



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Additional information submitted by Kazakhstan under
article 29 (4) of the Convention***

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* The present document is being issued without formal editing.



I. Introduction

1. This is the second periodic report of Kazakhstan to the United Nations Committee on Enforced Disappearances. It has been submitted in accordance with article 29 (1) and (4) of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by Kazakhstan on 20 December 2006 and ratified by the Act of 15 December 2008.
2. The report has been drafted in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29, adopted by the Committee at its second session (26–30 March 2012), taking into account the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents.
3. This report contains information on measures taken and progress achieved in implementing the provisions of the Convention between 2016 and 2021 and on the implementation of the recommendations made at the tenth session of the Committee on Enforced Disappearances (7–18 March 2016).¹
4. Pursuant to the recommendations of the Committee on Enforced Disappearances, an action plan was approved for 2017–2021.²
5. An interdepartmental working group was set up to prepare the report. It included representatives of the Ministry of Internal Affairs, the Human Rights Commission under the Office of the President of Kazakhstan, the National Centre for Human Rights, the Office of the Procurator General, the Anti-Corruption Agency, the Ministries of Defence, Justice, Foreign Affairs, Health, Education and Science, the Kostanay and Karaganda Academies of the Ministry of Internal Affairs and the Institute of Law of the Ministry of Justice, along with non-governmental organizations (NGOs).
6. In the preparation of the report, the implementation of the Committee's recommendations was analysed with the support of the United Nations Development Programme.
7. In accordance with the Public Services Act, No. 88-V of 15 April 2013,³ and the Access to Information Act, No. 401-V of 16 November 2015,⁴ a draft of this report was made public on the Open Enactments portal and on the website of the Ministry of Internal Affairs. All of the country's citizens had the opportunity to read the draft report and to make suggestions for changes and additions.
8. Questions related to the implementation of the Convention and the preparation of the national report were discussed at a meeting of the Dialogue Platform on the Human Dimension, an advisory body under the Ministry of Foreign Affairs, with the participation of NGOs. The suggestions received during the public discussion were taken into account in the preparation of the report. The question of observance of human rights in the activities of law enforcement agencies, including the strengthening of the legal status of lawyers, was considered at meetings of the Human Rights Commission under the Office of the President of Kazakhstan⁵ and the Public Council on the work of the internal affairs bodies.

II. General information

9. Kazakhstan remains committed to the principles of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and takes measures to strictly comply with the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance.⁶

¹ CED/C/KAZ/CO/1 of 26 May 2016.

² Instruction No. 23–14/1565 of the Prime Minister of Kazakhstan of 28 September 2017.

³ https://online.zakon.kz/Document/?doc_id=31376056.

⁴ https://online.zakon.kz/Document/?doc_id=39415981.

⁵ Record of proceedings No. 22–32-50.1 of 31 March 2022.

⁶ Ratified by the Act of 15 December 2008. *Source*: https://adilet.zan.kz/rus/docs/Z080000104_.

10. In accordance with article 4 (3) of the Constitution, international treaties ratified by Kazakhstan take precedence over domestic law. It is also worthy of note that international treaties ratified by Kazakhstan take precedence over the Criminal Code and are directly applicable, except when an international treaty specifies that its application requires enabling legislation.⁷

11. The 2017 constitutional reform was a logical, new step in the gradual and comprehensive process of the reshaping of society and the State. The Constitution was amended to strengthen the protection of human and civil rights and freedoms, constitutional oversight and the responsibilities of the Constitutional Council. The power to elect and dismiss the Human Rights Commissioner (Ombudsman) has been transferred to the Senate.

12. At the initiative of the President of Kazakhstan, Kassym-Jomart Tokayev, a framework for the “State that hears”⁸ is being implemented, the aim being to ensure effective communication with the population and greater citizen involvement in government.

13. The Constitutional Act on the Judicial System and the Status of Judges, No. 132 of 25 December 2000,⁹ establishes that everyone is guaranteed judicial protection against any unlawful decisions, actions or omissions on the part of State bodies, organizations, officials and other persons who violate or restrict their rights, freedoms or legitimate interests.

14. The adoption in December 2020 of Act No. 384-VI, which amended and supplemented certain legislative acts strengthening the protection of citizens’ rights in criminal proceedings and combating corruption, launched the practical implementation of a three-tiered model of criminal proceedings, in which the three key tasks are performed by different bodies:

(1) The pretrial investigation bodies are responsible for detecting and suppressing crime, the identification of the persons involved and the collection and consolidation of evidence;

(2) The procurator’s office carries out an independent assessment of the collected evidence, makes key procedural decisions and brings and supports the charges in court;

(3) The court carries out sentencing and considers citizens’ complaints.

15. With the transition to the three-tiered model of criminal procedure, all the key procedural decisions – the detention of suspects, the qualification of their acts and the selection of preventive measures – are adopted exclusively by the procurator. Preventive measures are approved by the investigating judge.

16. A Plan of Priority Measures in the field of human rights¹⁰ was adopted in June 2021. It inter alia addresses the right to life, public order and observance of human rights in the criminal justice system, the prevention of torture and ill-treatment, protection of the rights of human trafficking victims and the improvement of interaction with the United Nations treaty bodies and the special procedures of the United Nations Human Rights Council.

17. A national Framework for the Legal Policy until 2030 was adopted in October 2021.¹¹

18. Under this framework, the protection of the fundamental rights, freedoms and legitimate interests of individuals and organizations is defined as one of the basic tasks for primary and effective protection in all spheres of public life and in the life of the State. A significant part of the national legislation will continue to take shape under the influence of the country’s international legal obligations.

⁷ Article 2 (3) of the Criminal Code.

⁸ State of the Nation address by the Head of State to the people of Kazakhstan of 2 September 2019, entitled “Constructive public dialogue – The basis of stability and prosperity of Kazakhstan”. *Source*: https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana.

⁹ https://adilet.zan.kz/rus/docs/Z000000132_.

¹⁰ *Source*: <http://adilet.zan.kz/rus/docs/P2100000405>.

¹¹ Presidential decree of 15 October 2021. *Source*: <https://adilet.zan.kz/rus/docs/U2100000674>.

19. Approaches to questions related to the need to take systemic measures for the observance of human rights in criminal proceedings, including for the prevention of enforced disappearance, were updated in the President's State of the Nation addresses to the people of Kazakhstan and in the national action plans for their implementation for 2019–2021.

20. As part of the national action plan for the implementation of the President's State of the Nation address to the people of Kazakhstan of 2 September 2019, entitled "Constructive public dialogue – The basis of stability and prosperity of Kazakhstan", measures were adopted to strengthen guarantees of protection of citizens' rights; liability was increased for intentionally and unlawfully arresting or detaining people or remanding people in custody and for obstructing the lawful activity of lawyers and other persons who defend human and civil rights, freedoms and legal interests; and oversight and monitoring were strengthened to prevent the use by law enforcement officers of illegal methods of work or provocative actions in police work and investigative practices.¹²

21. Measures are being drawn up to ensure the safety of human rights defenders, including lawyers, and to counter illegal actions that hinder their work, in the framework of the national action plan for implementation of the instructions in the State of the Nation address by the Head of State to the people of Kazakhstan, "Unity of the people and systemic reforms are a solid foundation for the nation's prosperity", of 1 September 2021.¹³

22. Practical measures are being taken to ensure respect for the rights of citizens and protect them against the possibility of enforced disappearance.

23. The Framework for the Legal Policy until 2030 calls for the development of a service model for policing, based largely on the establishment of partnerships with the community, as one of the main themes for reforming the law enforcement system.

24. The basic strategy consists in providing quality police services to citizens and in jointly solving security problems, in partnership with the community. Projects implemented with the support of the European Union are aimed at optimizing the work of local police services, building an effective management system and establishing a dialogue between the police and the public.

25. In his State of the Nation address to the people of Kazakhstan of 1 September 2020, entitled "Kazakhstan in a new reality: Time for action", the Head of State ordered a comprehensive police reform whereby police services must be accessible, "a short walk away".¹⁴

26. In cities, 58 prefabricated police stations have been put into operation, the number of foot patrols has increased and 81 police emergency call buttons have been installed. These measures have a positive impact on law and order in public places and help protect citizens against unlawful infringements of their rights.

27. "Transparent spaces" for investigation activities are gradually being set up at police premises.

28. The "State that hears" framework has made it possible for law enforcement to ensure openness and transparency and to regularly ensure the reception of citizens. The "102" mobile app was launched, which makes it easier to call the police, including through social media.

29. In April 2021, the first phase was launched of a pilot project to automate the appointment of State-guaranteed legal aid in criminal proceedings. The initial results made it possible for criminal trial officers automatically to assign counsel, to order the participation of the suspect's counsel in criminal proceedings and to initiate payment of the legal aid provided for the suspect's defence through the State-guaranteed legal aid system.

¹² Paragraphs 20 and 21 of the national plan approved by the presidential decree of 10 September 2019. *Source:* <https://adilet.zan.kz/rus/docs/U1900000152>.

¹³ Paragraph 89 of the national plan approved by the presidential decree of 13 September 2021. *Source:* <https://adilet.zan.kz/rus/docs/P2100000628>.

¹⁴ https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1-sentyabrya-2020-g.

30. There are plans to launch a similar pilot project for cases of administrative offences.
31. In accordance with the instructions given by the Head of State in a State of the Nation address¹⁵ and also at the meeting of the National Council of Public Trust on 25 February 2021, an action plan has been drawn up and approved for the introduction of continuous video surveillance at prisons and police premises and at all investigative units of law enforcement agencies.¹⁶ The plan was agreed upon with the Charter for Human Rights Foundation and with the National Centre for Human Rights.
32. So far, over 18,000 surveillance cameras have been installed at police facilities, and more than 14,000 in prisons. Penitentiary system staff are provided with bodycams.
33. In order to ensure the safety of prisoners and reduce the number of offences, work is currently being undertaken under the Plan of Priority Measures in the field of human rights to set up ways for institutions in the penal correction system to send video footage to higher and supervisory bodies and subsequently to connect them to the National Video Monitoring System.
34. To ensure that the rights of prisoners are adequately protected, a road map was adopted for the development of the penal correctional system for 2019–2023. With its implementation, prisoners are given the possibility of filing submissions in electronic form. In the past two years, 243 electronic terminals have been installed for this purpose at the penal correctional facilities of the Ministry of Internal Affairs.
35. Electronic reports of abuses by prison administrations are automatically forwarded to the Anti-Corruption Agency. Such measures make it possible to reduce the risk of corruption and to create additional tools to prevent enforced disappearances and torture.
36. Since the presentation of the initial report, work has continued with the aim of improving the national legislation on human rights in criminal justice, including protection against enforced disappearance.
37. In order to implement articles 2 and 4 of the Convention, the Criminal Code was amended by Act No. 292-VI of 27 December 2019, which amended and supplemented certain legislative acts on the improvement of criminal law and criminal procedural law and on the strengthening of the rights of individuals.
38. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by a law adopted on 2 January 2021. Work is being carried out for the country's accession to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and to the Convention on the Civil Aspects of International Child Abduction.
39. Kazakhstan, having ratified the Convention on the Rights of the Child,¹⁷ the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption,¹⁸ the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict¹⁹ and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,²⁰ has demonstrated its commitment to the comprehensive protection of children, including against enforced disappearance.
40. In June 2021, under the Act of 5 July 2018, which amended and supplemented certain legislative acts on advocacy and legal aid,²¹ a number of basic amendments to the Code of Criminal Procedure were adopted. This was done with a view to implementing the

¹⁵ Paragraph 107 of the national action plan to implement the President's State of the Nation address to the people of Kazakhstan of 1 September 2020, approved by a presidential decree of 14 September 2020. *Source:* https://online.zakon.kz/Document/?doc_id=33374726.

¹⁶ Ministry of Internal Affairs Order No. 233 of 21 April 2021.

¹⁷ Resolution of the Supreme Soviet of Kazakhstan of 8 June 1994. *Source:* https://adilet.zan.kz/rus/docs/B940001400_.

¹⁸ Act of 12 March 2010. *Source:* https://adilet.zan.kz/rus/docs/Z100000253_.

¹⁹ Act of 4 July 2001. *Source:* https://adilet.zan.kz/rus/docs/Z010000221_.

²⁰ Act of 4 July 2001. *Source:* https://adilet.zan.kz/rus/docs/Z010000219_.

²¹ <https://adilet.zan.kz/rus/docs/Z2100000049>.

instructions issued by the Head of State, as expressed in the State of the Nation addresses to the people of Kazakhstan, to strengthen the adversarial nature and transparency of criminal proceedings and ensure the equality of the procurator and defence counsel in the judicial process.

41. The changes are aimed at strengthening the adversarial nature and openness of criminal proceedings and at more effectively empowering the defence to collect evidence.

42. The Commissioner for Human Rights Act, No. 90-VII, was adopted in December 2021. Article 1 of the Act defines the tasks of the Commissioner for Human Rights (or Ombudsman). The Ombudsman is to assist in the restoration of human and civil rights and freedoms when they are violated, work to improve the country's laws and promote and advance human and civil rights and freedoms.

43. In the Parliament, the Senate is currently considering amendments to expand the range of persons entitled to free legal aid and the beneficiaries of such aid under the State-guaranteed legal aid system.

44. In accordance with article 19 (2) and article 26 of the Advocacy and Legal Assistance Act, No. 176-VI of 5 July 2018, the e-Zan Komegi²² electronic legal assistance system provides the public with the possibility of receiving comprehensive online legal assistance and State-guaranteed legal aid at no cost.

45. More than 2,800 lawyers and 1,000 legal consultants have registered with the e-Zan Komegi unified information system. In the past three years more than 400,000 people have received free legal assistance.

46. Progress is gradually being made in implementing the standards of the Convention through the following laws:

- The Constitution of 30 August 1995 (as amended and supplemented by Act No. 51-VI of 10 March 2017 and Act No. 238-VI of 23 March 2019)²³
- Constitutional Act No. 132 of 25 December 2000 on the judicial system and the status of judges²⁴
- The Marriage and Family Code, No. 518-IV of 26 December 2011²⁵
- The Civil Code, No. 268-XIII of 27 December 1994²⁶
- The Criminal Code, No. 226-V of 3 July 2014²⁷
- The Code of Criminal Procedure, No. 231-V of 4 July 2014²⁸
- The Code of Administrative Offences, No. 235-V of 5 July 2014²⁹
- The Penalties Enforcement Code, No. 234-V of 5 July 2014³⁰
- The Code on Taxes and Other Obligatory Payments to the Budget (Tax Code), No. 120-VI of 25 December 2017³¹

²² <https://eup.kz/>.

²³ Source: https://adilet.zan.kz/rus/docs/K950001000_.

²⁴ https://adilet.zan.kz/rus/docs/Z000000132_.

