

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development (General Assembly)**

*Unofficial translation*

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak

Mission to Kazakhstan\*

*Summary*

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, undertook a visit to Kazakhstan from 5 to 13 May 2009.

The Special Rapporteur expresses his appreciation to the Government for the invitation which he interprets as a sign that the country is sincerely interested in an objective assessment of the situation. He notes that, since independence in 1991, Kazakhstan has acceded to numerous international human rights instruments, which illustrates its commitment to reforming the legal framework and policies. At the same time, he noticed that considerable efforts had been made to prepare the various detention facilities and the detainees for his inspections, which contradicts the very idea of independent fact-finding and unannounced visits. It also makes the task of assessing conditions of detention and torture objectively more **d i f f i c u l t**.

Whereas the physical conditions and food supply in the prison colonies seem to have been brought into line with international minimum standards in recent years, one of the key requirements of international human rights law — that penitentiary systems put rehabilitation and reintegration rather than the punishment of the individual offender at their core — has not been achieved; the restrictions on contact with the outside world provided by law contradict that very principle. Another major issue of concern is the fact that the hierarchy among prisoners appears to lead to discriminatory practices and, in some cases, to violence.

The same is true for pretrial detention and custody facilities. The pretrial facilities of the Ministry of the Interior, the Committee of National Security and the Ministry of Justice seem to have undergone improvements in terms of physical conditions and food supply; however the almost total denial of contacts with the outside world, often for prolonged periods, clearly contradicts the principle of the presumption of innocence and puts disproportional **psychological pressure on suspects**.

On the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, the Special Rapporteur concludes that the use of torture and ill-treatment certainly goes beyond isolated instances. He received many credible allegations of beatings with hands and

fists, plastic bottles filled with sand, police truncheons, and of kicking, asphyxiation with plastic bags and gas masks used to obtain confessions from suspects. In several cases, these allegations were supported by forensic medical evidence.

With regard to the legal framework and safeguards, the Special Rapporteur welcomes the fact that torture has been criminalized, even if the current definition needs to be brought fully into line with the Convention against Torture, and that safeguards are, by and large, provided for by the legislation and formally respected. In order for the safeguards to be effective, however, the various players in the criminal justice cycle must live up to their responsibilities, close the implementation gap and denounce cases of torture, which is currently not the case.

In the light of the above, the Special Rapporteur recommends that the Government of Kazakhstan implement fully its obligations under international human rights law. In particular, he urges the Government to create an independent and effective national preventive mechanism with the necessary human and other resources and to view it as an ally in the collective effort to discover what really happens in places where people are deprived of their liberty. He also recommends that the penitentiary system be conceived in a way that truly aims at the rehabilitation and reintegration of offenders. Complaints mechanisms need to be made accessible and credible; a mechanism to investigate promptly and impartially allegations of torture and ill-treatment should be put in place and be independent of the alleged perpetrators; the de facto time of apprehension should be recorded and terms of police custody reduced to international standards; temporary detention isolators should be transferred from the Ministry of the Interior to the Ministry of Justice; and the burden of proof to show that a confession has not been extracted by torture should be transferred to the prosecutor.

\* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in Russian. The appendix to the report is circulated as received.

Annex

**Report of the Special Rapporteur on torture and other cruel,  
inhuman or degrading treatment or punishment  
Mission to the Republic of Kazakhstan (5–13 May 2009)**

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## I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, undertook a visit to Kazakhstan from 5 to 13 May 2009, at the invitation of the Government.

2. The purpose of the visit was to assess the situation of torture and ill-treatment in the country, including conditions of detention, and to offer assistance to the Government in its efforts to improve the administration of justice. The Special Rapporteur is fully aware of the fact that Kazakhstan inherited many difficult features of the Soviet criminal justice system, which had a punitive character and were aimed at providing a source of cheap labour rather than at individual rehabilitation. It is probably due to these factors that the impulse to “institutionalize” persons of all age groups is still fairly strong; indeed rarely has he visited a country where so many different State bodies hold authority over places where persons are de facto deprived of their liberty with so many people actually being held. In spite of this, he notes that Kazakhstan has made progress in institution-building and protecting human rights since its independence in 1991.

3. The Special Rapporteur interprets the fact that the Government invited him and provided full access as a sign that it is sincerely interested in an objective assessment of the situation and in recommendations aimed at improving the status quo. He is particularly grateful that, at the outset of his visit, the relevant authorities provided him with letters authorizing him access to all places of detention without prior announcement and to interview detainees in private. He wishes to thank the Government for the comprehensive information

provided to him on statistics regarding the penitentiary system and past cases of torture.

4. At the same time, however, he notes that considerable efforts had been made to prepare detention facilities and the detainees for his inspections. While he assumes that most preparations were well intended, they contradict the very idea of unannounced visits and independent fact-finding. The latter is only possible if one has the chance to observe day-to-day practices in places of detention in an undistorted way. Unfortunately, this was not the case in most of the places visited in Kazakhstan, since it was clear that the Special Rapporteur was expected by the management of places of detention as well as by the detainees. Many of the places were freshly painted when he arrived; in some colonies, prisoners had been moved out of the quarantine and punishment cells when it became clear that the Special Rapporteur was on his way, concerts (without any listeners) had been set up, and so on. He also noted with concern that some of the detainees may have been intimidated into not speaking openly to him.

5. Respect for established fact-finding methods, including unannounced visits, is of utmost importance not only because it is crucial for a full assessment of the situation; it is also of particular significance in the light of the recent ratification of the Optional Protocol to the Convention against Torture, which foresees the establishment of a national preventive mechanism, a body independent from the Government mandated to undertake unannounced visits to all places of detention at any time and to speak in private with all persons deprived of their liberty. Whereas this constitutes a decisive step forward, it will be fully effective only if fact-finding methods are fully respected in practice and their independence is guaranteed.

6. The Special Rapporteur held meetings with the Secretary of State, who represents the President of Kazakhstan on matters relating to foreign affairs; the Minister for the Interior; the Minister for Labour and Social Protection and Chairwoman of the Commission on Family and Women Affairs; the Chairman of the Agency for the Fight against Economic and Corruption-related Crime (Financial Police); a deputy Minister for Foreign Affairs, a deputy Minister for Defence, two deputy Ministers for Justice, a deputy Chairman of the Committee for National Security; and a deputy Prosecutor General. In addition, the Special Rapporteur met with the Head of the Penitentiary Administration, the Secretary of the Human Rights Commission under the President, representatives of the Ministry of Health Care and staff members of all the institutions visited. The Special Rapporteur visited Astana, Almaty, Karaganda and surrounding regions, and inspected a variety of places of detention, including colonies, police posts, a temporary isolator for minors and psychiatric hospitals (see appendix ). Owing to time constraints, he was unable to visit more regions.

7. The Special Rapporteur also met with the Chairman of the Supreme Court, the Human Rights Commissioner, civil society representatives, including non-governmental organizations, people in places of detention and victims of violence. In addition, he held meetings with the United Nations country team, representatives of the Organization for Security and Cooperation in Europe (OSCE), the delegation of the European Commission,

and other members of the diplomatic community.

8. The Special Rapporteur expresses his gratitude to the Office of the Resident Coordinator and the entire United Nations team for the invaluable assistance prior to and throughout the mission, including interpreters and drivers; Dr. Duarte Nuno Vieira, forensic expert; and Isabelle Tschan and Roland Schmidt, of the Ludwig Boltzmann Institute of Human Rights in Vienna.

9. The Special Rapporteur shared his preliminary findings with the Government at the close of his mission. On 4 November 2009, a preliminary version of the present report was forwarded to the Government, to which it responded on 4 December 2009. The Special Rapporteur wishes to thank the authorities for their comprehensive and constructive response. He welcomes the Government's announcement that an "Action Plan" to implement the recommendations of the Committee against Torture is being elaborated, which covers also a number of issues raised in his report.

## **II. Legal framework**

### **A. International level**

10. Kazakhstan is party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Kazakhstan is party to the Geneva Conventions of 1949 and to the Additional Protocols thereto of 1977. Kazakhstan has not ratified the Rome Statute for the International Criminal Court. It is particularly noteworthy that, in October 2008, Kazakhstan ratified the Optional Protocol to the Convention against Torture. However, in accordance with article 24 of the Optional Protocol, the Government intends to make a declaration postponing the implementation of their obligations since the law establishing the NPM is still being discussed.

### **B. Regional level**

11. Kazakhstan is a participating State in OSCE, and is expected to hold the chairmanship of that body in 2010. By participating in OSCE, Kazakhstan has undertaken numerous political commitments in the field of human rights. It is also party to regional agreements, mainly in the field of security cooperation, such as the Convention on Judicial Assistance and Legal Relations in Civil, Family and Criminal Cases and the Shanghai Cooperation Organization.

### **C. National level**

## **1. Constitution of Kazakhstan**

12. Section II of the Constitution of Kazakhstan lists a number of human rights, including the right to life, non-discrimination, freedoms of religion, conscience and speech, and to the protection of health. The prohibition of torture is enshrined in article 17. Furthermore, article 16 grants the right to personal freedom, sets the legal time limit for police custody at 72 hours, and contains provisions for legal aid and the right to appeal.

## **2. Prohibition of torture in national legislation**

13. Torture is outlawed by article 347-1 of the criminal code. Its definition is more restrictive than the one contained in article 1 of the Convention against Torture, as it limits criminal responsibility to public officials and does not criminalize torture committed by any other person acting in an official capacity or by individuals acting at the instigation or with the consent or acquiescence of public officials. Furthermore, unlike article 1 of the Convention against Torture, which refers to “lawful sanctions”, the note to article 347-1 states that “physical and mental suffering caused as a result of legitimate acts on the part of officials shall not be recognized as torture”. The use of the term “legitimate acts” is of concern because of its vagueness. The Supreme Court and the Prosecutor’s office assured the Special Rapporteur that a revision of article 347-1 is under consideration. This is to be highly encouraged.

14. There are a number of other provisions of the criminal code under which law enforcement officials can be prosecuted for ill-treatment. Articles 307 and 308 criminalize the “abuse of official power” and “excess of authority or official powers” and provide for various forms of penalties, including imprisonment of up to two and five years, respectively. Furthermore, article 107 outlaws “the infliction of physical or psychological suffering through systematic beatings or other violent actions” by private actors, and mentions the use of torture as aggravated circumstance. Such an offence is punishable by, inter alia, “restriction of liberty for a period of up to five years or deprivation of liberty for a period of between three to seven years”. Domestic legislation does not contain any provisions implementing the principle of universal jurisdiction in accordance with articles 5 (2) and 7 of the Convention against Torture.

15. Article 10.9 of the penal enforcement code stipulates that “persons serving their sentence have the right to polite conduct on the part of the personnel. They should not be subjected to cruel or degrading treatment. Forcible measures may be applied only on the basis provided for by law”.

## **3. Safeguards**

16. Article 4 of the law on procedures and conditions for holding persons suspected or accused of a crime in custody sets out, as the guiding principles for holding persons in detention, lawfulness, the presumption of innocence, citizens' equality before the law, humanism, respect for the honour and dignity of the individual, and the norms of international law. It also provides that detention must not be accompanied by acts intended to cause physical or mental suffering of a person suspected or accused of a crime.

17 Articles 138.1 and 70.3 of the criminal procedure code guarantee detainees' right to inform their families and to have access to a lawyer. Code articles 14 (2) and 68 (3) (1) provide that a suspect cannot be held for more than 72 hours without a court decision. According to article 134 of the code, a protocol must be issued. Subsequently, the document must be read to the detained person, including an explanation of his or her rights, which must be signed by the detainee. Article 134 (1) of the code requires the responsible officer to inform the prosecutor of the detention in writing 12 hours after the detention protocol has been compiled.

#### **4. Capital punishment**

18. Article 15.2 of the Constitution provides that "the law shall establish the death penalty as an extraordinary measure of punishment for especially grave crimes and grant the sentenced person the right to appeal for pardon". Article 49 of the criminal code specifies these crimes. An indefinite presidential moratorium on the death penalty entered into force on 1 January 2004. According to official sources, the last execution of a death penalty took place on 1 December 2003. The last death sentence was pronounced on 31 August 2006. On 6 December 2007, the remaining 31 death sentences were commuted to life imprisonment.

### **III. Assessment of the situation**

#### **A. Acts of torture and ill-treatment in places of detention**

##### **1. Penitentiary institutions and investigation isolators under the National Security Committee**

19. The Special Rapporteur received allegations of ill-treatment and corporal punishment in penitentiary institutions.<sup>1</sup> One colony mentioned repeatedly in this regard (and called "the Guantanamo of Kazakhstan" by many detainees) is UK-161/3 in Zhitykara. The Special Rapporteur received reports that "difficult" detainees were sent there, subjected to beatings and other forms of physical and psychological violence in order to "break" them. According to some accounts, rape by fellow inmates is used to pressure prisoners. He is very concerned

about allegations that some people were sent there following meetings with him during his v i s i t .

20. Many reports indicate that in one colony, Stepnogorsk Prison Hospital (EC-166/18), officials, including the highest levels of management, participate in what is described as brutal medical “check-ups” for newcomers. The Special Rapporteur received consistent descriptions of how the personnel, with the support of convicts cooperating with the management, beat newcomers and would forcibly insert a rubber tube into their anus, officially for medical and hygiene purposes. There were also reports of rape. This treatment is exacerbated by the fact that many of the people arriving in the hospital are ill. Some interviewees indicated that the “welcome treatment” was adapted to target their “weak points” , that is their illness. Detainees in several institutions indicated that they were so afraid of going back to the prison hospital that they would rather not get any medical treatment at all.

21. In addition, in women’s and the minors’ colonies, officials appear to be involved in cases of corporal punishment. Such punishment includes beatings with hands and fists and police truncheons, but also more “subtle” measures, such as leaving convicts lying in cold punishment cells without bed sheets during the night.

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<sup>1</sup> In this context, the Government recalled that article 31 of the law on justice agencies governs the use of “special measures and physical violence” and that any instance of their use requires an internal investigation.

## **2. Police custody**

22. On the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, the Special Rapporteur concludes that the use of torture and ill-treatment certainly goes beyond isolated instances. In spite of the fact that his fact-finding was hampered by preparations and intimidation of detainees, he received many credible allegations of beatings with hands and fists, plastic bottles filled with sand and police truncheons, and of kicking, asphyxiation with plastic bags and gas masks, to obtain confessions from suspects. In several cases, these allegations were supported by forensic medical evidence. Torture and ill-treatment are most often inflicted in such a way as to avoid making visible marks (by beating on soles and kidneys with flexible tools) and frequently accompanied by threats to add additional charges to the one the person is suspected of, which would prolong the prison terms. Also, many threats against family members were reported.

23. One allegation voiced repeatedly was that detainees who refused to confess to a crime are threatened with transfer to a cell, where the so-called “humiliated ones” are held, as a



form of pressure to obtain a confession — that they would be threatened with or subjected to sexual abuse or rape — and, as a consequence, to exclusion from the general prison population.

### **3. Military**

24. The Ministry of Defence informed the Special Rapporteur that, in 2008, 117 cases of “interactions not in conformity with the rules” (practically a synonym for “hazing”) were recorded. As a result of such cases, five people committed suicide. These cases were investigated and brought before military tribunals: one case resulted in a one year conditional sentence, another in a four year prison term; in two cases, the harassers were sentenced to six years of imprisonment; and in another case, a decision is still pending. In a separate case, an officer who had beaten up another officer so severely that he succumbed to his injuries was sentenced to four years of imprisonment. In the first three months of 2009, 27 cases of “interactions not in conformity with the rules” were recorded, an improvement over the 43 recorded in 2008. The Special Rapporteur stresses that acts of harassment of soldiers by other soldiers can be considered torture, if they fulfil the criteria contained in article 1 of the Convention against Torture, especially if their purpose is to punish or intimidate.

## **B. Conditions in places of detention**

### **1. Penitentiary institutions and investigation isolators under the National Security Committee**

25. At 1 April 2009, the total population of the facilities run by the Ministry of Justice was 60,858 persons (not including temporary and investigating isolators of the National Security Committee). However, prison terms are still lengthy, and, even though the prison population has decreased over the past decade, 382 of 100,000 people are held in penitentiary facilities, which is still more than three times the average in Europe and well above the number in other post-Soviet countries.

26. Overall physical conditions and the food supply have been brought into line with international minimum standards. The Special Rapporteur found that most of the places he visited (which were prepared for his visit) were clean and well maintained. The “colony” type of facilities for convicts (in which 20 to 100 people sleep in large dormitories) generally allow for convicts to freely move around within a certain area and to stay in contact with other convicts, which is definitely positive. On the other hand, the dormitory system might jeopardize individual security of detainees. The Special Rapporteur also visited a special regime colony in Arshaly (EC-166/5), where convicts take shifts (half are confined to their cells while the other half can walk around a small courtyard).

27. Although most investigation isolators are under the authority of the Ministry of Justice, four remain under the National Security Committee. In general, they consist of cells containing three to eight beds and do not allow for much movement (convicts are usually confined to their cells for 23 hours a day), with 1 hour of exercise together with their cellmates in tiny courtyards with walls all around and bars above. Although there is running water in most isolator cells and the sanitary facilities have been renovated, many still do not allow for much privacy. In most places, access to showers is restricted (between once per week or every 10 days).

28. The Special Rapporteur learned that a hierarchical order among prisoners had been inherited from Soviet times. Those who do not comply with the hierarchy and the “shadow law” it represents are subjected to violence and discrimination by fellow prisoners, with the consent and sometimes active approval and solicitation of prison administrations. As a result, a certain degree of violence, including sexual violence, among prisoners is widely alleged to be quite common (for example, towards the so-called “humiliated ones”, who are totally excluded from the prisoner society). Moreover, in Kazakhstan, there are two types of prison colonies: the “black” and the “red” zones. In the red zones, prison management uses prisoners to intimidate other prisoners to maintain order. In the black zones, the administration simply hands the task of maintaining discipline to the prisoner hierarchy. Both are incompatible with international standards. The Special Rapporteur recalls that inter-prisoner violence can amount to torture or ill-treatment if the State fails to act with due diligence to prevent it.

