



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

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## Committee against Torture

Forty-fifth session

1-19 November 2010

### List of issues prior to the submission to the third periodic report of Kazakhstan (CAT/C/KAZ/3)\*

### Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

#### Articles 1 and 4

1. With reference to the previous recommendation of the Committee (para. 6),<sup>1</sup> please provide updated information on whether article 347-1 of the Criminal Code has been brought fully into conformity with the definition of torture contained in article 1 of the Convention. In responding, please also address whether it now extends criminal responsibility for torture to all persons acting in an official capacity or to individuals acting at the instigation of or with the consent or acquiescence of public officials.<sup>2</sup> Also, please clarify whether the current wording in article 347-1 regarding “legitimate acts” conforms to

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\* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic reports. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Unless otherwise indicated, paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/KAZ/CO/2.

<sup>2</sup> A/HRC/13/39/Add.3 (2009), paras. 13 and 80(b): “13. Torture is outlawed by article 347-1 of the criminal code. Its definition is more restrictive than the one contained in article 1 of the Convention against Torture, as it limits criminal responsibility to public officials and does not criminalize torture committed by any other person acting in an official capacity or by individuals acting at the instigation or with the consent or acquiescence of public officials. Furthermore, unlike article 1 of the Convention against Torture, which refers to “lawful sanctions”, the note to article 347-1 states that “physical and mental suffering caused as a result of legitimate acts on the part of officials shall not be recognized as torture”. The use of the term “legitimate acts” is of concern because of its vagueness. The Supreme Court and the Prosecutor’s office assured the Special Rapporteur that a revision of article 347-1 is under consideration. This is to be highly encouraged.”

the Convention and if it has been reformulated to eliminate vagueness and overly broad exemptions.

2. In light of the previous recommendation of the Committee (para. 17), as well as reports that punishment measures remain incommensurate with the gravity of the crime of torture,<sup>3</sup> please provide information on any amendments enacted since the examination of the previous periodic report in 2008 to part 1 of article 347-1 of the Criminal Code, in order to ensure that all punishments for acts of torture are commensurate with the gravity of the crime, as required by article 4 of the Convention.

### **Article 2<sup>4</sup>**

3. According to information before the Committee since the consideration of the previous periodic report in 2008, torture and ill-treatment, including the threat of sexual abuse and rape, committed by law enforcement officials, remain an issue of serious concern in the State party, and do not occur in isolated or infrequent instances.<sup>5</sup> Please provide up-to-date information on the measures taken by the State party to implement the previous recommendations (paras. 7-13, 22-23, 25-27, and 30-31) of the Committee under article 2 of the Convention. Please specifically comment on the adoption and implementation of the national Plan of Action for 2009-2012, as well as through adoption and implementation of draft legislation on “the status of investigators”, on “reform of the judicial system”, and on “clarifying procedures for detention of citizens”, as mentioned in the follow-up replies from the State party.<sup>6</sup> Also, please respond to the requests for further clarification regarding the national Plan of Action from the Rapporteur for follow-up, transmitted to the State party by letter dated 13 September 2010. Please include in the response the requested details on the mass media campaigns and other efforts to disseminate public information regarding human rights and the prohibition and prevention of torture.

4. Further to the previous recommendations of the Committee (paras. 9-11), and further to the persistent allegations that torture and ill-treatment committed by law enforcement officers occur during de facto apprehension but prior to formal registration<sup>7</sup> of a suspect at a police station, please provide specific and detailed information demonstrating the implementation of measures to ensure that persons taken into police custody are registered no later than three hours following their deprivation of liberty, in accordance with articles

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<sup>3</sup> A/HRC/13/39/Add.3, para. 62.

<sup>4</sup> The issues raised under article 2 could imply also different articles of the Convention, including, but not limited to, article 16. As general comment No. 2, paragraph 3, states "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

<sup>5</sup> A/HRC/13/39/Add.3, chapter III.

<sup>6</sup> Received by the Committee by note verbale dated 22 February 2010.