²⁵ https://online.zakon.kz/Document/?doc_id=31102748.

²⁶ https://adilet.zan.kz/rus/docs/K940001000_.

²⁷ Entered into effect from 1 January 2015. Source: https://online.zakon.kz/document/?doc_id=31575252#sub_id=0.

²⁸ Entered into effect from 1 January 2015. Source: https://online.zakon.kz/document/?doc_id=31575852#sub_id=0.

²⁹ Entered into effect from 1 January 2015. Source: https://online.zakon.kz/document/?doc_id=31577399#sub_id=0.

³⁰ Entered into effect from 1 January 2015. Source: https://online.zakon.kz/Document/?doc_id=31577723.

³¹ https://online.zakon.kz/document/?doc_id=36148637#sub_id=0.

- The Administrative Procedure Code, No. 350-VI of 29 June 2020³²
- The Children's Rights Act, No. 345 of 8 August 2002³³
- The Prevention of Juvenile Delinquency, Child Neglect and Child Homelessness Act, No. 591 of 9 July 2004³⁴
- Act No. 104-IV of 15 December 2008 on ratification of the International Convention for the Protection of All Persons from Enforced Disappearance³⁵
- The Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, No. 353-I of 30 March 1999³⁶
- The Act on State Protection of Parties to Criminal Proceedings, No. 72 of 5 July 2000³⁷
- The Law Enforcement Service Act, No. 380-IV of 6 January 2011³⁸
- The Personal Data and Data Protection Act, No. 94-V of 21 May 2013³⁹
- The Pensions Act, No. 105-V of 21 June 2013⁴⁰
- The Access to Information Act, No. 401-V of 16 November 2015⁴¹
- Act No. 501-V of 9 April 2016, which amended and supplemented certain legislative acts on child protection⁴²
- The Victims Compensation Fund Act, No. 131-VI of 10 January 2018⁴³
- The Advocacy and Legal Assistance Act, No. 176-VI of 5 July 2018⁴⁴
- The Mandatory Social Insurance Act, No. 286-VI of 26 December 2019⁴⁵
- Act No. 292-VI of 27 December 2019, which amended and supplemented certain legislative acts on the improvement of the criminal law and the criminal procedural law and on the strengthening of the rights of individuals⁴⁶
- Act No. 384-VI of 19 December 2020, which amended and supplemented certain legislative acts strengthening the protection of the rights of citizens in criminal proceedings and combating corruption⁴⁷
- Act No. 88-VII of 27 December 2021, which amended and supplemented certain legislative acts on the introduction of a three-tier model, with delimitation of powers and areas of responsibility between law enforcement agencies, the procurator's office and the court⁴⁸
- The Commissioner for Human Rights Act, No. 90-VII of 29 December 2021;⁴⁹ Act No. 93-VII of 29 December 2021, which amended the Tax Code in respect of the

³² Entered into effect from 1 July 2021. *Source:*

https://online.zakon.kz/document/?doc_id=35132264#sub_id=0.

³³ https://adilet.zan.kz/rus/docs/Z020000345_.

³⁴ https://adilet.zan.kz/rus/docs/Z040000591_.

³⁵ https://adilet.zan.kz/rus/docs/Z080000104_.

³⁶ https://online.zakon.kz/Document/?doc_id=1012660.

³⁷ https://adilet.zan.kz/rus/docs/Z000000072_.

³⁸ <https://adilet.zan.kz/rus/docs/Z1100000380#z451>.

³⁹ https://online.zakon.kz/Document/?doc_id=31396226.

⁴⁰ <https://adilet.zan.kz/rus/docs/Z1300000105>.

⁴¹ https://online.zakon.kz/Document/?doc_id=39415981.

⁴² <https://adilet.zan.kz/rus/docs/Z1600000501>.

⁴³ <https://adilet.zan.kz/rus/docs/Z1800000131>.

⁴⁴ <https://adilet.zan.kz/rus/docs/Z1800000176>.

⁴⁵ <https://adilet.zan.kz/rus/docs/Z1900000286>.

⁴⁶ <https://adilet.zan.kz/rus/docs/Z1900000292>.

⁴⁷ https://online.zakon.kz/document/?doc_id=32025901&show_di=1&pos=2;-68#pos=2;-68.

⁴⁸ https://online.zakon.kz/Document/?doc_id=38675129&pos=1;-16#pos=1;-16.

⁴⁹ https://online.zakon.kz/Document/?doc_id=37622147.

activities of the Commissioner for Human Rights;⁵⁰ Act No. 92-VII of 29 December 2021, which amended and supplemented the Code of Administrative Offences in respect of the activities of the Commissioner for Human Rights;⁵¹ and Act No. 91-VII of 29 December 2021, which amended and supplemented certain legislative acts in respect of the activities of the Commissioner for Human Rights⁵²

- Presidential Decree No. 192 of 10 February 2016 on the establishment of the Office of the Commissioner for Children's Rights⁵³
- Government Decree No. 1218 of 21 November 2014 approving the Rules for payment of property damage caused to a person acquitted by a court, a suspect, an accused person or a defendant, in respect of whom there has been an order from a court or a criminal prosecution body to terminate criminal proceedings as a result of the illegal actions of a body conducting criminal proceedings⁵⁴
- Constitutional Council Regulatory Decision No. 2 of 13 April 2012 on the official interpretation of the Constitution's provisions concerning the calculation of constitutionally established time limits⁵⁵
- Supreme Court Regulatory Decision No. 7 of 9 July 1999 on the application of the legislation on compensation for damages caused by the illegal actions of bodies conducting criminal proceedings⁵⁶
- Supreme Court Regulatory Decision No. 7 of 28 December 2009 on the implementation of the provisions of criminal law and criminal procedure law relating to respect for personal freedom and the inviolability of human dignity and the prevention of torture, violence and other cruel or degrading treatment or punishment⁵⁷
- Regulatory Resolution No. 1 of the Supreme Court of 24 January 2020 on certain issues relating to the authorization of preventive measures⁵⁸
- Order No. 232 of the Minister of Internal Affairs of 23 May 2011 approving the Rules for the activities of internal affairs special holding centres⁵⁹
- Order No. 233 of the Minister of Internal Affairs of 23 May 2011 approving the Rules for the organization of the activities of internal affairs holding and processing centres⁶⁰
- Order No. 10 of the Minister of Internal Affairs of 9 January 2012 approving the Rules for the internal organization of internal affairs holding and processing centres⁶¹
- Order No. 11 of the Minister of Internal Affairs of 9 January 2012 approving the Rules for the internal organization of internal affairs special holding centres⁶²
- Order No. 312 of the Minister of Internal Affairs of 22 May 2012 approving the Rules for visits by the public monitoring commission to internal affairs special institutions⁶³
- Order No. 89 of the Procurator General of 19 September 2014 approving the Rules for receiving and registering statements and notifications or reports of criminal offences and for the maintenance of the Unified Register of Pretrial Investigations⁶⁴

⁵⁰ <https://adilet.zan.kz/rus/docs/Z2100000093>.

⁵¹ <https://adilet.zan.kz/rus/docs/Z2100000092>.

⁵² <https://adilet.zan.kz/rus/docs/Z2100000091>.

⁵³ <https://adilet.zan.kz/rus/docs/U1600000192>.

⁵⁴ <https://adilet.zan.kz/rus/docs/P1400001218#z3>.

⁵⁵ <https://adilet.zan.kz/rus/docs/S1200000002>.

⁵⁶ https://adilet.zan.kz/rus/docs/P99000007S_.

⁵⁷ https://adilet.zan.kz/rus/docs/P09000007S_.

⁵⁸ https://online.zakon.kz/document/?doc_id=33808341&pos=4;-88#pos=4;-88.

⁵⁹ <https://adilet.zan.kz/rus/docs/V1100007030>.

⁶⁰ <https://adilet.zan.kz/rus/docs/V110000703>.

⁶¹ <https://adilet.zan.kz/rus/docs/V1200007417>.

⁶² <https://adilet.zan.kz/rus/docs/V1200007415>.

⁶³ <https://adilet.zan.kz/rus/docs/V1200007743>.

⁶⁴ <https://adilet.zan.kz/rus/docs/V14W0009744>.

- Joint Order No. 87 of the Procurator General of 3 September 2014 and No. 08–1-1-1/428 of the Acting Minister of Foreign Affairs of 26 September 2014 approving the Rules for the notification of diplomatic missions or consular offices of foreign States about the arrest and remand in custody of foreigners⁶⁵
- Order No. 819 of the Minister of Internal Affairs of 17 November 2014 on the Rules for the internal organization of institutions of the penal correction system
- Order No. 162 of the Procurator General of 24 December 2014 approving the Instruction on the procedure for the electronic registration of visitors at law enforcement agencies⁶⁶
- Order No. 112 of the Procurator General of 2 October 2017 approving the Instruction on the organization of procuratorial supervision of compliance with the international treaties of Kazakhstan⁶⁷
- Order No. 19 of the Chairman of the National Security Committee of 6 April 2015 approving the Rules for the protection and supervision of persons in national security bodies' detention facilities⁶⁸
- Order No. 505 of the Minister of Internal Affairs of 26 July 2017 approving the Rules for the internal organization of the remand centres of the penal correction system⁶⁹
- Order No. 107 of the Minister of Internal Affairs of 13 February 2017 approving the Rules for keeping records of persons held in institutions of the Ministry of Internal Affairs penal correction system⁷⁰
- Order No. 95 of the Minister of Internal Affairs of 5 February 2018 approving the Regulations for the internal organization of internal affairs temporary holding facilities⁷¹
- Order No. 29 of the Procurator General of 27 February 2018 approving the Rules for maintaining and using special records of persons who have committed criminal offences, and of persons charged with or convicted of criminal offences and of fingerprint records of arrested persons, persons in detention and convicted persons⁷²
- Order No. 165 of the Procurator General of 30 December 2020 approving the Instruction for the supervision of the legality of criminal prosecution⁷³
- Order No. 745 of the Minister of Internal Affairs of 28 October 2020 approving the Rules for medical assistance for persons whose liberty has been restricted, for persons serving court-imposed sentences at places of detention, for persons under arrest and in pretrial detention and for persons placed in special institutions⁷⁴
- Order No. 152 of the Procurator General of 15 November 2021 approving the Instruction regarding procuratorial supervision of the legality of criminal punishments and of the application of other effective measures in criminal law.⁷⁵

47. The efforts that have been undertaken have produced positive results that can be seen in the country's standing in global ratings, for both the protection of citizens' human rights and freedoms and their right to security, and for law enforcement.

⁶⁵ <https://adilet.zan.kz/rus/docs/V14W0009774>.

⁶⁶ https://online.zakon.kz/Document/?doc_id=31661553.

⁶⁷ <https://www.gov.kz/memleket/entities/prokuror/documents/details/8517?lang=ru>.

⁶⁸ <https://adilet.zan.kz/rus/docs/V1500010988>.

⁶⁹ <https://adilet.zan.kz/rus/docs/V1700015564>.

⁷⁰ <https://adilet.zan.kz/rus/docs/V1700014918>.

⁷¹ <https://adilet.zan.kz/rus/docs/V1800016389>.

⁷² <https://adilet.zan.kz/rus/docs/V1800016667>.

⁷³ <https://www.gov.kz/memleket/entities/prokuror/documents/details/153065?lang=ru>.

⁷⁴ <https://adilet.zan.kz/rus/docs/V2000021534>.

⁷⁵ https://online.zakon.kz/Document/?doc_id=32366040.

48. For example, the country's score in the Rule of Law Index was 0.51 in 2017–2018,⁷⁶ and it rose to 0.52 for the period 2019–2021.⁷⁷

49. This index places Kazakhstan in the group of countries at the “upper middle” level. Kazakhstan has set a goal of raising this indicator to at least 0.60 by 2030 (section 8 of the national Framework for the Legal Policy until 2030).

50. For the subcomponent on judicial independence, the World Economic Forum, in its Global Competitiveness Index, ranked Kazakhstan in seventy-ninth place out of 137 countries in 2017–2018 and seventy-first out of 141 countries in 2019. For reliability of police services, Kazakhstan placed eighty-seventh out of 137 countries in 2017–2018 and eighty-first out of 141 in 2019.⁷⁸

51. According to the national Framework for the Legal Policy until 2030, the goal is to rank at least fiftieth and sixtieth, respectively, for the subcomponents on the independence of the judiciary and the reliability of police services.

52. The World Prison Brief noted that the proportion of prisoners per 100,000 population was about 30 per cent lower in 2021 than in 2016. The proportion of minors (under 18 years of age) in relation to the total number of prisoners in 2021 was 0.1 per cent.⁷⁹

53. As reported by the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development in the Global Sustainable Development Goals Indicators Database, Kazakhstan is steadily making progress towards achieving Sustainable Development Goal 16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. For example, for indicator 16.3.2, “Unsentenced detainees as a proportion of overall prison population”, a decrease of nearly a third was recorded. While in 2015 the share was 15 per cent, in 2018 it had fallen to 10.9 per cent.⁸⁰

III. Information in respect of the articles of the Convention and the concluding observations of the Committee on Enforced Disappearances (CED/C/KAZ/CO/1)

Follow-up information relating to paragraphs 8 and 10 of the concluding observations

54. Kazakhstan has taken steps to bring its national human rights institution much closer into line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

55. The Office of the Human Rights Commissioner was established in September 2002.⁸¹

56. On 29 December 2021, the Head of State signed the Commissioner for Human Rights Act, which sets out the legal status and powers of the Office of the Commissioner and the

⁷⁶ World Justice Project, Rule of Law Index 2017–2018, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf.

⁷⁷ World Justice Project, Rule of Law Index 2019, <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21>.

⁷⁸ The Global Competitiveness Report 2017–2018, <https://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>; The Global Competitiveness Report 2019, https://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.

⁷⁹ World Prison Brief. Kazakhstan, https://www.prisonstudies.org/country/kazakhstan#further_info_past_trends.

⁸⁰ Data on global Sustainable Development Goal indicators for ECE countries. SDG Country Profile. Kazakhstan, <https://country-profiles.unstatshub.org/kaz>.

⁸¹ Presidential decree of 19 September 2002. *Source*: https://online.zakon.kz/Document/?doc_id=1033370. Official website: <https://www.gov.kz/memleket/entities/ombudsman?lang=ru>.

organization of its activities. The Act establishes important and necessary attributes of the Office's status as independent and autonomous, for example the requirement that the Commissioner be elected by the Senate (the upper house of the Parliament) and be independent and not accountable to any State bodies or officials (concluding observations, para. 10).

57. While in office, the Human Rights Commissioner may not be arrested, remanded in custody, placed under house arrest, summoned, subjected to court-imposed administrative penalties or prosecuted under the criminal law without the agreement of the Procurator General, except in cases where the Commissioner is arrested at the scene of an offence or has committed a serious or especially serious offence. The Commissioner has the right of unimpeded access to institutions and other facilities throughout the country upon presentation of official identity papers. It has been made an offence to interfere with or obstruct the lawful activity of the Human Rights Commissioner.

