



Penal Reform International (PRI)

1. This document contains concerns and recommendations which come within the mandate of Penal Reform International (PRI), an international non-governmental organization which has Consultative Status with the UN (ECOSOC). Its headquarters are in London, UK. Its regional office for Central Asia is based in Almaty, Kazakhstan. PRI has been implementing projects in the region, and in particular in Kazakhstan, since 1998. PRI has contributed also to the submission by NGOs based in Kazakhstan.

2. The Republic of Kazakhstan has achieved some tangible results in penal reform since gaining independence. For example, it moved from having the third largest known prison population in 1998 to 24th largest in 2006, halving its prison population. This was the result of a conscious decision to aspire to a penal system that would be informed by international standards and worldwide good practice, and to develop a comprehensive, multi-agency strategy that was explicitly supported by government at the highest level.

3. PRI and a number of non-governmental and inter-governmental agencies have supported and welcomed this and other signs of humanization in the penal policy of Kazakhstan, such as transferring responsibility for pre-trial detention to the Ministry of Justice, partial abolition of the death penalty, developing public monitoring of prisons and ratifying the Optional Protocol to the UN Convention against Torture, and maintaining a dialogue between the prison system, NGOs, international organizations and the mass media.

4. However, over the past three years the prison population of Kazakhstan has again increased. According to the most recent data, Kazakhstan's prison population rate is now 382 per 100,000 of the national population, raising it to 16th place in the world. Today more than 60 % of prisoners in Kazakhstan are serving sentences of more than 5 years' imprisonment.

5. The criminal code restricts the discretion of judges in an inconsistent manner, for example obliging them to impose a sanction of imprisonment for theft where the accused has previous convictions for this offence, but allowing them to impose an alternative sanction where the accused has a previous, more serious conviction. In addition, the possibility to take into account mitigating circumstances is restricted.

6. Such inconsistencies are the result of instability and unclarity in official rhetoric and criminal policy, which have led to frequent changes in the criminal law. Sanctions have changed from severe to lighter and back again, with the result being more and longer prison sentences, in many cases apparently without objective justification. (According to statistical data from 2007, superior courts felt it necessary to amend sentencing decisions in the cases of 2384 persons, and for 867 convicted persons the punishment was reduced.)

7. Alternatives to imprisonment remain rarely imposed sanctions, as the procedures for their realization have never been satisfactorily elaborated. For example, new rules concerning community sanctions require payment from the organizations which benefit from public works. This has long been recognized in Kazakhstan as a fundamental barrier to activating this promising alternative to incarceration.

8. As for the possibilities for early release, changes to the institution of parole in March 2007 resulted in a sharp reduction in the number of people released (from 11,199 in 2006 to 3,650 in 2008) and caused severe difficulties in the penal system. A key change was to introduce the obligation to provide reparation. No more than 30% of Kazakhstan's prisoners have access to the work that would permit them to meet this new obligation. In addition, contrary to the provisions of UN Standard Minimum Rules for the Treatment of Prisoners (article 60), control of early released persons was given to the Ministry of Interior, along with the right of unlimited surveillance, and to impose additional obligations and demand a wide range of information. In cases where these parole 'conditions' are breached, there is no alternative to re-incarceration. On the contrary, any violation or administrative misdemeanour leads automatically to a return to prison. The Law does not foresee an individualized approach with respect to released persons, and parole is automatically excluded for persons who were early released from previous sentences. From the data available, there is no sign that this hardening of policy on access to parole is guaranteed to improve the crime situation. The number of early released persons committing crimes decreased from 5081 in 2004 to 3469 in 2007; the number of crimes rose from 118,485 in 2004 to 141,271 in 2007.

9. The Criminal Code does not yet satisfy the definition of torture envisaged by article 1 of UNCAT. Most often cases of torture are characterised as 'exceeding official powers', leading to an underestimation of the scale of the problem posed in Kazakhstan by torture and other cruel, inhuman or degrading treatment or punishment. There have been a number of cases, in different regions of Kazakhstan, of protest, in the form of self-mutilation, by prisoners claiming that they have been tortured or otherwise ill treated.

10. On 6th of December 2007, the President of the Republic of Kazakhstan signed a Decree on pardon covering 31 prisoners under sentence of death. This penalty was replaced with life imprisonment, a penalty which may not be applied to women, to persons having committed a crime under the age of eighteen, and men who have reached the age of sixty five at the moment of passing sentence. Conditional release is possible, under certain conditions, including after not less than 25 years have been served, but not for those for whom a death sentence has been commuted to life.

11. PRI is concerned that conditions under which life sentenced prisoners are held are not decided on an individual basis and may therefore be unnecessarily harsh and restrictive. These prisoners are kept in separate prisons and separately from other prisoners (in two-person cells). All are held under a 'high security' regime for the first ten years of their term, after which they may be transferred to a less severe regime.

PRI offers the following recommendations for consideration under the UPR:

1. Follow international standards and reflect good practice by addressing the too punitive and unindividualised tendencies in Kazakhstan criminal legislation and criminal procedure, and returning to the earlier policy of promoting alternatives to imprisonment, including early release under supervision.
2. Develop the penal system, including responsibility for supervision of early release, as an integrated structure within the Ministry of Justice.
3. Develop responsibility for oversight of alternative sanctions (probation) as a part of the penal system under the Ministry of Justice.

4. Develop and adopt a law on “Public Monitoring in the Republic of Kazakhstan” to provide a legal basis for a National Preventive Mechanism (NPM) that will be in accordance with the UN Optional Protocol to the UNCAT and other international obligations.
5. Enlarge the list of institutions which may be monitored by Public Monitoring Commissions to include pre-trial detention centers under the Ministry of Interior and other institutions, and adopt the concept of unannounced visits.
6. Revise the definition of torture in the Criminal Code to bring it into conformity with Article 1 of the UNCAT.
7. Develop a legal mechanism to provide for medical examination by independent experts of all persons alleging torture.
8. Put into effect the 2008 recommendations of the UN Committee against Torture concerning establishing an independent and effective mechanism for prompt, impartial and effective investigations into all allegations of torture and ill-treatment, providing compensation and rehabilitation for victims of torture, and providing detailed statistical data on torture and other ill-treatment.
9. Develop a procedure for recording the time of arrest, informing the arrested person of the basis for their arrest and their rights, and other procedural guarantees.
10. Follow Habeas Corpus procedure for all limitations of freedom, in accordance with article 9 of the ICCPR.
11. Revise the current procedure for sending prisoner complaints, to ensure confidentiality and effectiveness.
12. Train in and inform all penal system officials, policemen, lawyers, judges, medical officers and other public servants regarding human rights standards, international human rights obligations and their implications under Kazakh law, and of the benefits of public monitoring of places of incarceration.
13. Review the regulations and legislation governing the treatment of persons serving life sentences, including those serving a life sentence commuted from a sentence of death, in order to bring these into line with UN standards and norms, including the Recommendations on Life Imprisonment, and international good practice, in particular concerning regular review of each individual’s security classification in order to facilitate transfer to appropriate conditions at the earliest possible date.