

# KAZAKSTAN

## Ill-treatment and the death penalty: a summary of concerns

### INTRODUCTION

Judging by the stories that emerge from behind the prison walls, practically throughout the former Soviet Union little regard is given to the lives of prisoners by the officials who oversee them. Information gathered by Amnesty International from a number of the newly independent countries now comprising the Commonwealth of Independent States (CIS)<sup>1</sup> suggests that a brutal regime prevails in the pre-trial and penitentiary systems, including deliberate ill-treatment of prisoners and appalling conditions of detention which amount to ill-treatment.

Furthermore, capital punishment is still in force in all but one of the member states of the CIS.<sup>2</sup> In many CIS countries, the rate at which this so-called “exceptional measure of punishment” is used is shockingly high.

This report focuses on the treatment of prisoners in Kazakhstan. The issues covered in the report are, however, in no way unique to that country, albeit Amnesty International remains concerned particularly by an exceptionally high rate of executions in Kazakhstan. This report on Kazakhstan is being published as part of a series of publicity and campaigning activities being undertaken by Amnesty International to highlight the problem of human rights violations within the prison systems of the CIS.<sup>3</sup>

This report is based on the findings of an Amnesty International mission to Almaty (the capital of Kazakhstan) in February and March 1996 which involved contacts with Kazakstani officials, representatives of non-governmental organizations and former prison workers, inmates and inmates’ families; on earlier communications with official and non-official sources in Kazakhstan; and on media reports.

### ILL-TREATMENT, TORTURE AND DEATHS IN DETENTION

#### ***Appalling conditions amounting to ill-treatment in pre-trial detention and in penitentiaries***

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<sup>1</sup> The CIS member states are Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. Three other former Soviet republics - Estonia, Latvia and Lithuania - are not CIS members.

<sup>2</sup> The exception is Moldova, where parliament voted on 8 December 1995 to abolish the death penalty from the country’s criminal code.

<sup>3</sup> Other Amnesty International country reports within the past year have focused on the issues of deliberate ill-treatment of prisoners and/or poor prison conditions amounting to ill-treatment in Armenia (see AI Index: EUR 54/04/95 and EUR 54/05/95); Azerbaijan (see AI Index: EUR 55/01/96); Kyrgyzstan (see AI Index: EUR 58/01/96); the Russia Federation (see the Focus article in *Amnesty International News*, Vol. 25 No. 6, June 1996); and Turkmenistan (see AI Index: EUR 61/03/96). Summary information on these issues is featured in the twice-yearly bulletin *Concerns in Europe*, covering all countries of the CIS. This bulletin also provides regular reporting about the death penalty in all CIS countries where it remains in force.

At a news conference on 23 April 1996 a Deputy Minister of Internal Affairs, Nikolay Vlasov, admitted that Kazakhstan's prisons were overcrowded, disease-ridden and chronically under-funded. The Deputy Minister announced a proposal for a 10-year program to bring Kazakhstan's prisons up to internationally-accepted standards, but noted that the prison system was chronically short of investment: the system needed annual funding of 4,500 million tenge (US\$70 million), but in 1995 had received only 1,900 million tenge. At the beginning of 1996, Kazakhstan had a prison population of around 94,000, over 20,000 of whom were in pre-trial detention.<sup>4</sup> There are 78 prisons and penitentiaries of various types.<sup>5</sup>

Faced with continuing shortfalls in the budget for prisons, on 26 June 1996 it was reported that the Senate, the upper house of Kazakhstan's parliament, had declared an amnesty for nearly 20,000 prisoners serving custodial sentences for non-violent crimes.

Some weeks before his April 1996 news conference, Deputy Minister Vlasov had met an Amnesty International representative visiting Almaty. Nikolay Vlasov gave a striking admission of the country's grim prison conditions when he remarked that the death penalty was less cruel than being in prison in Kazakhstan, which could only be described as "treating people with contempt".<sup>6</sup> Officials, human rights activists and former prisoners have identified problems in the prison system in Kazakhstan which Amnesty International regards as so severe that they are tantamount to ill-treatment of prisoners. Amnesty International has grave doubts that the recent prisoner releases are enough adequately to address the problems which are outlined below.

## Disease

In April 1996 there were an estimated 10,000 prisoners in Kazakhstan with infectious tuberculosis.<sup>7</sup> Speaking in June, Interior Minister Kairbek Suleymenov reported that some 1,270 prisoners had died

<sup>4</sup> Interview with Vladimir Root, head of department at the Office of the Procurator General, *Kazakhstanskaya Pravda*, 6 January 1996.

<sup>5</sup> According to information from the Main Directorate of the Criminal-Executive System (\_\_\_\_\_ - \_\_\_\_\_ --GUUIS) at the Ministry of Internal Affairs, as quoted in a 1996 report by the Moscow-based Social Centre for Cooperation in the Reform of Criminal Justice, the prison system in Kazakhstan comprises the following:

1 maximum security prison for convicted prisoners (at Arkalyk in Torgay Region).

39 "corrective labour colonies" - penitentiaries organized in four different regimes which increase in severity: ordinary (8), reinforced (14), strict (14) and special (3).

14 "corrective labour colony-settlements" - low security penitentiaries.

4 "educational labour colonies" - juvenile penitentiaries.

3 special hospitals.

17 "investigation-isolation prisons" (SIZOs) - pre-trial detention centres, and also the location where prisoners are held on death row until shortly before a death sentence is carried out. Two new SIZOs are reported to be under construction.

<sup>6</sup> Interview with Amnesty International, 26 February 1996.

<sup>7</sup> Nikolay Vlasov at the 23 April 1996 press conference, quoted by *Reuters*.

of tuberculosis in 1995, and around 450 had died to date in 1996. He cited overcrowding, malnutrition and shortages of medicines as aggravating factors.<sup>8</sup>

Nikolay Vlasov had similarly complained of a shortage of medicines to treat tuberculosis, and other conditions such as syphilis, at his meeting with an Amnesty International representative in February. However, he was reluctant to concur with suggestions that prisoners were being put at risk of infection by exposure: when asked to explain the fact that there were 40 times more tuberculosis cases per head of the prison population than reported per head of the population at large, he replied that this was only because testing of people entering prison was systematic, so data on the extent of infection was more accurate for prisoners than for the general population.

