
Committee against Torture

Concluding observations on the fourth periodic report of Kazakhstan*

1. The Committee against Torture 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 replies to the list of issues, 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 United Nations 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 to 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 concerning the communication 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 of article 63 part 6 of the Criminal Code, according to which a suspended sentence shall not be applied in cases of torture, in 2023;

(b) The adoption of the Constitutional law on the Commissioner for Human Rights (Ombudsperson) that extended the mandate as well as the activities of the Office of the Human Rights Commissioner as the national human rights institution, in 2022;

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

¹ CAT/C/KAZ/4.

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

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- (c) The adoption of the Law no. 153-VII ZRK on the Constitutional Court, in 2022;
 - (d) The adoption of the Law no. 155-VII ZRK on the Prosecutor's office, in 2022;
 - (e) The adoption of the Law no. 131-VI ZRK on Victims Compensation Fund, in 2018.

7. The Committee commends the State party's 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 Commissioner for Human Rights in all regions, in 2022;
- (b) The adoption of the action plan 2021-2023 to prevent, suppress and combat crimes related to trafficking in persons;
- (c) The adoption of the 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 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 of criminal proceedings, which aims to ensure transparency of procedural actions on the part of the investigating authorities and 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,³ the Committee requested the State party to provide information on the measures it had taken in follow-up to the recommendations on the following issues: the effective investigation of allegations of torture (para. 8); the transfer of detention authority to the Ministry of Justice (para. 10); the Human Rights Commissioner (Ombudsman) and the national preventive mechanism (para. 13); and the administration of justice (para. 15). Noting that a reply concerning the information sought by the Committee was provided on 20 November 2015,⁴ and with reference to the letter dated 29 August 2016 from the Committee's rapporteur for follow-up to concluding observations,⁵ the Committee considers that the State party has taken substantive steps towards the implementation of the recommendations included in paragraphs 13 and 15, the recommendations included in paragraphs 8 have been only partially implemented while the recommendations included in paragraph 10 have not. The Committee also notes additional information sent by the State party on 21 December 2016.⁶ The outstanding issues addressed in the previous recommendations are covered in paragraphs 15 to 20 of the present concluding observations.

Definition of torture

9. The Committee notes with interest the approved bill of 17 March 2023 (No. 212-VII ZRK) and its amendments introduced to article 146 of the Criminal Code, distinguishing the crime of torture from other forms of cruel, degrading, and inhuman treatment. However, it

³ CAT/C/KAZ/CO/3, para. 30.

⁴ See CAT/C/KAZ/CO/3/Add.1.

⁵ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FFUL%2FKAZ%2F25015&Lang=en.

⁶ See CAT/C/KAZ/CO/3/Add.2.

remains concerned about the following shortcomings in these provisions: firstly, section 2 of article 146 of the Criminal Code lacks the qualification of ‘severe’ physical and/or mental suffering that is one of the distinguishing elements of torture from ill-treatment. Secondly, a person convicted of acts of torture and ill-treatment may be subjected to penalty in form of a fine or community service (исправительная работа), which are not commensurate with the gravity of these crimes. Thirdly, the current wording concerning the exclusion clause in torture definition, namely that “physical and mental suffering caused by lawful actions of officials shall not be recognised as torture” might be open to wider interpretation than what is intended by limited “lawful sanctions” clause contained in article 1 of the Convention. Fourthly, article 612 of the Criminal Procedure Code read in conjunction with article 67 of the Criminal Code, does not exclude crimes of torture and ill-treatment from plea bargaining and article 72 of the Criminal Code provides for a 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 in line with article 1 of the Convention, namely by including the distinguishing elements of 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 its possibility of misinterpretation. It should also 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. The State party 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 2018 amendment made to the Criminal Procedure Code, which reduced the initial detention period 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 “on duty prosecutor”, among other things.⁷ 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 January 2022 events. In that respect, the information before the Committee indicates the following shortcomings: (a) delays in guaranteeing the right to access to a lawyer, alleged interference or hindrance in providing legal assistance, and deferrals in notifying a relative or a person of one’s choice; (b) inaccurate recordings of time of the arrest as well as detention in police temporary facilities well beyond the statutory time-limits; (c) initial detention in unauthorized places, such as police sports hall or military units, notably in Atyrau, Ust-Kamenogorsk or Taraz cities; (d) deletion of video recordings of interrogations in several documented cases; (e) failure to carry out independent medical examination routinely upon admission to pre-trial 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 suffered injuries; 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 January 2022 events (arts. 2).