29. Whereas progress has been made in containing tuberculosis through professional and responsible health management (in the first three months of 2009, there were 3,133 cases, against 3,806 in the same period of 2008). However, problems relating to medical care persist. The Special Rapporteur received complaints that complicated diseases are not treated or that treatment is delayed for long periods; it was also alleged that some doctors, penitentiary and medical staff demanded money for following up on requests for medical treatment, sometimes even regarding serious illnesses. According to official figures, in the first three months of 2009, 99 people died in penitentiary institutions (14 fewer than in 2008), of whom 35 from tuberculosis, 16 from trauma, poisoning and suicides, and 48 from somatic pathologies. In addition, the number of persons with HIV grew from 1,675 in the first three months of 2008 to 2,073 in the same period in 2009. In this regard, the Special Rapporteur expresses his concern that no needle exchange programme and drug substitution therapies are available in places of detention in Kazakhstan.

30. One concern recognized by several officials from the penitentiary administration related to the fact that many convicts serve their sentences far from their homes and families. On the one hand, the traditional concentration of facilities in the north of the country means that many people from the south of Kazakhstan are transferred to the north. On the other hand, it is often the remote location of facilities that makes family visits difficult; for example Arkalyk prison, the only facility with a cell system for highly dangerous individuals, is so

remote that it was impossible for the Special Rapporteur to visit it within the limited time available.

## **2. Police facilities**

31. Many facilities of the Ministry of the Interior have undergone significant structural improvements. Most suspects interviewed by the Special Rapporteur stated that they received food three times a day and that, at least to a certain degree, medical care was available. At the same time, he received allegations that, in many cases, the minimum time for exercise required by international minimum standards (one hour a day) was not respected. At some facilities, detainees indicated that they were allowed to walk for about 20 minutes a day only. Moreover, in many cases, sanitary facilities need improvement: toilets in cells are often open and do not allow for much privacy, and only one shower a week is authorized.

32. Given that a relatively large number of people remain in police custody facilities for long periods of up to several months (for example, waiting to be documented or during investigation and trial), the almost total denial of contact with the outside world puts disproportionate psychological pressure on suspects and, in the Special Rapporteur's assessment, clearly contradicts the principle of the presumption of innocence.

33. In the reception and redistribution centre in Almaty, where people without papers are held (including many Uzbek and Kyrgyz citizens), the cells were tiny, poorly ventilated and with almost no daylight. Food was allegedly insufficient, and exercise allowed for about 15 minutes a day only. Detention in such conditions is clearly not in line with international minimum standards, in particular since people may be held there for 30 days without judicial decision; since they can be re-arrested afterwards, they may even be held for another 30 days.

## **3. Institutions under other ministries**

34. The Special Rapporteur visited a psycho-neurological boarding house in Talgar under the Department for coordination of occupation and social programmes of Almaty Oblast, where people aged from 18 to 40 with severe mental and physical disabilities reside. The boarding house was in good condition, clean and well equipped. According to personnel, the patients who were mobile were allowed to spend much of the day outside in a large garden. The Special Rapporteur received some allegations of ill-treatment, but it was difficult to assess how widespread these practices were. He is concerned at complaints of extensive use of tranquilizers when patients do not comply with orders and at the reportedly high number of deaths in 2008 of patients transferred from other institutions. He also received allegations of cases of starvation in 2008. Other concerns were the procedure for placement in the boarding house as well as the manner in which such placement was reviewed,<sup>2</sup> and the lack of any independent monitoring of the boarding house.

35. The Special Rapporteur also visited a specialized psychiatric hospital in Aktas (

Almaty Oblast), where repeat offenders not considered responsible for their acts were sent, on the basis of a court judgement, for indefinite periods until a judge authorizes their release on the recommendation of a commission, composed of five senior medical doctors. The hospital was clean but run down, and closely resembled a prison colony. The Special Rapporteur did not receive any allegations of ill-treatment or violence. The isolation cells were located inside the units, and those held there had contact with others. Complaints voiced many times by detainees concerned the poor quality of food and the complete ban on smoking, which, though applied for praiseworthy reasons, was perceived as a profound restriction.

36. According to article 14 (2) of the criminal procedure code, compulsory placement in a medical institution of a person not in pretrial detention for the performance of a judicial-psychiatric expert evaluation should only be allowed pursuant to a court decision. Furthermore compulsory placement in a medical institution of a person not in pretrial detention for the performance of a judicial-medical expert evaluation is allowed pursuant to a court decision or on the basis of a sanction by the procurator. No maximum period for such treatment is stipulated by the law, the process lacks transparency and there appears to be no possibility to appeal such a decision. The Special Rapporteur received allegations that such placement is, in some cases, used to put pressure on suspects or the accused. He welcomes indications received from the Government that the current practice is being reviewed.

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<sup>2</sup> The Government indicated that these allegations were unfounded, but did not provide any figures on the number of deaths in 2008.

## **C. Women**

### **1. Violence against women**

37. With regard to violence against women, the Special Rapporteur has already stated that he considered the concept of “acquiescence”, as contained in the Convention against Torture, aside from the protection obligations, entailed a duty for the State to prevent acts of torture in the private sphere, and recalled that the concept of due diligence should be applied to examine whether States have lived up to their obligations (A/HRC/7/3, para. 68). Violence against women, especially within the family, is said to be widespread. Most often it is experienced in silence, and measures are taken only when domestic violence results in serious injuries. According to the Prosecutor’s office, little relevant statistical information is collected, since there is no law requiring it. However, the Government of Kazakhstan has taken steps to combat this phenomenon. For example, in 1999, subsections in charge of protecting women from violence were created in the Ministry of the Interior, which now have 128 employees. These subsections work in close coordination with the 24 crisis centres that exist in the country. Training for police is regularly being organized. While the criminal code and the

criminal procedure code provide for crimes under which acts of violence against women, including domestic violence, can be prosecuted, little has been done to facilitate access to justice for victims. The Special Rapporteur is encouraged by the fact that a draft law on combating domestic violence is scheduled for adoption in 2009, after pending for many years. However, the draft law appears to be focused on the prosecution of acts of domestic violence and neglects prevention and protection of the victims (for example it foresees no infrastructure to temporarily house and support victims of domestic violence). It is also problematic that, according to the draft law, any prosecution must be based on the complaint of an individual, which could lead to increased pressure being applied to the complainant if the culprit tries to make her withdraw the complaint.

## **2. Women in detention**

38. The Special Rapporteur received a number of allegations of threats against women accused of crimes, targeting in particular, their children. He received reports about women suspected or accused of drug-related crimes, and foreign women who are subjected to beatings and other forms of violence, including hooding and electroshock by law enforcement agents. Within the penitentiary system, he received credible allegations of corporal punishment against women. Since there are fewer colonies for women, they tend to be cut off from their families and friends even more than male prisoners.

## **D. Children**

### **1. Violence against children**

39. Article 10 of Law 345-II on Child Rights of 8 August 2002 enunciates a child's right to life, personal liberty and integrity of the dignity and personal life, and sets out the State's obligation to protect children from physical and/or mental violence, cruel, rough or humiliating treatment, sexual abuse and so on. Violence against children is, however, severely under-researched, in particular in the private sphere, and no effective mechanisms for combating it seem to be in place.<sup>3</sup> While the above-mentioned draft law on domestic violence might address some of these concerns, it contains shortcomings, such as the omission of a reporting obligation for health professionals.

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<sup>3</sup> See also *CRC/C/KAZ/CO/3*, paras. 34 and 36.

## **2. Juvenile justice**

40. According to article 15 of the criminal code, criminal responsibility for serious crimes is applicable as of 14 years of age; for other crimes, as of 16. Article 491 of the criminal procedure code provides that the detention of juveniles may be ordered in exceptional cases only, when a grave crime or felony is committed, and may not exceed six months. Articles 71.2 and 79 and chapter 52 of the code describe safeguards applicable to the various stages of criminal procedure of juveniles, such as limits on the duration of interrogations, the presence of a legal guardian, and the right to remain silent. However, the Special Rapporteur learned that many of the safeguards were respected only formally and that beatings of minors by the police with fists and police truncheons upon apprehension were common, mostly before detention was formally recorded. During that time children were often handcuffed to radiators for several hours, sometimes for entire nights.

41. The Special Rapporteur is encouraged to learn that, on 18 August 2008, the President approved a “juvenile justice system development concept” which, with reference to the Beijing Rules, foresees the creation, in the period 2009–2011, of a juvenile justice system and, among others, provides for specialized juvenile courts, a juvenile police, specialized legal aid, a specialized service for supervising non-custodial sentences, better coordination mechanisms and the integration of socio-psychological services into the juvenile justice system. He hopes that such a comprehensive approach will significantly improve access to justice for juveniles in practice and eliminate torture and ill-treatment of children.

### **3. Children in detention**

42. The Special Rapporteur visited an educational colony in Almaty (LA-155/6), the physical conditions of which seemed to be good (taking into account the extensive preparations made before the visit). The children attended school and leisure activities, and had no major complaints regarding the food or health care. The Special Rapporteur did, however, receive allegations of corporal punishment of minors in the colony, notably of severe, regular beatings with fists and truncheons by guards. The Special Rapporteur is also very concerned about the extensive restrictions on family visits (the norm was three two-day visits and three short-term visits a year). Such restrictive policies in relation to minors are definitely in contravention of the key requirement that their best interest should be placed at the centre of all measures taken by the State.

43. The Special Rapporteur also inspected a centre for temporary isolation, adaptation and rehabilitation in Karaganda. These institutions, under the responsibility of the Ministry of the Interior are designed to carry out a variety of tasks, including detaining children younger than 16 years of age suspected of having committed minor offences, housing children who have lost their parents or legal guardians, or have been picked up in the streets.<sup>4</sup> Placement of child suspects may be ordered by the Commission on Minors, an administrative body composed of representatives of the police, the department of education, the department of health, local

government and civil society. The Special Rapporteur regrets that the children had been intimidated and instructed on what they should say during his visit. He is concerned that, in the centre, there were children aged from 3 to 18 years of age held together. Most children are shaved upon arrival. In addition, they seemed not to be allowed much outdoor exercise and, although there was a garden around the centre, they only used a small indoor courtyard, and no toys were provided. The Special Rapporteur was very concerned at reliable claims that staff routinely subjected the children to corporal punishment if they did not obey orders. Reports indicate that educators regularly hit the children on the head with a bunch of keys or a thin wooden chair plate and punched the upper part of their bodies. Also the fact that children can be confined to the centres for 30 days (plus three weeks in the case of an outbreak of disease) on the basis of a prosecutorial decision is not in compliance with international standards. Although there appear to be some internal inspections and some centre officials in other towns appear to have been sanctioned for using force against the children they guard, the Special Rapporteur deplores the lack of transparency of such proceedings and of all independent monitoring.

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<sup>4</sup> See Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness and the Statute on Centers for Temporary Isolation, Adaptation and Rehabilitation.

### **E. The principle of non-refoulement**

44. Whereas Kazakhstan is a party to the Convention relating to the status of refugees of 1951 and works closely with the office of the United Nations High Commissioner for Refugees, the domestic legislation does not contain provisions implementing the principle of non-refoulement stipulated by article 3 of the Convention against Torture. One related concern is the fact that asylum-seekers from the Commonwealth of Independent States (CIS) are not normally recognized as refugees,<sup>5</sup> even if they do have a valid claim. In addition, although under the law any decision of a State body can be challenged in the court, in reality, clear procedures regarding full access to justice in extradition and deportation proceedings are lacking. A refugee law is currently being elaborated.

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<sup>5</sup> This is often done with reference to the Minsk Convention on Legal Assistance in civil and criminal matters of 1993 (Minsk Convention) and the Minsk Agreement on Visa-free Travel of 2000. It is argued that CIS citizens in the territory of other CIS countries enjoy rights similar to those of citizens, whereas in reality the Minsk Convention is designed to regulate interactions between the authorities, in particular courts and law enforcement agencies, of the contracting parties.

## **IV. Underlying causes**

### **A. Punitive penitentiary policies**

45. While the Special Rapporteur acknowledges that imprisonment as such carries certain limitations of human rights, he notes that the legal framework and penitentiary policies applied in Kazakhstan have an essentially punitive nature rather than aiming at reintegrating prisoners back into society, as required by article 10 (3) of the International Covenant on Civil and Political Rights. For instance, the criminal procedure code is built on the idea that different prison regimes serve as a form of punishment, and places heavy restrictions on contacts with the outside world. Of concern in this regard is the newly introduced punishment of life imprisonment, which gives prisoners very little hope of ever being released. According to the Ministry of Justice, at the time of the visit, 71 people were held with a life sentence (69 of whom in Zhitykara colony). Another worrying feature is that most prisoners perceive being sent to certain penitentiary institutions as punishment. Such informal means of additional punishment are in contravention of international norms, which foresee that, even if a person has been sentenced to deprivation of liberty, his or her other human rights should be affected to the minimum. The Government of Kazakhstan indicated that penitentiary reform based on the premises of educational work with convicts and their reintegration is ongoing.

46. The access of pretrial detainees to the outside world appears equally restricted (articles 17 and 19 of the law on procedures and conditions for holding persons suspected or accused of a crime in custody). In addition, the Special Rapporteur was informed that authorization was often denied. The fact that police detainees are prevented from receiving visits for prolonged periods of up to several months puts unnecessary hardship on detainees.

47. Furthermore, only a very small percentage of the prison population appears to have access to meaningful activities. While it is laudable that, in some places, schools and vocational training are available, few of the Special Rapporteur's interlocutors indicated that they benefited from any of them.

48. One of the main reasons for disciplinary punishment appeared to be that prisoners refused to do the two hours of work on maintaining the colony, which is prescribed by the rules. In response to this refusal, the prison administration may impose sanctions, including criminal ones that result in additional terms of imprisonment (article 360 of the criminal code). The Special Rapporteur learned of one case where a prisoner had more than 10 years added to his initial term. Such excessive punishment for disciplinary violations clearly suggests that the penitentiary system is deficient when dealing with offences by detainees.

### **B. Ineffectiveness of protection mechanisms**



## 1. Complaints channels

49. The law provides for several complaints mechanisms (articles 177, 183.1, and 184 of the criminal procedure code and article 10.2 of the penal enforcement code). Article 183 of the criminal procedure code expressly foresees that any complaint about a crime has to be registered. Article 192.4-1 CPC provides that, in cases falling under article 347-1 of the criminal code, preliminary investigation is carried out by the body of internal affairs or national security that initiated the criminal case. The law does not govern who should conduct such investigations; in most cases, if any inquiries are held, the police investigate torture allegedly perpetrated by its own officials, and the same holds true for the Committee for National Security and the financial police.<sup>6</sup>

50. The Human Rights Commissioner (position established by a presidential decree in 2002) may receive complaints, which he can refer to the competent authorities, asking them to initiate administrative measures or criminal proceedings against the alleged perpetrators. In 2008, the Commissioner received 38 complaints of policemen humiliating the dignity of detainees, which were forwarded to the Internal Security Department under the Ministry of the Interior. According to the analysis of the latter, in about 8 out of 10 cases, the allegations were not confirmed.<sup>7</sup>

51. The Special Rapporteur asked all police and National Security Committee chiefs and directors of penitentiary facilities whether they had received any complaints of ill-treatment in the preceding five years. The overwhelming majority of them denied ever having heard of such allegations. The almost total absence of official complaints, however, raises suspicion that, in actual fact, there is no meaningful complaint mechanism; on the contrary, it appears that most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals. In the Special Rapporteur's opinion, there is no independent body mandated to make prompt investigations, and the overwhelming majority of complaints are almost automatically rejected.

52. Several areas of concern identified in this regard are described below.

### *a) Burden of proof and independent medical examinations*

53. One key problem that the Special Rapporteur has identified in this regard is the burden of proof. According to international standards, if allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment.<sup>8</sup> A person in detention is clearly unable to collect and document proof if he or she does not have access to independent medical examination. While medical personnel employed by the Ministry of the Interior and the penitentiary administration do perform check-ups upon arrival, they clearly lack the independence to take action against colleagues with whom they work on a daily basis.<sup>9</sup> An

examination by these staff members can therefore not be considered independent; consequently, it needs to be done by an outside medical expert. Since independent medical examinations must, however, be authorized by the supervising authority — such as the investigators, the prosecutors, or the penitentiary authorities — that authority has ample opportunity to delay authorization so that injuries deriving from torture are healed by the time the examination takes place. Moreover, the Special Rapporteur was informed that, when an examination is conducted outside the detention facility, the law enforcement officer in charge of the case normally accompanies the detainee and stays with him or her during the examination. Another impediment is the fact that the detainee must bear the costs. This is clearly not a situation conducive to finding out the truth. An additional problem is that the forensic expert has to indicate the seriousness of the injuries, which will determine the classification of the potential crime, and therefore ample possibility to force medical personnel to understand the nature of the injuries. Indeed the Special Rapporteur received allegations of this taking place.

*b) Lack of ex officio investigations*

54. Although most investigation isolators have been brought under the authority of the Ministry of Justice, from the conversations the Special Rapporteur held in isolators, it became clear that the staff there did not consider it their responsibility to detect torture or ill-treatment perpetrated by law enforcement agencies, and even less to address it.

