



In cooperation with the
OSCE Field Operations in Central Asia

SEVENTH EXPERT FORUM ON CRIMINAL JUSTICE FOR CENTRAL ASIA

27-29 November 2018
Bishkek, Kyrgyzstan

Organization for Security and Co-operation in Europe
Office for Democratic Institutions and Human Rights (ODIHR)

In co-operation with the OSCE Field Operations in Central Asia, the United Nations Office on Drugs and Crime and
the UN Office of the High Commissioner for Human Rights



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Conference Report

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¹ Disclaimer: The opinions expressed in this report are those of the experts and participants to ODIHR's Sixth Expert Forum on Criminal Justice for Central Asia and do not necessarily represent the position of ODIHR.

01

INTRODUCTION

Criminal justice reforms in Central Asia have continued since the 2016 Expert Forum on Criminal Justice for Central Asia² and substantive changes have been adopted to criminal, criminal procedural and penal codes across the region. In some participating States, the roles of police, prosecutors, judges and defence have been modified significantly. There is an emerging trend towards transferring the power to authorize preventive measures and privacy-invasive investigative measures from prosecutors to the newly established function of pre-trial/investigative judges. In an attempt to increase the efficiency of criminal procedures, participating States in Central Asia have continued to introduce new forms of abbreviated procedures, mainly for situations where the accused does not contest his/her guilt. The establishment of probation services in some Central Asian participating States and elements of juvenile justice systems are much noted novelties, reflecting increased efforts to implement alternatives to imprisonment and to moving from punitive to rehabilitative criminal justice systems. In a similar vein, some participating States in the region have reviewed their classification systems, some adopting a tiered classification of offences, differentiating between crimes, misdemeanours and infractions. Discussions continue on the demilitarization of penitentiary systems, including in the context of implementing the recently revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).³

Amid these completed and ongoing reforms, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) organized the Seventh Expert Forum on Criminal Justice for Central Asia on 27-29 November 2018 in Bishkek, Kyrgyzstan. In this endeavour, ODIHR could count on the partnership and support of the Supreme Court of Kyrgyzstan, the OSCE Field Operations in Central Asia, particularly the OSCE Programme Office in Kyrgyzstan, the United Nations Office on Drugs and Crime (UNODC) and the Office of the High Commissioner for Human Rights (OHCHR).

ODIHR is also grateful for the contributions and commitment of civil society organizations from the region and international non-governmental organizations, including Penal Reform International, Fair Trials International, the International Commission of Jurists, the International Bar Association, the Soros Foundation and the Kyrgyz Association of Women Judges (CAGHS).



Photo: Participants of the Seventh Expert Forum on Criminal Justice for Central Asia, 27-29 November 2018, Bishkek, Kyrgyzstan

² OSCE Office for Democratic Institutions and Human Rights, Report on the Sixth Expert Forum on Criminal Justice for Central Asia, available at: <https://www.osce.org/odihr/332676?download=true>

³ Revised UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted unanimously by the UN General Assembly (UN-Doc A/Res/70/175) on 17 December 2015, available at: https://www.unodc.org › GA-RESOLUTION › E_ebook.

The Expert Forum on Criminal Justice for Central Asia aims to promote the exchange of experiences and informed dialogue with a view to policy development and reform in the area of criminal justice and has been organized by ODIHR since 2008 within the framework of its rule of law programme. It first took place in Zerenda, Kazakhstan, in 2008, followed by a forum in Issyk-Kul, Kyrgyzstan (2009), in Dushanbe, Tajikistan (2010),⁴ in Almaty, Kazakhstan (2012),⁵ in Bishkek, Kyrgyzstan (2014)⁶ and in Tashkent, Uzbekistan (2016). The Forum has emerged as a unique regional platform for professional discussion on criminal justice and judicial reform, human rights including fair trial rights in criminal procedure, and the harmonization of national legislation with international standards and relevant OSCE commitments.

Over the three days of the 7th Expert Forum, 130 representatives (75 men, 55 women) of the judiciary and prosecution, policy-makers, attorneys, academics and civil society actors from Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan and Uzbekistan discussed recent reforms, trends and challenges in the criminal justice sector in Central Asia and other parts of the OSCE region. Experts on criminal justice reform from Belarus, Croatia, Ireland, Sweden, the United Kingdom and Ukraine provided experiences and examples of good practices from beyond Central Asia, alongside experts from inter-governmental organizations. All presentations were made available to participants through an online platform and distribution of printed material.

The agenda of the Seventh Expert Forum was drafted taking into account recent reforms and developments in the criminal justice systems of the participating States in Central Asia, the outcomes and recommendations of the 2016 Expert Forum, consultations with OSCE field operations and partners, and meetings with relevant interlocutors in Kyrgyzstan in June and October 2018. Topics that follow up from the 2016 Expert Forum and those that benefit particularly from the format of cross-sectoral participation of criminal justice stakeholders were prioritized.

In their opening remarks, Ms. Ingibjörg Sólrún Gísladóttir, Director of ODIHR, Ms. Gulbara Kalieva, Judge and Chairperson of the Supreme Court of the Kyrgyz Republic, Ms. Svetlana Artikova, Deputy Chairperson of the Senate of the Oliy Mazhlis of the Republic of Uzbekistan, Ms. Ashita Mittal, Regional Representative for Central Asia of



Photo: Ms. Gulbara Kalieva, Judge, Chairperson of the Supreme Court of the Kyrgyz Republic opening the Seventh Expert Forum on Criminal Justice for Central Asia

the UNODC, Mr. Ryszard Komenda, Regional Representative of the UN OHCHR and Ambassador Pierre von Arx, Head of the OSCE Programme Office in Bishkek, stressed the importance of effective and fair criminal justice systems in line with the rule of law, human rights and judicial independence.

Following the opening remarks, the agenda was structured around three strands to allow discussion on issues related to the pre-trial phase, followed by trial and court-related topics and thirdly, issues relating to the penitentiary system.

Within these strands, participants discussed the following issues during six plenary sessions and seven working groups: reflection on criminal justice reforms in Central Asia, pre-trial investigations, the rights of suspects and defendants, the role of police, prosecutors and judges pre-trial, alternatives to pre-trial detention, institutional issues, procedural issues and fair trial, criminal sanctions and sentencing, the judicial system, reforms of the penitentiary system, reintegration and resocialization of offenders as well as discipline, sanctions and incident prevention in prison. A Women and Justice Breakfast was organized to discuss barriers women professionals face in justice institutions with regard to equal representation, equal treatment in the workplace and career prospects.

⁴ Third Expert Forum on Criminal Justice for Central Asia Final Report, 17-18 June 2010, available at: <https://www.osce.org/odihr/81134?download=true>.

⁵ Fourth Expert Forum on Criminal Justice for Central Asia: Final Report, 29-31 October 2012, available at: <https://www.osce.org/odihr/99506>.

⁶ Fifth Expert Forum on Criminal Justice for Central Asia Final Report, 24-25 November 2014, available at: <https://www.osce.org/odihr/147611>.

In addition to these sessions, the Forum provided participants with opportunities to debate current topics in criminal justice through side events. Six side events were organized by ODIHR on Professional standards for prosecutors, by Fair Trials International and ODIHR on Reducing confession-oriented criminal justice systems and incentives to coercion and ill-treatment, by ODIHR on tools to support OSCE participating States in implementing OSCE commitments and international standards relating to the rule of law, by the International Bar Association on Lawyers as an element and not obstacle to justice, by Penal Reform International on Developments in Central Asia on alternatives to detention, and by the CAGHS on Judicial practice in the matter of crimes against women and girls in the Kyrgyz Republic.



Photo: High-level panel delivering welcome remarks (from left to right): Ambassador Pierre von Arx, Head of the OSCE Programme Office in Bishkek; Ms. Ashita Mittal, Regional Representative for Central Asia, UN Office on Drugs and Crime (UNODC); Ms. Gulbara Kalieva, Judge, Chairperson of the Supreme Court of the Kyrgyz Republic; Ms. Ingibjörg Sólrun Gísladóttir, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR); Ms. Svetlana Artikova, Deputy Chairperson, Senate of the Oliy Mazhlis of the Republic of Uzbekistan, Mr. Ryszard Komenda, Regional Representative of the UN Office of the High Commissioner for Human Rights for Central Asia (OHCHR)

The present report does not seek to provide an exhaustive account of all interventions, but offers an overview of the discussions, highlighting the main conclusions and recommendations reached by participants. It seeks to provide a roadmap for further discussion and reform, and act as a tool for follow up at the Eighth Expert Forum envisaged to take place in 2020.

ODIHR would like to express its appreciation and gratitude to the authorities of Kyrgyzstan, particularly the Supreme Court of Kyrgyzstan, who hosted the Expert Forum, and to ODIHR's counterparts in the region, in particular the OSCE field operations, the United Nations Office for Drugs and Crime and the Office of the High Commissioner for Human Rights.

KEY CONCLUSIONS AND COMMENDATIONS

02

PRE-TRIAL INVESTIGATIONS

PLENARY SESSION 1

- The assumption that ill-treatment and coercion is necessary to obtain confessions from suspects to 'solve' crimes is erroneous and methods of non-coercive, research-based questioning (recently referred to as 'investigative interviewing') prove to be more efficient.
- States should move towards the adoption of investigative interviewing models, which are more respectful of human rights than coercive strategies, as well as more effective.
- Training of police officers is an essential part of the process of moving from guilt-assumptive to non-coercive interviewing.
- Performance assessment of police and prosecutors should not be based primarily on quantitative data, such as arrest or conviction rates, but include qualitative factors.
- In systems that are moving towards an adversarial approach through changes to procedural codes, it is particularly important that prosecutors ensure that the judge has information on all relevant aspects of the case, including exculpatory evidence and mitigating circumstances.

RIGHTS OF SUSPECTS AND DEFENDANTS

WORKING GROUP 1

- State-funded legal aid schemes are an integral part of a fair and effective criminal justice system and vital for ensuring access to justice for marginalized communities, as recognized in international standards.
- The principle of independence of the legal profession must be upheld in the process of appointment and allocation of legal aid lawyers. Legal aid lawyers must therefore be allocated in an objective manner without undue influence from the executive branch (Ministries of Justice) or police authorities.
- While judges, including investigative judges, are accountable for their conduct, their judicial decision-making can only be challenged by way of lawful remedies.
- Although the role of investigative (pre-trial) judges varies across jurisdictions, their functions must always be clearly defined in law.
- Following arrest, individuals need to be brought promptly before a judge, pursuant to Article 9(3) of the ICCPR. Legal aid should be provided to anyone arrested or detained on a criminal charge.

ROLE OF POLICE AND PROSECUTION DURING A PRE-TRIAL INVESTIGATION

WORKING GROUP 2

- Police should understand that their role is to gather evidence, pursuing all reasonable lines of enquiry, including those that might point away from the suspect/accused.
- Prosecutors need to have reasonable conditions of service such as adequate remuneration and training commensurate with their complex role in the criminal justice system.

- Performance assessment of police and prosecutors should not be based primarily on quantitative data, such as arrest or conviction rates, but include qualitative factors.
- Adequate safeguards need to be in place to prevent undue pressure and external influence on prosecutors, including by establishing selection, promotion and disciplinary procedures that are clearly defined in law and applied by independent bodies.

NON-CUSTODIAL ALTERNATIVES TO PRE-TRIAL DETENTION

WORKING GROUP 3

- The overuse of pre-trial detention is a key problem in the region and is often seen as the main reason for the high prison populations of some participating States. States seeking to tackle this problem should increase the use of non-custodial alternatives.
- Non-custodial alternatives are preferable in light of the right to liberty, according to which detention is permissible only where necessary, proportionate and only as a measure of last resort. Reducing the pre-trial population also helps ease problems caused by overcrowding, including safety and security in prison as staff struggle to manage high numbers of detainees.
- The establishment of separate systems of juvenile justice across the region was recommended as a matter of priority in order to bring states in line with international human rights standards, including the obligation to keep juveniles separate from adults in detention.
- Detention of juveniles should only be used as a measure of last resort.
- Judges fearing accusations of corruption acts as an obstacle to the use of non-custodial alternatives to pre-trial detention.

REFORMS AND GOOD PRACTICES IN THE PROSECUTION SERVICES OF THE OSCE REGION

SIDE EVENT A

- Safeguards need to be put in place to prevent undue interference with the course of investigations and prosecution in individual cases, in particular in high-profile cases.
- There should be an unbiased mechanism for the allocation of cases to prosecutors in order to avoid case assignment being used to influence the course of investigations.
- Instructions from senior prosecutors to line prosecutors need to be provided in writing and documented in the case file.
- The establishment of a task force of prosecutors to high-profile cases or other complex cases can be a helpful tool to preserve the impartiality and effectiveness of the prosecution in high-profile cases.
- Prosecutors fulfil a crucial and powerful function in the administration of justice and should therefore be conscious of the need to gain the trust of the public by ensuring due process and by introducing quality management tools to measure their performance.

REDUCING CONFESSION-ORIENTED CRIMINAL JUSTICE SYSTEMS AND INCENTIVES TO COERCION AND ILL-TREATMENT

SIDE EVENT B

- Legislative advancements have been made to prohibit the use of confessions extracted through torture as evidence in court, but are not implemented in practice resulting in the continued use of torture-tainted evidence before courts.
- Judges need to be proactive in scrutinizing the voluntariness and accuracy of confessions, and declare inadmissible evidence found to have been made as a result of torture.
- Medical examinations of individuals who may have been subjected to torture or ill-treatment need to be independent, objective and free from pressure from investigative bodies.
- Building investigative capacities can help ensure that the police move away from relying on coercive interrogation techniques.

WOMEN AND JUSTICE BREAKFAST

- There is always a need for a critical number of women within justice sector institutions. Proper representation has an impact on how women are treated within the justice system, whether they are women suspects, defendants, victims, witnesses or prisoners.
- States should increase their efforts to ensure equal representation of women in justice sector institutions, including in senior management positions.
- States should ensure that gender-based crimes are taken seriously from the moment of reporting through to ensuring that commensurate sanctions are imposed for such crimes.
- Associations of Women Judges are a good model for the promotion of gender equality in justice systems. Hearing the example of the Kyrgyz Association of Women Judges, many participants expressed a wish to cooperate with the Association to coordinate efforts.
- Obligatory training modules on gender should be mainstreamed into the training curricula for law enforcement, judges, prosecutors and staff of justice institutions.

INSTITUTIONAL ISSUES

PLENARY SESSION 3

- To ensure the independence of the judiciary, states should consider the establishment of judicial councils, except in those cases where independence is traditionally ensured by other means.
- Independent and self-governing bar associations are essential to provide a mechanism for the legal profession to carry out its activities without any external interference.
- Early preparation of a person sentenced to life upon release from prison is central for his/her reintegration and significantly reduces the risk of reoffending.
- Legal aid is a key component of the enjoyment of the right to a fair trial and a crucial element of a fair, humane and efficient criminal justice system that is based on the rule of law.

PROCEDURAL ISSUES/FAIR TRIAL

WORKING GROUP 4

- Lack of judicial independence, bias against defendants,⁷ corruption and ineffective legal aid are key problems in the delivery of justice in Central Asian countries.
- The quality of legal aid needs to be improved as a matter of urgency, and mechanisms of quality control need to be established for legal aid providers.
- Trial waiver mechanisms need to be accompanied by safeguards such as access to a lawyer before exercise of a waiver right, disclosure of evidence to the accused and judicial oversight.
- Mandatory video/audio recording of trial hearings ensures adherence of the parties to procedural rules and serves as a reliable and authentic source of evidence of any violations thereof.

CRIMINAL SANCTIONS/SENTENCING

WORKING GROUP 5

- In order to ensure fair and proportionate sentencing, some states in the region have divided offences into crimes, misdemeanours and infractions, with a specific range of sanctions set for each type of offence.
- States need to strike the right balance between judicial discretion in sentencing and maintaining clear legislative thresholds to avoid inconsistent sentencing practices.
- The exercise of judicial discretion and application of legislative guidance both require the gathering of as much information and context about the offence and offender as possible.
- In order for sentences to be proportionate there needs to be an appropriate range of sentences for the judge to choose from.

ODIHR'S TOOLS TO SUPPORT OSCE PARTICIPATING STATES

SIDE EVENT C

- Legislationline, an ODIHR-developed online legal database, is a useful drafting and reference tool for lawmakers and other interested professionals.
- States are encouraged to request ODIHR to assess legislative proposals and existing legislation against relevant OSCE commitments and international human rights standards.
- Trial monitoring is a unique diagnostic tool to assess key elements of justice systems in a given state, identify systemic obstacles to the realization of fair trial rights and identify areas in need of reform.

LAWYERS AS AN ELEMENT AND NOT AN OBSTACLE TO JUSTICE

SIDE EVENT D

- States should take all appropriate measures to ensure that defence lawyers are able to carry out their functions freely, independently and without interference from state agencies or private individuals.
- Confidentiality of communication between defence lawyer and client and access to a client during interrogation and in detention are preconditions for effective access to justice.
- As professional associations of lawyers are self-governed institutions, states should refrain from involvement in their management.

⁷ In the region, this phenomenon is often described as 'accusatorial bias' or 'prosecutorial bias'. It describes a tendency to presume that the defendants are guilty, contrary to the principle of the presumption of innocence.

- Reintegration and resocialization programmes should be seen as paramount objectives of the penitentiary system and should commence from the moment of an individual's entry into prison.
- An individualized sentence plan should be developed as soon as possible after entry into prison, detailing rehabilitative activities aimed at reducing the prospects of reoffending.
- Such programmes should be gender-sensitive and must not discriminate against women by focusing on stereotypical activities associated with childcare and housekeeping, but enable women offenders to lead self-supporting lives.
- Newly established probation services in the region have a key role to play in reintegration efforts, in particular equipping prisoners with employment and life skills.
- Prison systems should build partnerships with other services and non-governmental organizations to improve the effectiveness of reintegration and resocialization processes.
- As terrorist offences continue to be of considerable concern in the Central Asian region, penitentiary systems should address the process of re-entry of convicted offenders into society after release from prison.

ALTERNATIVES TO DETENTION IN CENTRAL ASIA

- The establishment of a probation service contributes significantly to the effective implementation of non-custodial preventive measures and sanctions, thereby reducing the prison population.
- States should not overly rely on technological means to supervise probation clients, but concentrate on the human aspect of the process.
- The effectiveness of the work of probation officers should not be predominantly evaluated on the basis of the recidivism rate of their clients.
- Probation services should represent - and present themselves as - a body distinct from law enforcement and the penitentiary, tasked with the assistance of its clients, not their punishment.

JUDICIAL PRACTICE IN THE MATTER OF CRIMES AGAINST WOMEN AND GIRLS IN THE KYRGYZ REPUBLIC

- Societal views form an obstacle to tackling gender-based crimes, and the treatment of victims of gender-based violence following complaint continues to be problematic.
- The act of putting psychological pressure on victims and/or their representatives with the aim of coercing them to drop their complaints against perpetrators of violence against women should be penalized.
- Child victims of sexual violence should be provided with state-funded legal aid and a psychologist and pedagogue should be present when child victims are interviewed.
- A database of psychologists and pedagogues should be created so that relevant expert witnesses can be summoned to participate in court proceedings. Expert services should be available throughout the country, not only in capital cities, and be available also as a component of legal aid.

- Uniformity of judicial practice should be promoted, including, for example through the adoption of resolutions by Supreme Courts' plenary sessions, analysing existing judicial practices.

REINTEGRATION AND RESOCIALIZATION OF OFFENDERS

WORKING GROUP 6

- An individualized sentence plan should be developed for each prisoner based on the assessment of the individual's risks and needs, especially for prisoners with long sentences.
- The selection of prison staff with good inter-personal and communication skills, committed to treating prisoners with humanity and dignity, is crucial in order to implement a rehabilitative approach to prison management.
- Prison staff should receive training tailored to their duties, including an induction training as well as continued in-service training and specialized training for those who execute specific functions.
- Conditional parole has proven to serve as an incentive for prisoners to comply with their sentence plan and constitutes a useful tool to reduce prison overcrowding.
- Parole hearings should take place in the presence of defence lawyers.

DISCIPLINE, SANCTIONS AND INCIDENT PREVENTION IN PRISON

WORKING GROUP 7

- Disciplinary sanctions should serve the purpose of providing order and security in prison, rather than creating a punitive environment or acting as an additional punishment to the prison sentence.
- Disciplinary sanctions must not amount to torture or other cruel, inhuman or degrading treatment or punishment under any circumstances.
- Disciplinary procedures and measures need to be regulated by law or regulation and may only be applied where necessary and proportionate, following due process.
- Breaches of prison rules are often rooted in grievances related to prison conditions and a lack of understanding of prison rules by prisoners.
- Disciplinary regimes should not compromise programmes aimed at rehabilitation and reintegration.
- The use of solitary confinement in the region, and its application to child detainees, must be reduced and regulated in accordance with the Nelson Mandela Rules.

COUNTRY PRESENTATIONS

03

Representatives of Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan and Uzbekistan presented recent criminal justice reforms in their jurisdictions.