#### **Allegations of negligent and even deliberate infection with tuberculosis**

Prisoners and human rights monitors have reported that prisoners suffering from tuberculosis are not segregated from the rest of the prison population. The fact that in June Interior Minister Kairbek Suleimenov cited overcrowding as a factor in the high rate of infection appears to corroborate this. A formerly imprisoned conscientious objector to military service, "Vladimir", alleged during an interview with Amnesty International in February 1996 that at the corrective labour colony where he had served his nine-month sentence in 1995 there had been prisoners suffering from infectious tuberculosis in every cell. However, this source went further, alleging that infection with tuberculosis was not just the consequence of negligence but sometimes the consequence of prison officials' placing a prisoner deliberately at risk: as a form of punishment for misbehaviour, according to "Vladimir", a prisoner would be put in a cell containing prisoners seriously ill with tuberculosis. Activists in a Kazakstani non-governmental organization working for prison reform have made similar allegations to Amnesty International.

#### Starvation

Closely linked to the issue of disease is that of starvation and malnutrition among prisoners. Amnesty International has received numerous reports that prisoners receive sometimes grossly inadequate food rations. For example, a former prisoner has recounted how at SIZO-1 in Almaty there were periods when he and his fellow prisoners would be fed only once every three days.<sup>9</sup> Such inadequate rations can result in malnutrition which weakens resistance to illness. There have even been reports of deaths in penitentiaries from wasting conditions associated with starvation (see, for example, the reference to suspicious, possibly malnutrition-related deaths in Almaty's juvenile penitentiary LA-155/6, below). Frequently, prisoners have to rely on relatives to bring food to them, but this can be very difficult given that prisoners often serve their sentences at penitentiaries hundreds of kilometres from their homes, and the frequency of visits is restricted by prison rules, as are the quantities of food and other items that can be handed over.<sup>10</sup> There have also been allegations that

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<sup>8</sup> Quoted in *Open Media Research Institute Daily Digest*, 28 June 1996.

<sup>9</sup> Letter from "Valentin" to the Committee of the Mothers of Prisoners, 24 February 1996.

<sup>10</sup> Rules for the Internal Order of Corrective Labour Institutions, Articles 26, 34 and 35.

the contents of food parcels handed over by relatives are sometimes stolen before reaching the prisoner.<sup>11</sup> Furthermore, that prisoners should rely on relatives to bring food is no solution to starvation for those who have no relatives.

In April 1994 there was a media report from Kazakhstan of a case of cannibalism, whereby five prisoners at an undisclosed penitentiary, reportedly driven by hunger, had killed and eaten a cell-mate.<sup>12</sup> Similarly, a representative from the Ministry of Internal Affairs has been quoted as having told a conference on judicial and penal reform in Kazakhstan in November 1995 that there had been four cases of cannibalism provoked by hunger at penitentiaries in Semipalatinsk Region.<sup>13</sup>

#### Overcrowding amounting to ill-treatment

According to Nikolay Vlasov, Kazakhstan's prison population has doubled since independence in 1991,<sup>14</sup> the consequence of a crackdown against a rapidly rising crime rate. However, as of early 1996 reportedly no program was being implemented to build new penitentiaries to accommodate this increase. "Vladimir", a formerly imprisoned conscientious objector to military service, told Amnesty International that he had been kept in a prison cell 8m. by 6m. with 60 other people, sleeping in three or four shifts because there was not enough room for them all to lie down at the same time. He described how bed linen had to be brought by relatives, everyone suffered from fleas and scabies, and in summer the heat was unbearable.<sup>15</sup> Former political prisoner Nikolay Gunkin (see below) reported that while in pre-trial detention in November 1995 at SIZO-1 in Almaty he was held with 23 other people in a cell built to hold eight. The prisoners were required to sleep in three shifts. The cell was infested with lice and cockroaches, and sanitary facilities were grossly inadequate.<sup>16</sup> A local human rights organization has also reported that in SIZO-1 prisoners have no regular exercise because there are not enough guards to escort the prisoners to the exercise yard, and because in winter many prisoners lack clothing warm enough to allow them to be out of doors.<sup>17</sup>

#### ***Torture and deliberate ill-treatment***

<sup>11</sup> *Reuters*, 23 April 1996, and statement by prisoners in the prison at Arkalyk, Torgay Region, to the Kazak-American Bureau for Human Rights and the Rule of Law, February 1996.

<sup>12</sup> *Reuters*, 19 April 1994.

<sup>13</sup> Stated at the November 1995 international conference "The Concept of Human Rights in the Reform of the Judicial and Penitentiary Systems", hosted in Almaty by the Kazak-American Bureau for Human Rights and the Rule of Law, as reported by the Moscow-based Social Centre for Cooperation in the Reform of Criminal Justice, 1996.

<sup>14</sup> Stated at 23 April 1996 press conference in Almaty, as quoted by *Reuters*.

<sup>15</sup> Interview with Amnesty International in Almaty, 28 February 1996. "Vladimir's" real name is being withheld to protect his identity.

<sup>16</sup> Letter in support of Nikolay Gunkin to the International Committee of the Red Cross from the Russian Centre of the Republic of Kazakhstan and the Semirechye Cossack Host, November 1995.

<sup>17</sup> Statement by the Committee of the Mothers of Prisoners, Almaty, 28 February 1996.

