



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

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Committee against Torture

Concluding observations on the fourth periodic report of Kazakhstan*

1. The Committee considered the fourth periodic report of Kazakhstan¹ at its 1995th and 1998th meetings,² held on 2 and 3 May 2023, and adopted the present concluding observations at its 2007th meeting, held on 10 May 2023.

A. Introduction

2. The Committee welcomes the timely submission of the fourth periodic report of the State party. The Committee appreciates the State party's written replies³ to the list of issues,⁴ along with the supplementary information provided during the consideration of the periodic report.

3. The Committee appreciates the dialogue held with the State party's delegation and the additional information and explanations provided.

B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The Convention on the Rights of Persons with Disabilities, in 2015;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2022.

5. The Committee also notes with interest the signature of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in 2023.

6. The Committee welcomes the following legislative, administrative and institutional measures taken by the State party in areas of relevance to the Convention:

(a) The amendment to article 63 (6) of the Criminal Code, according to which a suspended sentence is not to be applied in cases of torture, in 2023;

(b) The adoption of the Constitutional Law on the Human Rights Commissioner (Ombudsperson), which extended the mandate and the activities of the Office of the Human Rights Commissioner as the national human rights institution, in 2022;

(c) The adoption of Law No. 153-VII ZRK on the Constitutional Court, in 2022;

* Adopted by the Committee at its seventy-sixth session (17 April–12 May 2023).

¹ CAT/C/KAZ/4 and CAT/C/KAZ/4/Corr.1.

² See CAT/C/SR.1995 and CAT/C/SR.1998.

³ CAT/C/KAZ/RQ/4.

⁴ CAT/C/KAZ/Q/4.



- (d) The adoption of Law No. 155-VII ZRK on the Prosecutor's Office, in 2022;
- (e) The adoption of Law No. 131-VI ZRK on the Victims' Compensation Fund, in 2018.

7. The Committee commends the State party for its initiatives to amend its policies and procedures in order to afford greater human rights protection and to apply the Convention more widely, in particular the following:

- (a) The opening of representative offices of the Human Rights Commissioner in all regions, in 2022;
- (b) The adoption of the 2021–2023 action plan to prevent, suppress and combat crimes related to trafficking in persons;
- (c) The adoption of a plan for priority action in the field of human rights, in 2022;
- (d) The establishment of the Research and Education Centre for the Implementation of the Nelson Mandela Rules (referring to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)), in 2021;
- (e) The introduction of a three-tier model of criminal procedure, replacing the former five-tier model, in 2020;
- (f) The establishment of specialized investigative courts, in 2018;
- (g) The introduction of an electronic format for criminal proceedings, aimed at ensuring the transparency of procedural actions on the part of the investigating authorities and at excluding the possibility of falsification of criminal case materials, in 2017;
- (h) The establishment of the Commissioner for Children's Rights, in 2016.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

8. In its previous concluding observations,⁵ the Committee requested the State party to provide information on the measures that it had taken in follow-up to the recommendations on the following issues: the effective investigation of allegations of torture;⁶ the transfer of detention authority to the Ministry of Justice;⁷ the Human Rights Commissioner (Ombudsperson) and the national preventive mechanism;⁸ and the administration of justice.⁹ Noting that a reply concerning the information sought by the Committee was provided on 20 November 2015,¹⁰ and with reference to the letter dated 29 August 2016 from the Committee's rapporteur for follow-up to concluding observations,¹¹ the Committee considers that the State party has taken substantive steps towards the implementation of the recommendations included in paragraphs 13 and 15, that the recommendations included in paragraph 8 have been only partially implemented and that the recommendations included in paragraph 10 have not been implemented. The Committee also notes additional information sent by the State party on 21 December 2016.¹² The outstanding issues addressed in the previous concluding observations are covered in paragraphs 15 to 20 of the present concluding observations.

⁵ CAT/C/KAZ/CO/3, para. 30.

⁶ Ibid., para. 8.

⁷ Ibid., para. 10.

⁸ Ibid., para. 13.

⁹ Ibid., para. 15.

¹⁰ CAT/C/KAZ/CO/3/Add.1.

¹¹ See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FKAZ%2F25015&Lang=en.

¹² CAT/C/KAZ/CO/3/Add.2.