KAZAKHSTAN

Mr. Samat Budykov, Senior Prosecutor, Office for Quality Review of the Criminal Prosecution, Office of the Prosecutor General, briefed participants about the major amendments to Kazakhstan's criminal and criminal procedural codes in the course of 2017 and 2018.⁸ The amendments to the Criminal Code sought to humanize criminal law and reduce its repressiveness, which meant a major overhaul of legal provisions. For example, the minimum amount of damage inflicted by an offence to trigger a criminal procedure was increased by a factor of two. At the same time, minimum fines for misdemeanours and crimes were reduced and the use of community service and sanctions of 'restriction of liberty'⁹ were expanded. Statutes of limitation for serious and particularly grave crimes were shortened from 15 to 10, and from 20 to 15 years, respectively.¹⁰ The possibility of exemption from criminal liability based on reconciliation or active repentance in cases of torture was abolished. With regard to criminal procedural law, the maximum term of permissible arrest without a judicial warrant was reduced from 72 to 48 hours for adults, and to 24 hours for juveniles. The power to authorize preventive measures (such as pre-trial detention), all covert investigative measures as well as privacy-invasive investigative measures (such as the search of premises) was transferred entirely from prosecutors to pre-trial judges. Defence attorneys were given the right to file motions before a pre-trial judge, including motions requesting law enforcement bodies to conduct certain investigative measures (except for covert ones).¹¹ Bail as a preventive measure was expanded and can be applied even in cases of grave crimes (defined as offences that caused a damage of roughly 3,500 USD). Kazakhstan also reduced the minimum amount of bail for crimes of lower gravity. A specific type of abbreviated investigation procedure ('summary proceeding') was introduced for investigations of misdemeanours. It can be applied in situations where the accused does not contest his/her guilt or the amount of damage caused by the offence, provided the victim/civil claimant consents to this procedure. With this proceeding, a criminal case is sent directly to the court, without involvement of a prosecutor, for consideration without a trial hearing. The main type of sentence in such cases is a fine. Investigators were given the right to decide whether they use a hard copy case file or electronic case management system in the course of investigations of misdemeanours.

KYRGYZSTAN

Mr. Keneshbeck Toktomambetov, Judge of the Supreme Court of Kyrgyzstan, reiterated that as of 1 January 2019, a number of new codes and laws will enter into force in Kyrgyzstan. Those include the Criminal Code,¹² Code on Misdemeanours,¹³ Code on Violations,¹⁴ Criminal Procedural Code¹⁵ and Penal Code¹⁶ as well as the laws on amnesty,¹⁸ probation and mediation¹⁹.

⁸ Law of the Republic of Kazakhstan "On amending and supplementing certain legislative acts of the Republic of Kazakhstan related to the modernization of the procedural grounds of the law enforcement activities" of 21 December 2017, available at: https://online.zakon.kz/Document/?doc_id=35167041; and Law of the Republic of Kazakhstan "On amending and supplementing certain legislative acts of the Republic of Kazakhstan on issues related to criminal, criminal procedural law, and the activities of law enforcement and special state bodies" of 12 July 2018, available at: https://online.zakon.kz/Document/?doc_id=34803153.

⁹ A legacy of former Soviet Union legal systems, many criminal codes in the region include the sanction of 'restriction of liberty', alongside imprisonment on the one hand and community service on the other. The sanction involves the imposition of certain duties that restrict the liberty of the convicted person under the supervision of a specialized authority. For example, according to the Art. 44 of the Criminal Code of the Republic of Kazakhstan, the sanction "restriction of liberty" entails probationary supervision for a term between six months and up to seven years, including community services (100 hours annually for each year of the sentence).

¹⁰ Under Art. 11, Criminal Code of the Republic of Kazakhstan, a "grave crime" is defined as a premeditated offence for which the Code provides for imprisonment for a term not exceeding 12 years, whereas an "especially grave crime" is a premeditated offence for which the Code provides for imprisonment for a term exceeding 12 years, life imprisonment or the death penalty.

¹¹ Art. 70 (30), Criminal Procedure Code of the Republic of Kazakhstan.

¹² Criminal Code of the Kyrgyz Republic of 2 February 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111527?cl=ru-ru>

¹³ Code of the Kyrgyz Republic on Misdemeanours of 1 February 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111529?cl=ru-ru>

¹⁴ Code of the Kyrgyz Republic on violations of 13 April 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111565>

¹⁵ Criminal procedural code of the Kyrgyz Republic of 2 February 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111530?cl=ru-ru>

¹⁶ Penal Code of the Kyrgyz Republic of 31 January 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111528>

¹⁷ Law of the Kyrgyz Republic "On amnesty and the procedure of its application" of 20 January 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111514?cl=ru-ru>.

¹⁸ Ibid.

¹⁹ Law of the Kyrgyz Republic "On mediation" of 28 July 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111668>

With the adoption of the former three — substantive — codes, Kyrgyzstan has moved from a two-tier system in terms of classification of offences (crime — administrative violations) to a three-tier system (crime — misdemeanour — violation). The new Criminal Code introduced ‘compulsory measures of a criminal character’ against legal entities (companies), such as fines, limitation of certain rights and liquidation.²⁰ Recidivism was removed from the list of aggravating factors.



Photo: Mr. Mr. Keneshbek Toktomambetov, Judge, Supreme Court of the Kyrgyz Republic

not entail imprisonment or a criminal record. Consequently, pre-trial detention and house arrest are not applicable to suspects in such cases. In recognition of the problems with the phase of ‘preliminary verification’ of criminal reports and the formal stage of opening the criminal case that previously existed, the new Criminal Procedure Code eradicated this stage. A criminal investigation now starts with the registration of a complaint in the unified registry of crimes and misdemeanours maintained by the Ministry of Interior.²¹ The new Criminal Procedure Code introduces the role of a pre-trial judge, whose function, among other powers, is to authorize covert investigative measures and the use of preventive measures, including pre-trial detention. The new code also introduced procedural agreements such as reconciliation agreements, plea bargaining and agreements on co-operation.

Amnesty was removed from the Criminal Code following regulation in separate legislation. At the same time, the special part of the code was restructured, a number of articles clarified and new offences introduced, including war crimes pursuant to the Geneva Conventions and its protocols. For the first time, the code enshrines a glossary of definitions. In the course of reclassification, the Code on Misdemeanours absorbed offences previously treated as crimes of minor gravity under the Criminal Code as well as some administrative violations, which had been enshrined previously in the Code on Administrative Offences. The commission of a misdemeanour does

MONGOLIA

Ms. Lodoi Munkhtsetseg, Senior Officer at the Legal Policy Department of the Ministry of Justice and Internal Affairs of Mongolia, informed participants about the new criminal law, criminal procedure law, the Law “On the prosecution”,²² and the Law “On the execution of court decisions” which entered into force at the beginning of 2017. The new criminal law abolished the death penalty, introduced additional non-custodial sentences, reduced the maximum term of imprisonment and introduced specific provisions relating to the sentencing of juveniles. The new criminal procedure law incorporated a number of principles, including in particular the independence of judges, the principle of legality and the principle of equality of arms between the parties in a criminal procedure. Judges are obliged to scrutinize all circumstances of the case. Ms. Munkhtsetseg underlined that the criminal procedural law has been amended repeatedly since its adoption, most recently on 18 May 2017.

TAJIKISTAN

Mr. Sirojzoda Sayfidin, Advisor to the President on Legal Issues within the Presidential Apparatus, reported that the Criminal Procedure Code of the Republic of Tajikistan was amended in 2016 within the framework of a constitutional reform. In the course of these reforms, the moment of arrest was clarified and defined as the moment of factual limitation of freedom of the detained, including the limitation of his/her free movement.²³ Provisions were incorporated

²⁰ According to Art. 123(2), Criminal Code of the Republic of Kyrgyzstan, compulsory measures of a criminal character may be imposed on a legal entity (a company). Such measures are applicable if a) a person has committed a crime on behalf of the legal entity or b) a person has committed a crime using a legal entity and in the interest of this entity. These measures can be applied regardless of whether the individual who committed the offence is held criminally liable or not.

²¹ If an investigation is initiated by a law enforcement officer who discovers a crime, he/she also registers the investigation in the mentioned registry.

²² Law on Prosecution of the People's Republic of Mongolia (MPRP) adopted by the People's Great Khural (Parliament of Mongolia) in 1957, revised in 2002, see further information at <http://www.prokuror.mn/> and <https://montsame.mn/en/read/130424>.

²³ Law of the Republic of Tajikistan “On amending and supplementing the Criminal Procedural Code of the Republic of Tajikistan” of 14 May 2016, available at: http://base.spinform.ru/show_doc.fwx?rgn=85487.

to detail the procedure during arrest, introducing an obligation for law enforcement officers to explain the reasons for arrest and the right of the suspect to a phone call or other message to a close relative or defence attorney. Upon arrival in pre-trial detention, the arrested person has to undergo a medical examination, and has the right to demand that the examination is conducted by an independent doctor or a medical expert. Recently, the Government has approved a programme to be implemented between 2017 and 2021²⁴ seeking to adapt the criminal justice system to the needs of children. The Government is also in the course of developing the 2019–2020 Action Plan²⁵ for judicial reform, which, among other things, envisages the adoption of a new Criminal Code, Penal Code, Law “On access to judicial information” and Law “On free legal aid”.

TURKMENISTAN

Mr. Dovletgeldi Baymuhammedov, the Head of the Statistics Department at the Supreme Court of the Republic of Turkmenistan, recalled the adoption of the new Constitution of the Turkmen Republic in September 2016,²⁶ which introduced principles such as the presumption of innocence, the benefit of the doubt and the prohibition of double jeopardy. Recent amendments to criminal law have reduced the terms of imprisonment as well as the terms of non-custodial sentences. Some acts were decriminalized, such as bodily harm and verbal assault, which now constitute administrative offences rather than criminal acts. ‘Limitation of freedom’ was introduced as a new type of sentence. Pardons by the President and reduction of prison sentences by courts in case of good behaviour constitute further measures aimed at humanizing the criminal justice system. Within efforts to make legislation more child-friendly, juveniles can be exempted from criminal liability for a first offence of minor gravity and have to be held separately from adult prisoners in detention. In 2017, Turkmenistan established a specialized investigative agency for economic crimes.²⁷ Practical steps in the area of criminal justice described in this presentation included improvement of detention conditions, especially in women’s prisons, and the human rights education of state employees.

UZBEKISTAN

Mr. Aziz Mirzaev, Assistant to the Chairperson of the Supreme Court of Uzbekistan, informed participants about the process of democratization of the judiciary as the most important reform currently pursued in Uzbekistan, including measures to increase the independence of the judiciary and establish judicial self-governance. Since 1 June 2017, the Supreme Court has become operational as the highest court for all types of cases. Falsification of evidence has been criminalized by amendments to the Criminal Code,²⁸ and provisions have been outlined in the new Criminal Procedural Code for declaring evidence inadmissible. Arrest as a punishment, which existed in previous legislation, has been abolished.²⁹ The practice of returning the case for additional investigation has also been abolished.³⁰ The maximum term of permissible arrest without a judicial warrant was reduced from 72 to 48 hours.³¹ The reforms have resulted in an increase of acquittals, which were previously seen as extraordinary. As of 2019, mediation will become available.³² Uzbekistan has also started implementing ICT solutions in the criminal justice system, including a pilot project related to electronic criminal case files³³ and a unified database of judicial information where information³⁴ on the status of a court case can be checked. In order to increase transparency, the Supreme Court provides links to live web streams of trial hearings through its website at 12 pilot courts.³⁵

²⁴ The programme of reforming the judicial system to satisfy the needs of children for 2017–2021, approved by Regulation of the Government of the Republic of Tajikistan on 29 June 2017, available at: http://www.adlia.tj/show_doc.fwx?Rgn=129679.

²⁵ Available at: <http://sud.tj/upload/medialibrary/ba2/ba2c83ec80192d0d7345c252a104d5b5.pdf>.

²⁶ Constitution of Turkmenistan of 15 September 2016, available at: <http://infoabad.com/zakonodatelstvo-turkmenistana/konstitucija-turkmenistana-novaja-redakcija.html>.

²⁷ Turkmenistan.Ru, The Service for fighting economic crimes was established in Turkmenistan, 2 June 2017, available at: <http://www.turkmenistan.ru/articles/42637.html>.

²⁸ Decree of the President of the Republic of Uzbekistan “On additional measures to reinforce the guarantees of rights and freedoms of citizens in judicial and investigative activities”, 30 November 2017, available at: <http://lex.uz/docs/3432428>.

²⁹ Law of the Republic of Uzbekistan “On amending and supplementing certain legislative acts of the Republic of Uzbekistan due to the improvements of certain state bodies activities, and due to taking additional measures to secure guarantees of the protection of rights and freedoms of citizens” of 3 January 2018, available at: <http://lex.uz/docs/3486588>.

³⁰ Law of the Republic of Uzbekistan “On amending and supplementing certain legislative acts of the Republic of Uzbekistan to taking additional measures to secure guarantees of the reliable protection of rights and freedoms of citizens”, 29 March 2017, available at: <http://lex.uz/docs/3146369>.

³¹ Ibid.

³² Law of the Republic of Uzbekistan “On mediation”, 3 July 2018, available at: <http://lex.uz/ru/docs/3805229>.

³³ The case files in criminal cases will become electronic, see website of the Ministry of Justice of the Republic of Uzbekistan at: <http://www.minjust.uz/ru/press-center/news/89641/>.

³⁴ <https://oliusud.uz/ru/#>.

³⁵ <http://online.sud.uz/>.

SUMMARY OF DISCUSSIONS

CONCLUSIONS AND RECOMMENDATIONS OF THE 2016 FORUM

To follow up on the 2016 Forum, Mr. Dmitry Nurumov, an independent criminal justice expert, provided a short overview of its conclusions and recommendations.

He underlined the recommendations to participating States to introduce diversion schemes and to expand the list of available non-custodial preventive measures and sentences. Assessing the implementation of these recommendations, the expert noted that most of the Central Asian countries have adopted laws introducing new types of preventive measures and alternative punishments. This has helped reduce prison populations, for example in Kazakhstan, including the number of people held in pre-trial detention.

Mr. Nurumov noted some progress with regard to penitentiary reforms, for example, the establishment of probation services in Kazakhstan, as well as ongoing discussions about the establishment of such services in Kyrgyzstan (and their transfer to the Ministry of Justice)³⁶ and in Uzbekistan³⁷. Discussions on demilitarization of the penitentiary systems are ongoing; however, progress in this sphere was limited.

National Preventive Mechanisms, special bodies established under the Optional Protocol to the Convention against Torture (OPCAT) with a mandate to prevent torture and other ill-treatment through monitoring of places of deprivation of liberty,³⁸ have become operational in Kazakhstan and Kyrgyzstan.

A monitoring mechanism is about to be established in Uzbekistan, without ratification of OPCAT, by expanding the functions of the Ombudsperson's Office and the planned creation of an expert group consisting of NGO representatives to support the Ombudsperson's monitoring work. In Tajikistan a monitoring group has been established consisting of the Ombudsperson with NGO participation, while there are no concrete plans to date of ratifying OPCAT.

Participating States in Central Asia continued to introduce new forms of abbreviated procedures within the criminal justice system, mainly for situations where the accused does not contest his/her guilt. Such procedures include plea bargaining. While abbreviated procedures are considered to reduce the cost and length of criminal proceedings, safeguards are required to prevent abuse. It is essential for judges to verify that the accused enters into such agreements fully informed and voluntarily. The recommendation of the 2016 Criminal Justice Forum was recalled, according to which the provision of effective and timely legal assistance to defendants entering a plea agreement is indispensable to ensure equality of arms.³⁹

In order to ensure this, the need to strengthen the status and powers of the defence counsel in criminal proceedings was highlighted, with effective free legal aid systems, alongside the obligation of the judge to verify the voluntary nature of the consent.

Over the last two years, some participating States in Central Asia have also reformed the classification of offences. In particular, Kazakhstan and Kyrgyzstan have established a three-tier classification system differentiating between violation, misdemeanour and crime. Other participating States have restructured the classification of offences, but within the existing two-tier system of administrative violation versus crime. Ongoing drafting of new criminal justice laws in Uzbekistan was mentioned in this context.

³⁶ Law of the Kyrgyz Republic "On probation" of 24 February 2017, available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/111517?cl=ru-ru>.

³⁷ Decree of the President of the Republic of Uzbekistan "On measures related to radical improvement of penal law" of 7 November 2018, available at: <http://lex.uz/ru/docs/4045448>.

³⁸ UN Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), 9 January 2003, A/RES/57/199, available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cat-one.pdf>.

³⁹ "The provision of effective legal assistance to defendants entering a plea agreement is indispensable to balance the coercive nature of plea bargaining." (OSCE Office for Democratic Institutions and Human Rights, Report on the Sixth Expert Forum on Criminal Justice for Central Asia, p. 16, available at: <https://www.osce.org/odihr/332676?download=true>.)

Main conclusions and recommendations:

- The assumption that ill-treatment and coercion is necessary to obtain confessions from suspects to 'solve' crimes is erroneous and methods of non-coercive, research-based questioning (recently referred to as 'investigative interviewing') prove to be more efficient.
- States should move towards the adoption of investigative interviewing models, which are more respectful of human rights than coercive strategies, as well as more effective.
- Training of police officers is an essential part of the process of moving from guilt-assumptive to non-coercive interviewing.
- Performance assessment of police and prosecutors should not be based primarily on quantitative data, such as arrest or conviction rates, but include qualitative factors.
- In systems that are moving towards an adversarial approach through changes to procedural codes, it is particularly important that prosecutors ensure that the judge has information on all relevant aspects of the case, including exculpatory evidence and mitigating circumstances.

Summary of discussions:

The assumption that mistreatment and coercion is necessary to obtain confessions from suspects to 'solve' crimes is erroneous and methods of non-coercive, research-based questioning (recently referred to as 'investigative interviewing') prove to be more efficient. A police expert from the UK reflected on the erroneous assumption that mistreatment and coercion of suspects is necessary in order to obtain confessions or elicit information. Law enforcement is often under pressure from politicians, supervisors and media to 'solve' cases, while at the same time there is often a lack of forensic methodology and training in modern investigative techniques. Since coercive interrogation starts with a premature judgement as to the suspect's guilt, it lacks proper investigation in the hope that interrogation produces a confession. In contrast, non-coercive interrogation sets out with an investigative mindset that seeks to fact-find, asks the suspect for explanations and confronts him/her in case of inconsistencies between their explanations and the available facts. The expert therefore advocated against the use of confession rates to determine the effectiveness of questioning. A change of mindset was considered crucial in order to move away from criminal investigations that are overly confession-oriented. Participants agreed that this approach should be promoted in training for law enforcement.

States should move towards the adoption of investigative interviewing models, which are more respectful of human rights than coercive strategies, as well as more effective. The police expert reported on research in the UK that showed the high percentage of police officers whose primary aim is a confession and who approach the case with a guilt bias towards the suspect. However, empirical evidence confirmed that coercive methods of questioning, even when not amounting to torture, produce false confessions.⁴⁰ Participants queried at what point pressure — often considered an inevitable part of being questioned — becomes unlawful coercion, which manifests itself through tactics such as lying about evidence, or suggesting it would be in the suspect's 'best interest' to confess. It was noted that the police in some regions have increasingly concentrated on improving the quality of forensics and finding other forms of evidence, rather than relying on confessions — a trend which was considered likely to spread to Central Asia. Participants were informed about the role that non-coercive questioning has had in the reduction of appeals in the UK courts alleging miscarriages of justice due to false confessions. The question was raised whether different practices should be adopted when questioning witnesses as opposed to suspects. It was noted that, although the way in which evidence is introduced in the interview may differ for the two groups, the underlying purpose of the interview — to fact-find — is the same. It was concluded that every interview in the criminal justice context should be approached with an open mind.

⁴⁰ Special Rapporteur on Torture, Annual Report to the United Nations General Assembly, 5 August 2016, A/71/298, paras. 16-22.



Photo: Plenary Room Seventh Expert Forum on Criminal Justice for Central Asia, 27-29 November 2018, Bishkek, Kyrgyzstan.

In systems that are moving towards an adversarial approach through changes to procedural codes, it is particularly important that prosecutors ensure the judge has information on all relevant aspects of the case, including exculpatory evidence and mitigating circumstances. This duty includes disclosing evidence to the suspect/defendant that may assist the defence — a fair trial right enshrined in international standards, the importance of which was reflected in many discussions over the course of the Forum. Participants reflected on the common practice of considering as a failure the acquittal of an accused/defendant, which will be viewed negatively in performance assessments or even result in disciplinary proceedings against a prosecutor. They emphasized that this approach, although common in Central Asia, is inappropriate as it creates a personal interest in a specific outcome of a case.⁴² As a consequence, such systems generate an unintended incentive to achieve a conviction by all means, thereby undermining the duty to share evidence that may assist the defendant and the court.

Performance assessment of police and prosecutors should not be based primarily on quantitative data, such as arrest or conviction rates, but include qualitative factors. International experts on law enforcement and prosecution emphasized that any assessment of efficiency or performance in the justice sector should not be limited to quantitative data,⁴¹ such as the number of arrests and cases 'solved' in the case of police, or the number of clearance and conviction rates in the case of prosecutors. Quantity may be a useful indicator prompting further enquiries into the work of a prosecutor, for example, if there is significant divergence of conviction rates amongst different prosecutors in similar types of cases. However, it was pointed out that even in these cases, there may be a reasonable explanation. There are many reasons why a prosecution case may not result in a conviction which are unrelated to the prosecutor's performance, such as witnesses offering accounts in court that differ from those set out in their witness statements. Referring to international good practice, it was therefore recommended to include qualitative indicators of performance focusing on professional (e.g. ability to present evidence, capacity to draft motions, quality of court presence), personal (e.g. ability to cope with workload) and social factors (e.g. respectful treatment of parties, witnesses and victims).

⁴¹ Consultative Council of European Judges (CCPE), Opinion No. 11(2016) on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organized crime, 18 November 2016, para. 38, available at: <https://rm.coe.int/16807474b9>.



Photo: Aliya Ilkenova, Defence lawyer of the North Kazakhstan Bar Association

In systems that are moving towards an adversarial approach through changes to procedural codes, it is particularly important that prosecutors ensure the judge has information on all relevant aspects of the case, including exculpatory evidence and mitigating circumstances. This duty includes disclosing evidence to the suspect/defendant that may assist the defence — a fair trial right enshrined in international standards, the importance of which was reflected in many discussions over the course of the Forum. Participants reflected on the common practice of considering as a failure the acquittal of an accused/defendant, which will be viewed negatively in performance assessments or even result in disciplinary proceedings against a prosecutor. They emphasized that this approach, although common in Central Asia, is inappropriate as it creates a personal interest in a specific outcome of a case.⁴² As a consequence, such systems generate an unintended incentive to achieve a conviction by all means, thereby undermining the duty to share evidence that may assist the defendant and the court.