58. The Commissioner has a broad mandate: submitting proposals to the President, the Parliament and the Government regarding the drafting of bills and the improvement of legislation on the promotion and protection of human and civil rights and freedoms; submitting recommendations and proposals to the Government, other State bodies, local State government and self-government bodies, other organizations and officials regarding measures to prevent violations and restore human and civil rights and freedoms; making proposals to the President, the Government, the members of the Parliament and State bodies regarding matters within the competence of the Commissioner's Office; coordinating the activities of participants in the national preventive mechanism; considering complaints regarding violations of human and civil rights and freedoms; and exercising other powers, in accordance with Kazakh law.

59. The Commissioner submits annual reports to the President of Kazakhstan. These cover the outcomes of the Office's analyses of laws and regulations, its consideration of complaints and its exercise of other powers, as provided for in the Act. The Office is entitled to prepare and disseminate special reports on specific aspects of the observance of human and civil rights and freedoms. Its reports are transmitted to the relevant State bodies, which consider them from the perspective of their area of competence and must provide information on the outcome of their consideration of the report within three months of receipt.

60. The Commissioner is responsible for bringing cases to court to protect the rights and freedoms of the public at large, where these have been violated by the decisions, actions or omissions of State bodies, local government and self-government bodies, officials or civil servants.

61. The Office of the Human Rights Commissioner has representatives in the provinces, cities of national status and the capital, who exercise powers on the Office's behalf, in line with their functional responsibilities and on the Office's instructions, within the relevant administrative units.

62. The National Centre for Human Rights provides information and analysis and performs organizational, legal and other tasks in support of the Office of the Human Rights Commissioner.

63. Every year, the national budget includes a separate budget programme to provide for the resources needed to support the activities of the Office of the Commissioner for Human Rights, its representatives and the National Centre for Human Rights.

64. In his State of the Nation address of 16 March 2022,⁸² the Head of State proposed that the Commissioner for Human Rights should have the right of direct petition to the Constitutional Court – which is in the process of being established – and that the Commissioner for Human Rights Act should be elevated to the status of a constitutional law. Work has now begun on the preparation of a draft constitutional law on the Commissioner

⁸² <https://www.akorda.kz/ru/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana-1623953>.

for Human Rights. A regulatory policy consultation paper on the draft constitutional law has been posted on the Open Enactments portal.

65. According to the National Centre for Human Rights, there were no reported cases of enforced disappearance during the period under review.

66. The establishment of the post of Commissioner for Children's Rights in 2016 is a testament to the commitment of Kazakhstan to its international obligations regarding the protection of children's rights, including against enforced disappearance.⁸³

67. The possibility of recognizing the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications is currently under consideration (concluding observations, para. 8).

Follow-up information relating to articles 1–7 of the Convention and paragraph 12 of the concluding observations

68. In accordance with article 16 of the Constitution, all persons have an inalienable right to personal freedom. Arrest and remand in custody are permitted only in the circumstances specified by law and with the authorization of a court and are subject to appeal by the person remanded in custody. Without court authorization, a person may be detained for no longer than 72 hours.

69. Every person arrested, remanded in custody or charged with an offence has the right of access to a lawyer (defence counsel) from the moment that the person is detained, arrested or charged.

70. Under article 13 (3) of the Constitution, everyone has the right to receive properly qualified legal assistance. In circumstances specified by law, legal assistance is provided free of charge.

71. Due process of law, the administration of justice exclusively by the courts, the protection of human and civil rights and freedoms before the courts, respect for the honour and dignity of the individual and security of person are enshrined as the principles of criminal proceedings in articles 10–14 of the Code of Criminal Procedure.

72. Accordingly, under article 14 (1) of the Code of Criminal Procedure, no one may be arrested on suspicion of committing a criminal offence, remanded in custody or otherwise deprived of liberty except on the grounds and in accordance with a procedure prescribed by the Code.

73. Article 14 (2) of the Code of Criminal Procedure states that remand in custody and house arrest are permitted only in the circumstances specified in the Code and with the authorization of a court and are subject to judicial appeal by the person concerned.

74. In implementation of the recommendations of the Committee on Enforced Disappearances,⁸⁴ in order to bring the criminal law into conformity with articles 2 and 4 of the Convention, Kazakhstan amended the Criminal Code – specifically, article 125 (Abduction) and article 126 (Unlawful deprivation of liberty) – by adding the following aggravating circumstances to the offences established thereunder:⁸⁵

- The commission of the offence through abuse of official position
- The falsification, concealment or destruction of documents attesting to the identity of the victim

⁸³ Presidential decree of 10 February 2016. *Source:* <https://adilet.zan.kz/rus/docs/U1600000192>.

⁸⁴ The Committee's concluding observations (para. 12) and its evaluation of their implementation (CED/C/13/4).

⁸⁵ Act of 27 December 2019 amending and supplementing certain legislative acts on the improvement of the criminal law and the criminal procedural law and on the strengthening of the rights of individuals. *Source:* <https://adilet.zan.kz/rus/docs/Z1900000292>.

75. The criminal liability incurred for committing the acts in question with more serious aggravating circumstances is set out in paragraph 3 of these articles.

76. The reference to “any other form of deprivation of liberty”, in article 2 (2) of the Convention, is covered by article 127 of the Criminal Code (Unlawful placement in a psychiatric institution), among other provisions.

77. The definition of enforced disappearance set out in the Convention, namely, “abduction or any other form of deprivation of liberty by agents of the State ... followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”, has thus been incorporated into the Criminal Code through article 125 (2.9 and 2.10) and (3), article 126 (2.10 and 2.11) and (3), and article 127.

78. The provisions of articles 2 and 4 of the Convention concerning the criminalization of an act related to enforced disappearance, namely, “arrest [or] detention ... by agents of the State ... followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”, are also recognized as punishable crimes in the criminal law. Articles 414 and 435 of the Criminal Code establish the offences of “Deliberately unlawful detention or remand in custody” and “Obstruction of the lawful activity of lawyers or other persons who defend human and civil rights, freedoms and legal interests or who provide legal assistance to physical or legal persons”, respectively.

79. Under article 135 of the Code of Criminal Procedure, persons conducting pretrial investigations are required to notify without delay an adult family member of a suspect’s arrest and whereabouts or, if there are no immediate family members, other relatives or persons close to the suspect, or allow the suspect to give such notification.

80. Wilful failure to inform relatives of a suspect’s detention and whereabouts, unlawful refusal to provide information on the place where a person is being held in custody to a person who has the right to receive such information and falsification of the time at which an arrest record was drawn up or of the time of the actual arrest are acts punishable under article 414 (4) of the Criminal Code.

81. In accordance with Supreme Court Regulatory Decision No. 7 of 28 December 2009, detention is unlawful and the person concerned is to be released immediately if the conditions, grounds and motives established under articles 128 and 131 of the Code of Criminal Procedure are not met; if more than three hours pass before a record of arrest is drawn up; if the time limits for custody established under article 131 (4) of the Code of Criminal Procedure are exceeded without the authorization of the investigating judge; or if the time limits for custody authorized by the investigating judge are exceeded. Persons who commit unlawful acts with specific intent are prosecuted under article 414 of the Criminal Code.

82. Offences covered by article 414 of the Criminal Code may be committed by officials of bodies conducting initial inquiries or investigations, procurators, directors of institutions where detainees are held (directors of remand centres or temporary holding facilities) – that is, persons authorized by the criminal procedure law to carry out arrests or impose the preventive measure of remand in custody – or by officials of the law enforcement agencies responsible for ensuring the lawfulness of remand in custody. Unlawful arrest or remand in custody by other officials constitutes excess of official powers under article 362 of the Criminal Code.

83. The legal status and powers of lawyers, the procedure for inviting or appointing them and the grounds on which their participation in criminal proceedings is mandatory are governed by articles 66–70 of the Code of Criminal Procedure.

84. A defence counsel is a person who, in accordance with the procedure established by law, defends the rights and interests of witnesses with the right to a defence, suspects, accused persons, defendants, convicted persons or acquitted persons and provides them with legal assistance during criminal proceedings.

85. Lawyers act as defence counsel. When lawyers act as defence counsel in criminal proceedings, their client’s spouse, close relative, guardian or tutor or a representative of the

organization responsible for the client's care or maintenance may conduct the defence alongside them, provided that the suspect, accused person, defendant, convicted person or acquitted person has submitted a written request to this effect. Foreign lawyers may act as defence counsel, as prescribed by law, if an international treaty between Kazakhstan and the State concerned includes a reciprocal provision to this effect.

86. The defence counsel has the right to participate in criminal proceedings as soon as the person concerned has the status of either a witness with the right to a defence or a suspect or accused person, or at any later stage of the criminal proceedings.

87. Lawyers may not refuse to defend such persons if they have agreed to defend them.

88. Under article 67 (1) of the Code of Criminal Procedure, the participation of a defence lawyer is mandatory in criminal procedures if:

(1) The suspect, accused person, person standing trial, convict or acquitted person requests it;

(2) The suspect, accused person, person standing trial, convict or acquitted person has not reached the age of majority;

(3) The suspect, accused person, person standing trial, convict or acquitted person is unable, owing to physical or psychological impairments, to defend himself or herself;

(4) The suspect, accused person, person standing trial, convict or acquitted person does not have a command of the language in which the proceedings are conducted;

(5) The person is suspected or accused of a crime punishable by deprivation of liberty exceeding 10 years or by life imprisonment;

(6) The suspect, accused person, person standing trial or convict is held in custody as a preventive measure or is subjected to a compulsory psychiatric evaluation;

(7) There are contradictory interests between suspects, accused persons, persons standing trial, convicts or acquitted persons, one of whom has counsel;

(8) The proceedings include the participation of a representative of a victim (a private individual bringing charges) or a civil plaintiff;

(9) The proceedings include the participation of a procurator supporting charges brought by the State (as State prosecutor);

(10) The suspect, accused person, person standing trial, convict or acquitted person is outside Kazakhstan and refuses to appear before a criminal prosecution body or a court;

(11) A plea bargain is requested or accepted.

89. In the circumstances covered by article 67 (1) of the Code of Criminal Procedure, if the suspect, accused person, person standing trial, convict or acquitted person, or the person's legal representative or another acting on the person's instruction, does not request a defence lawyer, the body conducting the criminal proceedings must provide for the participation of a defence lawyer at the corresponding stage of the proceedings.

90. Under article 435 of the Criminal Code, obstructing the lawful activity of lawyers or other persons who defend human and civil rights, freedoms and legal interests in criminal proceedings or who provide legal assistance to physical or legal persons, including through the use of one's official position, is a criminal offence when such actions seriously undermine an individual's rights, freedoms and legal interests, the rights and legal interests of a legal entity or the legally protected interests of society or the State. The same applies to violations of the autonomy and independence of such activity.

91. The unlawful imposition of administrative penalties may be categorized as an offence under article 361 (Abuse of official powers) or article 362 (Excess of authority or official powers) of the Criminal Code.

92. The unlawful use of remand in custody may be held by a judge to constitute a knowingly unjust judicial decision under article 418 of the Criminal Code.

93. No criminal offences related to enforced disappearances were committed by agents of the State during the reporting period.
94. The provisions of article 3 of the Convention have been incorporated into articles 125 and 126 of the Criminal Code.
95. Under criminal legislation, both the person who commits an act of enforced disappearance and any accomplices, including the organizers and instigators of and accessories to the offence, are held criminally liable.
96. In accordance with article 28 (3) of the Criminal Code, an organizer is defined as a person who organizes or directs the commission of an offence or who establishes or directs a criminal group.
97. A perpetrator is defined as a person who directly commits a criminal offence or directly participates in its commission along with other persons (joint perpetrators) or who commits a criminal offence through other persons who are not criminally responsible by reason of their age, their unfitness to plead or other circumstances provided for in the Criminal Code, or through persons who commit an act by negligence.
98. An instigator is defined as a person who convinces another person to commit a criminal offence through persuasion, bribery, threats or other methods. An accessory is defined as a person who abets a criminal offence by providing advice, instructions, information, implements or means to commit the act in question or by removing obstacles to its commission, or who agrees, prior to the offence, to conceal the perpetrator, the implements or other means used to commit the offence, evidence of the offence or items obtained as a result of the offence, or to purchase or sell such items.
99. The Law Enforcement Service Act, No. 380-IV of 6 January 2011, establishes that, on receipt of an order or instruction that contradicts the law, an officer is required to follow the law and enjoys its protection.
100. The Criminal Code establishes penalties for these unlawful acts commensurate with the danger posed to society and the severity of their consequences.
101. The maximum sentences of deprivation of liberty are thus 15 years for abduction, 10 years for unlawful deprivation of liberty, 8 years for unlawful placement in a psychiatric institution, 7 years for abuse of official powers, 10 years for excess of authority or official powers, 10 years for deliberately unlawful detention or remand in custody, 10 years for issuance of a knowingly unjust verdict, decision or other judicial instrument and 5 years for obstruction of the lawful activity of lawyers or other persons who defend human and civil rights, freedoms and legal interests or who provide legal assistance to physical or legal persons.
102. When conducting a criminal prosecution, in each case, the criminal prosecution bodies take account of both mitigating and aggravating circumstances in determining criminal liability and punishment.
103. The provisions of article 7 (2) (a) of the Convention are reflected in article 53 of the Criminal Code, under which the circumstances mitigating criminal liability and punishment include genuine repentance, admission of guilt, active assistance in the investigation of the offence and the exposure of other persons involved.
104. For the purpose of sentencing, the mitigating circumstances that may be taken into account are not limited to those set out in article 53 (1) of the Criminal Code. For example, under national law, during sentencing, a mitigating circumstance may be deemed applicable if a person implicated in the commission of an enforced disappearance effectively contributes to bringing the disappeared person forward alive or makes it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance.
105. Article 54 of the Criminal Code sets out aggravating circumstances in determining criminal liability and punishment. These include the commission of an offence with serious consequences; the commission of an offence in a group, a group acting by prior conspiracy or a criminal group; the commission of an offence against a woman known to be pregnant, against a minor or another defenceless or vulnerable person or against a person who is

dependent on the perpetrator; the commission of an offence involving particular cruelty or sadism or the humiliation or torture of the victim; the commission of an offence using the uniform or documents of a public official; and the commission of offences by law enforcement officers, officials of special State agencies or judges with the use of their official positions.

Follow-up information relating to article 8 of the Convention and paragraph 14 of the concluding observations

106. The statute of limitations for criminal prosecution refers to the period of time elapsed since the date of commission of an offence, after which a person is exempted from criminal liability, under the conditions established by law.