<sup>7</sup> A/HRC/13/39/Add.3, para. 68: “many safeguards are not effective in practice: a major gap in this regard is the fact that the de facto apprehension and delivery to a police station is not recorded, which makes it impossible to establish whether the three hour maximum delay for the first stage of deprivation of liberty is respected. Indeed, the Special Rapporteur received many allegations that the first hours of (unrecorded) detention were used by law enforcement organs to obtain confessions by means of torture. The situation is exacerbated by the fact that, at that stage, there is no right of access to a lawyer”.

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132 and 134 of the Code of Criminal Procedure. What is the exact moment of deprivation of liberty under the national legislation of the State party?

5. Please provide updated information on the implementation in practice of fundamental legal safeguards from the moment of apprehension of a person, including his or her right to access a lawyer and an independent medical examination, to inform a relative, and to be informed of his or her rights, including as to the charges laid against him or her, as well as being promptly presented to a judge. Furthermore, please provide information on the relationship between articles 68 and 138 of the Code of Criminal Procedure, and on measures taken to ensure that no exceptional circumstances may be invoked for the postponement of the exercise of the right of a detainee to inform a relative of his or her whereabouts.

6. In its follow-up response of 22 February 2010 to the previous recommendations of the Committee regarding legal safeguards (para. 9), the State party drew attention to the existing rules relating to the initial period of detention. It added: "However, in practice, there are cases of violations of the established order of detention" (p. 2 of the response). Please indicate the details of such cases, including the number, their location and the alleged crimes for which individuals involved are being charged. Please indicate what measures have been taken to investigate such cases, to hold officials responsible and what sanctions or outcomes have resulted. How will the State party prevent such cases in the future?

7. With regard to the previous recommendation of the Committee concerning the lack of a habeas corpus procedure in full conformity with international standards (para. 9), please provide detailed information on the specific steps taken by the State party to introduce this legal safeguard against unlawful deprivation of liberty.

8. In accordance with information before the Committee, medical personnel of the penitentiary system are employed by the Ministries of the Interior and Justice.<sup>8</sup> Furthermore, it is reported that any independent medical examinations conducted by doctors not employed within the penitentiary system must first be authorized by the supervising authorities, and that, where a request is approved, law enforcement officers accompany detainees to and during their medical examination. Finally, it is reported that detainees must bear the costs of an independent medical examination themselves. In light of these reports, please provide information on steps taken to guarantee the independence and integrity of medical doctors and other health care personnel working within the penitentiary administration, and also on steps taken to guarantee in practice the possibility for detainees to undergo independent medical examinations by doctors not employed within the penitentiary system, respecting the confidentiality of such examinations. Please clarify who is responsible for requesting a medical examination or what capacity official law enforcement personnel have to delay or permit this.

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<sup>8</sup> A/HRC/13/39/Add.3, para. 53: "While medical personnel employed by the Ministry of the Interior and the penitentiary administration do perform check-ups upon arrival, they clearly lack the independence to take action against colleagues with whom they work on a daily basis. An examination by these staff members can therefore not be considered independent; consequently, it needs to be done by an outside medical expert. Since independent medical examinations must, however, be authorized by the supervising authority – such as the investigators, the prosecutors, or the penitentiary authorities – that authority has ample opportunity to delay authorization so that injuries deriving from torture are healed by the time the examination takes place. Moreover, the Special Rapporteur was informed that, when an examination is conducted outside the detention facility, the law enforcement officer in charge of the case normally accompanies the detainee and stays with him or her during the examination. Another impediment is the fact that the detainee must bear the costs".

9. According to information before the Committee, the use by the National Security Committee (NSC) of unofficial places of detention such as rented apartments and houses – so-called safe houses – as well as unofficial places of interrogation – persists in the State party. Please indicate steps taken to close such places of detention and/or interrogation, and to cease the use of such methods of investigation.