Definition of torture

9. The Committee notes with interest the bill approved on 17 March 2023 (Law No. 212-VII ZRK) and the amendments thereby introduced to article 146 of the Criminal Code, which distinguish the crime of torture from other forms of cruel, degrading or inhuman treatment. However, it remains concerned about the following shortcomings in these provisions. First, article 146 (2) of the Criminal Code does not refer to “severe” physical and/or mental suffering, which is one of the elements distinguishing torture from ill-treatment. Second, a person convicted of acts of torture or ill-treatment may be subjected to a penalty in the form of a fine or community service (*исправительная работа*), which is not commensurate with the gravity of these crimes. Third, the current wording concerning the exclusion clause in the definition of torture, namely that “physical and mental suffering caused by lawful actions of officials shall not be recognized as torture”, might be open to wider interpretation than is intended by the limited “lawful sanctions” clause contained in article 1 of the Convention. Fourth, article 612 of the Code of Criminal Procedure, read in conjunction with article 67 of the Criminal Code, does not exclude the possibility of plea bargaining for crimes of torture and ill-treatment, and article 72 of the Criminal Code provides for the possibility of parole for such crimes, which might contribute to impunity (arts. 1 and 4).

10. The State party should, as a matter of priority, bring the legal definition of torture contained in article 146 of the Criminal Code and other relevant pieces of legislation into line with article 1 of the Convention, namely by including the elements that distinguish the crime of torture from other forms of ill-treatment, and by adjusting the wording of the exclusion clause relating to “lawful sanctions” so as to minimize the possibility of it being misinterpreted. The State party should ensure that penalties for torture and ill-treatment are appropriate to the gravity of the crime, as set out in article 4 (2) of the Convention. It should also take legislative steps to exclude the possibility of plea bargaining and parole for crimes of torture and ill-treatment.

Fundamental legal safeguards

11. The Committee welcomes the amendment made to the Code of Criminal Procedure in 2018 whereby the initial detention period was reduced from 72 to 48 hours for adults, and to 24 hours for juveniles. It also notes other positive steps, such as the mandatory video recording of all interrogations and the role of the “duty prosecutor”, among others.¹³ However, the Committee remains concerned about the reports indicating that the fundamental legal safeguards have not been routinely afforded in practice from the very outset of deprivation of liberty during the reporting period, including during the state of emergency declared in the context of the events of January 2022. In that respect, the information before the Committee indicates the following shortcomings: (a) delays in guaranteeing detainees’ right of access to a lawyer, alleged interference or hindrance in providing legal assistance, and delays in notifying a relative or another person of the detainee’s choice; (b) inaccurate recording of the time of the arrest, and detention in temporary facilities of the police for periods well beyond the statutory time limits; (c) initial detention in unauthorized places, such as police sports halls or military facilities, notably in the cities of Atyrau, Ust-Kamenogorsk and Taraz; (d) the deletion of video recordings of interrogations in several documented cases; (e) failure to carry out independent medical examinations routinely upon admission to pretrial detention facilities, and instances where such medical check-ups were carried out in the presence of a police officer; (f) the absence of investigations into detainees’ complaints about injuries that they have suffered; and (g) disproportionate and unjustified use of administrative detention. The Committee also regrets the lack of available information on disciplinary measures taken during the period under review against law enforcement personnel who did not immediately allow persons deprived of their liberty to benefit from fundamental legal guarantees, including during and in the aftermath of the events of January 2022 (art. 2).

¹³ CAT/C/KAZ/RQ/4, paras. 26, 27 and 29.

12. **The Committee urges the State party:**

(a) **To ensure that all persons deprived of their liberty are afforded in practice all fundamental legal safeguards from the very outset of their deprivation of liberty, including during the declared state of emergency, notably the following:**

(i) **Having unimpeded access to an independent lawyer of their choice, or, if necessary, to free legal aid of adequate quality in accordance with national and international standards, including during the initial interrogation;**

(ii) **Being able to notify a relative or another person of their choice, of their detention, immediately after apprehension;**

(iii) **Being brought to and detained in official detention facilities immediately after the arrest and being brought before a judge within the time frame prescribed by law;**

(iv) **Having their arrest and detention systematically recorded in a central register of persons deprived of their liberty, which their lawyers and relatives may access;**

(v) **Having the questioning in custody, and the process of transportation, systematically video-recorded, with mandatory instructions for the storage of those recordings;**

