



**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\***

**Addendum**

**Replies of Kazakhstan\*\*, \*\*\***

[Date received: 16 November 2017]

\* 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.

\*\* On 18 January 2019, the State party requested the Subcommittee to publish its replies, in accordance with article 16 (2) of the Optional Protocol.

\*\*\* The present document is being issued without formal editing.



## **Consolidated information**

**on the implementation of the recommendations made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment resulting from its first visit to Kazakhstan from 20 to 29 September 2016**

### **Paragraph 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.**

1. The Ministry of Foreign Affairs of the Republic of Kazakhstan sent the report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in English to all government agencies on 13 February 2017. The Russian version of the report was sent to government agencies on 23 May 2017.
2. If the decision is taken to publish the report, we note the need for it to be posted on the websites of the designated government agencies and the Adilet legal information system; the Ministry of Justice expresses its readiness to assist by publishing the report on its official Internet website.

### **Paragraph 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.**

3. Persons who provided information during the visit by the members of the Subcommittee to places of deprivation of liberty were not subjected to any reprisals after the visit.

### **Paragraph 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. 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).**

4. Kazakhstan signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 29 June 1998. It ratified the Optional Protocol to the Convention against Torture on 26 June 2008.
5. In 2013, Kazakhstan adopted an Act amending some legislation on the establishment of a national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment. Under the Act, the preventive mechanism is now included in

criminal proceedings, the penal correction system, the health-care system, the system for the integration and education of minors and the temporary detention system.

6. In addition, amendments were made to the Code of Administrative Offences making it an offence to obstruct the lawful activities of the preventive mechanism.

7. Pursuant to the National Preventive Mechanism Act, places of detention are visited by members of civil society organizations that work to protect citizens' rights and legitimate interests, legal professionals, social workers and doctors, as well as by public monitoring commissions.

8. Furthermore, the lower house of Parliament, the Majilis, is currently considering a bill drafted by deputies that will amend the legislation governing the activities of children's rights organizations.

9. Under the bill, the mandate of the national preventive mechanism will be expanded by increasing the number of institutions and organizations subject to preventive visits. This concerns more than 200 institutions, including children's homes, medical institutions for children with disabilities, correctional boarding schools, orphanages and others.

10. The Ministry of Justice has also drawn up an inter-agency plan of action on implementation of the recommendations made by United Nations Member States during the universal periodic review and those of the Human Rights Committee on the second periodic report of Kazakhstan under the International Covenant on Civil and Political Rights for the period 2017–2019.

11. The plan includes discussion of the possible adoption of the National Preventive Mechanism Act at a meeting of the Dialogue Platform on the Human Dimension, a consultative and advisory body.

## Paragraph 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.**

12. The national preventive mechanism is established on the basis of the "Ombudsman plus" model, which was adopted in Kazakhstan on the recommendation of and in discussion with international organizations and experts, including the Subcommittee on Prevention of Torture, as well as leading Kazakh human rights organizations.

13. Practice has shown that the model chosen in our country to enable representatives of civil society, coordinated by the Human Rights Commissioner, to monitor all closed institutions makes it possible to effectively prevent cases of human rights violations.

14. Legislation provides for the Ombudsman to coordinate the activities of the parties involved in the national preventive mechanism and take measures to ensure that its participants have the necessary capacities and skills.

15. Act No. 51-IV of 10 March 2017 amending the Constitution anchored the status of the Human Rights Commissioner in the country's Basic Law. This innovation, which was aimed at bringing the institution of the Ombudsman into line with the Paris Principles, attests to the growing importance of the national human rights institution, the country's commitment to democratic transformation and its recognition of human and civil rights and freedoms as priorities.

16. Consolidating the status of the Ombudsman in the Constitution helps to substantially strengthen the national system for the protection of human and civil rights and freedoms, as well as the role of the Ombudsman, in the country's political and legal structure. The Act of 10 March 2017 amending the Constitution introduced changes to article 55 (1-1), giving the Senate exclusive responsibility for appointing, for a five-year term, on the proposal of the President, and dismissing the Ombudsman. Parliament is an independent authority.

17. On 14 March 2017, the Commission on Human Rights attached to the Office of the President recommended that a bill on the Commissioner for Human Rights should be drafted, to include the possibility of expanding the powers of the national human rights institution, as well as its financial and human resources.

18. Furthermore, in accordance with the inter-agency action plan for implementation of the recommendations made during the universal periodic review and by the Human Rights Committee, proposals for the implementation of the Human Rights Council recommendations that the status of the Ombudsman should be brought into line with the Paris Principles will be put to this year's meeting of the Ministry of Foreign Affairs consultative and advisory body, the Dialogue Platform on the Human Dimension.

## **Paragraph 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.**

19. As a general rule, 30 per cent of the membership of the national preventive mechanism is renewed each year, which allows the general public to be involved in its work. The remaining 70 per cent of the participants are re-elected, providing some continuity. Furthermore, the possibility is being discussed with the Coordinating Council of extending the mandate of the national preventive mechanism to two years.

20. The Ombudsman and the Coordinating Council of the national preventive mechanism carry out systemic work to assure and improve the capacities and skills of the members of the mechanism; they receive substantial support to that end from our partners, such as the European Union, the Council of Europe, the Organization for Security and Cooperation in Europe Office in Astana, the regional programmes of the Office of the United Nations High Commissioner for Human Rights for Central Asia, the Central Asia representative of Penal Reform International (PRI) and a number of Kazakh non-governmental organizations (NGOs).

21. One of the priorities of the Human Rights Commissioner and the Coordinating Council is to enhance the professional capacities of the national preventive mechanism members. Since the National Preventive Mechanism Act was signed, 22 training sessions have been conducted with the organizations mentioned on practical issues related to the mechanism's work for its participants and staff of government agencies; participants in the courses have included members of the United Nations Subcommittee on Prevention of Torture, the European Committee for the Prevention of Torture and representatives of the national preventive mechanisms of other countries. The training sessions concerned the monitoring of psychiatric institutions and police stations, interview methodology, planning and conducting preventive visits, preparing reports on the outcome of preventive visits and interacting with the media.

22. The Coordinating Council has developed methodological recommendations for effective monitoring of the mandated agencies and forms of reporting according to the type of site visited.

23. The Human Rights Commissioner intends to continue efforts in this direction, including by raising the possibility of working with international organizations in developing online training courses for national preventive mechanism members.

24. Furthermore, the inter-agency action plan for the implementation of the recommendations made during the universal periodic review and by the Human Rights Committee includes the following activities:

- Training sessions for national preventive mechanism members, with the involvement of Kazakh, international and foreign experts, in cooperation with PRI and international organizations. The final output will be a joint training plan. The

executing agency is the National Human Rights Centre. Implementation period: 2017–2018.

- The development of guidance for national preventive mechanism members on conducting preventive visits (supported by PRI and international organizations). The final output will be approval by the Coordinating Council of the Commissioner for Human Rights of the resources developed. The executing agency is the National Human Rights Centre. Implementation period: 2017.

## Paragraph 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.**

25. The Ministry of Justice currently administers the budget subprogramme that covers the activities of the national preventive mechanism.

26. The Ombudsman and the National Human Rights Centre are responsible for coordinating and conducting the activities of the national preventive mechanism.

27. Meanwhile, draft budget programmes for government agencies for 2017–2021 and administrator budget requests for the national budget programme for 2018–2020 were considered at a meeting of the National Budget Commission; as a result, the Ministry of Justice and the National Human Rights Centre were requested to collaborate on the transfer of the administration of the budget subprogramme for national preventive mechanism activities to the National Human Rights Centre.

28. The National Human Rights Centre, in line with its regulations as approved under Presidential Decree No. 992 of 10 December 2002, has the status of a legal entity in the legal form of a government institution.

29. Article 31 of the Budget Code provides that budget programmes are administered by the government agency responsible for planning, justifying, implementing and attaining the expected results.

30. National budget programmes are administered by the central executive and other central government bodies.

31. Article 2 (1) of the Administrative Procedures Act of 27 November 2000 defines government agencies as public institutions that are authorized by the Constitution, laws and other legal instruments to implement, on behalf of the State, functions related to: issuing laws establishing general rules of public conduct; the management and regulation of socially important social relations; and monitoring compliance with the general rules of conduct laid down by the State.

32. The National Human Rights Centre is not a government agency and therefore falls outside the scope of article 31 of the Budget Code; the transfer to it of the budget programme will therefore require changes to existing legislation.

33. The national preventive mechanism operates using funding from the national budget. The funds are used only to reimburse members of the mechanism for expenses related to preventive visits and may not be used to cover other expenses.

34. After each visit, national preventive mechanism members are reimbursed for expenses related to transport, accommodation, subsistence, stationery, postage and payment for the preparation of the report.

35. Such expenses amounted to 18.6 million tenge in 2014; 48 million tenge in 2015; and 66 million tenge in 2016; the forecast for 2017 is 61 million tenge.

36. With regard to the institutional autonomy of the national preventive mechanism in using the allocated budget, the regional teams independently draw up a list of institutions for preventive visits; this shows that the State does not intervene and the members act with autonomy.

