

**Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Ref.: AL KAZ 2/2024  
(Please use this reference in your reply)

9 May 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 52/7, 51/8, 54/14, 53/4, 52/9, 50/17, 52/4, 53/12 and 49/10.

We refer to the concerns previously raised by a number of Special Procedures mandate holders concerning the protests of January 2022 in a letter dated 18 January 2022 (KAZ 1/2022)<sup>1</sup> which focused on the excessive and lethal use of force against protesters, as well as the widespread arrests and detention of protesters on charges related to counterterrorism and the alleged enforced disappearances of trade unionists, and to which your Excellency's Government responded on 18 March 2022. We acknowledge your Excellency's Government's commitment to prosecuting all those responsible for the aforementioned alleged violations and take note of the various measures that have been taken as referred to in your reply. We also take note of the information that nine cases of deaths of people in temporary detention were being investigated by Special Prosecutors. We would also like to remind your Excellency's Government that in its follow-up to the conclusions of the Committee on the Application of Standards (110<sup>th</sup> Session of the International Labour Conference, 2022), the Committee of Experts on the Application of Conventions and Recommendations urged the Government, *inter alia*, to ensure that allegations of violence against trade union members are thoroughly investigated, to put an end to practices of harassment of trade union leaders and members engaged in lawful trade union activities and to withdraw all unjustified allegations.<sup>2</sup>

<sup>1</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26969>. Reply from government: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36852>.

<sup>2</sup> Observation CEACR on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - adopted 2022, published 111st ILC session (2023) [https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNT\\_RY\\_ID:4288290,103542](https://normlex.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNT_RY_ID:4288290,103542).

We have subsequently received additional information about the aforementioned events, which forms the basis of this new communication.

**We have received new information concerning allegations of torture and/or other cruel, inhuman or degrading treatment or punishment, lack of accountability and investigations in respect of those allegations, and a number of obstacles that alleged victims and survivors of torture or other ill-treatment are facing in terms of exercising their rights to rehabilitation and compensation.**

According to the information received:

During the protests which erupted in January 2022 in western Kazakhstan over the sudden and stark rise of liquefied petroleum gas (LPG) prices and spread to multiple locations across the country, law enforcement authorities deployed tear gas, stun grenades and water cannons on protesters. It was officially reported that approximately 10'000 people were detained during the protests across the country, hundreds of whom remain deprived of their liberty, and 238 people were killed, including 19 police and security officers. According to your response of 18 March 2022, 267 people with injuries were admitted to medical institutions, of which 33 received in-patient care and were released. It was also reported that, alongside the protesters, hundreds of people who were not taking part in the protests were also detained. Reportedly, a number of leaders of trade unions were subjected to enforced disappearance and their families could not establish their fate and whereabouts.

According to reports, it is alleged that acts of torture and ill-treatment took place in formal and informal detention centres, police stations, gymnasia, and on the streets, as well as in hospitals. Additionally, it is reported that most detainees were not officially registered for several days or weeks, and they were not permitted to contact their lawyers, thus being *de facto* placed outside the protection of the law. Notably, a deprivation of liberty followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person (including by failing to register the deprivation of liberty), which place such a person outside the protection of the law, amounts to an enforced disappearance, regardless of the duration of the said deprivation of liberty or concealment.

The reported methods of torture and other cruel, inhuman or degrading treatment or punishment included severe beatings, burning the detainees with hot irons, use of electric shocks, hooding, dousing the detainees with boiling or ice-cold water, pulling out teeth, sexual violence, and threats of rape.

In order to improve accountability for these violations, it is reported that changes in the national legislation have been undertaken in which investigations into torture and other ill-treatment, including in relation to the 2022 January events, have been delegated from the police and the Anti-Corruption Agency to the Prosecutor's Office since January 2023.