## Torture and ill-treatment in police custody and in pre-trial detention

It is impossible to estimate the scale of the problem of torture and ill-treatment of criminal suspects by law enforcement officials in Kazakhstan. Non-governmental organizations have publicized a number of cases, and in an interview in 1995 the then Procurator General of Kazakhstan officially admitted the problem, albeit denying that it was widespread and citing official measures to tackle it, including cases in which officers had been prosecuted for beating suspects.<sup>18</sup> However, non-governmental organizations claim that the problem is more widespread than reported because victims frequently do not lodge any complaint, for fear of reprisals or from scepticism that this would do any good.<sup>19</sup>

Although beating appears to be the most commonly reported form of torture in police custody and in pre-trial detention (beatings are allegedly used to force confessions and also in some cases to make suspects sign statements foregoing the right to legal representation of their own choice), unofficial sources have claimed that there are cases where confessions have been forced from people using torture methods such as asphyxiation with plastic bags or with gas masks which have had their air supply shut off.<sup>20</sup>

Detailed below are two cases raised by Amnesty International with authorities in Kazakhstan in the past year. In the second case, as with most such cases of alleged torture or ill-treatment coming to Amnesty International's attention from Kazakhstan, the victim had been detained on suspicion of committing an ordinary criminal offence. In the first case, however, there remain strong suspicions that both the arrest and the alleged subsequent ill-treatment of the victim were politically motivated.

### The case of Nikolay Gunkin

Nikolay Gunkin is the *ataman* (leader) of the Semirechye Cossack Host.<sup>21</sup> He was arrested in Almaty on 28 October 1995 by officers of the Moskovsky District Department of Internal Affairs. The arrest occurred when he presented himself to register as a candidate in forthcoming elections to the *Majlis*, the lower house of Kazakhstan's parliament. He was charged under Article 183-1 of the Criminal Code of the Republic of Kazakhstan with "organizing an unsanctioned meeting", reportedly in connection with what supporters of Nikolay Gunkin described as a religious procession which had taken place on 9 January 1995. On 21 November Nikolay Gunkin was sentenced to three months' imprisonment by a court in Almaty. He reportedly admitted participating in the 9 January religious

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<sup>18</sup> Interview with the then Procurator General of Kazakhstan, Zhamarkhan Tuyakbayev, *Kazakhstanskaya Pravda*, 9 September 1995.

<sup>19</sup> Amnesty International interview with a representative of the non-governmental organization "Development of Legislation in Kazakhstan", Almaty, 27 February 1996.

<sup>20</sup> *Ibid.*

<sup>21</sup> The Cossacks were a military formation which helped annex and guard border lands of the Russian Empire, including what is now Kazakhstan, during Tsarist times. Outlawed under Soviet rule, a Cossack movement has been revived in some of the post-Soviet states. Semirechye is the old Russian name for the area of southeast Kazakhstan now comprising Almaty and Taldykurgan Regions.

proceeding but rejected the criminal charge against him.<sup>22</sup> He was released at the end of his sentence on 27 January 1996, the time he had spent in pre-trial detention having been taken into account.

Allegations have been made that the arrest and prosecution of Nikolay Gunkin were politically motivated. Supporters of Nikolay Gunkin claim that his arrest was timed to prevent him becoming a candidate in the forthcoming elections, and that police had passed up previous opportunities to arrest him.

It has been alleged that Nikolay Gunkin was physically assaulted by police officers during his arrest. It has also been alleged that later the same day three men entered Nikolay Gunkin's cell at the Moskovsky District Department of Internal Affairs and attempted to hang him by the neck from a central heating pipe.<sup>23</sup> One of the men is alleged to have been wearing a police uniform.<sup>24</sup> It has been alleged further that, following his transfer to SIZO-1 in Almaty, officials there threw cold water over Nikolay Gunkin to try to force him to end a hunger strike.<sup>25</sup> Amnesty International regards such action as cruel, inhuman and degrading treatment or punishment. Amnesty International wrote to authorities in Kazakhstan in November 1995 asking to be kept informed as to whether investigations were taking place into the alleged ill-treatment of Nikolay Gunkin. The organization also asked to be provided with a copy of the indictment against Nikolay Gunkin and the court judgment, so that it could examine the exact basis for the charge of "organizing an unsanctioned meeting". There has been no response from officials in Kazakhstan to these requests.

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<sup>22</sup> *Reuters*, 21 November 1995.

<sup>23</sup> Letter to the President of Kazakhstan from the Russian Centre of the Republic of Kazakhstan, 4 November 1995.

<sup>24</sup> Open letter to the Secretary General of the United Nations from the Russian Centre of the Republic of Kazakhstan and the Semirechye Cossack Host, November 1995.

<sup>25</sup> Statement by the Committee for CIS Affairs and Links with Compatriots, State Duma of the Russian Federation, 8 November 1995.

## The case of Valery Zippa

Valery Zippa, born in 1971, is serving a 10-year prison sentence after having been convicted in April 1995 of offences including assault. It has been alleged that Valery Zippa was severely beaten on 17 August 1994 in the course of interrogation by officers at the remand centre of the Almaty City Directorate of Internal Affairs. Allegedly as a result of this beating he was hospitalized on the following day, and required surgery to remove his spleen.

A criminal investigation was opened by the office of the procurator of Sovetsky district in Almaty into the cause of the injuries sustained by Valery Zippa, and on 31 May 1995 a case against two police officers charged with "intentional infliction of grave bodily injury (Article 108 of the Criminal Code) and "exceeding authority" (Article 171) was referred to the Sovetsky district court for trial. However, on 28 June the court sent the case back for further investigation.<sup>26</sup> As of February 1996 no new

### **Assault on Iraida Kravtsova, wife of Nikolay Gunkin's lawyer**

In addition to the allegations of torture and ill-treatment of Nikolay Gunkin, there were allegations in this case relating to his lawyer which raised doubts about the fairness of the trial, as well as raising fears for the safety of the lawyer, Ivan Kravtsov, and his family. Notably, on 7 November 1995 unidentified people broke into the Kravtsov family home and physically assaulted the lawyer's wife, Iraida Kravtsova, who consequently required hospital treatment. Ivan Kravtsov also reportedly received threatening telephone calls, and was allegedly threatened by the city procurator of Almaty with the withdrawal of his licence to practise as a lawyer. On 8 November Ivan Kravtsov withdrew from the case. In a letter in November 1995 Amnesty International asked authorities in Kazakhstan whether any investigation had taken place into the attack on Iraida Kravtsova. There has been no response.