10. According to information before the Committee,<sup>9</sup> temporary detention isolation facilities (IVSs) and investigation isolation facilities (SIZOs) of the National Security Committee (NSC) continue to be placed under the jurisdiction of the Ministry of Interior and the NSC. Please explain why these facilities have not yet been transferred to the jurisdiction of the Ministry of Justice, in light of consistent recommendations to that effect by the Committee (para. 8) and by the Special Rapporteur on torture.<sup>10</sup> Please also provide information on whether independent public monitoring commissions and civil society organizations have access to visit these facilities, and clarify the reasons for any limitation or exclusion of visits by such bodies.

11. Please provide up-to-date information on the functioning of the regional public monitoring commissions. In particular, please inform the Committee of measures taken to:

(a) Ensure, in practice, the functional and financial independence and effectiveness of the regional public monitoring commissions;

(b) Ensure, in practice, that the regional public monitoring commissions have access to all places of detention in the entire territory of the State party, including those under the jurisdiction of the Ministry of Interior and the NSC;

(c) Ensure, in practice, that regional public monitoring commissions can undertake unannounced visits to places of deprivation of liberty, and that they are granted the right to interview detainees and prisoners in private; and

(d) Ensure, in practice, that detainees and prisoners are not subject to reprisals following any communication by them with members of the regional public monitoring commissions.

12. In light of the declaration of postponement by the State party of its obligations under article 24 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>11</sup> for a period of three years, please provide information on the ongoing institutional and legislative developments towards the establishment of an independent and effective national preventive mechanism (NPM), and on the involvement of civil society in that process. Please provide detailed information on any draft legislation currently under consideration, and explain how the OPCAT requirements regarding the rights, powers, mandate and privileges of the NPM are guaranteed.

13. Please provide information on the activities of the Presidential Human Rights Commission and the Office of the Ombudsman, with regard to visiting places of deprivation of liberty in the State party, including those under the jurisdiction of the Ministry of Interior and the NSC. Please also provide information on their functional and financial independence.

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<sup>9</sup> A/HRC/13/39/Add.3.

<sup>10</sup> A/HRC/13/39/Add.3, para. 82(b): “Transfer temporary detention isolators from the Ministry of the Interior, and investigation isolators from the National Security Committee to the Ministry of Justice and raise the awareness of Ministry of Justice staff regarding their role in preventing torture and ill-treatment”.

<sup>11</sup> In force as of 22 May 2010.

14. Further to the previous recommendations of the Committee (paras. 25-27), please provide information on what structural measures have been taken to address problems with regard to the independence of the judiciary and of lawyers. Please also provide detailed information on any amendments made to the Constitution, Criminal Code and Code of Criminal Procedure, in order to reduce the dominant role of the Procurator throughout the judicial process, and provide for more balance and equality of arms between the respective roles of the prosecutor, the defence counsel and the judge. In light of the case against Mr. Evgeniy Zhovtis, and reports that he was not granted a fair trial, please provide detailed information on the powers of the defence counsel to collect alternative forensic evidence and to present it in court, and please provide information on any restrictions imposed in practice on the presentation of evidence by defence counsel at the discretion of the judge. Finally, please provide information on any improvements made in legal education, and in providing continuous legal training to the judiciary and to lawyers.

15. Further to the previous recommendation of the Committee (para. 7(c)), and according to information before the Committee,<sup>12</sup> an unofficial quota system for “cases solved” continues to be used to assess the performance of both the judiciary and law enforcement officials. Further to the follow-up response provided by the State party,<sup>13</sup> with reference to the Plan of Action for 2009-2012, please provide updated information on measures taken to prevent this type of staff performance appraisal.

16. With reference to the previous recommendation of the Committee (para. 30), please inform the Committee of the steps taken to implement the Law on Prevention of Domestic Violence, adopted in 2009. Please provide information on how this new domestic legislation ensures, in practice, the prevention of domestic violence, and the protection of victims. Please provide relevant statistics as to the number of complaints, investigations, and the resolution of charges under this Law, including any sanctions, punishments, and rehabilitative measures taken. Please inform the Committee on whether the new legislation provides for prevention, protection and prosecution based only on the complaint of an individual.