## **Paragraph 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.**

37. Pursuant to article 42 of the Penalties Enforcement Code, members of the national preventive mechanism have the following rights:

- To receive information on the number of convicted persons held in the institutions and bodies responsible for the enforcement of sentences that are subject to preventive visits, the number of such institutions and their location
- To have access to information on the treatment of prisoners held in the institutions and bodies responsible for the enforcement of sentences that are subject to preventive visits, as well as the conditions in which they are held
- To carry out preventive visits in teams in accordance with established procedure
- To conduct interviews with convicted persons held in the institutions and bodies responsible for the enforcement of sentences that are subject to preventive visits and/or their legal representatives, without witnesses, personally or through an interpreter if necessary, and with any other person whom a national preventive mechanism member believes can provide relevant information
- To freely choose and visit institutions and bodies responsible for the enforcement of sentences that are subject to preventive visits
- To receive information and complaints concerning the use of torture or other cruel, inhuman or degrading treatment or punishment

38. Members of the national preventive mechanism are independent in the exercise of their legitimate activities.

39. Under article 45 of the Penalties Enforcement Code, preventive visits made by members of the national preventive mechanism fall into the following groups:

- Periodic preventive visits carried out on a regular basis and at least once every four years
- Mid-term preventive visits carried out in the period between periodic preventive visits in order to monitor the implementation of recommendations arising from the outcome of previous periodic preventive visits, and to prevent persecution by the administration of the institution or body concerned of convicted prisoners with whom members of the national preventive mechanism conducted interviews
- Special preventive visits carried out when allegations of torture and other cruel, inhuman or degrading treatment or punishment are received

40. The Coordinating Council determines the dates and the list of institutions subject to preventive visits within the limits of the allocated budget.

41. In line with article 47 of the Penalties Enforcement Code, the Coordinating Council prepares the annual consolidated report of the members of the national preventive mechanism, which takes account of their records of the preventive visits conducted.

42. The report also includes:

- The recommendations made to the relevant government agencies on improving the treatment of prisoners held in institutions and agencies responsible for the

enforcement of sentences that are subject to preventive visits and preventing torture and other cruel, inhuman or degrading treatment or punishment

- Proposals for improving national legislation

43. In accordance with article 49 of the Penalties Enforcement Code, government agencies and officials assist members of the national preventive mechanism in their legitimate activities.

44. No government body or official may restrict the rights, freedoms and legitimate interests of citizens to inform members of the national preventive mechanism about cases of torture and other cruel, inhuman or degrading treatment or punishment.

45. Officials who obstruct the legitimate activities of national preventive mechanism members are held liable by law.

46. Within three months of the date on which they receive the national preventive mechanism annual consolidated report in written form, the government agencies responsible inform the Human Rights Commissioner of the measures they have taken as a result of the reports received.

47. On the basis of the reports by the members of the national preventive mechanism on the outcome of preventive visits, the Human Rights Commissioner is entitled, in accordance with the procedure established by law, to contact the relevant government agencies or officials to request the instigation of disciplinary or administrative proceedings or a pretrial investigation in respect of any official who has infringed human and civil rights and freedoms.

48. Similar regulations are provided for in the Code on Public Health and the Health-Care System, the Children's Rights Act, the Act on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness and the Act on the Mandatory Treatment of Persons Suffering from Alcoholism or Drug or Substance Addiction.

49. Furthermore, pursuant to the Code of Administrative Offences, it is an offence to obstruct the activities of the members of the national preventive mechanism.

50. In addition, in accordance with the inter-agency action plan for the implementation of the recommendations made during the universal periodic review and by the Human Rights Committee, proposals on further improvements to the country's legislation to strengthen the national preventive mechanism will be put before the next meeting of the Government Inter-agency Commission on draft legislation this year.

51. The current legislative framework for the national preventive mechanism offers a number of significant advantages. The mechanism's mandate is enshrined in a number of codes (Code of Criminal Procedure, Penalties Enforcement Code, Code of Administrative Offences, Code on Public Health and the Health-Care System) and the Acts on the Procedure and Conditions for the Custody of Persons in Special Temporary Detention Facilities, on the Prevention of Juvenile Delinquency, on Mandatory Treatment of Persons suffering from Alcoholism or Drug Addiction and on Children's Rights.

52. This raises the awareness of the competent authorities and institutions under their control of the activities of the national preventive mechanism and allows for a broad interpretation of its mandate.

53. The current mandate of the national preventive mechanism includes a fairly broad range of establishments in the prison system, the internal affairs agencies, health-care facilities, the education system, military institutions and under the National Security Committee.

54. Between April and December 2014, members of the national preventive mechanism conducted 277 preventive visits, of which 14 were special visits. The monitoring visits included: 73 to temporary detention units, 72 to pretrial detention facilities and correctional institutions, 11 to remand houses, 17 to special holding facilities, 18 to rehabilitation centres for young persons, 25 to psychiatric clinics, 25 to drug addiction clinics, 21 to tuberculosis clinics, 9 to special educational institutions, 2 to Security Committee pretrial detention facilities and 4 to military police detention units.

55. In 2015, members of the national preventive mechanism carried out 528 preventive visits, of which 20 were special visits. The monitoring visits included: 151 to temporary detention units, 8 to pretrial detention facilities, 103 to correctional institutions, 5 to remand houses, 26 to special holding facilities, 9 to rehabilitation centres for young persons, 33 to psychiatric clinics, 31 to drug addiction clinics, 62 to tuberculosis clinics, 5 to special educational institutions, 6 to Security Committee pretrial detention facilities, 9 to military police detention units, 18 to police stations and 12 to district internal affairs offices.

56. During 2016, members of the national preventive mechanism conducted 680 preventive visits, of which 15 were special visits. The monitoring visits included: 156 visits to temporary detention centres, 2 to pretrial detention facilities, 103 to correctional institutions, 24 to remand houses, 31 to special holding facilities, 23 to rehabilitation centres for young persons, 10 to special educational institutions, 39 to psychiatric clinics, 39 to drug addiction clinics, 89 to tuberculosis clinics, 5 to Security Committee pretrial detention facilities, 9 to military police detention units and 120 to police stations (including 60 to internal affairs premises).

57. There is ongoing consideration of whether the mandate of the national preventive mechanism should be expanded. Corrections will make it possible to expand the range of institutions that fall under the national preventive mechanism mandate, to include, for instance, residential units for orphans and children without parental care in the health-care system, medical and social institutions for children with disabilities, remedial boarding schools for children with special needs and other social service organizations offering 24-hour residential care.

## Paragraph 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.**

58. The legislation contains eligibility requirements for membership of the national preventive mechanism in respect of suspects, accused persons and persons declared by a court as having limited or no legal capacity.

59. However, from when the mechanism was set up, there have been persons with disabilities among its participants, which shows that there are no restrictions on such persons taking part in its activities.

60. In practice, when considering candidatures for membership of the national preventive mechanism, the members of the Coordinating Council are guided by the principle of the presumption of innocence, and no confirmation is required concerning participation in criminal proceedings.

61. Furthermore, where it has transpired that future members of the national preventive mechanism are participants in legal proceedings or pretrial investigations, the members of the Coordinating Council have considered each case individually when discussing them in their meetings and withdrawn the mandate of such participants until the court judgment was pronounced.

62. Persons registered in psychiatric and/or drug addiction facilities are not referred to as having disabilities, since they are ill or suffering from certain (mental) diseases or addictions that could in practice have an effect on activities within the mandate of the national preventive mechanism.

63. These restrictions result from the fact that national preventive mechanism members must remain impartial in carrying out their duties and objectively assess the situation in

institutions covered by their mandate, and also result from concerns for the members' own security and that of other persons involved in preventive activities.

## Paragraphs 26 and 27

**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.**

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

65. Paragraphs 1 to 26 of the report do not contain any specific information to allow investigations of cases to be conducted.

66. There has not been a single case in the existence of the national preventive mechanism of its members being subject to criminal prosecution in connection with their work in the framework of its mandate.

67. Civil proceedings for libel have been brought by one individual against two members of the mechanism. The substance of the claim was related to inappropriate language used in respect of the head of an establishment covered by the mandate. Because of non-compliance with ethical standards by members of the regional team when the national preventive mechanism was first set up, the Coordinating Council decided to disband the national preventive mechanism group in Aktobe province, a move that was facilitated by recommendations made by international experts, including the members of the Subcommittee on Prevention of Torture.

## Paragraph 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.**

68. In accordance with the laws and regulations governing the work of the national preventive mechanism, special preventive visits are carried out by teams without prior notice on the basis of allegations received concerning the use of torture and other cruel, inhuman or degrading treatment or punishment. The decision to send a team to conduct a special preventive visit in an institution or organization subject to preventive visits is taken by the Human Rights Commissioner.

69. The national preventive mechanism in Kazakhstan works on the "Ombudsman plus" model, in which the Human Rights Commissioner plays a coordinating role, thus ensuring that there is constructive cooperation between the national preventive mechanism and government agencies; the Ombudsman takes responsibility for the conducting of unannounced visits and for the reputation of the mechanism in general.