*c) The role of prosecutors, judges and lawyers*

55. In spite of several waves of reforms, the dual role played by the prosecutors remains problematic: on the one hand, the prosecutor's office endorses the indictments prepared by the police after preliminary criminal investigation; on the other, it is meant to monitor compliance by criminal justice bodies and law enforcement officials with the law and to protect the rights of citizens and residents. This leads to the paradox that, if allegations of torture or ill-treatment are raised at a latter stage of a criminal process, and they have to be processed by the prosecutor's office, the latter, by demanding an investigation, basically admits that it has not fulfilled its monitoring role. Therefore, while the prosecutors appear to have some formal control over the police, in many contexts, they appear to tend to ignore grave violations.

56. Although several steps have been taken to raise the awareness of judges in relation to torture, they are widely seen as formally present at certain points of the criminal process, but mainly to rubberstamp prosecutorial decisions rather than taking an interest in discovering the truth and meaningfully following up on torture allegations. The overwhelming majority of interviewees stated that, neither at the first hearing to sanction pretrial detention nor during the trial itself had any judge asked about the treatment during the initial period of custody. Moreover, if victims raised allegations of torture or ill-treatment, they were routinely silenced. The Special Rapporteur heard many times that the court monitoring project led by the OSCE was helpful in ensuring that trials were fairer, notably in the only acquittal based

on the finding that torture had been used during the investigation (see case of Mr. Polienko, appendix).

57. The Special Rapporteur received numerous complaints about the role lawyers play in criminal cases. Lawyers are widely perceived as corrupt, ineffective, “part of the system” and unwilling to defend their clients’ rights. In particular, “State lawyers” are widely described as being present only during hearings and the trial and do not enjoy any trust. In many cases, interviewees indicated that their lawyers had simply ignored allegations of torture.

*d) Police custody*

58. Although the legal limit for police custody is 72 hours (10 days in rural areas, if transport is difficult), it sometimes lasts longer at some point in the process, for example, if the person detained has no papers or because he or she is sent back to their town for additional investigation or trial. Effectively, many people are transferred back and forth between temporary and investigation isolators several times; accused persons may repeatedly be returned to the place where their initial interrogation had taken place. Even if they file a torture complaint at some point long after the initial period of custody, they may have to return to the place where their torturers work, a prospect that effectively deters detainees from filing complaints.

*e) Threats and intimidation by law enforcement officers*

59. Many of the detainees interviewed by the Special Rapporteur indicated that they had been threatened with further charges, longer imprisonment and, in some cases, sexual violence by fellow inmates in order to make them withdraw complaints or sign declarations that they did not have any complaints or statements that they had sustained injuries while resisting arrest. He also learned that, in certain cases, threats are made against family members of the detainee, for example they will be arrested or that the friends of the child will be informed. Such behaviour, besides going counter to international standards, renders any complaints system meaningless and should be addressed in a determined manner.

*f) Evidence obtained under torture*

60. Article 77 (9) of the Constitution and article 116 (1) (1) of the criminal code outlaw the use of evidence obtained under torture in judicial proceedings. The Special Rapporteur has not, however, received information on cases where evidence has been excluded because it was found to have been obtained under torture. A worrying feature of the system repeatedly described to the Special Rapporteur is that, since crimes need to be solved, previous convicts are often accused of having committed them, and their cases are simply fabricated, often with the use of physical violence to obtain a confession, to which false evidence is then added.

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<sup>6</sup> According to the Government, in the framework of the elaboration of the “Action Plan”, an interagency group is currently discussing how to ensure that investigations into allegations of torture are conducted by a body independent from the body investigating the case against the

a l l e g e d

v i c t i m .

<sup>7</sup> See 2008 Activity report of the Ombudsman of the Republic of Kazakhstan available on the website of the Ministry of the Interior of Kazakhstan (www.mvd.kz).

<sup>8</sup> See E/CN.4/2003/68, para. 26.

<sup>9</sup> According to the Government, the establishment of a medical service independent of the Ministries of the Interior and Justice is currently under consideration in the framework of the elaboration of the Action Plan.

## 2. Prosecution and sanctioning of alleged perpetrators of torture and rehabilitation

61. The information provided to the Special Rapporteur by the various law enforcement bodies shows that article 347.1 has been applied to certain cases in recent years (see table below).

Year	Case	Outcome
2008		<p>Two investigators from Temirtau brought before the courts.</p> <p>According to the police, one investigator (Turumbaev) was sentenced to 10 years of imprisonment; the National Security Committee however reports that the case was closed in 2008 because no grounds for the charges were found. Criminal case was dropped.</p> <p>Sentenced to 18 months of deprivation of liberty.</p>
2007	<p>Two policemen in Kyzyl Orda region accused of holding three people in the administrative buildings without legal base.</p> <p>One police inspector in East Kazakhstan Oblast inflicted injuries on a suspect in order to obtain a confession.</p> <p>Three policemen in Astana used violence to obtain a confession.</p>	<p>Two policemen were sentenced to three years of imprisonment, one to two.</p> <p>Pending because the two alleged perpetrators are missing.</p> <p>Closed soon after because the alleged victims withdrew their complaints.</p>
2006	<p>Two officers from Pavlodar assaulted detainees.</p> <p>One case was opened.</p> <p>Three officers in Pavlodar found guilty of torturing a person, who eventually died.</p>	

62. The Special Rapporteur wishes to stress that the investigations and prosecutions described in the table can be considered only very preliminary steps. The number of official cases by no means reflects the actual scale of the torture and ill-treatment perpetrated in the country. Moreover, it appears that the punishment measures are not commensurate to the gravity of the crime.

63. Regrettably, there is no legal obligation in Kazakh domestic legislation for financial compensation or rehabilitation of torture victims. Although article 40 of the criminal procedure code provides for compensation of harm caused as a result of unlawful acts of the body leading or carrying out criminal proceedings, the list of unlawful acts does not include torture or ill-treatment. A resolution of the Supreme Court of 9 July 1999 (No. 7) on the practical application of the legislation on the compensation for the harm caused by unlawful actions of the bodies in charge of the criminal process, which serves as a guideline for judges, refers to the “use of violence, cruel and degrading treatment” and lists “arrested, accused and convicted persons” as eligible for compensation. The civil code, however, in its article 923, appears to limit the acts and conditions giving victims the right to compensation, since torture and ill-treatment are not listed. Furthermore, the civil procedure is only initiated once criminal proceedings against the perpetrator or offender have started; this clearly contradicts the requirements of article 14 of the Convention against Torture. The Special Rapporteur was not informed of any case where torture victims have received compensation or rehabilitation, even if torture had been found by the criminal court.

## C. Weakness of prevention

### 1. Monitoring and inspection

64. The main role of oversight is played by the Prosecutor’s office. The Deputy Prosecutor General informed the Special Rapporteur that prosecutors conduct inspections on an almost daily basis, sometimes also at night and on holidays. A number of specialized prosecutors are in charge of monitoring places of detention. In addition, all law enforcement organs have their own internal security departments, which conduct unannounced inspections. However, the results are not reported in a transparent way.

65. A number of other monitoring mechanisms operate in Kazakhstan. The Human Rights Commissioner has the right to enter any place where people are deprived of their liberty. In practice, he and his staff visit police temporary isolators, pretrial investigation isolators, prison colonies and psychiatric hospitals. Owing to the lack of independence and the limited human and other resources at its disposal, however, monitoring activities are not regular and have a limited impact.

66. In late 2008, the Working Group on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which meets under the auspices of the Human Rights Commissioner and includes high-level officials from most relevant State bodies, as well as heads of international and domestic non-governmental organizations, undertook a visit to pretrial and temporary detention facilities and colonies in Almaty and Almaty Oblast, then reported on its results to the President's administration. The report appears to have focused on the conditions that, in the Commissioner's assessment, did not conform to the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>10</sup> According to the Government, the Working Group continued to visit facilities in a number of regions in 2009.

67. With regard to civil society, public monitoring commissions, composed of 91 civil society representatives, were established in each of the 15 regions. The commissions are mandated to carry out monitoring visits to detention facilities under the authority of the Ministry of Justice. A project for the monitoring of temporary isolators by civil society representatives (under the Ministry of the Interior) in Almaty is ongoing. While these existing mechanisms do valuable work, they do not seem to cover the whole territory, and appear to focus on monitoring conditions rather than conduct torture fact-finding.

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<sup>10</sup> See 2008 Activity Report of the Ombudsman of the Republic of Kazakhstan, *op. cit.*, pp. 22, 61.

## **2. Safeguards**

68. Overall, the Special Rapporteur found that most existing safeguards are formally respected. All places he visited had registers, and most detainees indicated that they had seen judges, prosecutors and lawyers at the various stages of custody and judicial process, as required by law. At the same time, many safeguards are not effective in practice: a major gap in this regard is the fact that the *de facto* apprehension and delivery to a police station is not recorded, which makes it impossible to establish whether the three hour maximum delay for the first stage of deprivation of liberty is respected. Indeed, the Special Rapporteur received many allegations that the first hours of (unrecorded) detention were used by law enforcement organs to obtain confessions by means of torture. The situation is exacerbated by the fact that, at that stage, there is no right of access to a lawyer.<sup>11</sup>

69. One crucial safeguard in the context of the prevention of torture and ill-treatment is a review by an independent judge of detention at an early stage. Even though Kazakhstan, handed over the process of sanctioning arrest to the judiciary in 2008, the Committee against Torture expressed the view that the new process was not a fully-fledged habeas corpus proceeding in line with international standards (CAT/C/KAZ/CO/2, para. 9 (c)).

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<sup>11</sup> The Government noted that several recommendations, including the one regarding the registration of people deprived of their liberty immediately following arrest, and providing them with immediate access to their lawyers, are reflected in the draft Normative Resolution of the Supreme Court on the application of norms of the criminal and criminal-procedure legislation in relation to combating torture or inhuman treatment or punishment. Moreover, the Government indicated that the following amendments to its legislation may be envisaged: the criminalization of the falsification of custody periods and the inclusion in the criminal-procedure code of the following provisions on procedural aspects of the investigation of complaints about torture and ill-treatment:

a provision ensuring that complaints by detainees addressed to the preventive mechanism, to the prosecutor's office or the courts should always be sent in sealed envelopes that may not be opened for inspection

on the duty of the prosecutor in charge of supervising the lawfulness of the preliminary investigation of criminal cases

on the shortening of the periods of pretrial detention

a provision requiring that a court sanction detention in reception and redistribution centres and in centres for temporary isolation, adaptation and rehabilitation of minors; and reflecting the need to conduct examinations of physical injuries and other traces of torture in the absence of police and prosecutors as a matter of principle

#### **D. Evaluation of police performance and corruption**

70. The Special Rapporteur received numerous and consistent allegations that corruption is deeply ingrained in the criminal justice system. Several sources indicated that, at every stage, from the police and the judiciary through to detention centres and prisons, corruption is a quasi-institutionalized practice.<sup>12</sup>

71. Many sources indicated that individual policemen have an unofficial quota of cases that they are required to "resolve" in order to be positively evaluated. Such an evaluation system may tempt police officers to resort to unlawful methods to resolve cases. Many interlocutors in fact indicated that, although the law requires supporting evidence, confessions are still considered the most valuable form of proof. Moreover, supporting evidence, including testimonies, are sometimes obtained by force and intimidation as well.

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<sup>12</sup> Kazakhstan was ranked 145 by Transparency International on its corruption perception index for 2008.

#### **V. Conclusions and recommendations**

## A. Conclusions

72. Kazakhstan has made good progress in reforming its legal framework and its institutions since independence in 1991. By acceding to international instruments, it has signalled to its citizens, but also to the international community, that human rights should be considered a priority. Some steps have been taken to integrate these international standards into the national legal framework, including through the criminalization of torture (even if the definition is too narrow and penalties are not commensurate). However, considerable gaps between the law and reality remain.

73. Extensive preparations by the authorities of the places of detention to be visited by the Special Rapporteur, and intimidation of and instructions to detainees on which information to provide made it very difficult for the Special Rapporteur to draw objective conclusions. With this caveat in mind and on the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with people deprived of their liberty, often supported by forensic medical evidence, the Special Rapporteur concludes that the use of torture and ill-treatment certainly goes beyond isolated instances. He received many credible allegations of beatings with hands and fists, plastic bottles filled with sand, police truncheons and of kicking and asphyxiation with plastic bags and gas masks in order to obtain confessions from suspects. In several cases, the allegations were supported by forensic medical evidence.

74. The commission of acts of torture is facilitated by the inaction of prosecutors, judges, staff of the Ministry of Justice, the medical profession and lawyers in the face of allegations of torture and ill-treatment, and by the lack of effectiveness of inspection and monitoring mechanisms. In the Special Rapporteur's assessment, evidence obtained through torture (including threats) or ill-treatment is commonly used as a basis for conviction.

75. Conditions in penitentiary institutions and police custody have improved over recent years. However, the Special Rapporteur remains concerned about the overall highly punitive approach taken to penitentiary policies and practice, including overly long prison terms and the use of regimes that effectively use restrictions on contacts with the outside world as punishment.

76. Although the Special Rapporteur recognizes that impunity is not total, he found that existing complaints mechanisms are ineffective. The burden of proof rests on the alleged victim of ill-treatment; therefore, only a small minority of perpetrators are actually brought to justice. He also identified significant gaps with regard to the State's obligations in the areas of compensation and rehabilitation.

77. The Special Rapporteur observed that some independent monitoring is being conducted in Kazakhstan, but it is patchy and does not cover a large number of institutions. He very much welcomes the ratification of the Optional Protocol to the Convention against Torture and the planned creation of a national preventive mechanism.



78. With regard to violence against women, the Special Rapporteur is concerned about the inadequate prevention and protection afforded by the State to victims of domestic violence and about the lack of awareness of this problem. Children are extremely vulnerable to corporal punishment and need strengthened protection.

## **B. Recommendations**

79. While recognizing the progress achieved by Kazakhstan over recent years, the Special Rapporteur recommends, in a spirit of cooperation, that the following steps be taken to comply fully with relevant international obligations. With a view to the upcoming OSCE chairmanship of Kazakhstan in 2010, translating international norms into tangible changes in people's lives, including of those "behind bars", is of particular importance.

### **1. Impunity**

80. The Special Rapporteur recommends that the appropriate bodies take the following measures:

a) Publicly condemn torture and ill-treatment and unequivocally state that torture is a serious crime, in order to rebalance the current situation, where criminals are easily deprived of their liberty, often for very long periods, whereas law enforcement officials who break the law receive lenient sentences;

b) Amend the law to ensure that torture is established as a serious crime, sanctioned with appropriate penalties<sup>13</sup> and fully brought into line with the definition provided for in the Convention against Torture;

c) Introduce complaints channels that are accessible in practice, ensure that any signs of torture are investigated ex officio, and protect complainants against reprisals;

d) Establish an effective and independent criminal investigation and prosecution mechanism that has no connection to the body investigating or prosecuting the case against the alleged victim;

e) Allow access to independent medical examinations without the interference or presence of law enforcement agents or prosecutors at all stages of the criminal process, and provide independent medical check-ups of persons deprived of their liberty, particularly after entry to or transfer between places of detention;

f) Ensure that future refugee legislation duly takes into account the principle of non-refoulement enshrined in article 3 of the Convention against Torture.

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<sup>13</sup> The Government assured the Special Rapporteur that this process has started.

### **2. Safeguards and rehabilitation**

81. The Special Rapporteur recommends that the appropriate bodies take the following measures :

- a) Register persons deprived of their liberty from the very moment of apprehension, and grant access to lawyers and allow for notification of family members from the moment of actual deprivation of liberty;
- b) Reduce the period of police custody to a time limit in line with international standards ( maximum 48 hours ) ;
- c) Strengthen the independence of judges and lawyers, ensure that, in practice, evidence obtained by torture may not be invoked as evidence in any proceedings, and that persons convicted on the basis of evidence extracted by torture are acquitted and released, and continue the court monitoring led by the Organization for Security and Cooperation in Europe ;
- d) Shift the burden of proof to prosecution, to prove beyond reasonable doubt that the confession was not obtained under any kind of duress, and consider video and audiotaping interrogations ;
- e) Incorporate the right to reparation for victims of torture and ill- treatment into domestic law, together with clearly set out enforcement mechanisms.

### **3. Institutional reforms**

82. The Special Rapporteur recommends that the appropriate bodies take the following:

- a) Continue and accelerate reforms of the prosecutor's office, the police and the penitentiary system with a view to transforming them into truly client- oriented bodies that operate transparently, including through modernized and demilitarized training;
- b) Transfer temporary detention isolators from the Ministry of the Interior,<sup>14</sup> and investigation isolators from the National Security Committee<sup>15</sup> to the Ministry of Justice and raise the awareness of Ministry of Justice staff regarding their role in preventing torture and ill- treatment ;
- c) Design the system of execution of punishment in a way that truly aims at rehabilitating and reintegrating offenders, in particular by abolishing restrictive prison rules and regimes, including for persons sentenced to long prison terms, and maximizing contact with the outside world ;
- d) Strengthen further non-custodial pre- and post-trial measures, in particular, but not exclusively, in relation to minors, and equip the probation service with sufficient human and other resources ;<sup>16</sup>
- e) Design the national preventive mechanism as an independent institution in full compliance with the Paris Principles and equip it with sufficient human and other resources;

f) Ensure that medical staff in places of detention are truly independent from the organs of justice administration, that is by transferring them from the Ministry of Justice to the Ministry of Health.

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<sup>14</sup> According to the Government, this is under consideration, but would require considerable financial resources.

<sup>15</sup> The Government indicated that the detention of persons accused of espionage or treason in facilities outside the authority of the National Security Committee, would require special security measures since many of these detainees possess knowledge of state secrets, which would make it difficult to ensure that they cannot disclose them if they are held together with other detainees.

<sup>16</sup> According to the Government, the inspections of the penitentiary administration are being strengthened.