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: (i) having an unimpeded access to an independent lawyer of their choice or, if necessary, to free legal aid of adequate quality in line with national and international standards, including during the initial interrogation; (ii) being able to notify a family member, or a person of their choice, of their detention immediately after apprehension; and (iii) being brought and

⁷ CAT/C/KAZ/RQ/4, paras. 26-27, 29,

detained in official detention facilities immediately after 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 family members can access; (v) having the questioning in custody, as well as the process of transportation systematically video recorded, with mandatory instructions for the storage of those recordings; and (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 hearing and out of sight of police and prison officers, unless the doctor concerned explicitly requests otherwise, and even then it should be out of hearing of the police or prison officer;

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

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

Events of January 2022

13. The Committee is deeply concerned about many consistent reports indicating various forms of torture, ill-treatment, including excessive use of force, resulting in multiple deaths and injuries, beatings, electric shocks, and sexual violence in custody that occurred in the context of the January 2022 protests, as well as acts of intimidation, threats, and arbitrary detention of human rights defenders in connection with their human rights work. It is further concerned about a high rate of closed cases concerning torture or abuse of authority (236 out of 329)⁸ by the prosecutor's office and Anti-Corruption Agency as unsubstantiated or due to the lack of evidence of crime or difficulties to identify suspects and a low number of cases reaching the adjudication stage. According to the information available, 35 police and security officers have been investigated thus far and five police officers were convicted for inflicting torture to 23 detainees in Taldykorgan city, among few others. Of particular concern are the alleged difficulties in gathering of and corroborating evidence during the investigation of cases of torture and ill-treatment, as well as solidarity among the officers and medical professionals to cover up such acts and the victims' fear of reprisals and retaliation. The Committee raises concerns about the information indicating that the burden of proof that torture or ill-treatment had been committed was 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 January 2022 events, even though it takes into account the reported progress made in a number of cases.⁹ Lastly, the Committee learned about allegations of failure or denial to provide adequate medical assistance to 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 to:**

(a) Ensure that all acts of torture and ill-treatment, including excessive use of force, occurred during the January 2022 events 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. The State party should further ensure that burden of proof that torture or ill-treatment had 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. The State

⁸ CAT/C/KAZ/RQ/4, para. 195.

⁹ CAT/C/KAZ/RQ/4, para. 169.

party is also invited to consider assistance from international experts in investigating the cases of torture and ill-treatment in line with international standards;

(b) Continue investigating all deaths in custody 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) Continue strengthening 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 national preventive mechanism

15. The Committee takes note 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: Firstly, the visiting mandate of the national preventive mechanism is covered by various pieces of legislation, which requires constant update, and military barracks and military schools remain excluded from such mandate. Secondly, 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 approval of the Commissioner.¹⁰ Thirdly, regional representatives of the Commissioner's office, who are not members of the mechanism, are instructed to participate in its preventive visits. Furthermore, the Committee also 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 of adequate protocols for cooperation with the national preventive mechanism with undue delay, including the allocation of proper human and financial resources for such joint monitoring mandate (art. 2).

16. The State party should continue strengthening 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, as well as the 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 financial and human resources necessary for their effective functioning.

Transfer of detention authority to the Ministry of Justice

17. While noting the statement made by the delegation during the dialogue towards a possibility of revisiting the issue of transfer of authority for pre-trial detention and

¹⁰ CAT/C/KAZ/RQ/4, para. 12.

correctional facilities from the Ministry of Internal Affairs to the Ministry of Justice, the Committee remains concerned about the lack of any steps taken during the reporting period to this effect (art. 2 and 11).

18. The Committee reiterates its previous recommendations concerning the transfer authority for pre-trial detention and correctional facilities away from the Ministry of Internal Affairs¹¹ to the Ministry of Justice and invites the State party to take steps to implement them.

Ineffective investigation of acts of torture and ill-treatment

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

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

(b) The law enforcement continue investigating cases of ill-treatment, including instances where such complaints are lodged against their own officers, even though it welcomes the 2022 amendment made to article 193 of the Criminal Procedure Code vesting the exclusive competence for investigation of torture cases to the public prosecutors’ office;

(c) The information provided by the State party that 90 % of around 3.880 cases of torture registered between 2018 and 2022 were closed, mainly due to the lack of evidence, and only 53 cases were referred to the court which resulted in conviction of 68 officials,¹² and the information provided by the delegation that alternative punishments, including probation, were given in some convictions for crime of torture;

(d) The information submitted by the State party that over the past five years, 282 allegations that a statement was obtained by torture were lodged during the trial to no avail, as evidence could not be established owing to the considerable length of time that had elapsed¹³ (arts. 12–13 and 15).

20. In line with its commitment made during the universal periodic review in 2019,¹⁴ the State party should:

(a) **Enhance efforts to ensure prompt, impartial and effective investigation by an independent body, for example by the public prosecutors, whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, and take all necessary measures to ensure that there is no institutional or hierarchical relationship between the body’s investigators and the suspected perpetrators for such offences, as is currently the case for 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 registered in the Unified Registry of Pre-Trial 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**

¹¹ CAT/C/KAZ/CO/3, para. 10.