RIGHTS OF SUSPECTS AND DEFENDANTS

WORKING GROUP 1

Main conclusions and recommendations:

- State-funded legal aid schemes are an integral part of a fair and effective criminal justice system and vital for ensuring access to justice for marginalized communities, as recognized in international standards.
- The principle of independence of the legal profession must be upheld in the process of appointment and allocation of legal aid lawyers. Legal aid lawyers must therefore be allocated in an objective manner without undue influence from the executive branch (Ministries of Justice) or police authorities.
- While judges, including investigative judges, are accountable for their conduct, their judicial decision-making can only be challenged by way of lawful remedies.
- Although the role of investigative (pre-trial) judges varies across jurisdictions, their functions must always be clearly defined in law.
- Following arrest, individuals need to be brought promptly before a judge, pursuant to Article 9(3) of the ICCPR. Legal aid should be provided to anyone arrested or detained on a criminal charge.

Summary of discussions:

State-funded legal aid schemes are an integral part of a fair and effective criminal justice system and vital for ensuring access to justice by marginalized communities, as recognized in international standards.⁴³ Legal representation plays

⁴² See, for example, Venice Commission, Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, No. 785/2014, 12-13 December 2014, paras. 86-88. «The number of 'convicting' judgments should in no circumstances be a criterion. (...) Similarly, success on appeal should not be a criterion.»

⁴³ Principle 1, UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 20 December 2012, A/67/458.

a key role in ensuring access to a fair trial. Participants highlighted the importance of norms that ensure the access of a suspect/defendant to a defence lawyer while in custody, a right that is firmly established in international standards such as Principle 11(1) of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.⁴⁴ Participants recognised that legal aid guarantees have been incorporated in law and/or reform programmes in many Central Asian countries. For instance, Tajikistan's Programme for Reform of the Juvenile Justice System 2017–2021 recognised the right of juvenile offenders (suspects, accused and defendants) to legal aid.



Photo: Ms. Takhmina Ashuralieva, Law Program Coordinator, Soros Foundation, Kyrgyzstan

However, participants noted that across the region, in practice, legal aid is not always provided in a timely and effective manner. Participants thus reflected on remaining gaps in legislation and implementation in practice, including the selection, quality and accountability of state-appointed lawyers. There was a strong recognition that if legal aid is not accessible or is not of a high standard, it cannot fulfil its purpose, namely to ensure equality of arms, fair trial and thus equal access to justice. Some participants therefore advocated for a free choice of state-appointed lawyer.

The principle of independence of the legal profession must be upheld in the process of appointment and allocation of legal aid lawyers. The independence of the legal profession is a prerequisite to ensuring access to legal services and the protection of the human rights of the suspect/defendant.⁴⁵ The role of bar associations is pivotal in ensuring these outcomes, as highlighted by a report of the UN Special Rapporteur on the independence of judges and lawyers.⁴⁶ Participants agreed with the recommendations of the UN Special Rapporteur that bar associations need to be fully independent from governments and that the legal profession itself should be in charge of managing applications for and granting of professional licenses, including the administration of professional examinations that form part of this process.⁴⁷ Participants echoed the recommendation of the 2016 Criminal Justice Forum that bar associations should operate on the principle of self-administration and independence, free from the influence of state authorities.⁴⁸ Elaborating on this principle, participants noted that the government should play no role in the admission process, either directly or indirectly. The composition of qualification commissions, for instance, which may result in vetoes of certain candidates, was highlighted as a problematic indirect gateway to influence. In addition to the process of licensing lawyers, it is equally vital to exclude any influence from state authorities during the process of appointing a legal aid lawyer to a specific case. Otherwise, governmental or police departments may seek to block access to lawyers who work on certain types of cases, such as those related to human rights, terrorism or corruption.⁴⁹ Such interference and exclusion of certain lawyers not only undermines the protection of human rights and access to justice, but also hampers the quality of legal aid provided. A participant described the findings of research relating to the case allocation to state-appointed lawyers in his region, where manual distribution of cases using a register

⁴⁴ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988.

⁴⁵ International Bar Association (IBA), Standards for the Independence of Legal Profession, 1990, available at: https://www.ibanet.org/publications/publications_iba_guides_and_free_materials.aspx.

⁴⁶ Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 22 August 2016, A/71/348, available at: <https://undocs.org/A/71/348>.

⁴⁷ Special Rapporteur on the independence of judges and lawyers, Communication OL KAZ 1/2018, 17 January 2018, available at: <https://www.ohchr.org/Documents/Issues/Judiciary/Communications/OL-KAZ-17-01-18.pdf>.

⁴⁸ OSCE Office for Democratic Institutions and Human Rights, Report on the Sixth Expert Forum on Criminal Justice for Central Asia, p. 34 (footnote 4).

⁴⁹ *Ibid.*

of lawyers has resulted in unequal distribution, with some lawyers being allocated heavy caseloads while others are allocated only a small number of cases. Participants agreed that systems of automated assignment of cases to state-appointed lawyers are preferable as they are better suited to ensure objectivity and prevent attempts from any party to influence the assignment of a defence lawyer.

While judges, including investigative judges, are accountable for their conduct, their judicial decision-making can only be challenged by way of lawful remedies. Participants discussed the delicate balance between independence and accountability of judges, including in the context of the newly established role of investigative judges (pre-trial judges) and the relationship between prosecutors and judges. They reflected on the practice of prosecutors in the region of raising complaints against judges or alleging that judicial decisions are 'illegal' if their motions or cases are dismissed. Experts recalled that judicial decisions should not face demands for revision outside of an appeals process.⁵⁰ They noted the need to differentiate between the challenge to a substantive judicial decision and the disciplinary accountability of judges, which should not extend to the content of their rulings or verdicts.⁵¹ To this end, participants drew on the recommendation of the 2016 Forum that clear and foreseeable rules of judicial conduct are necessary to preserve a proper balance between judicial independence and accountability.⁵² While judges are accountable for their ethical conduct to appropriate institutions established to maintain judicial standards,⁵³ their judicial decision-making can only be challenged by way of an appeal to a higher court. Participants emphasized that judges need to be protected from personal attacks.⁵⁴

The functions of investigative judges may vary across jurisdictions, but should always be clearly defined in law. Reflecting on the institution of investigative judge in recent reforms, some participants perceived the main role of the investigative judge as that of a guarantor of human rights of the suspect/defendant, including the rights upon arrest and the prevention of torture or other ill-treatment in the course of interrogation or detention. Others emphasized the role of investigative judges in ensuring oversight of the criminal investigation in broader terms. While such difference of opinion reflected the respective roles of investigative judges in each of the discussed jurisdictions, it was agreed that the role of the judge should in every case be clear. Both within and beyond Central Asia, concerns about the extent to which investigative judges in fact scrutinize motions by the prosecution rather than granting the majority of them were raised. It was underlined that procedural laws need to ensure that investigative judges are not involved in the substantive decision at later stages in relation to the same criminal proceeding.

Following arrest, individuals need to be brought promptly before a judge, pursuant to Article 9(3) of the ICCPR, namely within 48–72 hours, and legal aid should be provided to anyone arrested or detained on a criminal charge. Discussing safeguards for suspects/defendants in detention, participants suggested that proceedings related to the imposition of pre-trial detention should take place in a public hearing, thereby recommending the application of the general standard in Article 14(1) of the ICCPR for criminal trials also to pre-trial hearings.⁵⁵ They argued that access of the public to court hearings is enshrined in international standards as a means of providing transparency and enabling public scrutiny of judicial decisions. These principles are equally relevant in hearings on arrest and pre-trial detention. Public access would enable relatives, members of the public and representatives of the media to ascertain the physical condition of the detained shortly after they have been taken into custody. This increases the likelihood of detection of signs of torture or ill-treatment at an early stage. Another suggestion for the protection of suspects/defendants at the pre-trial stage included enshrining in legislation the right of access to independent health-care services.⁵⁶ Early medical attention would help to protect detainees and allow a record to be kept where torture or ill-treatment has taken place.⁵⁷

⁵⁰ See, for example, Venice Commission, Report on European Standards As Regards the Independence of the Judicial System: Part 1 – The Independence of Judges, March 2010, para 67, available at: <https://rm.coe.int/1680700a63>.

⁵¹ OSCE Office for Democratic Institutions and Human Rights/Max Planck Minerva Research Group on Judicial Independence, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 23-25 June 2010, para. 25, available at: <http://www.osce.org/odihr/KyivRec?download=true>.

⁵² OSCE Office for Democratic Institutions and Human Rights, Report on the Sixth Expert Forum on Criminal Justice for Central Asia, 2016, p. 38 (Side Event 4: Comparative Perspectives on Judicial Independence), footnote 4.

⁵³ Judicial Group on Strengthening Judicial Integrity, The Bangalore Principles of Judicial Conduct, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Preamble, p. 2, available at: http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

⁵⁴ Principles 4 and 19, UN Basic Principles on the Independence of the Judiciary.

⁵⁵ Article 14(1) of the International Covenant on Civil and Political Rights.

⁵⁶ Rule 25(2) of the Nelson Mandela Rules.

⁵⁷ See Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 2004, para. 83, available at: <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

Main conclusions and recommendations:

- Police should understand that their role is to gather evidence, pursuing all reasonable lines of enquiry, including those that might point away from the suspect/accused.
- Prosecutors need to have reasonable conditions of service such as adequate remuneration and training commensurate with their complex role in the criminal justice system.
- Performance assessment of police and prosecutors should not be based primarily on quantitative data, such as arrest or conviction rates, but include qualitative factors.
- Adequate safeguards need to be in place to prevent undue pressure and external influence on prosecutors, including by establishing selection, promotion and disciplinary procedures that are clearly defined in law and applied by independent bodies.

Summary of discussions:

Police should understand that their role is to gather evidence, pursuing all reasonable lines of enquiry, including those that might point away from the suspect/accused. When investigating a crime, police officers should understand that their role is to gather evidence impartially, not acting as judges. They need to gather all available pieces of evidence, including those which may be contradictory, to be later presented before an independent court. Police must not be selective in collecting and documenting evidence. They must not ignore evidence that does not comply with their case theory, and must not make a premature judgment regarding the guilt of a suspect. In the UK, for example, this principle is enshrined in the Criminal Procedure and Investigations Act 1996⁵⁸ and the Code of Practice, which was adopted in application of this Act.⁵⁹ The Code affirms that the mission of the police is to conduct investigations impartially, gathering not only incriminatory evidence that confirm the case theory of an investigator but also exculpatory evidence.



Photo: on the left Mr. Sherzod Abdukodirov, Judge of the Supreme Judicial Council of the Republic of Uzbekistan

Prosecutors need to have reasonable conditions of service such as adequate remuneration and training commensurate with their complex role in the criminal justice system. Participants agreed that the substantive changes in the criminal justice systems of Central Asian countries in recent years, including a shift from inquisitorial to adversarial systems, have significantly changed the role of prosecutors and made it more complex. In order to attract and retain professionals with the necessary skills to exercise this function professionally, impartially and transparently, salaries within the service need to be attractive and commensurate with the skills required and the functions performed.⁶⁰

⁵⁸ According to Section 23(1a) of the Criminal Procedure and Investigations Act 1996 the Secretary of State has to prepare a code of practice containing provisions designed to secure “that where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued.” Available at: <https://www.legislation.gov.uk/ukpga/1996/25/section/23>.

⁵⁹ “In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect.” Code of Practice under the Criminal Procedure and Investigations Act 1996, para. 3.5., available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/447967/code-of-practice-approved.pdf.

⁶⁰ Guideline 6 of the United Nations Guidelines on the Role of Prosecutors, 1990. See also Council of Europe, Consultative Council of European Prosecutors (CCPE), Opinion No. 13(2018) on Independence, accountability and ethics of prosecutors, 23 November 2018, CCPE(2018)2, paras. 28 and 29, available at: <https://www.coe.int/en/web/ccpe/independence-accountability-and-ethics-of-prosecutors>.

Participants also stressed that underpay increases the risk of corruption within the institution. Ethical rules should therefore establish that prosecutors must not accept any kind of benefit or remuneration linked to the content of their choices, nor maintain career ambitions that may improperly guide their decisions. The importance of adequate training was emphasized, including on ethical rules, such as integrity and impartiality, which require prosecutors to avoid conflicts of interest and to perform their functions irrespective of personal preference, social relationships, political or religious affiliation.⁶¹

Adequate safeguards need to be in place to prevent undue pressure and external influence on prosecutors, including by establishing selection, promotion and disciplinary procedures that are clearly defined in law and applied by independent bodies. In order to ensure that prosecutors can exercise their functions professionally and free from political pressure and unlawful influence,⁶² states have to ensure that prosecutors are appointed and promoted solely based on known and objective factors such as competence and experience.⁶³ International experts explained the rationale for increased discussion of 'functional independence' in that prosecutors must not become an instrument of the interests of any particular group, any faction of the government or business community. Participants agreed that to this end, the process of appointment, transfer, promotion and discipline of prosecutors needs to be clearly set out in law or regulation and be applied by an independent professional body, such as a Council for Prosecutors. However, participants also recognized the risk of politicization of such bodies, in particular if government officials or other representatives of the executive branch are included as voting members.⁶⁴

NON-CUSTODIAL ALTERNATIVES TO PRE-TRIAL DETENTION

WORKING GROUP 3

Main conclusions and recommendations:

- The overuse of pre-trial detention is a key problem in the region and is often seen as the main reason for the high prison populations of some participating States. States seeking to tackle this problem should increase the use of non-custodial alternatives.
- Non-custodial alternatives are preferable in light of the right to liberty, according to which detention is permissible only where necessary, proportionate and only as a measure of last resort. Reducing the pre-trial population also helps ease problems caused by overcrowding, including safety and security in prison as staff struggle to manage high numbers of detainees.
- The establishment of separate systems of juvenile justice across the region was recommended as a matter of priority in order to bring states in line with international human rights standards, including the obligation to keep juveniles separate from adults in detention.
- Detention of juveniles should only be used as a measure of last resort.
- Judges fearing accusations of corruption acts as an obstacle to the use of non-custodial alternatives to pre-trial detention.

Summary of discussions:

States should create separate juvenile justice systems as a matter of priority. Overall, while certain reforms have been undertaken, participants highlighted the need to increase efforts to establish and improve separate juvenile justice systems across the region. The majority of Central Asian countries are yet to establish separate justice systems for juveniles. Where specialized courts are in place, such as in Kazakhstan, participants reported on their successful operation

⁶¹ These principles were formulated, for example, by the International Association of Prosecutors, Standards of professional responsibility and statement of the essential duties and rights of prosecutors, adopted by the International Association of Prosecutors on the twenty third day of April 1999, paras. 3 and 4.2.a. See also Council of Europe, Consultative Council of European Prosecutors (CCPE), Opinion No. 13(2018) on Independence, accountability and ethics of prosecutors, 23 November 2018, CCPE(2018)2, paras. 53-55.

⁶² On this topic, see, for example, Council of Europe, Consultative Council of European Prosecutors (CCPE), Opinion No. 13(2018) on Independence, accountability and ethics of prosecutors, CCPE(2018)2, 23 November 2018, paras. 15 and 31.

⁶³ See, for example, International Association of Prosecutors, Standards of professional responsibility and statement of the essential duties and rights of prosecutors, adopted on 23 April 1999, para. 6(e), available at: https://www.iap-association.org/getattachment/5f278b49-dd58-49ee-97d0-3d2d51a1af37/IAP_Standards.aspx.

⁶⁴ On this concern see also, for example, Venice Commission, ODIHR, Joint Opinion no. 791/2014, adopted on 20-22 March 2015, para. 131; Venice Commission/ CCPE and ODIHR, Joint Opinion on the Draft Amendments to the Law on the Prosecutor's Office of Georgia, endorsed on 23-24 October 2015, para. 39.

since specialization allows to respond to each child's particular needs and psychological characteristics, enabling better protection of child rights and minimizing the risk of trauma or harm to the child.⁶⁵ Tajikistan undertook initial reforms in respect of minors in 2004, introducing changes relating to juveniles at legislative level, although there is no separate juvenile justice system yet. International standards that several states in the region have already adopted in respect of minors include the UN Convention on the Rights of the Child (CRC), the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules). In accordance with the Beijing Rules, a separate juvenile justice system involves a set of laws, rules and provisions specifically applicable to juvenile offenders, institutions and bodies entrusted with the functions of the administration of juvenile justice, designed to meet the varying needs of juvenile offenders, protecting their basic rights and maintaining peaceful order in society.⁶⁶ Juvenile justice should form an integral part of the national development process of each country, within a comprehensive framework of social justice for juveniles.⁶⁷ Where the family is part of the underlying problem in cases of juvenile delinquency, considerations may include possible alternative housing in co-operation with youth welfare services, which must always be guided by the best interests of the child.⁶⁸



Photo (from left to right): Mr. Azamat Shambilov, Director, Penal Reform International Central Asia, Kazakhstan; Ms. Nadia Stefaniv, Justice, Supreme Court of Ukraine, Ukraine

Detention of juveniles should only be used as a measure of last resort and adults and children must always be detained separately. This approach reflects Article 37(b) of the CRC.⁶⁹ However, this principle is still not fully implemented in the participating States, even where legal provisions to this end have been adopted. The rationale behind these standards is to protect juveniles from the potential negative influence of adult offenders, to protect them from violence and to meet their needs, which are specific to their stage of development.⁷⁰ Participants suggested that it is also more effective to resolve the root causes of the minor's offending, including conflicts at home, rather than to place the child in detention. If and where children/juveniles are detained, they need to be kept separate from adults pursuant to international standards.⁷¹ Where detention is applied as a last resort, the Havana Rules recognize the importance of care and preparation for the child's return to society.⁷² Juveniles detained in facilities should thus be guaranteed meaningful programmes and activities, which promote and sustain their health and self-respect, and develop their potential as members of society.⁷³

⁶⁵ Development of Specialized Inter-district Courts on Issues of Minors in Kazakhstan', Carolyn Hamilton, Awaz Raof, Astana, 2015, p.26-27.

⁶⁶ Rules 1(4) and 2(3), UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, available at: <https://www.ohchr.org/documents/professionalinterest/beijingrules.pdf>.

⁶⁷ Rule 1(4), UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

⁶⁸ Article 3(1), UN Convention on the Rights of the Child.

⁶⁹ Article 37(b), UN Convention on the Rights of the Child.

⁷⁰ UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, footnote 58), Commentary to Rule 13.

⁷¹ Article 37(c), UN Convention on the Rights of the Child; Rules 13(4) and 26(3), UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); Rule 29, UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), adopted by General Assembly resolution 45/113 of 14 December 1990, available at: https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf.

⁷² UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 8 (footnote 63).

⁷³ Ibid, Rule 12 (footnote 63).

Non-custodial alternatives are preferable in light of the right to liberty, according to which detention is permissible only where necessary and proportionate and only as a measure of last resort. At the same time, reducing the pre-trial population helps ease problems caused by overcrowding, including inhumane prison conditions. Such conditions increase the risk of radicalization that lead to terrorism in prisons and bolster prison gangs, as inmates turn to them for security in absence of a safe environment when prison staff struggle to cope with rising numbers of detainees. Participants thus echoed the recommendations of the 2016 Forum that pre-trial detention should be imposed only after non-custodial measures have first been considered and found to be unsuitable.⁷⁴ Rule 6.2 of the Tokyo Rules highlights the need for alternatives to pre-trial detention to be employed at as early a stage as possible. Although the most commonly used alternative is bail,⁷⁵ many other possible measures are available. The UNODC Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment provides examples, including releasing an accused person and ordering him or her to appear in court on a specified day, refraining from leaving or going to specified places or districts, or refraining from meeting specified individuals.⁷⁶ In any situation, the most proportionate alternative must be applied, if possible.⁷⁷

There are systemic obstacles to the use of non-custodial alternatives, including the fear of judges of being accused of corruption if they do not impose pre-trial detention. Even where bail has been introduced as a non-custodial measure to replace pre-trial detention, it is rarely used in participating States in the region. The fear of judges to be accused of corruption if they grant bail was raised by participants as one of the underlying causes for this phenomenon. Participants also pointed to the lack of bail schedules listing recommended bail amounts, resulting in amounts being set inconsistently, considered arbitrary by the accused and the public, and/or judges being accused of corruption or partiality.⁷⁸ To address this, Kyrgyzstan, for example, has specified bail amounts in its new Criminal Procedure Code for minor, grave and especially grave offences. Participants mentioned that Kyrgyzstan's new legislation abolished the alternative of personal guarantors to ensure that an individual will appear at trial since it proved to be ineffective.

REFORMS AND GOOD PRACTICES IN THE PROSECUTION SERVICES OF THE OSCE REGION

SIDE EVENT A

Organized by ODIHR

Main conclusions and recommendations:

- Safeguards need to be put in place to prevent undue interference with the course of investigations and prosecution in individual cases, in particular in high-profile cases.
- There should be an unbiased mechanism for the allocation of cases to prosecutors in order to avoid case assignment being used to influence the course of investigations.
- Instructions from senior prosecutors to line prosecutors need to be provided in writing and documented in the case file.
- The establishment of a task force of prosecutors to high-profile cases or other complex cases can be a helpful tool to preserve the impartiality and effectiveness of the prosecution in high-profile cases.
- Prosecutors fulfil a crucial and powerful function in the administration of justice and should therefore be conscious of the need to gain the trust of the public by ensuring due process and by introducing quality management tools to measure their performance.

⁷⁴ OSCE Office for Democratic Institutions and Human Rights, Sixth Expert Forum on Criminal Justice for Central Asia, 16-18 November 2016: Report, p. 6 (footnote 4).

⁷⁵ UNODC, Custodial and Non-Custodial Measures: Alternatives to Incarceration Criminal Justice Assessment Toolkit (2006), p. 8.

⁷⁶ UNODC, Handbook of basic principles and promising practices on alternatives to imprisonment (2007), p. 19; see also UNODC, Handbook on strategies to reduce overcrowding in prisons (2013), p. 99 for options for non-custodial measures other than bail.

