



**Optional Protocol to the  
Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment**

**Visit to Kazakhstan undertaken from 20 to 29  
September 2016: observations and  
recommendations addressed to the State party**

**Report of the Subcommittee\*, \*\***

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\* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the State party on 1 February 2017. On 18 January 2019, the State party requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

\*\* The annexes to the present report are being circulated as received, in the language of submission only.

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## Contents

	<i>Page</i>
I. Introduction .....	3
II. Reprisals .....	4
III. Implementation of the Optional Protocol: the national preventive mechanism .....	4
IV. General observations on the situation of torture and ill-treatment .....	6
V. Framework for combating torture and its application .....	7
A. Safeguards .....	8
B. Authorization of detention .....	9
C. Detention and investigation under one ministry and frequent transfers between places of deprivation of liberty .....	10
D. Complaints .....	11
E. Inspections of places of detention and investigation of allegations of torture .....	11
F. Lack of protection of, compensation for and rehabilitation of victims of torture .....	12
VI. Penitentiary system .....	12
A. Pretrial detention facilities .....	13
B. Prison colonies .....	15
C. Women in detention .....	20
D. Children in detention .....	20
VII. Other institutions under the Subcommittee mandate .....	20
Annexes	
I. List of places of deprivation of liberty visited by the Subcommittee .....	22
II. Officials and other persons with whom the delegation met .....	24

## I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment carried out its first regular visit to Kazakhstan from 20 to 29 September 2016.
2. The Subcommittee members conducting the visit were: Victor Zaharia (head of delegation), Arman Danielyan, Marija Definis-Gojanovic and Paul Lam Shang Leen (focal point on reprisals). The Subcommittee was assisted by three human rights officers from the Office of the United Nations High Commissioner for Human Rights, United Nations security officers and interpreters.
3. During the visit, the Subcommittee conducted more than 40 visits to places of deprivation of liberty. The members visited police stations, temporary detention facilities, pretrial detention facilities (SIZOs), correctional establishments, prisons, military detention facilities, correctional rehabilitation centres, psychiatric and forensic institutions and other detention facilities (see annex I). The members held meetings with relevant authorities of Kazakhstan, the Human Rights Commissioner, representatives of the national preventive mechanism, members of civil society and the United Nations Resident Coordinator in Kazakhstan (see annex II).
4. At the conclusion of the visit, the Subcommittee presented its confidential preliminary observations orally to the authorities of Kazakhstan. In the present report, the Subcommittee lays out its findings and recommendations concerning the prevention of torture and ill-treatment of persons deprived of their liberty in Kazakhstan. In the report the Subcommittee uses the generic term “ill-treatment” to refer to any form of cruel, inhuman or degrading treatment or punishment.
5. The Subcommittee requests the authorities of Kazakhstan to reply within six months from the date of the transmission of the report, giving a full account of the actions taken by the State party to implement the recommendations.
6. The report will remain confidential until such time as the authorities of Kazakhstan request the Subcommittee to make it public, in accordance with article 16 (2) of the Optional Protocol. The Subcommittee draws the State party’s attention to the Special Fund established under the Optional Protocol, as recommendations contained in public Subcommittee visit reports can form the basis of an application for the funding of specific projects under the Special Fund.
7. **The Subcommittee recommends that the authorities of Kazakhstan request the publication of the present report in accordance with Optional Protocol article 16 (2). It also recommends that the State party distribute the report to all the relevant government departments and institutions.**
8. The Subcommittee wishes to express its gratitude to the authorities for their cooperation and facilitation of the visit. In particular, it would like to thank the Government of Kazakhstan for all the information received before and during the visit, for issuing credentials for unrestricted access to places of deprivation of liberty and for designating several focal points in the respective ministries.
9. The authorities granted access to all places visited by the Subcommittee, and the delegation was able to conduct private interviews of its choice in all the places visited. However, at the Centre of Forensic Medicine in Astana and at the national anti-corruption bureau in Almaty, access was delayed until the officers in charge, at the request of the focal point, confirmed the credentials with their superiors.
10. The Subcommittee recalls that the purpose of Subcommittee visits is to be able to assess the everyday life of persons deprived of their liberty. It is of the view that additional preparations made by the authorities could distort the overall picture, thus making it more

difficult for the Subcommittee to assess objectively the current situation in places of deprivation of liberty.

## II. Reprisals

11. The Subcommittee is concerned about the possibility of reprisals against persons interviewed during the visit. It wishes to emphasize that any form of intimidation or reprisals against persons deprived of their liberty constitutes a violation of the State party's obligation to cooperate with the Subcommittee under the Optional Protocol. In accordance with article 15 of the Optional Protocol, the Subcommittee urges the authorities to ensure that there are no reprisals following the Subcommittee's visit. It wishes to draw the attention of the authorities to the Subcommittee's policy on reprisals in relation to its visiting mandate (CAT/OP/6/Rev.1).

12. **The Subcommittee reiterates the recommendations made in connection with its preliminary observations and stresses that those persons who provide information to or cooperate with national or international agencies or institutions should not be punished or otherwise penalized for having done so. The Subcommittee requests the State party to provide in its reply detailed information on what it has done to prevent the possibility of reprisals against anyone who was visited by, met with or provided information to the Subcommittee during the course of the delegation's visit, as well as information on measures taken to act upon such allegations.**

## III. Implementation of the Optional Protocol: the national preventive mechanism

13. Kazakhstan ratified the Optional Protocol in 2008; however, it made a declaration under article 24, which allowed for the postponement of the national preventive mechanism designation for three years. In 2013 the Law on the amendments and additions to certain legislative acts of Kazakhstan on the establishment of a national preventive mechanism was adopted. According to an official notification letter, dated 5 January 2015, from the Commissioner for Human Rights addressed to the Subcommittee, the first monitoring visits under the mandate of the national preventive mechanism were conducted in 2014.

14. The national preventive mechanism of Kazakhstan is a two-tier body, based on the "ombudsman plus" model. The office of the Commissioner for Human Rights, which the Government designated as the national preventive mechanism, was established pursuant to presidential decree No. 947 of 19 September 2002. In accordance with article 8 of the statute established under the decree, the Commissioner is appointed and can be removed by the President. The Coordinating Council, established under the auspices of the Commissioner, is in charge of the overall functioning of the national preventive mechanism. One of its key responsibilities is to select the members of the mechanism, who carry out visits to places of deprivation of liberty. In December 2015, pursuant to a decision of the Coordinating Council, new members of the mechanism were elected for 2016.<sup>1</sup> The members of the mechanism are elected for a period of one year,<sup>2</sup> which may have a negative impact on the continuity and institutional capacity of the mechanism.

15. The Subcommittee observes that the authorities, rather than adopting a separate law on the national preventive mechanism, amended about 16 legislative acts, which makes it difficult to ascertain the precise remit of the mechanism's mandate.

16. The Subcommittee welcomes the establishment of the national preventive mechanism and commends the participation of civil society organizations in the mechanism. It is of the view, however, that the fact that the President of Kazakhstan appoints the

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<sup>1</sup> National Preventive Mechanism for the Prevention of Torture, "Consolidated report of the national preventive mechanism members on the preventive visits carried out in 2015 (annual report)".

<sup>2</sup> Order of the Human Rights Commissioner No. 8893 of 8 November 2013.

Human Rights Commissioner might affect the impartiality and independence of the mechanism.