(vi) **Having the right to request and receive a medical examination by an independent medical doctor free of charge, or by a doctor of their choice, upon request, that is conducted out of the hearing and out of the sight of police and prison officers, unless the doctor concerned explicitly requests otherwise; even then, it should be out of the hearing of the police or prison officer;**

(b) **To investigate all violations of fundamental legal safeguards against torture and ill-treatment documented during detention, and notably in the context of the events of January 2022;**

(c) **To provide information to the Committee, in the next periodic report, on the number of complaints received regarding failure to respect fundamental legal safeguards, including those reported since the events of January 2022, and on the outcome of such complaints, including disciplinary measures taken against officials who failed to afford fundamental legal safeguards.**

Events of January 2022

13. The Committee is deeply concerned about many consistent reports indicating various forms of torture and ill-treatment, including excessive use of force, resulting in multiple deaths and injuries, beatings, electric shocks and sexual violence in custody, which occurred in the context of the January 2022 protests, and acts of intimidation, threats and arbitrary detention of human rights defenders in connection with their human rights work. It is also concerned about the high rate of closure of cases (236 out of 329 cases) concerning torture or abuse of authority,¹⁴ by the Prosecutor's Office and the Anti-Corruption Agency, as unsubstantiated or due to lack of evidence of a crime or difficulties in identifying suspects, and about the low number of cases reaching the adjudication stage. According to the information available, 35 police and security officers have been investigated thus far and 5 police officers have been convicted for inflicting torture on 23 detainees in the city of Taldykorgan, among others. Of particular concern are the alleged difficulties in gathering and corroborating evidence during the investigation of cases of torture and ill-treatment, cooperation among the officers and medical professionals concerned to cover up such acts, and the victims' fear of reprisal and retaliation. The Committee is concerned about information indicating that the burden of proof that torture or ill-treatment has been committed has been shifted to the alleged victims by the investigators, while noting the delegation's statement to the contrary. Furthermore, the Committee notes with concern the pending investigations into deaths in custody allegedly resulting from torture in relation to

¹⁴ Ibid., para. 195.

the events of January 2022, even though it takes into account the reported progress made in a number of cases.¹⁵ Lastly, the Committee has learned about allegations of failure to provide, or denial of, adequate medical assistance for victims during those events, and regrets the lack of information on any investigations carried out in this regard (arts. 2, 12–14 and 16).

14. **The Committee urges the State party:**

(a) **To ensure that all acts of torture and ill-treatment, including excessive use of force, that occurred during the events of January 2022 are promptly investigated in an independent and impartial manner and that the suspected perpetrators are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts; to ensure that the burden of proof that torture or ill-treatment has been committed lies with the public authorities rather than the victims, under all circumstances and in all investigations of acts of torture and ill-treatment; and to consider assistance from international experts in investigating the cases of torture and ill-treatment in accordance with international standards;**

(b) **To continue to ensure that all deaths in custody are investigated in a prompt and impartial manner by an independent body, duly taking into account the Minnesota Protocol on the Investigation of Potentially Unlawful Death;**

(c) **To continue to strengthen the protocols regulating the conduct of law enforcement officials during social protests, in conformity with international standards for the protection of human rights.**

Office of the Human Rights Commissioner and the national preventive mechanism

15. The Committee notes with appreciation of the creation of a separate budget line for the national preventive mechanism within the overall budget of the Office of the Human Rights Commissioner and the expansion of the monitoring mandate of the mechanism to 3,434 places of deprivation of liberty, including medical institutions for compulsory treatment and institutions providing special social services, including for children. Despite these positive steps taken, the Committee raises the following concerns and expects that they will be properly addressed in the framework of the work to improve legislation on the activities of the national preventive mechanism announced by the delegation: first, the visiting mandate of the national preventive mechanism is covered by various pieces of legislation and requires constant updating, and military barracks and military schools remain excluded from this mandate; second, the national preventive mechanism does not enjoy full operational autonomy from the Commissioner, since the latter continues to coordinate the mechanism's activities, and the special visits conducted by the national preventive mechanism to places of deprivation of liberty still require the approval of the Commissioner;¹⁶ and third, regional representatives of the Office of the Commissioner, who are not members of the mechanism, are instructed to participate in its preventive visits. Furthermore, the Committee regrets the lack of information regarding the specific steps taken in response to the mechanism's recommendations, despite a high rate of implementation of such recommendations reported by the State party. Lastly, the Committee notes the memorandum signed between the Office of the Human Rights Commissioner and the Commissioner for Children's Rights in 2023 on monitoring closed institutions for children, and looks forward to receiving further information about the establishment, without undue delay, of adequate protocols for cooperation with the national preventive mechanism, including about the allocation of proper human and financial resources for this joint monitoring mandate (art. 2).