107. Pursuant to article 11 of the Criminal Code, the statute of limitations for criminal prosecution is determined by the category of the criminal offence. In accordance with article 71 of the Criminal Code (Grounds for exempting a person from criminal liability under the statute of limitations), there is exemption from criminal liability if the following periods have elapsed since the date of commission of a criminal offence: 10 and 15 years under article 125 (2.9), (2.10) and (3) (Abduction), respectively; 5 and 10 years under article 126 (2.10), (2.11) and (3) (Unlawful deprivation of liberty), respectively; 5 and 10 years under article 127 (1) and (2) (Unlawful placement in a psychiatric hospital), respectively; 5 and 10 years under article 361 (3) and (4) (Abuse of official powers), respectively; 10 years under article 362 (3) and (4) (Excess of authority); 5 years under article 414 (1) (Deliberately unlawful detention or remand in custody); 10 years under article 414 (2) and (3) (Deliberately unlawful detention or remand in custody); 1 year under article 414 (4) (Deliberately unlawful detention or remand in custody); 10 years under article 418 (Issuance of a knowingly unjust verdict, decision or other judicial instrument); and 5 years under article 435 (Obstruction of the lawful activity of lawyers or other persons who defend human and civil rights, freedoms and legal interests or who provide legal assistance to physical or legal persons).

108. On the basis of article 71 (6) of the Criminal Code, no statute of limitations is applicable in respect of the especially serious offences covered by article 125 (3), namely abduction committed by a criminal gang either for the purpose of exploitation or causing, by negligence, the death of the victim or other serious consequences.

Follow-up information relating to article 9 of the Convention

109. Issues of jurisdiction and the application of the criminal law to persons who have committed criminal offences in the territory of Kazakhstan and outside its territory are addressed in detail in articles 7 and 8 of the Criminal Code.

110. A criminal offence committed in the territory of Kazakhstan is defined as an act that begins, continues or is completed in the territory of Kazakhstan. The Criminal Code is also applicable in respect of criminal offences committed on the continental shelf and in the exclusive economic zone of Kazakhstan.

111. A person who commits an offence on board a ship or aircraft registered at a port of Kazakhstan and which is on the open seas or in the air outside the borders of Kazakhstan is subject to criminal liability under the Criminal Code of Kazakhstan, unless otherwise stipulated in an international treaty to which Kazakhstan is a party. Criminal liability is also incurred thereunder by a person who commits a criminal offence on board a military vessel or aircraft of Kazakhstan, regardless of its location.

112. Where diplomatic representatives of foreign States or other persons who enjoy immunity commit an offence in the territory of Kazakhstan, their liability is determined in accordance with international law.

113. Kazakh citizens who commit a criminal offence outside Kazakhstan are subject to criminal liability under the Criminal Code of Kazakhstan if the act is recognized as a criminal offence in the State in whose territory it took place, and provided that such persons have not been convicted in the other State.

114. Foreign nationals and stateless persons in Kazakhstan incur liability on the same grounds if they cannot be extradited to a foreign State for criminal prosecution or to a sentence in accordance with an international treaty to which Kazakhstan is a party.

115. Military personnel in Kazakh military units deployed outside Kazakhstan incur criminal liability under the Criminal Code for criminal offences committed in the territory of a foreign State, unless otherwise provided for in an international treaty to which Kazakhstan is a party.

116. In accordance with article 4 of the Code of Criminal Procedure, the application in the territory of Kazakhstan of the criminal procedure law of another State by the investigating bodies and court of that State or a body conducting criminal proceedings on their behalf is permitted if an international treaty ratified by Kazakhstan makes provision to that effect.

Follow-up information relating to articles 10–12 of the Convention and paragraph 16 of the concluding observations

117. Kazakhstan complies with article 10 (1) of the Convention.

118. The Code of Criminal Procedure provides for the use of preventive measures, whether remand in custody or other coercive procedural measures, against persons suspected or accused of committing criminal offences falling within the meaning of “enforced disappearance” as defined in the Convention.⁸⁶

119. In accordance with article 147 (1) of the Code of Criminal Procedure, a suspect, accused person or defendant may be remanded in custody as a preventive measure, provided such action is authorized by a judge, in the event that the offence in question carries a statutory penalty of over 5 years’ imprisonment and there is no possibility of applying another, more lenient preventive measure.

120. In exceptional cases, such preventive measures may be imposed on persons suspected, accused or convicted of an offence that carries a statutory penalty of less than 5 years’ imprisonment if the persons in question: are not permanently resident in Kazakhstan or their identity cannot be established; have failed to comply with a previously imposed preventive measure or coercive procedural measure; have attempted to flee, or have fled, from the criminal prosecution body or the court; are suspected of committing an offence as part of an organized group or criminal association (criminal organization); have a criminal record for a previous serious or especially serious offence; or are reportedly still involved in criminal activity.

121. Article 148 of the Code of Criminal Procedure regulates the procedure to be followed by investigating judges when considering requests to authorize the use of remand in custody as a preventive measure.

122. The period of remand in custody or pretrial detention may not exceed two months, barring exceptional circumstances provided for in the Criminal Code. The grounds and procedure for extending the period of remand in custody in exceptional cases, up to a maximum of 18 months, are strictly regulated by articles 151 and 152 of the Code of Criminal Procedure.

123. Under article 541 (1) and (3) of the Code of Criminal Procedure, a minor who is a suspect or accused person may be remanded in custody as a preventive measure only in exceptional cases, when suspected of a serious or especially serious offence. A minor may not be remanded in custody during pretrial proceedings for longer than 6 months.

124. Under article 589 (7) of the Code of Criminal Procedure, a person subject to extradition may be detained prior to extradition for 12 months from the moment of arrest. A person whose extradition has been requested by another State for the purpose of enforcing a court judgment may be detained prior to extradition for no longer than the sentence imposed by the requesting State.

⁸⁶ Code of Criminal Procedure, chaps. 18 and 19.

125. Upon expiration of the 12-month time limit for pre-extradition detention following a decision to extradite a person, the duration of remand in custody during the period leading up to the person's actual transfer may be extended by the investigating judge at the request of the procurator. However, it may not exceed the maximum period of deprivation of liberty applicable under the law of the foreign State for the offence that the person subject to extradition is accused or suspected of committing. Extensions may be granted if additional time is needed to:

- (1) Arrange the transfer of the person subject to extradition to the territory of the requesting State;
- (2) Consider a complaint filed by the person subject to extradition against an extradition decision by the Procurator General or a deputy.⁸⁷

126. In accordance with the Rules for the notification of diplomatic missions or consular offices of foreign States about the arrest and remand in custody of foreigners, the diplomatic missions and consular offices of foreign States accredited in Kazakhstan, including non-resident diplomatic missions and consular offices, must be notified immediately of all cases in which one of their nationals or a national of a State that they represent has been arrested or remanded in custody.

127. Persons conducting pretrial investigations who arrest a foreign national or apply for a foreign national to be remanded in custody as a preventive measure must notify the Ministry of Foreign Affairs of Kazakhstan within six hours of the arrest or of the authorization by a court of the use of remand in custody as a preventive measure, unless otherwise provided for in an international treaty ratified by Kazakhstan.

128. Within 24 hours of the moment of actual arrest or remand in custody, the Ministry of Foreign Affairs of Kazakhstan must notify the relevant diplomatic mission or consular office.

129. The diplomatic mission or consular office is notified by official correspondence, email, fax or telephone message.

130. Kazakhstan takes all necessary measures to ensure that every case of enforced disappearance is investigated promptly and impartially, in accordance with articles 10 (2) and 12 (1) and (2) of the Convention.

131. In fulfilment of the objectives of criminal proceedings, whenever evidence of a criminal offence is found, the criminal prosecution body must take all the measures prescribed by law, within its competence, to establish whether a criminal offence has been committed and to identify and punish the perpetrators.

132. The State ensures that every person who is a victim or witness of enforced disappearance or holds information about a case of enforced disappearance has the right to file a statement or notification and to have it promptly and impartially investigated by the competent body.

133. The criminal prosecution body must ensure that the victim has access to justice and take steps to provide reparation for the harm caused by the criminal offence.

134. In accordance with article 180 of the Code of Criminal Procedure, in order to launch a pretrial investigation, there must be sufficient evidence to show that a criminal offence has occurred and no circumstances precluding proceedings. Specifically, the information may consist of:

- (1) A statement by a physical person or a communication from an official of a State body or a person performing an administrative function within the organization reporting a criminal offence or a person's disappearance;
- (2) An admission of guilt;
- (3) Reports in the media;

⁸⁷ Code of Criminal Procedure, art. 589 (9).

(4) A report by an official of a criminal prosecution body of a criminal offence that is in preparation, is being committed or has been committed.

135. Where there are grounds for conducting a pretrial investigation, the person or agency conducting the initial inquiry, the head of the investigative unit, the investigator or the procurator must, as competent, accept the criminal case by issuing a decision.

136. Communications regarding criminal offences are received and registered in accordance with Order No. 89 of the Procurator General of 19 September 2014 approving the Rules for receiving and registering statements, notifications or reports of criminal offences and for the maintenance of the Unified Register of Pretrial Investigation.

137. Every statement or notification of a criminal offence must be entered in the Unified Register of Pretrial Investigations.⁸⁸ The procedure for receiving and registering such statements and notifications and maintaining the Unified Register of Pretrial Investigations is set out in Order No. 89, mentioned above.

138. It is prohibited to refuse to receive and register a statement regarding a criminal offence or to launch a pretrial investigation on any of the other grounds set out in article 180 (1) of the Code of Criminal Procedure. Such refusal incurs liability under the law and is subject to appeal before the procurator or the courts, as prescribed by the Code.

139. The period for completing the pretrial investigation, as established under 192 of the Code of Criminal Procedure, commences on the date on which the communication regarding the criminal offence is entered in the Unified Register of Pretrial Investigations.

140. Pretrial investigations in the criminal matters discussed in the present report are conducted promptly in accordance with article 187 of the Code of Criminal Procedure by the internal affairs and national security agencies, the anti-corruption service and the Department of Economic Investigation. The criminal prosecution bodies have the necessary powers and resources to conduct pretrial investigations effectively.

141. For the criminal offences covered by article 125 (2) and (3) (Abduction), article 126 (2) and (3) (Unlawful deprivation of liberty) or article 127 (Unlawful placement in a psychiatric hospital) of the Criminal Code, the pretrial investigation is conducted by investigators of the internal affairs bodies.

142. There are specialized units within the system of the Ministry of Internal Affairs for the detection of offences related to abduction, unlawful deprivation of liberty and trafficking in persons. They have sufficient personnel and resources to complete their assigned tasks.

143. For the criminal offences covered by article 414 (1–3) of the Criminal Code (Deliberately unlawful detention or remand in custody), the pretrial investigation is conducted by the relevant internal affairs agency or the anti-corruption service that respectively institutes the pretrial proceedings.

144. For the criminal offences covered by article 414 (4) of the Criminal Code, the pretrial investigation is conducted by the internal affairs authorities or the anti-corruption service under a summary procedure.

145. With regard to article 435 of the Criminal Code (Obstruction of the lawful activity of lawyers or other persons who defend human and civil rights, freedoms and legal interests or who provide legal assistance to physical or legal persons), cases are investigated by the relevant internal affairs agency, the anti-corruption service or the Department of Economic Investigation that respectively institutes the pretrial proceedings.

⁸⁸ The Unified Register of Pretrial Investigations is an automated database for information relating to the grounds on which pretrial investigations are initiated as set out in article 180 (1) of the Code of Criminal Procedure; the procedural decisions adopted in that regard; the actions taken; the course of the criminal proceedings; and the complainants and parties to the criminal proceedings. In addition, criminal proceedings are conducted in an electronic format at the pretrial investigation stage. See Order No. 89 of the Procurator General of 19 September 2014, para. 2 (14). *Source*: <https://adilet.zan.kz/rus/docs/V14W0009744>.

146. Cases involving the criminal offences covered by article 361 (Abuse of official powers) or article 362 (4.4) (Excess of authority) of the Criminal Code are entrusted to investigators of the anti-corruption service.

147. For the criminal offences covered by article 361 (3) and (4) (Abuse of official powers) or article 362 (3) and (4.3) (Excess of authority) of the Criminal Code, the pretrial investigation may be conducted by investigators of the National Security Committee if the offences in question were committed in combat.

148. It is punishable by law to exert influence of any kind over a criminal prosecution body with a view to obstructing the objective investigation of a criminal case.

149. Under article 193 of the Code of Criminal Procedure, the director of the procuratorial body may, in exceptional circumstances, remove the criminal case from the person or body conducting the pretrial investigation and transfer it to another person or body for that purpose, irrespective of the investigative jurisdiction established by law, to ensure that the investigation is impartial, complete and objective (concluding observations, para. 16).

150. Articles 125 and 158 of the Code of Criminal Procedure establish that if there are reasonable grounds to believe that accused persons, defendants or suspects would obstruct the investigation or trial, impede redress for the harm caused by the offence or continue to engage in criminal activity should they remain in their posts, the investigating judge (during the pretrial investigation) or the court (during judicial proceedings) may, in the absence of grounds for the imposition of remand in custody as a preventive measure, suspend them from their posts once a decision has been adopted to qualify their acts.

151. Law enforcement personnel may also be suspended from service under article 38 of the Law Enforcement Service Act of 6 January 2011.

152. In compliance with article 11 of the Convention, in the event that an alleged perpetrator of enforced disappearance is found in the territory of another State, Kazakhstan upholds the principle of certainty of punishment along with the principle of the right to a fair trial.

153. Article 598 of the Code of Criminal Procedure sets out the procedure and conditions for accepting the transfer of criminal proceedings, upon request by the competent agency of a foreign State, to continue the criminal prosecution of a person who has committed an offence in the territory of that State and who is currently in Kazakhstan.

154. Where such a request is granted, the Office of the Procurator General of Kazakhstan, in accordance with a procedure set out in the Code of Criminal Procedure, assigns the pretrial investigation to the corresponding competent authority and informs the requesting party.

155. The pretrial investigation is carried out in the manner prescribed by the Code of Criminal Procedure. In such a scenario, the same rules and methods apply for determining whether the act covered by the criminal law took place, whether it was committed by the person in question and whether the person is guilty, as well as for establishing other circumstances of relevance to the proper resolution of the case.

156. Any person against whom proceedings are brought in connection with an offence of enforced disappearance is guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance enjoys a fair trial before a competent, independent and impartial court or tribunal established by law.

157. Article 112 (1.1) of the Code of Criminal Procedure establishes that factual information may not be admitted as evidence if obtained by means that contravene the provisions of criminal procedure law. It may not be admitted if such means, by infringing the rights of participants in proceedings as guaranteed by law or depriving such persons of those rights, or by violating other rules of criminal procedure during the pretrial investigation or prosecution of a case, have influenced or may influence the reliability of the factual information obtained, for example through the use of torture, violence, threats or deception or other unlawful acts or ill-treatment.