¹² CAT/C/KAZ/RQ/4, para. 191.

¹³ CAT/C/KAZ/RQ/4, para. 209.

¹⁴ [A/HRC/43/10](#), para. 139.61, 139.63-139.67 and [A/HRC/43/10/Add.1](#), para. 4.

to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;

(d) **Continue providing mandatory training on the provisions of the Convention for all law enforcement personnel, the public prosecutors, medical personnel, forensic experts and judges on the absolute prohibition of torture and ill-treatment, and specific investigative techniques, so 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 adopted by the State party to replace ageing prisons with a new penitentiary infrastructure, as well as the efforts to improve conditions of detention, the Committee is concerned about overcrowding and poor conditions in some prisons and remand centres (SIZOs). It further notes with concern that many penitentiary establishments are dilapidated and their conditions are deplorable, unhygienic, and with inadequate sanitary facilities. The Committee is also concerned about the lack of reasonable accommodation provided to the specific needs of persons with physical disabilities in prisons. Insufficient rehabilitation and reintegration programs 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, their alleged poor state of health, extremely limited contact with the outside world, and scarce access to adequate reintegration programs, 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 prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and to take specific measures to provide persons with disabilities with individualized accommodations and accessibility in prisons;**

(c) **Strengthen access to rehabilitation and reintegration programs 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 developing adequate measures to review 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 inflicted on persons deprived of their liberty based on their sexual orientation and gender identity, as well as harassment and sexual violence inflicted on women detainees by men guards in exchange for favours. The Committee is also concerned about reports of persisting inter-prisoner violence, high rates of suicides and incidents of self-harm among prisoners. While taking note of the statistical information provided by the State party during the dialogue on the deaths in custody,¹⁵ including suicides and incidents of self-harm, the Committee regrets not having received 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

¹⁵ CAT/C/KAZ/RQ/4, para. 168.

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 by the lack of protection offered to detainees in vulnerable circumstances, including persons with intellectual or psychosocial disabilities (arts. 2, 11 and 16).

24. **The State party should:**

(a) **Ensure that all allegations of violence against detainees as well as violence based on sexual orientation and gender identity are thoroughly investigated and that suspected offenders are prosecuted and, if convicted, punished appropriately; specific attention should be paid to the allegations of violence against women 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 prevention of violence;**

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

(g) **Strengthen measures for preventing and reducing violence among persons deprived of liberty, in particular introducing preventive strategies that provide for this type of incident to be monitored and documented in 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 for adapting detention facilities and their staffing to prisoners with physical disabilities, in accordance with international standards and improve the support offered to vulnerable detainees, particularly those with psychosocial disabilities.**

Solitary confinement

25. The Committee is deeply concerned that articles 130 and 131 of the Criminal Executive Code stipulate the imposition of solitary confinement for up to four months as a disciplinary sanction for the repeated violations of the established rules and procedure for serving a sentence and that it is frequently used in practice. It also notes with concern that according to article 154 of the Criminal Executive Code juveniles might 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 Criminal Executive Code and practice on solitary confinement into line with international standards, particularly rules 43–46 of the Nelson Mandela Rules and 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 on imposing 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 in 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 healthcare services in pre-trial and penitentiary facilities from the Ministry of Internal Affairs to the Ministry of Health during the period under review, the Committee remains concerned at reports indicating that there is a lack of properly trained medical personnel, inadequate provision of medical care and necessary medication, including for persons in need of specialized treatment, such as HIV infected-persons, and persons with disabilities. It is also concerned about the information indicating the lack of psychiatric care provided to persons deprived of their liberty, while noting the State party's statement to the opposite, arguing that such care is provided by more than 500 psychiatrists. Finally, 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 that might contribute to a cursory recording and analysis of injuries, in particular in pre-trial detention facilities (IVSs and SIZOs), and to the absence of systemized practice of reporting such injuries to judicial authorities (arts. 2, 11 and 16).

28. The State party should continue improving the quality of health services provided to detainees by recruiting more qualified medical personnel, including psychiatrists, particularly for those in need of specialized treatment, such as HIV infected-persons and persons with disabilities, and provide necessary medicines and medical equipment in all correctional facilities. Furthermore, it should adopt a policy that ensures a 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 enhancing procedures in place to appropriately maintain medical files and registers, including those used for recording injuries, and to report any injuries indicating torture or ill-treatment immediately to the competent judicial authorities.