16. **The State party should continue to strengthen the capacity of the national preventive mechanism, by: (a) including a comprehensive list of places of deprivation of liberty in legislation regulating the national preventive mechanism, in accordance with article 4 of the Optional Protocol to the Convention, and ensuring that military barracks and military schools fall under its monitoring mandate; (b) ensuring its complete operational autonomy from the Human Rights Commissioner, and from the**

¹⁵ Ibid., para. 169.

¹⁶ Ibid, para. 12.

Commissioner’s regional representatives, and eliminating the need for the Commissioner’s approval for special visits conducted by the mechanism; (c) strengthening the follow-up to the implementation of the national preventive mechanism’s recommendations and ensuring that its recommendations are implemented efficiently; and (d) continuing to provide adequate and regular training to its staff and members. It should adopt further measures to operationalize the coordination between the national preventive mechanism and the Commissioner for Children’s Rights in monitoring closed institutions for children in all regions, and provide the financial and human resources necessary to effectively fulfil this joint monitoring mandate.

Transfer of detention authority to the Ministry of Justice

17. While noting the statement made by the delegation during the dialogue regarding the possibility of revisiting the issue of transfer of authority for pretrial detention and correctional facilities from the Ministry of Internal Affairs to the Ministry of Justice, the Committee remains concerned about the lack of any steps taken to this end during the reporting period (arts. 2 and 11).

18. **The Committee reiterates its previous recommendations concerning the transfer of authority for pretrial detention and correctional facilities away from the Ministry of Internal Affairs to the Ministry of Justice and invites the State party to take steps to implement them.**¹⁷

Ineffective investigation of acts of torture and ill-treatment

19. While noting the steps taken by the State party towards judicial reform, and its declaration of a zero-tolerance policy for torture, the Committee remains concerned about the following:

(a) Reports suggesting that some complaints of torture might not be entered in the Unified Register of Pretrial Investigations, as they could be referred to “authorized bodies”, including the police, for preliminary verification purposes, on the basis of article 181 (5) of the Code of Criminal Procedure, and following which they are often closed without instituting criminal proceedings owing to lack of evidence. In this connection, the Committee notes the delegation’s explanation that this article applies to economic and property crimes only and that all allegations of torture are registered in the unified registry;

(b) Law enforcement agencies continue to investigate cases of ill-treatment, including cases in which complaints of ill-treatment are lodged against their own officers, even though it welcomes the 2022 amendment made to article 193 of the Code of Criminal Procedure conferring exclusive competence for investigation of torture cases on the Prosecutor’s Office;

(c) The information provided by the State party that of approximately 3,880 cases of torture registered between 2018 and 2022, 90 per cent were closed, mainly owing to lack of evidence, and only 53 cases were referred to a court, resulting in the conviction of 68 officials;¹⁸ and the information provided by the delegation that alternative punishments, including probation, were given in some cases to those convicted of torture;

(d) The information submitted by the State party that over the past five years, 282 allegations had been lodged during trials that a statement had been obtained through torture, but that investigations could not establish whether torture had occurred owing to the considerable length of time that had elapsed (arts. 12, 13 and 15).¹⁹

20. **In accordance with its commitment made during the universal periodic review in 2019,²⁰ the State party should:**

¹⁷ CAT/C/KAZ/CO/3, para. 10.

¹⁸ CAT/C/KAZ/RQ/4, para. 191.

¹⁹ Ibid., para. 209.

²⁰ A/HRC/43/10, paras. 139.61 and 139.63–139.67, and A/HRC/43/10/Add.1, para. 4.