17. With regard to women deprived of their liberty, and allegations of ill-treatment and violence against women in detention,<sup>14</sup> please provide the Committee with detailed information on practical steps taken to ensure the effective prevention of violence against women in custody, and the prosecution and punishment of perpetrators.

18. With regard to juvenile justice,<sup>15</sup> please provide the Committee with up-to-date information on the process of establishment and implementation of a specialized juvenile

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<sup>12</sup> A/HRC/13/39/Add.3, para. 71.

<sup>13</sup> Received by the Committee by note verbale dated 22 February 2010.

<sup>14</sup> A/HRC/13/39/Add.3, para. 38: “The Special Rapporteur received a number of allegations of threats against women accused of crimes, targeting in particular, their children. He received reports about women suspected or accused of drug-related crimes, and foreign women who are subjected to beatings and other forms of violence, including hooding and electroshock by law enforcement agents. Within the penitentiary system, he received credible allegations of corporal punishment against women. Since there are fewer colonies for women, they tend to be cut off from their families and friends even more than male prisoners”.

<sup>15</sup> A/HRC/13/39/Add.3, para. 41: “The Special Rapporteur is encouraged to learn that, on 18 August 2008, the President approved a “juvenile justice system development concept” which, with reference to the Beijing Rules, foresees the creation, in the period 2009-2011, of a juvenile justice system and, among others, provides for specialized juvenile courts, a juvenile police, specialized legal aid, a specialized service for supervising non-custodial sentences, better coordination mechanisms and the integration of socio-psychological services into the juvenile justice system. He hopes that such a

justice system. With reference to the previous recommendation of the Committee (para. 12) please provide up-to-date information on the steps taken to ensure that legislation and practice as regards the arrest, detention and interrogation of children and juveniles in conflict with the law is brought fully in line with internationally adopted principles.

19. Pursuant to the previous recommendation of the Committee (para. 31), please provide updated information and detailed statistical data on the implementation of legislative and practical measures taken by the State party since the consideration of the previous periodic report in 2008, to continue to combat human trafficking, and on specific efforts undertaken to investigate, prosecute, convict and punish persons found responsible, including government officials complicit in human trafficking.

20. The initial report of Kazakhstan under the Convention<sup>16</sup> provided information on legal measures available against invoking an order from a superior as a justification of torture. In this connection, please provide information on legal procedures available, if any, enabling a law enforcement official to object to an order received from a superior officer which is perceived as involving acts of torture.

### **Article 3**

21. Further to the previous recommendation of the Committee (para. 14), and in light of the adoption, on 4 December 2009, of the Refugees Act, please provide detailed information on how this legislation is implemented in practice, in line with the obligation under article 3 of the Convention that no person shall be expelled, returned or extradited, to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

22. Please provide the Committee with up-to-date information about which departments of the Government are responsible for making decisions on matters of expulsion, return and extradition, and the procedures followed under the new Refugees Act. The criteria on which the relevant authorities determine the risk for a person under deportation of being tortured in the country of destination should be specified. Please provide information on the procedures available for appeal when applications for asylum have been rejected, and whether such appeals have a suspensive effect on the administrative decision to expulse, return or extradite an individual.

23. It is alleged that asylum-seekers from the Commonwealth of Independent States (CIS) are consistently denied refugee status,<sup>17</sup> and face expulsion, return and extradition on the basis of regional multilateral treaties and agreements, such as the Minsk Agreement on visa-free travel (2000), the Minsk Convention on legal assistance and legal relations in civil, family and criminal matters (1993), the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001) and the Treaty on Long-Term Good Neighbourliness, Friendship and Cooperation Between the Shanghai Cooperation Organization Member States (2007). In light of the previous recommendation of the Committee (para. 14), please provide information on any developments in granting priority to the Convention over less protective legal frameworks.

