. Without fail, the forms of physical restraint or confinement used against a prisoner and the length of their use are logged in the hospital record (form No. 003/u, approved by Order No. 907 of the Ministry of Health dated 23 November 2010) and the information systems of medical organizations (hospital information systems, medical information systems and so on), and the person's legal representative is notified of their use.