As of end of April 2024, it is reported that the General Prosecutor's Office of the Republic of Kazakhstan had investigated 13 criminal cases of torture during the 2022 January events and that of these, 35 law enforcement officers

accused of committing torture against 84 citizens are or were undergoing criminal proceedings.<sup>3</sup>

It is reported that 10 cases resulted in convictions with 26 perpetrators of torture sentenced to imprisonment, with terms from 3.5 to 6 years, five other perpetrators were granted suspended sentences, and one perpetrator received a verdict of acquittal. Three cases are still under trial and 20 are under pre-trial investigation. Reportedly, some officers who were convicted of torture are banned from holding law-enforcement posts for three years in accordance with the law.

According to the Annex to your reply of 18 March 2022, 301 complaints were received of unlawful means of interrogation and 256 cases of torture and abuse of power, which leaves a large gap between the number of complaints and prosecutions.

It is further reported that most investigations into torture and ill-treatment have been prematurely closed or suspended, as investigating authorities claimed that they have found no evidence of a crime or have not managed to identify the perpetrators. It has been reported that some investigations were closed or suspended even in cases in which alleged perpetrators were informally identified and where there were credible allegations and evidence concerning their implication in acts of torture, such as forensic examinations and video recordings.

Moreover, it has been reported that the investigating authorities have been reluctant to record, recognize and accept victims' statements of their experiences on the basis that they would be insufficient evidence. Within this context, it has been reported that victims of the January 2022 events have often come under pressure to "*keep quiet*" about the practice of torture and ill-treatment in detention. It is reported that, in some cases, officials have put pressure on detainees to withdraw their complaints about torture in exchange for not being sentenced to imprisonment or facing lesser punishment for "*participation in mass riots.*"

Furthermore, according to trial monitoring reports undertaken since 9 September 2022, when cases went to trial before the Taldykorgan City Court, there were multiple reports of anomalies which would interfere with fair trial proceedings. First, not all victims were notified in a timely manner of the hearing. Second, victims and defendants were seated next to each other, which could have the purpose or impact of intimidation and also affect negatively the mental and psychological state of the victims and survivors. Third, victims and survivors feared that, if they failed to prove the torture they were allegedly subjected to, they could themselves be accused of libel or false accusations, both offenses which, in Kazakhstan, are punishable by imprisonment. Finally, despite the high public interest in the cases, the media coverage was reportedly limited, as journalists and other media representatives faced restrictions in accessing to the hearings.

---

<sup>3</sup> Noteworthy is that Kazakhstan has not incorporated the definition of enforced disappearance in its national legislation. Instead, the Criminal Code recognizes the crimes of abduction, unlawful deprivation of liberty and trafficking in persons, which contain elements of enforced disappearance.

In terms of rehabilitation and compensation for victims and survivors of torture, it is reported that the State Fund would only provide financial compensation to victims who have been granted the procedural status under national law. This status, however, is difficult to obtain given the challenges outlined in this letter concerning the investigations and accountability for the alleged acts of torture and ill-treatment reportedly suffered by the victims. Moreover, compensations from the Fund are far from being sufficient to cover treatment costs (about 200 USD in all the cases). Many victims of torture are reported to be in a poor financial situation and cannot afford basic needs such as rent, food and medical care owing to their health problems associated with alleged torture.

While we do not wish to prejudge the accuracy of these allegations, we are particularly concerned about the lack of progress on investigations and prosecutions concerning the large number of allegations of torture and other ill-treatment, as well as challenges faced by victims and survivors to access adequate rehabilitation and compensation, as well as those regarding enforced disappearances.

We are also concerned about the inadequate protection of the rights of victims of torture in criminal proceedings against their perpetrators, including the lack of timely notification of trials and the intimidating courtroom layout, which may have negatively affected the testimonies of victims and survivors during the hearing and could contribute to self-censoring. We are also concerned that unsuccessful claims of torture could bring automatic charges for the crime of false reporting, which would constitute a retaliatory measure and have a chilling effect on other victims of torture. We are further concerned that restrictions on media reporting of the trial may not be consistent with the principle of open and public justice.

Should these allegations be confirmed, they would likely constitute violations in particular of articles 7, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kazakhstan on 24 January 2006, and articles 1, 2, 6, 7, 9, 12, 13, 14, 15 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kazakhstan acceded to on 26 August 1998.