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<sup>26</sup> Letter from the office of the city procurator of Almaty to the mother of Valery Zippa, 4 December 1995.

## **Conditions in juvenile detention: a regime of "fist and truncheon"**

Amnesty International has obtained information about a penitentiary for male juveniles in Almaty, known as LA-155/6. One of four penitentiaries for male juveniles in Kazakhstan, and one of around 80 such penitentiaries in the whole of the CIS, it has a population of some 600 boys aged from 14 to 18 years. A former employee of LA-155/6, who worked there for over 10 years up to 1995, told Amnesty International in February 1996 that the regime in LA-155/6 was based on "fist and truncheon".

A video film taken in the prison by an independent film maker, Taras Popov, during 1993-95 and shown to Amnesty International depicts cases of victims of physical abuse by staff - guards are shown striking boys with their fists - and by older inmates who had been put in charge of younger ones. A number

developments had been reported in the case, and Amnesty International wrote to authorities in Kazakhstan asking to be kept informed of the results of the investigation, in particular whether anyone had been brought to justice for Valery Zippa's injuries and whether Valery Zippa had received compensation. Amnesty International also sought official assurances that Valery Zippa had continued to receive appropriate medical care in his place of confinement. No reply has been received.

of the weakest inmates describe having been raped by other inmates, and two boys are shown who had prostituted themselves to other inmates in exchange for extra food or cigarettes. Some boys are shown in the film to have mutilated themselves or made themselves ill in the hope of getting released or in order to be hospitalized and thus avoid the normal work and exercise regime. It has been alleged to Amnesty International that half the inmates are malnourished, and that as of February 1996 there were 11 cases of tuberculosis at LA-155/6.

In the film, boys as young as 14 report that they were given four-year custodial sentences for relatively minor offences, such as petty theft. The former employee interviewed by Amnesty International claimed that 70-80 per cent of the inmates of LA-155/6 re-offend and end up back in prison.

Amnesty International has learned that at least eight inmates of LA-155/6 have died in recent months, possibly as a consequence of their treatment there. Little is known at this stage about these boys, but they include the following:

**Shakmatov**, aged 17, died at the end of 1995 of a wasting condition apparently caused by malnutrition.

**Ershev**, aged 16, died at the end of 1995 allegedly of starvation and pneumonia.

**Makamedov**, aged 17, died at the end of 1995 from unspecified ill-health very shortly after release. It has been alleged that he was released in haste to avoid him dying in the penitentiary.

**Raigert**, aged 17, was one of three inmates allegedly murdered at LA-155/6. Responsibility for his death is unclear.

Amnesty International is calling on authorities in Kazakhstan to conduct a full and impartial investigation in accordance with international standards into the deaths of these four boys, and of any others who have died in recent months, with the findings made public, and with anyone found guilty of a criminal offence related to their deaths being brought to justice.



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Torture and deliberate ill-treatment in the penitentiary system

Non-governmental organizations have persistently claimed that there have been incidents in which prison officials have engaged in deliberate ill-treatment of prison inmates. Cases brought to the attention of Amnesty International include that of a group of prisoners at the maximum security prison UT-174/4 at Arkalyk, Torgay Region, who in February 1996 contacted Kazakstani human rights monitors to complain about ill-treatment including beatings by prison guards. In protest at their treatment, some of the prisoners had allegedly mutilated themselves with knives.<sup>27</sup> When asked by Amnesty International to comment on this case, officials at the Ministry of Internal Affairs denied the allegations, but commented that the prison director had been changed “to improve discipline” in the prison.<sup>28</sup>

The prisoners at Arkalyk also complained of unwarranted confinement in punishment cells. Descriptions given to Amnesty International of punishment cells in other penitentiaries indicate that these cells do not meet minimum international standards. For example, prisoners at Arkalyk were allegedly held in punishment cells in complete darkness.<sup>29</sup> A former prisoner at a corrective labour colony, interviewed by Amnesty International in February 1996, described a punishment cell at that colony which was 1m. by 1m. Here prisoners would be left in isolation, stripped almost naked, for up to

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15 days.<sup>30</sup> Former political prisoner Nikolay Gunkin stated following his release that in January 1996 he had spent 10 days in a punishment cell in freezing temperatures because the windows were broken.<sup>31</sup>

## THE DEATH PENALTY

In March 1996 Amnesty International issued a statement condemning the use of the death penalty in Kazakhstan.<sup>32</sup> Information recently received by the organization from official and unofficial sources indicated that 110 death sentences had been passed during 1995, and 101 executions had been carried out. Among the countries in the world for which execution figures were known for 1995, only three countries (China, Nigeria and Saudi Arabia) had executed more people than Kazakhstan. Considering the size of Kazakhstan's population - just 17 million people - the figure of 101 executions in just one year was shockingly high.

The government points to a soaring crime rate to try to justify its use of the death penalty, but Amnesty International disputes claims about the death penalty's deterrent effect.

The Kazakstani authorities have publicly stated that Amnesty International's statistics are incorrect, and that the number of executions carried out in 1995 was 63.<sup>33</sup> However, they have offered no explanation about how this figure of 63 executions relates to the other limited statistical information they have provided at other times (see below). Amnesty International has consistently pointed out to the Kazakstani authorities that United Nations Economic and Social Council (ECOSOC) resolution 1989/64, point 5, urges member states

*"to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted".*

As a member of the Organisation for Security and Co-operation in Europe,<sup>34</sup> Kazakhstan has undertaken to "exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration", and to "make available to the public information regarding the use of the death

<sup>30</sup> Amnesty International interview with "Vladimir", formerly imprisoned conscientious objector to military service, 28 February 1996.

<sup>31</sup> Press conference in Moscow, 27 February 1996, reported by *Ekspress Khronika*.

<sup>32</sup> Amnesty International News Service 44/96, AI Index: EUR 57/05/96.