70. In practice, special visits, conducted when allegations of torture are received, are actually agreed on with the Human Rights Commissioner. However, it must be pointed out that, over the whole existence of the national preventive mechanism, the Ombudsman has not refused any request for a special visit, the decisions have been taken quickly and the visits made promptly on the dates requested by members of the mechanism. This provision does not represent an obstacle to special visits.

71. On 16 and 17 May 2017, during the first National Preventive Mechanism Forum, the participants did not express any objections to such provisions concerning decisions by the Ombudsman; indeed, some members of the mechanism said that they were a positive factor.

72. On the basis of the reports by national preventive mechanism members on the outcome of preventive visits, the Human Rights Commissioner is entitled, in accordance with the procedure established by law, to contact the relevant government agencies or officials to request the instigation of disciplinary or administrative proceedings or a pretrial investigation in respect of any official who has infringed human and civil rights and freedoms.

### **Paragraph 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.**

73. There are cases of individuals held in mandated institutions and even of individual staff members of those institutions not being aware of international human rights instruments or the work of the national preventive mechanism.

74. However, such issues are discussed at meetings of the Coordinating Council and in other forums. At the National Preventive Mechanism Forum on 16 and 17 May 2017, it was recommended that, to raise public awareness of the work of the mechanism and the regional teams, their activities should be widely publicized, including during preventive visits and through interaction with the media.

75. Each year, the Coordinating Council under the Human Rights Commissioner prepares the consolidated report of the national preventive mechanism members of the preventive visits conducted, which provides an analysis of the current year's activities and key issues related to the prevention of torture, with examples of cases of violations of citizens' rights to freedom from torture and other cruel, inhuman or degrading treatment or punishment.

76. The report is made public during an open presentation and dialogue between civil society and government agencies. The annual consolidated reports on the outcome of the mechanism's activities over three years was presented in an international forum and coordinated with the tenth anniversary of the entry into force.

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

### **Paragraph 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.**

78. In accordance with the law, after each preventive visit, the members of the national preventive mechanism send recommendations to the administration of the facility concerned and, in the case of special visits, to the procuratorial authorities.

79. In line with the plan of action for the implementation of the recommendations made during the universal periodic review and by the Human Rights Committee, the annual consolidated reports on the outcome of the activities of the national preventive mechanism in Kazakhstan are presented to the public at a conference, which offers the possibility of a constructive dialogue between government agencies and civil society (three reports, for 2014, 2015 and 2016, have been presented).

80. In November 2016, to support the national preventive mechanism in improving legislation, proposals were put to the Majilis on the further modernization of the Criminal Code, the Code of Criminal Procedure and the Penalties Enforcement Code; they had been drawn up with the participation of the Coordinating Council and members of the national preventive mechanism on the basis of an analysis of preventive visits conducted.

81. The Human Rights Commissioner and one member of the Coordinating Council sit on the Legal Policy Council, which discusses legislative initiatives from government agencies.

82. The members of the Coordinating Council of the national preventive mechanism participate in working groups under the Parliament and government agencies that discuss bills that have been drawn up; they also sit on the public councils attached to central and government agencies.

83. To raise public awareness of the work of the national preventive mechanism, it is present on social media and information on its activities is posted on the official website of the Human Rights Commissioner.

### **Paragraph 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.**

84. Article 49 of the Penalties Enforcement Code regulates the engagement of public authorities with the members of the national preventive mechanism:

(1) Government agencies and their officials assist members of the national preventive mechanism in their legitimate activities. No government agency or official may restrict the rights, freedoms and legitimate interests of citizens to inform members of the national preventive mechanism about cases of torture and other cruel, inhuman or degrading treatment or punishment. Officials who obstruct the legitimate activities of members of the national preventive mechanism are held liable by law.

(2) Within three months of the date on which they receive the annual consolidated report of the national preventive mechanism members in written form, the government agencies responsible inform the Human Rights Commissioner of the measures they have taken as a result of the reports received.

(3) On the basis of the reports by the members of the national preventive mechanism on the outcome of preventive visits, the Human Rights Commissioner is entitled, in accordance with the procedure established by law, to contact the relevant government agencies or officials to request the opening of disciplinary or administrative proceedings or a pretrial investigation in respect of any official who has infringed human and civil rights and freedoms.

85. Representatives of government agencies are regularly invited to attend the meetings of the Coordinating Council to discuss the current work of the national preventive mechanism. The agenda of the meetings includes the outcome of individual special visits carried out by the mechanism's regional teams, complaints from government agencies concerning the activities of the preventive mechanism, proposals for improving the situation in prisons and health-care facilities and the drafting of recommendations aimed at improving the mechanism's activities.

86. The Coordinating Council prepares the annual consolidated report of the members of the national preventive mechanism, taking account of their records of preventive visits. The annual consolidated report gives an analysis of the current year's activities and key issues related to the prevention of torture, with examples of cases of violations of citizens' rights to freedom from torture and other cruel, inhuman or degrading treatment or punishment.

87. The report contains recommendations to government bodies on improving the treatment of persons held in places of deprivation of liberty and proposals for improving legislation.

88. It is sent to the mandated government agency for consideration and is posted on the website of the Human Rights Commissioner, in accordance with article 23 of the Optional Protocol, no later than one month from the date of its approval by the Coordinating Council.

89. In line with legislation, within three months of the date on which they receive the annual consolidated report of the national preventive mechanism members in written form, the government agencies responsible inform the Human Rights Commissioner of the measures they have taken as a result of the reports received, and thus ensure that implementation of the recommendations is monitored.

### **Paragraph 36**

**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.**

90. Presidential Decree No. 387 of 8 December 2016 approved the 2017–2019 comprehensive strategy for the social rehabilitation of citizens released from places of deprivation of liberty who are registered with the probation services.

91. An action plan for the implementation of the 2017–2019 strategy was adopted on 29 December 2016, under Government Decision No. 912. The plan includes a number of measures aimed at the rehabilitation of individuals who have been released from prison on probation, including changes to existing legislation, pilot projects, the involvement of NGOs, the development of mechanisms and other measures to strengthen the probation services.

### **Paragraph 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.**

92. With the introduction of the new Criminal Code, criminal responsibility for torture has been tightened. In Kazakhstan, torture is defined as the infliction of any pain, even in the absence of any harm to health. The maximum penalty is 12 years' imprisonment.

93. Perpetrators may be law enforcement officers (investigators and persons conducting initial inquiries) but may also be other officials or other persons who have used torture at the instigation or with the acquiescence of law enforcement officers.

94. Persons who have committed torture may not be exempted from criminal liability as a result of the statute of limitations or of an amnesty.

95. The Office of the Procurator General and the government agencies responsible are preparing the fourth periodic report on the measures taken by Kazakhstan to implement the Convention against Torture.

96. The Office of the Procurator General has developed an outline bill amending legislation on combating torture and other ill-treatment or punishment and a plan of comprehensive measures to combat torture (start date: April 2016; presentation of the project: 23 February 2017; objective: effective prevention and eradication of the causes and conditions of torture in Kazakhstan; deadline: 2 years (December 2018)).

97. The objectives of the framework and the plan are to develop and implement measures for the prevention and effective investigation of cases of torture and the rehabilitation of victims of torture in the criminal process and in prison.

98. The comprehensive plan to combat torture includes a number of measures to ensure the absolute prohibition of torture, including by bringing articles 146 (torture) and 362 (exceeding authority or official powers) of the Criminal Code into line with article 1 of the Convention against Torture.

99. In particular, it is proposed that consideration be given to making a distinction between the offence of “torture” and that of “cruel, inhuman or degrading treatment or punishment” and amending the Criminal Code on that basis.

100. It is also proposed that torture should be punished as a serious offence, with no possibility of non-custodial penalties, and that sentences for other forms of ill-treatment should be commensurate with the gravity of the offence; that amendments should be made to articles 63 (conditional discharge) and 68 (exemption from criminal liability through reconciliation) of the Criminal Code to exclude the possibility of conditional discharge or of exemption from liability for torture, to ensure that sentences for torture are proportionate to their seriousness, and to amend the relevant Supreme Court decisions on torture and ill-treatment so as to establish standard legal practice in line with the provisions.

## Paragraph 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.**

101. As part of the ongoing legislative reform, a new Code of Criminal Procedure, which regulates the powers of the investigating judge, was adopted on 4 July 2014.

102. Under article 54 (3) of the Criminal Procedure Code, the investigating judge is a judge of a court of first instance with authority during the pretrial proceedings or a judge of a court of first instance whose powers include the implementation, in accordance with the Code of Criminal Procedure, of judicial control over compliance with the rights, freedoms and lawful interests of persons involved in criminal proceedings.

