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## المجلس الاقتصادي والاجتماعي



لجنة حقوق الإنسان  
الدورة الحادية والستون  
البند ١١ (د) من جدول الأعمال المؤقت

الحقوق المدنية والسياسية، بما في ذلك مسائل استقلال القضاء،  
 وإقامة العدل، والإفلات من العقاب

تقرير المقرر الخاص المعني باستقلال القضاة والمحامين، السيد لياندرو ديسبوي

إضافة

البعثة إلى كازاخستان\*

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\* يُعمم موجز التقرير بجميع اللغات الرسمية. ويرد التقرير ذاته في مرفق هذه الوثيقة ويُعمم باللغتين الإنكليزية والروسية فقط.

## موجز

بناءً على الدعوة الكريمة الموجهة من حكومة كازاخستان، قام المقرر الخاص المعني باستقلال القضاة والمحامين ببعثة إلى ذلك البلد في الفترة من ١١ إلى ١٧ حزيران/يونيه ٢٠٠٤. وأجرى مناقشات متعمقة مع المسؤولين الحكوميين واجتمع بحرية بعدد كبير من الأشخاص الذين زودوه بمعلومات أساسية مفصلة وأفكار ثاقبة عن السلطة القضائية. وهو يشعر أنه مدين تجاه جميع هؤلاء الأشخاص الذين تحدث معهم.

ونظراً للقيود التحريرية للأمم المتحدة، فإن وصف النتائج يقف عند حد أدنى. بيد أن التقرير يحاول تقديم صورة عن التطورات المؤسسية والقانونية التي أثرت في القضاء منذ عام ١٩٩١. ويرز التقرير الخطوات الحاسمة، مثل وقف تنفيذ عقوبة الإعدام في كانون الأول/ديسمبر ٢٠٠٣، مما يبعث على الأمل بأن الحالة تتطور في الاتجاه الصحيح. بيد أنه يبين أيضاً أن القضاء لا يزال، من الناحية المؤسسية والعملية على السواء، يعتمد إلى حد بعيد على إرادة ذوي السلطة التنفيذية والاقتصادية. ومن الواضح أن المدعي العام يمثل عقبة كبرى إذ بإمكانه أن يتدخل في القضايا الجنائية أو المدنية؛ وله دور حاسم فيما يتعلق بالاحتجاز الاحتياطي؛ وبإمكانه مراجعة قرار صادر عن محكمة حتى بعد قفل ملف القضية فعلاً؛ وبمقدوره أن يوقف تطبيق حكم صادر عن محكمة لغاية شهرين. ولا يمكن إحراز أي تقدم في سبيل الاستقلال حتى تجري تغييرات جذرية لتعديل توازن الاختصاصات والصلاحيات بين المدعي العام، والقاضي، ومحامي الدفاع. ومع ذلك، وإلى جانب الحاجة إلى مزيد من الإصلاحات، فإن القضايا الرئيسية موضع النزاع تتصل، فيما يبدو، "بثقافة" بعيدة العهد من حيث الطريقة التي تُمارس فيها الوظائف القضائية والحاجة إلى تأمين ثقافة جديدة تستهدف استقلال وفعالية ونزاهة القضاء. ولا يزال الفساد القضائي يشكل مدعاة رئيسية للقلق وتحدياً حقيقياً لا بد من مواجهته بجزم على وجه السرعة. وهناك جانب حاسم آخر يتعلق بتحسين مستوى التعليم والتدريب القانوني بقصد النهوض بالمؤهلات المهنية لكل من القضاة والمحامين. وفي هذا السياق، يلزم تقديم دعم من المجتمع الدولي لتعزيز عمل الأكاديمية القضائية والأخذ بتدريب إجباري على قانون حقوق الإنسان الدولي والمبادئ الدولية المتعلقة بالقضاء.

وفي حين أن التقرير يتضمن انتقادات، فإنه يعكس اقتناع المقرر الخاص بأن كازاخستان هي في وضع امتيازي تستطيع معه إجراء تغييرات مؤسسية سريعة وإيجابية، وخاصة بغية تذليل العقبات المتبقية التي تمس استقلال قضائها.

والواقع أن الحوار مع السلطات يدل على إدراكها للتحديات التي تواجهها وعزمها على التصدي لها بنشاط. وفي ظل هذه الخلفية الإيجابية، فإن التوصيات الواردة في التقرير تهدف إلى توفير مجال لمزيد من تبادل الآراء. ويأمل المقرر الخاص أن هذه التوصيات، رغم كونها محدودة في سياق هذا التقرير، ستبني وتدعم أمان جميع الذين يعملون على تحقيق قضاء مستقل جدير بائتمان الشعب وثقته.

## Annex

**REPORT SUBMITTED BY THE SPECIAL RAPPORTEUR ON  
THE INDEPENDENCE OF JUDGES AND LAWYERS,  
LEANDRO DESPOUY, ON HIS MISSION TO KAZAKHSTAN  
(11 TO 17 JUNE 2004)**

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## Introduction

1. Pursuant to his mandate, the Special Rapporteur on the independence of judges and lawyers visited Kazakhstan from 11 to 17 June 2004 at the kind invitation of the Government.
2. The visit was prompted by reiterated allegations that, despite important efforts and reforms undertaken by the Government since 1991, the judiciary remained dependent upon political pressure and administrative directives, was affected by corruption and needed further reforms to reach the necessary level of training and professionalism, independence, fairness and transparency. These allegations deserved to be cross-checked by way of a country visit aimed at assessing the situation and discussing ways of improving it.
3. The Special Rapporteur met with the Minister of Foreign Affairs, the Minister of Justice, the Minister of the Interior, and the Deputy Minister of Education. He had extensive consultations with a wide range of judicial and other officials: President of the Supreme Court, President of the Constitutional Council, Deputy Prosecutor General, National Ombudsman, Chairperson of the National Commission on Family Issues, Chairman of the National Commission on Human Rights, Chairman of the Judicial Academy, Deputy Chairman of the Almaty City Court, Chairman of the Union of Judges of Kazakhstan, Chairman of the City Board of Advocates, Chairman of the Advocate's Union, Rector of the Kazakh Humanitarian and Juridical University, and a number of judges and lawyers at the oblast and district (rayon) court levels. He met representatives of various local non-governmental organizations (NGOs) such as the Kazakhstan International Bureau on Human Rights and the Rule of Law, the Almaty Helsinki Foundation, Legal Initiative, Street Law Kazakhstan, and the Centre for Legal Assistance to Ethnic Minorities and Women's Work in the Legal System. He visited the local offices of the following United Nations agencies: Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations Development Programme (UNDP), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Development Fund for Women (UNIFEM) and United Nations Children's Fund (UNICEF). He met representatives of the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU). He also met representatives from various international organizations and national cooperation agencies: United States Agency for International Development (USAID), American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) which provided their 2004 report *Judicial Reform Index in Kazakhstan*, Prison Reform Institute (PRI), the Soros Foundation, and Transparency International.
4. The Special Rapporteur is very grateful to the Government of Kazakhstan for offering him this unique opportunity to examine with them the current status of and recent developments regarding the judiciary. He appreciated their full cooperation and was able to have a very frank and open dialogue which showed their awareness of the current challenges and their determination to resolve them. He was able to meet all those he wanted to meet without any form of limitations or constraints, including NGOs which perform very valuable work. He feels very indebted towards each and every person he met for the information they provided and their insight into current developments and needs for future reforms. He is hopeful that his recommendations will meet and support the main aspirations of all those, within Government, the judiciary and civil society, who strive to achieve an independent, effective and transparent judiciary, and will provide ground for further fruitful exchanges and progress.