24. It is also alleged that asylum-seekers and refugees from Uzbekistan and China are particularly targeted for expulsion, return and extradition, and that in accordance with

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comprehensive approach will significantly improve access to justice for juveniles in practice and eliminate torture and ill-treatment of children”.

<sup>16</sup> CAT/C/47/Add.1, paras. 22-29.

<sup>17</sup> A/HRC/13/39/Add.3, para. 44; UNHCR submission to the UPR on Kazakhstan, para. 16.

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Article 12 of the Refugee Act of 2009, refugee status can be denied on the basis of membership in religious groups.<sup>18</sup> In light of the previous recommendation of the Committee (para. 15), please provide information on the measures being taken to ensure equal treatment of all asylum-seekers and refugees without discrimination, including on the basis of religion.

25. Please provide the Committee with up-to-date statistical data, in particular since the consideration of the previous periodic report in November 2008, disaggregated by age, sex and nationality on:

- (a) The number of persons who have requested asylum;
- (b) The status of the determination on those requests;
- (c) The number of persons subjected to expulsion, return and extradition;
- (d) The countries to which these persons were expelled, returned or extradited;

and

(e) Please also provide examples, if any, of cases in which national authorities did not proceed with the extradition, return or expulsion of an individual for fear that he or she would be tortured if deported. What has been the outcome of those cases?

26. Please indicate whether the State party relies on diplomatic assurances to return persons to countries known for practising torture. If so, please provide detailed information on:

- (a) The procedures in place for obtaining diplomatic assurances;
- (b) Steps taken to establish a judicial mechanism for reviewing, in last instance, the sufficiency and appropriateness of diplomatic assurances in any applicable case;
- (c) Steps taken to guarantee effective post-return monitoring arrangements;
- (d) The number of cases where diplomatic assurances have been provided, since the consideration of the initial report and the other States concerned;
- (e) Assurances that have not been honoured and appropriate action taken in such cases by the State party.

## **Articles 5 and 7**

27. Pursuant to the previous recommendation of the Committee (para. 19), please provide information on steps being taken to fully implement the principle of universal jurisdiction in accordance with articles 5(2) and 7 of the Convention. Please provide detailed information, if any, on the exercise of universal jurisdiction for acts of torture by the State party since the consideration of the previous report in 2008.

28. Please indicate whether in practice the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result, since the consideration of the previous report in 2008. If so, please provide information on the status and outcome of such proceedings.

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<sup>18</sup> UNHCR submission to the UPR on Kazakhstan, para. 34.

## Article 10

29. Further to the request for information contained in the previous recommendation of the Committee (para. 20), please provide detailed information on the development of educational and training programmes to be provided to all law enforcement officials and penitentiary staff, specifically on the provisions and actual application of the Convention, and on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Furthermore, please indicate whether the State party has developed training to be provided to medical personnel within the penitentiary system on how to identify signs of torture and ill-treatment in accordance with international standards, as outlined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). Please also provide detailed information on any gender-specific training provided.

30. Please indicate in your response to the above requests for information the number of persons who have received training, the ranks of these persons, the periodicity of such training, as well as an assessment of the effectiveness and impact of the educational and training programmes on the reduction of cases of torture. Does re-attestation of officers depend on the successful completion of such programmes? What other facts are reviewed in the re-attestation of officers? What additional educational efforts have been established to ensure that judges, prosecutors and lawyers are fully apprised of the guidelines and the Supreme Court regulatory decree of 28 December 2009, referred to in the State party's response of 22 February 2010, and has such training been made mandatory? Also, please clarify what topics regarding the prohibition against torture are covered in the training on human rights at the General Prosecutor's Office and Ministry of Interior which are cited in the State party's response? What specific topics are addressed in the advanced training of judges in human rights, as indicated in the response, and how many such classes are required, covering what period of time? Finally, please provide the number of judges and prosecutors who took the courses, and in what locations.

## Article 11

31. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment that may have been introduced since the consideration of the last periodic report, and the frequency with which they are reviewed, with a view to preventing any cases of torture or ill-treatment.