We take note of the Committee against Torture's concluding observations to the State of Kazakhstan's periodic review, dated 17 May 2023, in which it expressed deep concern about many consistent reports indicating various forms of torture and ill-treatment, including excessive use of force, resulting in multiple deaths and injuries, beatings, electric shocks and sexual violence in custody, which occurred in the context of the January 2022 protests. The Committee further expressed concern about the high rate of closure of cases (236 out of 329 cases) concerning torture or abuse of authority, by the Prosecutor's Office and the Anti-Corruption Agency, as unsubstantiated or due to lack of evidence of a crime or difficulties in identifying suspects, and about the low number of cases reaching the adjudication stage. We would like to remind your Excellency's Government that the Committee against Torture urged the State of Kazakhstan to investigate all violations of fundamental legal safeguards against torture and ill-treatment documented during detention, and notably in the context of the events of January 2022 in its concluding observations on the country's fourth periodic review, and that providing such information was

identified as a priority for the Committee's follow-up<sup>4</sup>.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. In respect of the duty to investigate all allegations of torture and other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to the victims, please provide information on all measures taken or planned to be taken to fulfil this obligation in respect of the aforementioned allegations; please provide updated information on the status of investigations and prosecutions regarding public officers who have been accused of acts of torture and/or other ill-treatment, and for those found guilty, the sentences imposed.
3. Please provide information on the measures undertaken to ensure that relatives of disappeared persons, as victims of ill-treatment, receive psycho-social support and adequate measures of reparation.
4. In respect of the protection of victims and witnesses of torture before, during and after court proceedings, please provide information on legal and other measures available to protect complainants against ill-treatment or intimidation as a consequence of his or her complaint or any evidence given, pursuant to article 13 of the CAT, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005.
5. Please provide information as to how the United Nations Manual on the Effective Investigation and documentation of Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol, rev. 2002 edition) is being implemented in Kazakhstan, including how statements by and medical assessments of victims and survivors are permitted and used into criminal proceedings.
6. Please provide information on measures and safeguards that are aimed at preventing, in the future, similar occurrences of torture and other ill-treatment pursuant to articles 2 and 16 of the CAT.

---

<sup>4</sup> See CAT/C/KAZ/CO/4, paras. 12(b)(m), 13 and 14(b); [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FKAZ%2FCO%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FKAZ%2FCO%2F4&Lang=en).

7. Please explain the measures taken by your Excellency's Government to provide for rehabilitation and remedy, including compensation, for victims of torture, pursuant to article 14 of the CAT and of article 7, read in conjunction with article 2(3) of the ICCPR.
8. Please provide updated information in response to the second question raised in AL KAZ 1/2022 on the advancement of any investigation in relation with allegations of unlawful deaths, enforced disappearances and arbitrary detentions reported in the context of the protests.
9. Please provide updated information on the progress of the investigations into the deaths of nine individuals in temporary detention facilities and the compliance of investigations with international standards, particularly the Minnesota Protocol on the Investigation of Potentially Unlawful Deaths. Please include information on the outcome of any prosecutions of alleged perpetrators and the sentences imposed where relevant.
10. Please provide information on how your Excellency's Government ensures the right to information in relation to the cases mentioned in this communication, including through ensuring timely notification of proceedings to victims of torture and access of journalists and media organization to Court proceedings.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit a case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We would also like to inform your Excellency's Government that given the allegations of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit cases through its humanitarian procedure. The Government is required to respond separately for the present communication and to the letters sent under the humanitarian procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to

indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ganna Yudkivska

Vice-Chair on communications of the Working Group on Arbitrary Detention

Aua Baldé

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Gina Paola Romero Rodriguez

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government the following relevant international human rights standards, which are at issue in respect of the reported allegations:

#### *Protection of the right to life*

Article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the State of Kazakhstan on 24 January 2006, protect the inherent right to life of all human beings.