## **I. MAIN FINDINGS**

### **A. General political and legal background**

5. Kazakhstan gained independence in 1991, after over 70 years of rule by the former Soviet Union, and strives to develop institutions meeting international criteria of good governance. Since independence, the country has been ruled by President Nursultan A. Nazarbayev (re-elected in 1999 to serve in office until 2006), who introduced a new Constitution in 1995 aimed at replacing the first post-Soviet Constitution of 1993 and at establishing a strong presidential style of government. Article 3 (3) of that Constitution provides for the following safeguard, “Nobody shall have the right to appropriate power in the Republic of Kazakhstan. Appropriation of power shall be persecuted by law.”

6. Section VII of the Constitution addresses issues relating to courts and justice while the primary law governing the judiciary is Constitutional Law No. 132 (25 December 2000) “On the Judicial System and the Status of Judges in the Republic of Kazakhstan” (“Law on the Judicial System”). Proceedings are governed by the 1997 Criminal Code, the 1997 Code of Criminal Procedure and the 1998 Code for the Execution of Criminal Penalties.

7. Kazakhstan is a party to the following human rights treaties: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Racial Discrimination and Convention on the Elimination of All Forms of Discrimination Against Women. In December 2003, Kazakhstan signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights but has not yet ratified them. It may be noted in this connection that article 4 (3) of the Constitution states that “International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law.”

### **B. The court system**

8. Kazakhstan is divided into 14 oblasts (administrative regions), which are ruled by an *Akim* (governor) appointed by the President of the Republic. The status of the cities of Almaty and Astana is akin to that of an oblast. Each oblast is subdivided into rayons (districts). The country thus has three levels of jurisdiction:

- (i) A Supreme Court defined by article 81 of the Constitution as “the highest judicial body for civil, criminal and other cases which are under the courts of general jurisdiction, exercises the supervision over their activities in the forms of juridical procedure stipulated by law, and provides interpretation on the issues of judicial practice”. As per article 82, the chairperson, the chairpersons of the Collegia and the judges of the Court are “elected by the Senate at the proposal of the President of the Republic based on a recommendation of the Highest Judicial Council of the Republic”. The 48 Court members sit by panels of three to nine, depending on the case and may also sit in plenary to issue advisory opinions to the lower courts. The Court includes three divisions addressing, respectively, civilian cases, criminal cases and questions of supervision (see the web site [www.supcourt.kz](http://www.supcourt.kz));
- (ii) 16 oblast Courts (14 Oblasts plus Almaty and Astana), with a total of 572 judges, which may act either as courts of appeal or as courts of first instance in serious criminal matters such as murder. As per article 82 (2) of the Constitution, “The Chairpersons of

Oblast and equivalent courts, the Chairpersons of the Collegiums and judges of the Oblast and equivalent courts shall be appointed by the President of the Republic at the recommendation of the Highest Judicial Council of the Republic.”;

- (iii) 260 Rayon Courts, with a total of 1,851 judges, which function as courts of first instance. As per article 82 (3) of the Constitution, the Chairperson and judges of these courts are “appointed by the President of the Republic at the proposal of the Minister of Justice based on a recommendation of the Qualification Collegium of Justice”. The rayon courts are not officially divided into sections, although as a practical matter most judges specialize in criminal or civil cases. They preside over cases individually by panels of three.

9. In addition, 16 Economic Courts (one by oblast, including Almaty and Astana) are at a level equivalent to that of the Rayon Courts and deal with commercial disputes. Also, Military Courts functioning at the oblast and rayon levels address cases concerning the military and its personnel. Finally, Kazakhstan is trying to establish a number of specialized courts:

- (iv) Administrative tribunals have been established in Almaty and Astana on an experimental basis to address issues relating to fines;
- (v) A specialized system of juvenile justice will be established in Almaty and the Almaty region with eventual implementation nationwide. In the meantime, certain judges specialize in juvenile matters at the Rayon and Oblast Courts.

### **C. Other relevant institutions**

10. *Constitutional Council.* Article 71 of the Constitution establishes this quasi-judicial institution as a successor to the Constitutional Court set up by the 1993 Constitution. Its organization and activity are regulated by Constitutional Law. Its seven members are appointed for six years with a renewal system every three years: the chairperson is appointed by the President of the Republic and enjoys decisive vote; two members are also appointed by the President, two by the chairperson of the Senate, and two by the chairperson of the Majilis (Chamber of Deputies). During their term in office, members enjoy immunity from arrest, detention, administrative punishment imposed by a court of law, and arraignment on a criminal charge without the consent of Parliament, except in cases of flagrante delicto or “grave crimes”. Article 72 of the Constitution provides for the Council’s functions. Concerns raised with the Special Rapporteur related to the following:

- (i) The Council is not authorized to review the constitutionality of presidential decrees; and
- (ii) Article 73 (4) of the Constitution gives the President of the Republic the power to veto the Council’s resolutions. Although the Constitution provides that such objection may be overruled by a two-third majority of the Council, in practice, since three of the seven members of the Council are appointed by the President, the veto power is a powerful tool over the Council.

11. *Higher Judicial Council.* Article 82 (4) of the Constitution provides that this institution is “headed by the President of the Republic and consists of the Chairperson of the Constitutional Council, the Chairperson of the Supreme Court, the Procurator General, the Minister of Justice, members of the Senate, judges and other persons appointed by the President of the Republic”. Its status, procedure of formation and organization of work are defined by law and, as far as the Special Rapporteur could gather, are very much in the hands of the President of the Republic to

whom it presents, on a quarterly basis, recommendations regarding the appointment of the chairpersons of oblast and equivalent courts, the chairpersons of the Collegia judges of the oblast and equivalent courts. The allegations related to lack of transparency and corruption, including in the form of payment, for acceding to the position of judge.