(a) **Enhance efforts to ensure prompt, impartial and effective investigation by an independent body, such as the Prosecutor's Office, whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, and take all measures necessary to ensure that there is no institutional or hierarchical relationship between the body's investigators and the suspected perpetrators of such offences, as currently occurs in cases of ill-treatment, and that the suspected perpetrators are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts;**

(b) **Ensure that all complaints indicating torture and ill-treatment are properly entered in the Unified Register of Pretrial Investigations;**

(c) **Ensure that, in cases of alleged torture or ill-treatment, suspected perpetrators are suspended from duty immediately and for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;**

(d) **Continue to provide mandatory training on the provisions of the Convention for all law enforcement personnel, public prosecutors, medical personnel, forensic experts and judges, in particular the absolute prohibition of torture and ill-treatment, and on specific investigative techniques, so that they are properly trained to identify cases of torture and ill-treatment, in accordance with the revised version of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).**

Conditions of detention

21. While appreciating the measures taken by the State party to replace ageing prisons with a new penitentiary infrastructure, and the efforts made to improve conditions of detention, the Committee is concerned about overcrowding and poor conditions in some prisons and remand centres. It further notes with concern that many penitentiary establishments are dilapidated, with deplorable and unhygienic conditions and inadequate sanitary facilities. The Committee is also concerned about the lack of reasonable accommodation provided for the specific needs of persons with physical disabilities in prisons. Insufficient rehabilitation and reintegration programmes and meaningful activities in all places of deprivation of liberty is also a matter of concern. Lastly, the Committee is concerned about the special restriction regime imposed on persons sentenced to life imprisonment and their alleged poor state of health, extremely limited contact with the outside world, and scarce access to adequate reintegration programmes, although it notes with interest the plans in motion aimed at improving their situation, as explained by the delegation (arts. 2, 11 and 16).

22. **The Committee recommends that the State party:**

(a) **Redouble its efforts to ease overcrowding in detention centres, in particular by making greater use of non-custodial measures, such as parole and early release, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(b) **Continue to improve existing prison facilities and material conditions to bring them into line with the Nelson Mandela Rules, and take specific measures to provide persons with disabilities with individualized reasonable accommodation and accessibility in prisons;**

(c) **Strengthen access to rehabilitation and reintegration programmes in all places of deprivation of liberty, including meaningful activities, vocational training and education, with a view to supporting their rehabilitation in the community;**

(d) **Continue to develop adequate measures to review the detention regime of prisoners serving a life sentence and bring it into line with international human rights standards, such as the Nelson Mandela Rules.**

Violence and deaths in custody

23. The Committee is seriously concerned about the allegations of violence on the basis of sexual orientation and gender identity inflicted on persons deprived of their liberty, and harassment and sexual violence inflicted on female detainees by male guards in exchange for favours. The Committee is also concerned about reports of persisting inter-prisoner violence and high rates of suicide and incidents of self-harm among prisoners. While taking note of the statistical information provided during the dialogue by the State party on deaths in custody,²¹ including suicide and incidents of self-harm, the Committee regrets that it did not receive complete information on the results of investigations into those cases and the lack of comprehensive strategies in place to prevent them. In this connection, the Committee notes the installation of 24-hour video monitoring in places of deprivation of liberty for security reasons. The placement of persons under constant video surveillance in their cells is a matter of concern. Lastly, the Committee is concerned about the lack of protection offered to detainees in vulnerable circumstances, including persons with intellectual disabilities and persons with psychosocial disabilities (arts. 2, 11 and 16).

24. The State party should:

(a) **Ensure that all allegations of violence against detainees, including violence on the basis of sexual orientation and gender identity, are thoroughly investigated and that suspected offenders are prosecuted and, if convicted, punished appropriately, with specific attention paid to allegations of violence against female detainees;**

(b) **Ensure that all deaths in custody are investigated in a prompt and impartial manner by an independent body, in accordance with the Minnesota Protocol on the Investigation of Potentially Unlawful Death;**

(c) **Investigate any potential involvement of police and prison staff in the death of persons in custody, and, where warranted, appropriately punish the guilty parties and award fair and adequate compensation to the families;**

(d) **Provide the Committee with detailed information on cases of deaths in custody and the causes of those deaths;**

(e) **Ensure prison security by providing prison staff with proper training, including on the prevention of violence;**

(f) **Compile detailed data on suicide among persons deprived of liberty and assess the effectiveness of strategies and programmes for prevention and risk identification;**

(g) **Strengthen measures for preventing and reducing violence among persons deprived of liberty, in particular by introducing preventive strategies that provide for the monitoring and documenting of incidents of such violence with a view to investigating all complaints and ensuring that all those responsible are held accountable;**