Complaints mechanisms in places of deprivation of liberty

29. While taking note of the steps taken by the State party to facilitate the access to complaints procedure in places of deprivation of liberty, such as installation of electronic terminals in all 79 prisons, among other avenues,¹⁶ the Committee remains concerned about the information that many persons deprived of their liberty experience difficulties or are reluctant to lodge complaints about torture or ill-treatment via these terminals due to their vicinity 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 due to fear of reprisals from the personnel (arts. 2, 12-13 and 16).

30. The State party should take steps to strengthen the existing complaints mechanisms by ensuring a confidential and unhindered access to them in complete 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 the legislation in the State party enabling forced hospitalization for persons with disabilities,¹⁷ including children, either for monitoring or treatment, as well as 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, use of isolation cells, physical restraints, and neglect of children and young adults with disabilities in state residential institutions, and a high number of administrative and disciplinary proceedings opened (700) against personnel between 2019 and 2021, including for beatings and torture, and the limited

¹⁶ CAT/C/KAZ/RQ/4, paras. 188 and 190.

¹⁷ E/C.12/KAZ/CO/2, paras. 44-45.

number of convictions (22).¹⁸ It also regrets the deaths of four children with disabilities in a state institution in Ayagoz and welcomes the opened criminal proceedings in this regard.¹⁹ Lastly, the Committee is concerned about the reported lack of any specialized support services available to juvenile offenders who are diagnosed with “mental disorders” or with intellectual or psychosocial disabilities. The Committee learned about a worrying case of a juvenile who has been subjected to compulsory medical measure and placed in solitary cell in 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, and ensure that such admissions are applied 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 mechanism to all persons, including those with limited legal capacity;**

(b) **Develop a public policy aimed at averting the institutionalization of children and adolescents, supporting families and suitable community-based services and ensure that the separation of a child from his or her family for 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 diagnosed with “mental disorder” or with intellectual or psychosocial disability, 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 care;**

(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 a 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 the Law on 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 several views adopted by the Committee²⁰ and other United Nations treaty bodies, to which it is a party, in individual communications are pending implementation and that 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, the State party should 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 as full a rehabilitation as possible, in addition to the compensation obtained from the Victims Compensation Fund. In addition, the State party should implement the views adopted by the United Nations treaty bodies in 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.**

¹⁸ CAT/C/KAZ/RQ/4, paras. 178-181.

¹⁹ CAT/C/KAZ/RQ/4, paras. 174-175.

²⁰ See for example, CAT/C/62/3, CAT/C/60/4, CAT/C/57/3, CAT/C/56/2, CAT/C/54/3.

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 the expulsion and deportation for illegal crossing of the state border or violation of the legislation in the field of migration do not contain provisions on prevention from 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 international protection determination 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 referral of asylum-seekers between border authorities, including at the international airports and transit zones, and local executive bodies.²¹ Lastly, it notes that the State party has not acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness yet (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 the 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, the reinforcement of women 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 offence²² and 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 as well as violence based on the grounds of gender identity and sexual orientation, and ensure that mechanisms are in place to encourage victims of sexual and gender-based violence to come forward and 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 grounds of their real or perceived sexual orientation or gender identity

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

40. The State party should take effective measures to prevent violence based on real or perceived sexual orientation and gender identity and ensure that all acts of violence

²¹ CERD/C/KAZ/CO/8-10, paras. 39-40.

²² CEDAW/C/KAZ/CO/5, paras. 25-26; E/C.12/KAZ/CO/2, paras. 36-37.

are investigated and prosecuted promptly, effectively, and impartially, perpetrators brought to justice and victims provided redress

Legal recognition of gender

41. The Committee is concerned about mandatory reassignment surgery, including sterilization, as a requirement for legal recognition of gender stipulated by article 257 (13) of the Family and Marriage Code, which needs to be accompanied by diagnosis of psychiatric disorder, and the lack of any psychosocial support in this regard (art. 16).

42. The Committee should revoke the requirement of mandatory surgical change contained in article 257 (13) of the Family and Marriage Code as well as the diagnosis of psychiatric disorder, establish procedures concerning the legal recognition of gender based on non-discrimination and voluntary principle, and ensure impartial counselling services and psychosocial support.

Hazing and ill-treatment in the army

43. The Committee remains concerned about the reports of hazing and psychological pressure as possible causes of self-harm, suicides, and deaths in the armed forces, as well as a high rate of recorded incidents of injuries and deaths provided by the delegation, but appreciates the preventive actions put in place aimed at addressing these issues (arts. 2 and 16).

44. The Committee reiterates its previous recommendations²³ that the State party should strengthen its preventive actions aimed at eliminating hazing and mistreatment 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 concerning 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 invite United Nations special procedures mandate holders who have requested visits, notably the Working Group on arbitrary detention.**

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.**

²³ CAT/C/KAZ/CO/3, para. 25.