103. Article 55 of the Code of Criminal Procedure defines the powers of the investigating judge:

- (1) To authorize detention;
- (2) To authorize house arrest;
- (3) To authorize temporary suspension from duties;
- (4) To authorize a restraining order;
- (5) To authorize arrest prior to extradition;
- (6) To extend a period of detention, house arrest or arrest prior to extradition;
- (7) To approve the use of bail;
- (8) To authorize the seizure of assets;
- (9) To approve involuntary confinement to a medical establishment of a person not currently in detention for a forensic psychiatric examination and/or medical examination;
- (10) If mental illness is ascertained, to approve the transfer of a person previously held in detention to a specialized psychiatric facility adapted for the detention of patients in strict isolation;
- (11) To approve the exhumation of human remains;

(12) To declare an international search for a suspect or accused person.

104. The investigating judge:

(1) Considers complaints in respect of the actions (or lack of action) and decisions of the official or agency conducting initial inquiries, the investigating official, prosecutor or the court;

(2) Considers any physical evidence subject to rapid deterioration or for which prolonged storage pending the resolution of the criminal case on the merits would entail considerable material cost;

(3) During the pretrial proceedings, takes statements from a victim or witness;

(4) Imposes a monetary penalty on persons, except for lawyers and prosecutors, who either fail to comply with or do not fully comply with their procedural obligations in pretrial proceedings;

(5) On the proposal of the prosecutor, considers the question of recovering procedural costs in a criminal case;

(6) On a reasoned request from a lawyer acting as defence counsel, considers requisitioning and admitting in a criminal case any information, documents or objects of importance to the criminal case, with the exception of information that constitutes State secrets, in cases of refusal or failure to take action on such a request within three days;

(7) On a reasoned request from a lawyer acting as defence counsel, considers the appointment of an expert, if, in responding to such an application, the criminal prosecution authority has unreasonably refused the request or takes no decision within three days;

(8) On request from a lawyer acting as defence counsel, considers whether to compel to appear before the authority in charge of the criminal proceedings a witness who has previously been questioned where it is difficult to ensure that person's attendance to give evidence;

(9) Exercises other powers, as stipulated in the Code.

105. In accordance with article 56 of the Code of Criminal Procedure, investigating judges may examine matters falling within their competence alone, without a court hearing.

106. If it is necessary to investigate circumstances that are significant to the adoption of a lawful and substantiated decision, the investigating judge may decide that a court hearing will be held, with the participation of the persons concerned and the procurator.

## **Paragraph 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.**

107. The recommendation of the Subcommittee cannot be maintained, given that provisions on informing individuals about their detention are already enshrined in national legislation.

108. One of the innovations in the Code of Criminal Procedure is the introduction of the Miranda rule, a short form of which is reflected in article 131 (1). In line with the rule, persons detained on suspicion of having committed a criminal offence are informed orally by the official of the investigating authority of the criminal offence that they are suspected of having committed and of their right to retain counsel, the right to remain silent and the fact that anything they say may be used against them in court.

109. It is also planned to introduce a coercive procedural measure of allowing up to three hours to ascertain whether a person has been involved in committing a criminal offence. That period is included in the period of detention as a suspect.

110. If the detainee does not speak Kazakh or Russian or cannot adequately understand the explanation of his or her rights at the time of the arrest due to intoxication with alcohol, drugs or other substances, or has a psychosomatic disorder, the rights of the suspect are explained in the presence of an interpreter, where necessary, and/or a lawyer before the start of the interrogation as a suspect, and that fact is noted in the record of the interrogation.

111. The right of a person deprived of liberty to inform family members or other close relatives of the detention is enshrined in article 64 (3) of the Code of Criminal Procedure: “Detained suspects may, by telephone or other means, promptly inform their place of residence or work of their arrest and place of detention. Where there are grounds to believe that a communication concerning the detention might hinder the pretrial investigation, the officer of the prosecuting agency conducting the arrest may independently notify adult family members or close relatives of the detainee. Such notification shall be carried out without delay.”

## **Paragraph 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 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.**

112. The constitutional provision guaranteeing the full realization of the right to a defence against accusation cannot be infringed by any procedural rules.

113. Under article 26 of the Code of Criminal Procedure, the legislator has provided suspects and accused persons with the right to defence. They may exercise this right themselves or with the assistance of a defence lawyer. In other words, the State does not prohibit suspects or accused persons retaining a lawyer of their choice.

114. Pursuant to article 68 of the Code of Criminal Procedure, suspects, witnesses who have the right to a defence, accused persons, defendants, convicted and acquitted persons have the right to invite several lawyers to act as their defence counsel.

115. Where defence counsel is provided from State funds, the payment of legal aid lawyers and the reimbursement of expenses associated with defence, representation and any reconciliation is covered from the State budget and provided for in the State Legal Aid Act and Kazakh legislation on administrative offences, criminal procedure and civil procedure.

116. The role of lawyers has been enhanced as part of the major reforms to improve the accessibility and transparency of justice. Through the investigating judge, the lawyer may request any necessary investigative actions, the results of which must be included in the criminal case file.

117. The range of persons entitled to receive free legal aid from the moment of actual detention has been expanded. The participation of a defence lawyer may be allowed on the request of the person concerned at any stage in the proceedings.

118. The Penal Correction System Committee has signed a memorandum with the National Bar on unhindered access for lawyers to places of detention and correctional facilities.

119. The memorandum is aimed at preserving safeguards for the legal profession, including lawyer-client confidentiality, the inadmissibility of any search of the lawyer’s files and the confidentiality of the lawyer’s meetings with the defendant in pretrial detention rooms without the use of audio recording.

## **Paragraph 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.**

120. In accordance with the requirements of Ministry of Internal Affairs Order No. 314 of 7 April 2015, a medical examination is carried out upon a person's admission to and departure from penal correction system facilities to assess whether there are any bodily injuries.

121. If any bodily injuries are recorded in the single pretrial investigation register, the procuratorial authorities are immediately informed and, if necessary, a forensic medical examination is conducted as part of the pretrial investigation.

122. However, in accordance with a joint order of the Ministry of Justice, the Ministry of Internal Affairs and the Ministry of Health, since 2010, whenever injuries are detected or if convicted persons or remand prisoners have so requested, staff of the institution concerned arrange for an independent examination to be conducted by specialists from the region's forensic medical institute.

123. In order to improve the training of health personnel, it was planned to train 62 doctors and 148 nurses in the prison system in 2017. So far in 2017, 39 doctors and 66 nurses have received refresher training or retraining, with certificates of their completion.

124. Furthermore, in accordance with the Plan of Action for the implementation of the second phase of the project agreement on improving national human rights mechanisms and effective implementation of the international obligations of Kazakhstan, curricula and training manuals have been developed for judicial experts on implementation of the Istanbul Protocol, with the involvement of the Office of the Procurator General and the Ministry of Internal Affairs.

125. Since February 2017, the Office of the Procurator General, in collaboration with the Ministry of Internal Affairs, has been implementing a project entitled "Towards a society without torture", which includes a specific section on the implementation in legal practice of the Istanbul Protocol recommendations (recommendations made by United Nations experts on the investigation of torture, independent of the country or any differences in criminal procedure law).

## **Paragraph 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.**

126. As part of the implementation of the Government's "Information Kazakhstan-2020" programme, a centralized computer database for the penal system has been set up and brought into operation.

127. It has been linked to the information systems of State agencies, as follows:

- The Special Records automated information system of the Committee for Legal Statistics and Special Records under the Office of the Procurator General

- The Government's database on private individuals, through the law enforcement and specialized agencies information exchange system
- The Ministry of Internal Affairs integrated data bank
- The automated information system of the Ministry of Justice enforcement agencies

128. The information is updated regularly with information on persons arriving in penal correction system institutions entered on a daily basis.

## Paragraph 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. 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, 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.**

129. This norm is contained in existing legislation. In accordance with article 147 (2) of the Code of Criminal Procedure, where it is necessary to choose detention as a preventive measure, then, in accordance with article 140, the person conducting the pretrial investigation issues the order to apply to the court to obtain authorization to use the measure. Certified copies of the case file confirming the validity of the application are attached. The order concerning the choice of preventive measure, the application to the court for authorization to use that measure and all supporting documentation should be submitted to the procurator no later than 18 hours before the expiry of the detention period.

130. Paragraph 4 of the same article provides that the agreement of the procurator to the order of the person conducting the pretrial investigation authorizing the detention and the supporting documentation must be submitted to the investigating judge no later than 12 hours before the expiry of the period of detention, and the persons concerned are informed.

131. Pursuant to article 148 (2), the investigating judge shall, no later than eight hours after receipt of the documentation by the court, in compliance with the procedure prescribed in article 56 and in the presence of the procurator, the suspect or accused person, and the defence counsel, consider the application for authorization of detention as a preventive measure. A legal representative and a representative also have the right to participate in the court hearing. If the participants mentioned have been given due notification by the court of the place and time of the hearing, their non-attendance does not prevent the hearing taking place.

## Paragraph 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.**

132. Currently, the penal correction system falls under the structure of the Ministry of Internal Affairs; it is separate from the criminal prosecution agencies and, with the vertical subordination of the regional offices in the central administration, it has maintained its autonomy.

133. The current structure of the penal correction system is in line with article 24 of the Constitutional Law on the Government of the Republic of Kazakhstan and article 7 (4) of

the Internal Affairs Agencies Act; it comprises the central department, its local offices (the provincial departments), penal correction facilities and other subordinate organizations.