17. **While the decision on the institutional format of the national preventive mechanism is left to the discretion of States parties, it is imperative that national preventive mechanism laws are in full compliance with the Optional Protocol and the guidelines on national preventive mechanisms (CAT/OP/12/5). Therefore, the Subcommittee recommends the enactment of a separate law that ensures the functional and operational independence of the mechanism, with due consideration paid to the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

18. **The Subcommittee further recommends that the mandate of the Human Rights Commissioner be separated from that of the national preventive mechanism so that mechanism functions can be performed autonomously, in line with the guidelines of the Subcommittee.**

19. **The Subcommittee recommends extending the current one-year mandate of the members of the national preventive mechanism in order to ensure some continuity. All mechanism participants should undergo training, including on interview techniques, visiting procedures and skills to detect signs and risks of torture and ill-treatment.**

20. The Subcommittee further observes that there are no explicit provisions in the legislation related to the national preventive mechanism regarding earmarked funding; rather, it is stated that expenses incurred by the members of the mechanism are to be reimbursed in accordance with government orders. The Subcommittee underlines that the lack of budgetary independence may have a negative impact on the independent functioning of the mechanism.

21. **The Subcommittee recalls that under article 18 (3) of the Optional Protocol, States parties are required to undertake to make available the necessary resources for the functioning of the national preventive mechanisms. Therefore, it recommends that funding be provided for the effective functioning of the mechanism through a specific budget line in the national annual budget, and that the mechanism be granted institutional autonomy for the use of its resources.**

22. The legislation related to the national preventive mechanism does not contain a single, overarching definition of “deprivation of liberty”. Rather, the legislative changes to the 16 existing laws indicated that the mechanism would have access to prisons, army detention facilities, pretrial detention facilities, institutions for juveniles and a variety of health-care institutions, such as psychiatric institutions and centres for treatment of drug addiction, among others. However, the amendments appear not to cover centres where asylum seekers and refugees are held, social care homes and other places where persons may be deprived of their liberty.

23. The Subcommittee emphasizes that, in accordance with article 4 of the Optional Protocol, the State is to allow visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. Therefore, any place in which a person is, or might be, deprived of liberty, in the sense of not being free to leave, should fall within the scope of the national preventive mechanism.

24. **The Subcommittee recommends that the national preventive mechanism be empowered, through legislative means, to exercise core national preventive mechanism functions, including the powers to regularly examine the treatment of persons deprived of their liberty in all places of deprivation of liberty, as defined in article 4 of the Optional Protocol, to issue recommendations to relevant authorities and to submit proposals and observations on existing and draft legislation.**

25. The Subcommittee notes with concern that the legislation related to the national preventive mechanism provides that persons suspected of a crime cannot be members of the mechanism. This not only stands at odds with the presumption of innocence but may lead to abuse. Persons registered in psychiatric and/or drug-treatment institutions do not have the

right to be members of the mechanism. The Subcommittee finds this overly restrictive and even potentially contradictory to article 5 of the Convention on the Rights of Persons with Disabilities.

26. The Subcommittee is greatly concerned about reported cases of criminal prosecution against members of the national preventive mechanism for work carried out under the mandate of the mechanism. According to the information available to the Subcommittee, a civil libel case was brought against two members of the mechanism.

**27. The Subcommittee recommends that an impartial investigation into the circumstances surrounding the above-mentioned cases be conducted, and that the Subcommittee be kept informed about the results of the investigation. In this connection, the Subcommittee would like to draw the State party's attention to article 21 of the Optional Protocol.**

28. In 2015, the national preventive mechanism carried out 528 preventive visits, including 19 special visits. The Subcommittee is pleased that, according to the consolidated report of the national preventive mechanism members on the preventive visits carried out in 2015, the number of preventive visits almost doubled in comparison with 2014.

29. The Subcommittee learned that special urgent visits must be approved by the Commissioner, who also must approve any findings before their publication. This procedure may compromise the independence of the national preventive mechanism, as the Commissioner is appointed by the President and his or her activities are governed by presidential decree. The Subcommittee would like to recall the concern expressed by the Committee against Torture that the national preventive mechanism had not been able to undertake ad hoc visits owing to bureaucratic constraints (see CAT/C/KAZ/CO/3, para. 13).

30. The Subcommittee is concerned that, in the various places visited, many prisoners were unaware of the existence of the national preventive mechanism and had never met a member of the mechanism.

**31. The Subcommittee recommends that the State party raise awareness of the Optional Protocol and the mandate of the national preventive mechanism in order to increase the mechanism's visibility. Recommendations issued by the mechanism should be widely discussed. Moreover, the mechanism should engage in legislative processes and advocacy, as encouraged under article 19 of the Optional Protocol.**

**32. The Subcommittee also recommends that the State party and the national preventive mechanism enter into a continuous dialogue, with a view to implementing the mechanism's recommendations to improve the treatment and conditions of persons deprived of their liberty and to prevent torture and other ill-treatment or punishment.**

#### **IV. General observations on the situation of torture and ill-treatment**

33. The Subcommittee welcomes the considerable reduction in the number of persons deprived of their liberty and the parallel overall improvement in conditions of detention. However, it found that there was a general atmosphere of intimidation and repression in the places of deprivation of liberty it visited. In the course of its mission, the Subcommittee received a number of credible allegations of torture and ill-treatment, related in particular to the initial stages of deprivation of liberty. For instance, there appear to be instances of excessive use of force during apprehension and immediately after, and beatings with hands and batons and kicking during interrogation. In some cases, a certain degree of psychological pressure appears to have been applied; for example, the police threatened to harm family members. The Subcommittee was also told about instances of "welcome" beatings in quarantine in pretrial detention facilities and some harsh informal disciplinary measures and beatings meted out during searches in penitentiary institutions.

34. The Subcommittee is concerned about cases of torture and ill-treatment and welcomes the announcement by the Government of a zero-tolerance policy vis-à-vis torture. To achieve this, the areas described below need to be addressed.

35. The current institutional landscape, which is characterized by a concentration of power in two institutions, the Ministry of Internal Affairs and the Prosecutor's Office, both of which ultimately focus on resolving crimes and depend on each other to do so, does not allow for effective control. In addition, neither the judiciary nor defence lawyers constitute an actual counterbalance. As a result, the safeguards, while provided for by law and in many cases formally complied with, are ineffective in practice.

36. While the creation of a new probation system is a step in the right direction, the current penitentiary system is not in compliance with rule 5 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which stipulates that prison regimes should seek to minimize differences between life inside and outside prisons. The Subcommittee is of the view that the overemphasis of punishment and the cumulative effect of restrictions, rigid discipline and military parading are unlikely to help reach the objectives of the penitentiary system, and may amount to degrading treatment. **The Subcommittee recommends that the penitentiary system shift its focus from excessive disciplinary punishment towards rehabilitation and reintegration.**

## V. Framework for combating torture and its application

37. The Subcommittee notes the prohibition of torture and ill-treatment in the Constitution (art. 17) and acknowledges the comprehensive normative framework in the area of criminal justice. However, the definition of torture in the Criminal Code is not in full compliance with that outlined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as the former excludes physical and mental suffering caused as a result of legitimate acts on the part of officials, which are different from the lawful sanctions referred to in the Convention. Also, only acts of torture committed by any person acting in an official capacity or upon incitement by that person or with his or her knowledge or agreement are covered. Kazakh legislation also allows for fines and other non-custodial punishments for torture.

38. **The Subcommittee notes the authorities' indications that a review of the definition of torture in the Criminal Code is under way. In that context, the Subcommittee reiterates the recommendation of the Committee against Torture to bring that definition into conformity with the one contained in the Convention and ensure that perpetrators convicted of having committed torture or ill-treatment are punished with appropriate penalties that are commensurate to the gravity of the crime (see CAT/C/KAZ/CO/3, paras. 9 and 24).**

39. During the initial stages of deprivation of liberty, when the protection of the presumption of innocence is key, suspects come into contact with two institutions: the Ministry of Internal Affairs and the Prosecutor's Office. The first is responsible for investigating crimes and prosecuting criminals, while also managing almost all detention facilities, with the exception of a limited number of pretrial detention facilities that are managed by the National Security Committee (KNB). Ministry investigators hold far-reaching powers in terms of restricting prisoners' contact with their family and even access to private lawyers.