12. *Qualification Collegium of Justice.* The Collegium is established by article 82 (4) of the Constitution as “an autonomous, independent institution formed from deputies of the Majilis judges, public prosecutors, teachers and scholars of law and workers of the bodies of justice”; its status, procedure of formation and organization of work are defined by law. Its recommendations are said to be generally accepted by the Minister of Justice and the President of the Republic. The allegations related to the absence of clear criteria and transparency in the Collegium decision-making process, corruption, and lack of support personnel for its 14 members.

13. *Judicial Academy.* It was established in 2001 and enjoys Government support. Its budget forms part of the national budget. It provides training to future judges and continued training for sitting judges; in 2003, some 400 judges received a one-month training. Its creation generated high expectations and efforts are being made for it to receive international support and input. Current training is focused mainly on the existing jurisprudence and still provides little or no emphasis on new legislation and issues or on relevant international human rights norms and principles, including those relating to the judiciary.

14. *Presidential Commission on Human Rights.* It was established in 1994 as a consultative body reporting directly to the President of the Republic. Its status and competence were developed in several presidential decrees, the latest of which (20 March 2004) extended its membership to include additional representatives of NGOs, universities and lawyers to sit together with representatives of the Government, the Parliament and the judiciary. It is to advise the President on (i) human rights policy and State programmes and concept formulations; (ii) institutional framework and legislation on human rights protection; (iii) accession to human rights treaties and international cooperation; (iv) mechanisms and procedures in human rights area and improvement of law enforcement practices; and (v) development of human rights education. It considers complaints and makes recommendations for restoring the violated rights (over 700 complaints in 2003). It reportedly enjoys the respect of all parties in the court system, international and national actors and, most importantly, the general public, as generally, complaints sent to it are followed through and investigated and complainants receive a response. No statistics were unfortunately available to help evaluate the Commission’s workload and level of success. It is however seen as a mechanism able to press the courts to consider human rights issues.

15. *The National Ombudsman.* This institution was established in 2002 by presidential decree. Of the over 1,200 complaints the Ombudsman reportedly received during its first two years of work, 27 per cent are said to refer to ill-functioning of the courts and corruption, with 5.5 per cent of the cases referring to non-implementation of court decisions and 3 per cent to undue delays in the judicial process. This may be explained by the fact that the general public tends to wrongly perceive the Ombudsman as an appeal mechanism. There reportedly exists a level of confusion and overlapping of jurisdiction between the respective roles of the Presidential Commission on Human Rights and the Ombudsman, particularly in the area of human rights monitoring. The Ombudsman is said to routinely refer complaints to the prosecutor or the relevant court without duly informing individual complainants.

#### **D. Main recent reforms and developments affecting the judicial system**

16. Since 1991, President Nazarbayev has undertaken significant reforms, mainly in the economic field. Recognizing that economic and institutional changes are interconnected, the most important reforms and developments in relation to the judiciary have been the following:

17. *Legal reforms.* Constitutional Law No. 132 “On the Judicial System and the Status of Judges in the Republic of Kazakhstan” (hereinafter “Law on the Judicial System”) was adopted on 25 December 2000 while the Criminal Code, and the Code of Criminal Procedure were reformed in 1997 and the Code for the Execution of Criminal Penalties was modified in 1998. In 2002, Parliament adopted Law No. 363 which amended the Code of Criminal Procedure to further enhance protection of human rights at both the investigation and trial stages. Articles 68 and 69 of the Code now provide for the right to immediately make a phone call, the right to counsel in private, the right to file a defence, the right to file a complaint, the right to a translator, the right to know the charges, the right to silence, the right to obtain a copy of the court judgement, etc.

18. *Protection of human rights.* Street Law produced, in Russian and Kazakh, a booklet entitled “Aware of your rights” that highlights the basic rights each citizen is entitled to. The International Bureau on Human Rights and Rule of Law also published a booklet entitled “Rights of Citizens in Court”. A wide distribution of both booklets, including in schools and universities, would be relevant.

19. *Pre-trial detention.* Kazakhstan used to have one of the highest rates of pre-trial detentions in the world but through reforms to the Criminal Procedure Code, the rate has dropped. This improvement is partly a result of the transfer of pre-trial detainees to the authority of the Ministry of Justice and away from the Ministry of the Interior in 2004. However, the rate of pre-trial detention continues to be extremely high, with 6,000 to 8,000 detainees at the time of the visit, about 15 per cent of the prison population.

20. *Moratorium on the death penalty.* In December 2003, the Senate proposed a moratorium on the death penalty. By presidential decree the moratorium was extended in January 2004 and the Criminal Code amended to introduce life imprisonment instead of capital punishment. With all human rights organizations, the Special Rapporteur welcomes this development, especially having in mind that 40 persons were executed in 1999; 22 in 2000 and 15 in 2001. Since the moratorium, only one death sentence was registered and the Supreme Court commuted it to life imprisonment.

21. *Criminalization of violence against and trafficking of women and girls.* Kazakhstan is a party to CEDAW and UNIFEM is actively working with the National Commission on Family Issues to ensure a gender-neutral legislation that upholds the principles of gender-equality. In May 2003, Parliament approved amendments to the Criminal Code to specify punishments for trafficking in human beings, especially women. The Minister of Interior started to implement a special national programme on combating violence against women into the police system at the district level. At the time of the visit, the Ministry was to table in Parliament a bill on domestic violence. It appears that this issue was never taken seriously by the police and the judiciary and local human rights institutions and organizations were thus hopeful that this legal development would generate positive changes.

22. *The prison sentences.* In 2000, Kazakhstan had the third highest incarceration rate in the world. The country now ranks nineteenth in terms of incarceration, further to a series of reforms that included:



- (i) The transfer of responsibility of the prison system, including with regard to pre-trial detainees, from the Ministry of Interior to the Ministry of Justice, which tends to improve accountability and increase administrative efficiency;
- (ii) The decriminalization of a number of offences and the introduction of probation and community service and other forms of alternative sentencing.

23. *Proposed introduction of a jury system.* Article 75 (2) of the Constitution states that “in cases stipulated by law, the criminal form of judicial procedure shall be exercised with participation of jurymen”. In September 2002, the introduction of the jury system into future legal proceedings was endorsed by Presidential Decree No. 949 “Concept of Legal Policy”. A bill proposes introducing a jury system for certain “serious” crimes at the oblast level, with the possibility of expanding it to other crimes at a later stage; the French system (*cour d’assises*) is a major source of inspiration.