⁷⁷ UNODC, Handbook on strategies to reduce overcrowding in prisons (2013), p. 99.

⁷⁸ See Rule 5(1), UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by General Assembly resolution 45/110 of 14 December 1990, available at: <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>.

Summary of discussions:

Safeguards need to be put in place to prevent undue interference with the course of investigations and prosecution in individual cases, in particular in high-profile cases. International experts explained that the term independence refers to prosecutors being free from political influence and unlawful interference of any kind when conducting investigations and when prosecuting criminal cases. They explained that this applies to the prosecution service as an institution as well as to individual prosecutors. This does not prevent a hierarchical organization of the prosecution service or instructions of a general nature in order to ensure the consistency of prosecutorial functions and compliance with human rights. However, it is increasingly recognized internationally, that there should be no instructions by the executive branch concerning individual cases, in particular on the question of whether or not a case is to be investigated or prosecuted.⁷⁹ A number of safeguards can help prevent such interference, including the determination in law of selection, promotion and disciplinary mechanisms and their application by an independent self-governing body such as a Prosecutorial Council. There should be an unbiased mechanism for the allocation of cases to prosecutors in order to avoid case assignment being used to influence the course of investigations. The disciplinary accountability of prosecutors needs to be transparent and clearly defined in law so that it cannot be used as a means to put pressure on prosecutors.⁸⁰ (See also Working Group 2)

Instructions from senior prosecutors to line prosecutors need to be provided in writing and documented in the case file. Participants reflected on the fact that prosecutors are often reluctant to take decisions on how to proceed in a case without seeking — formal or informal — advice from superiors. In many countries they fear negative consequences such as stalled promotion or denial of bonus if they make a ‘wrong’ decision. Situations in which line prosecutors need to consult their superiors in order to make a particular decision, such as closing a case or entering into plea bargaining agreements, should be clearly prescribed by law or regulation.⁸¹ Any such instructions should be documented in writing in the case file, including their originator and the reasoning.



Photo (from left to right): Mr. Andy Griffiths, Police Expert, University of Portsmouth, UK; Nazgul Yergalieva; Mr. James Hamilton, former Director of Public Prosecutions of Ireland, former member of Venice Commission, Ireland

⁷⁹ See UN Office on Drugs and Crime and International Association of Prosecutors, *Guide on the Status and Role of Prosecutors*, 2014, pp. 7 et sqq.; Council of Europe, Consultative Council of European Prosecutors (CCPE), *Opinion No. 13(2018) on Independence, accountability and ethics of prosecutors*, 23 November 2018, CCPE(2018)2, para. 36, referring also to the Council of Europe Recommendation (2000)19 on The Role of Public Prosecution in the Criminal Justice System, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, paras. 11 et sqq.

⁸⁰ UN Guidelines on the Role of Prosecutors (1990), Guidelines 21 and 22; Special Rapporteur on the independence of judges and lawyers, Report to the UN Human Rights Council, 7 June 2012, A/HRC/20/19, paras. 82 et sqq.; UN Office on Drugs and Crime and International Association of Prosecutors, *Guide on the Status and Role of Prosecutors*, 2014; see also Council of Europe, Consultative Council of European Prosecutors (CCPE), *Opinion No. 13(2018) on Independence, accountability and ethics of prosecutors*, 23 November 2018, CCPE(2018)2, paras. 46 et sqq.

⁸¹ See Council of Europe, Consultative Council of European Prosecutors (CCPE), *Opinion No. 13(2018) on Independence, accountability and ethics of prosecutors*, 23 November 2018, CCPE(2018)2, paras. 24, 25, 47.

The establishment of a task force of prosecutors to high-profile cases or other complex cases can be a helpful tool to preserve the impartiality and effectiveness of the prosecution in high-profile cases. While as a general rule, cases should be assigned to an individual prosecutor, an expert from Ireland advised that the establishment of a task force of prosecutors has proven beneficial in the context of high-profile cases or cases that raise particularly complex legal issues. A task force is more resilient to external pressure and can help reduce the risk of corruption. However, the expert underlined that if such a mechanism is not applied in good faith, it can also be misused to exercise undue influence internally, contrary to its very purpose.

Prosecutors fulfil a crucial and powerful function in the administration of justice and should therefore be conscious of the need to gain trust of the public by ensuring due process and by introducing quality management tools to measure their performance. There was an agreement that prosecutors are essential agents of the administration of justice and should be conscious of their role in protecting public interests.⁸² Prosecutors are vested with considerable powers and authority and decide on issues fundamental to the administration of justice and rights of individuals. Public trust in this institution is therefore crucial. However, participants noted that in order to gain this public confidence, the institutional culture of prosecutorial services needs to change. Prosecutorial services should be conscious of their essential function to ensure due process and respect for human rights in the criminal justice system. Quality management should be introduced and public trust should constitute a relevant indicator for assessing performance of the prosecution service. To this end, civil society and academia should be considered partners and be consulted in reform processes. Participants were confident that the public values quality over speed and quantity. (See also Working Group 2.)

REDUCING CONFESSION-ORIENTED CRIMINAL JUSTICE SYSTEMS AND INCENTIVES TO COERCION AND ILL-TREATMENT

SIDE EVENT B

Organized by ODIHR and Fair Trials International

Main conclusions and recommendations:

- Legislative advancements have been made to prohibit the use of confessions extracted through torture as evidence in court, but are not implemented in practice resulting in the continued use of torture-tainted evidence before courts.
- Judges need to be proactive in scrutinizing the voluntariness and accuracy of confessions, and declare inadmissible evidence found to have been made as a result of torture.
- Medical examinations of individuals who may have been subjected to torture or ill-treatment need to be independent, objective and free from pressure from investigative bodies.
- Building investigative capacities can help ensure that the police move away from relying on coercive interrogation techniques.

Summary of discussions:

Despite positive legislative changes extending criminal liability to all those involved in the perpetration of torture and ill-treatment, changing practice has proven more difficult and structural incentives ingrained in many of the Central Asian criminal justice systems still need to be tackled. Positive legislative developments in this context include the widening of the ambit of Article 235 of the Criminal Code of Uzbekistan which criminalises torture and ill-treatment, so that it now extends to all parties that may be complicit in torture, including those that give silent agreement, even if they do not act as active participants. The updated provision extends beyond places of detention, to also include places where people are held in respect of administrative violations as well as places of medical treatment. Uzbekistan has also established habeas corpus legislation to challenge the legality of detention, enshrined rules on

⁸² UN Guidelines on the Role of Prosecutors (1990), Guideline 13(b); Special Rapporteur on the independence of judges and lawyers, Report to the UN Human Rights Council, 7 June 2012, A/HRC/20/19, para. 93.

the exclusion of evidence obtained under torture and enhanced procedural rights at early stages. Yet impunity for acts of torture and ill-treatment is still widespread in the region, something participants agreed stems from the use of confessions as the most dominant form of evidence throughout the region, with judges and prosecutors failing to look for corroborating evidence despite a legal requirement to do so. This constitutes an incentive to torture or other forms of ill-treatment or coercion during the investigation phase in order to extract a confession.⁸³ Judges need to be proactive in scrutinizing the voluntariness and accuracy of confessions and declare inadmissible evidence found to have been made as a result of torture.⁸⁴ Participants identified pre-trial detention as a mechanism for coercion, increasing the vulnerability of suspects in detention and rendering it more difficult for them to prepare a defence. Plea bargaining practices were also cited as an incentive for the continued and prevailing use of confession evidence. Where such practices are applied, evidence is never tested in court, removing any judicial scrutiny as to its accuracy, validity and relevance. As recognized at the 2016 Criminal Justice Forum, plea bargaining entails an undeniable element of coercion since the defendant faces the choice of either agreeing to the sentence proposed by the prosecution or going to trial and risking a higher sentence if found guilty.⁸⁵



Photo: Mr. Andy Griffiths, Police Expert, University of Portsmouth, UK

Independent medical examinations are key to documenting evidence of torture or ill-treatment. Participants highlighted the importance of timely and independent medical examinations in cases of alleged torture or other ill-treatment as physical signs of torture or ill-treatment will often have already faded by the time defence lawyers are granted access to their clients. The requirement, in some Central Asian participating States, for the investigator's approval before any such medical examinations can be conducted was highlighted as a problematic practice. In accordance with the Istanbul Protocol, detainees themselves, their lawyers or relatives, have the right to request a medical evaluation.⁸⁶ Moreover, doctors should have daily access to all prisoners who complain about physical or mental health issues or injury.⁸⁷ Participants also shared monitoring reports, which suggest that pressure is sometimes imposed by investigative bodies on doctors in the context of medical examinations. This is in contravention to the protections of the Istanbul Protocol, which advises that medical doctors working in places of detention need to be able to conduct their professional duties independent of any third-party influence.⁸⁸ Another problem raised by participants is that where torture is alleged to have taken place, prosecutorial offices are sometimes in charge of reviewing the allegations made against them. This causes a clear conflict of interest and undermines the impartiality, effectiveness and independence of the review of complaints raised, in contravention of the requirement of the Istanbul Protocol for investigators to be impartial and independent of the suspected perpetrators and the agency they serve.⁸⁹

⁸³ Special Rapporteur on Torture, Report to the United Nations General Assembly, 5 August 2016, A/71/298, para. 11.

⁸⁴ Article 15, UN Convention Against Torture.

⁸⁵ OSCE Office for Democratic Institutions and Human Rights, Report on the Sixth Expert Forum on Criminal Justice for Central Asia, 2016, p. 17.

⁸⁶ Office of the High Commissioner for Human Rights (OHCHR), Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004, para. 123, available at: <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

⁸⁷ Rule 31, UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the General Assembly on 17 December 2015, A/RES/70/175, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

⁸⁸ Office of the High Commissioner for Human Rights (OHCHR), Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004, para. 126 (footnote 78).

⁸⁹ Office of the High Commissioner for Human Rights (OHCHR), Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004, para. 79 and Annex I, para. 2 (footnote 78).

Building investigative capacities is essential to ensuring that law enforcement move away from relying on coercive interrogation techniques. Participants reflected on the narrative common amongst police and investigators that coercion-based evidence is needed in order to solve criminal cases and that a prohibition of coercion will hinder their ability to investigate. A UK-based police officer rebutted this assumption and shared his experience of the higher efficiency of investigative interviewing methods as compared to coercive interrogation techniques. It was noted that law enforcement needs to be provided with investigative tools that diminish the reliance on information attained from suspects. Indeed, a lack of forensic methodology and training in modern criminal investigation techniques often lead to the belief that torture, ill-treatment and coercion are the easiest and quickest means of acquiring information.⁹⁰ Forensic evidence, mobile phone data and CCTV footage, for example, render the task of investigation more factual and lower the need for police to hypothesize. For instance, rather than interrogating a suspect about their whereabouts at a certain time, protocols with mobile phone providers can provide reliable information. (See also Plenary Session 1 and Working Group 2.)

WOMEN AND JUSTICE BREAKFAST

Organized by the Kyrgyz Association of Women Judges (CAGHS), ODIHR and the OSCE Programme Office in Bishkek

Main conclusions and recommendations:

- There is always a need for a critical number of women within justice sector institutions. Proper representation has an impact on how women are treated within the justice system, whether they are women suspects, defendants, victims, witnesses or prisoners.
- States should increase their efforts to ensure equal representation of women in justice sector institutions, including in senior management positions.
- States should ensure that gender-based crimes are taken seriously from the moment of reporting through to ensuring that commensurate sanctions are imposed for such crimes.
- Associations of Women Judges are a good model for the promotion of gender equality in justice systems. Hearing the example of the Kyrgyz Association of Women Judges, many participants expressed a wish to cooperate with the Association to coordinate efforts.
- Obligatory training modules on gender should be mainstreamed into the training curricula for law enforcement, judges, prosecutors and staff of justice institutions.

Summary of discussions:

Barriers faced by women professionals in justice sector institutions were discussed on the basis of CAGHS presenting its projects and key findings, and ODIHR introducing its paper on “Gender, diversity and justice”.⁹¹

The establishment of Associations of Women Judges offers a good model in the promotion of gender-sensitive justice systems. Such associations help to promote equal representation of women within justice sector institutions and gender-sensitive treatment of women suspects, victims, witnesses and prisoners. Associations of Women Judges should also engage in supporting women to break the ‘glass ceiling’ in legal professions, including through peer assistance and mentoring. This support network is particularly crucial since complaint mechanisms pertaining to workplace discrimination against women are either underused, or, if used, inefficient.⁹² Associations can provide an alternative avenue to help women professionals tackle discrimination and barriers to career progression and advocate for the improvement of redress mechanisms at a systemic level.

⁹⁰ Special Rapporteur on Torture, Report to the United Nations General Assembly, 5 August 2016, A/71/298, para. 10.

⁹¹ OSCE Office for Democratic Institutions and Human Rights, Gender, diversity and justice, May 2019, available at: osce.org/odihr/419840.

⁹² Ibid, p. 21.

Showing how the model of such associations can practically and effectively promote these goals, the Kyrgyz Association of Women Judges reported on three influential projects it has undertaken recently. The first related to access to justice for people with disabilities, culminating in the improvement of physical accessibility in court buildings across the country, for example through the installation of wheelchair ramps. The presentation of ODIHR's paper on Gender, diversity and justice echoed the need to highlight intersectional discrimination, finding that representation of women with disabilities and/or of minority backgrounds was particularly low. The second CAGHS project focused on gender-based crimes in Central Asia, explored more fully below, and the third on the prevention of human trafficking.

States should increase their efforts to ensure equal representation of women in justice sector institutions, including in senior management positions. Experience shared by participants across the Central Asian participating States confirmed the reluctance of women victims to open up towards male officers about sexual violence they have suffered, and harmful attitudes and stereotypes which prevent many male officers from taking female victims of domestic violence seriously. Yet women professionals continue to face unequal representation in justice sector institutions. ODIHR's needs assessment study, the findings of which were compiled into the paper on Gender, diversity and justice, found that women are not proportionately represented amongst prosecutors and judges. Even where they are, this does not extend to senior management positions, positions such as court presidents or judges of Supreme or Constitutional Courts. At the same time, interviews conducted for the paper highlighted a phenomenon known as the "feminization" of the justice sector. Pursuant to this trend, men are more likely to leave the justice sector for better-paid private sector jobs, while women remain within lesser-paid jobs that are more flexible and "compatible" with the caretaking responsibilities they are expected to undertake. Changing parental leave policies so that men also take parental leave is one way to tackle this phenomenon and stereotyped assumptions about the gender roles of working parents.⁹³

Some Central Asian states have introduced measures that seek to promote a more proportionate representation of women in justice sector institutions. For instance, in Kyrgyzstan, the Constitutional Law on the status of judges adopted in 2008 stipulates that no more than 70 per cent of appointed judges should belong to one sex. Current statistics show that the judiciary comprises 62 per cent men and 38 per cent women. Prior to 2010, the representation of women was far below 38 per cent. Amongst chairpersons of courts, there is room for improvement — 78 per cent



Photo: Women and Justice Breakfast, organized by the Kyrgyz Association of Women Judges (CAGHS), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Programme Office in Bishkek

⁹³ Ibid, p. 16.

are men while only 22 per cent are women. However, a good indicator is that a new chairwoman of the Supreme Court has been elected following the expiration of the term of office of the post's previous office-holder, who was also a woman. Yet, women in justice sector institutions continue to face barriers with regards to equal representation, equal treatment in the workplace and career prospects. Participants agreed that equality of women in justice sector institutions is not limited to overall statistics, but women need to be represented equally in decision-making roles.

States need to ensure that when gender-based crimes are reported, a thorough investigation and commensurate sanctions ensue. The CAGHS' presentation of its report analysing judicial practice in cases of crimes against women and girls⁹⁴ provided an illustrative example of the impact of underrepresentation of women in law enforcement and justice systems on women victims of sexual crimes or domestic violence. For example, investigations of cases of bride kidnapping are terminated because of a lack of recognition by male judges of the gravity of the offence. Other examples provided related to cases in which police officers perpetrated sexual crimes against women which resulted only in fines in the first instance decisions and were then lowered further on appeal by male judges. A tendency was also reported of putting pressure on victims and their families to reconcile rather than pursue criminal charges in cases of gender-based violence, including rape. Another illustrative example was the requalification by judges of rape to offences of lower gravity, in particular in cases with victims who are minors, resulting in termination of the case. Participants recommended considering a prohibition on reconciliation of parties where the victim is a minor.

Training for law enforcement, judges, prosecutors and staff of justice institutions is crucial to overcoming barriers to equality. Participants urged the development of relevant and obligatory training modules. Training and education is crucial when it comes to overcoming barriers to equality. Experts interviewed for ODIHR's Gender, diversity and justice paper considered that mainstreaming modules on gender into training curricula of judges and prosecutors was preferable to creating a stand-alone module, as incorporation into the overall curricula seems to be more readily accepted by those undertaking the courses.

INSTITUTIONAL ISSUES

PLENARY SESSION 3

Main conclusions and recommendations:

- To ensure the independence of the judiciary, states should consider the establishment of judicial councils, except in those cases where independence is traditionally ensured by other means.
- Independent and self-governing bar associations are essential to provide a mechanism for the legal profession to carry out its activities without any external interference.
- Early preparation of a person sentenced for life upon release from prison is central for his/her reintegration and significantly reduces the risk of reoffending.
- Legal aid is a key component of the enjoyment of the right to a fair trial and a crucial element of a fair, humane and efficient criminal justice system that is based on the rule of law.

Summary of discussions:

To ensure the independence of the judiciary, states should consider the establishment of judicial councils, except in those cases where independence is traditionally ensured by other means.⁹⁵ Expert panellists shared standards and good practice relating to institutional aspects of judicial independence and noted that the establishment of judicial councils (or similar bodies of judicial self-governance) has been recognized as good practice by the UN Special Rapporteur on the independence of judges and lawyers.⁹⁶ However, it was noted that the sole fact of establishment of such a body is not itself sufficient, and may not lead to substantial improvements in promoting judicial independence.⁹⁷ In order to be effective, judicial councils need to be granted with substantial powers over judicial careers, and their structure

⁹⁵ Special Rapporteur on the independence of judges and lawyers, Report to the UN Human Rights Council, 2 May 2018, A/HRC/38/38, para. 91, available at: <http://undocs.org/A/HRC/38/38>.

⁹⁶ Ibid.

⁹⁷ Ibid, para. 19.

⁹⁸ Ibid, para. 18.

and composition needs to ensure that they are insulated from external political pressure⁹⁸ and free from corporatism⁹⁹. Participants agreed that on a legislative level, judicial councils should be established under the Constitution or at an equivalent level in the legislative framework, which should include provisions on their powers and composition.¹⁰⁰ International experts reported that with regard to the composition of these councils, there is a tendency towards a mixed composition of members, including judges and lay members (for example, lawyers, law professors, journalists, or citizens with a recognized reputation and experience), since such composition is considered a safeguard against corporatism and self-interest within the judiciary.¹⁰¹ Participants reached the conclusion that the members of judicial councils, whether judges or not, need to be selected through an objective, fair and transparent process on the basis of their competence, experience, understanding of the judicial system and requirement of independence. The international standard was recalled according to which judges should be elected by their peers following procedures that guarantee the widest representation of the judiciary at all levels,¹⁰² while the selection of lay members should be entrusted to non-political authorities.¹⁰³ Moreover, in order to avoid excessive concentration of power in one judicial body, it is recommended to establish different independent bodies competent for specific aspects of judicial administration.¹⁰⁴



Photo (from left to right): Mr. Stefano Sensi, Human Rights Officer, UN Office of the High Commissioner for Human Rights (OHCHR); Mr. Jago Russel, Executive Director, Fair Trials International; Mr. Kakhramondzhon Sanginov, Rule of Law Officer, OSCE Programme Office in Bishkek

Independent and self-governing bar associations are essential to provide a mechanism for the legal profession to carry out its activities without any external interference.¹⁰⁵ Participants reiterated that lawyers play an essential role in promoting and strengthening the rule of law and professional administration of justice. To safeguard their independence and integrity, it was recommended that in countries where the legal profession is not yet organized on a national level,¹⁰⁶ an independent and self-governing bar association should be established. However, it was

⁹⁹ Ibid, A/HRC/38/38, para. 68, stating that, if the proportion of judges is too high, this could create "a risk of corporatism and insulate the council from any external oversight".

¹⁰⁰ Consultative Council of European Judges (CCEJ), Opinion no.10 (2007) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, para. 11, available at: http://www.europeanrights.eu/public/commenti/CCJEOpinion101_consiglio_dei_giudici.pdf.

¹⁰¹ Special Rapporteur on the independence of judges and lawyers, Report to the UN Human Rights Council, 2 May 2018, A/HRC/38/38, para. 107, stating that, to avoid the risk of corporatism and self-interest, the councils may also include lay members, for example lawyers, law professors, jurists, Bar members, as well as citizens of acknowledged reputation and experience.

¹⁰² OSCE Office for Democratic Institutions and Human Rights/Max Planck Minerva Research Group on Judicial Independence, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 23-25 June 2010 (Footnote 43), para. 7 stating that, "Where a Judicial Council is established, its judge members shall be elected by their peers and represent the judiciary at large, including judges from first level courts." (Footnote 43)

¹⁰³ Special Rapporteur on the independence of judges and lawyers, Report to the UN Human Rights Council, 2 May 2018, A/HRC/38/38, para. 108.

¹⁰⁴ OSCE Office for Democratic Institutions and Human Rights/Max Planck Minerva Research Group on Judicial Independence, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 23-25 June 2010 (Footnote 43), para. 2 (Footnote 43).

¹⁰⁵ Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 5 August 2018, A/73/365, para. 87, available at: <http://undocs.org/A/73/365>.