40. Despite some changes to the functions of prosecutors as a result of the 2015 legal reforms, prosecutors continue to play a double role likely to undermine their impartiality. They participate in the prosecution, while at the same time they are mandated to oversee the legality of the detention and of actions by Ministry of Internal Affairs officials.

41. The judiciary, which should act as an independent oversight mechanism over the above institutions, has been somewhat strengthened and investigating judges are tasked with monitoring whether human rights and freedoms and the legal interests of people are

respected during criminal processes.<sup>3</sup> In reality, members of the judiciary appear to deviate only rarely from decisions taken by the prosecutors and are not viewed as independent actors by detainees. Similarly, there is a lack of trust of defence lawyers. This leads to a situation in which the overwhelming majority of suspects do not have effective avenues of redress. The Subcommittee is concerned that there is ample opportunity for putting pressure on suspects, with little effective control by any independent actors.

**42. The Subcommittee recommends that the State party reform the system of prosecution, ensure that only independent judges take decisions on restrictions on the human rights of suspects and accused persons, and reinforce oversight of the activities of investigators.**

## **A. Safeguards**

### **1. Information about rights**

43. Leaflets outlining the rights of detained persons were posted visibly in almost all institutions visited. Detainees informed the delegation that, normally, their rights were formally read or given to them. The Subcommittee received allegations that some foreigners had not had access to interpretation.

**44. The Subcommittee recommends that all arrested persons be immediately informed of the reasons for their arrest, and their rights as detainees, in a language they understand.**

### **2. Communication of the detention and information to the next of kin**

45. Many interlocutors highlighted issues relating to how next of kin were informed about detentions. The Subcommittee was informed that, in some cases, investigators delayed notification of the family as a means of putting pressure on the suspect, with a view to obtaining a confession. In several instances, detainees allegedly were able to use the investigator's office telephone to call anywhere, provided they cooperated. Also, authorization of visits with next of kin apparently was dependent on cooperation. According to several detainees, such visits were allowed by the administration only with the permission of the investigator in charge of the criminal case.

**46. The Subcommittee recommends that persons deprived of liberty be able to immediately inform a family member or other next of kin of their detention. The exercise of that right should not depend on the prosecutor or investigator, or the administration of the detention facility. Any decision by investigators or prosecutors to restrict the right to inform the next of kin must be for objective and verifiable reasons related to the investigation and subject to judicial review.**

### **3. Access to a lawyer**

47. The Subcommittee notes the legal aid system in place and that the law requires defence lawyers to be present from the first interrogation. However, according to consistent reports, State-provided lawyers enjoy practically no trust because of a lack of diligence, delays and the perception that they work in collusion with investigators. Some interlocutors reported that first interrogations are done without the presence of a lawyer, and that lawyers sometimes signed documents post-factum. Further eroding the confidence in, and independence of, State-provided lawyers is the fact that their expense reports must be signed by judges or investigators.<sup>4</sup> "Public defenders" – usually close relatives of the detainee – have regular access to the detainee. The process to become a public defender was described as burdensome, and depended on permission from the police.

**48. Persons deprived of liberty must have access to legal counsel of their choice, and if needed, a State-provided lawyer. The Subcommittee recommends that the system and remuneration of State-provided lawyers be reviewed to ensure effective**

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<sup>3</sup> Code of Criminal Procedure, art. 54 (3).

<sup>4</sup> It was also reported that the investigators must approve the lawyer's access to the client.



**assistance is provided to suspects. Lawyers must be provided with unhindered access to their clients, without the need for any approval from prosecutors or investigators.**

#### **4. Medical screening**

49. Initial medical screening is normally conducted upon arrival at temporary detention facilities (IVS). However, it appears that the screening is routinely conducted in the presence of police officers and superficially, and that the person conducting the screening reports to the Ministry of Internal Affairs. Also, the Subcommittee learned that the initial screening is performed unevenly across the country. During transfers, the results of medical screening are kept in the personal files of inmates, making it impossible for the oversight mechanisms to have the full picture of the number of people delivered with injuries.

**50. The Subcommittee recommends that initial medical screenings be carried out rigorously, and that clear and detailed records be established, which should be accessible at all times as part of the record of any detention facility. Medical personnel conducting such screenings should be independent from the administration of the detention facility to allow for impartial results and proper follow-up. The Subcommittee recommends that the State party improve its training of medical personnel, particularly on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and other international standards. In addition, the Subcommittee recommends that health professionals immediately report suspicions of torture and ill-treatment to appropriate authorities so that an independent examination may be conducted in accordance with the Istanbul Protocol. The confidential medical report should be made available to the detainee and to his or her counsel.**

#### **5. Registers, books, video monitoring**

51. The Subcommittee welcomes that in several locations an electronic database system and video monitoring were functioning. However, while numerous records and registers exist in temporary detention facilities, including lists of detainees, paper-based record-keeping is inconsistent and incoherent in all places visited, and in police stations visitor registers do not reflect the movements of the persons brought in from other pretrial detention facilities.

**52. The Subcommittee recommends that a single online registry be established to avoid duplication and confusion. The system should allow for a quick search of any person, to ensure that information can be accessed as needed by the prosecutors, next of kin and lawyers. The State party must ensure that all detainees and arrestees are registered and accounted for, and that their exact location is known at all times.**

### **B. Authorization of detention**

53. Interlocutors generally reported adherence to procedural time frames, such as being brought before a judge within 72 hours of the initial arrest.<sup>5</sup> The detainees, in some cases, were taken before a judge just before the time limit expired. According to reports, including official figures, the judge approves the prosecutor's request for detention in about 90 per cent of cases. Court hearings were reported to be short and ineffective; judges are generally seen as rubber-stamping decisions proposed by the prosecutor. Additionally, judges almost never ask questions about treatment by law enforcement officials. While defence lawyers are usually present, they are said not to actively seek the detainee's release, ask questions or present any evidence.

54. It appears that detainees, as a rule, are not present when decisions on prolonging detention are taken. By law, a judge may request the detained person to be brought before him or her but, as reported by numerous interviewees, this does not happen in practice. In best-case scenarios, detainees are given copies of the decision prolonging their detention,

<sup>5</sup> See Code of Criminal Procedure, art. 131.

without any explanation. The problem is exacerbated by the fact that State-provided lawyers generally do not visit their clients in pretrial detention facilities. Even defence lawyers and public defenders reportedly are sometimes not informed of the time, date and location of hearings on prolongation of detention. The Code of Criminal Procedure simply states, in article 152, that the lawyer or public defender may participate, but does not make his or her participation mandatory. The prosecutor, on the other hand, must participate, in accordance with the same article. In some cases, the detainees were unaware of the reasons for their initial detention, or for the prolongation of their detention by the court. They were also unaware of the time frame of their detention, the progress in their investigation or the identity of their lawyer or the investigator.