<sup>33</sup> Press conference by Mikhail Baranov, Chairman of the Presidential Clemency Commission, 20 March 1996, quoted by *Reuters*.

<sup>34</sup> Kazakhstan was admitted to the Conference on Security and Co-operation in Europe (CSCE), later restyled the Organisation for Security and Co-operation in Europe (OSCE), in January 1992.

penalty".<sup>35</sup> Moreover, as a member of the United Nations,<sup>36</sup> Kazakhstan should provide information to the five-yearly studies on the use of the death penalty by the ECOSOC Commission on Crime Prevention and Criminal Justice.

Until Kazakhstan is prepared to publish detailed statistics on its use of the death penalty, Amnesty International stands by its original statement.

#### The legal status of the death penalty

The death penalty is allowed in Kazakhstan's Constitution through an explicit restriction of the constitutional provision of the right to life. Article 15 of the Constitution states:

*1. Everyone has the right to life.*

*2. No one has the right arbitrarily to take the life of another person. The death penalty is provided by law as the exceptional measure of punishment for especially serious crimes, with the condemned person having the right to petition for clemency.*

Kazakhstan is still using the Soviet-era criminal code, in force since 1960, with amendments. This retains the death penalty for 18 peacetime offences.<sup>37</sup> However, senior officials at the Ministry of Justice informed Amnesty International in April 1992 that no one had been executed for economic crimes in the past 10 years.<sup>38</sup> Statistics shown to Amnesty International at that time revealed that between 1987 and 1991 the death penalty had been applied for only four offences: murder under aggravating circumstances, rape, threatening the life of a police officer, and banditry. The most recent official statements claim that in 1995 the death penalty was applied only for aggravated murder.<sup>39</sup>

<sup>35</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, paragraphs 17.7-17.8.

<sup>36</sup> Kazakhstan was admitted to the United Nations on 2 March 1992.

<sup>37</sup> Treason (Article 50 of the Criminal Code); Espionage (Art. 51); Terrorist act (Art. 52); Terrorist act against a representative of a foreign state (Art. 53); Sabotage (Art. 54); Organizing the commission of any of the previously-listed offences (Art. 58); Commission of any of the previously-listed offences against another Working People's State (Art. 59); Banditry (Art. 63); Actions disrupting the work of corrective labour institutions (Art. 63-1); Counterfeiting (Art. 73); Violating currency rules (Art. 74); Large-scale theft of state property (Art. 76-5); Premeditated, aggravated murder (Art. 88); Aggravated rape (Art. 101); Taking a bribe (Art. 146); Threatening the life of a police officer (Art. 173-1); Hijacking an aircraft (Art. 223-1); Resisting a superior or compelling him to violate official duties, in conjunction with intentional homicide of a superior or any other person performing military duties (counts as a peacetime offence), or committed in wartime or a combat situation (counts as a wartime offence) (Art. 227/c).

<sup>38</sup> Amnesty International interview with then Deputy Ministers of Justice Serik Temirbulatov and Marat Nurbekov, Almaty, 18 April 1992.

<sup>39</sup> Amnesty International interview with Mikhail Baranov, Chairman of the Presidential Clemency Commission, Almaty, 27 February 1996.

A draft of a new criminal code is currently being reviewed by the Ministry of Justice prior to being submitted to parliament. Officials have told Amnesty International that the new criminal code will contain fewer crimes punishable by death.<sup>40</sup>

#### Legal procedures involving the death penalty

A **death sentence** can be passed by the Regional Courts in any of Kazakhstan's 19 regions, and by the Almaty City Court. Cases are currently tried by a bench of three judges; introducing trial by jury has been the subject of limited official discussion, but there is currently little official support for this. A defence lawyer must assist in capital cases. A death sentence may not be passed on a person who was younger than 18 years old at the time of the commission of the crime, or on a pregnant woman. Prisoners can **appeal** against the verdict or sentence to the next highest court within seven days of receiving a written copy of the judgment. As their cases are heard at a higher level at first instance, however, prisoners under sentence of death have fewer opportunities to appeal than many other prisoners.

Death sentences may also be reduced by a **judicial review**. Under this procedure a higher court re-examines the case after it has received a protest against the judgment of the court of first instance or the court of appeal. Although death sentences are suspended pending appeal, they may still be carried out before a judicial review has been completed. If these remedies fail the prisoner can petition for **clemency**. Petitions for clemency are reviewed by the Clemency Commission before being referred to the President of Kazakhstan for final confirmation (according to officials, the Commission also reviews cases where the prisoner has not submitted a petition for clemency, although it is not clear to Amnesty International whether a review is automatic or discretionary in such cases). The Commission meets once a month (currently under the chairmanship of the Minister of Internal Affairs), to review cases based on summary information about each case which is given to the Commission members three days before the meeting, and on statements on each case presented to the meeting by the Supreme Court and the Procuracy. The Commission is formally comprised of 13 members, although the Amnesty International delegate visiting Kazakhstan in February 1996 was told that at that time only 10 members were involved in taking the Commission's decisions.<sup>41</sup> If the vote is a tie, the Commission automatically refuses clemency (that is, a decision to grant clemency needs a simple majority plus one). Officials have conceded to Amnesty International that, given the Commission's current composition, it is almost guaranteed that the prisoner will have at least five votes against his or her being granted clemency, even before the Commission reviews the case.<sup>42</sup>

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<sup>40</sup> Amnesty International interview with Igor Rogov, presidential adviser on legal issues, Almaty, 26 February 1996.

<sup>41</sup> The Minister of Justice; the Procurator General; the President of the Supreme Court; the Chairman of the Committee for National Security; the Chairman of the Clemency Commission; the Minister of Internal Affairs; the Deputy Chairman of the Clemency Commission (representative from the Cabinet of Ministers); Belger Kanolovich, a writer; Timur Dombetov, the First Vice-President of the national Olympic Committee; and Anatoly Shapov, the Chairman of the Union of Veterans' Organizations.

<sup>42</sup> Amnesty International interview with Mikhail Baranov, Chairman of the Presidential Clemency Commission, Almaty, 27 February 1996.

