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UN EXPERT ON TORTURE CONCLUDES VISIT TO KAZAKHSTAN

Astana, 13 May -- In conclusion of his visit to Kazakhstan undertaken upon invitation by the Government from 5 to 13 May 2009, the Special Rapporteur of the United Nations Human Rights Council on Torture and other forms of cruel, inhuman, degrading treatment or punishment, delivered the following statement:

“I would like to thank the Government of Kazakhstan for inviting me and for its full cooperation before and during the visit. I am grateful to all my interlocutors, including senior State officials, representatives of civil society, detainees and victims of torture and ill-treatment. I would also like to express my gratitude to the Resident Coordinator and the United Nations Country Team for the assistance provided. A list of places visited and meetings held is annexed to this statement.

Since independence in 1991, the Republic of Kazakhstan has acceded to numerous international human rights instruments, which illustrates its commitment to reforming the legal framework and policies. Similarly, I interpret the mere fact that the Government invited me as a sign that it is thoroughly interested in an objective assessment of the situation and in recommendations aimed at improving the status quo. I feel honoured that the authorities took my visit very seriously and ensured unimpeded access to all facilities. At the same time however, I noted that considerable efforts were made to prepare the various detention facilities for my inspections. While I assume that most of these preparations were well-intended, they contradict the very idea of unannounced visits and independent fact-finding. The latter is only possible if I have a chance to observe the day-to-day practices in places of detention in an undistorted way. Unfortunately this has not been the case in many of the places.

Full respect for these methods of fact-finding is of particular significance in light of the recent ratification of the Optional Protocol to the Convention against Torture, which foresees the establishment of a so-called national preventive mechanism – a body independent from the Government mandated to undertake unannounced visits to all places of detention at any time and to speak in private with all persons deprived of their liberty. This constitutes a decisive step forward, if it is fully implemented in practice and its independence is guaranteed.

Conditions in places of deprivation of liberty

Clearly, ensuring territory-wide monitoring is a challenging task in a country as big as Kazakhstan, which has inherited a system of camps, whose main task it was to “contain” individuals who did not comply with the law and to supply cheap labour. Considerable efforts have been made in the last years to improve the conditions in the prison colonies. I am glad to report that I have seen – and the majority of my interlocutors confirmed this impression – that the physical conditions and food supply have been brought in line with international minimum standards. With the caveats expressed above, I was impressed by the cleanliness and the very good level of maintenance in most of the places I visited. It is clear that progress has been made in containing tuberculosis through professional and responsible health management. At the same time, one of the key-requirements of international human rights law is that penitentiary systems put the rehabilitation and reintegration rather than the punishment of the individual offender at their core. This has clearly not been achieved: the current law still provides for different prison regimes as a form of punishment and places heavy restrictions on contact with the outside world; exacerbated by the fact that the locations of the facilities per se make family visits difficult. Furthermore, only a very small percentage of the prison population appears to have access to meaningful activities – examples of such places are the women’s colony in Koksus and the special regime colony in Arshaly. Another major issue of concern is the

fact that the hierarchy among prisoners appears to lead to discriminatory practices and, in some cases, violence.

The same is true for pre-trial detention and custody facilities: Ministry of Interior, Committee of National Security and Ministry of Justice pre-trial facilities (IVS and SIZO) have undergone significant improvement in terms of the physical conditions and food supply. But the almost total denial of contacts with the outside world – often for prolonged periods – clearly contradicts the principle of the presumption of innocence and adds disproportional psychological pressure on the suspects. In this context I also wish to mention the Reception and Redistribution Centre in Almaty, where persons can be held up to 30 days without judicial decision in tiny, badly ventilated cells with little daylight. Detention in such conditions is clearly not in line with international minimum standards.

The situation of torture and protection mechanisms

With the above caveats of the prepared places of detention in mind, and on the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, I conclude that the use of torture and ill-treatment certainly goes beyond isolated instances. I have received many credible allegations of beatings with hands and fists, plastic bottles filled with sand, police truncheons; of kicking, asphyxiation through plastic bags and gas masks used to obtain confessions from suspects. In several cases, these allegations were supported by forensic medical evidence. Clearly there are some groups of persons that run larger risks of cruel, inhuman and degrading treatment than others – I have received consistent allegations of beatings and other ill-treatment of minors by law-enforcement organs at the initial stage of custody, but also in other institutions under the Ministry of Interior as well as the Ministry of Justice. Similarly, the likeliness for foreigners to be subjected to ill-treatment and inhuman or degrading punishment seems to be higher than average.