**55. The Subcommittee recommends that detainees be brought before a judge as soon as possible, without waiting for the 72 hours authorized by law to lapse, and to reduce that period from 72 to 48 hours as an additional safeguard against torture and ill-treatment.<sup>6</sup> It also recommends that all hearings regarding initial detention and its prolongation be conducted in the presence of the detained persons and their lawyers. During the hearings, judges should inquire into the well-being of detainees and, where there is suspicion of torture, order an immediate and effective investigation. Detained persons must be able to challenge their detention at any time,<sup>7</sup> at reasonable time intervals. The procedure for the initial detention and its periodic review and prolongation should be under judicial supervision and beyond the control of investigators, prosecutors and detaining authorities.**

### **C. Detention and investigation under one ministry and frequent transfers between places of deprivation of liberty**

56. While Kazakhstan had transferred pretrial detention facilities and prison colonies from the Ministry of the Interior to the Ministry of Justice as of 2004, the State party brought all detention facilities back under the authority of the Ministry of Internal Affairs in 2011. The temporary detention facilities attached to district police stations under the Ministry of the Interior are intended for initial detention of no more than 72 hours, but in many cases are used for stays of up to 30 days while investigations are ongoing.<sup>8</sup> Pretrial detention facilities and temporary detention facilities are governed by the same law.

57. The delegation observed that detainees under investigation are frequently, sometimes daily, transferred from pretrial detention facilities to police stations or temporary detention facilities and back. When, owing to the distance, it is impossible to transfer the prisoner from a pretrial detention facility to a police station directly, prisoners are transferred first to a temporary detention facility, with the aim of further transfer to a police station.

58. There appears not to be a requirement for the investigator to explain why a suspect must be taken out of a pretrial detention facility, and often it is done for interrogation only. Registers kept at pretrial detention facilities, while recording the time of transfer, do not show where suspects are taken, and there seem to be no registers in police stations to record who has been brought in for an investigation. In addition, while there are time limits on detention in police stations (three hours) and the duration of interrogations (two sessions of four hours each, separated by a one-hour break), there do not appear to be limits on the time spent outside the pretrial detention facility; several suspects had been taken out at 10 a.m. and were not back when the delegation left at 7.30 p.m. This is of particular concern given the generally inadequate conditions in cells at police stations, where suspects wait: only

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<sup>6</sup> The Human Rights Committee, in paragraph 33 of its general comment No. 35 (2014) on liberty and security of person, states that longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment.

<sup>7</sup> See International Covenant on Civil and Political Rights, art. 9 (4).

<sup>8</sup> Law No. 353-I on the procedure for and conditions of detention of persons in special institutions that enforce temporary isolation from society, art. 12.

benches are provided, there are no windows and no ventilation and no food or water is provided. Some detainees indicated that the investigator gave them food.

59. **The fact that all detention facilities are under the same ministry as the investigators is problematic. The Subcommittee recommends that the detaining authority be separate from the investigating officials, which allows for mutual control and excludes the possibility of using detention as a tool of the investigative process or a means to compel prisoners to confess.**

60. **The Subcommittee views with concern the many transfers between different institutions. Transfers of detainees should be kept to a minimum. As the default option, investigators should travel to the pretrial or temporary detention facilities to question detainees. If investigators consider transfers elsewhere strictly necessary, they should be required to justify those transfers. The Subcommittee recommends that movements of suspects be recorded accurately in order to track their whereabouts.**

61. **The Subcommittee recommends that the Government bring the conditions of detention in police stations into compliance with international standards, including the conditions of detention during transfers, by ensuring that cells have sufficient daylight, ventilation and space and by providing detainees with water and food.**

#### **D. Complaints**

62. The delegation noted that there were several formal complaints mechanisms in place, including “complaints boxes” in most places of deprivation of liberty. The national legislation in force describes relevant procedures and prohibits reprisals against complainants.<sup>9</sup>

63. While the legislation prohibits censorship of correspondence, and requires that all mail should be forwarded unopened,<sup>10</sup> many detainees interviewed reported that their correspondence was opened by the administration of the detention facilities. In some cases, they faced reprisals as a result of their complaints, despite the legal provisions prohibiting such reprisals. Meanwhile, nearly all the officials interviewed indicated that they had not received any complaints about misconduct by Ministry of Internal Affairs staff through those channels in recent years. Few detainees appeared to trust the complaints boxes system or other complaint mechanisms. The delegation was told that complaints often remained unprocessed and that detainees did not even receive a registration number for the complaint. Many interlocutors indicated that those who complained rarely received a response, or that they were told after lengthy periods that their complaints had been set aside without any further action.

64. **The Subcommittee concludes that, in practice, there are no effective complaints avenues, which leads to a total absence of trust and, in combination with fear of reprisals, a low number of complaints. The Subcommittee therefore recommends ensuring that complaints reach relevant authorities and that the confidentiality of those complaints is respected.**<sup>11</sup>

#### **E. Inspections of places of detention and investigation of allegations of torture**

65. The delegation met several oversight prosecutors, who are usually assigned to a particular detention facility. By law, they are tasked with an array of activities specifically aimed at preventing torture. The fact that they visit places of detention almost daily is laudable, but they mentioned that they never received complaints about conditions or treatment. At the same time, almost all detainees interviewed consider the prosecutors part

<sup>9</sup> Criminal Execution Code, art. 14 and Law No. 353-I, art. 20.

<sup>10</sup> Law No. 353-I, art. 20.

<sup>11</sup> Nelson Mandela Rules, rule 57.

of the problem, not the solution. This suggests that the prosecutors view their duties in a formalistic way and are perceived to be part of the system.

66. The investigation of torture cases is carried out by special prosecutors. Few complaints reach that level, and even fewer are investigated properly, if at all, which indicates that such prosecutors are not sufficiently independent and/or not willing to investigate. As a result, a limited number of cases reach the court: 12 out of 600 complaints, according to the statistics provided by the State party. In addition, not all persons convicted of torture are sentenced to prison terms.<sup>12</sup>

67. While the Subcommittee acknowledges the fact that some cases of torture have been brought to justice in recent years, the interviews conducted and the low number of complaints show that investigation and prosecution procedures are inaccessible to many detainees and are ineffective. Neither special prosecutors nor oversight prosecutors are seen as independent actors able to initiate prosecutions against officials of the Ministry of Internal Affairs.

**68. The Subcommittee recommends that prompt, impartial, effective and independent ex officio investigations be undertaken in response to all allegations of torture or where there are reasonable grounds to believe that an act of torture has been committed, irrespective of whether a formal complaint has been received.**<sup>13</sup>

## **F. Lack of protection of, compensation for and rehabilitation of victims of torture**

69. No specific measures designed to address the protection of, compensation for and rehabilitation of victims of torture are in place. Regarding compensation, victims must file a civil lawsuit either during or following the criminal case proceedings.<sup>14</sup> Filing a lawsuit for compensation independent of a criminal case is not possible under the current legislation. No mechanisms for establishing the exact amount of compensation in cases involving torture are established. Furthermore, there is no programme for the rehabilitation of victims of torture.

**70. The Subcommittee recommends setting up a formal system to address the protection of, compensation for and rehabilitation of victims of torture. In accordance with international standards, victims of torture must have an enforceable right to fair and adequate compensation.**<sup>15</sup> **Even where perpetrators of torture have not been identified, the State party must provide adequate compensation when a civil lawsuit is brought against it. In addition to affirming the formal status of a victim of torture, the State party must provide as full rehabilitation as possible.**<sup>16</sup> **When an act of torture has been established to have been committed, compensation should automatically be paid.**

## **VI. Penitentiary system**

71. The Subcommittee learned that, as a result of legislative and other measures taken in recent years, the number of persons deprived of their liberty in pretrial detention facilities and prison colonies has been significantly reduced, from 55,000 in 2012 to about 36,000 in 2016, according to official figures. Holding fewer people in places of deprivation of liberty

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<sup>12</sup> The figures provided by the authorities are as follows: in 2015, nine cases brought to trial, with 16 persons sentenced to deprivation of liberty, 1 to a fine and 1 to “limitation of freedom”; in 2016 (first half), four cases brought to trial, 6 persons convicted – 5 to deprivation of liberty and 1 to conditional release.

<sup>13</sup> Nelson Mandela Rules, rule 57.