32. Please provide updated information on the number, location, capacity and occupancy rates of prisons and detention facilities in the country. For each facility, please specify its type (i.e. juvenile, women, pre-trial detention etc.). Please also provide detailed information on measures undertaken by the State party, as well as material, human and budgetary resources made available, to improve conditions in all detention facilities and ensure that they conform to minimum international standards. In addition, the Committee would appreciate receiving information on the most recent inspections of detention facilities by the competent authorities, their findings and follow-up measures taken, if any.

33. Pursuant to the previous conclusions and recommendations of the Committee (para. 21), please provide detailed and up-to-date information on legislative and practical steps taken by the State party to:

(a) Reduce overcrowding in places of deprivation of liberty, including through the building of new facilities, as well as the application of alternative forms of punishment, as provided for by the law;



(b) Limit the use of isolation as a measure of last resort, for as short a time as possible under strict judicial supervision and with a possibility of judicial review;

(c) Identify reasons leading prisoners to commit acts of self-mutilation and provide appropriate remedies;

(d) Adequately prevent and combat inter-prisoner violence, as well as self-harm amongst prisoners, in places of deprivation of liberty; please include information on the number of cases and their outcomes.

34. In its previous concluding observations (para. 21), the Committee expressed its concern at the high incidence of death in custody. Please provide updated information on the death rate, and its causes, during custody since November 2008. In this connection, please provide detailed information on the legislative and practical steps taken by the State party to ensure that all instances of death in custody, including suicide, are promptly, impartially and effectively investigated and that those found responsible for any deaths resulting from torture or ill-treatment or for wilful negligence leading to any of these deaths are prosecuted. Please provide names, ages, cause of death, date of investigation and outcomes. Has this information been released publicly?

35. Please provide detailed information on any steps taken by the State party to continue to reform the penitentiary system in a way that clearly includes efforts to rehabilitate and reintegrate offenders,<sup>19</sup> in particular by abolishing restrictive prison rules and regimes, including for persons sentenced to long prison sentences.

### Articles 12 and 13

36. Pursuant to the previous recommendation of the Committee (paras. 7(b) and 24), and in light of allegations that there continues to be widespread impunity for acts of torture and ill-treatment, and that complaints mechanisms are ineffective,<sup>20</sup> please provide information on steps taken to ensure, in practice, prompt, impartial and effective investigations – if necessary ex officio – into all allegations of torture and ill-treatment, in particular, against the National Security Committee (NSC). In that connection, please inform the Committee on whether preliminary examinations of complaints of torture and ill-treatment continue to be carried out by the Department of Internal Security. Please inform the Committee on the status of investigations into the complaints made by Denis Polienko, and by the families of Rasim Bairamov and Aleksandr Bruikhanov, who allege torture and ill-treatment, and whose complaints have been examined and dismissed by the Department of Internal Security. What is the current status of effective and impartial investigations into these cases?

37. In accordance with information before the Committee, many detainees are reluctant to lodge complaints because of threats and fear of reprisals against themselves or their

<sup>19</sup> As recommended by the Special Rapporteur, in A/HRC/13/39/Add.3, para. 82(c): “Design the system of execution of punishment in a way that truly aims at rehabilitating and reintegrating offenders, in particular by abolishing restrictive prison rules and regimes, including for persons sentenced to long prison terms, and maximizing contact with the outside world”.

<sup>20</sup> A/HRC/13/39/Add.3, para. 76: “Although the Special Rapporteur recognizes that impunity is not total, he found that existing complaints mechanisms are ineffective”, and para. 51: “The almost total absence of official complaints, however, raises suspicion that, in actual fact, there is no meaningful complaint mechanism; on the contrary, it appears that most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals. In the Special Rapporteur’s opinion, there is no independent body mandated to make prompt investigations, and the overwhelming majority of complaints are almost automatically rejected”.

families, and of lack of confidence in the effectiveness and independence of the complaints procedures.<sup>21</sup> Please provide information on steps taken to address the problem (including in practice) and to ensure that detainees are not subjected to reprisals. In this connection, please provide information on whether detainees lodging a complaint against law enforcement officials are entitled to be transferred to places where they are no longer in contact with them, as a measure to avoid any form of threat or intimidation. Please provide the number of cases and their results, for the period under review.