24. *Legal education and ethics awareness-raising.* During the Soviet period, there were only two law schools with about 350 students. In 2003, almost 150 schools were registered, with approximately 65,000 law students and 16,000 law school graduates. Yet, the quality of legal education suffers from the shortage of qualified professors and an overly theoretical approach; also, some teachers are said to accept bribes from students eager to register beyond the set quota. Law school curricula need to be updated to reflect legislative reforms and continuing legal training is required as many judges, prosecutors and lawyers are not well informed of recent legal reforms affecting their daily work. Against that background, the Ministry of Education (MoE) has introduced a system of exchange with international law schools and an additional certification for second-year law students to achieve a minimum standard before passing to the final year. Finally, while the MoE has approved the introduction of certain human rights law elements into the law school curriculum, there apparently is not one specific course on human rights law currently offered, either as an optional or mandatory course; the same is true of international humanitarian law and international refugee law. International principles relating to the bar or to judges and the treatment of detainees are also generally ignored, as is the Code of Ethics developed by the Union of Judges. The MoE acknowledged this situation and plans to implement reforms to improve the standard of legal education and deontology.

25. *Legal aid.* The Union of Advocates, a voluntary organization of lawyers, provides free legal advice and is reimbursed a nominal amount by the Government. Eight legal aid clinics further operate in law faculties and give free legal advice to economically disadvantaged citizens; in return students gain practical experience. The Soros Foundation, ABA/CEELI and USAID currently sponsor legal aid projects.

26. *Administrative and financial support to the judiciary.* The Supreme Court has control over its own budget. Regarding lower courts, a number of reforms have shifted some administrative responsibilities and financial support to the judiciary away from the Minister of Justice to the Court Administration Committee of the Supreme Court. This has reportedly enabled the judiciary to exercise increased and more effective control over its own budget (which represented 0.91 per cent of the national budget in 2003) and the way it is spent. This has resulted in an increase in the salaries of Supreme Court judges, housing allocations (although some judges would rather have private housing and better salaries), acquisition of computers and repairs to court buildings.

## **E. Proportion of women and ethnic minorities in the judiciary**

27. Official statistics demonstrate that in 2002, 16.7 per cent of women compared to 13.1 per cent of men graduated from university. Women are well represented in the judiciary,

except at the highest level of court. In 2002, the proportion of women judges was as follows: Supreme Court 34 per cent; Oblast Courts 52 per cent; Rayon Courts 49 per cent. Women represented 50 per cent of the chairperson positions at the oblast level and 11 per cent at the rayon level.

28. The 17 million population of Kazakhstan includes 56 per cent ethnic Kazakhs, and a large number of ethnic groups among which 32 per cent are ethnic Slavs (Russians, Ukrainians and Belarussians). There exists no open strife among the various ethnic groups, although some people expressed concern at the potential risks deriving from a rather widely spread perception that ethnic Kazakhs receive economic and political advantages over citizens of other ethnic backgrounds. In addition, Kazakh and Russian are the only official languages of the country. Reportedly, Russians and other minorities are underrepresented in the judiciary, even though the picture is satisfactory in some courts and some parts of the country. No statistical data was provided in this respect.

#### **F. Equal access to the courts**

29. In principle equal access is guaranteed by law. Yet, no statistical information was offered regarding effective access to the courts by groups such as the disabled, minorities, women and children.

#### **G. Judges**

30. Like in other former Soviet countries, the judiciary was historically closely connected to the State and viewed as an institution that promoted the State's interests. In general, judges were viewed with suspicion, and this led to the adoption of the "Law on the Judicial System" in 2000 (see paragraph 17 above).

31. *Qualifications and training.* In Soviet times, judges were "elected": candidacies were put forward by the Communist party and only members of the party voted. To become a judge in the current system, according to article 79 (3) of the Constitution, one must be a citizen of the Republic, be at least 25 years old, have a higher juridical education, have worked for two years in the legal profession, and pass a qualification examination. Article 29 (1) of the Law on the Judicial System adds that, to be a judge at a rayon court, one must undergo an internship at the court and receive a positive reference from the plenary of an oblast court. Article 29 (2) states that to become a judge at the oblast level or at the Supreme Court, one must have five years experience in the legal profession, including two years as a judge. As of 2001, the Judicial Academy has provided re-training for sitting judges and in September 2004, a first group of future judges entered a new Master's programme. Such training is to become mandatory for future judges, and sitting judges will have to undergo a two to three weeks' training every three to five years. The Union of Judges, a national association representing almost all judges, also provides training to sitting judges, and individual courts conduct weekly or monthly training programmes to discuss new laws as well as decisions and directives of the Supreme Court and to study errors or reversals in the courts.

32. *Appointment and tenure.* The President of the Republic retains crucial influence over the nomination process (see paragraph 8 above). Judges must be reappointed by the President every five years. Reportedly, reappointment can be subject to abuse, coercion and also self-censorship as tenure may depend upon the way in which judges resolve cases, as explained in paragraph 34 below.

33. *Advancement.* The main legal criteria are ability, integrity and experience. Yet the process is reportedly far from being transparent, fair and objective.

34. *Removal and disciplinary measures.* While Supreme Court judges can only be appointed and removed by Parliament, oblast and rayon court judges are subject to review and possible disciplinary measures and to reappointment every five years by the President of the Republic. The relevant provisions of the Law on the Judicial System are ambiguous; combined with the powers of the President, they can facilitate the abusive removal or sanction of, more especially, any politically independent judge. Judges feel vulnerable about their position if they issue acquittals opening the door for individuals to threaten the State financially, or if their sentences are reversed on appeal. More especially, judges with a high record of sentences contrary to State interests may have to prove that they were not bribed and be exposed to disciplinary measures or non-reappointment by the President. This issue, which may explain the poor level of acquittals in Kazakhstan of around 1 per cent (see paragraph 53 below), was identified by both judges and lawyers and various organizations such as ABA/CEELI as a serious legal flaw and was even acknowledged by certain government officials.

35. *Ethical norms of judicial conduct.* Training in that respect is far from international standards, more especially the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex). To help raise poor local standards, the Union of Judges has developed a code of ethics. This initiative deserves to be highly praised; yet, its impact remains limited as most judges reportedly ignore or act as if they had no knowledge of this document.

36. *Judicial immunity.* It is protected by law but can be lifted by the President of the Republic.

37. *Salaries.* Pursuant to article 47 (2) of the “Law on the Judicial System” the President of the Republic determines how much judges are to be paid but is not allowed to decrease their salaries. In 2002, salaries were increased and judges are currently considered to be among the highest paid State officials. Oblast and rayon judges complained that there remains a great difference in pay between the different levels of judges and that, despite the increase, it is difficult to attract and keep judges living in rural areas. As a result, the entry threshold level of judges, particularly in the rural areas, is very low, and this has a direct impact on the quality of justice delivered.

38. *Protection from threat and harassment.* In general, judges have no complaints with regard to their security. On the other hand, court buildings are poorly, if at all, protected.