<sup>14</sup> Code of Criminal Procedure, art. 166.

<sup>15</sup> Convention against Torture, art. 14.

<sup>16</sup> See Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, para. 12.

is one of the most effective ways of preventing torture and ill-treatment. The reduction has also resulted in better material conditions of detention.

## A. Pretrial detention facilities

72. The Subcommittee visited pretrial detention facilities operated under the Ministry of Internal Affairs and under the National Security Committee, as well as temporary detention facilities operated under the Ministry of Internal Affairs.<sup>17</sup> As all these institutions are governed by Law No. 353-I on the procedure for and conditions of detention of persons in special institutions that enforce temporary isolation from society, and as temporary detention facilities are often used as pretrial detention facilities, the information in this section applies to all temporary and pretrial detention facilities, unless specified otherwise.

73. The delegation learned about the Government's efforts to increase the use of alternatives to pretrial detention.<sup>18</sup> As a result of those efforts, 5,500 persons were being held in pretrial detention in Ministry of Internal Affairs institutions, as compared to more than 7,000 earlier. The Subcommittee found that the maximum duration of pretrial detention provided by law – up to 12 months – was generally respected. Pretrial detainees were separated from convicts in accordance with international standards.

### 1. Pretrial detention regime and daily activities

74. The Subcommittee observed that in pretrial detention facilities, detainees are required to walk with their hands behind their back and their head bowed, to retreat against the wall when an official appears, and to recite their names and the articles of the law that they are accused of having violated when they present themselves. All boys and men must wear uniforms and are shaved upon arrival to the facilities. Several interlocutors indicated that they did not understand the reasons for the forced shaving and found it stigmatizing.

75. Law 353-I authorizes work when there is the possibility (art. 16.3). Generally, few activities are provided during pretrial detention, and many detainees spend 23 hours in their cells without meaningful activity. Most detainees indicated that they were allowed to walk around for up to one hour. In most pretrial detention facilities, there appears to be access to televisions, radios and libraries in accordance with the legislation. While religious freedom is guaranteed by law, in some institutions restrictions on praying and access to religious literature were reported.

**76. The Subcommittee recommends that opportunities for paid work, exercise and educational, recreational and cultural activities be provided,<sup>19</sup> and that freedom of religion and belief be respected. The bowing of heads, recital by detainees of the articles that they are accused of having violated, the wearing of uniforms and forced shaving should be discontinued.**

### 2. Contact with the outside world

77. For detainees in pretrial detention facilities and temporary detention facilities, investigators, in accordance with article 17 of Law No. 353-I, can authorize no more than two, or in the case of minors, three, visits of up to three hours with relatives per month; the authorization must be in writing.

78. Many persons detained in pretrial detention facilities told the delegation that they had not seen their families. Some were not even sure whether their families had been informed of their detention. While telephone calls can be authorized, some detainees cannot afford the pay cards required to make a call. Rules around telephone calls were not clear and differed from place to place. Overall, the Subcommittee had the impression that access to telephones was quite restricted, which is problematic, given the distances in Kazakhstan.

<sup>17</sup> There are a total of 178 temporary detention facilities in Kazakhstan.

<sup>18</sup> Efforts include the broader use of bail.

<sup>19</sup> Nelson Mandela Rules, rules 103–105 and 116.

79. **While international norms and standards allow for some limitations on contact with the family during pretrial detention, the Subcommittee recommends that such limitations be justified and regularly reviewed. Current rules seem overly restrictive.**

### 3. Quarantine and disciplinary measures

80. All detainees arriving at a pretrial detention facility undergo about two weeks of quarantine. In some cases, the periods appear to have been longer; for example, in pretrial detention facility No. 18 in Almaty, one person had been in quarantine in a fairly dark cell for 37 days. The Subcommittee received allegations of “welcome beatings” in several pretrial detention facilities, said to be meted out to ensure compliance with the rules. In such cases, detainees are beaten with hands or truncheons, often on the soles of their feet, their palms or other parts of the body where blows do not leave visible traces. In some cases, helpers of the administration – “volunteer activists” – appear to participate in such acts of ill-treatment.

81. Disciplinary measures are applied for minor violations, such as lying down on the bed, which can incur two warnings and then isolation.<sup>20</sup> Such warnings must be given in writing and can be appealed to a more senior penitentiary official, the prosecutor or the judge. In accordance with article 31 of Law No. 353-I, suspects and accused persons can be placed in solitary confinement or disciplinary cells for more than 24 hours upon a written explanation by the head of the place of detention and, in accordance with article 37 of the same law, for up to 15 days (up to 7 days in the case of juveniles), but the delegation did not find many records of such placement being used.

82. In some disciplinary cells conditions were inhumane owing to the cell’s size, darkness, lack of ventilation and degrading toilet facilities. In pretrial detention facility 1 in Almaty, a man allegedly was in solitary confinement in degrading circumstances for three weeks, force-fed and not allowed access to showers.

83. **The Subcommittee notes with concern the allegations of “welcome beatings” and recommends that any such practices be discontinued, that the system of disciplinary punishment be reviewed to ensure proportionality and that the conditions in disciplinary cells be brought into line with international standards.**

### 4. Material conditions of detention

84. While material conditions were generally acceptable, in some places visited they fell short of international standards, for example, in some facilities there were open toilets in cells, which do not allow for privacy, and detainees were permitted only one shower per week. In many pretrial detention facilities, several layers of bars on the windows prevented daylight from entering. There were few complaints about the quantity of the food, although many detainees complained about the quality and lack of variety, in particular a lack of fruit and vegetables, and indicated that they preferred to get food from relatives.

85. **The Subcommittee was told that the new pretrial detention facility in Almaty Oblast might serve as a model for future pretrial detention facilities. The Subcommittee found that the walking areas of that facility, located on the fifth floor, were inadequate and not accessible to persons with disabilities or health issues. The Subcommittee recommends that full accessibility of walking areas be ensured.**

86. **The Subcommittee recommends that shutters be removed to allow daylight to enter and that showers be allowed more often than once a week, especially during the hot season. While in some cases cameras in cells may be justified, that is, to reduce the risk of suicide, they may infringe on the right to privacy, especially in women’s cells.**

### 5. Health care

87. General medical services in pretrial detention facilities are perfunctory and basic. Many interlocutors indicated that the quality of the medical services do not meet their

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<sup>20</sup> Law No. 353-I, arts. 37–39.

expectations. In terms of the prevention of torture and ill-treatment, it is problematic that the medical staff is subordinate to the Ministry of Internal Affairs.

**88. The Subcommittee recommends that medical care and assistance be guaranteed and accessible to all detained persons upon their request and that medical personnel not be under the same authority as the investigating, prosecuting and detaining ministry.**

## **6. Pretrial detention facilities under the National Security Committee**

89. The delegation found that the Almaty pretrial detention facility that is under the authority of the National Security Committee was used as an institution of initial detention since, according to the registers, most detainees were brought prior to the authorization of an arrest. The Committee is responsible for investigating, prosecuting and detaining suspects, which does not allow for any outside controls.

90. Contacts with the outside world are more restricted in these pretrial detention facilities than in other facilities. Many inmates have no information about their relatives, and may not even know whether their relatives know where they are. Medical screening is insufficient. The delegation observed one person with clearly visible injuries resulting from detention in pretrial detention facility 1 in Almaty that were not documented in either the medical register or on the medical card.