(h) **Guarantee that video surveillance in custody facilities does not intrude on the privacy of detainees or violate their right to confidential communication with their lawyer or doctor;**

(i) **Allocate the resources required to adapt detention facilities and their staffing to prisoners with physical disabilities, in accordance with international standards, and improve the support offered to vulnerable detainees, particularly detainees with intellectual disabilities and detainees with psychosocial disabilities.**

Solitary confinement

25. The Committee is deeply concerned that under articles 130 and 131 of the Penal Enforcement Code, solitary confinement may be imposed for up to four months as a disciplinary sanction for repeated violations of the established rules and procedure for serving a sentence, and that solitary confinement is frequently used in practice. It also notes with

²¹ CAT/C/KAZ/RQ/4, para. 168.

concern that according to article 154 of the Criminal Executive Code juveniles, may be subjected to solitary isolation for up to 72 hours (arts. 2, 11 and 16).

26. The State party is urged to bring articles 130 and 131 of the Penal Enforcement Code and practice on solitary confinement into line with international standards, particularly rules 43–46 of the Nelson Mandela Rules, and to use solitary confinement only in exceptional cases as a last resort, for as short a time as possible (no more than 15 days) and subject to independent review, and only upon authorization by a competent official. The State party should respect the prohibition of the imposition of solitary confinement and similar measures on minors (see also rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty) and bring article 154 of the Criminal Executive Code into line with the international standards.

Health care in places of deprivation of liberty

27. While appreciating the steps taken by the State party to transfer the provision of health-care services in pretrial and penitentiary facilities from the Ministry of Internal Affairs to the Ministry of Health during the period under review, the Committee remains concerned about reports indicating that there is a lack of properly trained medical personnel and inadequate provision of medical care and the necessary medication, including for persons in need of specialized treatment, such as HIV-infected persons and persons with disabilities. It is also concerned about information indicating a lack of psychiatric care provided to persons deprived of their liberty, while noting the State party's statement to the contrary in which it argued that such care was provided by more than 500 psychiatrists. Lastly, the Committee notes the lack of continuous and adequate training provided to all medical personnel in contact with persons deprived of their liberty in the detection of torture and ill-treatment, which might contribute to merely cursory recording and analysis of injuries, in particular in pretrial detention facilities, and to the absence of a systemized practice of reporting such injuries to judicial authorities (arts. 2, 11 and 16).

28. The State party should continue to improve the quality of health services provided to detainees by increasing recruitment of qualified medical personnel, including psychiatrists, particularly for those in need of specialized treatment, such as HIV-infected persons and persons with disabilities, and provide the necessary medicines and medical equipment in all correctional facilities. Furthermore, it should adopt a policy that ensures the proper examination and documentation of health status of all arrested and detained persons by independent medical personnel, ensure that all medical personnel in contact with persons deprived of their liberty receive mandatory and regular training in the detection of torture and ill-treatment in accordance with the revised version of the Istanbul Protocol, and continue to enhance procedures in place for appropriately maintaining medical files and registers, including those used for recording injuries, and for immediately reporting any injuries indicating torture or ill-treatment to the competent judicial authorities.

Complaints mechanisms in places of deprivation of liberty

29. While noting the steps taken by the State party to facilitate access to the complaints procedure in places of deprivation of liberty, such as, among other measures, the installation of electronic terminals in all 79 prisons,²² the Committee remains concerned about information received that many persons deprived of their liberty experience difficulties or are reluctant to lodge complaints about torture or ill-treatment via these terminals owing to their proximity to the administration's offices or constant video surveillance. It is also worried about the reported lack of trust to lodge complaints electronically or hand them over to other supervising bodies during their visits for fear of reprisals from personnel (arts. 2, 12, 13 and 16).

30. The State party should take steps to strengthen the existing complaints mechanisms by ensuring confidential and unhindered access to them in complete

²² Ibid., paras. 188 and 190.

privacy and ensure that complainants are protected against any intimidation or reprisals as a consequence of their complaints.