134. Furthermore, in 2013, in the country's third periodic report to the Committee against Torture, approved by Government Decision No. 617 of 18 June 2013, Kazakhstan officially stated on an international stage that: "One sign of the commitment to the Convention's principles and provisions is the preservation of the independence of the penal correction system. Notwithstanding the transfer of this structure to the Ministry of Internal Affairs, the prison system has retained its own independent administrative body: the Ministry's Committee on the Penal Correction System at national level and the Committee's provincial departments at local level." This remains the official position.

### **Paragraph 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.**

135. In accordance with article 150 (2) of the Code of Criminal Procedure (prison transfers), the movement of suspects, accused persons and defendants held in detention as a preventive measure from one detention facility to another for the purposes of the investigation takes place on the decision of the procurator or of the person conducting the pretrial investigation, with the authorization of the procurator.

### **Paragraph 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.**

136. Living space per prisoner in institutions of the penal correction system has been increased from 2.5 m<sup>2</sup> to 3.5 m<sup>2</sup> for men, 4 m<sup>2</sup> for women, 5 m<sup>2</sup> in hospitals and 6.5 m<sup>2</sup> for minors.

137. Kazakhstan pays particular attention to improving the conditions for detainees and prisoners.

138. Places of deprivation of liberty currently meet international standards. This is reflected in the results of visits conducted by United Nations special international experts and human rights NGOs.

139. One area of activities in which the country's penitentiary system is being brought in line with international standards is that prisoners are now permitted to move around and see other persons during the day, while they are held in isolation in a separate room at night. This form of detention is the most suitable and safe for the prisoners.

140. Measures are being taken in respect of both infrastructure and amenities to improve detention conditions in correctional facilities.

141. Since 2011, nutritional standards for convicted prisoners have been improved, with the daily food ration increased to 26 items; as a result, there are practically no complaints about food quality and nutritional norms.

142. In temporary detention facilities, three meals a day are provided by local commercial catering companies.

143. The length of time during which bedding is used has been reduced and the quality of non-food items has been improved.

## Paragraph 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.**

144. On 5 July 2014, the Penalties Enforcement Code was supplemented with a provision improving the mechanism for the submission and examination of complaints from convicted prisoners. Thus, in accordance with article 14 (2), institutions and bodies responsible for the enforcement of sentences have been equipped with special collection boxes to receive communications from convicted prisoners regarding unlawful actions on the part of officials. Communications are collected once a week by the procurator with the assistance of representatives of the administration of the institution or body responsible for the enforcement of sentences, and their collection is recorded. Special collection boxes are being installed in the grounds and buildings of institutions and bodies responsible for the enforcement of sentences in areas accessible to convicted prisoners.

## Paragraph 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.**

145. There is an accessible and effective mechanism for submitting complaints of torture at any stage of the criminal process.

146. The procurator must determine whether the person in question has been subjected to torture or other forms of ill-treatment.

147. The administration of a place of detention immediately refers to the procurator any complaints of torture or ill-treatment received from detainees or convicted prisoners. The censorship of such complaints is strictly prohibited.

148. Following receipt of such reports or the discovery of signs of violence, an investigating judge conducts an immediate verification of the facts.

149. If complaints are received during a trial, the court orders an investigation and the results are reflected in the report of the court proceedings.

150. To increase accessibility, the Ministry of Internal Affairs has set up a unified telephone helpline, 1402, which any citizen can call free of charge from any part of the country to report cases of torture or other violations of constitutional rights.

151. Complaints boxes have been installed in all institutions of the penal correction system in places accessible to all convicted prisoners. The complaints are collected directly by procurators and members of the national preventive mechanism, without any involvement of the institution's staff.

152. Law enforcement agencies are prevented from investigating cases of torture involving their own officials. The procuratorial authorities investigate all reported cases of torture.

## Paragraph 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. 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. When an act of torture has been established to have been committed, compensation should automatically be paid.**

153. The Ministry of Finance has drafted a bill on a compensation fund for victims and corresponding proposed legislation, which establish a legal basis for the payment of monetary compensation for unlawful criminal prosecution.

154. The aim of the bill is to create favourable legal conditions in which to develop a mechanism to protect the rights of victims, provide a fixed level of financial assistance for victims and their legal representatives and systematize the procedure for financing and disbursing resources by accumulating capital in the fund.

155. The bill proposes the creation of a fund in the form of a cash control account allowing the designated central authority for the execution of the budget to allocate and execute payments to victims.

156. In accordance with the bill, the State guarantees monetary compensation for victims or their successors, as follows:

- Minors who are victims of sexual violence, trafficking in persons or torture (30 monthly notional units, or 63,630 tenge)
- Persons who have suffered serious harm to their health or have become HIV-positive (40 monthly notional units, or 84,840 tenge)
- The successors of victims who died as a result of a criminal offence (50 monthly notional units, or 212,100 tenge)

157. Citizens are entitled to receive this compensation as soon as they have been declared victims.

158. The fund is financed from non-tax revenues, including:

- Fixed payments imposed by a court
- Financial penalties imposed by a court on a victim, witness, expert, interpreter or other person, excluding lawyers, procurators and defendants, for non-fulfilment of procedural obligations or violations of court procedure
- Sums withheld by court order from a person against whom a guilty verdict has acquired legal force and who has been sentenced to punitive work
- Sums collected under the recourse procedure

159. In accordance with article 71 of the Code of Criminal Procedure, victims are made aware of their right to bring a civil claim during criminal proceedings, and compensation is awarded for damage to property caused by a criminal offence, as well as for any expenses incurred in connection with participation in criminal proceedings, including expenses for representation, according to the rules established in the Code.

160. Victims' claims for moral damages are considered in criminal proceedings. Persons who have not brought claims in criminal proceedings or whose claims have not been considered are entitled to bring them under the civil procedure.

161. As part of the implementation of the plan of comprehensive measures to combat torture, consideration is being given to the possibility of amending article 167 of the Code of Criminal Procedure in order to establish the State's exclusive responsibility for torture, which would give effect to its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, increase the responsibility of government bodies for the actions of their officials and provide guarantees for the non-repetition of torture in accordance with the Convention: "Civil claims in cases concerning the criminal offences established under articles 146 and 146-4 of the Criminal Code are brought against the State as represented by the government body responsible for the offence."

## Paragraph 76

**The Subcommittee recommends that opportunities for paid work, exercise and educational, recreational and cultural activities be provided, 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.**

162. In accordance with article 119 of the Penalties Enforcement Code, the administration of an institution undertakes to create paid jobs for all convicts who are fit to work.

163. To date, 249 business entities have had inactive production facilities placed under their trusteeship, creating jobs for more than 3,000 people.

164. Under a self-employment model, 19 convicted prisoners in the institutions have begun producing souvenirs, footwear and furniture and growing vegetables.

165. Quarterly working meetings are held with representatives of the Atameken regional chambers of entrepreneurs and business communities to discuss the engagement of business entities with institutions of the penal correction system. Departments of the penal correction system and local executive bodies hold exhibitions, open-doors days and craft fairs.

166. As at mid-2017, 12,308 convicted prisoners, or 69 per cent of those fit to work, had paid jobs.

167. In accordance with article 123 of the Penalties Enforcement Code, the Committee on the Penal Correction System organizes technical and vocational training for convicted prisoners who do not have a trade.

168. Trade colleges are being set up in places of deprivation of liberty. Vocational training is currently available in 47 institutions of the penal correction system in 35 specialisms, including carpentry, plastering, plumbing, gas and arc welding, milling machine operation, sewing, baking, cookery and roofing. At the end of the 2016/17 academic year, 2,594 convicted prisoners received diplomas on the successful completion of their trade college training.

169. In 2017, 11.4 million tenge was set aside from the national budget to purchase stationery, household items and other goods to strengthen the industrial training base of colleges.

170. Regulations governing educational activities for persons sentenced to deprivation of liberty were approved by Ministry of Internal Affairs Order No. 508 of 13 August 2014. They cover educational activities for convicted prisoners and the organization of cultural events and sporting competitions.

171. The Office of the Procurator General has drawn up a comprehensive action plan to combat torture. It provides for amendments to the departmental regulatory instruments of the penitentiary system, including those concerning the penal correctional system, aimed at abolishing marching, drill practice and other educational and corrective measures not provided for in the Penalties Enforcement Code in order to ensure the safety of prisoners and protect their rights.

## Paragraph 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.**

172. In accordance with article 17 of the Act on Procedures and Conditions for the Custody of Persons in Special Temporary Detention Facilities, private and confidential meetings with defence lawyers, relatives and other persons are granted on the basis of written permission from the person or body conducting criminal proceedings. There are no restrictions on the number or length of meetings with defence lawyers.

173. Visits from relatives and other persons are limited to no more than two a month, or no more than three a month for juveniles, and can last no longer than three hours each. They take place under the supervision of detention centre officials. Visits may be terminated prematurely if an attempt is made to hand over to a suspect or accused person any prohibited objects, substances or foodstuffs or to impart information that might hinder efforts to establish the truth in a criminal case or facilitate the commission of an offence.