**91. The Subcommittee recommends that the detaining authority be different from the prosecuting authority and that detention conditions comply with international standards. Medical screening should be rendered more effective and be carried out by independent medical staff.**

## **B. Prison colonies**

92. According to official figures, at the time of the visit only 33 per cent of all those convicted are sentenced to deprivation of liberty, down from 42 per cent, the rate recorded prior to the legal reform in 2015. About 40 per cent of all convicts are sentenced to restrictions on freedom and fines are used much more widely. Incarceration rates are currently about 210 per 100,000 population; according to the State party, this translates to a ranking of 62nd worldwide,<sup>21</sup> and has had a positive impact on prison conditions. Government officials also announced that two colonies had been closed and there were plans to close seven more.

93. The objectives laid down by the Criminal Execution Code (arts. 4 and 7) are in compliance with applicable international norms, including the Nelson Mandela Rules. However, the Subcommittee noted that, with the exception of those at the juvenile colony in Almaty, officials generally perceived their role as ensuring the smooth functioning of the system and staff security, rather than rehabilitating and reintegrating prisoners.

### **1. Regime, “conditions” and daily activities**

94. Generally, colonies have different security regimes to which convicts are assigned by court decision, depending on the gravity of the crime committed and previous sentences. Assignment to security regimes does not take into account the risks posed by a given convict. In addition to the security levels, a complex system of “conditions” – privileged, soft, common, strict and special – is in place,<sup>22</sup> which imposes different levels of restrictions, including in terms of access to work, and the number of parcels, phone calls and family visits a detainee can receive. Changes in a detainee’s level of conditions are decided by internal commissions.<sup>23</sup>

95. All detainees are shaved at regular intervals. They are required to shave their beards, although no razors are provided. All detainees, except those in minimum security colonies,

<sup>21</sup> As reported by the State party during the initial briefing.

<sup>22</sup> Criminal Execution Code, chap. 18.

<sup>23</sup> *Ibid.*, art. 103.

must always wear a uniform.<sup>24</sup> In many places, badges indicating the crime committed and the length of the sentence must be worn, and detainees must recite that information when presenting themselves. The same badges are also fixed on beds. In some places the delegation observed that detainees must greet the officer in unison when an officer enters the room.

96. In the context of maintaining discipline, the Subcommittee learned about daily “parading” exercises that involve marching and the singing of the national anthem for more than 30 minutes. They take place every day, unless the temperature drops significantly. Even elderly prisoners and prisoners with disabilities must participate. Some interlocutors described scenes of such persons collapsing during the march.

97. Article 13 of the Criminal Execution Code guarantees freedom of conscience and belief and allows for religious clerics to gain access to prisons. In practice, however, the delegation received reports that religious detainees are closely watched, are often punished and have limited possibilities to practice their religion, including in terms of praying. In some places, there were complaints about a lack of access to religious literature and restrictions on praying.

98. Despite efforts by the Government to provide more work and training opportunities for prisoners, the absence of meaningful activities for many remains a major issue.

99. **To ensure that freedom of religion is respected in all places of deprivation of liberty, the Subcommittee recommends that prisoners be granted access to religious services, to books of religious observance and to instruction in prison in accordance with international norms, in particular rule 66 of the Nelson Mandela Rules.**

100. **The Subcommittee recommends that parading and marching, reciting the list of crimes of which one is convicted, answering in chorus and forced shaving be discontinued, as they do not constitute effective means of achieving the aims spelled out in legislation and are not in accordance with rule 36 of the Nelson Mandela Rules.**

101. **The Subcommittee observed that documentation of movements inside and outside prisons is not consistent or systematic, which leads to loopholes. The Subcommittee therefore recommends improving the system of registers to ensure that it is always clear who is responsible for a detainee at a given moment.**

102. **The Subcommittee welcomes efforts to occupy detainees with meaningful activities and to create training and employment opportunities for prisoners, and recommends intensifying these efforts as there are more detainees who wish to work than jobs available.**

## 2. Contact with the outside world

103. Contact with the outside world depends on the “conditions”, which in turn depend on the behaviour of detainees. In softer conditions, four short and four long (two-day) visits per year are authorized, while under the strict conditions in maximum security institutions convicts are allowed no more than three short visits per year.<sup>25</sup> Being placed under strict conditions also means that telephones can be used only in exceptional situations, including emergencies.<sup>26</sup> Detainees in strict conditions are not allowed to work. The number of parcels is also dependent on the conditions. A shift from strict conditions back to common conditions can take place at the earliest one year following punishment for a violation.<sup>27</sup>

104. In most institutions, access to telephones must be authorized by the administration. In some cases, even if the regime allows for access to telephones in accordance with the institution’s schedule, there are not enough telephones; de facto access is thus restricted even further.

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<sup>24</sup> Ibid., art. 97 (4).

<sup>25</sup> Ibid., art. 138.

<sup>26</sup> Ibid., art. 109.

<sup>27</sup> Ibid., art. 139 (5).



105. **The Subcommittee is concerned about the excessively restrictive approach to contact with families. Recent amendments to the Criminal Execution Code exacerbated further already drastic restrictions on contact with the outside world. Therefore, the Subcommittee recommends that prisoners be allowed to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation.**<sup>28</sup>

### 3. Maintaining discipline

106. The disciplinary regime in prison colonies is based on transfers from common to soft or strict conditions, which, in turn, are dependent on whether detainees comply with prison rules. However, punishments for even relatively minor violations involving no violence, such as verbal conflicts with other detainees, cursing, refusal to be searched or possession of a mobile telephone, are drastic. The person in question is first transferred to a disciplinary cell, and is subject to the strict regime for a lengthy period. That system culminates in the possibility of the court prolonging the prison term, on the grounds of disobedience of legal orders of the penitentiary administration, by up to five years for the first incident and up to seven years in cases of repetition.<sup>29</sup> Furthermore, it appears that threats of transfer to stricter conditions are used to intimidate detainees. The Subcommittee was told that there are few, if any, effective review mechanisms.

107. It is not easy to escape from the chain of punishment, as it is interlinked with sophisticated informal punishment systems, sometimes administered by “helpers” involved in informal disciplining measures in exchange for rewards from the prison administration. Other informal forms of intimidation include being threatened with rape, which is targeted especially at those who are not afraid of harsher prison conditions, and with transfers to harsher prison colonies as punishment measures, which leads to fear and discourages detainees from filing complaints. There is a strong link between these unofficial and official systems, as volunteers are said to sometimes provoke conflicts, which then trigger official disciplinary action.

108. **The Subcommittee recalls that disciplinary punishments should be strictly proportional,<sup>30</sup> and recommends that the system of disciplinary punishment be reviewed, as current punishment terms are clearly excessive. Also, prisoners should be enabled to challenge disciplinary sanctions before an independent body. Imposing criminal sanctions, i.e. additional prison terms of several years, for disciplinary violations is excessive and suggests that the penitentiary system is deficient when dealing with offences by detainees. In the light of these findings, the Subcommittee recommends a revision of article 428 of the Criminal Code. The Subcommittee further recalls that disciplinary sanctions should not include the prohibition of family contact,<sup>31</sup> and that no detainees should be employed, in the service of the prison, in any disciplinary capacity.**<sup>32</sup>

### 4. Conditions

109. Overall the material conditions were in line with international standards and there was no overcrowding, although in some cases conditions in small and disciplinary cells may be degrading. Also, hierarchical structures within the prison population appear to persist, with lesbian, gay, bisexual, transgender and intersex persons, previously segregated, now integrated in the general population, but still reported as stigmatized. Security is generally overemphasized, with many staff devoted to maintaining security and numerous control and head-count measures.

110. There were few complaints about the quantity of food, but many prisoners complain about its quality. Many prisoners in the northern parts of Kazakhstan mentioned the harsh climate and insufficient winter clothes as an issue.

<sup>28</sup> Nelson Mandela Rules, rule 107.

<sup>29</sup> Criminal Code, art. 428.

<sup>30</sup> Nelson Mandela Rules, rule 39 (2).