Persons with disabilities in closed institutions

31. The Committee is seriously concerned about legislation in the State party that enables the forced hospitalization of persons with disabilities,²³ including children, either for monitoring or treatment, and about the lack of access to effective complaints mechanisms in such closed institutions, notably for persons with limited legal capacity. It is further deeply concerned about serious allegations of physical violence, forced sedation, the use of isolation cells, the use of physical restraints, and the neglect of children and young adults with disabilities in State residential institutions, and about the high number of members of personnel (700) against whom administrative and disciplinary proceedings were opened between 2019 and 2021, including for beatings and torture, compared with the limited number of convictions (22).²⁴ It regrets the deaths of four children with disabilities in a State institution in Ayagoz and welcomes the criminal proceedings that have been opened in this regard.²⁵ Lastly, the Committee is concerned about the reported lack of any specialized support services for juvenile offenders with intellectual disabilities or psychosocial disabilities, who are diagnosed with “mental disorders”. The Committee learned about a worrying case of a juvenile who was subjected to compulsory medical measures and placed in solitary cell in a psychiatric ward for adults (arts. 2, 11, 13 and 16).

32. The Committee recommends that the State party:

(a) **Avoid involuntary admissions to closed institutions on medical grounds, ensure that such admissions are undertaken only when strictly necessary, as a last resort, for the shortest possible period and solely when accompanied by adequate procedural and substantive safeguards, such as initial and periodic medical and judicial reviews, and guarantee in law and in practice access to complaints mechanisms for all persons, including those with limited legal capacity;**

(b) **Develop a public policy aimed at averting the institutionalization of children and adolescents and supporting families and suitable community-based services, and ensure that the separation of children from their family for the purposes of protection, detention or imprisonment is allowed only as an exceptional measure and for the shortest period of time possible;**

(c) **Ensure that juvenile offenders with intellectual disabilities or psychosocial disabilities, who are diagnosed with “mental disorders”, are never detained or imprisoned in psychiatric wards for adults and are directed to appropriate health facilities, where they can receive psychiatric supervision and treatment, if needed, and are provided with adequate accommodation and psychosocial support;**

(d) **Investigate promptly, thoroughly and impartially all allegations of human rights abuses in State residential institutions for children, bring those responsible to justice and provide redress to victims; guarantee strict regulation of the use of chemical and physical restraints; and ensure regular visits to such institutions by the national preventive mechanism in cooperation with the Commissioner for Children’s Rights.**

Redress

33. While noting the adoption of Law No. 131-VI ZRK on the Victims’ Compensation Fund, and a low monetary award offered to the victims of torture from the Fund, the Committee is concerned about the lack of comprehensive redress and rehabilitation assistance afforded to those victims. Furthermore, the Committee regrets to note that recommendations in several decisions that it has adopted with respect to individual communications concerning the State party,²⁶ and in Views adopted by other United Nations treaty bodies regarding treaties to which it is a party, are pending implementation, and that

²³ E/C.12/KAZ/CO/2, paras. 44 and 45.

²⁴ CAT/C/KAZ/RQ/4, paras. 178–181.

²⁵ Ibid., paras. 174 and 175.

²⁶ See, for example, CAT/C/54/3, CAT/C/56/2, CAT/C/57/3, CAT/C/60/4 and CAT/C/62/3.

the State party failed to inform the Committee about the outcome of the working group established to develop a legal mechanism for implementing those recommendations (arts. 2 and 14).

34. Recalling its general comment No. 3 (2012) on the implementation of article 14 of the Convention, the Committee recommends that the State party take further steps to establish a comprehensive programme under which victims of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for rehabilitation as fully as possible, in addition to the compensation obtained from the Victims' Compensation Fund. In addition, the State party should implement the recommendations in Views adopted by the United Nations treaty bodies concerning individual communications with a view to providing redress to the victims, develop a proper mechanism for such implementation and publish its comprehensive reports and conclusions regularly.

Asylum system and non-refoulement

35. While noting the efforts made by the State party to provide protection to persons seeking asylum and to stateless persons, the Committee is concerned that the relevant provisions of the Criminal Code and the Code of Administrative Offences regulating expulsion and deportation for illegal crossing of the State border or violation of migration legislation do not contain provisions on the prevention of refoulement. As a result, persons seeking asylum are not exempted from administrative and criminal liability in case of illegal entry, the use of false documents or illegal stay in the territory of the State party, even though their proceedings on determining international protection might be still pending. While noting that the national legislation provides for the possibility to apply for asylum at the border, the Committee is concerned that the procedure in place lacks detailed instructions on the referral of asylum-seekers from border authorities, including at international airports and transit zones, to local executive bodies.²⁷ Lastly, it notes that the State party has not yet acceded to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness (arts. 2, 3 and 16).