#### **4. Women**

83. The Special Rapporteur recommends that the appropriate bodies adopt a law on domestic violence in full compliance with international standards. The law should not focus on prosecution, but also foresee preventive measures; provide for ex officio investigations of alleged acts of domestic violence and ensure adequate funding for the infrastructure to support victims of domestic violence and trafficking; and create a national database on violence against women.

#### **5. Children**

84. The Special Rapporteur recommends that the appropriate bodies take the following measures:

- a) Explicitly prohibit by law corporal punishment of children in all settings;
- b) Raise the age of criminal responsibility and establish a juvenile justice system that puts the best interests of the child at its core, and abolish the use of temporary isolators for minors;
- c) Seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes the United Nations Office on Drugs and Crime, the United Nations Children's Fund, OHCHR and non-governmental organizations, to implement these reforms.

#### **6. Health-care facilities/psychiatric institutions and harm reduction**

85. The Special Rapporteur recommends that the appropriate bodies take the following measures:

a) Ensure respect for the safeguards available to patients, in particular their right to free and informed consent to treatment in compliance with international standards (see also A/63/175); change the terminology used to describe disabilities, in particular “idioty”; ratify the Convention on the Rights of Persons with Disabilities; use institutionalization as a last resort; allow for independent monitoring of all institutions; and ensure that all deaths in such institutions are investigated in a transparent manner by an independent body;

b) Initiate harm-reduction programmes for drug users deprived of their liberty, including by providing substitution medication to persons and allowing needle exchange programmes in detention.

Appendix

### Places of detention visited and interviews conducted

- |         |   |
|---------|---|
| Astana  | <ul style="list-style-type: none"> <li>• Temporary detention isolator (IVS)               <ul style="list-style-type: none"> <li>• Reception and redistribution centre</li> <li>• Special reception centre (for administrative detention)</li> </ul> </li> <li>• Investigation Isolator (SIZO – EC 166/1) – visited twice</li> <li>• Almatynskiy District police station Arshaly • Special regime colony (EC-166/5)               <ul style="list-style-type: none"> <li>• Temporary detention isolator</li> </ul> </li> </ul>  |
| Almaty  | <ul style="list-style-type: none"> <li>• Reception and redistribution centre               <ul style="list-style-type: none"> <li>• Investigation isolator (SIZO – LA 155/1)</li> </ul> </li> <li>• Investigation isolator (SIZO) of the Committee for National Security (K N B)               <ul style="list-style-type: none"> <li>• Educational colony (LA-155/6)</li> <li>• Zhetisuyskiy District police station</li> </ul> </li> <li>• Medical detoxification cells – Zhetisuyskiy District               <ul style="list-style-type: none"> <li>• Almalinskiy District police station</li> </ul> </li> </ul> |
| Talg ar | <ul style="list-style-type: none"> <li>• District Police               <ul style="list-style-type: none"> <li>• Psycho-neurological boarding house</li> </ul> </li> </ul>   |
| Aktas   | <ul style="list-style-type: none"> <li>• State specialized psychiatric hospital with intense supervision Karaganda • Temporary detention isolator (IVS), Old City</li> <li>• Investigation isolator (SIZO) of the Committee for National Security (K N B)</li> <li>• Centre for temporary isolation and rehabilitation of minors (CVIARN) Temirtau • Temporary detention isolator (IVS)</li> </ul>  |

Koksu • Women’s strict regime colony (AK-259/9)

1. The Special Rapporteur regrets that his right to carry out unannounced visits to places of detention has been undermined by the authorities. In the majority of places, preparations

had been made, including painting facilities, transferring detainees/prisoners out of quarantine and punishment cells, setting up concerts without any listeners, etc. He is also very concerned about allegations of intimidation of detainees and fears that this may have led to distortions in his fact-finding. Below, some accounts of interviews are reproduced. If detainees did not wish their interviews to be recorded or if the publication of names of victims may put them at risk, the information provided is only reflected in the general findings of the report. Some detainees requested that their interviews be published anonymously.

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**Almatinsky ROVD, Police**

2. The Special Rapporteur on torture was received by the head of the Police Station, Major Abay Seydir-uly Kulginov and the Deputy Head in charge of police investigations, Mr. Kazhigali Sakko-uly Imajanov. Mr. Kulginov had taken over the post in June 2008. He had earlier worked at the headquarters of Astana Police. Mr. Imajanov had been in this post for one year. He had earlier served as Deputy Chief in Almaty. There were no persons detained in the holding cells. Contradictory information was given to the Special Rapporteur with regard to the last person held in the cell, Mr. L. The investigator in charge of Mr. L.'s case informed the Special Rapporteur that Mr. L. had been arrested shortly after midnight on 6 May 2009. At 1 a.m. he had been brought to the police station. Consequently the investigator came to the police station and, after a short interview with the suspect, she issued a detention report. Mr. L. was then sent to the IVS (temporary detention isolator). At 10 a.m., he was brought back and interrogated in the presence of a state lawyer, who was called by the investigator. From 11.40 a.m. to 3 p.m. the suspect was held again in the holding cell. From 3 p.m. to 5 p.m. he was confronted with the victim/witness in the office of the investigator. After that he was supposedly brought back to the holding cell. However the register of the holding cells (record number 2235) state that Mr. L. was held there only from 11.50 p.m. on 6 May to 1.40 a.m. on 7 May. No records regarding the whereabouts of the suspect between 5 p.m. and 11.50 p.m. were available.

**Police Headquarters Astana, IVS**

3. The detention facilities were located in a three-storey building with the IVS on the top floor, the cells for undocumented persons (reception-distribution centre) on the second floor, and the cells for persons held in administrative detention ("special reception centre") on the first floor. Fifty-one persons were held for lack of documents, 6 of them women. The Special Rapporteur was received by Mr. Marat Demeuov, Head of Astana Police since late May 2008, who had not heard of any complaint of torture in the last ten years.

4. Cell with six undocumented women who had been detained for between 2 and 10 days: the women said that they were allowed daily exercise, between one and two hours. They had no allegations regarding ill-treatment.

5. Cell with four men including one ethnic Kazakh and one Kyrgyz: they had no complaints regarding the conditions of detention and ill-treatment. They were allowed to walk

in a cage-like courtyard for one hour per day and to take a shower twice a week. It was obligatory to wear a pyjama-like dress. Visits were allowed anytime except on Sundays. Food was provided three times per day. Telephone calls were allowed through the payphone. A doctor was available every morning.

6. 47 persons were held in administrative detention. Most of them were detained for drunk-driving which, according to a law that had entered into force in early 2009, was sanctioned with 10 to 15 days of custody. They were allowed to have a one hour walk in the morning and in the afternoon in the court yard. Detainees could shower twice a week. Visits were possible anytime and there was no restriction on phone calls through payphone. They had no complaints regarding food and treatment. All of them had been informed about the visit of the Special Rapporteur on torture a day earlier.

## **IVS**

7. The IVS had a capacity to hold 70 detainees. Upon arrival of the Special Rapporteur on torture only five detainees were present, eight other detainees had been transferred for the day to the court in order to participate in their proceedings. Cells were generally clean and comprised metal bunk beds, and central heating, as well as a sanitary unit. The number of visits possible from outside depended on the approval of the investigator in charge.

8. **Mr. L.**, who had been previously interrogated at Almatynsky district police station in Astana, and whose case had been examined by the Special Rapporteur, had arrived according to the records at 2.35 a.m. on 7 May. This information appears to be consistent with the records of the IVS, taking the time for transport into account. Upon the arrival of the Special Rapporteur one interrogation was ongoing, which took place in the presence of a lawyer and was taped with a video camera. According to the investigator in charge, the video taping is conducted to support the evidence. The accused has the possibility to see the tape again after the interrogation and has to sign a document certifying the veracity of the footage.

9. **Evgeniy Efimenko**, aged 31, Kazakhstani citizen, had been arrested on 6 March 2006 in Russia as a suspect in a crime committed in Kazakhstan. Two months later, he was extradited on the basis of a request from Kazakhstan. After the transfer he spent one week in an IVS, later he was sentenced to a 12 years term, to be served in a strict regime colony. 10 days earlier, he had been transferred to Astana IVS since new facts relating to his case emerged, and a new trial commenced. He shared the cell with two other persons. Detainees in the IVS were confined to their cells throughout the day, with the exception of a walk of up to two hours in the open air. Food was served three times per day which Mr. Efimenko considered satisfactory in terms of quantity and quality. He reported that he had not experienced any forms of physical ill-treatment since his arrest in 2006. However, life in prison put strain on his mind — “what can be worse than living without freedom”. He hoped that, after six years, he would be able to serve his sentence in an open colony due to his good behaviour.

**Zhetesuyskiy District Police, Almaty**

10. Two detainees from Kyrgyzstan were sleeping in one cell when visited by the Special Rapporteur on torture (10.45 p.m.). They had been arrested two hours prior to the visit of the Special Rapporteur because they did not have any documents. Two minors were held in an office on the second floor. Their arrest had not been recorded.

11. The detoxification cells were located in the backyard of the district police's main building. One room contained a medical chair used for restraining persons who pose a risk to themselves and others. The authorities reported that the chair had not been used for a long time. However, no records on the use of the chair were available.

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### **IVS, Talgar**

12. The Special Rapporteur was received by Mr. Taimerdenov, Chief of district police. He provided the Special Rapporteur with contradictory information with regard to the persons detained in the facilities (between 47 and 51 persons had been there in the morning), and the Special Rapporteur was unable to establish the exact number of detainees. It appeared that ten persons accused of having committed a crime had been transferred elsewhere because of the l o n g w e e k e n d .

13. Up to seven detainees were held in small cells (of about 8 to 12 square metres) with open toilets not providing any privacy. The cells were rather dark, with little light coming in through a small double-barred window. Some of the cells were overcrowded and had insufficient sleeping space. Overall, the conditions of detention were not in accordance with i n t e r n a t i o n a l s t a n d a r d s .

14. One detainee complained that he needed special medicine because of an operation six months earlier, which he did not receive.

### **Psycho-Neurological Boarding House under the Ministry for Labour and Social Protection**

15. The Special Rapporteur was received by Ms. Biehr Galina Vassolierna (acting director) and Ms. Saidakova Ganhar Mukasheva (chief nurse). The boarding house accommodated patients aged between 18 and 40, of both sexes. Upon the arrival of the Special Rapporteur, 115 persons were held in the institution. They were separated into three categories: 1) "crawling", 2) persons with mental disabilities called "idioty" and 3) bedridden patients. The institution's staff comprised 57 employees including two doctors as well as one part-time psychiatrist. The facility had a gym with modern exercise equipment. Most patients could access a spacious garden with some sports facilities including a basketball field.

16. Patients whose behaviour posed a risk to their own or others' health could be put into a straitjacket or be confined in an isolation cell for up to 24 hours. In severe cases in which neither the above measures nor the application of certain medication leads to an improvement of the patient's condition, he or she could be transferred to the regional psychiatric hospital. Patients did not report any forms of corporal punishment. However, confinement in the isolation cell could be used as a form of disciplinary punishment for non-compliance with the

rules and was not documented. According to some allegations, patients were sometimes kept for up to two weeks in isolation cells and threatened with injections which were not justified by any medical necessity. These forms of punishment were mostly inflicted shortly after an inspection by the Ministry of Labour and Social Protection's so-called Medical Expert Commission (VTEK), which took place every 7 to 10 weeks. The Commission also decided about the length of internment, which could either be indefinite or reviewed on an annual basis. Persons who claim to be healthy can be sent before a medico-judicial expert, who evaluates the claim and may order their release (one such case in 2008).

17. While conducting interviews with groups of patients, some of the personnel regularly interfered and tried to control the conversations. This led to the impression that the personnel tried to prevent an open conversation between the Special Rapporteur and the patients. In addition, the forensic doctor was not able to talk with patients without interference from the health staff, but open access was given to all patient medical files.

**State National Specialized Psychiatrist Hospital with Intense Supervision, Aktas**

18. The Special Rapporteur was received by Mr. Cheremisin Leonid Semjonovitsch, senior physician, Mrs. Ajdos Adikhan Kenesovitsch, chief physician and Mrs. Iakovenko Zoja Alexandrovna, senior physician.

19. The institution hosted persons who had committed criminal acts but could not be held criminally accountable due to their mental condition. On the day of the visit, 850 persons (older than 16 years) were detained in the facility, which comprised 14 wings located in separate buildings. The large area was surrounded by several lines of barbwire fences placed next to walls between which dogs were held. The police were tasked with guarding the premises.

20. The patients were allowed a one to two hour walk outside twice a day. Restraint measures used included fixation to the bed with special bandages as well as injections. Furthermore, patients could be held in punishment cells for up to ten days. These cells were not very different from normal cells and usually comprised about four beds. The conditions were generally in line with international standards. Although the buildings were very old and in a run-down state, the rooms were kept very clean. The main concern brought forward by staff members was the lack of funds, particularly with regard to maintenance of the buildings.

21. Persons considered dangerous were held in unit "4" where the monitoring was more intense than in other wings. When visited, 53 persons were held in the six cells; one person was under strict monitoring, meaning that he was held in a normal cell but permanently observed by a staff member. This observance lasts for at least one month and is ended by decision of the medical doctor in charge of the wing.

22. The main complaints voiced by the patients referred to the restrictions regarding contact with the outside world. Visits were allowed only twice per month for ten minutes and phone calls once per month for five minutes. The amount of parcels was restricted, but no



restriction applied for letters. Furthermore, detainees complained about the complete prohibition of smoking even in open air areas.

23. Twice a year, all the detainees undergo a medical evaluation by a Commission consisting of five senior medical doctors which results in a recommendation to keep or release the person. This evaluation is based inter alia on the overall medical and behavioural record of the last six months and a conversation with a psychiatrist, which lasts for five minutes. Detainees reported that, although the Commission often recommends release, these recommendations are hardly ever taken up by the judges, who take the final decision in these matters.

### **KNB SIZO, Almaty City**

24. The Special Rapporteur was received by Mr. Myrzaliev Nurzhan Kermazovich, Head of KNB Almaty City as well as Mr. Kenenbaev, the Head of the SIZO. On the day of the visit, 70 persons were in detention. Cells were located on the first floor (two detainees in each) and second floor (four to six detainees in each). A punishment cell (“karcer”) was located on the first floor. An officer checks the cells every two minutes.

25. Two detainees, who had been detained in the KNB facilities for nine days reported that no violence had been used during their arrest. They were able to call a private lawyer. They were not allowed to receive visits as the investigator did not authorize visits, but they were allowed to receive parcels. They further reported that the food provided was good. A medical check-up had been done upon their arrival.

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### **SIZO (LA 155/1), Almaty**

26. The Special Rapporteur was expected and received by Mr. Embergen Sakenovitch Kudaibergenov, Director of the SIZO, who had been in this position for only 3 months, his deputies responsible for the administration, operations, and educational matters, and other staff members. The Head of the Penitentiary Committee of Almaty, Mr. Sadiev, joined at a later point during the visit.

27. The SIZO was built under the Tsar, about 120 years earlier, and was designed to be used as a prison for long term convicts. It comprised five wings (“corpus”): wings 1 to 3 accommodated pretrial detainees (depending on the seriousness of the crime and whether it was a first-time offense), wing 4 convicts, and wing 5 female detainees. The approximately 150 to 200 new arrivals per day were detained in corpus A1 before being transferred to other wings.

28. A total of 1436 detainees were held in the SIZO. 1081 of them were under investigation, 293 were convicted and to be transferred to colonies. One hundred and 33 detainees were under medical treatment. One hundred and thirty were women. There were no minors. The total number of detainees also included 85 convicts who work as maintenance staff or in the kitchen and were held under the most lenient regime (i.e. 2 days of visits per month). The staff comprised 420 members, including 22 medical staff, among them internists,

dermatologist and psychiatrists

29. The Special Rapporteur was informed that, upon arrival every detainee had to undergo a medical examination, which included blood testing for tuberculosis, HIV and other diseases. Treatment for HIV/AIDS reportedly started immediately after a positive diagnosis.

30. The applicable prison rules stipulate that if the doctor discovers bruises or if there was a complaint by a detainee, a forensic expert has to be called and a report has to be sent to the prosecutor. However, according to the SIZO's authorities this had never happened in practice. Detainees reported that there was no forensic medical examination of detainees returning to the SIZO after having been transferred to the police for investigation. In relation to complaints, the authorities reported having received 217 complaints during the first four months of 2009. Detainees can raise complaints directly with the SIZO management or by using one of the numerous "complaints letter boxes" installed on the premises. These complaints referred largely to the length of the sentence or the qualification of the crime, but not to any forms of ill-treatment. There had not been a single complaint against a member of the SIZO staff. The number of drug users among detainees was fairly high. They were isolated upon arrival and provided with some medical treatment, but no substitution therapy as such.

31. As a disciplinary measure, detainees could be held in punishment cells ("karcer"). The authorities informed the Special Rapporteur that such detention could not exceed 15 days and that the cells were about to be renovated. There was no register available on the use of these cells. Next to the karcer, nine cells (cells No. 7 to 15) called "bunker" had been used for solitary confinement of death row detainees earlier. The officers informed the Special Rapporteur that these cells were not in use any more. However, when inspecting the cell, he found some bread and a cup of water suggesting that a person may have been held there in the not so distant past. The cells were without any (natural or artificial) light and were filthy, certainly not in accordance with any international standard.

32. A considerable number of detainees reported that they or their family members were exposed to threats in order to confess to the crimes they were charged with. Corruption among law enforcement agents was also described as a key problem. Many detainees in the SIZO indicated that they suffered most from not being able to see their children more often. Some complained that access to medicine was restricted.