<sup>31</sup> Ibid., rule 43 (3).

<sup>32</sup> Ibid., rule 40.

111. **The Subcommittee recalls that rule 12 (2) of the Nelson Mandela Rules requires careful selection of those confined to the same room.**

## 5. Health care

112. While basic medicine is available almost everywhere, supplies of special medicine and access to specialized treatment are inconsistent and sometimes unduly restricted, in particular with respect to dental care. In several institutions the administration informed the Subcommittee that it was difficult to fill vacancies and that outside physicians had to be brought in. The delegation was told repeatedly that the prison administration does not send ailing detainees to specialized health-care institutions. In the places visited, no drug treatment was available. HIV treatment was managed by the regional HIV centres.

113. The Subcommittee observed that conditions in medical units were often stricter than those in other parts of colonies, with prisoners having nothing to do. It also received allegations that the confidentiality of medical files was not always respected.

114. **The Subcommittee recommends ensuring that prisoners enjoy standards of health care that are the same as those enjoyed by persons in the community, without discrimination, including access to dentists.<sup>33</sup> Prompt access to medical attention in urgent cases needs to be ensured, including through transfer to specialized institutions or civil hospitals.<sup>34</sup> Medical files should be subject to medical confidentiality.<sup>35</sup> Authorities are called upon to encourage the voluntary participation of individuals with drug use disorders in treatment programmes, with the informed consent of those individuals.<sup>36</sup>**

115. **The Subcommittee recommends taking measures to combat discrimination against prisoners on the basis of illness, including by ensuring that persons in medical units are not subjected to conditions that are stricter than those imposed on other prisoners.**

## 6. Persons sentenced to life imprisonment

116. During the visit to the special security establishment UK-161/3 in Zhetygara, the Subcommittee found 121 detainees serving life sentences, 28 of whom had had their earlier death sentences commuted to life imprisonment. Following the abolition of the death penalty and the introduction of life imprisonment, the number of prisoners serving life sentences has continued to grow. The prison administration informed the Subcommittee that additional blocks for such detainees were to be built in the near future. The two existing blocks are maximum security.

117. Detainees can be held in strict, common or soft conditions,<sup>37</sup> which determines, among other things, the amount of money they may spend, the length of their walks (between one and two hours) and the number of visits and parcels they may receive, for example, six parcels and four short and four long visits per year under soft conditions, but only two parcels and three short visits per year under strict conditions. Another feature is that movement from stricter to softer conditions occurs after 10 years, that is, violations lead to the prolongation of strict conditions of detention for 10 years.

118. The Subcommittee observed that all persons sentenced to life imprisonment were considered dangerous, which led to harsh security measures that were partly stigmatizing. Detailed descriptions of the crimes committed are posted on cell doors. Individuals sentenced to life imprisonment are given specific uniforms indicating their status; they must present themselves by reciting the article of the Criminal Code that they violated and stating the length of their sentence.

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<sup>33</sup> Ibid., rules 24 and 25.

<sup>34</sup> Ibid., rule 27.

<sup>35</sup> Ibid., rule 26.

<sup>36</sup> General Assembly resolution S-30/1, annex.

<sup>37</sup> Criminal Execution Code, art. 141.

119. The procedure for being taken out of the cell to go anywhere involves a lot of yelling by officers; the detainee is handcuffed and must bow his head, and his mouth is checked. All of this is done in the presence of many heavily armed officers and guards in bulletproof vests, who escort the handcuffed prisoner to the walking yard, from which escape is all but impossible. To avoid putting other persons through that procedure, the delegation interviewed only one person. Prisoners serving life sentences are allowed to communicate only from cages in the head of section's office, including for visits with medical doctors or priests, which is degrading.

120. While the conditions in terms of, among other things, daylight and food seemed acceptable, the layers of bars within the cells, in addition to the heavy doors that were locked several times, seemed excessive. Sports equipment was prohibited. Security measures in the walking yards were excessive, and out of 10, only 1 had a bench for persons with disabilities. The Subcommittee was told that, in the light of "technical issues" prisoners serving life sentences had no possibility to make telephone calls.

**121. The Subcommittee recommends that the treatment of prisoners serving life sentences be reviewed to ensure that it is based on individual risk assessments and not dependent on the sentence. It should be adapted to the needs of such prisoners and allow for contact with the outside world.**

**122. In that spirit, the Subcommittee recommends discontinuing the overemphasis on security and, in particular, the degrading procedure followed when taking prisoners serving life sentences out of their cells, and putting an end to the excessive use of systematic security measures.**

**123. The Subcommittee also recommends abolishing the practice of keeping prisoners serving life sentences separate from other prisoners serving long sentences. As with all prisoners, the ultimate aims remain rehabilitation, reinsertion and reintegration. Therefore, contact with the outside world should not be restricted on the basis of the sentence or disciplinary regime.**

## **7. Early conditional release**

124. A probation service was created in 2015 and a draft law to define all its competencies is pending. Meanwhile, probation is increasingly used, with more than 20,000 persons on probation, according to the authorities. The probation service assists with social assistance, health insurance and employment.

125. The Subcommittee notes steps taken since 2012 to ensure that early conditional release is applied more broadly. It aims at encouraging detainees' participation in activities and work, which earns them credit. According to the authorities, in accordance with a special order of the Supreme Court judges now must allow early release. Many prisoners, particularly in the northern regions, however, clearly felt that decisions on whether to grant such release was arbitrary and that only a small percentage of prisoners were granted such release.

126. Furthermore, unsettled lawsuits can stand in the way of early conditional release. Given the low salaries, for example, 15,000 tenge in the women's colonies, for many prisoners it is difficult to raise enough money to settle their debts, which in turn prevents them from being released. The Subcommittee has received complaints from foreigners that their application for early release was refused for fear that they would return to their country of origin.

**127. The Subcommittee welcomes the creation of a probation system to facilitate the social rehabilitation, reinsertion and reintegration of those granted early release. It recognizes that early conditional release is increasingly used, which is positive. The Subcommittee recommends that such release be implemented more transparently.**

### C. Women in detention

128. As in other colonies, detainees in the women's colony in Zhaugashty village in Almaty Oblast lived in dormitories. In that colony, women with children under 3 years of age benefit from a special arrangement that allows them to spend most of the day with their children. The law allows for "children's houses", where conditions necessary for normal life and the development of the children are to be guaranteed.<sup>38</sup> Outside of their working hours, convicted women can visit their children there, without restrictions. Upon the request of the mother, or at the latest when a child reaches 3 years of age, children are sent to relatives or orphanages and the usual, restrictive visit conditions apply.

129. More generally, the penitentiary system lacks the flexibility to meet women's special needs and, since there are fewer colonies for women, women tend to be cut off from their families and friends even more than male prisoners are. Women also indicated that they found the marching and parading difficult.

**130. The Subcommittee recommends allowing mothers and their small children to live together in conditions that maximally resemble life in the community. In the light of rule 52 (3) of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), special transitional measures in terms of ensuring further contact should be considered once children have reached the age of 3. In line with rule 59 of the Nelson Mandela Rules, prisoners should be allocated, to the extent possible, to prisons close to their homes.**

### D. Children in detention

131. The Subcommittee welcomes the many efforts to reduce the number of children in detention and improvements regarding their rehabilitation and education. The delegation notes the generally good conditions in the Almaty juvenile colony, in particular the abundant dedicated staff, good medical equipment and access to schooling and sports facilities, as well as efforts aimed at rehabilitation and reintegration. Also, it appeared that the disciplinary cell had not been used for some time. At the same time, some stigmatizing practices continued, such as forced shaving of heads and the wearing of uniforms and badges listing the crimes committed and the sentence.