39. *Creation of new positions for judges.* The President of the Republic has full discretion to create new positions on the basis of a recommendation from the Court Administrative Committee of the Supreme Court. Since 2001, 600 positions were created of which 300 in 2003. The Committee presses for further positions to be created, as it realized that on average most judges hear more than double the reasonable quota of cases per year.

## **H. The Procuracy**

40. As per the “Law of the Procuracy”, the Procurator’s office exercises its authority independently of other State bodies and officials and is accountable to the President of the Republic only. Article 83 (1) of the Constitution provides that “The Procurator’s office on behalf of the State shall exercise the highest supervision over exact and uniform application of law, the decrees of the President of the Republic of Kazakhstan and other regulatory legal acts on the territory of the Republic, legality of preliminary investigation, inquest and inspection, administrative and executive legal procedure; and take measures for exposure and elimination of any violations of the law, the independence of courts as well as the appeal of laws and other regulatory legal acts contradicting the Constitution and laws of the Republic. The Procurator’s

office of the Republic shall represent interest of the State in court as well as conduct criminal prosecution in cases using procedures and within the limits, stipulated by law”.

41. Both *de jure* and *de facto*, there has been very little reform of the Procuracy from the Soviet times and it remains particularly strong and influential in rural areas.

42. *Powers of arrest, detention, search and seizure.* Articles 16 (2) of the Constitution and 150 (1) of the Criminal Procedure Code foresee that arrest and detention warrants may be issued either by the courts or the prosecutor. In practice, they are under the exclusive authority of the Procuracy. A person can be detained for up to 72 hours by the police. Pursuant to article 153 of the Code of Criminal Procedure, the initial period of pre-trial detention is two months, save exceptional circumstances. If those circumstances exist, pre-trial detention can be extended by a district procurator or equivalent for up to three months and then six months. Then the Deputy General Procurator can extend detention for up to nine months. Finally, the General Procurator can extend pre-trial detention to a total of 12 months. The accused can appeal to a judge, but in practice this is said to rarely happen.

43. *Length of pre-trial detention.* Although the 72 hours detention period may be exceeded by decision of the Procuracy, the courts have very limited capacity to act upon complaints or appeals by detainees. The Constitutional Council reported 3,788 cases of unjustified arrest in 2002 and 19 out of 63 law enforcement officials involved in 41 criminal cases were convicted.

44. *Trial proceedings.* In civil cases, the Procuracy has the right to intervene at any stages of the trial, even where the State does not have a clear and legitimate interest. This situation reportedly occurs with some regularity, especially where there exists an economic interest: it forms part of a frustrating power relationship between judges and prosecutors and it was alleged that, sometimes, this leads individuals who have the political or financial means of soliciting the Procuracy (possibly by offering a bribe) to intervene and appeal a decision that runs against their interest. By contrast, some categories of criminal offences do not involve the Procuracy but can be prosecuted only by private citizens: this includes minor crimes but also the serious offences of rape and domestic violence whereas, indeed, these should be recognized as a State concern.

45. *Right of appeal.* There is an imbalance between the right of the Procuracy and the right of an accused to appeal to a higher court. The Procuracy has an automatic right to appeal to the next level of court. By contrast, an accused must first be granted leave to appeal.

46. *Temporary suspension of court decisions.* While article 466 of the Criminal Procedure Code and article 396 of the Civil Procedure Code were amended in 2002, the Prosecutor-General and the chairperson of the Supreme Court retained their right to suspend the enforcement of a sentence, a court resolution or a judicial act, for up to two months in both criminal or civil cases.

47. All of the above highlights the predominating role performed by the Procuracy throughout the judicial process: the prosecutor can intervene in either criminal or civil cases; plays a crucial role with regard to pre-trial detention; can, as opposed to the defence lawyer, appellate a court decision even when the case is already closed; and is even able to suspend the execution of a court decision or sentence for up to two months. All of this demonstrates that the prosecutor exerts crucial influence on the outcome of the judicial process.

## **I. The Bar**

48. Under the Soviet system, the defence counsel played a minor role in the trial process. As a result, there is no historical culture of an effective defence bar in the country. Despite important

reforms, the Bar remains the weakest and most passive part of the judicial system. Many defence lawyers notoriously lack adequate legal training, knowledge of or sufficient familiarity with recent legal changes and jurisprudence, and also with international human rights law and judicial principles, and thus have little background and inadequate advocacy skills to represent their clients. Lawyers further have very limited powers to collect evidence, which conspires to hamper their capacity to counterbalance the powers of the prosecutor and impact on the judicial process. There are 16 local bar associations in Kazakhstan - one in each region and one in Almaty and Astana - operating quite independently; they reportedly have little influence in their own domain or on the other key actors in the justice system. They have their own ethical codes, yet, defence counsels reportedly fall into one of two categories - "red lawyers", who actively defend the rights of their clients, and "black lawyers", who sign off that they have seen and advised their clients of their rights but in fact never made the consultation and may go even further, actually aiding the investigators or prosecutors to help establish their client's guilt, often accepting bribes in return. Clearly, this reported division among defence counsels themselves has dramatic impact on the profession and on public confidence in them.

## **J. Conduct of judicial proceedings**

49. *Presumption of innocence.* Article 77 (3) of the Constitution provides for presumption of innocence and states that the accused shall not be obliged to prove his innocence. In practice, respect of this principle is seriously undermined by the way proceedings are conducted and the prosecutor's excessive powers to detain suspects.

50. *Pre-trial investigation and detention.* As per article 84 of the Constitution, inquiry and preliminary investigation of criminal cases are to be carried out by special bodies and be separated from the court and the Procurator's office. Yet, as explained in paragraph 42 above, the prosecutor has critical influence on the duration of pre-trial detentions.

51. *Access to a lawyer and exercise of defence rights.* Article 16 (3) of the Constitution guarantees due process and the right of each citizen to a legal defence. Yet, many accused are said to be unaware of their right. It further appears that, in practice, defence lawyers frequently fail or are shy to insist on their right to represent their client and to confer with them in private, and do not even complain about being denied access to their client. As a result the rights of the accused are often eroded, despite clear provisions in the Criminal Procedure Code. Also, there is no formal system of public defenders. Public defence work is either conferred upon a pre-selected group of lawyers who receive very little pecuniary compensation (US\$ 2 per hour) and whose legal experience can vary greatly, or a few NGOs such as the Kazakhstan International Bureau on Human Rights and the Rule of Law and the Women's Work in the Legal System, which provide free legal services on an ad hoc basis.