33. **D.B.** was arrested in November 2008 at his home. During the arrest one officer struck him with his elbow. He was handcuffed and transferred to the police station where he was interviewed by an investigator in the evening of the same day. During the interrogations, in which three officers participated, he was threatened and beaten on his kidneys. A state appointed lawyer was present, who, however, "didn't do anything". D.B. then partly confessed to the charges. In total he spent one day and one night at the police station before being transferred to IVS Almaty, where he spent three days. Once transferred to the SIZO, he was kept one day in an area which he called "quarantine".

## **Women's section**

34. Only female staff members were working in the women's section. The cells were in very good condition. Female detainees were allowed a 30 minute walk every day.

35. **Mrs. Kurkebaeva Larissa**, aged 49, was brought to the SIZO after her conviction and sentencing to 5 years imprisonment on 4 May 2009 and was awaiting transfer to a prison. One month earlier she had been arrested by the police and brought to an IVS, where she was kept in custody for one night and then released on bail. She reported that she had no complaints regarding the treatment in the IVS and SIZO. She was represented by a state lawyer.

36. **Female detainee** was arrested on 19 December 2008 and taken to the Tursipskiy District Police Station. She was in a state of shock after having killed her partner and had a poor recollection of the arrest. In the presence of the State lawyer assigned to her, she confessed to the killing. She further reported that her partner had beaten her and her son violently for several months. When he attacked her son with a hammer, she killed him. She had never complained to the police about the violence.

37. **Mrs. Butabaeva Marniya**, aged 50, was arrested by three policemen on 11 September 2008 and taken to the IVS immediately. She had no complaints about the treatment in the IVS, but described the facilities as very dirty and old. The food was of poor quality. She was held in a basement cell without windows. Mrs Butabaeva had no complaints regarding the detention in the SIZO. She found the medical services were very good. She had been transferred to the room for pregnant women due to a medical condition.

38. **Mrs. Dshomasheva Zhanara**, aged 31, was held in a special cell for pregnant and sick women, where she received medical treatment for a kidney problem. She had already been convicted and sentenced to eight years of imprisonment for economic fraud, and had spent five months in Colony No 155/4. She was currently in the SIZO because she had appealed the sentence. After arrest in January 2008, she spent one day in the IVS in Almaty. She reported that the treatment in all three institutions (IVS, SIZO and prison) was humane and that the conditions of detention were good. In the SIZO she was allowed to receive visits of two hours. In prison she had the right to short and long term visits by close relatives. Phone calls with friends were permitted. Being a mother of a two year old daughter and a lawyer, she argued that according to Article 72 of the CCP the execution of a sentence might be postponed in case the convicted person has a small child. She raised this issue in her own statement in court; however it was not taken into account. Mrs. Dshomasheva planned to make a request regarding the postponement of the implementation of the sentence. In principle she would be allowed to have her baby in prison until the age of three. She saw the facilities for mothers and children in Colony No 155/4 and found them very good, however she decided not to have her child with her in prison.

39. **Female detainee** was invited in autumn 2008 to a district police station, since she had submitted a complaint because somebody tried to rob her. Once at the police office, however, she was accused of theft by the officers. She was insulted, and the officers threatened to use

force against her and her family unless she would confess. Despite not doing so, she was convicted and is currently held at the SIZO as a worker. Her private lawyer recommended that she forget about the threats; since no physical violence had been involved abuse would not be of any judicial relevance.

40. **Female detainee**, ethnically non-Kazakh, was arrested in spring 2009 by the police in Almaty. She carried some money which had been returned to her by a person to whom she had lent this sum. That person called the police who handcuffed her, took all the money and threatened to take action against her son if she told anybody that the money was taken. She was subsequently brought to a district police station where she had to stand for 24 hours against the wall, handcuffed by one hand. No water or food was provided, but she was allowed to go to the toilet. The officers guarding her were drinking vodka, insulted her because of her ethnicity, and swore and grabbed her in the face. Furthermore, she was threatened that they would do “something” to her son. During the interrogation which took place in an office on the fifth floor between 8 p.m. and 1 a.m. of the next day, they offered to release her if she would pay 20 000 tenge. She was accused of having stolen money and they continued to threaten to catch her son and plant drugs on her. Under this pressure she finally signed the paper she was told to sign. No lawyer was present during the interrogation; only after the interrogation was she informed about her right to have a lawyer in court. On the second day in the IVS, she was taken to an office by one of the investigators. He told her that the man to whom she had lent money and who called the police paid the police 15 000 tenge to arrest her. If she would paid 20 000 tenge, the officers would release her. Furthermore, the officer threatened to call her son’s university of abroad and ask them to expel him. Intimidated, she promised to pay 25 000 tenge, without actually possessing the money. When she was brought before the court on the fourth day, the judge immediately decided to prolong her pretrial detention. There was no possibility to speak to her appointed lawyer before the trial session. As for the conditions of detention in the SIZO in Almaty, no complaints were reported. However, at times the police would put spies (persons who pretend that they were accused) into the cells. She was very much afraid of making a complaint as she feared that something might happen to her son. She furthermore reported that the prosecutor had never asked her if she had been ill-treated or threatened. She was returned for investigation to the IVS several times, but in fact no investigation was done. She was just put in a cell for six hours and then returned to the SIZO.

41. **Male detainee**, had been detained in the SIZO in Almaty for six weeks. Upon arrest in the Zhetysuyskiy District he was taken to the district police station, where he was held in custody for two days. The interrogation was first carried out in an office, but as he did not “cooperate”, a gas mask was put over his head, and he was nearly suffocated and fainted as the air in-flow was stopped. Furthermore, they put a biro between his fore- and middle finger and pressed his fingers together, which caused strong pain. Targeting his disabled legs, and his inability to splay them more than 40 cm, they forced them further apart, which also resulted in

serious pain and difficulties in walking. He confessed under this torture and was accused of having committed an organized crime. Two days later he was transferred to the IVS in Almaty and from there to the SIZO. Upon arrival in the SIZO, he underwent a medical examination, during which he was asked why he had these medical problems, but he did not dare to tell the real reason or to make a complaint. He had no lawyer and was only informed in the SIZO that he had the right to have a lawyer. From time to time he was transferred back to the district police station for investigation, where he found himself in the hands of the same police officers who had tortured him. He later found out that he was charged on the basis of three eyewitnesses who reported having observed him — in spite of his disability — running away after the crime was committed.

42. **Mr. Aleksey Belousov**, aged 21, was arrested by two policemen following a fight and taken to Tursipkiy District Police, where he was held for 24 hours and where conditions were poor. He had no complaints about the IVS or the SIZO.

### **Reception and Distribution Centre under the Ministry of Interior, Almaty**

43. The Special Rapporteur was received by Myrzakhmetov Esengali Kalievich. 122 persons, including 35 women, were detained on the day of the visit. Men and women were separated. The facility was tasked with holding persons without identity papers for up to 30 days.

44. One men's cell held 11 persons; most of the space was taken by two large metal bunk beds. The ventilation was insufficient; little light came through one dirty and barred window. The detainees were basically held in their cells for 24 hours a day except for a 10 to 15 minute walk in the yard. Despite having been there for more than a week, most detainees were still in the clothes they were wearing when arrested. A few got new clothes from their family members, the majority of them however were without any family or friends living close by. Showers were allowed once a week.

45. Detainees complained about the lack of any possibility for meaningful activities during the day. Neither books nor electricity for radios or TV sets were available.

46. Detainees further stated that they found themselves trapped in a vicious circle. Those who would be eligible to receive papers needed money for the related administrative fees. When working in order to earn money, they were arrested due to the lack of identity papers. Once released after 30 days, they were in exactly the same position as before. Re-arrest occurred very frequently. The facility's officials informed the Special Rapporteur that a person could be arrested only twice for the lack of papers. However, given the lack of a central detention register, further detentions in other collection centres were de facto possible.

47. One women's cell held six persons (in reality eight women as two were working in the kitchen), four of them Kazakh, one Uzbek and one Kyrgyz. One woman was pregnant. All were picked up in the street by the police because they did not have their documents with them. They all said that they would be released after 30 days. Some of them had been in

detention for more than three weeks. The conditions of detention were extremely poor as the women barely had space to lie down in their cell. There was no natural light or fresh air in the cell. The women were allowed to go outside for 5 to 10 minutes per day. They were allowed to take a shower once a week. The food was reported to be of poor quality. In order to receive visits the guards had to be bribed. The medical treatment was insufficient since the doctor was reportedly incompetent. The prosecutor checked the facilities from time to time, but did not take any action.

48. **Female detainee** had been arrested in April 2009 and taken to a district police station, where she was beaten with a belt. The next day, she was transferred to another district police station, where she was subjected to further beatings with boxing gloves and electro-shocks (through three layers of clothes) by four officers in order to obtain a confession, but she refused. Her request for a doctor was denied. Her complaint to the prosecutor was refuted as self-inflicted injuries (“you were beating yourself”). The forensic doctor inspecting the facility with the UN Special Rapporteur confirmed that the traces on her body were compatible with the allegations of beatings with a belt, as the scars were still clearly visible.

#### **Prison Colony for minors (LA 155/6), Almaty**

49. The Special Rapporteur was received by the Prison Director, Mr. Nuredilov Malekhan Zhumanuly and Ms. Yakupova Irina, Head of the educational department of the Regional Penitentiary Committee. The Head of the Penitentiary Committee of Almaty, Mr. Sadiev, joined during the visit. It was clear that the staff had expected the Special Rapporteur and had prepared the colony.

50. On the day of the visit 106 boys aged between 14 and 18 were detained in the institution. Detainees with a good behavioural record could request to stay in the facility until the age of 20. The dormitories were in a good condition. The facility was spacious, and comprised a yard for sports and other activities. The staff comprised 150 members, among them 109 certified officers. There were six doctors, three of them employed on a full time basis. New arrivals were held for three (convicts) or six (“recidivists”) months in a “general regime” before being transferred to a more relaxed regime. Detainees in the general regime were entitled to two short visits, two long visits, and eight parcels a year; those held in the relaxed regime could receive twelve short visits, four long visits, and twelve parcels a year. Phone calls were permitted on a daily basis. The medical unit was in acceptable condition, with well-organized medical files, a supply of drugs for usual clinical situations and some basic medical equipment. Consultation of medical records showed that medical check-ups were done regularly.

51. According to the authorities, detainees who had attempted to commit suicide or were suffering from “exceptional psychological circumstances” were locked up in quarantine. Furthermore, detainees could be held there as a punishment for a maximum period of seven days. Upon the arrival of the Special Rapporteur, the cells were under renovation. In order to punish detainees, they could also be put under a “special condition” (similar to a regime),

which entailed separation from the general prison population for up to six months and confinement to a specific dormitory. It also meant deprivation of any outside recreation, sport activities etc.

52. Upon the arrival of the Special Rapporteur, seven detainees were held under this “special” condition. Attendance at four-hour psychological sessions three times per week was compulsory; however the detainees were not allowed to go to school.

53. In general, the detainees all reported that the conditions in the colony were satisfactory. They all attended either secondary school or followed other vocational training courses. Bed rest was from 10 p.m. to 7 a.m., but there were no doors to close the dormitories. Disciplinary measures comprised warnings and reprimands, which had a negative impact on the possibility of early release. Placement in punishment cells was another disciplinary measure. Some of the boys had spent up to seven days in the cell. The biggest problem in the cell was reportedly the cold during wintertime.

54. The Special Rapporteur received credible allegations of regular severe beatings of detainees held in the punishment cells. These beatings were sometimes carried out by up to six officers with their fists, police truncheons and cables. In some instances detainees had been stripped naked during the beating. Educator Mr. K. was named as one of the main perpetrators of the beatings.

55. Almost all of the boys had been held in an IVS or ROVD after arrest, most of them in cells with male adult detainees. Practically all of them reported that they had been beaten by police officers with police truncheons in order to extract confessions. None of them had been asked by the judge in court if they had been subjected to ill-treatment by the police. Some of them were attached with handcuffs to a radiator for hours or longer in the police offices. All of them were informed about their right to have a lawyer only after they had confessed.

### **Almalinsky ROVD, Almaty**

56. The Special Rapporteur was received by the chief of the police station, Murat Ibraev and Officer Erlan Mashazhanov. The Special Rapporteur had received many allegations that torture took place in the offices of this ROVD. On the second floor, the Special Rapporteur coincidentally encountered a police officer who was just leaving his office while taking away another person. When approached, the officer explained to the Special Rapporteur that the person was “just a good friend”. In a private interview with the person it was discovered that the person was a suspect and had actually been detained at the Reception and Distribution Centre under the Ministry of Interior which had been visited by the Special Rapporteur earlier. He reported that he had been beaten up on 27 April in an office on the third floor of the same building. The Special Rapporteur was furthermore denied access to one office by Officer Mr. Asyl Chokbarov. Eventually, the Special Rapporteur found several persons, including two men locked up in the room. Although none of them complained about any ill-treatment, at least one of them had spent the whole night in the police office and their names were not recorded.

**Police ROVD, Arshaly**

57. The Special Rapporteur was received by Mr. E.A. Mukanov, acting head of the ROVD, Mr. Tishitinbaev Suyundik Amangeldinovitch, head of the IVS, and other staff members. Upon arrival, two persons were held at the IVS, three had earlier been transferred to the court to participate in their proceedings. The facility comprised a police station and an IVS. Persons in police custody were locked up in a small cell called “stakan” (meaning literally “glass”, referring to the narrow and high shape of a glass) which was a barred room of about 1 square metre located in the area of the police’s entrance counter. While the size of the cell was only suitable for very short periods of custody, the Special Rapporteur received credible information that suspects had been held there for days.

58. During the night, persons in police custody — despite the obligation to transfer them to the IVS — had to sleep in a cell colloquially called “monkey cage”. The acting head of the ROVD deliberately concealed the existence of this cell. Only by following detailed descriptions by persons earlier held there was the Special Rapporteur able to find the cell, which was located in the entrance area of the police station under a staircase. The cell was in a run-down condition, filthy, humid and without light. There was no bed; detainees had to sleep on the concrete floor, which was only covered with thin linoleum. Although the Special Rapporteur was told that the cell had not been used for a long time, there were numerous indications that a person had been held there not long before the visit (blanket on the floor, water bottle, recent newspaper...).

59. The IVS comprised six cells each providing space for two persons. The cells were clean and the sanitary units in the rooms were in a good condition. Detainees reported that they could leave the cell twice a day for walks of approximately 30 minutes in the facility’s yard.

60. **K.K.**, born in 1978, was arrested in early March 2009 by the police at around 8 p.m. and transferred to the ROVD. Upon arrival he was put in the “stakan”. He was kept in this cell until 1 a.m. and then transferred to another cell called the “monkey cage”. At 6 a.m. he was taken out of the “cage” and put back into the “stakan”. He was provided with a chair and also offered hot water for tea. After spending another night in the “monkey cage” and a day in the “stakan”, he was eventually transferred to the IVS two days after his arrest. He reported that he was not subjected to any violence during his time at the ROVD/IVS. After 18 days in the IVS, he was transferred to the SIZO in Astana, where he underwent several medical examinations. During his time in the SIZO he did not hear or see any violence being inflicted among or on detainees. About two weeks later, he was returned from the SIZO to the IVS in Arshaly in order to participate in the proceedings of his case at the local court. Although food was generally provided by the IVS, he relied on the food and other items brought by his family and friends. At the current stage of his trial, however, he was not allowed to meet his relatives or friends, but officers were forwarding their deliveries to him.



61. **Male detainee**, aged 44, was arrested some days earlier by two police officers. He was directly brought to the ROVD, where he was interrogated for 30 minutes. He was not represented by a lawyer but was informed of his right to have a lawyer. He did not confess to any offence. He had no complaint regarding the treatment by the police. His family was informed of his arrest, but they were not allowed to visit him as his detention had not yet been sanctioned by the court.

62. **Male detainee** was arrested some days prior to the visit of the Special Rapporteur by police officers. He was questioned for 30 minutes in an office on the second floor. A state lawyer was present. His family was informed about his arrest and detention. After the interrogation he was transferred to the IVS, where he was held in custody for three days. His detention had already been sanctioned by a judge and the detainee expected to be transferred to the S I Z O soon.

63. **Mr. Yusiliev Yuri Petrovich**, aged 32, was arrested on 2 May 2009 at 11 a.m. in Arshaly by three police officers. He was handcuffed and taken by car to the ROVD, where he was locked in the “stakan” for 24 hours. The small size of the cell, did not allow him to lie down and sleep. He was allowed to go to the toilet, but not provided with any food. Within the 24 hours he was once taken out of the cell and brought to an office on the second floor where he was interrogated. On 3 May in the afternoon he was again taken out of the cell and taken to another office on the second floor, where he was interrogated again. A state lawyer was only called after he had confessed and all documents had been produced. Mr. Yusiliev reported that no violence was used during interrogation. After the interrogation he was transferred to the IVS, where he had been detained during the visit of the Special Rapporteur. In the register of the “stakan” his custody was documented from 6:35 p.m. to 9:00 p.m. on 2 May 2009 only. Custody in the IVS started on 3 May 2009 at 11 p.m. according to the register. His whereabouts is unaccounted for during the time between 9:00 p.m. and 11:00 p.m.

64. **Male detainee** arrested in March 2009 without any violence and taken to an office in the ROVD building. After three days he was sent to the IVS. Three days later, he was presented to the court. Following about 10 days in the IVS, he was transferred to the SIZO in Astana. The conditions there were fairly good, also in terms of access to medical services. He had signed the confession because “they will put me behind bars anyway”.

#### **Special regime colony Arshaly (EC-166/5)**

65. The Special Rapporteur was received by the Director, Mr. Mukanov and Mr. Omelnickiy Yuriy, Deputy Head of the educational department of the colony. The Head of the Astana Penitentiary Committee, Bakhytzhhan Sadybekov, arrived later. The colony was built in 1957 and designed as a “special regime” facility with three different “conditions” (relaxed/regular/strict). Only detainees with long term sentences and recidivists were held here (but no life sentences); the longest sentence to be served was 29 years. The colony had a capacity for 1010 detainees, the actual population was 1097. On the day of the Special

Rapporteur's visit, 635 detainees were under relaxed, 278 under regular, and 184 under strict condition. The number of staff was 202, not including the police guards securing the premises outside. The Director of the colony informed the Special Rapporteur that he had not received a single complaint regarding torture or other forms of ill-treatment since he had assumed office in 2005.