¹⁰⁶ Under the law (of the Republic of Turkmenistan), lawyers may found a state-wide community of lawyers following a Conference of Lawyers in Turkmenistan for the purpose of improving lawyers' practice, upholding the independence and self-governing capacities of the legal profession, co-ordination and development of relations with State agencies and public associations, representation of the interests of lawyers, protection of professional and social rights of lawyers, performing methodical work and contributing to the enhancement of professional aptitudes of lawyers. No such organization of lawyers has been established to date. (International Commission of Jurists, Independence of the legal profession in Central Asia, 2013, p. 15, available at: <http://www.icj.org/new-icj-report-highlights-thechallenges-faced-by-the-legal-profession-in-central-asia/>).

emphasized that the mere existence of a bar association with no or little regulatory powers is not sufficient to protect its independence.¹⁰⁷ Participants discussed that, in order to be independent, bar associations need to be able to set their own regulations, make their own decisions free from external influence and represent their members' interests. With regard to the composition of the executive body of bar associations, it was recommended that its members should be lawyers elected by their peers.¹⁰⁸ (See also Side Event D)

Early preparation of a person sentenced for life upon release from prison is central for his/her reintegration and significantly reduces the risks of reoffending. Participants discussed factors for successful reintegration of prisoners upon release, drawing on experience with the implementation of pilot probation projects presented by a panellist from Kazakhstan. For example, the programme 'Rehabilitative prison'¹⁰⁹ was described which entails preparation of prisoners for reintegration during the year prior to release. Such preparation is coordinated mainly through NGOs whose activities are funded by the state. They work on the establishment of the prisoner's social ties, in particular family ties, assist with the search for employment, restore behavioural skills in the social setting, and provide psychological and medical assistance. Another programme discussed was 'Meeting at the gate'¹¹⁰ which aims to ensure assistance for those prisoners who cannot rely on relatives or friends. A probation officer is assigned to them from the outset, meeting the individual at the prison's entrance upon release, escorting him/her to the place of residence and assisting in overcoming domestic and other challenges. Participants stressed that programmes of the nature described were helpful in the resocialization of released prisoners and reduced recidivism rates.

Legal aid¹¹¹ is a key component of the enjoyment of the right to a fair trial and a crucial element of a fair, humane and efficient criminal justice system that is based on the rule of law.¹¹² Participants were debriefed on the outcomes and main recommendations of the Third International Conference on Access to Legal Aid in Criminal Justice Systems that took place in Tbilisi on 15–18 November 2018. Participants discussed four issues related to the provision of legal aid, including the independence of legal aid providers, early access to legal aid, quality of legal aid and access to legal aid by vulnerable groups. With regard to the independence of legal aid providers, participants stressed that it is a state responsibility to ensure that providers are able to perform their professional functions without intimidation, harassment or improper interference.¹¹³ An expert highlighted that the appointment mechanism of legal aid lawyers remains a concern in many Central Asian states. Law enforcement officers often engage in the process of identification of such lawyers, and this may lead to the appointment of attorneys who are less active in legal defence of their clients and more reluctant to challenge police misconduct or other procedural violations during pre-trial and trial stages.¹¹⁴ It was discussed that those suspected or accused of an offence need to have access to legal aid as early as possible but no later than before the first questioning, and states were urged to establish robust mechanisms to this end.¹¹⁵ Participants emphasized that early access to legal aid has also proven to be a tool to prevent torture and coerced confessions and, where mistreatment has occurred, can help prevent the use of evidence obtained through torture, other ill-treatment or coercion at trial.¹¹⁶ Central Asian attorneys shared their experience, noting obstacles in accessing their clients in detention despite legislative provisions granting this right. Access to free legal aid after conviction, including while serving a sentence, was also highlighted as a fundamental component of the effective free legal aid systems.¹¹⁷ States also have a responsibility to ensure that legal aid providers possess the necessary skills for their work and provide effective defence, and should put monitoring and evaluation mechanisms in place to this end, with

¹⁰⁷ Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 5 August 2018, A/73/365, para. 34, available at: <https://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx>.

¹⁰⁸ International Bar Association (IBA), Standards for the Independence of the Legal Profession, 1990, para. 17, available at: <https://www.ibanet.org/Document/Default.aspx?DocumentUID=F68BBBA5-FD1F-426F-9AA5-48D26B5E72E7>

¹⁰⁹ Informburo, Rehabilitative prison: how businessmen are made from prisoners in Kazakhstan, 28 August 2018, available at: <https://informburo.kz/stati/reabilitacionnaya-tyurma-kak-v-kazahstane-iz-prestupnikov-hotyat-sdelat-biznesmenov.html>

¹¹⁰ Implementation of the project "Meeting at the gate" in Astana, Committee of the Penitentiary system of the Ministry of Internal Affairs of the Republic of Kazakhstan, see http://mvd.gov.kz/portal/page/portal/CriminalExecutive/kuis_pages/kuis_resocial/4A0FBE7802B87485E053030F110A0EE.

¹¹¹ The term "legal aid" is defined in the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems as legal advice, assistance and representation for the detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. (UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly on 20 December 2012, A/RES/67/187, available at: <https://undocs.org/en/A/RES/67/187>).

¹¹² Principle 14, UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

¹¹³ Ibid, Principle 36.

¹¹⁴ Such lawyers, sometimes known in the region as "pocket lawyers", are a persistent problem throughout Central Asia. The problem arises in particular in regard to lawyers appointed by the courts or investigating authorities to represent defendants in criminal proceedings who could not otherwise afford a lawyer. Throughout the region, there are frequent reports of some such lawyers acting in the interests of the prosecution rather than in defence of their clients' rights. See International Commission of Jurists, Independence of the Legal Profession in Central Asia, p. 30, available at: <https://www.refworld.org/pdfid/530f03374.pdf>.

¹¹⁵ The Tbilisi Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and Progress on 'Access to Justice for All' of the 2030 Agenda on Sustainable Development, Tbilisi/ Georgia, 13-15 November 2018, available at: http://www.legalaid.ge/files/2018-11/Tbilisi%20Declaration%20-%20Adopted%20FINAL_5bffc9c0f3b78.pdf.

¹¹⁶ See Council of Europe, Consultative Council of European Prosecutors (CCPE), Opinion No. 13(2018) on Independence, accountability and ethics of prosecutors, 23 November 2018, CCPE(2018)2, para. 59.

¹¹⁷ Access of prisoners to legal advisers, including access to effective legal aid, is enshrined in Rule 61 of the Nelson Mandela Rules.

effective complaint and accountability mechanisms.¹¹⁸ Participants shared the view that the quality of legal aid in Central Asian participating States needs to be improved and suggested the development of guidelines that outline minimum requirements in terms of provision of quality legal aid services. It was discussed that legal aid providers in the region need to build up capacity to provide specialized legal aid services for vulnerable and marginalized groups, including women and children in contact with the criminal justice system.¹¹⁹ (See also Working Group 1.)

PROCEDURAL ISSUES/FAIR TRIAL

WORKING GROUP 4

Main conclusions and recommendations:

- Lack of judicial independence, bias against defendants,¹²⁰ corruption and ineffective legal aid are key problems in the delivery of justice in Central Asian countries.
- The quality of legal aid needs to be improved as a matter of urgency, and mechanisms of quality control need to be established for legal aid providers.
- Trial waiver mechanisms need to be accompanied by safeguards such as access to a lawyer before exercise of a waiver right, disclosure of evidence to the accused and judicial oversight.
- Mandatory video/audio recording of trial hearings ensures adherence of the parties to procedural rules and serves as a reliable and authentic source of evidence of any violations thereof.

Summary of discussions:

Lack of judicial independence, bias against defendants, corruption, and ineffective legal aid are key problems in the delivery of justice in Central Asian countries. Discussing the main challenges faced in the delivery of criminal justice in the region, many participants identified the lack of judicial independence as a major threat to fair trials. More robust guarantees would be needed to prevent undue influence on judges. In many of the participating States in the region, the executive branch is strongly embedded in the processes of appointment, discipline, promotion and dismissal of judges, contrary to standards of judicial independence. As a result, judges are exposed to the risk of retribution should they act contrary to the interests of the executive branch of power. Another major concern expressed by participants related to the lack of impartiality of the judiciary, which was described as acting often as if it was merged with the prosecution. Institutional culture and performance assessment mechanisms result in the perception of acquittals as a failure, or at least as undesirable. As a result, judges experience pressure to convict defendants brought to court by the prosecution, whereas acquittals are rare. The same reflex plays out in the context of preventive measures, resulting in an almost automatic judicial approval of prosecutorial requests for pre-trial detention, even though judges are obliged by law to consider non-custodial alternatives. Participants discussed whether an extension of jury trials could constitute a measure to address this, noting that juries are independent from executive bodies and not biased towards conviction, and many supported this approach.

The quality of legal aid needs to be improved as a matter of urgency and mechanisms of quality control need to be established for legal aid providers. Participants deplored the low quality of legal aid provided. They pointed to the lack of qualification of state-appointed lawyers and the lack of professional ethics in considering the defence of their clients' rights as paramount.¹²¹ Problems associated with state lawyers referred to also included the high number of cases taken on, impeding the quality of representation, resulting in a low level of trust in state-appointed lawyers. It was recommended that bar associations should play a role in quality control of legal aid providers. Improvement of legal education of adequate quality and incorporating international standards was considered by participants as

¹¹⁸ The Tbilisi Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and Progress on 'Access to Justice for All' of the 2030 Agenda on Sustainable Development, Tbilisi/ Georgia, 13-15 November 2018, para. 37 (footnote 107).

¹¹⁹ *Ibid.*, para. 1 (footnote 107).

¹²⁰ In the region, this phenomenon is often described as «accusatorial bias» or «prosecutorial bias». It describes a tendency to presume that the defendants are guilty, contrary to the principle of the presumption of innocence.

¹²¹ International Bar Association (IBA), *International Principles on Conduct for the Legal Profession*, 2011, para. 5, available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=BC99FD2C-D253-4BFE-A3B9-C13F196D9E60>.

a key to changing the existing mindset in criminal justice institutions. Adequate salaries of judges were mentioned as another measure to ensure quality of decisions in criminal proceedings, but also in order to prevent judges being vulnerable to corruption. (See also Plenary Session 1 and Side Event B.)



Photo (from left to right): Mr. Jago Russel, Executive Director, Fair Trials International, UK; Mr. Aziz Mirzaev, Assistant to the Chairperson of the Supreme Court, Uzbekistan; Mr. Daniyar Kanafin, Associate Professor and Defence Lawyer, Kazakhstan

Trial waiver mechanisms need to be accompanied by safeguards to mitigate risks to justice and fairness, including access to a lawyer in plea negotiations, disclosure of evidence and judicial oversight. Participants reflected on the increase in many Central Asian countries over the last 20 years of plea bargaining schemes and other trial waiver mechanisms that encourage suspects to admit guilt and waive their right to a full trial.¹²² The percentage of cases resolved through trial waiver systems is also constantly growing.¹²³ Such schemes aim to increase the efficiency of criminal proceedings and seek to improve access to compensation for victims. However, there is a lack of data to assess whether those goals are indeed achieved following the introduction of such mechanisms. At the same time, such mechanisms bear the risk of coercion since the defendant faces the choice of agreeing to the sentence proposed by the prosecution or going to trial risking a higher sentence.¹²⁴ As a result, innocent people may be incentivized to plead guilty for crimes they did not commit. Moreover, trial waiver systems may result in over-criminalization and inflation of sentences as they prompt convictions even for minor offences which may otherwise have been diverted.¹²⁵ In order to address these risks, access to a lawyer needs to be mandatory in plea negotiations to achieve/restore equality of arms between prosecution and defence. Secondly, the defendant needs to have access to the case against him/her. Accordingly, the prosecution must disclose the available evidence before a trial waiver is agreed. Thirdly, the courts need to have the powers to assess the fairness and voluntariness of the waiver/plea agreement with a power to reject them if found coercive or unfair. In doing that, they should consider the legal qualification of the offence, the amount for compensation to the victim, and the type and severity of the proposed sentence.¹²⁶ (See also Side Event B)

Mandatory video/audio recording of trial hearings ensures adherence of the parties to procedural rules and serves as a reliable and authentic source of evidence of any violations thereof. Participants agreed that audio/video recording of trial hearings should be mandatory. They underlined that recordings are an effective tool to ensure accurate

¹²² See Fair Trials International, *The Disappearing Trial. Towards a rights-based approach to trial waiver systems*, 2017, available at: <https://www.fairtrials.org/wp-content/uploads/2017/12/Report-The-Disappearing-Trial.pdf>, p. 5. Of the 90 countries studied by Fair Trials International, in 2017 66 had some type of formal "trial waiver". In 1990, the number was only 19.

¹²³ Fair Trials International, *The Disappearing Trial. Towards a rights-based approach to trial waiver system*, 2017, p. 23 (footnote 115).

¹²⁴ See OSCE Office for Democratic Institutions and Human Rights, *Sixth Expert Forum on Criminal Justice for Central Asia*, 2016, p. 17.

¹²⁵ See, for example, Fair Trials International, *The Disappearing Trial: Towards a rights-based approach to trial waiver systems*, 2017, p. 17 (footnote 115).

¹²⁶ See Article 623 (1) of the Criminal Procedure Code of Kazakhstan, available at: <https://bit.ly/2GVw2KH>.

documentation of the proceedings, of testimonies and cross-examinations. Recordings facilitate the role of the judge when assessing the substance and weight of evidence, and provide an unequivocal source to verify claims of procedural violations in the course of an appeal or disciplinary proceedings. Documentation by clerks, by contrast, does not provide an equally detailed account and may be negligent or influenced by conscious or unconscious bias. While representing a cost factor, at the same time audio/video recording of trial hearings increases the efficiency and quality of criminal proceedings overall. Participants underlined that in order to achieve the intended goal, equipment needs to be of adequate quality.

CRIMINAL SANCTIONS/SENTENCING

WORKING GROUP 5

Main conclusions and recommendations:

- In order to ensure fair and proportionate sentencing, some states in the region have divided offences into crimes, misdemeanours and infractions, with a specific range of sanctions set for each type of offence.
- States need to strike the right balance between judicial discretion in sentencing and maintaining clear legislative thresholds to avoid inconsistent sentencing practices.
- The exercise of judicial discretion and application of legislative guidance both require the gathering of as much information and context about the offence and offender as possible.
- In order for sentences to be proportionate there needs to be an appropriate range of sentences for the judge to choose from.

Summary of discussions:

Some states in the region have adopted a tiered classification of offences, differentiating between crimes, misdemeanours and infractions. This tiered system focuses on the nature of the damage caused by an offence, with subsequent corresponding sanctions. Participants generally felt that focusing on the damage caused by the crime helps ensure fair and proportionate sentencing. They considered there to be a shift in the region away from focusing on the offender, for example, by abandoning the notion of repeat offences in Kyrgyzstan and Kazakhstan. An offender's criminal record, where it exists, is therefore no longer considered an aggravating factor at the sentencing stage. Participants concluded that ultimately, the way in which judges weigh aggravating and mitigating factors depends on the question previously raised during plenary session 3 on institutional issues — namely, what the criminal justice system understands as its purpose, the extent to which it prioritizes rehabilitation, and accordingly what it adopts as its rationale for sentencing.

There was a debate as to the balance to be struck between judicial discretion and legislative guidance. On the one hand, judicial discretion takes into account the specific characteristics of each perpetrator and offence, with standardized classifications of offences protecting against arbitrariness. On the other hand, specifying sentences in legislation ensures consistent sentencing practices for similar cases and across the country. An expert from the UK noted that consistency in sentencing has a positive impact on the faith placed in the criminal justice system by the public and individuals in contact with the system. At the same time, an element of judicial discretion remains important since not all possible combinations of factors can be anticipated in law or in a workable set of sentencing guidelines. Participants supported an individual approach to sanctions, requiring a sufficient degree of judicial discretion, nonetheless carefully circumscribed by legislation in order to avoid disparate sentencing.

The exercise of judicial discretion and application of legislative guidance both require the gathering of as much information and context as possible about the offence and offender. An expert from the UK noted that applying judicial discretion and sentencing guidelines face the same challenges in obtaining complete and objective information on which to base decision-making, in particular where the defendant entered a guilty plea and no witnesses were heard. Examples of ways to increase the level of information required to pass a proportionate and effective sentence include the use of victim statements and the provision of pre-sentence reports prepared by probation officers, which

should include an assessment of the potential success of specific types of intervention, such as treatment for drug and/or alcohol addiction where relevant.



Photo (from left to right): Ms. Andrea Huber, Deputy Chief, Rule of Law Unit, ODIHR; Mr. Valery Kalinkovich, First Deputy Chairperson of the Supreme Court of Belarus; Ms. Gulmira Mamatkerimova, Deputy Head of the Expert working group on monitoring of judicial reform under the President, Kyrgyzstan; Mr. Bakhadir Tlegenov, Leading Researcher at the Institute of Problems of Legislation and Parliamentary Studies under the Oliy Mazhlis of the Republic of Uzbekistan

ODIHR'S TOOLS TO SUPPORT OSCE PARTICIPATING STATES

SIDE EVENT C

Organized by ODIHR

Main conclusions and recommendations:

- Legislationline, an ODIHR-developed online legal database, is a useful drafting and reference tool for lawmakers and other interested professionals.
- States are encouraged to request ODIHR to assess legislative proposals and existing legislation against relevant OSCE commitments and international human rights standards.
- Trial monitoring is a unique diagnostic tool to assess key elements of justice systems in a given state, identify systemic obstacles to the realization of fair trial rights and identify areas in need of reform.

Summary of discussions:

Representatives of ODIHR presented to Forum participants Legislationline,¹²⁷ a free-of-charge online legal database, a useful drafting and reference tool for lawmakers and other interested professionals. ODIHR developed it to assist OSCE participating States in bringing their legislation in line with OSCE commitments and relevant international human rights standards. Initially created in 2002, the database currently contains around 11,000 legal documents in English and Russian related to human rights law and democratic governance issues. Its database includes national laws, international and regional human rights documents and legal opinions prepared by ODIHR, on occasions jointly with the Venice Commission. The database was designed as a support tool for lawmakers who can access comparative analysis of legal acts and obtain examples and options from other countries' legislation in order to inform their own choices. At the same time, the database is a reference tool for academic researchers, government officials, international organizations, students and other legal specialists.

¹²⁷ <https://legislationline.org>

In the framework of its mandate, ODIHR reviews individual pieces of legislation¹²⁸ to assess their compliance with OSCE commitments and international human rights standards, producing legal opinions. States are encouraged to request ODIHR to review legislative proposals and existing legislation.. Such Requests can come from certain institutions of OSCE participating States, such as parliaments (including from speakers and heads of the legislative committees), judicial bodies, ministries and national human rights institutions. During 2018, ODIHR has received 21 requests for legal review from 14 states and produced 19 legal opinions. The preparation of a legal opinion takes up to 3 months, depending on volume and complexity of the law to be analyzed. Upon finalization of an opinion, ODIHR may also conduct a follow-up visit to the participating State to present the requested opinion and answer related questions. All opinions are published online¹²⁹ and freely accessible to everyone. Participating States interested in requesting an ODIHR legal opinion should contact the OSCE field operation in their country, or ODIHR directly in participating States without OSCE presence.

Trial monitoring is a unique diagnostic tool to assess key elements of justice systems in a given state, identify systemic obstacles to the realization of fair trial rights and identify areas in need for reform. At the request of participating States, ODIHR and OSCE field operations may engage in trial monitoring,¹³⁰ in particular to assess compliance with fair trial standards. With the exception of so-called ad-hoc trial monitoring, which refers to monitoring in direct response



to specific events, ODIHR's trial monitoring methodology does not relate to the outcome of individual cases. Rather, usually it is conducted long-term in order to support broad justice-sector related reforms (systemic trial monitoring) or tailored to assess challenges faced by a justice system relating to a specific category of cases, phase of proceedings or subject matter (thematic trial monitoring). Based on its long-term experience with this mechanism, ODIHR, in co-operation with the OSCE field operations, has published a manual for practitioners, setting out principles and providing guidance on how to organize and operate a trial monitoring programme.¹³¹ Trial monitoring findings are usually compiled in a trial monitoring report, including analysis and recommendations, which are followed up through advocacy on the recommendations. Within the framework of this portfolio, ODIHR organizes trial monitoring training events and an Annual Trial Monitoring Meeting.

128 Requesting Legislative Assistance from ODIHR see: <https://www.osce.org/odihr/407447?download=true>

129 OSCE Office for Democratic Institutions and Human Rights, Legal Reviews Assessments and Guidelines, see Legislationline at <https://www.legislationline.org/odihr-documents/page/legal-reviews>.

130 OSCE Office for Democratic Institutions and Human Rights, Brochure on Trial Monitoring, available at: <https://www.osce.org/odihr/123550?download=true>.

131 OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring: A Reference Manual for Practitioners, Revised edition 2012, available at: <https://www.osce.org/odihr/94216>.

Organized by the International Bar Association (IBA)

Main conclusions and recommendations:

- States should take all appropriate measures to ensure that defence lawyers are able to carry out their functions freely, independently and without interference from state agencies or private individuals.
- Confidentiality of communication between defence lawyer and client and access to a client during interrogation and in detention are preconditions for effective access to justice.
- As professional associations of lawyers are self-governed institutions, states should refrain from involvement in their management.

Summary of discussions:

States should take all appropriate measures to ensure that defence lawyers are able to carry out their functions freely, independently and without any interference from state agencies or private individuals.¹³² Participants discussed that, in contradiction to internationally recognized principles,¹³³ in the Central Asia region defence lawyers tend to be identified — by state bodies and the general public — with their clients or their clients' causes when performing their functions. This was identified as a key factor leading to incidents of interference with lawyers' functions in the region, including verbal attacks on the reputation of defence lawyers, physical attacks, unjustified disciplinary sanctions or even arbitrary detention and prosecution. While such incidents have been reported in the region by both state and non-state actors, participants pointed to the particular responsibility of states, not only to refrain from actions that might



Photo: Jamshid Turdaliev, defence lawyer and member of the Chamber of Advocates of Uzbekistan

undermine the independence of defence lawyers but also to take all appropriate measures to protect them from attacks on their security and to investigate any alleged violations.¹³⁴ It was also emphasized that where interference is frequent or even systematic, this has a chilling effect on all legal practitioners, discouraging them from dealing with sensitive cases out of fear of becoming a target. Participants noted the mandate of the UN Special Rapporteur on the Independence of Judges and Lawyers who can receive individual communications and intervene with states in line with the Code of Conduct for the UN special procedures. (See also Working Group 1.)