132. Four girls held in the women's prison were detained separately and were attending school classes as the delegation visited. Boys in several pretrial detention facilities visited by the Subcommittee were held in the same cell with either one or more adult men who were not members of their family. Some of these cells, for example at the Kostanay pretrial detention facility, had no daylight entering and no ventilation.

**133. In relation to the juvenile colony visited, the Subcommittee recommends that further measures be taken to ensure that life inside the colony prepares children for life in the community, in particular the facilitation of more regular contact with the community and the discontinuance of all stigmatizing measures, including the shaving of heads and wearing of uniforms and badges. When boys are placed in close contact with adults, which is the case in pretrial detention, it must be in their best interest and should be done, as stipulated in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, as part of a special programme that has been shown to be beneficial for the juveniles concerned.**

## VII. Other institutions under the Subcommittee mandate

### Ministry of Health

134. The Subcommittee visited a number of psychiatric institutions and drug rehabilitation centres. According to official information, at the time of the visit about 3,000 persons were being held in psychiatric, drug rehabilitation and tuberculosis institutions. In

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<sup>38</sup> Criminal Execution Code, art. 116.

all the institutions the delegation visited the physical conditions were satisfactory, although they did not allow for any privacy, decorations or private storage space.

135. In the medical centre for mental health in Astana there are involuntary patients (those who present a danger for themselves or surroundings) and five patients under court order. The same form is used to obtain consent for hospitalization and for treatment. If a patient refuses treatment, a hospital commission decides whether to administer the treatment, but the patient can complain through lawyers and can have access to a patient support service. Mechanical restraints are used only on a doctor's order, in rare cases, but there is no specific register for such use. The Prosecutor's Office conducts daily inspections.

**136. The Subcommittee recommends that consent for hospitalization be requested separately from consent for treatment and that an independent commission be established to deal with complaints. A special register for the use of restraint measures should be introduced, and should include all necessary data, for example, who ordered the restraints, for what reason, for how long and the supervision provided, and the approach to treatment should be individualized. The medical centre for mental health in Astana should also facilitate privacy and decorations in patients' rooms.**

137. The Subcommittee also visited the rehabilitation centre in Astana for alcoholics and drug users, who can be placed in the centre involuntarily on the basis of a court order. The maximum duration of treatment is 12 months. According to the detainees, there is no effective appeal procedure, although article 132 of the Code on public health and health-care system (Law No. 193-IV) provides that a decision to identify someone as an abuser of alcohol, drugs or other substances can be appealed to a higher health care facility or a court. In accordance with article 133 of the Code, a drug addict or his or her legal representative has the right to refuse medical and social rehabilitation at any stage. Such a refusal must be signed by the patient or his or her legal representative and the medical doctor.

**138. In practice, detainees at the centres reported that there were no avenues for them to reverse decisions identifying them as substance abusers. The Subcommittee recommends that an effective appeals procedure that complies with international law be put in place.**

## **Annex I**

### **List of places of deprivation of liberty visited by the Subcommittee**

#### **Astana**

Establishment ETs-166/1 (SIZO)

Strict regime establishment ETs – 166/10, Astana

Special regime establishment, ETs-166/5, Arshaly-2 village, Akmolinskaya Oblast

Investigation Isolator of Security Services, Astana

Temporary isolator (IVS), Astana

Reception dispatch center, Astana

Special reception centre, Astana

Adaptation center for adolescents, Astana

Medical center for mental health, Astana

Drug rehabilitation center, Astana

Police station 17

Police station 18

Police station 25

Investigation isolator of railways (SIZO)

Department of Internal Affairs of Saryarikinskiy rayon (ROVD)

Department of Internal Affairs of Esilskiy rayon (ROVD)

Department of Internal Affairs of Almaatinskiy rayon (ROVD)

Forensic center of Astana

Military isolation cells of military police of Astana

#### **Kostanay**

Investigation isolator, UK-161/1

Special security establishment – UK-161/3, Zhetygara

Central Police Station and temporary isolator IVS Kostanay – detention facilities moved to IVS Rudny

ROVD, Zatobolsk

Reception dispatch center, Zatobolsk

Temporary isolator, IVS, Rudny

Adaptation and detoxification centre, Zatobolsk

#### **Pavlodar**

Investigation isolator AP-162/1 (SIZO) (visited twice to prevent reprisals)

Temporary isolator (IVS) Pavlodar

UVD Pavlodar

Strict regime establishment AP-162/4

General regime establishment AP-162/3

Police station No. 10

**Almaty**

Establishment LA-155/1 (visited twice to prevent reprisals)

Correctional/educational establishment for minors LA 155/6

Investigation Isolator of National Security, Almaty

Temporary isolator, IVS, DVD Almaty

Department of National Anti – Corruption Bureau, Almaty

Women’s colony, LA-155/4, Zhaugashty village

Establishment LA-155/18, Almaty

UVD, Altanisky rayon

UVD, Zhetysuyskii Rayon

Establishment of strict security regime LA-155/8, Kapchagai

Psychiatric ward of the establishment LA-155/14, Kapchagai

GOVD Kopchagai

## Annex II

### Officials and other persons with whom the delegation met

Abdiev Zhazbek Nietovich, Deputy Head of Department, Supreme Court;

Abdukarim Manshuk Sametovna, a.i. Chair of the Committee on Children's Rights, Ministry of Education and Science;

Akhmetzhanov Marat Muratovich, Deputy Prosecutor General;

Amirov Mukharan Serikovich, Head of Investigation Department, Ministry of Internal Affairs;

Azimova Elvira Abilkhasimova, Deputy Minister of Justice;

Bashev Talgat Mamyrbekovich, Head of Department of Prevention and Control, State Revenues Committee, Ministry of Finance;

Berdalin Baurzhan Maratovich, Head of the Committee of the Criminal Execution System, Ministry of Internal Affairs;

Bisenkulov Berik Baibulovich, Deputy Minister of Internal Affairs;

Irgaliev Ruslan Iskandarovich, Director of the Department of International Law and Cooperation, Ministry of Justice;

Izanova Dinara Tulegenovna, Head of Division, Ministry of Foreign Affairs;

Kozhamberdiev Berik Myrzakhanovich, Deputy Head of Investigation Department, Ministry of Internal Affairs;

Kurmashaeva Dana Abylevna, Political Adviser to the Minister of Foreign Affairs;

Lepekha Igor Vladimirovich, Head of Administrative Police Department, Ministry of Internal Affairs;

Nurumov Askar Eltaevich, Deputy Head of the Investigation Isolator of the Committee of National Security;

Ospanov Kuat Kalievich, Head of Security Department, Ministry of Internal Affairs;

Rakhimov Rishat Akhmetovich, a.i. Director of the National Centre for Human Rights;

Satybaldiev Ruslan Kusainovich, Deputy Director of Forensic Medicine of the Ministry of Justice;

Shakirov Askar Orazalievich, Human Rights Commissioner of the Republic of Kazakhstan;

Shimomura Norimasa, UN Resident Coordinator/UNDP Resident Representative in Kazakhstan;

Suinbaev Serik Koisariyevich, Head of Staff, Ministry of Internal Affairs;

Tanybekov Kairat Sagatkhanovich, Head of Operational Planning Department, Ministry of Internal Affairs;

Tastanova Aigul Kapanovna, Deputy Head of Medical Aid Department, Ministry of Health and Social Development;

Tlenov Yermek Kumisbekovich, a.i. Deputy Head of Special Department, State Anti-corruption Agency;

Zhanbirov Rustem Makatovich, Head of Public Safety Department of the Military Police, Ministry of Defense;

Zhangarashev Tleu Kasenovich, Deputy Head, State Revenues Committee, Ministry of Finance;

Members of the Coordinating Council and Heads of national preventive mechanism groups.