52. *Confessional evidence and allegations of torture.* Kazakhstan has ratified the Convention against Torture, and article 17 of the Constitution and article 116 of the Criminal Code of Criminal Procedure prohibit the admission of evidence obtained under duress. Yet, torture reportedly remains widespread. The Government openly acknowledged that there had been cases of the police conducting superficial investigations, destroying evidence, intimidating victims and witnesses, either deterring them from testifying or forcing them to retract their statements. Reportedly, as the police are under instruction to have a high rate of "solved crimes", it is not uncommon for investigators to resort to undue and even illegal "pressure" upon detainees to lead them to confess, so as to meet the success criterion. The Minister of the Interior showed great will to resolve this situation and has asked UNDP to prepare a programme to train the police in human rights. A similar programme could usefully be extended to judges, as some are said to be reluctant to implement the new legislation against torture. This reaction is apparently the result of both a

lack of education about the new laws and the perpetuation of a mentality that existed in Soviet times when judges viewed their role as fighting crime on behalf of the State rather than as protecting individual rights. As a result, it is reportedly rather common for a judge to refuse to take into account an oral testimony or physical proof that may be evidence of torture or ill-treatment of an accused by law enforcement officials. Against that background, it is understandable that, while the accused or his/her lawyer are entitled by law to file a complaint on such grounds, they often are too intimidated to do so in practice.

53. *Acquittal rate, rehabilitation and compensation in case of acquittal.* Of the 62,602 cases that went to trial in 2003, only 73 resulted in acquittal. Having account of the fact that there were multiple accused in many of those cases, the acquittal rate is assessed to be a mere 1 per cent. As mentioned in paragraph 34 above, this may be explained, in particular, by the heavy constraints and fears for their tenure experienced by judges. The Special Rapporteur was also told that an acquittal is seen as an implicit admission that the police did something wrong, such as violating legal procedures, and judges may be fearful of possible repercussions from the police and the Procuracy. He was also informed of the lack of rehabilitation measures for those acquitted on criminal charges and the poor record of Kazakhstan with regard to granting compensation for damage caused by illegal accusation or detention. A Supreme Court study shows that of 17 acquittal verdicts issued between January 2002 and September 2003, only three of the accused obtained compensation and one received an official apology, while none received a copy of the verdict and an indication as to how to obtain compensation. Of 104 persons who claimed compensation on civil cases, only 76 were satisfied in full or in part.

54. *Appellate review.* Kazakh legislation provides for a judicial appellate review of judicial decision. Yet, as already noted, prosecutors can present special appeals on cases that have already been closed, a right that defence lawyers do not enjoy. In addition, the prosecutor may suspend the implementation of court decisions until the said appeals have been decided upon. The proportion of sentences that are reversed or amended is in practice low: at rayon court level in 2003, for criminal cases, 0.7 per cent of decisions were reversed and 3.7 per cent were amended; for civil cases, 1.2 per cent of decisions were reversed and 0.9 per cent were amended.

## **K. Working conditions of the judiciary**

55. *Human and material resources.* The Court Administrative Committee of the Supreme Court has tried to arrange for each judge to have his or her own office, secretary and computer, in addition to benefiting from a recent increase of salary. In general, there are no complaints in that connection.

56. *Courtrooms.* Kazakhstan invested a considerable amount of money to ensure that courtrooms are in sufficient number and in relatively good condition. Yet, a number of judges and lawyers stated that there were still too few courtrooms in relation to the caseload. As a result, trials were often held in the judge's office rather than the courtroom, which clearly hampers the relatives and friends of the accused and the public at large, including journalists, from following the proceedings. Furthermore, most courtrooms continue to be equipped with a cage where criminal defendants are kept, which runs against the principle of presumption of innocence.

57. *Security.* In general, courts are very poorly equipped with regard to security owing to the shortage of guards and metal detectors as well as of bailiffs, both to secure order in the courtrooms and enforce judgements. Also, most judges' offices are accessible without any security check.

58. *Availability of existing legislation.* The Court Administrative Committee of the Supreme Court provides all courts with copies of the laws and tries to do so both in hard copies and

electronically. The legislation database Zakon, already installed in many courts, should shortly be accessible from all courts' computer systems. Such efforts are very welcome. Yet, not all interlocutors were satisfied that, in practice, the system is functioning to its best.

59. *Method of assignment of cases.* A computer system is being introduced to randomly assign cases based on a number of criteria such as the caseload of a judge, replacing the practice by which the chair of the court determines the procedure for assigning cases or even personally assigns them. Yet, the chair of the court appears to retain the power to assign or withdraw cases to specific judges which, in practice, can lead to serious abuse.

## **L. Transparency and accountability**

60. *Cases filing and tracking.* While efforts are being made by the Court Administration Committee of the Supreme Court to introduce a computerized system, most courts continue to use a manual system which, in general, they consider as sufficient owing to the caseload. Yet, with a fast growing caseload (28.7 per cent between 2002 and 2003), the use of computers may soon become indispensable, including to help tracking undue delays - a matter that fortunately does not appear to be a major concern in Kazakhstan.

61. *Availability of court records, judgements and jurisprudence.* The publication and circulation of Supreme Court judgements is reportedly not universal. Only a few selected judgements are made public (mainly through the court web site), and there can be significant delay in their release. Some oblast court judgements are also available while rayon and other lower courts judgements can be found nowhere. Of further concern is that decisions are usually drafted without specific reference to the facts and the relevant legal provisions, and tend to place emphasis on the arguments of the prosecutor to the detriment of those of the defence. Trial records allegedly reflect the entire prosecutor's submissions but omit the testimonies of defence witnesses and the questions, objections and arguments made by defence counsels.

62. *Access to judicial statistical data.* In Kazakhstan, the official repository of judicial statistics is the Office of the Prosecutor General. Such statistics are not always easily accessible or available. In addition, most judges are said to be unwilling to offer statistical data regarding their caseload. All of this clearly represents a major judicial loophole.

63. *Public and media access to proceedings, and observation of judicial proceedings.* Public and media access to proceedings, while duly protected by law, is reportedly not always guaranteed in practice, especially in criminal cases. Relatives of the parties involved or members of the public are said to be often approached and asked why they wished to observe the court proceedings, although it appears that the courts of first instance are relatively more open than higher courts. To observe judicial proceedings as an "independent official observer", special permission has to be obtained. ABA/CEELI reported the difficulties its mission experienced in that connection and the reluctance of some judges to engage in a dialogue with them. The Kazakhstan International Bureau on Human Rights and the Rule of Law published a report in 2004 entitled "Observation of Procedural Rights of Citizens of the District Courts of Astana", which was based on a study of 24 trained court observers who attended over 900 trials and noted various procedural violations of a fair trial, largely due to the fact that the prosecutor and the lawyers do not have equal status. On a positive note, a recent decision of the Supreme Court requested judges to ease access to courtrooms and proceedings by relatives and media: this should help enhancing judicial transparency and accountability and, as a result, public confidence in the judiciary.

64. *Public access to trial records.* Such access is not protected by law. As a result, nothing prevents the chair of a court to deny third-party access to a trial record.