158. Under article 197 of the Code of Criminal Procedure, it is prohibited to use torture, violence, threats or other unlawful measures or ill-treatment or to endanger the life or health of those involved in the course of an investigation.

159. Torture is subject to criminal prosecution under article 146 of the Criminal Code and, with aggravating circumstances, is categorized as a serious offence with a maximum penalty of 12 years' imprisonment. Under article 415 of the Criminal Code, it is a criminal offence to coerce a suspect, accused person, victim or witness into giving evidence; to prevent a person from voluntarily giving evidence or from giving a statement regarding a crime that has been committed; to coerce a person into refusing to give evidence; or, in the case of procurators or persons conducting the pretrial investigation, to coerce an expert into giving an opinion through the use of threats, blackmail or other unlawful acts.

160. The court, procurator and person conducting an initial inquiry are required to take all the measures provided for by law in conducting a comprehensive, complete and objective investigation of all the facts needed for the proper elucidation of the case.

161. Due process of law is a fundamental principle of criminal proceedings. The courts and criminal prosecution bodies must comply with the law during criminal proceedings, failing which they incur liability as established by law and their unlawful decisions are declared invalid and revoked.

162. Section 7 of the Constitution (Courts and justice, arts. 75–82) sets out the principles governing the administration of justice and the election and appointment of judges.

163. Under article 1 of the Constitutional Act on the Judicial System and the Status of Judges, No. 132 of 25 December 2000, no one may be deprived of the right to have his or her case heard by a competent, independent and impartial court in accordance with all the requirements of the law and justice.

164. Judges are independent in their task of dispensing justice and are subject only to the Constitution and the law; any kind of interference in the work of a court in the dispensation of justice is prohibited and incurs liability under the law.

165. Article 51 (2) of the Code of Criminal Procedure states that any criminal case may be considered only by a lawful, independent, competent and impartially constituted court. The following rules must be observed:

- (1) Determining the appropriate jurisdiction for specific criminal cases;
- (2) Constituting the court to hear specific criminal cases;
- (3) Recusing judges;
- (4) Separating the adjudication function from the prosecution and defence functions.

166. In accordance with article 12 (1) and (4) of the Convention, the State takes sufficient measures to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any other evidence given.

167. Criminal procedure law and the Act of 5 July 2000 on State Protection of Parties to Criminal Proceedings provide for the application by the State of a set of measures to protect the lives, health and property and the legitimate rights and interests of persons who are parties to criminal proceedings, their family members and close relatives, and to ensure their safety, with the aim of preventing unlawful interference in such proceedings.

168. Under article 96 (1) of the Code of Criminal Procedure, the body conducting the criminal proceedings must take measures to ensure the safety of suspects, accused persons, victims, witnesses and other parties to criminal proceedings, as well as their family members and close relatives, if there are indications that they face a danger of violence or other criminal acts in connection with the criminal proceedings.

169. To ensure the safety of witnesses, suspects and other parties to criminal proceedings, as well as members of their families and close relatives, the following measures are available to the body conducting the criminal proceedings:

- (1) Issuance of official warnings to persons who threaten to commit violence or other criminal acts, notifying them that they are liable to criminal prosecution;
- (2) Restriction of access to information about protected persons;
- (3) Issuance of an instruction to ensure the personal safety of such persons;
- (4) Application, in accordance with a procedure set out in the Code, of preventive measures in respect of the accused person or suspects, to prevent them from committing, or organizing the commission of, acts of violence or other criminal acts against parties to criminal proceedings;
- (5) Imposition of a restraining order as a coercive procedural measure.

170. The procedure for ensuring the personal safety of witnesses, suspects, accused persons and other parties to criminal proceedings, as well as their family members and close relatives, is set out in the Act on State Protection of Parties to Criminal Proceedings, No. 72 of 5 July 2000.

171. Article 98 of the Code of Criminal Procedure also sets out measures to ensure the safety of parties to judicial proceedings.

172. The legal, economic, social and organizational framework for ensuring that the victims of specific instances of criminal offences receive compensation is governed by the Victims Compensation Fund Act.

173. In total, the State spent 46 million tenge on protection of parties in 2016; 43 million tenge in 2017; 35 million tenge in 2018; 38 million tenge in 2019; 41 million tenge in 2020; and 39 million tenge in 2021.

174. Obstruction of justice or a pretrial investigation is a criminal offence under article 407 of the Criminal Code.

Follow-up information relating to articles 13–16 of the Convention and paragraph 18 of the concluding observations

175. International cooperation in criminal matters, including extradition, is governed by section 12 of the Code of Criminal Procedure.

176. Kazakhstan is a party to over 70 multilateral and universal international human rights treaties.

177. The Convention has been ratified and serves as a legal basis for the provision of legal assistance.

178. If a foreign State requesting legal assistance is not a party to the Convention, legal or other assistance may be afforded on the basis of a request by the foreign State, or requested by a central body of Kazakhstan, based on the principle of reciprocity.

179. In the absence of an international treaty to which Kazakhstan is a party, requests, instructions or applications must be refused if there are substantial grounds for believing that they have been made for the purpose of prosecuting, convicting or punishing a person on account of that person's origin, social, official or property status, sex, race, ethnicity, language, attitude to religion, beliefs, place of residence or any other personal circumstances.

180. The legal avenue for providing legal assistance, including to victims of enforced disappearance, and for searching for, locating and releasing disappeared persons is governed by chapter 59 of the Code of Criminal Procedure and ministerial orders of the Ministry of Internal Affairs on matters relating to searches and international cooperation.

181. The grounds and procedures for pre-extradition detention and for extradition are governed by chapter 60 of the Code of Criminal Procedure.

182. The investigating judge issues an order authorizing or refusing pre-extradition detention.

Table

Information from the Supreme Court on the authorization of the preventive measure of pre-extradition detention

<i>Period</i>	<i>Number of applications considered</i>	<i>Granted</i>	<i>Denied</i>
2016	161	161	0
2017	140	139	1
2018	190	189	1
2019	173	171	2
2020	87	87	0
2021	90	89	1

183. After receiving the necessary documents from the State requesting extradition, the Office of the Procurator General performs an extradition review. After examining the case file, the Procurator General or deputy Procurator General decides whether to extradite or refuse extradition to the foreign State.

184. When it ratified the Convention, Kazakhstan took on the obligation to fully implement its provisions, including those in article 16 on non-extradition to the requesting State where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance.

185. An exhaustive list of grounds for refusing extradition is set out in article 590 of the Code of Criminal Procedure.

186. Extradition may be refused in accordance with article 590 (1.7) of the Code of Criminal Procedure if there are substantial grounds for believing that the person in question would be at risk of being subjected to torture in the requesting State or if there is a risk to the person's health, life or liberty on the grounds of race, faith, ethnicity, citizenship, membership of a particular social group or political beliefs, except in cases provided for by an international treaty to which Kazakhstan is a party.

187. In addition, extradition will be refused if it is contrary to obligations under the international treaties to which Kazakhstan is a party and there are other grounds provided for by such a treaty.⁸⁹

188. There is no basis for refusing extradition on the grounds that enforced disappearance is regarded as a political offence, as an offence connected with a political offence or as an offence inspired by political motives.

189. Article 592 of the Code of Criminal Procedure established a procedure to file an appeal with the Supreme Court against an extradition decision. The Supreme Court verifies the legality and validity of the decision with regard to its compliance with national legislation and the international treaties to which Kazakhstan is a party.

190. Thus, the law provides for the conditions so that the State can thoroughly and individually in each case consider the possible danger to the life or health of the person whose extradition is requested, including the danger of enforced disappearance, and whether to deny extradition, in accordance with its obligations under the Convention.

191. Kazakhstan is taking the necessary measures to ensure unhindered access to refugee status determination procedures that comply fully with the obligations arising under article 16 of the Convention (concluding observations, para. 18).

192. Political asylum is granted to foreign nationals, stateless persons and their family members who are seeking asylum and protection from persecution or from a real risk of becoming a victim of persecution in their country of nationality or residence for their public

⁸⁹ Code of Criminal Procedure, art. 590 (1.11–12).

political activities or religious beliefs, and in cases of violations of human rights provided for by rules of international law.⁹⁰

193. Decisions on changes of citizenship and the granting of political asylum are made by the President, on the basis of applications submitted to the Office of the President.

194. One of the grounds for denial of political asylum in Kazakhstan is the commission of a crime against peace, a war crime or a crime against humanity or of acts contrary to the purposes and principles of the United Nations or other international organizations of which Kazakhstan is a member.

195. By acceding to the Convention relating to the Status of Refugees of 28 July 1951,⁹¹ Kazakhstan expressed its willingness to afford protection to refugees.

196. The granting, extension, withdrawal and termination of refugee status in Kazakhstan is carried out in line with procedures provided for in the Refugees Act, No. 216-IV of 4 December 2009.⁹²

197. Persons seeking asylum may submit a written application for refugee status in person or through a designated representative to the local executive authority of the province, city of national status or the capital, depending on their location, upon their arrival in Kazakhstan, or while already in the country, whenever they become aware of circumstances that would make them a victim of persecution on the grounds of race, ethnicity, faith, citizenship, membership of a particular social group or political beliefs.

198. Persons crossing the border are entitled to submit a written application at a migration control post, or in the absence of such a post, to a unit of the Border Guard Service of the National Security Committee.

199. The competent authority clarifies the circumstances surrounding their arrival in Kazakhstan and registers the application for refugee status within two calendar days. On the date it is registered, asylum-seekers are issued with a document confirming their status and their registration is granted for the period until a decision is made on their application.

200. In April 2017, a commission was established to consider appeals against decisions handed down by local offices of the internal affairs authorities denying the granting, extension, withdrawal or termination of refugee status.

201. According to information from the migration police, no applications for refugee status owing to a risk of enforced disappearance in the person's country of nationality or residence have been submitted.

202. The number of registered refugees was 628 in 2016, 582 in 2017, 553 in 2018, 504 in 2019, 425 in 2020 and 342 in 2021. Between 2016 and 2021, the refugee status of 425 foreigners was terminated owing to their voluntary repatriation, resettlement in a third country, naturalization, including the acquisition of Kazakh citizenship, receipt of a residence permit or receipt of stateless status.

Follow-up information relating to articles 17 and 18 of the Convention and paragraphs 20, 22 and 24 of the concluding observations

203. The State strictly complies with article 17 (1) of the Convention, which provides that "no one shall be held in secret detention", and implements it in line with the provisions of the Code of Criminal Procedure, the Penalties Enforcement Code, the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities and departmental enactments.

204. In accordance with article 131 (3), article 135 and article 148 (14) of the Code of Criminal Procedure and article 7 (4) of the Act on Procedures and Conditions for the Custody

⁹⁰ Presidential Decree No. 198 of 10 October 2006 on the Citizenship Commission attached to the Office of the President, para. 5.

⁹¹ Act of 15 December 1998. *Source*: https://adilet.zan.kz/rus/docs/Z980000317_.

⁹² https://online.zakon.kz/Document/?doc_id=30525705.

of Persons in Special Temporary Detention Facilities, persons conducting pretrial investigations must notify the procurator in writing of the place of detention or change of place of detention of suspects promptly, no more than 12 hours after an arrest, and must also provide such information without delay to an adult member of their families or, in the absence of such family members, to other relatives or persons close to them, or to allow the suspects themselves to convey such notification. If the person held in detention is a foreigner, the embassy, consulate or other office of the State must also be notified through the Ministry of Foreign Affairs.

205. Suspects and accused persons are entitled to receive information about their legal status, rights and obligations and about the detention regime. They have a guaranteed right to security of person in places of detention and to meetings with their counsel, relatives and other persons.⁹³

206. In accordance with article 25 of the Penalties Enforcement Code, when convicted persons arrive at a facility to serve their sentence, the administration of the institution or of the entity responsible for enforcing the sentence must inform a person of their choice, either their spouse, a relative or their legal guardian, in writing and within two working days.

207. Upon the arrival of a foreign national, the embassy, consulate or other office of the State of nationality is notified through the Ministry of Internal Affairs within the same time period.

208. Upon admission of the convicted person to the institution or entity responsible for enforcing the sentence, the administration must provide written information and an explanation of prisoners' rights and obligations, the restrictions, procedures and conditions for serving the sentence and any changes, to be signed by the convict.

209. The State complies with article 17 (2) (a) of the Convention.

210. The grounds and procedures for arresting persons suspected of committing criminal offences are set out in articles 128 and 131 of the Code of Criminal Procedure.

211. Arrest is a coercive procedural measure taken by the prosecution authority to combat crime and to decide whether to remand the person in custody as a preventive measure, either in order to bring proceedings for a minor offence, or because there is reason to believe that the person may abscond or commit a more serious act.

212. Article 14 (3) of the Code of Criminal Procedure stipulates that all arrested persons must be immediately informed of the grounds for their arrest and of the criminal acts which they are suspected of committing.

213. In accordance with article 128 (2) of the Code of Criminal Procedure, officials of the prosecution authority may arrest persons suspected of committing a criminal offence punishable by deprivation of liberty if:

- (1) They are caught while committing the criminal offence or immediately afterwards;
- (2) Witnesses, including victims, directly identify them as perpetrators of the criminal offence or apprehend them in line with article 130 of the Code of Criminal Procedure;
- (3) Clear traces of the crime are found on them, their clothes, in their vicinity or at their residence;
- (4) Legally obtained materials from police or counter-intelligence operations or covert investigations in respect of the person contain reliable information about a crime that the person has committed or is preparing.

214. If there is other information giving reason to suspect persons of committing a criminal offence, they may be arrested only if they have tried to abscond, they have no permanent

⁹³ Act of 30 March 1999 on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, arts. 16–17.

residence, their identity has not been established or an application has been filed with a court for approval of remand in custody as a preventive measure.

215. Without court approval, persons may be held in custody for a maximum of 48 hours, or 24 hours in the case of juveniles, except in cases when a maximum custody period of 72 hours without court authorization is expressly provided for by the Code of Criminal Procedure.

216. Pursuant to article 131 (4) of the Code of Criminal Procedure, a maximum custody period of 72 hours is permitted if the person is suspected of having committed an especially serious offence, an offence of terrorism or extremism, an offence committed during riots, an offence committed as a member of a criminal group, offences related to illicit traffic in narcotic drugs, psychotropic substances, precursors and analogues, sexual offences against minors or an intentional offence leading to a person's death. It is also permitted if it is impossible to bring the person promptly before the investigating judge owing to distance or lack of suitable transport connections, or during a state of emergency or an emergency situation.