Confidentiality of communications between defence lawyer and client and access to a client during interrogation and in detention are preconditions for effective access to justice. Communication between a defence lawyer and a client is privileged in international law and must be confidential, without interference or censorship.¹³⁵ This applies to any form of communication, whether a client and a defence lawyer meet in person or communicate through technical means, including e-mails. The principle of access and confidentiality equally applies to clients in detention.¹³⁶ It was reiterated that states have to ensure that defence lawyers are able to consult with their clients freely, without any interference from law enforcement, staff of pre-trial detention facilities or prison staff. Staff of pre-trial detention or penal institutions may observe visually, but out of hearing.¹³⁷ Many Central Asian attorneys shared their experience of facing impediments in accessing their clients in detention, contrary to the internationally recognized right of the detained to prompt access to a lawyer.¹³⁸ Complications were described, deriving from internal regulations of

¹³² Principle 16, UN Basic Principles on the Role of Lawyers, 7 September 1990, available at: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

¹³³ Ibid, Principle 18.

¹³⁴ Ibid, Principle 17; see also Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 22 August 2016, A/71/348, para. 70, available at: <https://undocs.org/A/71/348>.

¹³⁵ Principle 22, UN Basic Principles on the Role of Lawyers.

¹³⁶ Ibid, Principle 8.

¹³⁷ Rule 61(1), Nelson Mandela Rules (footnote 79); see also Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 22 August 2016, A/71/348, para. 47.

¹³⁸ Principle 7, UN Basic Principles on the Role of Lawyers.

detention facilities, which establish restrictions on access for attorneys, sometimes contrary to legislative provisions, such as a necessity to obtain a prosecutor's/investigator's permit to visit a client. Lawyers also pointed to problematic restrictions on the duration of meetings with their detained clients. Participants underlined that such limitations impede the provision of effective defence in criminal proceedings and also prevent defence lawyers from protecting their clients from torture or other ill-treatment. Participants emphasized that, in line with international law, documents and cell phones of defence lawyers should not be subject to scrutiny prior and after consultations with their clients.¹³⁹ Such surveillance or searches may only occur under the most exceptional circumstances and exclusively under the supervision of an independent judicial authority.¹⁴⁰ In conclusion, participants emphasized the obligation of states to provide the detained with adequate opportunities, time and facilities to be visited by and to communicate and consult with a defence lawyer in private.¹⁴¹

As professional associations of lawyers are self-governed institutions, states should refrain from active involvement in their management. Participants discussed legislation in some Central Asian countries that provides for a considerable role of state authorities in the management of bar associations and election of representatives of their executive or disciplinary bodies. This is reflected, for example, in the submission of proposals for the election of chairpersons and their deputies. A panellist expert recalled international standards, which provide that executive bodies of professional associations of lawyers shall be elected by their members,¹⁴² through a transparent and participatory process to avoid corporatism or politicization.¹⁴³ With regard to disciplinary bodies, it was underlined that their composition must ensure their independence and impartiality,¹⁴⁴ including from other bodies of bar associations. Participants emphasized that control of the state over bar associations, including through influence over its governing body, is incompatible with the principle of independence of the legal profession, in particular if exercised by the executive branch.¹⁴⁵ It was noted that, in contrast, the initiation of legislation determining the requirements and procedures for access to the legal profession and with regard to the development and management of legal aid schemes constitutes a legitimate form of government involvement, provided that independence of bar associations is ensured in line with international standards. (See also Side Event D.)

REFORMS OF THE PENITENTIARY SYSTEM

PLENARY SESSION 5

Main conclusions and recommendations:

- Reintegration and resocialization programmes should be seen as paramount objectives of the penitentiary system and should commence from the moment of an individual's entry into prison.
- An individualized sentence plan should be developed as soon as possible after entry into prison, detailing rehabilitative activities aimed at reducing the prospects of reoffending.
- Such programmes should be gender-sensitive and must not discriminate against women by focusing on stereotypical activities associated with childcare and housekeeping, but enable women offenders to lead self-supporting lives.
- Newly established probation services in the region have a key role to play in reintegration efforts, in particular equipping prisoners with employment and life skills.
- Prison systems should build partnerships with other services and non-governmental organizations to improve the effectiveness of reintegration and resocialization processes.
- As terrorist offences continue to be of considerable concern in the Central Asian region, penitentiary systems should address the process of re-entry of convicted offenders into society after release from prison.

¹³⁹ Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 22 August 2016, A/71/348, para. 47.

¹⁴⁰ Ibid, para. 46.

¹⁴¹ Principle 8, UN Basic Principles on the Role of Lawyers.

¹⁴² Ibid, Principle 24.

¹⁴³ Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 5 September 2018, A/73/365, para. 102, available at: <https://undocs.org/A/73/365>.

¹⁴⁴ Principle 28, UN Basic Principles on the Role of Lawyers.

¹⁴⁵ Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, 5 September 2018, A/73/365, para. 101.

Summary of discussions:

Reintegration and resocialization processes should be seen as paramount objectives of the penitentiary system and should commence from the moment of an individual's entry into prison. Article 10(3) of the International Covenant on Civil and Political Rights (ICCPR) highlights the main aim of the penitentiary system, namely the reformation and social rehabilitation of prisoners. Rule 4 of the Nelson Mandela Rules, found in the Rules' basic principles, also notes the importance of reintegration ensuring a law-abiding and self-supporting life. In order to be successful, rehabilitation programmes thus need to start at the beginning of the sentence, rather than just a few weeks prior to release. Since most prisoners are ultimately released and return to live in the community, reducing the risk of reoffending is crucial.



Photo (from left to right): Ms. Stephanie Selg, Advisor on Torture Prevention, Human Rights Department, ODIHR; Ms. Yulia Denisenko, Consultant, Penal Reform International Central Asia, Kyrgyzstan; Ms. Takhmina Ashuralieva, Law Program Coordinator, Soros Foundation, Kyrgyzstan; Mr. Nicholas Hardwick, former Chief Inspector of prisons and probation, UK

Participants stressed the importance of investing in programmes that address the underlying causes of offending and equip prisoners with the skills to lead self-supporting, law-abiding lives after release. Participants agreed that such programmes provide benefits not only upon release, but also during imprisonment as they represent purposeful occupation and hope for the future, thereby providing an incentive to comply with prison rules. Participants considered that this contributed to a safer prison environment, alongside the factor of prisoners being treated by staff with respect for their human dignity. Participants encouraged systems in which performance of the penitentiary is measured not only in respect of the safety of prisons, but including also the efforts of staff and management to assist rehabilitation and reintegration. Such programmes can include educational courses and vocational training; however, physical and mental health is also a crucial factor for successful reintegration upon release. Programmes must be gender-sensitive and must not discriminate against women by focusing on stereotypical activities associated with childcare and housekeeping, but enable women offenders to lead self-supporting lives. Incorporation of rehabilitation efforts into the job profile of prison officers as well as positive relationships between prison staff and prisoners were highlighted as key components to successful rehabilitation programmes. Participants stressed that the general public needs to be informed about the benefits of rehabilitation programmes for prisoners, both in prison and following release.

Partnerships with probation and other services and organizations are crucial to improving the effectiveness of reintegration and resocialization processes. Participants agreed that sentence plans should be formulated for each prisoner as soon as possible after entry into prison, echoing Rule 94 of the Nelson Mandela Rules. Sentence plans should address the prisoner's educational, vocational training and work-related needs, and any specific requirements for interventions relating to offending behaviour, as well as ways of maintaining family contact and meeting any financial or other obligations.¹⁴⁶ Participants emphasized that there should be an individualized rather than uniform

¹⁴⁶ UN Office on Drugs and Crime, Roadmap for the Development of Prison-based Rehabilitation Programmes, 2017, p. 28, available at: http://www.unodc.org/documents/justice-and-prison-reform/17-05452_ebook.pdf.

approach to creating sentence plans. Participants highlighted the role of newly established probation services in the region and those in the process of establishment in reintegration efforts, in particular equipping prisoners with employment and life skills. Participants recommended that prison systems establish links with probation services and other services and organizations in order to ensure an individual's practical needs upon release, including employment, housing and other social services.¹⁴⁷ NGOs and families were mentioned as other important resources with which prison systems should build strong relationships since they can address the practical necessities of the individual's first few days after release, for instance making travel arrangements from the prison to home and ensuring individuals have adequate clothing, and subsequently assist individuals in finding employment and housing. Partnerships with relevant organizations also help to ensure access to other social assistance, for example for those unable to work because of disability.

As terrorist offences continue to be of considerable concern in the Central Asian region, penitentiary systems should address the process of re-entry of convicted offenders into society after their release from prison. Penitentiary systems across Central Asia need to work on increasing efforts to improve the efficiency of programmes for disengagement from violence or terrorism during detention. Experts highlighted that such programmes should include psychological as well as social components, as these are often factors in radicalization to violence or terrorism. The starting point should be respect for the human dignity of prisoners by prison staff. Lack of respect for human rights and poor and overcrowded prison conditions are factors conducive to spreading ideas of violent extremism and radicalization in prisons. That lack of safety and security in prisons may force individuals to seek gangs' protection or drive them into the hands of violent extremist groups. In respect of rehabilitation programmes and risk assessment processes, which measure prisoner risk levels in order to appropriately allocate them in detention, participants again highlighted the need for an individualized approach, according to the personal circumstances and needs of the individual, with a support from specialists. Such an approach directly addresses particular violent behaviours of the individual which it seeks to change, rather than focusing on beliefs or ideologies as such. Participants with experience in this field noted that individualized programmes even reduce the cost of rehabilitation as compared to a one-size-fits all approach.

ALTERNATIVES TO DETENTION IN CENTRAL ASIA

SIDE EVENT E

Organized by Penal Reform International

Main conclusions and recommendations:

- The establishment of a probation service contributes significantly to the effective implementation of non-custodial preventive measures and sanctions, thereby reducing the prison population.
- States should not overly rely on technological means to supervise probation clients, but concentrate on the human aspect of the process.
- The effectiveness of the work of probation officers should not be predominantly evaluated on the basis of the recidivism rate of their clients.
- Probation services should represent - and present themselves as - a body distinct from law enforcement and the penitentiary, tasked with the assistance of its clients, not their punishment.

Summary of discussions:

The establishment of a probation service contributes significantly to the effective implementation of non-custodial preventive measures and sanctions, thereby reducing the prison population. Participants discussed the experience of Kazakhstan, the first country in Central Asia to establish a probation service. At the time of its formation in 2015, the service was tasked with providing social and legal assistance¹⁴⁸ only to people sentenced with restriction of liberty¹⁴⁹ and

¹⁴⁷ Ibid, p. 28 (footnote 140).

¹⁴⁸ Legal assistance provided by the probation service usually entails consultations on such issues as renewal of lost or expired documents (e.g., birth certificates, passports, driving licenses) or receipt of certain forms of state allowance.

¹⁴⁹ So-called "sentencing probation", applicable while the 'restriction of liberty', a specific sentence type in many post-Soviet Union countries, is being served.

those who were released on parole.¹⁵⁰ With the adoption of a new, distinct Law on Probation in 2016,¹⁵¹ the mandate of the probation service was expanded. During the pre-trial phase¹⁵² the probation service was tasked with providing assistance to suspects/defendants with disabilities, juveniles, the elderly and those who are raising children up to the age of three.¹⁵³ Within this framework, the probation service also enquires into the history and background of clients before sentencing in order to reveal their unique individual circumstances and help the judge determine a suitable sentence, which it captures in a pre-trial report (often referred to internationally as a pre-sentence report).¹⁵⁴ The assistance of the probation service now sets in not only upon release, but one year before completion of the sentence, entailing the development of an individualized assistance programme in co-operation with the administration of the penitentiary institution and including measures such as assistance with the search for prospective employment and living premises.¹⁵⁵ An expert underlined that with the establishment of the probation service, courts have become more likely to order non-custodial sanctions, knowing that the offenders will be supervised effectively. Besides that, the probation mechanism has helped to improve reintegration into society upon release after serving a prison sentence, thus reducing the risk of recidivism. Overall, the service has contributed to a significant reduction of the prison population in Kazakhstan and recent statistics indicate roughly twice as many clients on probation as individuals in prison. As a result, it has been possible to close eight penitentiary institutions, which represents a significant cost reduction for the penitentiary system. It was underlined that it is important to accompany the establishment of probation services with proactive information campaigns to communicate the functions of the institution and its benefits for society. (See also Plenary Session 5.)



Photo: Ms. Gulnora Ishankhanova, Commissioner of the International Commission of Jurists, Uzbekistan

States should not overly rely on technological means to supervise probation clients, but concentrate on the human aspect of the process. An expert from the UK elaborated on two commonly used technological solutions to monitor compliance of probationers with the conditions of their release. Firstly, electronic monitoring is commonly used to send an alert if a person leaves a designated area for a relevant period in time. Secondly, technological means are used to detect whether a person has consumed alcohol if parole conditions prohibit its consumption. Participating States should take into account that the production/purchase and supervision of electronic monitoring entails considerable costs, including maintenance and supervising staff. While these tools are beneficial under certain circumstances, the development of human relationships, building trust and confidence between a probation officer and his/her probation client should be at the core of the supervision process.

The effectiveness of the work of probation officers should not be predominantly evaluated on the basis of the recidivism rate of their clients. In the process of developing bylaws for probation services, many participating States in

¹⁵⁰ So-called "post-penitentiary probation", applicable upon release from prison.

¹⁵¹ Law of the Republic of Kazakhstan "On Probation", 30 December 2016, available at: https://online.zakon.kz/Document/?doc_id=36232217#pos=28;-156.

¹⁵² Article 13, Law of the Republic of Kazakhstan "On Probation", so-called "pre-trial probation". Note that under international law every accused/suspect is presumed to be innocent until proven guilty by a court of law. As a consequence, his/her guilt must therefore not be antedated pre-trial, which means that neither the probation service nor other authorities can implement any pecuniary measures on the accused/suspect.

¹⁵³ Provided that custodial preventive measures are not applied to such individuals and only upon their request.

¹⁵⁴ Article 14, Law of the Republic of Kazakhstan "On Probation".

¹⁵⁵ Article 15, Law of the Republic of Kazakhstan "On Probation", so-called "penitentiary probation", applied while the person is still serving his/her sentence.

Central Asia have encountered challenges in setting out criteria for performance evaluation of the work of probation officers. Among possible evaluation methods, participants favoured measuring performance of probation officers against a mix of indicators, including abidance by the operations manual¹⁵⁶ and completion of an individual probation plan by a probation client. Reoffending rates of clients, while a factor, should not be the main or only indicator as this has shown to be counterproductive. Performance indicators should not in effect punish probation officers who are dealing with more challenging clients and should not create an incentive to discard such clients (e.g. moving the client to a different jurisdiction) or downplay violations of parole conditions.

Probation services should represent — and present themselves as — a body distinct from law enforcement and the penitentiary, tasked with the assistance of its clients, not their punishment. Participants discussed that many probation clients, at least in the beginning, may have a rather negative attitude towards the probation service as it is linked to criminal procedures against them or even to imprisonment. The uniform of probation officers was identified as a relevant factor, hindering the establishment of trust of probation officers with their clients as they are associated with law enforcement and punishment. It was therefore recommended that probation officers should not wear uniform, or wear a uniform visibly different from that used by other agencies. For the same reasons, probation offices should be situated in buildings distinct from those agencies.

JUDICIAL PRACTICE IN THE MATTER OF CRIMES AGAINST WOMEN AND GIRLS IN THE KYRGYZ REPUBLIC

SIDE EVENT F

Organized by the Kyrgyz Association of Women Judges (CAGHS)

Main conclusions and recommendations:

- Societal views form an obstacle to tackling gender-based crimes, and the treatment of victims of gender-based violence following complaint continues to be problematic.
- The act of putting psychological pressure on victims and/or their representatives with the aim of coercing them to drop their complaints against perpetrators of violence against women should be penalized.
- Child victims of sexual violence should be provided with state-funded legal aid and a psychologist and pedagogue should be present when child victims are interviewed.
- A database of psychologists and pedagogues should be created so that relevant expert witnesses can be summoned to participate in court proceedings. Expert services should be available throughout the country, not only in capital cities, and be available also as a component of legal aid.
- Uniformity of judicial practice should be promoted, including, for example through the adoption of resolutions by Supreme Courts' plenary sessions, analysing existing judicial practices.

Summary of discussions:

CAGHS presented the results of analytical research on how gender-based crimes are dealt with by the Kyrgyzstani criminal justice system. To this end, the CAGHS examined 1,020 court judgments and conducted interviews with women and girl victims. The analysis provided a basis for a discussion of how such cases are investigated and adjudicated in Kyrgyzstan, but also in other participating States in the Central Asia region. The CAGHS reported positive developments since presenting its research to the Supreme Court, General Prosecutor's Office, defence lawyers and the Ministry of Internal Affairs in Kyrgyzstan. Many judges have subsequently changed the way in which they approach such cases, acknowledging that in order for the rights of victims to be upheld and to effectively tackle gender-based violence, victims must be treated with more respect and dignity within the criminal justice system.

¹⁵⁶ The term is used for a manual in which the probation service provides instructions to its officers for day-to-day operations.

Societal views form an obstacle to tackling gender-based crimes, and the treatment of gender-based violence victims following complaint continues to be problematic. The CAGHS research concluded that victims are afraid to report because of fears of repercussions and societal judgement. Furthermore, a majority of women and girl victims are unaware of their rights, and many lack the means to seek legal assistance as they are financially dependent on their male family members or partners, who are often the perpetrators of the crimes. Even if victims choose to report, they are often dissuaded from doing so not only by family members, but also by medical doctors, defence lawyers and police officers. Participants noted that cases are frequently delayed, often deliberately. When the case reaches court, prosecutors are either absent or ill-prepared for the trial, and victims play only a passive role in proceedings. While the accused frequently have legal representation of their choice, victims are most often only represented by duty lawyers who are inactive. During court sessions, both defence lawyers and prosecutors have been reported as asking unnecessary and irrelevant personal questions of victims, without due intervention from judges. Participants also described lawyers who misinterpret their role to be that of an intermediary between the perpetrator and the victim's family, seeking reconciliation without or against the victim's wishes.

There is a failure to adapt interviewing methodology to victims of gender-based violence, and a subsequent failure to take into account the gendered aspects of the crimes. Moreover, there is no distinct approach to interviewing children, and unless a legal representative is present, children are left without a comprehensible, simplified explanation of the procedures. An example of good practice is the compulsory legal representation of minors in Kazakhstan in place since 2012,¹⁵⁷ a norm that participants agreed should be adopted throughout the region. Participants highlighted that a different approach is required when interviewing children and recommended that a psychologist and pedagogue be present when child victims are interviewed. Separate interview rooms should be provided to make them feel more comfortable. Following the CAGHS' reporting to policymakers, separate rooms for minors have been introduced in all courts, and judges adopt simplified procedures where either the victim or the defendant is a juvenile. Participants discussed the option of placing the child in a separate accommodation in such situations for the duration of the criminal procedure against the alleged perpetrator. Although this may prevent delays or termination of the complaint, children should never be separated from their parent(s) against their will, unless such a decision is adopted by a judicial branch of power.¹⁵⁸ Each instance needs to be assessed on a case-to-case basis, with the best interests of the child as the primary consideration.¹⁵⁹



Photo: Ms Chinara Aydarbekova, Judge of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Kyrgyz Association of Women Judges (CAGHS)

Participants recommended that a database of psychologists and pedagogues is created so that relevant expert witnesses can be summoned to participate in court proceedings. At present, very little attention is paid to the psychological trauma suffered by victims, in particular victims who are minors. In Kyrgyzstan, psychological expertise during court proceedings is in place only in Bishkek and is practically unavailable in other parts of the country. The perpetrators of sexual violence against child victims are often their own family members. In cases where fathers perpetrate crimes against their children, mothers may be afraid of pursuing a complaint as the family may be financially reliant on the father. Expert services should

be available throughout the country, not only in capital cities, and state-appointed lawyers should be able to call on expert witnesses as part of the free legal aid system.

¹⁵⁷ See Article 215 of the Criminal Procedure Code of Kazakhstan for pre-trial proceedings and Article 371 for proceedings at court.

¹⁵⁸ Article 9, UN Convention on the Rights on the Child.

¹⁵⁹ Article 3(1), UN Convention on the Rights on the Child.

Main conclusions and recommendations:

- An individualized sentence plan should be developed for each prisoner based on the assessment of the individual's risks and needs, especially for prisoners with long sentences.
- The selection of prison staff with good inter-personal and communication skills, committed to treating prisoners with humanity and dignity, is crucial in order to implement a rehabilitative approach to prison management.
- Prison staff should receive training tailored to their duties, including an induction training as well as continued in-service training and specialized training for those who execute specific functions.
- Conditional parole has proven to serve as an incentive for prisoners to comply with their sentence plan and constitutes a useful tool to reduce prison overcrowding.
- Parole hearings should take place in the presence of defence lawyers.

Summary of discussions:

An individualized sentence plan should be developed for each prisoner based on the assessment of the individual's risks and needs, especially for prisoners with long sentences. Drawing on the experience of an international expert from Sweden, participants discussed the need to prepare sentence plans for every prisoner as soon as possible after admission as a key component of an approach that promotes the social reintegration of prisoners following their release, taking into account his/her individual needs, capacities, and dispositions.¹⁶⁰ Sentence planning is a tool to identify the risks each prisoner may present to him/herself and others and his/her rehabilitation needs, using the time in prison constructively and purposefully to address these risks through rehabilitation programmes. Such programmes may relate to, for example, education, employment, treatment for substance dependence and psychosocial counselling for mental health care needs.¹⁶¹ Apart from reducing the risk of reoffending upon release, rehabilitation programmes have shown to reduce the risk of disruptive behaviour in prison. Participants reflected on sentence planning as a dynamic document that should be developed in consultation with the prisoner to enhance their ownership over their own future, be gender-sensitive and be updated regularly in order to take into account changed prerequisites. The assignment of prison officers to individual prisoners, monitoring the fulfilment of the sentence plan and providing continued support has proven to be good practice. It is also important that the available range of prison works and related vocational training courses take into consideration the needs of the labour market, to enable a prisoner to earn a living after release.¹⁶² Women prisoners need to be provided with equal opportunities in terms of vocational and rehabilitation programmes, and activities offered must not be limited to household or other stereotypical occupations.