65. *Code of ethics.* Most judges are said to ignore the Code developed by their Union and little or no training is provided on judicial ethics. However, in October 2002, a Supreme Court instruction directed oblast courts chairpersons to exclude ex parte communications and direct testimonies from individuals and representatives of legal entities.

66. *Corruption and bribery.* The Criminal Code criminalized the acceptance and payment of bribes and the Government also introduced economic and administrative courts as an anti-corruption measure. The Ministries of Justice and of the Interior have increased the salaries of judges and the police respectively, in an effort to combat the most blatant form of corruption which is bribery. Yet lawyers, in particular, insisted that the old Soviet “telephone justice” has not yet been eradicated. All interlocutors acknowledged that the judiciary, at all court levels, has a very bad reputation among the public, which generally perceives it as a branch in which corruption is prevalent. In meetings with judges there was an admission that a few cases of bribery end each year with the removal of the judge, while many cases simply “disappear” due to a lack of evidence. Yet according to OSCE statistics, about 50 per cent of the complaints for the first half of 2004 related to corruption in either the police or the judiciary. Many interlocutors insisted that corruption and bribery in fact affect the Government, the police, the judiciary, the Procuracy and the legal profession, including at the level of the legal educational institutions.

### **M. The judiciary and political opposition**

67. Article 20 of the Constitution guarantees the right to freedom of expression to all persons. Yet, freedom of expression is reportedly closely monitored by the Government. The Special Rapporteur continues to monitor a number of cases initiated before the courts against members of the political opposition, journalists or other activists that reveal a potential abuse of the judiciary to control political opposition or dissent and undermine the rule of law.

## **II. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusions**

68. **In less than 10 years, Kazakhstan gained sovereignty and underwent a very deep transition, moving from an authoritarian system to a more democratic institutional system, and from a centrally planned economy to a market one. In the meantime, the Kazakh society, which is composed of around a hundred different ethnic groups, also experienced deep changes and any observer can notice tension between the old and the new customs and conditions. Nowadays, the transition of this country of around 17 million inhabitants - the largest of Eurasia, and one of the most endowed in natural resources such as uranium, oil and gas - is to be analysed against the backdrop of the deep transition experienced by the whole region under the combined pressure of large economical and geopolitical interests and bearing in mind the multiple risks the region is facing.**

69. **While those reforms operated during the last years mostly targeted the economy, they also dramatically transformed the institutions. The Special Rapporteur welcomes the qualitative leap made thanks to the Government’s audacity and determination. Concerning the judiciary, there is no doubt that since 1991, important steps have been taken to allow Kazakhstan to move from a context in which the administration of justice strongly depended upon political priorities and administrative instructions, and even upon personal connections, to one more firmly based on legal norms. One is however bound to note that, directly or indirectly, the executive continues - in another political context and under another institutional framework - to play almost as dominant a role within the judiciary as it did under the previous regime, and this tendency has even increased with the establishment of a strong presidential regime further to the adoption of the new Constitution in 1995.**



70. Concerning the functioning of the judiciary, nothing can better express this situation than the dominant role the Procurator continues to play in the entire judicial process, precisely at a time when the whole system should move towards enhanced consistency with relevant international principles. Under the prior regime, the justice system and the judicial personnel used to work within a vertical system framework and under the close supervision of the Communist party hierarchy. Today, they operate within an institutional framework based on the principle of separation of powers, but the role of the Procurator remains as dominant as it used to be. There is no doubt that this represents a major hindrance for democratic evolution and is the origin of the main distortions that the judiciary continues to show in general. It would be quite worrying if, owing to this situation, the important reforms made to improve the functioning of the judiciary would eventually lead to functional improvements without at the same time rendering it more independent from those closely connected to power. One disquieting symptom in this respect is the number of acquittals that remains particularly low, around 1 per cent. This appears to result less from the rigour of the law than from the difficulties met by defence lawyers and also from the very functioning of the judiciary, since sentences continue to depend highly on the Procurator's arguments. This situation also derives from the partial or total lack of knowledge of and reference to international human rights principles. Some interlocutors attributed this to the passivity of the civil society, which tends to remain entrenched in the mentality of the past.

71. Beyond the above analysis, the Special Rapporteur is convinced that Kazakhstan is a country which, at the institutional level, is able to perform a quick and positive evolution, particularly with respect to the judiciary, by removing obstacles to the independence of judges and lawyers. It is with this in mind that the Special Rapporteur presents the recommendations outlined below.

## B. Recommendations

72. *Judicial and structural reforms.* A professional and independent judiciary is not a privilege for the judges but a fundamental right of the public. Thus, if Kazakhstan is to be considered a truly democratic State, it is crucial to introduce legal adjustments that may even include constitutional reforms, so as to reach a fairer balance of power between the branches of Government and, more especially, increase the independence of the judiciary. Based on the example of other presidential systems, the Special Rapporteur believes that this is possible without affecting the presidential nature of the political system. Those issues that are most crucial in this connection relate to:

- (i) The process of nomination of judges at all levels of the court system, their tenure, removal and salaries, which should not remain the quasi-exclusive domain of the President of the Republic;
- (ii) The powers of the prosecutor, which are clearly too far-reaching and represent a major bottleneck to an independent judiciary;
- (iii) The composition and functioning of the Higher Judicial Council, entirely dependent upon the President of the Republic; and
- (iv) The weakness of the Constitutional Council, which is in no position to counterbalance the influence of the President of the Republic since it is not allowed to review presidential decrees and is subject to presidential veto.

73. *Ratification of international human rights instruments and related legal steps.* The Special Rapporteur welcomes steps taken by Kazakhstan since 1991 to accede to a number of international human rights instruments, especially the signature of the International

Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and urges the authorities to ensure their prompt ratification, without reservations, including accession to the Optional Protocol of the International Covenant on Civil and Political Rights. He recommends that, where necessary, national legislation be amended so as to conform to international standards. Having in mind the very important and welcome step taken by Kazakhstan towards the abolition of the death penalty, he urges the authorities to consider similar steps with regard to the Second Optional Protocol to the International Convention on Civil and Political Rights, aiming at the abolition of the death penalty. He further urges them to consider similar steps with regard to the Optional Protocol to the Convention against Torture. He urges the Supreme Court to show leadership with respect to human rights by referring to the above instruments in their decisions, as is permissible under article 4 (3) of the Constitution, and encourages all judges to apply international human rights norms.