217. Paragraph 2 of Constitutional Council Regulatory Decision No. 2 of 13 April 2012 on the official interpretation of the Constitution's provisions concerning the calculation of constitutionally established time limits states that police custody refers to a coercive measure involving the short-term restriction of a person's individual liberty for no more than 72 hours. The custody period begins at the exact minute when the restriction of the arrested person's liberty, including freedom of movement, becomes effective, regardless of whether any procedural status is conferred on the arrested person or whether any other formal procedures are carried out.

218. The requirements of article 17 (2) (b) and (c) of the Convention are met.

219. The grounds and procedures for applying the preventive measures provided for in article 137 of the Code of Criminal Procedure, including remand in custody, are set out in articles 136, 140 and 147 of the Code of Criminal Procedure.

220. A body conducting criminal proceedings may, within the scope of its competence, apply the preventive measure of remand in custody if there is sufficient reason to believe that the suspect or accused person would abscond from the prosecution authorities or court, hinder the impartial investigation of the case or the related court proceedings or continue to engage in criminal activity, or in order to secure the enforcement of a judgment.

221. The body conducting the criminal proceedings issues a decision on application of the preventive measure, indicating the criminal offence of which the person is suspected or accused and the grounds for application of the preventive measure. A copy of the decision is provided to the person in question, along with an explanation of the procedure for appealing against the preventive measure.

222. In accordance with article 1 (10) of the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, remand in custody refers to the temporary detention of persons in special facilities, with court approval and as provided for by law.

223. On the basis of article 474 of the Code of Criminal Procedure, until the enforcement of a sentence, the judge presiding over the case or the president of the court is required to allow the spouse or close relatives of convicted persons remanded in custody, on their request, to have a meeting and telephone conversation with the convicted person.

224. Remand in custody as a preventive measure is used only with the authorization of a judge and only against persons suspected, accused or on trial for a criminal offence carrying a sentence of deprivation of liberty of more than 5 years and when it is impossible to apply other, less severe preventive measures.

225. At the end of the time limit for remand in custody established in the criminal procedure law, unless the remand period is extended, the director of the establishment where the suspect or accused person is held must issue a decision to release the person from custody.

226. The State observes the provisions of article 17 (2) (c) of the Convention on the guarantee that any person deprived of liberty is held solely in officially recognized and supervised places of deprivation of liberty.

227. The places for remand in custody of persons suspected or accused of committing a criminal offence are:

(1) The remand centres of the penal correction system and national security agencies of Kazakhstan;

(2) The temporary holding facilities of the internal affairs and national security agencies of Kazakhstan.⁹⁴

228. Pursuant to article 134 of the Code of Criminal Procedure, military personnel arrested on suspicion of committing a criminal offence and persons serving sentences of deprivation of liberty may also be detained in military detention barracks and in penal correction system facilities enforcing sentences of deprivation of liberty, respectively.

229. In accordance with articles 4 and 5 of the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, detention in special facilities is carried out in conformity with the principles of legality, the presumption of innocence, equality before the law, humanism, respect for the honour and dignity of the individual and the rules of international law. The detention must not be accompanied by acts intended to cause physical or mental suffering to suspects or accused persons held at such facilities.

230. The grounds for placing a person in a special facility are as follows:

(1) Suspects and accused persons for whom the preventive measure of remand in custody is selected may be placed in a remand centre on the decision of a judge;

(2) Persons arrested on suspicion of committing a criminal offence may be placed in temporary holding facilities on the basis of a record of arrest drawn up by an investigator or a person conducting an initial inquiry;

(3) Persons subject to administrative detention may be placed in temporary holding facilities or special holding centres by means of a judge's decision ordering the detention;

(3-1) Foreign nationals and stateless persons subject to deportation on the basis of an enforceable court judgment, decision or order and persons who have not left the territory of Kazakhstan by the time indicated in a judicial act on expulsion may be placed in special holding centres on the decision of an internal affairs agency on the preventive restriction of freedom of movement, as authorized by a court;

(4) Persons with no fixed abode and/or no identity documents may be placed in holding and processing centres on the decision of an internal affairs agency, as authorized by a court.

231. Suspects, accused persons and defendants subject to the preventive measure of remand in custody may be placed in temporary holding facilities on the decision of a judge if their transfer to a remand centre is not possible owing to distance or lack of suitable transport connections.

232. Juvenile suspects who cannot be left in their previous place of residence owing to the living conditions and conditions of care there may be placed in institutions legally fulfilling child protection functions, in accordance with a procedure set out in article 540 of the Code of Criminal Procedure.

233. In accordance with article 6 of the Act, persons detained in special facilities have the same rights, freedoms and obligations as other citizens, subject to the restrictions provided for in the Constitution and national laws.

⁹⁴ Act of 30 March 1999 on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, art. 7. *Source:* https://adilet.zan.kz/rus/docs/Z990000353_.

234. Foreign nationals and stateless persons held in special facilities and establishments have the same rights, freedoms and obligations as citizens of Kazakhstan, unless otherwise provided by the Constitution, national laws or international treaties ratified by Kazakhstan.

235. The State observes the provisions of article 17 (2) (d) and (e) of the Convention.

236. Article 17 of the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities establishes that suspects and accused persons have the right to meet with counsel confidentially and in private from the outset of their arrest. There are no restrictions on the number or length of such meetings.

237. The procedures for meetings of suspects and accused persons with their defence counsel, relatives, representatives of voluntary associations who are lawyers, other persons acting as defence counsel in the case, official representatives of a diplomatic mission or consular post of a foreign State and other persons are laid down in the internal regulations of remand centres of the penal correction system and the internal regulations of temporary holding facilities of the internal affairs agencies.

238. The procedures for the accommodation of convicted prisoners at institutions and the granting of visits to them are laid down in article 106 of the Code of Criminal Procedure and the internal regulations of institutions of the penal correction system.

239. Convicted prisoners are entitled to maintain contact with their spouses and relatives.

240. Convicted foreign nationals and stateless persons have the right to communicate with the accredited diplomatic missions and consular posts of their State in Kazakhstan. Nationals of countries without such accredited missions and posts have the right to communicate with the diplomatic missions of a State that has undertaken to protect their interests or with international organizations protecting them.

241. Regular monitoring has been carried out at all places of detention or deprivation of liberty with the participation of NGO representatives.

242. In Kazakhstan, the national preventive mechanism against torture has been in operation since 2014. The members of the national preventive mechanism are the Commissioner for Human Rights and the members of public monitoring commissions, representatives of voluntary associations working to protect the rights and legitimate interests of citizens, legal professionals, social workers and doctors selected by a Coordinating Council.

243. In accordance with article 21 of the Penalties Enforcement Code and article 3 (7) of the Commissioner for Human Rights Act, No. 90-VII of 29 December 2021, the Commissioner is entitled to make unhindered visits, upon presentation of professional credentials and without special authorization, to penal correction institutions, remand centres and other facilities throughout the country.

244. Members of the national preventive mechanism have access to information relating to the treatment of prisoners in penal correction institutions and bodies, their conditions of detention, the number of institutions and their locations and the prisoners serving their sentences there. They are entitled to receive communications and complaints about the use of torture and other cruel, inhuman or degrading treatment and punishment.⁹⁵

245. In their work, the members of the national preventive mechanism visit special temporary detention facilities and establishments and other organizations designated by national law for their visits, specifically:

- Penal correction institutions (correctional facilities, remand centres, including those of the National Security Committee, military detention barracks and military detention units)

⁹⁵ Paragraph 6 of the regulations on preventive visits by groups composed of members of the national preventive mechanism, approved by Government Decree No. 266 of 26 March 2014. *Source:* <https://adilet.zan.kz/rus/docs/P1400000266>.

- Compulsory treatment facilities (specialized tuberculosis centres, compulsory drug rehabilitation centres and psychiatric institutions providing compulsory medical care)
- Special temporary detention facilities and establishments (temporary holding facilities, special holding centres, holding and processing centres and police stations)

246. Members of the national preventive mechanism have the right to freely choose and visit facilities and organizations subject to preventive visits.

247. In 2019, the legislation was amended to broaden the mandate of the national preventive mechanism. In addition to the institutions of the penal correction system and compulsory treatment facilities, the mechanism's mandate now includes institutions providing specialized social services and child protection establishments. Over 3,000 institutions are now covered by the mechanism.

248. All visits by the members of the national preventive mechanism are unannounced. The members of the mechanism are independent in carrying out their work.⁹⁶ Obstruction of the legitimate activities of its members is an administrative offence under article 507 of the Code of Administrative Offences.

249. Members of the national preventive mechanism conducted 680 preventive visits in 2016, 582 in 2017, 461 in 2018, 495 in 2019, 517 in 2020 and 497 in 2021.

250. All special preventive visits are unannounced. There have been no recorded incidents of obstruction of the members of the national preventive mechanism in their conduct of special preventive visits.

251. Based on the preventive visits, the members of the national preventive mechanism submit recommendations on detention and living conditions, health care, food, education, provision of essential items and other issues to the administration of the institutions visited. In 2020 and 2021, members of the mechanism made 6,986 recommendations following preventive visits.

252. The members of the national preventive mechanism did not suspend their work during the state of emergency in Kazakhstan. During the state of emergency alone, the members of the mechanism carried out 159 preventive visits, conducted 43 online video interviews with persons in closed institutions and held 58 consultations.

253. Seventeen public monitoring commissions, whose membership includes representatives of non-governmental human rights organizations and government agencies, have been set up and are active in all regions of the country.

254. The public monitoring commissions continuously monitor observance of the rights and legitimate interests of suspects, accused persons and convicted prisoners at places of detention and at places of deprivation of liberty.

255. Between 2018 and 2021, the public monitoring commissions conducted 1,054 visits.

256. The actions and decisions of the courts and prosecution authorities may be challenged in accordance with a procedure set out in the Code of Criminal Procedure. All convicted and acquitted persons are entitled to a review of the verdict in a higher court, in accordance with a procedure set out in the Code of Criminal Procedure.

257. Pursuant to article 100 of the Code of Criminal Procedure, the decisions and actions of a person conducting a pretrial investigation, a procurator, a court or a judge may be challenged orally or in writing by the parties to the proceedings and other persons and legal entities whose interests are affected by the procedural acts in question.

258. Consideration of the appeal may not be assigned to the same person conducting an initial inquiry or to the same investigator, procurator or judge whose actions are being challenged, or to any official who approved the decision being challenged.

259. Refusal to accept and register the appeal is prohibited and punishable by law.

⁹⁶ Penalties Enforcement Code, art. 42.

260. Articles 106 and 107 of the Code of Criminal Procedure set out the judicial procedure for the consideration of appeals against the actions or omissions and decisions of the procurator or prosecution authorities and for appeals against the authorization by the investigating judge of the preventive measure of remand in custody of a suspect or of detention with a view to extradition. Such appeals may be filed by suspects, their lawyers or legal representatives and by victims or their legal representatives, or by other persons whose rights and freedoms are directly affected by the act of the investigating judge.

261. In accordance with articles 414 and 486 of the Code of Criminal Procedure, convicted and acquitted persons and their lawyers, including those who join the proceedings after a judgment or decision has been handed down, victims or persons bringing a private prosecution and their legal representatives, are entitled to file appeals against a judgment or decision and to apply for the review of enforceable judicial acts.

262. Article 275 of the Code of Criminal Procedure provides for guarantees of the rights and legitimate interests of persons undergoing forensic examinations. Persons placed in medical institutions have the opportunity to file complaints.

263. Pursuant to article 8 of the Code of Civil Procedure, all persons have the right to apply to the courts to protect their violated or disputed rights, freedoms and legitimate interests.

264. These provisions are compatible with article 17 (2) (f) of the Convention.

265. In compliance with article 17 (3) (a)–(h) of the Convention, the State keeps a register of persons facing criminal prosecution and those convicted of a criminal offence, and it maintains fingerprint records of persons taken into police custody, of persons remanded in custody and of convicted prisoners, in accordance with the rules approved by Order No. 29 of the Procurator General of 27 February 2018 (concluding observations, para. 22).⁹⁷

266. Information on persons taken into custody by the law enforcement agencies in line with article 128 of the Code of Criminal Procedure and on persons brought in for questioning in line with article 129 of the Code who are subsequently deprived of liberty is recorded in the electronic Unified Register of Pretrial Investigations.

267. In accordance with Order No. 89 of the Procurator General, of 19 September 2014, the electronic records created in respect of persons suspected or accused of a criminal offence contain the following: the individual's personal data (individual identification number, full name, date of birth, age, sex, place of birth, nationality, ethnicity, identity document, education, marital status, place of residence and other additional information); entry number in the Unified Register of Pretrial Investigations; name of the investigating agency; form and content of the pretrial investigation; type of involvement in the criminal offence; grounds, reasons for and length of police custody; change to the custody period; characterization of the suspect's acts; grounds for release; and other information (concluding observations, para. 22).

268. Since the information entered in the Unified Register is online, it is continuously updated and it is monitored and verified by the competent authority.

269. If information in the Unified Register is not in line with the case files of a criminal proceeding, such information is corrected.

270. When persons detained in remand centres are transferred to penal correction system institutions to serve a sentence or are released from the remand centre and removed from the Unified Register, record cards are drawn up and stored in card archives.⁹⁸

271. Within five working days of the entry of a person subject to remand in custody as a preventive measure or of a convicted prisoner, remand centres and military detention barracks must draw up alphabetical record cards and fingerprint records, with an attached

⁹⁷ Regulations on the keeping and use of special records on persons facing criminal prosecution and those convicted of a criminal offence and of fingerprints of persons taken into police custody and of persons remanded in custody and convicted prisoners. *Source:* <https://adilet.zan.kz/rus/docs/V1800016667>.

⁹⁸ Rules for keeping records of persons held in institutions of the Ministry of Internal Affairs penal correction system, approved by Ministry of Internal Affairs Order No. 87 of 18 February 2022.

copy of the person's identity document or decision establishing the person's identity, and send them to the local branch of the Committee for Legal Statistics and Special Records in the Office of the Procurator General.

272. For foreign nationals, a translation of the individual's personal details, place of birth, sex and other information in the identity documents must be attached to the documents.

273. Moreover, within five working days, the penal correction agencies of the Ministry of Internal Affairs produce electronic notifications and transfer them to the Special Records automated information system.

274. The Special Records automated information system automatically registers the following: electronic notifications of the movements to and from places of deprivation of liberty; placement on and removal from the probation service register; release, parole or substitution of the unserved portion of a sentence with a lighter sentence, or of a lighter sentence with deprivation of liberty, and other substitutions; changes of incarceration regimes; deaths and their place of registration; changes to enforceable court judgments; placement in the medical facility of a remand centre or military detention barracks owing to the transported convict falling ill during transit; persons who have been granted pardons; and persons convicted by a court in a member State of the Commonwealth of Independent States who have been sent to serve their sentences at a penal correction institution of the Ministry of Internal Affairs of Kazakhstan.