If clemency is refused, **execution** is carried out no later than four days after the decision.<sup>43</sup> Execution is by shooting with a single shot in the back of the head. Amnesty International was informed in March 1996 that at the beginning of the year the responsibility for carrying out executions was transferred between departments of the Ministry of Internal Affairs, from the Main Department of the Criminal Executive System (GUUIS) to the State Investigation Committee (GSK).

Representatives of GUUIS told Amnesty International that prisoners do not have the right to say good-bye to their relatives before execution,<sup>44</sup> nor do they have a right to see a priest or spiritual adviser. GUUIS officials claimed that relatives are informed of executions immediately in writing, although Amnesty International has heard from other official sources that there are cases in which relatives did not find out for some time about executions which had taken place.<sup>45</sup> Relatives do not have the right to receive the body of the prisoner after execution, or to know the place of burial.

In May 1995 video footage purporting to show the execution of a man sentenced to death for murder was shown on state television in Kazakhstan. This footage was screened for a second time in September. At the time of the first screening, the filming was reported to have been organized by the Kazakhstan Ministry of Internal Affairs, and approved by the Office of President Nursultan Nazarbayev and the Procurator General's Office.<sup>46</sup> In a letter to the Procurator General of Kazakhstan in July 1995, Amnesty International reiterated its opposition to the death penalty and its dismay that an execution had been shown on television. Media reports in early 1996 have suggested that the execution shown in the video footage was not genuine, but an officially-organized hoax intended to deter crime.<sup>47</sup>

On average, the period between the passing of a death sentence and execution, including appeal and clemency proceedings, takes one year.

#### Statistics for the application of the death penalty

In the absence of consistent official reporting of statistical data on the application of the death penalty in Kazakhstan Amnesty International's information is incomplete, but the available data suggests a steady increase in the number of death sentences passed since the late 1980s, and a drastic reduction in recent years in the number of death sentences being commuted to imprisonment.

Official statistics on the application of the death penalty in Kazakhstan were made available to Amnesty International in April 1992, when a delegation from the organization first visited Almaty. These statistics indicated that between 1987 and 1990 a total of 165 people received death sentences,

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<sup>43</sup>Amnesty International interview with Nikolay Vlasov and Hassan Valeyev, Almaty, 26 February 1996.

<sup>44</sup>*Ibid.*

<sup>45</sup>Amnesty International interview with Madina Shambusovna, Ministry of Foreign Affairs of the Republic of Kazakhstan, Almaty, 28 February 1996.

<sup>46</sup>Statement by the Kazak-American Bureau for Human Rights and the Rule of Law, 13 November 1995.

<sup>47</sup>*Reuters*, 12 March 1996.

but at least 41 of them benefited from commutation or pardon. In 1991, 67 death sentences were passed, at least 26 of which were subsequently commuted. Official statistics for 1992 were not made available to Amnesty International, but the organization received reports of six death sentences being passed and six executions carried out during that year; the true figures are assumed to be much higher. In 1993, 65 people were sentenced to death.

Statistics on the application of the death penalty in 1994 were disclosed in statements in March 1995 by President Nazarbayev and in April by the First Deputy Chairman of the Supreme Court. One hundred people had been sentenced to death in 1994. Of these, seven had subsequently had their punishment changed on appeal during the year to 15 years' imprisonment, as had 19 other people sentenced to death in previous years. One death sentence passed in 1994 had been commuted. The First Deputy Chairman of the Supreme Court reported that in cases where sentence had been passed towards the end of 1994 appeals and clemency petitions were still pending.

Officials at the office of the Procurator General told Amnesty International in February 1996 that 110 death sentences were passed in 1995. The figure of 101 executions carried out in 1995 was first brought to Amnesty International's attention by unofficial sources. The Amnesty International representative who visited Almaty in February and March 1996 questioned a number of officials about the accuracy of this figure. Some officials did not dispute the figure; those who did dispute it as too high were not able at that time to provide a different figure. The Chairman of the Clemency Commission revealed that 86 clemency petitions were reviewed in 1995, only one of which was granted. Given that all 85 executions are believed to have been carried out during the year, as were 16 executions of people whose clemency petitions had been turned down in 1994, Amnesty International stands by the figure of 101 executions until such time as the Kazakstani authorities are prepared to implement ECOSOC resolution 1989/64 and publish detailed statistics.

Amnesty International was informed in mid-June 1996 by an unofficial source that in the first five months of 1996 the Clemency Commission had refused 25 petitions for clemency and upheld only two.

#### Official attitudes to the death penalty

On 18 March 1995, President Nazarbayev delivered a speech about crime in Kazakhstan in which he stated: "Although I am not a supporter of repressive measures, I would like to say that at present calls which are sometimes heard for the abolition of the death penalty are absolutely groundless, irrespective of whatever humanistic reasoning accompanies them. Possibly in future our society will reach the necessity of abolishing it and replacing it with life imprisonment as is accepted in states with a high level of a sense of justice, but so far it is too early to talk about it".

In discussions between Amnesty International and officials in Kazakhstan in February 1996 the main arguments given by officials for the need for the retention of the death penalty in Kazakhstan were: (i) the provision for the death penalty in the new Constitution of Kazakhstan and the lack of provision for life imprisonment in the Constitution; (ii) the economic impoverishment of the country, which means that the state cannot support a system of life imprisonment; (iii) the rapidly rising crime rate in Kazakhstan, and public opinion. Some officials rejected arguments about the risk of innocent people being wrongly convicted and executed, claiming that there were adequate judicial safeguards including the review the President makes of all cases.

#### Moves towards abolition

There is no serious official initiative to abolish the death penalty in Kazakhstan at present, although officials have indicated to Amnesty International that Kazakhstan may be positively influenced by moves by the Russian Federation towards abolition.<sup>48</sup> Currently, official initiatives are focused on improving existing procedures and safeguards against mistakes.

