

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/KAZ/CO/3)

KAZAKHSTAN

(...)

C. Principal subjects of concern and recommendations

(...)

Effective investigation of allegations and prosecution of perpetrators of torture and ill-treatment

8. While welcoming the creation of the Office of the Special Prosecutor with responsibility for overseeing investigations into allegations of torture and ill-treatment, including sexual violence, by State officials, the Committee is concerned at reports that most allegations of torture and ill-treatment continue to be referred for preliminary investigation to the same department as that in which the persons accused of torture are employed. The Committee is further concerned that allegations of torture and ill-treatment received from persons deprived of their liberty by members of the State party's Public Monitoring Committees and the National Preventive Mechanism are reported back to the authorities with responsibility for the place of detention rather than to an independent investigating authority, with the result that individuals who complain of torture are made vulnerable to reprisals. The Committee is also concerned at the data based on official sources revealing that less than 2 per cent of the complaints of torture received by the State have led to prosecutions (arts. 12 and 13).

The State party should:

(a) Establish an effective, fully resourced, independent and accountable body that is able to carry out prompt, impartial, thorough and effective investigations, including preliminary investigations, into all allegations of torture and ill-treatment, ensuring that such investigations are never undertaken by personnel employed by the same ministry as the accused persons;

(b) Ensure that such an independent body is also empowered to receive and act on complaints of alleged torture and ill-treatment by law enforcement officials, including complaints of sexual violence; ensure that persons deprived of their liberty are able to transmit confidential complaints to such bodies; and ensure that this body is able to protect effectively complainants from reprisal;

(c) Provide the Committee with information on the number of complaints of torture made by persons deprived of their liberty, the number of claims of acts of torture and ill-treatment that have been investigated and by which body (bodies); the number of persons prosecuted and under what charges; and the penalties applied for those found guilty.

(...)

Transfer of detention authority to the Ministry of Justice

10. The Committee is gravely concerned that, despite its previous recommendation to the State party to complete the process of transferring control of all detention and investigation facilities from the Ministry of Internal Affairs to the Ministry of Justice, in 2011 the State party instead transferred authority over the penal correction system back to the Ministry of Internal Affairs. The Committee regrets that the State party's delegation indicated at the review its intention to maintain that arrangement. The Committee reiterates its concern that when places of detention are controlled by the same government ministry with responsibility for the police and internal security, that arrangement creates an incentive for the investigating authorities to seek to use detention as a tool of the investigative process or a means to compel prisoners to confess to the charges against them and thus amplifies the risk of torture and ill-treatment in such places of detention (arts. 2 and 11).

The Committee reiterates that the State party should transfer authority for all detention and investigation facilities, including prisons, temporary holding facilities (IVSs) and remand centres (SIZOs) away from the Ministry of Internal Affairs. That step would be consistent with international standards and would reduce incentives for officials at such places of detention to commit torture and ill-treatment.

(...)

Human Rights Commissioner (Ombudsman) and the National Preventive Mechanism

13. While welcoming the State party's designation of the Human Rights Commissioner (Ombudsman) as the National Preventive Mechanism under the Optional Protocol to the Convention within the "Ombudsman plus" formula, the Committee is concerned that the National Preventive Mechanism has not been able to undertake ad hoc visits owing to bureaucratic constraints. The Committee is also concerned that the National Preventive Mechanism's mandate does not provide for visits to all places of deprivation of liberty, such as offices of police departments and of the National Security Service, orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes and military barracks. It is concerned that the findings and recommendations of the National Preventive Mechanism will only be made public in the form of an annual report that is subject to prior review and approval by the President. Recalling its previous concluding observations (CAT/C/KAZ/CO/2, para. 23) adopted in November 2008, the Committee is concerned at continued reports regarding the limited competence

and lack of independence of the Office of the Human Rights Commissioner (Ombudsman) (art. 2).

The State party should ensure the independence of the Office of the Human Rights Commissioner (Ombudsman) by establishing it through a constitutional or legal text, and should broaden its mandate to enable it to function effectively in all parts of the country in its expanded role as both the national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and as the national preventive mechanism in compliance with the Optional Protocol to the Convention. The mandate of the National Preventive Mechanism should be broadened to include monitoring of all places of deprivation of liberty, such as offices of police departments and of the National Security Service, orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes and military barracks, and examining the conditions and treatment of children in penitentiary and non-penitentiary institutions. Measures should be taken to improve the ability of the mechanism to carry out urgent and unannounced visits to places of detention upon its request. The State party should consider authorizing the mechanism to publicize its findings and recommendations shortly after undertaking visits rather than only on an annual basis and to ensure that the mechanism's members and the public can assess whether their recommendations have been acted upon. The annual and other reports of the mechanism should not be subject to review and approval by the President before publication.

(...)

Administration of justice

15. While taking note of the State party's assertion that the bases of the administration of criminal justice are "adversariality" and "equality of parties", and that "the issue of permitting defence counsel to collect evidence" is currently being considered, the Committee is concerned at the reported lack of balance between the respective roles of the procurator, the defence counsel and judges. The Committee is particularly concerned about the dominant role of the procurator throughout judicial proceedings and the lack of power of defence lawyers to collect and present evidence, which reportedly results in court decisions relying disproportionately on evidence presented by the prosecution, an allegation that the Committee previously raised in the context of the trial of human rights defender Evgeniy Zhovtis. It is also concerned at reports of cases in which defendants were not permitted to attend appeal proceedings in person and that investigators can handpick State-appointed defence lawyers, which serves as a disincentive for those lawyers to defend their clients. The Committee remains concerned at reports that there is a lack of judicial control over the actions of prosecutors and that judges are overly deferential to prosecutors owing to their lack of independence from the executive branch (arts. 2 and 10).

The State party should undertake structural reform of the system of administration of justice with a view to balancing in practice and ensuring equality of arms between the respective roles of the procurator

and the defence counsel in judicial proceedings and ensuring the independence of the judiciary. The State party should reform the system of prosecution and subject procurators to greater oversight by judges. Defence lawyers should be allowed to collect and present evidence from the outset of judicial proceedings and to call defence witnesses, and should have prompt, effective and unimpeded access to all evidence in the hands of the prosecution.

(...)

30. The Committee requests the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations relating to: (a) the effective investigation of allegations of torture; (b) transfer of detention authority to the Ministry of Justice; (c) the Human Rights Commissioner (Ombudsman) and National Preventive Mechanism; and (d) the administration of justice, as contained in paragraphs 8, 10, 13 and 15, respectively, of the present document

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