66. One wing comprised cells used as quarantine for new arrivals (20 cells) as well as punishment cells (18 cells). New arrivals had to stay in those cells for up to 15 days before being transferred to the strict condition regime. Detainees who had to be separated for security reasons could be held for up to 30 days. Detainees who were punished for violations of the prison rules could be sentenced to between 2 and 60 days of solitary confinement. In cases of repeated violations the Criminal Code provides for additional imprisonment terms (CC articles 360 and 361<sup>17</sup>). In both cases, detainees are only allowed to leave the cells for the morning toilet and for a 1,5 hour walk per day. The rest of the time they have to spend in the cell. No contact with other detainees is permitted.

67. The colony had clearly been prepared for the Special Rapporteur's visit, e.g. a prison band gave a concert, and most buildings had been cleaned and freshly painted. Following a detailed check of the registers, the Special Rapporteur established that, whereas detainees usually spend one week in the quarantine, on that morning even the latest arrivals who had come in on 7 May, had been released. The prison administration admitted to this during the debriefing. The Special Rapporteur concluded that the Prison Administration had decided to remove all prisoners from solitary confinement to avoid interviews by the Special Rapporteur.

68. The Special Rapporteur received many serious and consistent allegations relating to ill-treatment in **EC 166/18, Stepnogorsk prison hospital** (descriptions see below). The officers referred to repeatedly as being responsible were Mr. Sh., Mr. M., Mr. A. and Mr. M. Many detainees indicated that they were then forced to sign statements indicating that they had no complaints against the staff of this penitentiary institution. The Special Rapporteur, during the debriefing with authorities, recommended:

- That detainees who wish not to be transferred to this facility should not be forced and should receive medical treatment elsewhere
- That these allegations should be subject of an independent investigation, and
- That the alleged perpetrators should be brought to justice

69. **Strepetilov Vladislav**, aged 38, spent the 10 days from 30 April to 10 May alone in a punishment cell because of the prohibited possession of a mobile phone. Once a day, at 9 a.m., he could go alone for a walk in the yard for 60 to 90 minutes. The confinement was completely solitary. No reading materials etc. were provided. The food was described as satisfactory. Mr. Mr. Strepetilov was normally held on the first floor of wing 5 (ordinary regime), comprising eight rooms for 20 prisoners each. The wing was overcrowded, but the conditions were not worse than in other colonies. The rooms were locked from 9 p.m. to 7

a.m. Detainees could only walk around in the yard of wing 5, and were in principle not allowed to mix with detainees of other wings (sometimes they would meet during sports). He was allowed to receive two long-term visits by close relatives for up to three days per year. Usually only his wife visited him; the visiting facilities were too small for a third person (e.g. his son). During short-term visits detainees would be separated by a glass wall from their visitors. The medical unit was fairly badly equipped. Medical staff were reported to only provide pills, and the dentist did little other than pulling out teeth. Mr. Strepetilov furthermore reported that since he had immediately confessed to having committed the theft he was accused of, he had not been beaten by the police. He was eventually sentenced to five years of imprisonment. However, on earlier occasions he had experienced beatings by the police. During the 15 months in the colony, he had never been beaten.

70. From 26 February to 12 March 2009, Mr. Strepetilov was at the Prison Hospital in Stepnogorsk, EC 166/18, to get treatment for his heart problems. He was transferred with 45 other prisoners. Upon arrival, they were “treated like animals” by other prisoners who were in charge of examining the new arrivals. Mr. Strepetilov was brought to the punishment cells, stripped of his clothes and thrown against a wall. Prisoners put their hands in his mouth and anus, forced him to wash the toilet, and humiliated him with homosexual attacks while being fixed to a table. He was threatened with rape if he would not sign an application form to become a member of the “Association of friends of the penitentiary”. The newly arrived detainees spent all night in the punishment cells before being taken to the hospital on the next day. Although this humiliating treatment was carried out by prisoners of this “association”, it was clearly authorized and condoned by the management of the colony. The medical staff provided medical treatment without asking many questions.

71. **Zadorozhny Andrey Victorovitch**, aged 27, was sentenced to 5 years of imprisonment and had lived in wing 8 (relaxed condition) since 27 March 2008. Between 7 a.m. and 9.30 p.m. detainees were allowed to move freely within the wing. He was allowed to have two long-term visits from his wife for 3 days each and receive two parcels per year. In addition, two short-term visits of 2 hours were allowed. Satisfactory food was provided three times a day. Mr. Zadorozhny reported that in general, the penitentiary system was in need of humanization. In particular, the special regime for recidivists should be reformed to allow for e a r l i e r r e l e a s e .

72. **Male detainee**, sentenced to death in 1996 (and again in 1997). During the investigation he had been beaten by the police in Aktyubinsk IVS. After appealing for clemency, the Supreme Court commuted his death sentence to 25 years imprisonment. From 1996 to 1998 he served in Aktyubinsk SIZO, where he spent most of the time with other detainees in a small cell and could only go out for a walk of one hour per day. From Aktyubinsk SIZO he was transferred to Arshaly colony, where the conditions were much better. He had experienced no beatings but had been put in the punishment cell.

73. **Mr. Ananin Vitaliy** arrived on 7 May at the colony. As a new arrival he was put into

quarantine, where he was held until only a few hours before the Special Rapporteur arrived. He was then transferred to a normal wing. In quarantine he had been in a cell on his own. He was allowed to leave the cell twice a day to go to the toilet, but he was not allowed to go for a walk in the small yard. Food was served three times per day. He was serving a 12 year sentence in relation to a drug offense. He reported that, when arrested by the police he was sober; however he had to be hospitalized for an overdose eight hours later, suggesting that the police actually administered the drugs to him.

74. **Mr. Abakarov A.A.**, was held in quarantine for one week and released only hours before the Special Rapporteur arrived. He was put in quarantine after transfer from Zhytykara colony in Kostanay Region (UK 161/3) via Astana where he had been held in the transit area of the SIZO. The release from quarantine came as a surprise. Mr. Abakarov described quarantine in the colony as “inhuman” and very different from other quarantines he had experienced. While in other quarantines, detainees would undergo medical tests, see a psychologist, or could watch TV, he was locked up permanently in the cell. Regarding his time (2,5 years) in Kostanay, Mr. Abakarov reported constant beatings. The medical unit did not pay any attention or react to the injuries of prisoners since it was “the rule”. The beatings were inflicted mainly by police guards using truncheons. However, some months prior to his transfer, the beatings had stopped. While in Kostanay, he had lost more than 20 kg, and only started to regain weight following his transfer. He further described colony UK 161/3 in Zhytykara as a “punishment camp for those who complained in other camps”. The colony in Arshaly had the reputation of being “ok”. Mr. Abakarov further reported ongoing abuses in the prison hospital of Stepnogorsk, where he once received treatment which was conducted in a very brutal manner. Patients who complained were beaten severely. As a result, some attempted suicide out of desperation. Many detainees who needed medical treatment would refuse to go the hospital of Stepnogorsk.

75. **Mr. Osanov A.K.**, block 5, had undergone an operation in the hospital in Stepnogorsk in 1997/98. During his time there, he was very heavily beaten. Now, he was scheduled to be transferred to Stepnogorsk in a few weeks time, in order to get medical treatment. Although he described his current state of health as unbearable, he urged the Special Rapporteur on torture to intervene in order to avoid his transfer to Stepnogorsk. Mr. Osanov was very afraid of being held in the hospital. The Special Rapporteur raised the case of Mr. Osanov during the debriefing with the colony’s officials who promised to look into the matter.

76. **Male detainee** held under the relaxed regime, where detainees were free to leave the dormitory for most of the time, except from 6 p.m. to 7 p.m. and 10 p.m. to 6 a.m. He complained about the quality of the food. He preferred to eat only once per day instead of having the three meals served by the authorities.

77. **Mr. Kleshev Pavel Aleksandrovich**, had been detained since 25 January 2008 in the colony of Arshaly. He was held in the relaxed conditions wing and worked as a cleaner in the wing with the punishment cells. He reported that the general treatment in the colony was good

and that the relationships between prisoners were relatively peaceful as there was no gang system. The only negative issue for him was that he was the remote location which was far from his relatives who were unable to visit him.

78. **Male detainee** in medical unit had been brought to the prison hospital in Stepnogorsk for treatment. Upon arrival he was undressed and handcuffed. A convict — with the approval of the prison administration — approached him and showed him his penis and urged him to sign a document by which a prisoner declares that he will stick to the rules. He was threatened with rape if he would not sign the paper.

79. **Shevtsov Michail Arkadievitich**, aged 58, medical unit, said that he was paralyzed and in the final stage of prostate cancer. His paralysis resulted from a car accident in 1982. He reported that, when brought to the prison hospital in Stepnogorsk in 2004, the officers poured water over him and beat him. When he was transferred to Arshaly Colony during winter, the officers took his clothes off to wash him and left him freezing in the cold and insulted him. The Deputy Chief of the medical unit beat him up with a glove and said “you are only good for the grave”. He further complained that he did not receive adequate treatment, although the overall conditions in the medical unit were good. He wished to be released and to spend the last months of his life with his sister and his father. The forensic doctor accompanying the Special Rapporteur confirmed that the patient was in a bad state. The Special Rapporteur advocates for an early release of Mr. Arkadievitich based on medical reasons.

80. **Sviridenko Victor Stanislavovich**, aged 50, a wheelchair bound invalid. On 8 January 2009, he was transported from penitentiary facility EC 166/5 to penitentiary facility EC 166/18 in Stepnogorsk for treatment. Upon arrival, during a body search conducted for the purpose of enforcing obedience, the staff of the facility dragged him down from the wheelchair and, without waiting for him to get undressed, ripped his clothes off, threw him over a bench and, in spite of his begging and objections, inserted a rubber hose into his anus and pumped water into it until Mr. Sviridenko lost consciousness because of the resulting pain. Mr. Sviridenko was then brought to consciousness with ammoniac, doused with water, forced to get dressed and dragged along the corridor to his cell where he was locked in. After some time, Mr. Sviridenko regained consciousness in a disciplinary cell and realized that he would be forced to stay overnight without mattresses and blankets and knocked on the door asking for a mattress, a blanket and a doctor. In answer to his request, Mr. Sviridenko was insulted with obscene curses. Subsequently, about seven members of the correctional facility’s staff rushed into his cell and started beating him and jumped on his body and head so that he again lost consciousness. As a consequence of the ill-treatment, blood poured out of his ears. He regained consciousness when paramedics brought him undressed on a stretcher to the medical unit of the penitentiary facility. When he demanded to see the public prosecutor, the deputy of the facility for administrative- operational work “Mr. M.” started to threaten him and said that he would die. In the evenings between 8 and 22 January 2009, Mr. Sviridenko was repeatedly called to the office of the assistant director, where officers tried to force him

to sign a statement that he had no complaints. After his transfer back to Arshaly prison, he sent a complaint to his wife and asked her to forward it to various institutions. At the time of the interview, no institution had reacted to the complaint. The findings of the forensic expert of the Special Rapporteur corroborated the allegations of ill-treatment.

81. **Male detainee** was taken to facility EC 166/18 in Stepnogorsk in early 2009 for medical treatment. In the arrivals' section, he was stripped naked and a rubber hose was introduced into his anus. He was also beaten all over his body by officers and other prisoners working at the colony with hoses and police truncheons. As a result, he suffered from internal bleeding and sustained additional injuries. The treating doctor operated on him without otherwise reacting to the traces resulting from the ill-treatment. The forensic doctor accompanying the Special Rapporteur found that the scars resulting from the operation, and also signs on his back and scars in the anal sphincter were fully compatible with the allegations. Another reported form of humiliation applied at the facility was to take detainees outside during winter and oblige them to learn the national anthem by heart. Apart from the ill-treatment, the conditions inside the prison hospital were fine. Before his departure from the prison hospital, he was forced to sign a statement saying that he had no complaints against any of the staff members.

82. **Mr. Moldakashov Kudabai**, born in 1963, had been at Arshaly colony since 16 January 2006. He reported that he was beaten with different objects by six policemen for several hours five days in a row in Ushteme in August 2005. The deputy prosecutor was present during the ill-treatment. During the beatings a bag was also put over his head. Out of desperation and in order to protest against his treatment, Mr. Moldakashov cut himself. As a reaction, the beatings were intensified leading to leg injuries and walking impairment. The forensic expert of the Special Rapporteur examined Mr. Moldakashov and concluded that he was fully able to walk and only simulated his disability. The possibility of a psychiatric disorder should be evaluated.

83. Death that had occurred on 5 April 2008, two officers reportedly beat a prisoner who had been detained in a punishment cell so badly that he had to be transferred to the hospital. The person died during the transfer. According to official reports he had fallen and injured his head. The forensic examination concluded heart insufficiency as cause of death. Nevertheless, an investigation was conducted and one or two officers were dismissed or transferred (no precise information was available).

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<sup>17</sup> On intentional refusal to follow orders of the administration, respectively on disorganizing the order of the institution.

84. The Special Rapporteur was received by Major Ospanov. There were 12 cells with 27 detainees, including four women (one in solitary confinement). The detainees were allowed to leave the cell for 20 minutes per day. During the walk, they were not allowed to intermingle with other detainees. No complaints regarding the staff of the UVD were voiced, however, detainees raised the lack of books, radio or television sets.

85. Four detainees were held in cell number 6. The cell comprised three bunk beds and a sanitary unit. The window was very dirty and very little natural light could enter the cell. All detainees were in custody for the first time. They had been detained for three to eleven days.

86. **Mr. Kudriashov Evgeniy Alekseevich**, born in 1979, was arrested in the evening of 7 May 2009 by three plainclothes officers in the street, on suspicion of having bought drugs. He was subsequently taken to the police station and interrogated. Mr. Kudriashov confessed and had to sign a related document. His case file, which related to an earlier arrest and similar charges, was subsequently reopened. After the interrogation, at approximately 1.30 a.m., he was transferred to the IVS. Mr. Kudriashov reported that the arrest as well as the interrogation was conducted without any violence and that no handcuffs were used. The following day (8 May) Mr. Kudriashov was transferred to the court where the same judge who had already seen him after his earlier arrest sanctioned his detention. During the hearing, which lasted 5 minutes, a state appointed lawyer was present, who, however, showed no interest in the case. He met the lawyer for the first time immediately before the start of the court session. Following his arrest he had not been able to make a phone call. His wife, family, and employer were most probably not informed about his situation and whereabouts. As far as the detention in the IVS is concerned, Mr. Kudriashov did not voice any major complaints. The food is acceptable; detainees can ask for hot water if they want to make tea. Each day the cells are opened for 20 to 30 minutes for a walk in the yard. The relations among the detainees are friendly. Mr. Kudriashov most pressing problem was the lack of a drug substitute. He reported that he had been injecting drugs and had developed a strong addiction over the last 6 months. Without drugs, he suffers from insomnia, and has the feeling that his “inside turns outside”. He only hoped to “stay human”. His transfer to the SIZO (C-16 in Karaganda) was scheduled for the next day (12 May).

87. **Mrs. Gustanova Tatiana**, aged 45, accused of murdering her boyfriend’s brother. Ms Gustanova alerted the police after the killing. The police came to the apartment of her brother, arrested her and brought her to the UVD for interrogation. The interrogation took place in the presence of a lawyer in an office on the second floor of the UVD. She explained to the police that she killed her boyfriend’s brother with a knife in reaction to his constant abuse. For the last five years she was regularly beaten by him when he was drunk. She was surprised by the polite reaction of the police as she had heard before that murderers would be beaten up by the police. The police sent her for examination to a forensic expert to check if she had any injuries or marks from the domestic violence she experienced. She further explained that her boyfriend knew about the beatings by his brother, but was unable to stop the abuse. For the

last ten months she went frequently to church, also with the boyfriend's brother, and prayed for him. However, the situation did not improve. She had never reported the beatings to the police as she felt pity with her aggressor and was also staying illegally in his apartment. Ms. Gustanova did not regret the murder as she just could not deal with the beatings anymore. Before she assassinated him, he took a chair and hit her so that her shoulder was dislocated. She had been detained for a prolonged period in the IVS because she had no documents.

88. **Female detainee**, aged 25, has been detained for two weeks in the IVS alone in a cell (since she was a first offender and the other female detainees were repeated offenders). She was arrested on 30 March 2009 by the KNB in the streets of Temirtau from where she was directly brought to the KNB SIZO in Karaganda. She said that she was positively surprised by the good treatment she received by the KNB. She was detained alone in a cell, which was not a big problem for her as her parents brought her books and other equipment. After one month, her case was transferred to the financial police and she was transferred to the ordinary SIZO in Karaganda. One week later she was transferred to the IVS in Temirtau for investigation because the offence of which she was accused, had taken place in Temirtau. She made no allegations regarding ill-treatment.

89. Male detainee, had been arrested about ten days earlier. He was subsequently brought to the police department in Temirtau where he was interrogated in the presence of a lawyer. No pressure was put on him. He signed the arrest document and a confession. At 6 p.m. he was transferred from the police department to the IVS. The next day he was brought before a judge who sanctioned the arrest.

90. Male detainee, had been in the cell for three days and reported that he had spent 1,5 days in an office at the Eastern Police Station of Temirtau. At the station there were also two so-called "zero cells". These cells were reportedly empty rooms used to detain persons. Detainees have to sleep on the concrete floor. He had not confessed, since he was cheated into a crime by only doing his work in good faith. He was supposed to pick up metal from a local factory, and claimed that he did not know that this metal was actually stolen.