Turning to the question of safeguards for persons deprived of their liberty, I have found that the legal framework has been modified and therefore, by and large, is in line with international norms. I am also encouraged by the fact that I have found these safeguards formally respected – all places I visited have well-kept registers, and most detainees indicated that they had seen judges, prosecutors and lawyers at the various stages of custody and judicial process as required by the legislation. At the same time, many of these safeguards are not effective in practice: since the moment of apprehension and delivery to a police station is not recorded, it is impossible to establish whether the three-hour maximum delay for the first stage of deprivation of liberty is respected; in fact, we received many allegations that the first hours of (unrecorded) detention are used by law-enforcement organs for the extraction of confessions by means of torture; most of the defence lawyers are State appointed and widely not perceived as defending the interests of suspects and accused persons; similarly, judges are seen as being formally present at certain points of criminal process to rubberstamp prosecutorial decisions rather than interested in finding out the truth and meaningfully following up on torture allegations. The prosecutorial control, while supervising formal respect of legal requirements, lacks transparency. Another factor hampering the administration of justice is corruption, which is widely perceived as being endemic.

The same is true for complaints channels: I asked all the police, SIZO and prison chiefs and directors whom I met, if they had received any complaints of ill-treatment in the last five years – and the overwhelming majority of them denied ever having heard of such allegations. However, the almost total absence of official complaints raises suspicion that, de-facto, there is no meaningful complaint mechanism. On the contrary, it appears that most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals. Although most SIZOs have been brought under the authority of the Ministry of Justice, the SIZO personnel, including doctors and nurses, seem not to consider it their responsibility to initiate ex-officio investigations if traces of torture are detected.

Contrary to international standards, there is no independent body mandated to undertake prompt investigations – rather, the law does not regulate who should conduct such investigations – and, in most cases, the police investigates torture allegedly perpetrated by its own officials, and the same holds true for

the Committee for National Security and the Financial Police. While corruption by officials of these three law-enforcement bodies seems to be investigated by one of the other bodies, this is usually not the case for torture allegations. This impression is confirmed by the figures provided to me by the various governmental bodies – whereas it has to be acknowledged that there is a limited number of prosecutions of alleged perpetrators of torture and ill-treatment, the prosecutions have led to few convictions.

Violence against women, especially within the family, is said to be a widespread phenomenon. Most often it is experienced in silence, and measures are taken only if it results in serious injuries. The fact that the draft law on domestic violence has not been adopted for many years indicates that the State has not taken full responsibility for the protective infrastructure for victims of domestic violence.

Preliminary recommendations

Whereas I recognize the progress achieved by Kazakhstan over the last years, I would like to recommend that the following steps be taken to comply fully with its relevant international obligations. With a view to the up-coming chairmanship in the Organisation for Security and Cooperation in Europe in 2010, translating international norms into tangible changes in people's lives, including of those "behind bars", is of particular importance.

- Amend the legislation to ensure that the crime of torture is established as a serious crime and sanctioned with appropriate penalties and brought in line with the definition provided for in the United Nations Convention against Torture;
- Introduce accessible and confidential complaints channels; ensure that any sign of torture is investigated ex-officio; and establish an effective and independent criminal investigation and prosecution mechanism against alleged perpetrators of torture.
- Register persons deprived of their liberty from the very moment of apprehension; reduce the time limits for police custody; grant access to lawyers and notification of family members starting from the moment of the actual deprivation of liberty;
- Transfer temporary detention isolators (IVS) from the Ministry of Interior to the Ministry of Justice;
- Strengthen the independence of judges and lawyers; ensure that in practice evidence obtained by torture may not be invoked as evidence in any proceedings and that persons convicted on the basis of evidence extracted by torture are acquitted and released;
- Conceive the system of execution of punishments in a way that truly aims at rehabilitating and reintegrating offenders, in particular through abolishing restrictive detention rules and regimes, including for persons sentenced to long prison terms, and maximizing contact with the outside world;
- Allow access to independent medical examinations without interference by the police or prosecutor at all stages of the criminal process; provide independent medical check-ups of persons deprived of their liberty, particularly after entry to or transfer between places of detention; ensure that medical staff in places of detention is truly independent from the organs of the justice administration, i.e. by transferring them from the Ministry of Justice to the Ministry of Health;
- Ensure that victims of torture are provided with adequate reparation for the harm suffered;
- Adopt expediently the law on domestic violence and create a national database on the prevalence of violence against women, children and elderly in order to effectively combat it;
- Establish a national preventive mechanism mandated to carry out unannounced visits to places of detention and provide it with the necessary financial and human resources;
- Initiate harm reduction programmes for persons deprived of their liberty, especially by providing substitution medication to persons addicted to narcotic drugs.