275. A centralized automated database for the penal correction system has been created as part of the State programme entitled "Information Kazakhstan – 2020"⁹⁹ and its corresponding plan of action for implementation, with a view to ensuring more effective and timely registration by the units of the penal correction system of the personal data on prisoners.

276. The centralized automated database is operational in all local departments and institutions of the penal correction system and has been integrated with the information systems of other public bodies. A total of 56,259 cases were entered into the database from 2016 to 2021.

277. Access to the information listed in article 18 (2) (a)–(g) of the Convention is guaranteed by articles 25 and 104 of the Penalties Enforcement Code, the Advocacy and Legal Assistance Act, No. 176-VI of 5 July 2018, the Access to Information Act, No. 401-V of 16 November 2015 and departmental enactments. Persons may also apply to the competent authorities to obtain the necessary information listed in article 18 (1) of the Convention, in line with a procedure set out in the Administrative Procedure Code.

278. Citizens have the right to know which body has issued a decision on arrest or detention or a sentence of deprivation of liberty and to obtain information on the whereabouts of arrested, detained or convicted persons.

279. In the framework of article 18 (2) of the Convention, Kazakhstan takes measures to protect the relatives of persons deprived of liberty, their representatives and counsel, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

280. Pursuant to the Act on State Protection of Parties to Criminal Proceedings of 5 July 2000, State protection is afforded to investigators, persons conducting initial inquiries, procurators, judges, jurors, persons conducting police work, citizens assisting the authorities carrying out police work, persons bringing private prosecutions, defence counsel, experts, victims, witnesses and the legal guardians, representatives, family members and close relatives of the aforementioned persons.

281. Protected persons are provided with:

(1) Security measures to protect their lives and health and preserve their property that are taken by the competent public authorities;

⁹⁹ Approved by Presidential Decree No. 464 of 8 January 2013.

(2) Legal protection measures, including to ensure the criminal prosecution of persons responsible for assaults on their lives, health and property;

(3) Social protection measures to uphold the right to material compensation in the event of their death, bodily injury or other harm to their health, or damage to or destruction of their property.¹⁰⁰

282. Detailed information about the provision of protection is also included in the section of this report on implementation of article 12 of the Convention.

Follow-up information relating to articles 19 and 20 of the Convention

283. Personal information collected within the framework of the search for a disappeared person or persons involved in a disappearance is entered in the Special Records automated information system and the fingerprint information system of the Committee for Legal Statistics and Special Records in the Office of the Procurator General.¹⁰¹

284. The data may not be used or made available for purposes other than the search for the persons sought. This provision is governed by the Personal Data and Data Protection Act and by related orders of the Office of the Procurator General.

285. Pursuant to article 11 of the Personal Data and Data Protection Act, controllers or processors and third parties who receive access to restricted personal data ensure the confidentiality of such data by complying with the requirement to prevent their dissemination without the consent of the data subjects or their legal guardians or the existence of another legal basis.

286. Persons who become aware of restricted personal data in connection with their professional or official duties or through working relationships must ensure their confidentiality. The national law provides for the confidentiality of biometric data.

287. Pursuant to the requirements of article 201 of the Code of Criminal Procedure, data from pretrial investigations may not be disclosed. They may be made public only with the consent of the procurator and to the extent that the procurator considers this possible when it is not contrary to the interests of the investigation and does not involve a breach of the rights or legitimate interests of other persons.

288. The person conducting the pretrial investigation informs the defence counsel, witnesses, victims, civil claimants and respondents or their representatives, experts, specialists, interpreters, official witnesses and other persons present during the investigation of the prohibition on disclosing information from the case without his or her consent, collects the signatures of those persons and warns them about liability for disclosure.

289. In accordance with article 241 of the Code of Criminal Procedure, measures are taken to protect information in criminal proceedings.

290. In line with article 350 of the Code of Criminal Procedure, the participants in closed court hearings are informed by the judge of the prohibition on disclosing information from the case without the judge's consent, and they sign a document warning about liability for disclosure.

291. Pursuant to article 273 of the Public Health and the Health-Care System Code, Code No. 360-VI of 7 July 2020,¹⁰² personal medical data, the fact that a person has sought medical care, information about a person's state of health, diagnosis and other information received during an examination or treatment are subject to medical professional secrecy.

¹⁰⁰ Personal Data and Protection Act, arts. 3 and 5. *Source:* https://online.zakon.kz/document/?doc_id=1018939&pos=82;-60#pos=82;-60.

¹⁰¹ Official website of the Committee for Legal Statistics and Special Records: <https://www.gov.kz/memleket/entities/pravstat?lang=ru>.

¹⁰² <https://adilet.zan.kz/rus/docs/K2000000360>.

292. Information constituting a medical secret may be transmitted to other physical or legal persons in the interests of the examination and treatment of patients only with their consent or the consent of their legal representatives.

293. Article 321 of the Criminal Code sets out the punishment for breach of secrecy by a medical professional and for the disclosure of data from pretrial investigations or closed court proceedings.

294. Medical care in institutions of the penal correction system is provided in accordance with the Code on Public Health and the Health-Care System, the Penalties Enforcement Code¹⁰³ and the regulations on the provision of health care to persons subject to restriction of liberty, persons serving court-imposed sentences in places of deprivation of liberty, persons in police custody or remanded in custody and persons placed in special facilities, as part of the guaranteed level of free health care.

Follow-up information relating to articles 21 and 22 of the Convention and paragraph 22 of the concluding observations

295. In accordance with the Rules for keeping records of persons held in institutions of the Ministry of Internal Affairs penal correction system, prisoners are released on the day that their release documents are received by the corresponding institution.

296. In the event of the release or death of a convicted prisoner, or when judicial decisions are handed down changing a prisoner's situation, including with respect to the type of institution of the penal correction system of the Ministry of Internal Affairs, substitution of the unserved portion of a sentence with a lighter sentence, amnesty, parole or return to a place of detention, the institution issues a notification, or an electronic notification for automatic completion of the details in the Special Records automated information system, within five working days.

297. For mentally ill persons sent to the national specialized psychiatric hospital for intensive care, the Special Records department submits to the hospital administration release certificates, along with the patients' personal documents, copies of the court decisions and forensic psychiatric assessments. It transfers those relating to persons placed in secure psychiatric hospitals to the hospitals, together with their personal files.

298. Court decisions to release prisoners or shorten their sentences or to substitute or delay the sentences of pregnant women, women with young children and men who are the single parents of young children are transmitted to the probation service of the person's place of departure or, in the case of parole, to the internal affairs authorities.

299. To ensure the timely release of prisoners and the integrity of their personal files, the information on the duration of deprivation of liberty contained in those files is checked against the data on the length of sentences twice a year. Moreover, an inspection is carried out at least once a year to ensure that the personal files and cards actually correspond with the prisoners present in the institution.

300. The date of the inspection and the name of the official who carries it out are indicated with the results of the inspection on a checklist, which is drawn up in two copies, with one sent to the penal correction department for the province, city of national status or the capital.

301. The local branches of the Committee for Legal Statistics and Special Records in the Office of the Procurator General and the local offices of the penal correction system of the Ministry of Internal Affairs cross-check their data by the third of each month. The electronic notifications from the centralized automated database for the penal correction system for the relevant period are checked against the data from the Special Records automated information system to ensure that the data are present, accurate and complete. The results of the cross-check are recorded in a report on the number of persons in the probation register and serving sentences in places of deprivation of liberty. If discrepancies are found, measures to explain and eliminate them are taken within five working days.

¹⁰³ Arts. 10–11 and 116–117.

302. Pursuant to article 162 (2) of the Penalties Enforcement Code, persons sentenced to short-term rigorous imprisonment or deprivation of liberty are released in the morning of the last day of their sentence. The last day is the day before completion of the term, as counted from the start of the sentence.

303. Early release is carried out on the day the relevant documents are received, or the next morning if they are received after the end of the working day.

304. Prisoners released from places of deprivation of liberty are issued with a release certificate in a standard format.

305. If prisoners are not released in a timely manner, internal investigations are carried out and the measures prescribed by law are taken against the officials responsible, including under article 414 of the Criminal Code.

306. Obstruction of the lawful activities of lawyers and other persons who defend human and civil rights, freedoms and legal interests in criminal proceedings or of the provision of legal assistance to physical or legal persons is a criminal offence under article 435 of the Criminal Code.

307. Officials guilty of failing to meet the obligation to register persons deprived of liberty or to record the information set out in article 22 (1) (b) of the Convention may be held liable in accordance with a procedure prescribed by law.

308. The requirements for ensuring access to information as specified in article 22 (1) (c) of the Convention are met.

309. The Access to Information Act of 16 November 2015 guarantees that everyone has the right to freely receive and impart information by any means not prohibited by law.

310. Disciplinary action may be taken against officials of a competent authority for providing inaccurate information.

311. In accordance with article 416 of the Criminal Code, it is a criminal offence to falsify evidence in civil proceedings or proceedings for administrative offences, police or counter-intelligence materials, reports on covert investigations and the annexes thereto, and for persons conducting pretrial investigations, procurators, experts involved in proceedings or defence counsel to falsify evidence in criminal proceedings.

312. Wilful failure to inform suspects' relatives of their detention and whereabouts, unlawful refusal to provide information on a person's place of detention to a person who has the right to receive such information and falsification of the time at which a record of arrest was drawn up or of the time of the actual arrest are acts punishable under article 414 (4) of the Criminal Code.

313. The procedures for the recording of information and the granting of access to it are described in more detail in the sections of the report on articles 17, 18 and 20 of the Convention.

Follow-up information relating to article 23 of the Convention and paragraphs 26 and 28 (in respect of the training of judges) of the concluding observations

314. The curricula of educational institutions and further training courses for the staff of internal affairs agencies, procurators, judges, military personnel and the medical staff of the penal correction system include studies of the Convention.

315. During the reporting period, a total of 124 training events were held on the country's international obligations under the international human rights treaties which have been ratified by Kazakhstan, namely the International Convention for the Protection of All Persons from Enforced Disappearance, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of all Forms of Discrimination against

Women, the Convention on the Rights of Persons with Disabilities, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

316. In all, more than 10,000 law enforcement officers and judges received basic and further training during the reporting period.

317. The provisions of the Convention are included in the training programmes of the senior and middle-grade officers of internal affairs agencies, as well as in postgraduate education and vocational training. The case studies focus on:

- The responsibility of officials involved in enforced disappearances
- The procedure for preventing and investigating cases of enforced disappearances
- Urgent measures to establish the whereabouts of disappeared persons and inform their close relatives

318. With the support of the Embassy of the United States of America in Kazakhstan, the Ministry of Internal Affairs held 40 training events attended by 800 staff members of internal affairs agencies. The Ministry's educational institutions have provided specialized advanced training courses on international human rights standards for 6,172 students.

319. In order to improve the scientific and methodological basis of the specialized training of the staff of internal affairs agencies for investigating abduction committed by organized criminal groups and for organizing international searches in Kazakhstan in response to search warrants issued through the International Criminal Police Organization (INTERPOL), 2 practical courses were held and 17 academic articles, 2 conference proceedings and 10 methodological papers were published.

320. With the assistance of the Human Rights Commission under the Office of the President of Kazakhstan and the Friedrich-Ebert-Stiftung foundation, the Academy of Justice under the Supreme Court held 71 training seminars for 2,342 judges on the country's international obligations in respect of the judicial protection of human rights.

321. The Academy of Law Enforcement Agencies under the Office of the Procurator General held 15 training courses on the implementation by law enforcement agencies of practices in accordance with the country's international obligations.

322. Every year the Ministry of Defence runs training courses at the Kazakhstan Peacekeeping Training Centre for participants in peacekeeping missions. The provisions of the Convention are covered as part of the following subjects: methods to combat trafficking in persons; prevention of violence against women, children and persons with disabilities; cultural aspects of peacekeeping missions; international humanitarian law; and the prevention of the involvement of peacekeepers on peacekeeping missions in crimes. More than 1,000 military peacekeepers were trained at the centre between 2016 and 2021.

Follow-up information relating to article 24 of the Convention and paragraphs 28 (in respect of reparation) and 30 of the concluding observations

323. The criminal procedure legislation and civil law contain provisions ensuring that victims of enforced disappearances have the right to fair and adequate compensation and reparation for the harm caused and can obtain the fullest possible reparation, including restitution, rehabilitation and satisfaction, including restoration of dignity and reputation (art. 24 (4), (5) and (6) of the Convention). Provision is made for the protection of the interests of disappeared persons whose whereabouts are unknown and of their relatives in the spheres of social protection, family law and property rights.

324. The procedure for rehabilitation and obtaining compensation for harm caused by the illegal actions of a body conducting criminal proceedings is regulated by chapter 4 of the Code of Criminal Procedure.

325. Under article 37 of the Code of Criminal Procedure, the court and the criminal prosecution body must take all the measures stipulated by law to rehabilitate the persons concerned and to compensate them for the harm caused by the unlawful actions of the body conducting criminal proceedings.

326. Under article 71 of the Code of Criminal Procedure, victims are informed of their right to lodge a civil claim during criminal proceedings, and compensation is awarded for material damage caused by a criminal offence, as well as for any expenses incurred in connection with their participation in criminal proceedings, including counsel's fees, in accordance with the rules established in the Code. Victims' claims for moral damages are considered in criminal proceedings. Victims who have not brought claims in criminal proceedings, or whose claims have not been considered, are entitled to bring them under a civil procedure.

327. According to article 40 of the Code of Criminal Procedure, material damages caused as a result of the illegal actions of the body conducting criminal proceedings include compensation for losses in wages, pensions, benefits and other means and income; property unlawfully confiscated or appropriated by the State on the basis of a sentence or other court judgment; fines levied in pursuance of an unlawful conviction; court fees and other sums paid by a person in connection with unlawful actions; sums paid for legal assistance; and other expenses incurred as a result of criminal prosecution.

328. Persons entitled to full compensation for material damage caused by the illegal actions of the body conducting the criminal proceedings are likewise entitled to the reinstatement of their labour, pension, housing and other rights and to moral damages (restitution and satisfaction).¹⁰⁴ Claims for reparation of moral damages by pecuniary means are brought in civil proceedings.

329. Article 38 (3) of the Code of Criminal Procedure provides that in the event of death, the right to statutory damages passes to the person's heirs and, in particular, any pensions or benefits which have been suspended are transferred to the family members who are the beneficiaries of a survivor's pension.

330. Cash payments in connection with harm resulting from the illegal actions of the bodies conducting criminal proceedings, irrespective of the liability of such bodies, are charged to the national budget.

331. The procedure for the payment of compensation is regulated by Government Decree No. 1218 of 21 November 2014 approving the Rules for payment of property damage caused to a person acquitted by a court, a suspect, an accused person or a defendant, in respect of whom there has been an order from a court or a criminal prosecution body to terminate criminal proceedings as a result of illegal actions by a body conducting criminal proceedings.