38. Further to the previous recommendation of the Committee (para. 18), and the follow-up replies received from the State party,<sup>22</sup> please provide information on the extent to which law enforcement officials continue to be prosecuted under article 307 or 308 of the Criminal Code, which criminalize “abuse of official powers” and “exceeding power or official authority” respectively for acts of torture. Please provide further detailed information on the relevant provisions of the Supreme Court regulatory decree of 28 December 2009 mentioned in the follow-up replies of the State party, and explain how the implementation of this legislation ensures the prosecution of law enforcement officials for acts of torture under article 347-1 of the Criminal Code.

39. Please provide detailed statistical data on the number of complaints, investigations, prosecutions, convictions and sentences imposed, on the basis of allegations of torture or ill-treatment, initiated under the provisions of the Criminal Code (article 307 or 308) and under the provisions of the Supreme Court regulatory decree of 28 December 2009. Examples of recent judicial decisions concerning the prosecution of law enforcement officials would be useful to enable the Committee to assess the situation.

## Article 14

40. According to information before the Committee, until recently there was no legal obligation for the State party to provide financial compensation or rehabilitation for torture victims.<sup>23</sup> Please provide the Committee with up-to-date information on the steps being

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<sup>21</sup> A/HRC/13/39/Add.3, para. 59: “Many of the detainees interviewed by the Special Rapporteur indicated that they had been threatened with further charges, longer imprisonment and, in some cases, sexual violence by fellow inmates in order to make them withdraw complaints or sign declarations that they did not have any complaints or statements that they had sustained injuries while resisting arrest. He also learned that, in certain cases, threats are made against family members of the detainee, for example they will be arrested or that the friends of the child will be informed. Such behaviour, besides going counter to international standards, renders any complaints system meaningless and should be addressed in a determined manner”.

<sup>22</sup> Received by the Committee by note verbale dated 22 February 2010.

<sup>23</sup> A/HRC/13/39/Add.1, para. 63: “there is no legal obligation in Kazakh domestic legislation for financial compensation or rehabilitation of torture victims. Although article 40 of the criminal procedure code provides for compensation of harm caused as a result of unlawful acts of the body leading or carrying out criminal proceedings, the list of unlawful acts does not include torture or ill-treatment. A resolution of the Supreme Court of 9 July 1999 (No. 7) on the practical application of the legislation on the compensation for the harm caused by unlawful actions of the bodies in charge of the criminal process, which serves as a guideline for judges, refers to the “use of violence, cruel and degrading treatment” and lists “arrested, accused and convicted persons” as eligible for compensation. The civil code, however, in its article 923, appears to limit the acts and conditions giving victims the right to compensation, since torture and ill-treatment are not listed. Furthermore, the civil procedure is only initiated once criminal proceedings against the perpetrator or offender have started; this clearly contradicts the requirements of article 14 of the Convention against Torture. The Special Rapporteur was not informed of any case where torture victims have received compensation or rehabilitation, even if torture had been found by the criminal court”.

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taken, further to the implementation of the Supreme Court regulatory decree of 28 December 2009 and the Plan of Action 2009-2012, to enact and implement legislation regulating compensation and rehabilitation for torture and ill-treatment, in accordance with the State party's obligations under article 14 of the Convention.

41. Further to the previous recommendation of the Committee (para. 28) please provide information, accompanied by detailed statistical data, on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture or ill-treatment, or their families, since the examination of the last periodic report in 2008. This information should include the number of requests for compensation or redress made, the number granted, the amounts of compensation ordered and those actually provided in each case.