Photo: Mr. Isak Enstrom, Corrections Specialist, UNDP New York

Participants discussed that the shift in prison management from a punitive approach to rehabilitation-oriented systems implies a change in the role of prison staff, which needs to be reflected in changed selection procedures and training programmes for them. In order to implement a rehabilitative approach, prison officers need to have interpersonal and communication skills and be committed to treating prisoners with humanity and dignity, in addition to security-related skills required. To be able to attract staff with such a skillset, remuneration and conditions of service need to be commensurate with

¹⁶⁰ Rule 94, Nelson Mandela Rules.

¹⁶¹ Rule 67, Nelson Mandela Rules.

¹⁶² Rule 98 (1), Nelson Mandela Rules.

the nature of this work.¹⁶³ Moreover, the recruitment process should be designed to attract women prison officers as well as prison officers from ethnic and other minorities to reflect the diversity of the prison population. In line with international standards, selection procedures need to prevent discrimination and ensure the professional suitability of personnel of every grade, including their integrity, humanity and personal suitability.

Prison staff should receive training tailored to their duties, including an induction training as well as continued in-service training and specialized training for those who execute specific functions. Participants agreed that adequate training of prison staff is a prerequisite for implementing rehabilitation-oriented prison management as well as for ensuring the safety and security of prisoners and prison staff. To this end, training needs to be provided not only before entering on duty (induction training),¹⁶⁴ but continuously while on service in order to provide the necessary skillset and to keep abreast of developments in international standards and evidence-based good practices in penal science. There was a consensus that the provision of in-service training is the responsibility of the prison administrations and should reflect contemporary evidence-based good practice.¹⁶⁵ Training should cover, at a minimum, relevant national legislation and applicable international instruments, rights and duties of staff, security and safety measures, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, and first aid.¹⁶⁶ Participants also reiterated that staff in charge of working with certain groups of prisoners and those assigned to other specialized functions need to receive specialized training with a corresponding focus,¹⁶⁷ for example, related to engagement in sentence planning and rehabilitation programming or with regard to vulnerable prison populations such as women, children and juveniles. It was pointed out that regular training of staff is beneficial also as a stimulator of systemic change to internal processes and practices in prison management, taking into account the latest good practice.

Conditional parole has been proven to serve as an incentive for compliance of prisoners with their sentence plan and constitutes a useful tool to reduce prison overcrowding. Participants looked at regulations governing conditional release (parole/remission) upon serving a certain period of their sentence (two-thirds, for example) while remaining under the supervision of a probation officer for the rest of the sentence term. Comparing different systems, some grant parole automatically after a minimum period or a fixed proportion of the sentence, while others require a positive decision by an institution such as a parole board, upon a respective motion of the prisoner after having served a certain period of the sentence. Common conditions are participation in rehabilitation and resocialization programmes and compensation of damages inflicted by the crime,¹⁶⁸ and can include face-to-face meetings with probation officers, curfews, monitoring of contacts by the police, frequent random testing for alcohol or drug use and, in some cases, electronic monitoring. More extensive use of parole was recommended as it constitutes an incentive to comply with prison rules and reduces the prison population while ensuring supervision of the released in the community under individualized parole conditions. However, it was underlined that, when deciding on parole, authorities should carefully assess the risk of recidivism of a sentenced person, considering a number of factors such as the type of the crime committed (for example, whether it was violent or not) and its severity, the behaviour of a sentenced person in prison, his/her family ties, and the victim's input.

Parole hearings should take place in the presence of attorneys, and parole applications and hearings should be accessible through legal aid schemes. Participants discussed the lack of legal representation during parole hearings in most Central Asian countries, in spite of the guidance in international standards that states should introduce measures to ensure prisoners' access to legal aid for applications for parole and representation at parole hearings.¹⁶⁹ The lack of legal representation at such hearings was believed to be one of the reasons for the high percentage of parole petitions rejected by courts. While the attendance of a lawyer during such hearings is admissible in law upon request, the right to be represented is rarely exercised in practice. Prisoners lack awareness of their right to legal representation at

¹⁶³ Rule 74(3), Nelson Mandela Rules, stating that: "Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work."

¹⁶⁴ Rule 75(2), Nelson Mandela Rules.

¹⁶⁵ Rule 75(3), Nelson Mandela Rules.

¹⁶⁶ Rule 76(1), Nelson Mandela Rules.

¹⁶⁷ See Rule 76(2), Nelson Mandela Rules.

¹⁶⁸ See, for example, Arts. 88 (2), 88 (3) of the Criminal Code of the Kyrgyz Republic. Conditional parole can be applied when the following conditions are cumulatively met by a convict: 1) a person has served two thirds or three fourths of a sentence (depending on a gravity of a committed crime); 2) such a person has achieved positive results in rehabilitation and reintegration; 3) such a person has compensated not less than 50% of the damages inflicted by a crime; 4) such a person does not have an outstanding disciplinary record; 5) such a person diligently worked and studied while serving his/her sentence; 6) such a person has agreed to participate in addiction treatment courses (treatment for alcoholism, substance abuse), should such an addiction exist. (available at: <https://bit.ly/2CeHlug>)

¹⁶⁹ Guideline 6, para. 47(c), UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

parole hearings, including when and how to exercise it. A Kazakh participant shared good practice from her country, where the presence of attorneys at parole and sentence substitution hearings is obligatory. This helps to ensure that parole decisions are based on proceedings that are fair and protect the rights of the imprisoned person.

DISCIPLINE, SANCTIONS AND INCIDENT PREVENTION IN PRISON

WORKING GROUP 7

Main conclusions and recommendations:

- Disciplinary sanctions should serve the purpose of providing order and security in prison, rather than creating a punitive environment or acting as an additional punishment to the prison sentence.
- Disciplinary sanctions must not amount to torture or other cruel, inhuman or degrading treatment or punishment under any circumstances.
- Disciplinary procedures and measures need to be regulated by law or regulation and may only be applied where necessary and proportionate, following due process.
- Breaches of prison rules are often rooted in grievances related to prison conditions and a lack of understanding of prison rules by prisoners.
- Disciplinary regimes should not compromise programmes aimed at rehabilitation and reintegration.
- The use of solitary confinement in the region, and its application to child detainees, must be reduced and regulated in accordance with the Nelson Mandela Rules.

Summary of discussions:

Disciplinary sanctions should serve the purpose of providing order and security in prison, rather than creating a punitive environment or acting as an additional punishment to the prison sentence.¹⁷⁰ A criminal justice expert from the UK shared international experience which indicates that frequent, inconsistent or disproportionate use of disciplinary measures is detrimental to good prison management. Creating distrust between staff and prisoners, such measures ultimately undermine rather than support the objective of disciplinary sanctions, namely to ensure a safe and secure prison environment. In recognition of correctional science to this end, states unanimously adopted clear restrictions on the use of disciplinary measures, enshrined in the Nelson Mandela Rules, including the principles of necessity and proportionality.¹⁷² Accordingly, disciplinary sanctions should never constitute a first response to problems in prison, but may only be imposed once other steps aimed at preventing or resolving conflicts have failed.¹⁷³ Measures taken must be necessary and proportionate, and be imposed through fair proceedings.¹⁷⁴ These considerations are key when formulating disciplinary offences. Participants reiterated that, in line with international law, restrictions and disciplinary sanctions must never amount to torture or other cruel, inhuman or degrading treatment or punishment. Experts recalled the prohibition in international standards of indefinite and prolonged solitary confinement, placement of a prisoner in a dark or constantly lit cell, corporal punishment or the reduction of a prisoner's diet or drinking water, collective punishment and the use of instruments of restraint as a sanction.¹⁷⁵ The prohibition of family visits should also never be applied as a disciplinary sanction.

Disciplinary procedures and measures should be regulated by law or regulation and may only be applied where necessary and proportionate, following due process. While disciplinary measures constitute a necessary tool for prison management to provide order and security, they can harm staff-prisoner relations and infringe on the human rights of prisoners, in particular if they are excessive or unfair. Alternative measures, aimed at the prevention of disciplinary

¹⁷⁰ Rule 36, Nelson Mandela Rules (footnote 79). The Essex group has noted that Rule 36 sets out the only possible purposes for restrictions, i.e. safe custody, secure operation of the prison and a well-ordered community life (Penal Reform International/University of Essex, Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, p. 78, available at: <https://www.penalreform.org/resource/guidance-on-implementation-the-nelson-mandela-rules/>).

¹⁷¹ Rules 36 and 39(2), Nelson Mandela Rules (footnote 79).

¹⁷² Rule 38(1), Nelson Mandela Rules.

¹⁷³ Rule 39(1) and 39(2), Nelson Mandela Rules.

¹⁷⁴ Article 11 UN Convention Against Torture; Rule 43(1), Nelson Mandela Rules.

¹⁷⁵ Rule 43, Nelson Mandela Rules.

offences and resolution of conflicts in prisons through conflict prevention, mediation and other alternative dispute resolution mechanisms are supported by the Nelson Mandela Rules.¹⁷⁶ Participants recalled that disciplinary offences need to be specified in national prison rules,¹⁷⁷ along with the possible types and duration of sanctions and the authority competent to impose them, and that prisoners shall not be sanctioned twice for the same act.¹⁷⁸ Participants stressed that, contrary to the practice in some countries, self-harm should not be considered a violation of prison rules, but rather trigger the provision of appropriate treatment and care.¹⁷⁹ Accordingly, in 2008, the Constitutional Court of Kazakhstan declared unconstitutional a provision criminalizing self-harm in detention.¹⁸⁰ Participants emphasized that prison staff should focus on identifying and tackling the root causes of self-harm which a prisoner may resort to, for example when their grievance remains unaddressed despite complaints. Participants also highlighted the risk that acts of self-harm may be classified by prison administrations as instances of ‘group disobedience’ in detention, which often carry heavy disciplinary sanctions, in contravention of the prohibition of collective punishment set out in the Nelson Mandela Rules.¹⁸¹ It was emphasized that disciplinary sanctions can only be imposed on individuals who breach prison rules.



Photo: Working Group 7, at the panel (from left to right): Ms. Sharon Critoph, Independent Criminal Justice Expert, UK; Mr. Koen Marquering, Acting Head of the UNODC Program Office in the Kyrgyz Republic; Mr. Batyr Saparbaev, Expert on penitentiary reform, UNODC Program Office in the Kyrgyz Republic

Solitary confinement, which is mainly used as a disciplinary measure in the region,¹⁸² including in respect of children and juveniles, constitutes a particular problem. Participants concluded that the protections set out in the Mandela Rules, which prohibit indefinite or prolonged solitary confinement,¹⁸³ have not yet been implemented in the region. Some

¹⁷⁶ Rule 38(1), Nelson Mandela Rules.

¹⁷⁷ Rule 37(1), Nelson Mandela Rules.

¹⁷⁸ Rule 39(1), Nelson Mandela Rules.

¹⁷⁹ OSCE Office for Democratic Institutions and Human Rights/Penal Reform International, Guidance Document on the Nelson Mandela Rules: Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners, 2018, Chapter 4, para. 26, available at: <https://www.osce.org/odihr/389912>.

¹⁸⁰ <https://www.state.gov/j/drl/rls/hrrpt/2008/sca/119135.htm>.

¹⁸¹ Rule 43(1)(e), Nelson Mandela Rules.

¹⁸² The provisions of the Mandela Rules apply to solitary confinement not only when it is imposed as a disciplinary measure, but also when it is used by prison authorities for any other reason to separate individuals from the general prison population (Rule 37(d)). See also ODIHR/PRI, Guidance Document on the Nelson Mandela Rules, Chapter 4, paras. 42-72.

¹⁸³ Rule 43(1), Nelson Mandela Rules (footnote 79).

participating States use individual cells,¹⁸⁴ not as a means to provide private space to prisoners, but for disciplinary isolation, in particular in the context of prisoners serving life sentences and of those convicted of terrorist offences. A regional expert noted the high levels of placement of individuals in 'punishment cells' as a disciplinary measure in the region, and the problematic length of such placements.¹⁸⁵ The practice of detaining juveniles in temporary isolation for several days as a measure of 'disciplinary confinement' was raised as a particular concern in light of the prohibition in international standards of applying solitary confinement to children.¹⁸⁶

Breaches of prison rules are often rooted in grievances related to prison conditions such as lack of family contact, lack of educational or work opportunities in prison, the dominance of prison gangs or a repressive atmosphere in prison overall. The value of dynamic security was stressed in this context as resource efficient and contributing strongly to the improvement of staff-prisoner relationships. 'Dynamic security' describes the concept of prison staff actively and frequently interacting with prisoners to gain a better understanding of individual prisoners, and assessing the risks they represent as well as those they might be exposed to. Ongoing and meaningful interactions allow prison staff to detect and handle problems as soon as they arise, avoiding situations in which unresolved grievances lead to violations of the prison rules.¹⁸⁷ Participants emphasized that prisoners need to have access to complaints mechanisms without fear of reprisals¹⁸⁸ and noted that dynamic security signals to prisoners that they are taken seriously¹⁸⁹, thereby helping to alleviate frustration that can otherwise easily escalate. The acknowledgment of this approach in the Mandela Rules was also highlighted, including rules on training prison staff on preventive and defusing techniques, such as negotiation and mediation.¹⁹⁰ Participants reiterated the benefit of dynamic security in the context of managing prisoners convicted of terrorist offences, and in the context of preventing radicalization that leads to terrorism in prison.

Lack of understanding of prison rules by prisoners, many of whom have a low level of education, constitutes another underlying cause of prison regulation breaches. As per Rule 55 of the Mandela Rules, information on applicable prison regulations and disciplinary sanctions should be provided in the most commonly used languages of the prison population. A prisoner who does not understand any of those languages should be provided with interpretation assistance,¹⁹¹ while illiterate prisoners should receive the information orally.¹⁹² Those with sensory disabilities should be given the relevant information in a manner appropriate to their needs.¹⁹³ In order to ensure general awareness, summaries of the prison regulations and applicable disciplinary sanctions should also be prominently displayed in common areas in places of detention.¹⁹⁴ It was also noted that similarly, prisoners need to be informed, in a language they understand, of the nature of the accusations against them. In order to exercise their right to due process, they need to be given adequate time and facilities for the preparation of their defence.¹⁹⁵

Disciplinary regimes, notably isolation in cells, should not compromise programmes aimed at rehabilitation and reintegration. Participants underlined that rehabilitation programmes across the region should be expanded and improved, including for prisoners convicted of terrorist offences. Like other prisoners, most of these detainees will at some stage be released, increasing the need for institutions to work with prisoners on their rehabilitation and reintegration from the first day of their detention. Participants discussed the approach taken in a number of countries, namely to segregate individuals suspected or convicted of terrorism-related offences.¹⁹⁶ Yet international

¹⁸⁴ Correctional science indicates that accommodation in cells is preferable to prisoners being housed in dormitories as it allows for safer and more humane prison conditions. However, in the region, it is more common for prison accommodation to consist of dormitories rather than individual cells.

¹⁸⁵ Rule 44 of the Nelson Mandela Rules defines solitary confinement as confinement of prisoners for 22 hours or more a day without meaningful human contact. Solitary confinement is considered prolonged when it exceeds 15 consecutive days. On the harmful effects of solitary confinement, see also The Istanbul statement on the use and effects of solitary confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul, p. 2.

¹⁸⁶ Rule 45(2) Nelson Mandela Rules (footnote 79), citing rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); Rule 22 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), adopted by the General Assembly on 21 December 2010, A/RES/65/229, available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

¹⁸⁷ See OSCE Office for Democratic Institutions and Human Rights/ Penal Reform International, Guidance Document on the Nelson Mandela Rules: Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners, 2018, Chapter 3, Context 3.1 and Chapter 4, paras. 81 – 88.

¹⁸⁸ Rule 57(2), Nelson Mandela Rules (footnote 79).

¹⁸⁹ OSCE Office for Democratic Institutions and Human Rights/ Penal Reform International, Guidance Document on the Nelson Mandela Rules: Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners, 2018, p. 37, "Context: Informal Complaints" and Chapter 1, paras. 130-165.

¹⁹⁰ Rules 74-76, Nelson Mandela Rules; Rule 76(c) in particular emphasises the importance of including dynamic security in the training of prison staff. See also OSCE/ODIHR and PRI, Guidance Document on the Nelson Mandela Rules, Chapter 1, para. 187.

¹⁹¹ Rule 55(1), Nelson Mandela Rules (footnote 79).

¹⁹² Rule 55(2), Nelson Mandela Rules.

¹⁹³ Rule 55(2), Nelson Mandela Rules.

¹⁹⁴ Rule 55 (3), Nelson Mandela Rules.

¹⁹⁵ Rule 41 (2), Nelson Mandela Rules.

¹⁹⁶ Penal Reform International, Global Prison Trends 2018, pp. 26 and 30. The UNODC Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons also reports that violent extremist prisoners are held in isolation in some countries (UN Office on Drugs and Crime, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, 2016, p. 49).

experts noted that there is no one right answer to housing such prisoners. Rather, decisions in this regard need to be taken on the basis of specific factors present in the respective country.¹⁹⁷ Participants agreed that isolation in a cell may appear to make the job of prison management easier during detention, but is not an environment conducive to rehabilitation and hence counter-productive in the longer term. This built on discussions at the 2016 Criminal Justice Forum, which concluded that the relevant authorities should make a careful and proportionate assessment before imposing segregation regimes on individuals convicted for terrorism or violent extremism-related offences.¹⁹⁸

¹⁹⁷ UN Office on Drugs and Crime, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, 2016, p. 47.
¹⁹⁸ OSCE Office for Democratic Institutions and Human Rights, Report on the Sixth Expert Forum on Criminal Justice for Central Asia, p. 15 (footnote 4).

Summary of Expert Forum delivered by Andrea Huber, Deputy Chief of ODIHR's Rule of Law Unit, 29 November 2018

I can in no way provide a complete overview, the discussion was so rich, covered such a broad range of issues in so much detail and from so many angles. It would be impossible to summarize in such a short time. But I will try to provide a few highlights and common themes.

Let me start with the very vivid discussions on the role of the prosecution. This came up repeatedly, more than in previous years, and it is not surprising because the considerable changes in criminal procedural law in some participating States mean that the prosecution plays a very different role. Being in charge of criminal investigations gives a different twist to the relevance of standards by which the prosecution should be guided.

The question of appointment of prosecutors came up and that it must not be politicized. With the role of this institution changing, it should be no surprise that the skillset of prosecutors also changes. This needs to be reflected in the selection of prosecutors, in legal education and vocational training.

This leads me to report on a broader theme in our discussions, which kept coming up repeatedly in different contexts and from different angles. There is a need for a thoroughly thought-through system of checks and balances. If the prosecution is too powerful in comparison to other parties in the procedure and if there is no scrutiny of investigative measures by a judge, violations of human rights are much more likely, if not foreseeable.

The role of defence lawyers is crucial, not only but in particular at the early stages of an investigation and right after arrest as well as in the context of plea bargaining schemes. We have heard that criminal justice systems in the region are very confession-oriented and this exposes a suspect to pressure to confess. This pressure may come from the police who want to «solve the case», but it also creates an incentive for prosecutors to put pressure on the suspect. Scepticism was raised in this context regarding plea bargaining schemes, which incentivize a «fast-track» system rather than the establishment of what actually happened. It was flagged that we need to be careful when designing systems on the basis of efficiency.

There are preconditions for the defence to be able to play its role in a criminal proceeding: Firstly, the accused needs to have access to their lawyer. As — unfortunately — many suspects are held in pre-trial detention this means that lawyers need to be able to meet their client in detention. Here, it was useful to hear about the very concrete provisions of the Nelson Mandela Rules relating to legal representation while in prison and guidance on how to implement them.

Moreover, the defence only fulfils its role in the triangle between the judge, the prosecution and the suspect if it actually represents the accused. This can only be expected from a lawyer who is independent — who is not on the side of the prosecution. For this to happen, defendants need to be able to choose their lawyer. There is an obvious problem if another party to the procedure, who has a contrarian interest, gets to choose the lawyer for the defendant because this may mean that consciously or unconsciously they pick a lawyer who is «convenient» in the sense that they do not issue too many motions or make «too much trouble».

There is another problem of course with legal representation — and for the equality of arms to be a reality: the majority of defendants come from poor backgrounds and are not able to afford legal representation. It was therefore important that we also caught up on developments regarding legal aid — and on problems in the participating States in providing it. If legal aid is not accessible, or if it is not high quality, it cannot fulfil its purpose, namely to restore the equality of arms between the accused and the prosecution.

To say that fair trial rights were a recurring theme at the Expert Forum would be an under-statement. There was a lot of discussion on how the defendant — and/ or their defence lawyers — can actually exercise their rights in the criminal justice systems of the participating States; and yet again the significant changes to criminal procedural codes in the region prompted new questions and new challenges. This was about the right to prepare a defence; about the equality of arms; about the presumption of innocence.

To pick just a few issues raised, how would the defence be able to prepare the case if it didn't have access to the case file? In a system where the prosecution is in charge of investigation this is even more crucial: otherwise one party to the proceeding has got access to the result of investigations, whereas the other party does not.

The definition of the «moment of arrest» to me also seemed a significant point in the discussion, because this is the moment that triggers a lot of rights of the suspect. If the definition of this moment is vague, then the exercise of rights can be delayed, and this would undermine the rights of an arrested person altogether.