Annex

(A) Official meetings

The Special Rapporteur held meetings with: His Excellency, Mr. Kanat Saudabaev, State Secretary; His Excellency, Mr. Serik Baymagambetov, Minister of Interior; Her Excellency, Ms. Abdykalikova, Minister of Labour and Social Protection and Chairwoman of the Commission on Family and Women Affairs; Mr. Kairat Kozhamzharov, Chairman of the Agency for the Fight with Economic and Corruption-related Crime (Financial Police); Mr. Nurlan Danenov, Deputy Minister of Foreign Affairs; Mr Bolat Dzhanaev, Deputy Minister of Defense; Mr. Dulat Kustavletov, Deputy Minister of Justice; Mr. Marat Beketayev, Deputy Minister of Justice; Mr. Nugali Bilisbekov, Deputy Chairman of the Committee for National Security; and Mr. Iogan Merkel, Deputy Prosecutor General.

In addition, the Special Rapporteur met with Mr. Mayram Aubaev, Head of the Penitentiary Administration; Mr. Tastemir Abishev, Secretary of the Human Rights Commission under the President, representatives of the Ministry of Health Care, and staff of all the institutions visited.

Outside of Government, the Special Rapporteur met with Mr. Masabek Alimbekov; Chairman of the Supreme Court; Mr. Askar Shakirov, Human Rights Commissioner; civil society representatives, including non-governmental organizations, persons in places of detention and victims of violence. In addition, the Special Rapporteurs held meetings with the United Nations country team, the Organization for Security and Cooperation in Europe, the Delegation of the European Commission, and other members of the diplomatic community.

(B) Places visited

- Astana:
 - Temporary detention isolator (IVS)
 - Reception and redistribution centre
 - Special reception centre (for administrative detention)
 - Investigation Isolator (SIZO – EC 166/1) – visited twice
- Arshaly:
 - Almatynskiy District police station
 - Special regime colony (EC-166/5)
 - Temporary detention isolator
- Almaty:
 - Reception and redistribution centre
 - Investigation isolator (SIZO – LA 155/1)
 - Investigation isolator (SIZO) of the Committee for National Security
 - Educational colony (LA-155/6)
 - Zhetisuyskiy District police station
 - Medical detoxification cells - Zhetisuyskiy District
 - Almalinskiy District police station
- Talgar:
 - District Police
 - Psycho-neurological boarding house
- Aktas:
 - State specialized psychiatric hospital with intense supervision
- Karaganda:
 - Temporary detention isolator (IVS), Old City
 - Investigation isolator (SIZO) of the Committee for National Security
 - Centre for temporary isolation and rehabilitation of minors
- Temirtau:
 - Temporary detention isolator (IVS)
- Koksu:
 - Women’s strict regime colony (AK-259/9)

Short biographical information about the Special Rapporteur

Mr. Nowak was appointed Special Rapporteur on 1 December 2004 by the United Nations Commission on Human Rights. As Special Rapporteur, he is independent from any government and serves in his individual capacity. The Commission first decided to appoint a special rapporteur to examine questions relevant to torture in 1985. The mandate, since assumed under the UN Human Rights Council, covers all countries, whether or not they have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Mr. Nowak has previously served as member of the Working Group on Enforced and Involuntary Disappearances; the UN expert on missing persons in the former Yugoslavia; the UN expert on legal questions on enforced disappearances; and as a judge at the Human Rights Chamber for Bosnia and Herzegovina. He is Professor of Constitutional Law and Human Rights at the University of Vienna, and Director of the Ludwig Boltzmann Institute of Human Rights. His visit to Kazakhstan has been the 15th fact-finding mission he has undertaken. For further information on the mandate of the Special Rapporteur, please visit the website:

<http://www2.ohchr.org/english/issues/torture/rapporteur/index.htm>