36. The State party should ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture. In particular, the State party should take legislative steps to amend the relevant legal provisions regulating expulsion and deportation for illegal crossing or violation of migration laws, in accordance with the principle of non-refoulement. In this connection, it should not expel asylum-seekers or refugees from its territory until there is a final decision, including on appeal. The State party should further establish an accessible asylum and referral procedure at all border points. The Committee encourages the State party to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Gender-based violence, including domestic violence

37. The Committee welcomes the establishment of crisis centres and shelters for victims of domestic violence in each region and the increased number of female investigators, and notes the amendments made to the Domestic Violence Prevention Act in 2020. However, it remains concerned that domestic violence is still not criminalized as a separate offence,²⁸ and that the social stigma attached to it results in a low number of reporting. Moreover, information received by the Committee shows a low rate of investigations and prosecutions vis-à-vis a high number of estimated deaths and injuries resulting from domestic violence (arts. 2, 12–14 and 16).

38. The State party should adopt specific legislative and other measures to criminalize and prevent domestic violence and violence on the basis of gender identity and sexual orientation, and should ensure that mechanisms are in place to encourage

²⁷ CERD/C/KAZ/CO/8-10, paras. 39 and 40.

²⁸ CEDAW/C/KAZ/CO/5, paras. 25 and 26, and E/C.12/KAZ/CO/2, paras. 36 and 37.

victims of sexual and gender-based violence to come forward, that all allegations of violence are promptly, thoroughly and effectively investigated, that perpetrators are held accountable, and that victims obtain adequate redress and have access to adequate medical and psychosocial support.

Violence against individuals on the basis of their actual or perceived sexual orientation or gender identity

39. The Committee further notes with concern violence against individuals on the basis of their actual or perceived sexual orientation or gender identity, including human rights defenders combating such discrimination, and the lack of effective investigations into such cases (arts. 2 and 16).

40. **The State party should take effective measures to prevent violence on the basis of actual or perceived sexual orientation or gender identity, and ensure that all acts of violence are investigated and prosecuted promptly, effectively and impartially, that perpetrators are brought to justice and that victims are provided with redress.**

Legal recognition of gender

41. The Committee is concerned that mandatory reassignment surgery, including sterilization, is a requirement for the legal recognition of gender under article 257 (13) of the Family and Marriage Code, that a diagnosis of a psychiatric condition is also required, and that there is a lack of any psychosocial support in this regard (art. 16).

42. **The State party should revoke the requirement of mandatory reassignment surgery contained in article 257 (13) of the Family and Marriage Code, and the requirement of a diagnosis of a psychiatric condition, establish procedures concerning the legal recognition of gender based on non-discrimination and on a voluntary basis, and ensure impartial counselling services and psychosocial support.**

Hazing and ill-treatment in the army

43. The Committee remains concerned about reports of hazing and psychological pressure as possible causes of self-harm, suicide and death in the armed forces, and about the high rate of recorded incidents of injuries and deaths provided by the delegation, but appreciates the preventive action taken with the aim of addressing these issues (arts. 2 and 16).

44. **The Committee reiterates its previous recommendations²⁹ that the State party strengthen its preventive action aimed at eliminating hazing and ill-treatment of personnel, ensure effective investigations into all allegations of abuse and deaths of personnel in the army, prosecute and punish those responsible with appropriate penalties, and provide victims and their families with redress.**

Follow-up procedure

45. **The Committee requests the State party to provide, by 12 May 2024, information on follow-up to the Committee's recommendations on the events of January 2022, violence and deaths in custody, health care in places of deprivation of liberty, and hazing and ill-treatment in the army (see paras. 14 (a), 24 (a), 28 and 44 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

46. **The Committee encourages the State party to extend invitations to United Nations special procedure mandate holders that have requested visits, notably the Working Group on Arbitrary Detention.**

²⁹ CAT/C/KAZ/CO/3, para. 25.

47. The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

48. The Committee requests the State party to submit its next periodic report, which will be its fifth, by 12 May 2027. To that end, the Committee invites the State party to accept, by 12 May 2024, the simplified reporting procedure consisting of the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the report. The State party's replies to that list of issues would constitute its fifth periodic report under article 19 of the Convention.