174. With the permission of the Office of the Procurator General, diplomatic representatives have the right to visit suspects or accused persons from the State that they represent, provided that their doing so does not contravene legislation.

175. The number and length of visits granted to persons with infectious diseases (HIV/AIDS and tuberculosis) are determined in accordance with the established procedure following a preliminary discussion with a medical worker (doctor) and the receipt of written notification of the likelihood of contagion.

### **Paragraph 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.**

176. The Subcommittee notes with concern the allegations of “welcome beatings” and recommends that any such practices be discontinued. However, the report does not contain any specific information on the basis of which investigations of cases could be launched.

### **Paragraph 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.**

177. In institutions of the penal correction system, persons with disabilities enjoy improved living conditions. They also enjoy increased food rations in accordance with the nutritional standards approved by Government Decision No. 1255 of 28 November 2015.

178. The premises in which convicted prisoners with disabilities are held have been designed for and equipped with accessible specialized assistive devices and appliances.

179. Under the Social Protection for Persons with Disabilities Act, convicted prisoners with disabilities are, in accordance with their individual rehabilitation plan, provided with prosthetic and orthopaedic appliances, assistive devices and special mobility devices included in a list (which includes crutches, personal wheelchairs, walking frames, orthopaedic footwear, prosthetic appliances and walking sticks) and in accordance with a procedure determined by the Government.

180. Convicted prisoners with disabilities do not have separate exercise areas in remand centres. However, convicted prisoners with disabilities live in facilities on the ground floors of buildings.

181. Institutions of the penal correction system are currently calculating the cost of creating accessible exercise areas for persons with disabilities.

### **Paragraph 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.**

182. The internal regulations of institutions of the penal correction system were approved by Ministry of Internal Affairs Order No. 819 of 17 November 2014. These regulations determine the internal organization of institutions in the penal correction system with a view to ensuring the necessary conditions for the serving and enforcement of sentences.

183. These regulations govern: the procedure for admitting convicted prisoners to an institution; the relations between convicted prisoners and the staff of an institution; the daily schedule in an institution; the acquisition by convicted prisoners of foodstuffs and essential items, their receipt of parcels, hand-delivered packages and packets, the provision of additional services and the procedure for confiscating prohibited items or documents; convicted prisoners' correspondence, incoming and outgoing money transfers, visits and telephone conversations; the procedure for granting convicts periods of leave outside an institution; the procedure for serving sentences under the strict regime and the conditions in which convicted prisoners are held in disciplinary units, solitary confinement, temporary isolation rooms, secure areas and cells in institutions; the specificities of imprisonment for persons sentenced to life imprisonment or the death penalty and those held in minimum-security institutions; and the procedure governing the conduct of convicted prisoners serving sentences under the favourable regime, who have the right to reside outside an institution.

184. The windows in the institutions have been fitted with folding shutters as part of measures to equip strategic facilities with essential security systems and to strengthen control of access to administrative territorial units.

185. The provision of water for convicted prisoners, including the use of showers, and water consumption are regulated by Government Decision No. 1118 of 2 November 1998 on standards for the consumption of electrical energy, heating, hot and cold water and other communal services in State-funded organizations.

## **Paragraph 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.**

## **Paragraph 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.**

186. The possibility of transferring responsibility for the medical care of remand and convicted prisoners held in institutions of the penal correction system from the Ministry of Internal Affairs to the Ministry of Health was considered at meetings of the Security Council in May 2011 and of the board of the Office of the Procurator General in March 2012.

187. In accordance with an instruction of the Prime Minister of 7 May 2012, a working group was set up to consider the matter, and, in January 2013, a corresponding plan of measures for the gradual transfer of responsibility for the medical care of remand and convicted prisoners was drawn up and approved.

188. On the basis of the views of the State bodies involved, a letter was sent to the Office of the President putting forward a proposal to defer consideration of the transferral of responsibility for health care in the penitentiary system to the Ministry of Health until the resource base of prison hospitals had been strengthened and the matter of improving the social benefits of medical workers in the penal correction system had been addressed.

## Paragraph 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.**

189. Convicted prisoners are guaranteed the right to freedom of conscience and religion. This right is governed by the Act of 11 October 2011 on Religious Activities and Religious Organizations, article 13 of the Penalties Enforcement Code and the Instruction on the creation of conditions for the performance of religious rituals by persons sentenced to deprivation of liberty, which was approved by Ministry of Internal Affairs Order No. 503 of 8 August 2014.

190. The administration of an institution makes facilities available for meetings between convicted prisoners and religious officials. These facilities are fitted with essential equipment of no religious significance, including a table and chairs. Audiovisual equipment has been installed in them so that religion-themed materials can be listened to and watched.

191. The administration of an institution or body responsible for the enforcement of sentences facilitates the performance of religious rituals and ensures the personal safety of religious officials.

192. Religious literature, other written materials of a religious nature and items of religious significance can be brought into the institution only after they have undergone a religious expert assessment and the results have been received. Such materials or items are stored in the library of the institution. When necessary, they are used as part of religious rituals conducted during visits from representatives of religious associations. Convicted prisoners use them on an individual basis in the reading room of the library at a set time in the daily schedule. In this connection, we consider it inappropriate to introduce amendments to the Act.

193. In addition, according to paragraph 11 of Ministry of Internal Affairs Order No. 503 of 8 August 2014 approving the Instruction on the creation of conditions for the performance of religious rituals by persons sentenced to deprivation of liberty, convicted prisoners are allowed to perform religious rituals individually, near their sleeping area; this is also in line with rule 66 of the Nelson Mandela Rules.

## Paragraph 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.**

194. Point 41 of the internal regulations of institutions of the penal correction system approved by Ministry of Internal Affairs Order No. 819 of 17 November 2014 stipulates that convicted prisoners are moved around the grounds of the institution in organized groups, wearing the correct uniform, and are accompanied by a representative of the administration of the institution. An exception is made for minimum-security institutions, where convicted prisoners are moved in formation only for the purposes of inspections and mealtimes.

## Paragraph 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.**

195. Matters concerning the movement of prisoners inside and outside prisons are regulated by the Penalties Enforcement Code and the internal regulations of institutions of the penal correction system approved by Ministry of Internal Affairs Order No. 819 of 17 November 2014.

196. The aforementioned regulatory instruments do not contain provisions relating to the documentation of movements of prisoners inside and outside prisons.

197. The recommendation in question will be implemented by introducing amendments to the aforementioned regulatory instruments.

## **Paragraph 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.**

198. Under article 121 of the Penalties Enforcement Code, one of the meaningful activities in which convicted prisoners engage is the task of developing the institution and improving the conditions of detention, for which they are not paid. Convicted prisoners engage in this activity for no more than two hours a week.

199. In addition, institutions have amateur artistic groups, which are run on a voluntary basis. These groups organize concerts, competitions, meetings and other events.

200. The aim of these meaningful activities is to foster positive personal relationships among convicted prisoners and to develop in them a sense of responsibility and the ability to display a selfless attitude towards society.

201. At present, 17,800 (60 per cent) of the 29,600 prisoners in institutions of the penal correction system are fit to work.

202. Of the convicted prisoners who are fit to work, 12,400 (69 per cent) have paid jobs.

## **Paragraph 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.**

203. Under article 86 (2), (7) and (8), of the Penalties Enforcement Code, convicted prisoners are entitled, at their own expense, to a telephone conversation with their spouse or a close relative in exceptional personal circumstances, including in the event that their spouse or a close relative dies or has a serious, life-threatening illness or that a natural disaster has caused significant financial damage to their family; and to a short visit of no more than seven days in duration, not including travel time to and from the place of the visit (no more than five days), in the event that their spouse or a close relative dies or has a serious, life-threatening illness or that a natural disaster has caused significant financial damage to their family.

204. In accordance with article 109 of the Penalties Enforcement Code, convicted prisoners are each entitled to a telephone conversation of 15 minutes in duration, in accordance with the internal regulations of institutions.

205. Convicted prisoners or their spouse or close relatives pay for telephone conversations at their own expense.

206. The administration of an institution makes use of available means of telecommunication to maintain convicted prisoners' social relationships.

207. Convicted prisoners held under the strict regime, in a disciplinary unit or in solitary confinement as a sanction have the right to a telephone conversation in exceptional personal circumstances, including in the event that their spouse or a close relative dies or has a serious, life-threatening illness or that a natural disaster has caused significant financial damage to their family.

208. In accordance with article 113 of the Penalties Enforcement Code, convicted prisoners held in institutions, as well as those placed in mixed-security institutions or transferred to full-security institutions to carry out maintenance work, are entitled to short periods of temporary release outside the institution of no longer than seven days in the event that their spouse or a close relative dies or has a serious, life-threatening illness or that a natural disaster has caused significant financial damage to their family; and, for those in a minimum-security institution, to extended temporary release for the period of annual paid leave.

209. Women convicted prisoners who have a child in an institution's children's unit are entitled to a short period of temporary release to place the child in the care of their spouse or relatives or in a children's home.