We recall that the right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation: An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences (Human Rights Committee, General Comment 36).

Loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under article 6. States parties also have a particular duty to investigate allegations of violations of article 6 whenever State authorities have used or appear to have used firearms or other potentially lethal force outside the immediate context of an armed conflict, for example, when live fire has been used against demonstrators, or when civilians have been found dead in circumstances fitting a pattern of alleged violations of the right to life by State authorities (Human Rights Committee, General Comment 36).

Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (Human Rights Committee, General Comment 36).

We emphasize that investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent. We stress that investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates. Where relevant, the investigation should include an autopsy of the victim's body, whenever possible, in the presence of a representative of the victim's relatives. In the event that a violation is found, full reparation must be provided, including, adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an



obligation to take steps to prevent the occurrence of similar violations in the future (Human Rights Committee, General Comment 36).

States parties need to take, among other things, appropriate measures to establish the truth relating to the events leading to the deprivation of life, including the reasons and legal basis for targeting certain individuals and the procedures employed by State forces before, during and after the time at which the deprivation occurred, and identify the bodies of the individuals who have lost their lives. States parties should also disclose relevant details about the investigation to the victim's next of kin, allow the next of kin to present new evidence, afford the next of kin legal standing in the investigation, and make public information about the investigative steps taken and the findings, conclusions and recommendations emanating from the investigation, subject to absolutely necessary redactions justified by a compelling need to protect the public interest or the privacy and other legal rights of directly affected individuals (Human Rights Committee, General Comment 36).

States parties must also take the necessary steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation.

*Prohibition of torture and other cruel, inhuman or degrading treatment or punishment*

We recall that the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is established in (at least) article 5 UDHR, article 7 ICCPR as well as in multiple articles of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

We stress that attached to the peremptory and absolute prohibition of torture are obligations to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to protect victims from reprisals and intimidation, and to provide remedies to victims<sup>12</sup>. We refer your Excellency's Government to the comprehensive report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on all aspects including good practices of States, relating to the investigation and prosecution of acts of torture and related ill-treatment (A/HRC/52/30).

States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have explicit treaty duties to establish all acts of torture as offences under domestic law (art. 4 CAT), to exercise jurisdiction over said offences (art. 5), to receive complaints and examine them promptly and impartially (art. 13), and to investigate those allegations promptly and impartially (art. 12). Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (art. 2 (3) and 2 (2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition. Amnesties provided by domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction. Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means (art. 15). Victims are to be protected from

reprisals or intimidation during said investigations (art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14). States are to establish jurisdiction over all acts of torture on territoriality, flag State, active nationality, passive nationality, and universal jurisdiction principles (art. 5).

In connection to such prohibition, we recall the obligations of States to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to victims. Such investigations are recommended to be carried out in line with the United Nations Manual on the Effective Investigations and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Istanbul Protocol” revised 2022 edition).

Concerning the obligation to provide remedies for victims of torture, the Committee Against Torture has affirmed that the comprehensive reparative concept entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. It has also determined that ‘victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention’ and that ‘a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted. Moreover, the Committee has established that ‘the obligations of States parties to provide redress under article 14 are two-fold: procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.

Likewise, we wish to remind your Excellency’s Government that according to paragraph 5 of the Committee Against Torture’s General Comment No. 2 (CAT/C/GC/2), no exceptional circumstances whatsoever (including a state of war or threat thereof, internal political instability or any other public emergency, any threat of terrorist acts or violent crime, armed conflict, international or non-international) may be invoked by a State party to justify acts of torture in any territory under its jurisdiction.