### **SIZO KNB Karaganda**

91. The Special Rapporteur was received by the Chief of the SIZO, Mr. Uchitski Vasily. The cells in the SIZO were fairly dark and little daylight could enter. The electric light was on for 24 hours per day. An officer checked the cells every two minutes through door viewer. The detainees were allowed one hour's walk in the yard every day.

92. **Male detainee**, arrested by officers of the KNB and transferred to the operational offices of the KNB located behind the detention facility. Upon arrival, he was first held in a cell called the "monkey cage", afterwards he was taken to an office. There, he was handcuffed, and ten officers beat and kicked him all over his body. They also hit his head, where he had had an injury prior to the arrest. The ill-treatment lasted for almost an entire night and was for the purpose of extracting a confession. Furthermore, the police officers threatened to arrest his family including his two young children. Under the physical and



psychological pressure he eventually confessed. As a consequence of the ill-treatment, he had bruises all over his legs, one of his ribs was broken and he had strong headache from which he was still suffering on the day of the interview. After confessing, he was brought to the SIZO. For the first three days he was kept in solitary confinement. He complained about pain in his chest to the nurse in charge at the KNB SIZO, who sent him for X-ray, and diagnosed him as healthy. When he was examined by a separate independent medical service (outside the SIZO), it was established that he had a broken rib. The nurse went to see the medical institution and exerted pressure to get the medical results withdrawn. Furthermore, the KNB told him not to complain to the prosecutor in case he would be asked about any ill-treatment.

93. **Mr. Grigoriev Alexandr Viktorovitch**, aged 46, was arrested on 6 May 2009 at 5.30 a.m. at his home in Aktaz village by three police officers. Mr. Grigoriev had a criminal record and had spent 15 years in prison earlier. For the last four years he had been living in freedom, and together with his girlfriend took care of his handicapped mother. He was given no reasons for his arrest and was brought to a police station in Shakhtinsk, some 50 km away, where he was interrogated for an entire day without being ill-treated. According to Mr. Grigoriev it turned out that the police had worked for the last two months to fabricate a drug trafficking case against him since he was approached seven times by an unknown person offering him drugs. The officers threatened that he would be sentenced to 15 years of imprisonment unless he confessed. A confession would lead to a conditional sentence of two years. In the evening of 6 May he was transferred to the SIZO. A counsel was appointed by the police. The judge, who initially did not follow the officers' request, sanctioned the arrest after being approached by an investigator. Mr. Grigoriev informed the judge about the fabrication of the charges; a State appointed lawyer was not very useful during the proceedings. In general, he deemed the conditions of detention in the SIZO as satisfactory; meals were served three times a day. Visits were allowed and his mother and girlfriend were informed about this whereabouts by t h e l a w y e r .

94. **Male detainee** had been arrested by border guards about eight months earlier, before crossing the border into Uzbekistan. He was brought to the SIZO in Shymkent, where he stayed for some days. During those days, he was heavily beaten in an empty cell by men wearing masks who, he assumes, were probably KNB agents. Plastic bags were used to suffocate him, all in order to obtain a confession. His detention was only sanctioned by a procurator; it was not until March 2009 that he saw a judge for the first time. In the SIZO he experienced no more violence, but the conditions were described as bad: no sun, no fresh air, only half an hour per day outside to walk. In eight months he had received only two visits of 15 minutes each.

#### **Centre for temporary isolation, adaptation and rehabilitation (CVIARN) Karaganda**

95. The Special Rapporteur was received by the Director, Suleymanov Marat Magavinovich, and the Deputy Director, Abilgazinova Marina. On the day of the visit, there

were 56 children aged between 3 and 18 years detained in the institution, which had the capacity for 80 individuals. The Special Rapporteur was informed that the 17 girls were separated from the 39 boys. Similarly, the five youths suspected of minor offences were separated from the others, but no separation according to age was in place.

96. Whereas the maximum duration for detention at the CVIARN was in principle 30 days, the register showed that some children had been there for several months. Many of the children had shaved heads. Whereas the staff reported that children were allowed to play volleyball outside, the “sports field” in the garden was covered by grass and no volleyball net was available. Upon the arrival of the Special Rapporteur, many of the children were watching TV. During the night the children were locked into their sleeping rooms. The Special Rapporteur received complaints about the food which was found to be insufficient. Visits were in principle allowed, however many of the children did not receive any. Classes took place in the morning. The Special Rapporteur received information that the educational classes consisted of a “teacher” reciting the Criminal and the Criminal Procedure Codes. The Special Rapporteur received reports of regular beatings by educators with fists or objects as forms of corporal punishment (see also main report, para. 43).

#### **Women’s colony in Koksu**

97. The Special Rapporteur was received by Director Garifullin Kanat Merekenovitsch and senior staff members. The Head of Karaganda KUIS, Mr. Akhmetov Talgat Bayzulinovich, joined the group in spite of the late hour. The director who had worked in the colony since 1985 reported that he had never received any complaint about ill-treatment by s t a f f m e m b e r s .

98. The colony has 202 staff members (65 percent women). The medical unit has a staff of 20 members, including 6 doctors and 14 nurses. There were 39 tuberculosis and 106 HIV positive patients in the colony. The medical treatment within the colony was fairly basic, e.g. the dental chair was not functional and there were no facilities to carry out laboratory tests. Access to outside medical care was severely restricted. In 2008, three persons had died; in the first four months of 2009, five cases were reported. In all such cases, autopsies had to be p e r f o r m e d .

99. The colony was spacious and held 951 convicts, 27 in the quarantine wing. The Special Rapporteur received allegations of cases of corporal punishment, most often in the punishment cells, where detainees could be held as a disciplinary punishment. He also received complaints about corruption by the personnel, including the health personnel. The remote location of the colony hampers family members and others to visit detainees.

100. **Ihernich Tanya** had been in the colony for eight years. She had been informed a day earlier about the Special Rapporteur’s visit and was told that a commission would visit the institution because Kazakhstan would hold the chairmanship of the OSCE in 2010. She further reported that preparations were made for the visit of the Special Rapporteur, but not too much has been changed. She said that all in all, the conditions of detention were quite

good, detainees were allowed to work and play volleyball; and DVD and stereo equipment was also available in every barrack. She would not receive visits, since the colony is too far from her home Shymkent, but received parcels.

101. **Washakidze Liana**, Georgian citizen, had been detained in the colony for 15 years. The last time she was held in the punishment cell (PKT) was in 2002. She reported that beatings were inflicted until 1997, but such punishment would not be applied anymore in prisons. However, she heard that detainees were still beaten up in police stations. She informed the Special Rapporteur that prisoners were allowed to smoke, but there was no consumption of alcohol and drugs inside the prison.

102. **Polickovaya Victoria**, aged 33, had been convicted to eleven years of imprisonment for selling narcotic drugs. Ms. Polickovaya however maintained that she was a drug addict and has never sold drugs. At the moment of arrest she had 0,34 g heroin on her. She was brought to the colony on 27 April 2009 and was detained in quarantine on the day of the visit of the Special Rapporteur. Prior to the colony, she had been held in the SIZO in Karaganda for seven months where she did not receive any substitution treatment for her drug addiction. Officers of the police and drug control agency offered her heroin in exchange for a confession of drug selling. During her trial, she had a state lawyer who, however, did not defend her. She filed an appeal, without any positive outcome. Upon arrival at the colony she had to undergo a very thorough and violent body search, her intimate parts were examined and she was threatened. All her personal belongings were searched, her soap was broken into small pieces, and her shoes were destroyed. She had a 15 year old daughter who was looked after in a boarding house. The last time she could see her was in March 2009. After the 15 days in the quarantine she hopes to be able to call her.

103. **Senova Rosa Sembajevna**, aged 44, from Ust-Kamenogorsk, was arrested in 2006 on drug trafficking charges. While she admitted that she was addicted to drugs at that time, she strongly denied being involved in drug trafficking activities (for which she had already served a prison sentence earlier). The police officers arrested her at a bus stop and took her to her flat. There, the officers went to the kitchen and picked out one specific jar — among many others — and found drugs inside. They then went straight to the living room, looked under the bed and found further drugs. Ms Senova claimed that the drugs were planted. Subsequently, she was brought to the ROVD of Ust-Kamenogorsk and interrogated in one of the offices. When she denied all accusations, she was beaten up and a plastic bag was put over her head. Eventually, she confessed to drug possession, but not to drug trafficking. She was then put into a cell for several days where she developed withdrawal symptoms. Officers offered her drugs in exchange for confessing to other, completely unrelated crimes. In light of her earlier conviction, she was sentenced to life imprisonment. Ms. Senova reports that the entire colony had been waiting for the Special Rapporteur's visit for days. She indicated that, in section 12, 70 women had to sleep in one dormitory, but had only one bucket and one sink. The daily schedule at the colony provides for a wake-up time at 6 a.m., followed by washing, breakfast,

a headcount, and cleaning works. Until 12 noon, when lunch is served, the majority of detainees do not have any meaningful activity to follow. After lunch, again, detainees have nothing to do until the headcount at 4 p.m. Dinner is served at 6 p.m., lights are switched off at 10 p.m. Detainees are held either under the strict, general or relaxed regime. The main difference is the amount of parcels one can receive: one every three (strict), two (general), or every month (relaxed). Phone calls can be made once every twelve days. There are only very few possibilities to work. Ms. Senova once asked to work in the boiler heating unit, which is hard but well paid work. She was told that no paid post was available, and that she would have to work for free until a paid post becomes vacant. Similarly, educational activities do not offer any possibility for a meaningful occupation given the inadequate level for her (she finished secondary school and therefore would only repeat what she already knows) or the limited number of places.

104. **Mursinova Galina Anatolevna**, born in 1963, held in quarantine on the day of the Special Rapporteur's visit. She had arrived three days earlier (on 8 May) from Ust-Kamenogorsk, where she was serving a part of her 9,5 years sentence. She complained about a wounded lip and a deaf right ear, both resulting from beatings before the transfer from Ust-Kamenogorsk. She had been informed by the prison authorities that her transfer was scheduled for 4 May. When the transfer police unit arrived for the transfer on 25 April, her name was called, but she was not ready since she had not yet packed her belongings. She was subsequently brought into the office of the head of operations, where at least four other officers were present. The head of operations started to shout at her, twisted her arm, beat her on her arms and back and banged her face on the table. At one point he slapped her with his flat hand on her right ear causing severe pain — since then she cannot hear on this ear. Eventually she was transferred and had to leave most of her belongings in the cell. The transfer to the colony went via Semipalatinsk and Astana. In both facilities she raised her ear injury with the medical staff, but was turned down every time. Once she arrived at the colony, she asked the doctor to examine her ear. She was, however, told that she should have raised the complaint right in the beginning. The doctor would not look into it, since any detected injury may be portrayed as inflicted in the colony. The forensic expert accompanying the Special Rapporteur found the allegations were compatible with the results of his examination. She further complained about the way she was searched upon arrival at the colony. The few belongings which she was able to take with her were basically destroyed — soaps were cut into pieces, cigarettes were broken, shoes were cut.

#### **SIZO EC-166/1, Astana**

105. The Special Rapporteur was received by Mr. Baigaraev Edilbai Erubay-uly and Mr. Kauyzhanov Dyusor Elip-Uly. On the day of the visit, a total of 714 detainees were present, including 49 women and 12 minors.

#### **Visit of the medical unit (Korpus 4/1-4/3)**

106. The Special Rapporteur's delegation was received by Dr. Balgybekova Bakhyt Teleubekkyzy, acting head of the medical unit. The medical unit had a permanent staff of four doctors, including one psychiatrist, one paramedic, and two nurses. Additionally, the unit had a total of ten external staff members, including one dentist, gynaecologist, bacteriologist and radiologist. The unit hosted its own dental department and laboratory. New arrivals to the SIZO were held in quarantine for three days, where they had to undergo medical examinations, incl. HIV/AIDS and fluoroscopy tests. Furthermore, a doctor and a nurse examined the body of the detainee. If any trauma is detected, a report is produced which is then forwarded to the head of the SIZO.

107. According to Dr. Balgybekova Bakhyt Teleubekkyzy, in the first four months of 2009, 19 trauma cases had been detected in total; three related to new arrivals who were all on transit from Stepnogorsk. The outcome of these reports was unknown. According to the forensic expert of the Special Rapporteur, the trauma records were not up to international standards. The acting director of the medical unit had never heard of the Istanbul protocol. Detainees were also seen by a psychologist and dermatologist. Out of the total SIZO population, eleven detainees tested HIV positive.

108. In 2008, five persons had died in custody (two suicides, three due to illnesses); in 2009 so far three had died (one suicide, two due to illnesses). Once a dead body is found, the authorities inform the ambulance of the local hospital as well as the police. The body will not be removed by the prison staff, but by the police who bring a forensic expert with them and initiate an autopsy. The results of any autopsy are forwarded to the prison administration within approximately 1 month.

109. Eleven patients with tuberculosis (not multiresistant) were held in a closed section of the medical unit. They reported that the doctor saw them every day free of charge. Medication was regularly provided and blood tests were done on a routine basis. Detainees were allowed to leave the cells for one hour per day for a walk outside.

110. According to the acting head of the medical unit, renovation works were scheduled to start the following week.

### **Punishment cells (corpus 5)**

111. Upon the arrival of the Special Rapporteur on torture, no detainee was held in the punishment cells. Three detainees had been released on 8 May — all earlier than originally foreseen. Pretrial detainees could be held up to seven days, convicts up to 15 days. There were a total of 17 cells, most of them in need of general renovation. The cells were rather narrow (ca. 1,5 meter) and separated by a bar into a large and small area (the latter one next to the wall with the window). Whereas the bar presumably served to prevent detainees from touching the windows, it appeared that the smaller part could be separately used as an aggravated form of punishment. Each cell had a toilet and a sink. Detainees were reportedly allowed to leave the cell for a one hour walk per day in a cage outside.

112. **Ruslan**, was in the transfer area of the SIZO and had clearly visible traces from

beatings. One of his eyes was bloodshot. He reported that he had been arrested in the afternoon of the previous day and taken to the ROVD of Astana. The injuries reportedly originated from a nightly fight in which he was involved, in a village outside of Astana. At the ROVD he signed his arrest papers, but did not confess. During the interrogation, no lawyer was present, although he would like to have legal assistance. After approximately 2,5 hours he was transferred to the IVS. There, officers enquired about the origin of his injuries, but he was not seen by a doctor. He had arrived at Astana SIZO on the day of the Special R a p p o r t e u r ' s v i s i t .

113. **Mr. Rasimovich Rafik**, held in cell 62 (transfer wing) had arrived on 7 May. He was in a poor state of health, could speak only slowly and appeared to be very fragile. He reported how he had been severely tortured in colony UK 161/3 in Kostanay in September 2008. As a punishment for refusing to do some “humiliating work” he was put into the “karcer”. There he was handcuffed behind his back, suspended on his arms and punched and beaten with truncheons by seven or eight officers. When he fainted, water was poured over his head to wake him up and to continue the ill-treatment. Several strokes also hit his head. He sustained one bleeding wound on his back leaving a scar. After the ordeal, he tried to commit suicide by eating barbed wire and a spoon. After the required operation in the local hospital, he was soon transferred back to the colony where he started a hunger strike. He complained that he was held under a strict regime which would be only applicable for persons serving life-term sentences. However, he served a 17 years prison sentence which due to the accumulation of several additional sentences for violations of prison rules had increased to 34 years in total. He had also been tortured earlier in Arqalyq prison where guards were beating him so strongly on his buttocks that he lost consciousness. Expecting that he would not survive the abuse, he cut the phrase “The administration is responsible for my death” into his chest with a razor blade. Rafik is scheduled to be transferred to Arshaly on 17 May. He was supposed to leave already with an earlier transfer; however, the chief of the convoy refused to accept him due to his weak state of health. He had no complaints regarding the staff in Astana SIZO. He does not receive any psychological counselling despite suicidal tendencies.

114. **Mrs. Karkhu Inessa**, aged 35, was arrested on 17 April 2007. While driving a car with her mother, she noticed that she was followed by another car. She stopped and went to ask the driver why she was being followed. At that moment, several men got out of the car and pushed her to the ground. When she tried to get up, she was beaten on her shoulders, neck and head. Only later was she informed that she was beaten by members of the financial police , including officer M. Her mother was also beaten. At one point, the director of the company for which she worked arrived on the spot and prevented more severe beatings. However, when she mentioned to one of the officers that she intended to file a complaint, the officers attempted to hit her again. Subsequently, she was taken in a car and brought to the offices of the financial police. Mrs. Karkhu was threatened that her mother would also be arrested; she had to receive treatment at the hospital as a consequence of the beatings. She was then forced

to sign a statement indicating that she had resisted the arrest. After three to four hours in the office she was taken to the IVS in Astana, where she stayed one night before being transferred to the SIZO. Her parents were not informed where she was and tried to find her for three days. She filed complaints with various bodies but did not receive any answer. On 19 February 2008, she was released on bail under the condition that she would not file any complaint. On 10 April 2009, she was sentenced to two years of imprisonment. She feared that the court was not independent as the father of the deputy chief of the financial police was the president of the court. She complained about an eye disease and said that she was gradually losing her vision as a result of the heavy beatings. Although the medical examination conducted by the forensic expert was unable to conclude that the loss of her vision was due to the beatings, it was clear that she had an ophthalmologic pathology that needed to be treated. It is not possible to exclude the possibility that heavy beatings may have contributed to the deterioration of her vision.