Notably, the Chairman of the Clemency Commission has submitted proposals to the President that: (i) when the Commission's vote on a clemency petition is a tie, the decision should be automatically to grant clemency; and (ii) that the Minister of Internal Affairs, the President of the Committee of National Security and the Chairman of the Supreme Court should be excluded from the Commission (on the grounds that their opinion is already given in writing, and that they have been involved in the investigation and/or prosecution stages), and that a deputy from each house of parliament and a representative from the Presidential Committee on Human Rights should replace them. He suggests retaining the Procurator General and the Minister of Justice on the Commission to guarantee that the law is observed.<sup>49</sup>

Officials have also submitted proposals to the President for a delay of at least one year between the upholding of a death sentence on appeal and the consideration of a petition for clemency. In the view of Igor Rogov, an adviser to the President, this would help to avoid innocent people being executed by allowing more time for gathering evidence on which to base a clemency petition. The passage of time might also allow a clemency decision to be taken in an atmosphere less influenced by strong emotions aroused by the crime.<sup>50</sup>

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<sup>48</sup>The Russian Federation became officially committed to suspend all executions, pending the full abolition of the death penalty within three years, when it acceded to the Council of Europe on 28 February 1996. However, although this commitment was welcomed as an important step in the right direction by the international community, it appears that executions continue. A member of the Russian Federation Presidential Clemency Commission said in an interview at the end of March that the Russian authorities had not put the moratorium into effect and were "executing as many people as possible".

<sup>49</sup>Amnesty International interview with Mikhail Baranov, Chairman of the Presidential Clemency Commission of the Republic of Kazakhstan, Almaty, 27 February 1996.

<sup>50</sup>Statement by Igor Rogov on the results of the November 1995 international conference "The Concept of Human Rights in the Reform of the Judicial and Penitentiary Systems", hosted in Almaty by the Kazak-American Bureau for Human Rights and the Rule of Law.

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## AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE GOVERNMENT OF KAZAKHSTAN

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### **1. Implement commitments to human rights law and standards**

Since becoming a member of the United Nations (UN) in 1992, the only UN treaty on human rights to which Kazakhstan has acceded is the Convention on the Rights of the Child.<sup>51</sup> While welcoming this accession, Amnesty International is calling on the Government of the Republic of Kazakhstan to accede also to the other UN treaties on human rights, including the International Covenant on Civil and Political Rights (ICCPR), its first and second Optional Protocols, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture).

Until such time as Kazakhstan reaffirms its commitment to them, it remains legally bound as a successor state of the former USSR to those international human rights treaties to which the USSR was party, including the ICCPR and the Convention against Torture.

Amnesty International also calls on the Government of the Republic of Kazakhstan to respect the detailed human rights commitments of the Organisation for Security and Co-operation in Europe (OSCE), which it has voluntarily and expressly agreed to implement.

### **2. Take effective steps to end the problem of poor prison conditions amounting to ill-treatment**

Amnesty International acknowledges that the June amnesty for around one quarter of the penitentiary population represents a positive step by authorities in Kazakhstan to address the serious problem of poor prison conditions caused by under-funding of the prison system. Amnesty International also recognizes that under-funding affects not just prisoners but those responsible for overseeing them. Low morale occasioned by unpaid wages to prison guards and under-staffing is a factor which aggravates many of the problems listed in this report.

In recognition that many of the problems within the prison system can only be fully resolved by financial and technical assistance, Amnesty International is seeking through this report and associated campaigning activities to interest humanitarian aid and prison reform organizations in the problems of the Kazakhstani prison system and to encourage such organizations to work with the Kazakhstani authorities to tackle disease, starvation, overcrowding and other aspects of poor prison conditions.

Nevertheless, the contention that ill-treatment is somehow inevitable because of poor economic conditions has no merit. Many other countries with similar or worse economic conditions treat their prisoners in a relatively humane manner which is generally consistent with international standards. Therefore, Amnesty International recommends that the Kazakhstani authorities should explicitly and fully acknowledge that they are obliged by international standards to ensure the well-being of prisoners, including protecting their right to life as guaranteed by Article 6 of the ICCPR, and ending ill-treatment. This would be consistent with their right as prisoners to be treated with humanity and respect for the inherent dignity of the human person as guaranteed by Article 10. To this end, authorities in Kazakhstan should do all within their means to implement their obligations under the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of

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<sup>51</sup> Signed by President Nazarbayev on 16 February 1994.



Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the Body of Principles) to provide all prisoners with adequate food, medical care, accommodation and sanitary facilities.<sup>52</sup>

### **3. Put an end to torture and deliberate ill-treatment**

There can never be any excuse for torture and deliberate ill-treatment, and it is clearly within the power of authorities in Kazakhstan to take immediate measures to eliminate them, regardless of the problems of under-funding in the prison system. In addition to recommending as a matter of priority accession to the UN Convention against Torture, Amnesty International recommends that authorities in Kazakhstan do the following, in line with international standards:

- Inform all detainees of their rights, including the right to complain to the authorities against ill-treatment (Rule 35 of the Standard Minimum Rules; Procedure 4 of Procedures for the Effective Implementation of the Standard Minimum Rules).
- Ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel and other persons who may be involved in the custody, interrogation and treatment of any individual subjected to any form of arrest, detention or imprisonment (Article 10 of the UN Convention against Torture).
- Establish an effective and impartial complaints procedure with powers to implement decisions (Article 2(3) of the ICCPR; Rule 36 of the Standard Minimum Rules; Principle 33 of the Body of Principles).
- Establish an effective system of independent inspections of all places of detention (Rule 55 of the Standard Minimum Rules).
- Implement prompt and impartial investigations of all complaints of torture or ill-treatment (Article 13 of the UN Convention against Torture; Human Rights Committee General Comment 20, paragraph 13), and whenever there are reasonable grounds to believe that torture or ill-treatment has occurred even if there has been no complaint (Article 12 of the UN Convention against Torture).
- Bring those responsible for torture or ill-treatment to justice (Article 7(1) of the UN Convention Against Torture; Human Rights Committee General Comment 20, paragraph 13).
- Ensure that every victim of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible (Article 14 of the UN Convention against Torture).