210. Women convicted prisoners who have minor children with disabilities outside the institution are entitled to one short period of temporary release per year to see them.

211. Juvenile convicted prisoners and convicted prisoners who have a category I or II disability and require constant care for health reasons are allowed to be accompanied by a spouse, relative or other accompanying person during their period of temporary release.

212. Convicted prisoners' applications for temporary release are considered within 24 hours. Periods of temporary release are granted by the director or the officer in charge with due regard to the requirements set out in article 113 (3) of the Penalties Enforcement Code and the conduct of the convicted prisoner in question.

213. Time that convicted prisoners spend outside the institution counts towards their sentence.

214. In accordance with article 116 of the Penalties Enforcement Code, children's units can be set up in institutions in which female convicted prisoners with children are serving sentences.

215. These children's units offer children the necessary conditions for a normal life and development.

216. Women convicted prisoners who have children aged under 3 years place them in an institution's children's unit and, when they are free from work, can spend as much time with their children as they wish. They are allowed to live with their children.

217. Point 6 of the plan of measures to implement the 2017–2019 comprehensive strategy for the social rehabilitation of citizens released from places of deprivation of liberty who are registered with the probation service, approved by Government Decision No. 912 of 29 December 2016, provides for a pilot project to be conducted at one of the institutions of the penal correction system to enable convicted prisoners to use modern information technology to have video visits from their families.

218. This promotes meaningful relationships and law-abiding behaviour and incentivizes early release.

## **Paragraph 108**

**The Subcommittee recalls that disciplinary punishments should be strictly proportional, 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, and that no detainees should be employed, in the service of the prison, in any disciplinary capacity.**

219. According to the Nelson Mandela Rules, discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life.

220. All these aspects shall always be subject to authorization by law or by the regulation of the competent administrative authority.

221. In 2014, the Parliament adopted a new Penalties Enforcement Code to bring the conditions for serving sentences into line with the experience of developed States and international standards.

222. A progressive system of penalties enforcement has been introduced. It takes the form of a comprehensive inter-sectoral framework, which, when implemented, means that the status of convicted prisoners depends on the extent to which they reform their behaviours; their rights are correspondingly increased or decreased in number.

223. Under article 132 of the Penalties Enforcement Code, the circumstances of a particular violation, the character of the convicted prisoner concerned and his or her past conduct are taken into account in the imposition of sanctions.

224. The sanctions imposed are commensurate with the gravity and nature of a particular violation, taking into account the circumstances in which it was committed, the character of the convicted prisoner concerned and his or her past conduct.

225. For example, preventive discussions are held with convicted prisoners of good character as an alternative to the imposition of disciplinary sanctions.

226. The new Penalties Enforcement Code sets out criteria for determining the gravity of an offence and also regulates the procedure for establishing disciplinary responsibility.

227. The following criteria for assessing the gravity of a violation are taken into account in the imposition of disciplinary measures on convicted prisoners:

- (1) The content and nature of the violation;
- (2) Information attesting to a convicted prisoner's character and his or her attitude towards all aspects of the penal correction regime and educational measures;
- (3) The motive and seriousness of the violation (whether it was intentional or resulted from negligence);
- (4) Mitigating circumstances (i.e., it is a first violation, the convicted prisoner admits the violation, or the violation did not have any negative consequences or cause damage to the institution's property or to other persons);
- (5) Aggravating circumstances (i.e., it is a repeat violation, was committed under the influence of alcohol or drugs, had negative consequences or caused damage to the institution's property or to other persons).

228. The sanctions imposed must begin with the least severe and progressively increase in severity.

229. Convicted prisoners have the right to qualified legal assistance in the form of, inter alia, consultations, certificates and the preparation of legal documents, in accordance with the procedure established in national law.

230. Meetings with lawyers do not count towards the number of the meetings set out in the Penalties Enforcement Code and are unlimited in number and duration. Moreover, conversations must be held in private, if a convicted prisoner so wishes. The codification of this right satisfies the recommendations made in rule 93 of the Nelson Mandela Rules.

231. Pursuant to article 10 of the Penalties Enforcement Code, convicted prisoners have the right to make oral and written proposals, applications and complaints to an institution or

body responsible for the enforcement of sentences, higher bodies, the court, procuratorial bodies, other State bodies, officials, voluntary organizations and international organizations that protect human rights and freedoms, in accordance with national legislation.

### **Paragraph 111**

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

232. Article 94 of the Penalties Enforcement Code clearly regulates matters relating to the separation of women, juveniles, persons with infectious diseases and persons with previous convictions.

233. The Office of the Procurator General and the Committee on the Penal Correction System are currently discussing the possibility of grouping convicted prisoners in accordance with the level of social danger of the acts that they have committed and the gravity of their offences.

234. This will involve dividing convicted prisoners held in institutions of the penal correction system into several groups.

235. These measures will help to:

- Prevent the formation of prison “subcultures”
- Reduce the frequency of self-harm, suicide and crime among prisoners
- Create a normal “microclimate” in individual groups
- Accelerate resocialization

### **Paragraph 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. Prompt access to medical attention in urgent cases needs to be ensured, including through transfer to specialized institutions or civil hospitals. Medical files should be subject to medical confidentiality. 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.**

236. Article 117 of the Penalties Enforcement Code regulates medical care. Medical services are administered to convicted prisoners in accordance with national legislation on health care.

237. Prison hospitals (hospitals for the treatment of physical and mental diseases and tuberculosis, medical units and medical clinics) have been set up in the penal correction system to administer medical care to convicted prisoners. The medical unit in an institution administers compulsory treatment for convicted prisoners suffering from alcoholism or drug or substance addiction.

238. The administration of the institution is responsible for implementing the sanitary and epidemiological requirements set out in legislation.

239. Tuberculosis services, epidemiological monitoring in institutions and medical examinations of convicted prisoners put forward for remission of sentence on grounds of illness are organized in accordance with national legislation.

240. In the case of the death of a person serving a sentence, the administration of the institution concerned immediately notifies, in writing, the procurator, the deceased person’s spouse or relatives and, if the deceased is a foreign national, the Ministry of Foreign Affairs.

## Paragraph 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.**

241. In accordance with the Code on Public Health and the Health-Care System, a convicted prisoner's health status and any conditions with which he or she has been diagnosed are subject to medical confidentiality.

242. Convicted prisoners can be held separately on medical grounds if they have a disease that presents a danger to others.

243. Convicted prisoners who are HIV-positive are held along with all other prisoners, to prevent any discrimination.

## Paragraph 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.**

244. All convicted prisoners, irrespective of their length of sentence, have equal access to everyday products (food, clothes and other essential items) and to recreational opportunities (reading newspapers and magazines and watching television).

245. No differentiation is made on these issues.

246. The conditions of detention are the only variable; they depend on the regime under which a sentence is being served (ordinary, relaxed or strict).

247. In accordance with article 127 of the Penalties Enforcement Code, it has been made possible for prisoners serving life sentences and those in prison hospitals to receive primary, basic secondary and general secondary education.

248. It has been made possible for prisoners serving life sentences and those in prison hospitals to receive primary, basic secondary and general secondary education.

249. Convicted prisoners are encouraged to take primary, basic secondary and general secondary education, and their willingness to do so is taken into account in the appraising their behaviour and preparing a character assessment.

250. Under article 141 of the Penalties Enforcement Code, prisoners serving life sentences are entitled to a daily walk lasting:

- (1) One hour for those held under the strict regime;
- (2) One and a half hours for those held under the ordinary regime;
- (3) Two hours for those held under the relaxed regime.

## Paragraph 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.**

251. Rule 11 of the Nelson Mandela Rules stipulates that different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.

252. Rule 37 of the Nelson Mandela rules refers to any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation,

special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

253. National laws and regulations provide for special treatment for prisoners serving life sentences.

254. Moreover, rule 89 of the Nelson Mandela Rules stipulates that the fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.

255. According to rule 93 of the Mandela Rules, the purposes of classification are:

(a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

256. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

257. In addition, preliminary observation 2 of the Nelson Mandela Rules stipulates that, in view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

258. For example, even in the United States of America, in a prison that is by no means the strictest in the country, convicted prisoners are moved around in hand and leg shackles. In addition, some convicted prisoners are held in rooms in which they can only stand and only in their underwear.

### **Paragraph 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.**

259. Under article 141 of the Penalties Enforcement Code, prisoners serving life sentences are placed in cells.

260. Educational activities for convicted prisoners are organized with due regard to the requirements of detention in cells.

261. Convicted prisoners are entitled to a daily walk lasting:

(1) One hour for those held under the strict regime;

(2) One and a half hours for those held under the ordinary regime;

(3) Two hours for those held under the relaxed regime.

262. In accordance with article 27 of the Penalties Enforcement Code, it has been made possible for prisoners serving life sentences and those in prison hospitals to receive primary, basic secondary and general secondary education.

263. Convicted prisoners are encouraged to take primary, basic secondary and general secondary education, and their willingness to do so is taken into account in determining their level of conduct and their character assessment.