### Article 15

42. Pursuant to the previous recommendation of the Committee (para. 29) and the follow-up reply submitted by the State party,<sup>24</sup> and in light of cases such as the ones against Messrs. Bairamov and Bruikhanov, who were convicted and sentenced on the basis of confessions allegedly obtained through torture, please indicate steps taken by the State party to ensure that, in practice, evidence obtained under torture shall not be invoked as evidence in any proceedings, in accordance with article 15 of the Convention, and as provided for under article 77(9) of the Constitution, article 116 of the Criminal Code, and the Supreme Court regulatory decree of 28 December 2009. In this regard, please highlight what steps are being taken in practice to ensure that judges in particular effectively examine all allegations of torture raised during court proceedings and exclude any evidence that may have been obtained under torture.

43. Please provide the Committee with the number of complaints of torture by defendant and by crime; the number of cases where the courts rendered confessions inadmissible as a result of these complaints, the number of criminal and disciplinary proceedings taken as a result, the sanctions imposed, and the remedies and reparations granted to the victims. Has there been a review of past cases of persons currently imprisoned on the basis of confessions, and will such cases be re-examined or dismissed because of the admission of coerced evidence? Please clarify whether the rule in the Supreme Court's regulatory decree of 28 December 2009 about the exclusion of alleged coerced evidence will be formalized in the Criminal Code. Please provide the Committee with detailed up-to-date information, accompanied by statistical data and recent examples, on cases where evidence was excluded from proceedings because it was found to have been obtained under torture.

### Article 16

44. Please provide information on the measures (legal, administrative, and practical) taken, if any, to prevent hazing (*dedovshchina*) in the military, as well as other torture and other cruel, inhuman or degrading treatment or punishment in the armed forces, conducted by or with the consent, acquiescence or approval of the responsible personnel or officers, resulting in severe physical and/or mental harm to the victims. Are such acts criminalized? Has a "hotline" for victims been put in place? Do the armed forces ensure "prompt and impartial" investigation of all complaints of *dedovshchina* as a preventive measure under the Convention? Please provide, for the years under review, information on the complaints, investigation, prosecution, number of victims within the military, the crimes committed,

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<sup>24</sup> Received by the Committee by note verbale dated 22 February 2010.

location and any suicides resulting from such acts. What is the number of persons who have been held accountable, through disciplinary or criminal proceedings, for failing to stop such abuses in units subordinate to them? What further measures are anticipated?

45. Please provide up-to-date information on the measures taken to provide medical care for persons deprived of their liberty who are drug addicts, infected with tuberculosis, and/or infected with HIV/AIDS. Please provide detailed statistical data, and please inform the Committee of the State party's prevention and treatment policies.

46. In light of allegations that corporal punishment and beatings persist in places of deprivation of liberty, please provide detailed information on steps taken to prevent, in practice, corporal punishment in places of deprivation of liberty.

### **Other issues**

47. Please provide detailed information on the protection of human rights defenders in the State party. Please explain in what way(s) Evgeniy Zhovtis was granted the due legal safeguards of a fair trial, and please provide the Committee with updated information on his current situation.

48. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

49. Please inform the Committee on whether the moratorium on the death penalty, which has been in force since December 2004, is still applied to all crimes, including crimes of terrorism and war crimes. In this connection, what progress has been made to enact legislation on the total abolition of the death penalty? Please inform the Committee whether, further to the State party's response to recommendations made under the UPR process,<sup>25</sup> ratification of the Rome Statute of the International Criminal Court is under consideration for the near future. Please also inform the Committee whether the State party envisages ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.<sup>26</sup>

### **General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

50. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the consideration of the previous periodic report in 2008, including any relevant jurisprudential decisions.

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<sup>25</sup> A/HRC/14/10/Add.1, para. 3.

<sup>26</sup> Further to the recommendations contained in the Report of the Working Group on the UPR, A/HRC/14/10, and the acceptance thereof by the State party, cf. A/HCR/14/10/Add.1.

51. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level, that have occurred since the consideration of the previous periodic report in 2008, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

52. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2008, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.

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