332. The Victims Compensation Fund Act makes provision for a mechanism to compensate victims and the setting up of a fund.

333. Under article 6 of the Victims Compensation Fund Act, compensation is awarded to persons who have suffered grievous bodily harm as a result of the criminal offences referred to in articles 125 (3.3), 126 (3.3) and 127 (2.4) of the Criminal Code, and to persons who succeed to the entitlements of a victim in the event of the death of the victim of the criminal offences referred to therein.

334. Aliens and stateless persons are entitled to compensation from the moment they are recognized as victims, unless otherwise stipulated by the laws of Kazakhstan and the international treaties it has ratified.

335. Currently, the Senate (the upper house of the Parliament) is considering a draft law amending and supplementing certain statutes on matters of intellectual property that would expand the range of persons entitled to free legal aid.

¹⁰⁴ Supreme Court Regulatory Decision No. 7 of 9 July 1999 on the application of the legislation on compensation for damages caused by the illegal actions of bodies conducting criminal proceedings. Source: https://adilet.zan.kz/rus/docs/P99000007S_.

336. These amendments provide for the provision of free legal assistance paid for out of the budget to victims of domestic or sexual violence, an act of terrorism, torture or human trafficking.

337. Under articles 28, 29, 30, 188 and 235 of the Civil Code, citizens may be declared missing by a court upon the application of interested persons, at which point trusteeship over their property is established by a court decision.

338. In the event of the appearance or discovery of the whereabouts of persons who have been declared missing, the court revokes the decision.

339. Under article 31 of the Civil Code, citizens may be declared dead by a court upon the application of interested persons if, for three years, there is no sign of them at their place of residence, or within six months, if they disappeared under life-threatening circumstances or in circumstances giving reason to assume a fatal accident has occurred.

340. Once a court decision declaring a deceased breadwinner missing or dead becomes final, the family of that person is entitled to a State social survivor's benefit. When deceased breadwinners are members of the social insurance scheme, their dependents are entitled to a supplementary survivor's social benefit from the State Social Insurance Fund.

341. Under article 44 of the Tax Code, tax liability is suspended from the moment that a final court decision declares that a person is missing. Any tax owed by such missing persons is settled by the trustees of their property. Where the latter is insufficient, the unpaid part is written off by the tax authority, on the basis of a court finding that the property value is insufficient.

342. Articles 19 and 21 of the Insurance Act provide for social benefits related to recognition that a citizen is missing.

343. In accordance with article 24 (10) of the Pensions Act, compulsory pension contributions withheld from the income of former employees whose whereabouts are unknown and not transferred by intermediaries are paid into to the budget, in accordance with a procedure laid down by the Government of Kazakhstan. This sum may be reclaimed by the former employees or, if a court decision recognizing that they have gone missing becomes final, by their heirs, in accordance with the civil law of Kazakhstan.

344. Article 15 of the Marriage and Family Code provides for the possibility of termination of marriage (or matrimony) resulting from a recognition that one of the spouses is missing. In the event of the reappearance of a spouse declared missing by a court and the setting aside of the relevant court decisions, the marriage can be reinstated by the registering authority at the joint request of the spouses.

345. A general survey of judicial practice with regard to findings that citizens were missing or dead was carried out in 2018. It found that there had been no cases in which the courts had determined that a person had been declared missing as a result of enforced disappearance.

346. The State complies with the requirement of article 24 (3) of the Convention that it take all appropriate measures to search for, locate and release disappeared persons. The search for disappeared persons is carried out in accordance with a procedure prescribed by law, by the police authorities, including with the cooperation of foreign authorities, on the basis of international treaties.

347. Special records are kept of missing persons, persons who have lost contact with their relatives, persons who are unable to provide identifying information about themselves (owing to mental or other illness, infancy or other reasons) and unidentified corpses.¹⁰⁵

¹⁰⁵ Order No. 78 of the Procurator General of 4 August 2017 approved the rules for maintaining and using special registers of persons who have hidden from an inquiry, investigation or court, as well as persons evading punishment or a probationary checks, missing persons, persons who have lost contact with their relatives, persons who are unable to provide identification information about themselves, unidentified corpses and debtors who are wanted under enforcement proceedings and defendants wanted in cases brought in the interests of the State, and for the recovery of alimony, or for

348. Records are kept by means of search files and the special reports portal of the Special Records automatic information system of the Committee for Legal Statistics and Special Records in the Office of the Procurator General.¹⁰⁶

349. The basis for entry in the record of missing persons, persons who have lost contact with their relatives or persons who are unable to provide identification data about themselves is an official decision to open a search. The decision is issued on the basis of an individual's statement, or a report from an official of a State body or a person performing managerial functions in an organization about a person's disappearance, or a loss of family communication, or a report that a person unable to provide personal identification information has been found.

350. The Committee conducts quarterly comparisons of the information in the Special Records automatic information system with the data of the INTERPOL National Central Bureau in Kazakhstan.

351. No data is compiled on the number of missing persons who have become victims of enforced disappearance.

352. It should be noted that the right to form organizations and associations that assist in establishing the circumstances of enforced disappearances and the fate of disappeared persons is provided for under the Voluntary Associations Act, No. 3 of 31 May 1996.¹⁰⁷

353. The State recognizes the importance of civil society's efforts to shed light on the detention conditions of convicted prisoners and actively supports public initiatives in this respect. Constructive interaction has now been established with 63 NGOs.

354. During the reporting period, representatives of NGOs visited institutions of the penal correction system 1,667 times.

Follow-up information relating to article 25 of the Convention and paragraph 32 of the concluding observations

355. Article 27 (1) of the Constitution establishes that the State is responsible for the protection of childhood.

356. The national law makes provision for the fundamental rights of children to life, the protection of their honour and dignity, personal inviolability, health and provision of medical care, along with other rights, and for liability for the violation of such rights.

357. An Office of the Commissioner for Children's Rights has been established.¹⁰⁸

358. During the reporting period, a number of additional measures were taken to protect the legitimate interests and rights of children, including to protect them from violent abuse.

359. The Head of State issued an instruction to toughen penalties for sexual violence, paedophilia, human trafficking and other serious crimes against the person, in particular when committed against children.¹⁰⁹

360. As a result, criminal liability for criminal offences against the life, health or sexual integrity of young children (under 14) and minors (under 18) was made more stringent by increasing the respective terms for deprivation of liberty (for example, life imprisonment for homicide of a minor and for other illegal acts, including those related to enforced

compensation of harm resulting from the injury or other damage to the health, or the death, of a breadwinner. <https://adilet.zan.kz/rus/docs/V1700015639#z20>.

¹⁰⁶ <http://qamqor.gov.kz>.

¹⁰⁷ https://adilet.zan.kz/rus/docs/Z960000003_/z960003.htm.

¹⁰⁸ Official website: <https://www.gov.kz/memleket/entities/ombudsman?lang=ru>.

¹⁰⁹ State of the Nation address to the people of Kazakhstan of 2 September 2019, entitled "Constructive public dialogue – The basis of stability and prosperity of Kazakhstan". *Source*: https://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-glavy-gosudarstva-kasym-zhomarta-tokaeva-narodu-kazahstana.

disappearance).¹¹⁰ Specifically, criminal liability was increased for forcibly or illegally removing human organs or tissues,¹¹¹ for involving minors in prostitution,¹¹² for trafficking in minors¹¹³ and for other acts. In cases of crimes against the sexual inviolability of minors, there is no statute of limitations and there can be no reconciliation between the parties or early release or pardon for persons found guilty of committing such offences.¹¹⁴

361. The comprehensive and systematic measures that have been taken have helped reduce criminal offences committed against minors from approximately 2,600 to 2,000 (in 2016 there were 2,605 criminal offences registered, while in 2021 there were 2,088).

362. Monitoring and prevention activities in the field of children's rights are carried out by the Interdepartmental Commissions on Minors' Affairs and Protection of Minors' Rights at the levels of the central Government and of the local *akimats*, and by the Ministry of Education's Committee for the Protection of Children's Rights.

363. Amendments and supplements were introduced into the Marriage and Family Code in order to regulate the activities of organizations assisting in the placement of orphans and children left without parental care and to set out the requirements for their accreditation.

364. The identification and registration of orphans and children left without parental care is regulated by the Marriage and Family Code and the Prevention of Juvenile Delinquency, Child Neglect and Child Homelessness Act of 9 July 2004.

365. Measures have been taken to improve the system of monitoring and data collection on the situation of children in order to prevent child neglect and homelessness, including forced disappearance.

366. A national database of orphans and children without parental care has been set up.

367. In 2021, there was a total of 4,076 orphans without parental care at residential institutions.

368. The number of orphans in residential care whose parents (either both or a single parent) were reported as missing was 159 in 2016, 154 in 2017, 134 in 2018, 129 in 2019, 111 in 2020 and 95 in 2021.¹¹⁵

369. Of the 89 institutions for orphans and children without parental care, 52 are part of the education system, 19 orphanages are under the health-care system and 18 are run by the social welfare system. In Kazakhstan there are 18 support centres for children in difficult circumstances and 10 child adaptation centres.

370. Institutions protecting children's rights are inspected on a systematic basis as part of preventive monitoring (143 were inspected in 2019, 411 in 2020 and 418 in 2021).

371. Internal affairs, education, health and social welfare agencies, local representative and executive bodies, commissions for the protection of minors' rights and other government bodies are responsible within their fields of competence for preventing child neglect and homelessness. This comprehensive, interdepartmental approach has ensured a reduction of 20 per cent in the number of children identified as neglected or homeless (from 1,866 in 2017 to 1,479 in 2021).

¹¹⁰ Acts of 27 December 2019 amending and supplementing certain legislative acts on the improvement of criminal and criminal procedure legislation and strengthening the protection of individual rights. *Source:* <https://adilet.zan.kz/rus/doc>; Act of 30 December 2020 amending and supplementing certain legislative acts for the implementation of certain provisions of the State of the Nation address by the Head of State to the people of Kazakhstan of 1 September 2020, entitled "Kazakhstan in a new reality: Time for action". *Source:* https://online.zakon.kz/Document/?doc_id=35256101&show_di=1.

¹¹¹ Criminal Code, art. 116.

¹¹² Criminal Code, art. 134.

¹¹³ Criminal Code, art. 135.

¹¹⁴ Criminal Code, arts. 68 and 71.

¹¹⁵ Orphans and children left without parental care at residential institutions. *Source:* <https://bala.stat.gov.kz/harakteristiki-detej-sirot-i-detej-ostavshih-sya-bez-popecheniya-roditelej-nahodyaschihsya-v-internatnyh-uchrezhdeniyah/>.

372. The Commissioner for Children's Rights and members of public monitoring commissions and voluntary associations carrying out activities to protect the rights and legal interests of citizens participating in the national preventive mechanism.¹¹⁶

373. Act No. 240-VI amending and supplementing certain legislative acts relating to the work of organizations protecting the rights of the child significantly extended the mandate of the national preventive mechanism in relation to institutions caring for children. The list of facilities to be visited includes child adaptation centres, special educational institutions, educational establishments with special custodial regimes and medical and social establishments. This has made it possible to check on more than 200 establishments.¹¹⁷

374. Between 2016 and 2020, representatives of the national preventive mechanism conducted 311 visits to facilities working with children (35 in 2016, 28 in 2017, 23 in 2018, 111 in 2019 and 114 in 2020).¹¹⁸

375. Measures are taken to protect the interests of children whose parents are serving sentences at places of detention.

376. For example, the LA-155/4 women's correctional facility has a childcare unit which provides all the necessary conditions for women and their young children (up to 3 years old) to live together and for the children's full development.

377. The juvenile courts have continued to function properly. Their jurisdiction includes not only criminal cases involving offences committed by minors or directly violating their rights, but also civil cases, for instance involving the determination of a child's place of residence, deprivation (or restriction) or restoration of parental rights, adoption and disputes arising from guardianship (or foster care) of underage children.

378. The Marriage and Family Code ensures the right of children to be heard in any judicial or administrative proceedings.

379. On 1 July 2021, the Administrative Procedure Code entered into force. According to the Code, minors emancipated personally exercise their procedural rights and obligations from the moment of emancipation when so stipulated by law. In a number of cases established by the national legislation, minors between the ages of 14 and 18 are entitled to personally defend their rights, freedoms and legal interests in administrative cases. The rights, freedoms, and legal interests of minors under the age of 14, as well as those of persons recognized as having no legal capacity, are protected in court by their legal representatives and the procurator.

380. Measures are taken to ensure the international protection of children against the harmful effects of their wrongful removal or retention and to establish a procedure for their prompt return to their State of habitual residence. The judicial procedure for returning a child and exercising access rights under an international treaty is defined in chapter 51 of the Code of Civil Procedure.

381. Between 2016 and 2020, 35 children from the Russian Federation, Ukraine, Moldova, Jordan, South Africa, the Republic of Korea, France and the United Arab Emirates were returned to Kazakhstan.¹¹⁹

382. The procedures for cancelling or invalidating an adoption established in articles 106, 108 and 316 of the Code of Civil Procedure and detailed in Regulatory Resolution No. 2 of

¹¹⁶ Article 47–1 (3) of the Children's Rights Act of 8 August 2002. *Source:* https://adilet.zan.kz/rus/docs/Z020000345_.

¹¹⁷ Government Decree No. 942 of 28 December 2021 approving the fifth and sixth consolidated periodic reports on the implementation by Kazakhstan of the Convention on the Rights of the Child. *Source:* <https://adilet.zan.kz/rus/docs/P2100000942>.

¹¹⁸ Number of visits to children's institutions under the national preventive mechanism. <https://bala.stat.gov.kz/kolichestvo-poseschenij-detskih-uchrezhdenij-v-ramkah-natsionalnogo-preventivnogo-mehanizma/>.

¹¹⁹ Government Decree No. 942 of 28 December 2021 approving the fifth and sixth consolidated periodic reports on the implementation by Kazakhstan of the Convention on the Rights of the Child. *Source:* <https://adilet.zan.kz/rus/docs/P2100000942>.

the Supreme Court of 31 March 2016 on the application by the courts of the legislation on adoption¹²⁰ are fully consistent with the provisions of article 25 (4) of the Convention.

383. With regard to the criminalization of actions related to the unlawful removal of children referred to in article 25 (1) of the Convention, and the establishment of appropriate penalties in the light of their extreme seriousness (concluding observations, para. 32), it should be noted that article 137 of the Criminal Code establishes criminal liability for illegal actions related to adoption, placement under guardianship or tutorship and foster care.

384. In the case of the kidnapping or illegal removal of a child or children, the actions of the perpetrators may also fall under articles 125, 361, 362 of the Criminal Code.

¹²⁰ <https://adilet.zan.kz/rus/docs/P160000002S>.