## Paragraph 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.**

264. In 2017, 5,642 convicted prisoners were released from places of deprivation of liberty (versus 7,249 in 2016), including 1,289 released on completion of their sentence (versus 1,834 in 2016) and 3,102 released on parole with the unserved portion of their sentence being commuted to a milder penalty (versus 5,364 in 2016).

265. In the current year, 461 convicted prisoners applied to the administration of an institution for assistance on their release (versus 418 in 2016), and they were referred to various social and treatment institutions, including 149 to social adaptation centres (versus 97 in 2016) and 103 to outpatient clinics (versus 118 in 2018).

266. The introduction of penitentiary probation will make it possible to prepare convicted prisoners more thoroughly ahead of their release. It will be carried out in close cooperation with government agencies, NGOs and civil society and will be aimed at helping convicted prisoners to reintegrate into society.

## Paragraph 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.**

267. Pursuant to article 116 of the Penalties Enforcement Code, children's units have been set up in institutions of the penal correction system to create the conditions necessary for the normal accommodation and development of children aged under 3 years. Women convicted prisoners can place their children in such units and, when they are not working, can spend as much time with them as they wish.

268. Medical care is provided for women convicted prisoners who are pregnant or in labour and for their children within the framework of the guaranteed volume of free medical care (Government Decision No. 2136 of 15 December 2009 and Ministry of Internal Affairs Order No. 314 of 7 April 2015 approving rules for the provision of medical care for citizens whose freedom has been restricted and persons serving court-imposed penalties in places of deprivation of liberty or placed in special institutions).

269. One of these children's units has been set up at institution LA-155/4 of the Almaty province Departmental Penal Correction System, providing temporary care for up to 50 children aged under 3 years.

270. The children's unit has all the necessary equipment and facilities. The work is organized by the director of the children's unit and the staff, which includes a paediatrician, a neurologist, a psychiatrist, five nurses, a radiographer, a midwife, an aide, teachers and nannies.

271. The children are examined by doctors on a daily basis. Children aged over 3 years are placed in the care of a close relative of the convicted prisoner. In the event that a convicted prisoner does not have any close relatives or they refuse to take the child, the child is placed in a children's home, in accordance with a court decision.

### Paragraph 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.**

272. The country currently has one young offenders' institution in Almaty (institution LA-155/6) and one segregated area for female juvenile convicted prisoners at institution LA-155/4.

273. The institution has a total of 48 juvenile convicted prisoners.

274. The educational activities conducted in the institution are tailored to the psychological and physical characteristics of adolescents and the individual needs of the young offenders.

275. Juveniles who find themselves in conflict with the law need assistance in the form of comprehensive services and support for the process of serving a criminal sentence.

276. For this reason, the institution has a psychological service. On entry to the institution, every juvenile convicted prisoner undergoes a comprehensive initial psychological evaluation. The psychologist uses the results of the evaluation to make a character assessment of the young offender and gives officers recommendations for future interventions. Persons in need of special attention are placed on a preventive register.

277. Group sessions in psychological counselling, preventive psychology and education (training courses and lectures) are one of the most effective psychological interventions. They enable all convicted prisoners to develop communication skills, gain an outside perspective on their conduct and analyse mistakes and deficiencies in their communication.

278. In accordance with recommendations made by international human rights organizations, the new Penalties Enforcement Code does not include punishments such as placement in a disciplinary unit for juvenile convicted prisoners. The director of the institution can decide to place adolescent convicted prisoners who display aggressive behaviour in a temporary isolation room for up to 48 hours to prevent violations of the procedure for serving sentences (Penalties Enforcement Code, art. 150).

279. It is recognized in the Penalties Enforcement Code that general education is one of the main corrective measures for convicted prisoners. For this reason, vocational and secondary education has been organized for juveniles in institutions of the penal correction system.

280. There is a general education school in the grounds of the institution, and young offenders aged 14 to 18 years study there in grades 9 to 11 (three classes in the State language of instruction and three in Russian). In the 2015/16 academic year, 12 students received certificates on successful completion of general secondary education (grade 11) and 5 students received certificates of successful completion of basic secondary education (grade 9).

281. General education schools are not only places of learning, but also offer extracurricular activities in the form of clubs. In these clubs, young offenders study drawing technique and applied art. The teachers in the school are members of the institution's educational council and take part in the work of the commission responsible for assessing convicted prisoners' conduct and transferring them to other possible regimes for serving their sentences.

282. Learning a trade is an important part of a juvenile's reintegration into society. The trade school in the institution offers the opportunity to train as a mechanic, a metal worker

or a carpenter. Training lasts for 6.5 months. Convicted prisoners who successfully complete trade school receive a standard State document indicating their grade. Depending on the length of their sentence, convicted prisoners can manage to learn two or three trades. In the 2015/16 academic year, 50 students received trade school diplomas. There are 28 students enrolled in the current academic year.

283. Guardianship councils and parental committees made up of convicted prisoners' parents and other close relatives have been set up to improve the effectiveness of the educational initiatives introduced for their benefit and to assist the administration of the young offenders' institution.

284. In addition, the staff of territorial judicial bodies and lawyers' and notaries' offices provide young offenders with qualified legal assistance.

285. Many municipal organizations, educational institutions, voluntary associations, religious denominations and NGOs work with juvenile convicted prisoners.

286. The Almaty municipal administration (*akimat*) also plays an active role. It works with the department for physical education and sport to organize regular sporting events, concerts and screenings of films, comedy programmes and so forth. In 2016, 14 such events were organized and took place.

287. These various efforts are all, first and foremost, part of the educational process and are aimed at promoting law-abiding behaviour among juvenile convicted prisoners, providing incentives for them to reform and encouraging their rapid reintegration into society.

## Paragraph 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.**

288. Under article 127 (2) of the Code on Public Health and the Health-Care System, the use of physical restraint or isolation in the case of a person who has been forcibly hospitalized and is held in a psychiatric inpatient facility is permissible only in such cases and for such periods as are considered necessary if a psychiatrist is of the opinion that actions on the part of the hospitalized patient that present a danger to himself or herself or to other persons cannot be prevented by other means. The use of such methods is subject to ongoing monitoring by medical staff. The forms of physical restraint or isolation used and the length of their use are logged in a medical register, and the person's legal representative is notified of their use.

289. The mechanical restraints used are soft restraints.

290. We consider it inappropriate to separate the forms for requesting consent for hospitalization and for requesting consent for treatment, as the conditions of detention and treatment are explained to a person as part of the hospitalization process. Treatment is administered in accordance with the diagnosis and treatment protocols are approved by the Ministry of Health.

291. With regard to the creation of an independent commission to examine complaints, we note that a service has been set up in each organization under the authority of the main director to support patients and conduct internal audits. Since 2012, the national centre for mental-health research under the Ministry of Health has had a public mental-health council, whose members include officials from psychiatric and educational organizations and NGO representatives (public unions, foundations, associations, the media, legal organizations and so forth).

292. In addition, a recommendation was made to directors of regional drug rehabilitation centres on setting up public councils with NGO representatives among their members.

293. These organizations have local electronic information systems, and there are plans to develop registers for recording the use of restrictive measures in that context.

### **Paragraph 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.**

294. Pursuant to article 10 (8) and (9) of the Penalties Enforcement Code, the fundamental rights of convicted prisoners include health and access to qualified medical care in accordance with national legislation on health-care and psychiatric services. This medical care should be administered by officials from the institution's psychological service or other persons who have the right to provide such care.

295. Persons sentenced to a short term of rigorous imprisonment, deprivation of liberty or the death penalty have the right to submit applications regarding the protection of their rights to the higher administrative bodies of the relevant institutions or bodies responsible for the enforcement of sentences, the court, procuratorial authorities, other State authorities, voluntary organizations and international organizations that protect human rights and freedoms. Such applications are submitted through the administration of the institution or body responsible for the enforcement of sentences.

296. Under article 26 (2) and (3) of the Penalties Enforcement Code, an institution can obtain a court order to take coercive measures of a medical nature against a convicted prisoner declared to be in need of treatment for alcoholism or drug or substance addiction. If a convicted prisoner is declared to be suffering from one of the illnesses specified in article 26 (1), the administration applies to the court for authorization to use coercive measures of a medical nature.

297. Under article 132 of the Code on Public Health and the Health-Care System, the procedure for declaring a person to be suffering from alcoholism or drug or substance addiction is conducted by State health-care organizations following the appropriate medical examination in accordance with the procedure set out by the designated body.

298. Persons declared to be suffering from alcohol or drug or substance addiction can appeal such decisions to the higher administrative body responsible for health care and/or to the court.

299. Persons suffering from alcoholism or drug or substance abuse have the right to refuse medical and social rehabilitation at any stage. Persons who have refused medical and social rehabilitation, or their legal representatives, must be given an explanation of the possible consequences of such a refusal. Such persons, or their legal representatives, and a psychiatrist or addiction specialist must sign medical documentation certifying that medical and social rehabilitation has been refused and that the possible consequences of that refusal have been explained.

300. We consider it inappropriate to develop additional complaints procedures.

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