#### *Prohibition of arbitrary detention and enforced disappearances*

We recall that any arrest and detention applied as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR, including article 19, is arbitrary. In this regard, we would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State

has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

We wish to stress that protesters, including civil society representatives, journalists and human rights defenders, should not face criminal liability following their participation in peaceful protests, nor for exercising their right rights to freedom of opinion and expression, or merely exercising their profession, in the case of journalists. Article 6 (b) and c) of the Declaration provides that everyone has the right to freely publish, impart or disseminate to others’ views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance of these rights. Article 12, paragraphs 2 and 3, provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Concerning the arrests and detention following the events that took place in January 2022, we wish to refer to article 43(3) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) which establishes that Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited period of time and as is strictly required for the maintenance of security and order. In addition, article 58 establishes that Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals. Likewise, principles 15, 16 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment establish that during arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify members of his family, or other appropriate persons of his choice, of his arrest, detention or imprisonment, or of the transfer, and of the place, where he is kept in custody and that a detained person shall have the right to be visited by members of his family and shall be given adequate opportunity to communicate with the outside world.

We also remind your Excellency’s Government that an individual has the right to legal assistance, from the moment of arrest. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

We would also like to stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. We recall that enforced disappearances amount to violations of articles 6, 7, 9 and 16 of the ICCPR, read alone and in conjunction with article 2(3), and of articles 1, 2, 4, 12 and 24 of the

International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), acceded to by Kazakhstan on 27 February 2009. Equally, the right not to be subjected to an enforced disappearance is of a non-derogable nature and the prohibition of this crime has attained the status of *jus cogens*. Furthermore, enforced disappearance constitutes a particularly aggravated form of arbitrary detention and such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance and is inherently arbitrary, as it places the person outside the protection of the law, in violation of article 6 UDHR.

In this connection, article 3 of the ICPPED sets forth the State's obligation to investigate promptly, thoroughly, and impartially any act of enforced disappearance and bring those responsible to justice. The preamble, as well as article 24 of ICPPED enshrine the rights of victims of acts of enforced disappearance to obtain reparation and compensation for the harm suffered.

We would like to recall the Declaration on the Protection of All Persons from Enforced Disappearance, pursuant to article 7 of which, no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearance. Moreover, articles 9-12 establish the guarantees to be afforded to any person deprived of liberty. In this connection, we stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. Article 13 of the Declaration sets forth the State's obligation to investigate promptly, thoroughly and impartially any complaints of enforced disappearance.

Article 19 of the Declaration requires that victims of acts of enforced disappearance and their family obtain redress and integral reparation for the harm suffered. In this regard, we would like to draw the attention of your Excellency's Government to the 2012 annual report of the Working Group on Enforced or Involuntary Disappearances, and its thematic section on reparation and enforced disappearances (A/HRC/22/45, paras. 46-67).

The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

We would like to remind your Excellency's Government that enforced disappearance has different impact depending on whom it targets. For instance, according to the Study on enforced or involuntary disappearances and economic, social and cultural rights by the Working Group on Enforced or Involuntary Disappearances (A/HRC/30/38/Add.5), human rights defenders are also targeted to intimidate and prevent others from claiming and exercising their rights. Due to collective character of certain economic, social and cultural rights, the disappearance of one person may have a negative effect on the larger community. Similarly, the General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances (A/HRC/WGEID/98/2) stresses, inter alia, the differentiated effects of enforced disappearances in women and girls. In particular, States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence, and the resulting psychological damage and social stigma as well as

the disruption of family structures.

*The right to freedom of expression*

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with Article 19. (GC34 paragraph 23)

*The right to fair trial – open and public justice*

We note that the right to fair trial under article 14(1) of the ICCPR provides for the principle of open justice: ‘The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice’.

*Victim participation in criminal proceedings*

We recall that judicial proceedings, including to prosecute torture, should be responsive to the needs of victims, including through providing relevant information to them, allowing their views to be presented and considered, providing them with proper assistance, minimizing inconvenience to them, protecting their privacy, and ensuring their safety (including from intimidation and retaliation) (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, para. 6; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005, para. 12). Appropriate measures should be taken to ensure the safety, physical and psychological well-being and privacy of victims (2005 Basic Principles, para. 10). A victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation (2005 Basic Principles, para. 10). Victims should also be treated with compassion and respect for their dignity (1985 Declaration, para. 4; 2005 Basic Principles, para. 10).