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<sup>52</sup> Relevant extracts from international standards are quoted in full in the appendix to this document.

- Make provision for the establishment of an Ombudsman. The duties of the Ombudsman would normally include the power to investigate alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unlawful, oppressive or unfair treatment of citizens by government officials, and to assist victims of such violations, abuse or unfair treatment to obtain redress. To ensure the protection of those detained or imprisoned, an Ombudsman should be empowered to gain access at any time, without prior notice, to any place of confinement. An Ombudsman should also have the power to take appropriate action to call for the remedying, correction and reversal of abuses including bringing proceedings in a competent court and making recommendations to the appropriate authorities for the reform of legislation or existing practices.
- As requested by the Ninth UN Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, May 1995), provide answers to the questionnaire on the UN Standard Minimum Rules for the Treatment of Prisoners; exchange views with other states on improving prison conditions and strengthen cooperation in that area; share information regarding practical conditions in penal institutions with the general public, professional organizations, scientific institutions and relevant non-governmental organizations; and enhance transparency in prison systems and their functioning by providing ways and means of monitoring them by independent national bodies, such as judicial supervision or parliamentary control, duly authorized independent complaint commissions or ombudsmen.

#### **4. End torture and ill-treatment in juvenile detention**

As noted above, the one human rights treaty to which Kazakhstan has acceded is the Convention on the Rights of the Child. In line with Article 37 of the Convention, Amnesty International urges the Government of Kazakhstan to eliminate torture or other cruel, inhuman and degrading treatment or punishment of child detainees.

Amnesty International also calls on authorities in Kazakhstan to investigate the deaths of prisoners at juvenile penitentiary LA-155/6 mentioned in this report, with the findings made public and anyone found criminally responsible being brought to justice.

#### **5. Take effective steps to abolish the death penalty**

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. For example, a survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988, concluded that:

"This research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis".

Similarly, the South African Constitutional Court, whose judges were appointed by President Nelson Mandela, in its judgment of June 1995 (*State v. MaKwanyane and Mchunu*, Case No. CCT/3/94), expressly rejected the contention that the death penalty was an effective specific deterrent.

Amnesty International also maintains that the wrong message is given when a government itself violates human rights in the process of seeking to enforce law and order. Executing people to punish serious violent crime only serves to perpetuate a cycle of violence.

The majority of countries in the world have now abolished the death penalty in law or practice. In addition, the United Nations Security Council, when it established the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, expressly ruled out the death penalty for the gravest of all crimes: genocide, other crimes against humanity, and serious violations of humanitarian law. Moreover, the International Law Commission, a body of some of the world's leading experts appointed by the UN General Assembly, has drafted a statute for a permanent international criminal court which would exclude the death penalty for these crimes.

Therefore, Amnesty International continues to call on the Government of the Republic of Kazakhstan to do the following:

- Commute all pending death sentences.
- Declare an immediate moratorium on further death sentences and executions pending a comprehensive review of the death penalty in Kazakhstan.
- If not yet ready to do the above, at least ensure that all legal proceedings in which a death penalty could be imposed conform to international minimum standards including those set forth in the ICCPR, the UN Economic and Social Council (ECOSOC) Safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to Resolution 1984/50 of 25 May 1984, and ECOSOC Resolution 1989/64 of 24 May 1989 implementing those Safeguards.
- Publish comprehensive statistics for the application of the death penalty, in accordance with ECOSOC Resolution 1989/64, the requirements of the five-yearly studies on the use of the death penalty by the ECOSOC Commission on Crime Prevention and Criminal Justice, and Kazakhstan's commitments as a member of the OSCE.

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## **APPENDIX: SELECTED INTERNATIONAL STANDARDS CONCERNING TORTURE AND ILL-TREATMENT**

### ***1. Requirement to provide adequate food***

“Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 20(1).*

### ***2. Requirement to provide sanitation and medical care***

“Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to the season and geographical region, but at least once a week in a temperate climate.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 13.*

“Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 15.*

“All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 17(2).*

“Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be staff of suitably trained officers.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 22(2).*

“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”

*UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24.*

### **3. Requirement to provide accommodation which is not tantamount to ill-treatment**

“All accommodation provided for the use of prisoners and in particular sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 10.*

“Every prisoner shall, in accordance with local and national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure cleanliness.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 19.*

### **4. Requirement to ensure that use of punishment cells does not amount to ill-treatment**

“Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 31.*

### **5. Requirement to ensure that conditions in juvenile detention do not amount to ill-treatment**

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”

*UN Convention on the Rights of the Child, Article 37(a).*

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.”

*UN Convention on the Rights of the Child, Article 37(c).*

### **6. Obligation to ensure prompt and impartial investigations of all complaints and reports of torture and ill-treatment**

“Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

*International Covenant on Civil and Political Rights, Article 2(3).*

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

*International Covenant on Civil and Political Rights, Article 9(4).*

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

*UN Convention against Torture, Article 12.*

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

*UN Convention against Torture, Article 13.*

“Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 35(1).*

“The Standard Minimum Rules, as embodied in national legislation and other regulations, shall also be made available and understandable to all prisoners and all persons under detention, on their admission and during their confinement.”

*Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners, Procedure 4.*

“Every Prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

“It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

“Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

“Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 36.*

“A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to

higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.”

*UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 33(1).*

“There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.”

*UN Standard Minimum Rules for the Treatment of Prisoners, Rule 55.*

### **7. Duty to bring to justice those responsible for torture and ill-treatment**

“Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

“Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”

*UN Convention against Torture, Article 4.*

“States parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate article 7 [of the ICCPR, prohibiting torture and ill-treatment], whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.”

*Human Rights Committee General Comment 20, Paragraph 13.*

### **8. Duty to provide fair and adequate compensation to victims of torture**

“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means to as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

“Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.”

*UN Convention against Torture, Article 14.*

### **9. Duty to ensure effective steps are taken to prevent torture**

“Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

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“Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of such persons.”  
*UN Convention against Torture, Article 10.*