115. **Mr. Semenihin Andrey**, aged 35, was arrested on 18 July 2008 and detained in the IVS in Stepnogorsk. On 20 March 2009, he and other detainees were supposed to be taken out for a walk. However, they were taken to the investigator's office and were told that they would be transferred to the SIZO in Astana immediately, and the time would not allow them to pack their personal belongings. The detainees asked to see the prosecutor, but the IVS staff refused to call him. Following heated discussions, the criminal investigator started to beat the detainees with a police truncheon. Mr. Andrei was dragged out in the corridor where he was told to lie down with his face towards the floor. In this position he was beaten up and insulted ("we are sick and tired of you") by four police officers, who also jumped on his back. His underpants were pulled down and he was threatened with rape. He reported that other detainees were beaten too; however, he got the impression that he was beaten particularly severely. After the beatings he was told to clean the blood from the floor which he refused to do. Consequently, the beating started again — so that he fainted. He regained consciousness in the emergency room of the city hospital. The doctors told him that he had two broken ribs and his back was all blue. The marks from the truncheons were clearly visible. The X-ray showed that his lung was ruptured, requiring a drainage tube with a bottle. On 26 March 2009, the regular transfer to the SIZO was scheduled. Although the doctor objected to the police request to release him, he was taken out of hospital. However, the officer in charge of the convoy refused to admit him to the transfer due to his very bad state of health. Subsequently, he was brought back to the IVS where he was handcuffed and put in an isolation cell. On 28 March 2009 he was transferred back to the hospital for further treatment and to remove the drainage tube. On 1 April the police convinced the doctors again to release him from hospital. He was brought back to the IVS and again put in a solitary cell where he was held incommunicado until 23 April 2009. Mr. Andrei had a private lawyer, but she was not allowed to see him when he was in the IVS and the hospital, despite nine requests to see her. Also his wife had no access to him. On 23 April 2009, he was finally transferred to the SIZO

since the court hearings started. Mr. Andrei filed eight complaints in total, all without any response.

116. **Mr. Evloyev Oleg Issayevitch**, aged 28, was detained on 29 October 2008 in Nesterovskaya, Ingushetia, Russian Federation, on charges of having murdered a woman and her three children in Astana. After his arrest, Mr. Evloyev was placed in a pretrial detention facility in Grozny, Chechnya, Russian Federation. On 9 December 2008, Mr. Evloyev was taken to Astana by plane. Starting in the plane and continuing later on, he was beaten continuously for the purpose of extracting a confession. On the day of his arrival in Astana, without any warm clothes provided, despite the freezing weather of minus 10 degrees Celsius, Mr. Evloyev was taken out for investigatory activities, which were videotaped. However, the tape later disappeared. He was held in the temporary detention facility (IVS) of Astana, from 9 December 2008 until 17 February 2009. During that time Mr. Evloyev was repeatedly not allowed to sleep for two or three days in a row; he was refused drinking water and food for long periods; or to use the toilet and sometimes even to sit down. Moreover, he was forced to stand in a tiny room (50 square centimetres), which he referred to as “glass” (stakan) and suffocated with a gas mask. During that period he was not allowed access to a lawyer or his relatives. In two transcripts of his interrogations, dated 10 December 2008 and 16 December 2008, it is documented that Mr. Evloyev was complaining of torture and stated that he had been forced to make the confession. In the minutes of the interrogation of 16 December 2008, Mr. Evloyev states that he “didn’t kill anyone, didn’t take any gold; I was forced to testify under physical and psychological pressure. [...] I have signs of beating on my body, which were registered during the medical examination. Everyone is against me. I refuse to testify until the trial. I was not fed. I was not allowed to sleep. I was forced to stand in a space as small as half a square meter. I was not allowed to use toilet for several days. I insist on my very first statements, which I gave in Grozny. Since the very first day [in Kazakhstan], I have been ill-treated and tortured”.

117. When the Special Rapporteur interviewed him on 12 May 2009 in the SIZO in Astana, he had spent 10 days in a “normal cell”. Prior to that, he had been held for 75 days in the punishment cell in solitary confinement. The normal maximum of detention in the punishment cell is 15 days, but he was allegedly detained for a longer period to punish him for having gone public with his torture allegations. In the cell, he was allowed 40 minutes of exercise every day. He had no complaints regarding ill-treatment in the SIZO. He had filed complaints with organizations and institutions about his torture allegations, but he received either no answer or a negative answer. In particular, the prosecutor did not react to the complaints. In addition, for 45 days he had not had access to his lawyer. Therefore, he and his casemate Dmitry Tyan asked for a jury trial. On 16 June 2009, a jury found Mr. Evloyev guilty and sentenced him to life imprisonment. His torture allegations were said to be unsubstantiated.

118. **Mr. Dmitry Nikolayevitch Tyan**, aged 36, was summoned to the police on 22



October 2008 at around 5 p.m. He stayed there until 10 p.m., and was then transferred to the Almatynskiy District Department of Internal Affairs. There he was forced to strip to his underwear and to stretch his legs wide apart. He was intimidated and beaten with water-filled plastic bottles on his kidneys and other parts of the body. He was threatened that, unless he confessed to having murdered the wife of his private employer with her three children, he would not live to attend the trial or that he would “commit suicide”. This treatment continued until 2 a.m. in the morning, after which he was released. In the morning of 23 October 2008, Mr. Tyan went to the National Security Committee offices with his wife to file a complaint against the police officers who had tortured him the night before. Immediately after he left the National Security Committee building, he was apprehended by police officers who had been waiting for him outside. He was taken to the Astana City Department of Internal Affairs, where he continued to be interrogated as a witness, i.e. without a lawyer and was beaten again. On 24 October 2008, Mr. Tyan’s status was re-qualified into a suspect in the above-mentioned murder, and he was put into police custody. On 28 October 2008, the court ordered his pretrial detention for a period of 10 months. On the same day he signed a “voluntary” self-incriminating report. Some days later he withdrew this report saying that he had been cheated and forced to sign it. On 3 November 2008, Dmitry Tyan and one other man (see case of Mr. Oleg Issayevitch Evloyev) were charged with the premeditated murder of four persons. Despite the court’s order, he continued to be detained in police custody. His private lawyers were not allowed access to him until January 2009. When finally transferred to the SIZO, he was held in the punishment cell in solitary confinement for two months. His and his family’s complaints that he had been subjected to torture were not investigated. Mr. Tyan was denied a proper medical examination. On 16 June 2009, a jury found Mr. Tyan guilty and sentenced him to 25 years of imprisonment.

119. **Male detainee** was arrested in Stepnogorsk for alleged possession of 1,5 gram of marihuana. From 6 February to 12 May 2009, he was taken back and forth between the IVS in Stepnogorsk and the SIZO in Astana. He was part of the group of detainees who were beaten up on 20 March 2009 by the police in the IVS in Stepnogorsk. He was reportedly dragged into an empty cell where he was beaten with a police truncheon on his back. In addition, the officers jumped on his back. After the transfer to the SIZO in Astana, he underwent a medical examination. His back was reportedly all blue, and the medical staff refused to approve his admission to the SIZO. Eventually, however, they were forced to accept him and took a video of his body covered with bruises. After 20 March 2009 he was not subjected to any further ill-treatment. However he was brought back to the IVS in Stepnogorsk several times. He and his mother, who lives in Stepnogorsk, were repeatedly threatened. The officers from Stepnogorsk even came to the SIZO, threatened to put drugs on him and to kill him if he launches a complaint, and punched him in his kidneys.

**8 May 2009, United Nations Office Almaty**

120. **Mr. Usturkhanov Selemkhan**, aged 29, blind, suffering from brain cancer; and two juveniles nephews.

121. On 1 September 2008, seven or eight masked police officers (KNB) forcefully opened the door to their apartment. Mr. Selemkhan Usturkhanov and the two boys had a bag put over their heads and were forced to lean against the wall. Mr. Selemkhan Usturkhanov was kicked in his back and fell. Subsequently, he received a strong blow on his head where he had earlier been operated upon for his tumour; he lost consciousness and started bleeding from his head. Also the back of his thorax was injured and had a bleeding wound. In order to wake him up, water was splashed water on his face. A man put his hand on his left shoulder and promised that nothing would happen anymore, just to get kicked into his kidneys the very next moment. Then a hand grenade was put into his hand, leaving his fingerprints on it. While he heard his elder brother being ill-treated, he was handcuffed. Mr. Selemkhan Usturkhanov and his two relatives were then transferred to the KNB offices in Energeticheski Poselok, located in the suburbs of Almaty (then, he was not informed about his whereabouts). The officers forced them to stand in a line in the corridor and continued the beatings. Subsequently, Mr. Usturkhanov was taken to an office, his mask was taken off and he was ordered to sign a paper. If he refused, his nephews would be tortured. Eventually, he was thrown into a motor vehicle and brought to the IVS. From there he was taken to the hospital, where he got two injections and was told that he was in need of hospitalization. The doctor voiced fears that he might die, but a KNB officer who was accompanying him said that he would be brought "to [their] own hospital". Instead, he was returned to the IVS, where he spent three days without medication. Thereafter he spent three months in the KNB SIZO. The forensic medical examination of Selemkhan Usturkhanov showed that he had undergone several brain surgeries (he has a brain cystic tumour), and that he presented a very low resistance in the right part of the head (due to lack of bone) and highly increased sensibility in the right parieto-frontal area. He also had a small scar in the back of the thorax.

122. Following the above described arrest, his nephews were also taken to the KNB office. In a corridor on the ground floor they were beaten and kicked in their kidneys and electro-shocked mainly on their elbows. The ill-treatment lasted for about six hours in order to force them to incriminate their uncle. No water was provided. The officers took them one by one to another office, took off the handcuffs and the bag from their heads and threatened that the beatings would continue if they would not sign a prepared statement. After initially refusing and lengthy exchanges, they finally signed, since they were too tired after the long hours of beatings. They were then transferred to the IVS and locked into a cell with others. Until then they had been accompanied by KNB officers. From the cell they were not allowed to call their relatives and had no access to a lawyer. They were subsequently released and asked to return to the police on the next day. One nephew requested emergency medical care, which he received, however he was not provided with any medical report. One week later, he was forced to leave the hospital, and the KNB told the doctors not to report anything that

would go beyond low-level injuries. Although the KNB officers had instructed the nephews not to file any complaints, they tried to file complaints with several institutions, but to no avail.

**Astana, United Nations premises, 12 May 2009**  
**Mr. Denis Polienko, Schuchinsk, Akmola Oblast**

123. Denis Polienko, then aged 19, was detained on 21 November 2006 at 9 a.m. at his work place in Shuchinsk and taken to the local police department. His detention was not registered. He was not allowed to call his family, nor provided a lawyer. He was accused of having robbed and killed one of his neighbours. During the following 36 hours of unacknowledged custody, until midnight on 23 November 2006, Denis Polienko was heavily beaten by two policemen (called Popov and Romanov). They also put a plastic bag over his head and threatened him repeatedly with rape in order to extract a confession from him. The police also expressed threats against his family. At one point, an officer named Sh. came into the room where Polienko was held, and the three police officers took Mr. Polienko to another office on the 2nd floor which appeared to be the office of the District Police Chief I. Mr. I. began threatening and insulting Mr. Polienko by calling him a drug addict and an alcoholic. Despite the threats, Polienko continued to plead innocent, and Mr. I. told Officers P., R., and Sh. to continue “working” on him. After this, Polienko was taken back to P.’s and Mr. R.’s office, where officer P. punched him on his Adam’s apple, liver and chin.

124. Almost unconscious, Mr. Polienko told them that he would complain to the prosecutor about the ill-treatment. As a reaction, Mr. P. said to Mr. R. that they should treat Polienko differently. He asked Mr. R. for a plastic bag, pushed Mr. Polienko to the floor, put the plastic bag over his head and began to suffocate him. Then Mr. P. dragged Polienko to the middle of the room, ordered his colleague to sit on Polienko’s legs, and started suffocating Polienko with the plastic bag from behind while pushing against Polienko’s back with his knees. During the entire ordeal, Mr. Polienko remained handcuffed with his arms fixed behind the back. At the same time, an officer named Mr. M. kicked him in his side.

125. After the ill-treatment, Mr. Polienko was taken back to his workplace in order to collect clothes and was subsequently brought to an unknown office where he was videotaped. He spent the night in one of the offices at the Schuchinsk District Police Department. He remained handcuffed and was not allowed to call his family or a lawyer. In the early morning of 22 November 2006, Mr. Romanov brought Mr. Polienko to the Schuchinsk Central District Hospital in order to receive a medical-check-up necessary for his admittance to the preliminary detention center. Before the examination, Mr. Romanov further intimidated Mr. Polienko, threatened him not to raise any complaints with the doctor, and punched him on his head and chest. During the examination, which was not confidential and took place in the presence of Romano, the doctor, Mr. B., asked Mr. Polienko if he had been beaten. Mr. Polienko replied by asking the doctor if he would be interested in the truth. Hearing this, Mr. Romanov started pushing Mr. Polienko with his fist and said to the doctor: “Don’t you know,

they all say they have been beaten?” Doctor B. then said to Mr. Polienko, “OK, if you don’t want to, you don’t have to say anything to me. That’s your business after all.” Mr. Polienko refrained from voicing his complaints. The doctor registered minor bruises of an unspecified nature on Mr. Polienko. Upon return to Schuchinsk District Police Department, Mr. Romanov and Mr. Popov left Mr. Polienko in an office with two police officers, Mr. A. and X. He told them that he had been beaten and that he was not guilty. When officers Popov and Romanov came back later, A. informed them about Mr. Polienko’s complaints. Subsequently, Officer P. and R. took him to their office and were about to start suffocating him again. At this point, officer Sh. entered the office and threatened to bring in Mr. Polienko’s wife and to start “working on her”. In reaction, Mr. Polienko agreed to testify against himself.

126. Mr. Popov and Romanov instructed Mr. Polienko what to testify about the crime and what he should show when he was taken to the crime scene. Polienko was then allowed access to a State lawyer, but no confidential meetings were permitted. He was also taken to the office of the investigator in charge of the case, Mr. U., where he had to confirm his testimony in the presence of the lawyer. During the remainder of 22 November 2006, Polienko was taken from one office to another in the building of Schuchinsk District Police Department. He was only admitted to the temporary detention centre at around midnight. In the morning of 23 November 2006, officers Romanov, Popov and Sh. visited Polienko and requested that he should give them a thin-bladed knife and testify that it was the knife with which he had committed the murder. Otherwise, they threatened, he would be placed in a prison cell with — as was commonly alleged — inmates infamous for their aggressive sexual behaviour towards other prisoners.

127. In a later meeting with the prosecutor, Mr. Polienko denied his guilt and reported that his previous testimony had been a result of beatings. In the presence of the prosecutor, Polienko wrote a complaint against Mr. Romanov and the other officers. He then continued to be detained in the IVS of Schuchinsk District Police Department. On 2 December 2006, Mr. Polienko was summoned to meet Mr. X., another police officer, who threatened him with worse treatment, saying words to the effect of, “You are crazy, you know. What happened to you before will now seem like paradise to you, you understand?” In the night of 2 to 3 December 2006, Mr. Polienko was taken from cell No. 3 to the nurse’s office of the detention center. However, the nurse was not present. Instead, officers P., R., Sh., X., and another officer were awaiting him. A further man left after Polienko was brought in. Mr. X. said to Polienko: “Now we’re going to chain you to this table and will push this rubber stick into your anus, and we will show you one knife, which you will recognize as the one you killed your neighbour with. Clear?” When trying to fight back and yelling, Mr. Polienko felt a heavy blow to his face, and he fell unconscious. When he woke up, he was told to write that he had no complaints against the police and that he had fallen down from his cell bed by accident, which was how he sustained the injuries. Mr. Polienko at first refused to comply, but after being threatened with rape again, he agreed. He was told not to date the document.

128. Mr. Polienko was examined by the detention centre's nurse on 3 December 2006, who registered bruises and prescribed anti-bruising ointment. She indicated that the cause of the injuries was falling from a cell bed. Unable to stand the torture any longer, Mr. Polienko signed a "voluntary confession". On 23 November 2006, Denis Polienko was "officially" detained and placed in the local pretrial detention centre. His torture allegations against the police officers were disregarded as unsubstantiated. A general forensic examination was ordered in September 2007, ten months after his ordeal. It detected no injuries despite his complaints of chest and stomach aches and worsening eyesight, amongst others. As a result of the treatment, Mr. Polienko sustained facial fractures, two fractured ribs, and damage to eyesight, voice problems (husky and harsh voice) due to an injury of the Adam's apple, and a post-traumatic stress disorder.

129. Two years later, in November 2008, Mr. Polienko was acquitted due to the lack of evidence. The court found Mr. Polienko's detention to be illegal. The first instance court issued a separate court opinion regarding Mr. Polienko's allegations of torture and requested that they be investigated. The second instance court, on appeal by the prosecutor's office, supported the acquittal of the lower-instance court, but deleted the names of the police officers, who Mr. Polienko was accusing of torture. Mr. Polienko's allegations of torture have still not been investigated. Since his acquittal, Mr. Polienko has been trying to file a civil lawsuit for compensation for his illegal detention with civil courts, but the courts keep rejecting his lawsuit indicating that there is no respondent mentioned on the submission. Mr. Polienko does not know against whom to file his lawsuit.

130. Mr. Polienko's numerous written pleas to regional and national prosecutor's offices, the National Security Committee, the Financial Police, the National Human Rights Center, and the Administration of the President of Kazakhstan requesting that the coerced evidence be withdrawn and that the perpetrators be held accountable, have been forwarded to the Internal Security Department within the Shuchinsk District Police. The investigations of the Department, looking into the accountability its own staff members, did not establish in any violations. The forensic medical examination showed that Mr. Polienko presented a deviation of the nasal septum and of the thyroid cartilage, both due to non-recent fractures, as well as callosities in multiples ribs (also due to non-recent fractures). These medical findings are totally compatible with his allegations of ill-treatment during detention.