74. *Legal and human rights education and training.* Particularly urgent steps, coupled with the allocation of the necessary funding, should be taken to improve the level of legal education and to introduce continued legal education and training so as to raise the level of professionalism of prosecutors, judges and lawyers and ensure implementation of new laws and amendments. In this respect, the Special Rapporteur welcomes the creation of the Judicial Academy and urges the international community to support this institution. It is indispensable if the judiciary is to play its role both more effectively and in keeping with national and international norms and principles. To this end, separate and mandatory courses on international human rights law, international humanitarian law and international refugee law should be introduced into the national law school curriculum, and mandatory continuous training in these three branches of international public law should be developed for exercising judges, prosecutors and lawyers who should further be made aware of the various international principles relating to the judiciary. This should be coupled with human rights training for law enforcement officials and also with campaigns aimed at increasing human rights awareness among the public, so as to develop a collective human rights culture that meets the country's constitutional principles and objectives.

75. *Freedom of expression.* All lawyers, judges and prosecutors need to be specifically trained on issues of freedom of expression in order to acquire a better understanding of the extent and exercise of this right by the press, political opponents and NGOs.

76. *Torture and ill-treatment.* All judicial officials should, in every instance:

- (i) Conduct prompt, impartial and full investigations into allegations of torture;
- (ii) Properly investigate any failures to prosecute alleged perpetrators, as required by articles 12 and 13 of the Convention against Torture; and
- (iii) Exercise their powers of excluding evidence obtained under duress or torture.

**Here also, corresponding training should be dispensed to law enforcement officials.**

77. *Availability of legal reference documents, national statistics and jurisprudence.* Current efforts made to render recent legal changes promptly available in judicial and law libraries and electronically should be pursued, and should be combined with action to also make available all relevant international instruments and principles and national and international legal publications. Special efforts should be made to improve the compilation and availability of reliable and constantly updated statistical data and of jurisprudence. It would further be advisable that judicial statistics become available directly from the State Statistical Office or

the Ministry of Justice rather than from the Office of the Prosecutor General, as is currently the case.

78. *Gender awareness.* While welcoming the reforms made to raise gender awareness and promote women's rights in Kazakhstan - a country that could apparently be seen as a role model to various others in the region - the Special Rapporteur trusts that further progress may be achieved through close cooperation between UNIFEM, the National Commission on Family and Women and competent NGOs. All judicial personnel should receive in-depth gender training and the UNIFEM initiative to introduce a training manual on the Convention on the Elimination of All Forms of Discrimination Against Women for the judiciary ought to be welcomed and encouraged. Improved gender balance in high levels of the judiciary, especially the Supreme Court, is highly desirable.

79. *Procurator.* Kazakhstan needs to amend article 16 (2) of the Constitution and to drastically amend its Criminal Code and Criminal Procedure Code so as to reduce the procurator's dominating role throughout the judicial process and secure, in both law and practice, a fairer balance between the respective roles of the prosecutor, the defence lawyer and the judge. In particular, the power of arrest, search and seizure should belong to the judge rather than the procurator.

80. *Judges.* The Law on the Status of Judges should be further amended so as to increase the professional level of judges, not only through the education and continued training dispensed by the Judicial Academy, but also through the creation of a career as such, guarantee of tenure and stability. In that form, judges would no longer feel threatened in their position because, in conscience, they have acquitted a suspect instead of following the prosecutor's request for a sentence, or because their decisions have been overturned on appeal. It is urgent to separate the application of disciplinary sanctions to judges from the act of judging or resolving a case on appeal. Furthermore, any acts of corruption should be duly sanctioned as by law. Finally, salary scales for judges should be further reviewed so as to ensure a better balance between the various court levels and also prompt interest for the position of judges in rural areas.

81. *Defence.* At the pre-trial stage, defence counsels must be granted powers to have full access to the evidence and prepare their own case for the trial. Their role during the trial should be reinforced, so that they can effectively counter that of the prosecutor. Another advisable reform is the establishment of a national system of public defenders. The Special Rapporteur refers to principle 3 of the Basic Principles on the Role of Lawyers according to which "Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources". Finally, local bar associations should be granted the status of a professional self-governing body: currently, they are not permitted to be licensed, accredited or have control over disciplinary matters.

82. *Pre-trial detention.* While the Government has made considerable improvement in this area, more steps are needed so that pre-trial detention becomes an exception rather than the rule. Reforms are needed to the Code of Criminal Procedure to reduce the period of prolonged pre-trial detention that is currently determined by the Procurator's office, and to ensure judicial review of the determination of continued pre-trial detention.

83. *Death sentence.* Transforming the current moratorium into abolition of the death penalty would be a very welcome development, and one consistent with the international trend. It would be encouraging if such a development were coupled with the ratification of the Optional Protocol on the abolition of the death penalty.

84. *Criminalization of the exploitation of, and violence against, women.* Steps must be taken towards the criminalization of all forms of exploitation of, and violence against women, including domestic violence, which has to be seen as a matter of State interest. The drafting of the law on domestic violence must be resolutely pursued and the wording of the legislation must ensure that the procuracy and the judiciary consider these acts as serious offences, so that complainants no longer have to pursue the case as a private prosecution. The investigation stage is also crucial to ensure the effective implementation of this future legislation.

85. *Jury trial.* Current efforts to establish a jury system should be pursued in order to enhance independent decision-making, and also to promote the involvement of civil society in the administration of justice with a view to ensuring public confidence.

86. *Deontology, transparency and accountability.* If the public is to trust the judiciary, drastic and urgent measures need to be taken to develop a strong and compulsory code of ethics and to increase accountability. Preventing and punishing acts of corruption and bribery at all levels of the judiciary and in the legal education system is definitely a crucial and priority task. The development and implementation of anti-corruption initiatives, possibly with the assistance of the international community, should target the root causes of the long established judicial “culture” of corruption and include adequate sanctions.

87. *Access to courts.* The Government should do all in its power to guarantee access by all, in particular in rural areas. It should organize campaigns aimed at increasing public awareness and confidence, including among organizations representing groups such as children, women, minorities and the disabled, that the legal system upholds the rule of law and can provide redress and remedies.

88. *Public access to trial records.* Such access should henceforth be ensured by law.

89. *Juvenile justice.* The Government should quickly move forward with its plan to introduce legal reforms in order to establish a separate juvenile justice system and, at the same time, pursue its work with UNICEF to develop a national child right’s code. The Ministry of Justice should further introduce sentencing reforms to provide juveniles with the benefit of alternative sentences so that imprisonment is not applicable in cases of a minor nature and is not necessarily the rule in more serious cases. This would minimize the number of children entering the criminal system.

90. *National Ombudsman.* The respective mandates of the Presidential Commission on Human Rights and the Ombudsman should be clarified. It is desirable that this be done by law and not by presidential decree. The reform concerning the Ombudsman should aim at consistency with the Paris Principles. The public should be better explained the role of the Ombudsman, which itself should react promptly to any complaints made by an accused or his/her lawyer and press for thorough and expeditious investigation and, whenever appropriate, sanctions against those responsible.

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