A comment I want to highlight in this context is that the guarantee of fair trial rights, of equality of arms and of the right to prepare a defence are not «obstacles» to the work of the prosecution or the court — and they should not be seen as such. Rather, they are a precondition for a functioning criminal justice system — if we remind ourselves again what the purpose of criminal justice is in the first place.

To find the truth. To identify the perpetrator of an offence who has done damage to a victim or who jeopardises the safety of society. To hold the perpetrator to account. To send a signal that perpetrators are held to account. And to prevent reoffending.

As was said very eloquently during the Expert Forum: the purpose is not to convict as many people as possible in as short a time as possible.

I think there was general agreement that a criminal proceeding is not to confirm an upfront assumption that the suspect is guilty and then find the evidence to support this view. I am also confident that I reflect the participants' view when I say that the number of convictions cannot be the indicator for success in a criminal justice system.

This reminds me of the report on new trends and investigative techniques of law enforcement, referred to as «investigative interviewing» — to mark a shift to non-coercive methods of questioning of suspects and witnesses as well as the benefits of audio-visual recording of interrogations/ interviews.

The purpose of criminal justice has a bearing also on what sanctions are imposed for which offences. It was therefore interesting to review, in the working group on sentencing, the developments in Kyrgyzstan and other participating States, in which the concept is to differentiate between infractions, misdemeanours and crimes in order to reflect the different severity of offences, and subsequently the different severity of sanctions that judges can hand down. This marks an important development in order to ensure proportionality of sanctions. It was highlighted strongly that sentences need to be individualized, tailored to the circumstances of the offence and the offender.

There was an interesting discussion on the balance between the legislator determining sanctions in a more detailed way, supporting consistency of sentences, on the one hand side, and the discretion of judges on the other side. Again, it seems to be a question of balance...

We also reviewed different sentencing options, including non-custodial sanctions, the range of which has increased in the region, but implementation in practice still seems to require improvement.

The issue of sanctions leads me, lastly, to the third thematic strand of the Expert Forum, which discussed developments in the penitentiary system.

Again, what we consider to be the purpose of criminal sanctions has a considerable impact on how we approach this.

We were reminded during the forum of Rule 4 of the Nelson Mandela Rules that the purpose of a prison sentence is protecting society against crime and reducing recidivism.

An innovation in the region that is particularly relevant in this context is the establishment of probation and we heard an interesting account of the first experiences with this institution. We heard that rehabilitation programmes need to start, not only a few weeks before release, but on the day of admission. We heard that preparing prisoners for release is not something that prisons can do on their own, but different institutions need to play a role and probation services are key.

We heard that what works in rehabilitation is different in different countries, but that there are general principles of success, including prison staff perceiving rehabilitation of prisoners as part of their duty.

An issue of particular complexity is rehabilitation and reintegration of prisoners in the context of violent extremism that leads to terrorism and we heard that no country in the region has managed to counter this trend effectively. It became clear that there is no single approach to rehabilitation and de-radicalization programmes, but as an overall rule measures should be individualized, including classification and allocation, and measures need to be in line with human rights.

Relating to rehabilitation of prisoners in general, the importance of staff-prisoner relationships was stressed in the context of the broader issue of prison conditions and prison management.

Again, there was an issue of balance — the balance between ensuring the safety and discipline in prison, and the human rights of prisoners. To strike this balance is particularly difficult in the context of disciplinary sanctions in prison, and a vivid discussion on this topic was held, on the basis of the Nelson Mandela Rules which provide explicit guidance for the very first time.

Thank you for your attention.

SEVENTH EXPERT FORUM ON CRIMINAL JUSTICE FOR CENTRAL ASIA

27 – 29 November 2018
Park Hotel, Bishkek, Kyrgyzstan

ANNOTATED AGENDA

Since 2008, the Expert Forum on Criminal Justice for Central Asia has brought together leading experts and policy makers to discuss the latest reforms, trends and initiatives in the criminal justice sector in participating States from Central Asia and other parts of the OSCE region.

The Seventh Expert Forum is organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and its partners, the Supreme Court of the Republic of Kyrgyzstan, the UN Office on Drugs and Crime (UNODC), the UN Office of the High Commissioner for Human Rights (OHCHR) as well as the OSCE field operations in Central Asia. The Forum promotes the exchange of experiences and expertise between participating States on compliance with OSCE commitments and international standards related to fair and effective criminal justice systems and the rule of law in Central Asia.

This agenda was drafted taking into account the recent reforms and developments in the criminal justice systems of the participating States in Central Asia, the outcomes and recommendations of the 2016 Expert Forum captured in the conference report, consultations with OSCE field operations and partners, and meetings with relevant interlocutors in Kyrgyzstan in June and October 2018. Topics that follow up from the 2016 Expert Forum and those that benefit particularly from the format of cross-sectoral participation of criminal justice stakeholders have been prioritized.

Plenary sessions seek to focus on topics of interest to all forum participants, regardless of their profession and role in the criminal justice system. Working groups have been tailored to allow more in-depth discussion on the impact of recent legislative and policy changes in the region. Key outcomes and recommendations from the working groups will be reported back to the plenary for further discussion. As in previous years, side events have been allocated to cover issues of very specific interest to (a) particular group(s) of professionals.

Speakers and participants are encouraged to take into account gender-specific aspects and concerns in the criminal justice system in all the plenary sessions, working groups and side events, and equally to take into consideration the impact of legislation, policies and practice on children, juveniles and persons with disabilities.

Participants are encouraged to provide feedback at the end of the event, through an online questionnaire or hard copy feedback forms if more convenient (see end of annotated agenda for link and QR-code).

DAY ONE, 27 NOVEMBER 2018

7.30 – 9.00 **Registration**

9.00 – 9.30 **Welcoming remarks: High-level panel**

Venue: Ballroom (Plenary room)

Moderator:

- Mr. Marcin Walecki, Head of the Democratization Department, ODIHR

Panellists:

- Ms. Ingibjörg Sólrún Gísladóttir, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)
- Ms. Gulbara Kalieva, Judge, Chairperson of the Supreme Court of the Kyrgyz Republic
- Ms. Svetlana Artikova, Deputy Chairperson, Senate of the Oliy Mazhlis of the Republic of Uzbekistan
- Ms. Ashita Mittal, Regional Representative for Central Asia, UN Office on Drugs and Crime (UNODC)
- Mr. Ryszard Komenda, Regional Representative of the UN Office of the High Commissioner for Human Rights for Central Asia (OHCHR)
- Ambassador Pierre von Arx, Head of the OSCE Programme Office in Bishkek

Representatives of the institutions involved in the organization of the Seventh Expert Forum will open the conference with welcoming remarks, recognize the contributions of those who made the event possible and outline the objectives of the conference.

A representative of Uzbekistan has been asked to join the panel in order to provide continuity between this event and the 2016 Expert Forum, which was hosted in Tashkent, Uzbekistan.

9.30 – 11.00 **Introductory session**

OReflection on criminal justice reforms in Central Asia

Venue: Ballroom (Plenary room)

Moderator:

- Mr. Keneshbeck Toktomambetov, Judge, Supreme Court of the Kyrgyz Republic

Panellists:

- Mr. Dmitry Nurumov, Independent Criminal Justice Expert: Overview of the conclusions and recommendations of the Sixth Expert Forum on Criminal Justice for Central Asia
- Mr. Samat Budykov, Senior Prosecutor, Office for Quality Review of the Criminal Prosecution, Office of the Prosecutor General: Report on the Republic of Kazakhstan
- Mr. Keneshbeck Toktomambetov, Judge, Supreme Court of the Republic of Kyrgyzstan: Report on the Kyrgyz Republic
- Ms. Lodoi Munkhtsetseg, Senior Officer, Ministry of Justice and Home Affairs and Mr. Odser Dendev, Head of Division, General Executive Agency of Court Decision of Mongolia: Report on Mongolia
- Mr. Sirojzoda Sayfidin, Advisor to the President on Legal Issues within the Presidential Apparatus: Report on the Republic of Tajikistan
- TBC: Report on Turkmenistan
- Mr. Aziz Mirzaev, Assistant to the Chairperson of the Supreme Court of Uzbekistan: Report on the Republic of Uzbekistan

Following a review of the Sixth Expert Forum, a representative of the delegations of each of the participating States of Central Asia (in alphabetical order of the participating State) will deliver a 10-minute presentation on the latest reform efforts in their country in the area of criminal justice.

This session is intended to recall the outcomes and recommendations of the 2016 Expert Forum and to take stock of developments since then, providing the basis for subsequent deliberations.

11.00 – 11.15 Tea/coffee break

11.15 – 13.00 Plenary session 1: Pre-trial investigations

Venue: Ballroom (Plenary room)

Moderator:

- Ms. Tatyana Zinovich, Acting Director, Legal Policy Research Centre, Kazakhstan

Panellists:

- Mr. Andy Griffiths, Police Expert, University of Portsmouth, UK
- Mr. James Hamilton, former Director of Public Prosecutions of Ireland, former member of Venice Commission, Ireland
- Mr. Marijan Bitanga, Judge, Zadar County Court, Croatia
- Mr. Kanat Duisebayev, Head of Department electronic case management, Committee on Legal Statistics and Special Accounts of the Office of the Public Prosecutor, Kazakhstan

This session seeks to review the impact of the substantive changes in some of the new Criminal Procedural Codes relating to the pre-trial investigation phase, which have significantly modified the roles of police, prosecutors, judges and defence. The session allows for discussion of the responsibilities of pre-trial/investigative judges, a role newly established in some participating States in order to ensure the protection of human rights during pre-trial investigations. These rights include, amongst others, the presumption of innocence, the right to prepare an adequate defence and the principle of equality of arms between the parties.

In decisions authorizing investigative measures and/or arrest, judges need to thoroughly scrutinize the necessity and proportionality of such measures, especially the most intrusive ones, and ensure balance between such measures and the human rights of the suspect/accused, namely the right to liberty, physical integrity and security, and the right to privacy.

The session is also intended to cover new developments relating to the rights of suspects upon arrest, in particular the right to be informed about charges, the right to remain silent and the right to be brought before a judge and have the legality of arrest and detention reviewed (*habeas corpus*).

Furthermore, it is suggested that participants reflect on the extent to which criminal justice systems in the region rely on confessions of the accused and how this may (unintentionally) incentivize coercion, including torture and other ill-treatment. This risk is aggravated when police and prosecution are appraised according to the number of cases indicted or convicted, when forensic services require improvement and when a clear prohibition of using evidence resulting from coercion or ill-treatment is lacking.

Panellists will also provide input on new trends and investigative techniques of law enforcement. In particular, they will elaborate on the benefit of audio-visual recording of interrogations/interviews and of 'investigative interviewing'. The latter term describes non-coercive methods of questioning suspects and witnesses in recognition of the realization that coercive methods of questioning, even when not amounting to torture, may produce unreliable information and false confessions, and may therefore be counterproductive for public safety. The concept entails a shift from an interrogative practice aimed at getting the suspect to confess, to a research-based interviewing procedure designed to gather and test accurate and reliable information.

Furthermore, it is suggested that the participants discuss models of electronic case management in order to expedite judicial decisions, while respecting and protecting the right to privacy and securing data protection.

13.00 – 14.00 Lunch

13.30 - 14.30 Day 1 Side Events

A) Side Event: Professional standards for prosecutors

(organized by ODIHR Rule of Law Unit)

Venue: Signature Room

B) Side Event: Reducing confession-oriented criminal justice systems and incentives to coercion and ill-treatment

(organized by ODIHR Human Rights Department and Fair Trials International)

Venue: Diplomat Room

14.30 – 16.00 Working Group sessions 1, 2 + 3 (in parallel)

Working Group 1: Rights of suspects and defendants

Venue: Ballroom (Plenary room)

Moderator:

- Ms. Gulnora Ishankhanova, International Commission of Jurists, Uzbekistan

Resource persons:

- Mr. Aslan Kulbaev, Kyrgyz National University, Kyrgyzstan
- Mr. Stefano Sensi, Human Rights Officer, UN Office of the High Commissioner for Human Rights (OHCHR)

Working Group 1 allows for more detailed discussion on the impact of recent criminal procedural reforms on the rights of suspects and defendants. Significant changes in the roles and responsibilities of prosecution, (pre-trial) judges and defence also mean that judges play a different role in protecting the rights of suspects and defendants and that the accused and their defence lawyers need to exercise their rights in a different procedural setting.

The session is also intended to reflect on new developments relating to the rights of suspects upon arrest, in particular the right to be informed about charges, the right to remain silent and the right to be brought before a judge and have the legality of arrest and detention reviewed (habeas corpus).

The status and role of lawyers, in particular in the pre-trial phase of criminal proceedings, is another focus of this working group. This includes regulations and the application in practice of the defendant's right to access to a lawyer and confidential communication with their legal representative. Legal and practical challenges facing defendants and their lawyers in accessing the case file, an integral component of the right to prepare a defence, should also be assessed.

Working Group 2: Role of police, prosecutors and judges pre-trial

Venue: Diplomat Room

Moderation:

- Ms. Nazgul Yergaliev, National Consultant on the Judicial Sector, UNDP Kazakhstan

Resource persons:

- Mr. James Hamilton, former Director of Public Prosecutions of Ireland, former member of Venice Commission, Ireland
- Mr. Andy Griffiths, Police Expert, University of Portsmouth, UK

In light of the significance of changes in new Criminal Procedure Codes in the region regarding the pre-trial phase, Working Group 2 will allow for more in-depth discussion on the effect of the new role of pre-trial/investigative judges on investigative measures and criminal proceedings as well as implications for the roles of police, investigators, prosecution and defence.

In some of the new Criminal Procedural Codes, pre-trial/investigative judges have been established, exercising new functions, including authorization of arrest and other investigative measures. Judges are required to ensure the protection of human rights during pre-trial investigations, including to review the legality of arrest and to decide on pre-trial detention.

The session also seeks to provide the opportunity to reflect on specific impacts of changes to the Criminal Procedural Codes on juveniles, women and other individuals in vulnerable situations, such as persons with disabilities.

Working Group 3: Alternatives to pre-trial detention

Venue: Signature Room

Moderator:

- Mr. Azamat Shambilov, Director, Penal Reform International Central Asia, Kazakhstan

Resource persons:

- Ms. Nadia Stefaniv, Justice, Supreme Court of Ukraine, Ukraine
- Ms. Gulchekhira Rakhmanova, Director, NGO Legal Initiative, Tajikistan

Working Group 3 seeks to provide an opportunity to discuss the application of alternatives to pre-trial detention like bail, confiscation of travel documents, reporting to police, house arrest and submission to electronic monitoring.

The presumption of innocence and the right to liberty require that pre-trial detention is imposed only where strictly necessary and proportionate in order to secure the criminal procedure, and only if other non-custodial measures such as bail or home arrest would not suffice in the individual case. However, in many OSCE participating States, including in Central Asia, pre-trial detention is overused and often imposed as a default measure rather than as a last resort. All participating States in the region have adopted various types of alternative measures to pre-trial detention in their legislation, however implementation still needs to be improved.

Panellists will provide insight into the role of judges in decisions relating to authorization and review of pre-trial detention as well as reforms in the area of juvenile justice and prevention of pre-trial detention for juvenile suspects.

16.00 – 16.15 Tea/coffee break

16.15 – 17.45 Plenary session 2: Pre-trial investigations

Venue: Ballroom (Plenary room)

Moderation:

- Ms. Natalya Seitmuratova, Human Rights Officer, UN Office of the High Commissioner for Human Rights (OHCHR)

Panellists/agenda:

- Rapporteurs of Working Groups 1, 2 and 3
- Q & A/Discussion
- Mr. Valery Kalinkovich, First Deputy Chairperson of the Supreme Court of Belarus: Main results of the reform of the system of courts of general jurisdiction of the Republic of Belarus

The rapporteurs from Working Groups 1, 2 and 3 will consolidate and present the main observations from their respective groups, with a view to highlighting key issues and recommendations. The reports will serve as a basis for further discussion in plenary session 2.

18.15 - 18.30 Shuttle busses depart from Park Hotel to reception

19.00 – 21.00 RECEPTION at the State Residence of the President of the Kyrgyz Republic, No. 1 House of Receptions “Enesay”

DAY TWO, 28 NOVEMBER 2018

8.00 – 9.00 Women and Justice Breakfast

Venue: Restaurant “L’Art” at Park Hotel

This side event is hosted jointly by the Kyrgyz Association of Women Judges (CAGHS), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Programme Office in Bishkek.

It will provide a platform to discuss barriers faced by women professionals in justice institutions – such as police officers, prosecutors, judges or defence lawyers – with regard to equal representation, equal treatment in the workplace and career prospects. Panellists will talk about their experiences in this regard as well as initiatives that could be promoted to improve gender equality amongst justice sector institutions, such as mentoring programmes.

9.15 – 10.30 Plenary session 3: Institutional issues

Venue: Ballroom (Plenary room)

Moderation:

- Mr. Kakhramondzhon Sanginov, Rule of Law Officer, OSCE Programme Office in Bishkek

Panellists:

- Mr. Stefano Sensi, Human Rights Officer, UN Office of the High Commissioner for Human Rights (OHCHR)
- Mr. Meiram Ayubayev, Deputy Chairman of the Committee of Penal System of the Ministry of Internal Affairs of the Republic of Kazakhstan, Kazakhstan
- Mr. Jago Russell, Executive Director, Fair Trials International, UK

Plenary session 3 intends to cover recent developments relating to institutional issues such as judicial self-governing bodies (for example, judicial councils), bar associations, probation and legal aid schemes.

As judicial self-governing bodies entrusted with specific tasks of judicial administration, judicial councils play an important role in safeguarding judicial independence and promoting judicial integrity. However, they are not in themselves a sufficient guarantee of these principles.

A summary of a recent report of the UN Special Rapporteur on the independence of judges and lawyers will provide input for discussion on the essential role that bar associations play in ensuring access to justice and the protection of human rights, in particular due process and fair trial guarantees.

Based on a presentation on experiences in the Republic of Kazakhstan, the session provides an opportunity to reflect on the establishment of probation in the region. Probation relates to the implementation of community sanctions as an alternative to prison sentences, involving supervision, guidance and assistance aimed at the social inclusion of an offender. In some jurisdictions, probation agencies are also tasked with providing information and advice to judicial

and other deciding authorities to help them reach informed and just decisions, and to support offenders while in custody in order to prepare their release and reintegration.

The session will also draw on the key outcomes and recommendations from the Third Conference on Access to Legal Aid in Criminal Justice Systems, which took place on 13-15 November 2018 in Tbilisi/Georgia.

Availability of free legal assistance for criminal defendants who are unable to afford a lawyer is an essential component of the right to a fair trial. A functioning legal aid system may also reduce the length of time suspects are detained, helps to reduce wrongful convictions, prison overcrowding and congestion in the courts. While many participating States have established legal aid schemes, challenges arise including limited financial resources, an inadequate number of lawyers, poor quality of legal aid services and insufficient training.

Poor and marginalized communities are disproportionately affected by the absence of legal aid and studies suggest that women face particular barriers in accessing legal representation. Eligibility criteria for legal aid can discriminate against women if they are based on family/household income, which women offenders do not have access to. It is encouraged therefore that participants include in the discussion the availability and accessibility of legal aid to women and minority groups.

10.30 – 11.00 Group photo followed by tea/coffee break

11.00 – 13.00 Working group sessions 4 – 5 (in parallel)

Working Group 4: Procedural issues/fair trial
Venue: Ballroom (Plenary room)

Moderator:

- Mr. Aziz Mirzaev, Assistant to the Chairperson of the Supreme Court, Uzbekistan

Resource persons:

- Mr. Daniyar Kanafin, Associate Professor and Defence Lawyer, Kazakhstan
- Mr. Jago Russell, Executive Director, Fair Trials International, UK

While Working Group 1 focused on the rights of suspects and defendants during arrest and in the pre-trial phase, this session is intended to discuss the implementation of fair trial safeguards during the trial phase.

The working group will cover the right of the suspect/defendant to adequate time and facilities to prepare a defence and the principle of equality of arms between prosecution and defence. These cornerstones of a fair trial require that each party is given a reasonable opportunity to present their case under conditions that do not place him or her at a disadvantage vis-à-vis the opponent, and that strike a fair balance between the parties.

The working group is intended to follow up on deliberations in 2016 and discuss the impact of plea bargaining schemes in the region on fair trial guarantees and procedural efficiency. Such schemes, sometimes also referred to as 'trial waiver systems' or 'co-operation agreements', have been introduced in some participating States in the region as a means of increasing the efficiency of criminal procedures and reducing costs. However, inequality of arms is inherent in many plea bargaining schemes, and there is a risk that fair trial rights are undermined and that suspects are pressured to confess.

Research has underpinned a number of concerns, including innocent people pleading guilty to crimes they have not committed; easier convictions encouraging over-criminalisation and harsher sentences; efficiency considerations overriding the search for the truth; and «deals» behind closed doors which may undermine public trust in the justice system.

Participants should assess whether sufficient safeguards against misuse and coercion are in place, such as guaranteed effective legal advice for the defendant, a clear obligation for the judge to verify the suspect's voluntariness and the existence of corroborating evidence.

The protection of the rights of children and juveniles as well as the protection of the rights of women in criminal justice systems should be given specific consideration.

Working Group 5: Criminal sanctions/sentencing

Venue: Diplomat Room

Moderation:

- Ms. Andrea Huber, Deputy Chief, Rule of Law Unit, ODIHR

Resource persons:

- Ms. Elizabeth Tiarks, Senior Lecturer in Law, Northumbria Law School, UK - video message
- Ms. Leyla Sydykova, Professor at Kyrgyz Russian Slavic University, Kyrgyzstan

Working Group 5 is intended to follow up on deliberations in 2016 relating to sentencing policies, classification of offences and proportionate sanctions.

In a fair criminal justice system, sanctions are commensurate to the offence in each individual case, weighing aggravating and mitigating factors, the circumstances of the offence and the alleged offender. A broad range of sentencing options of varying severity should be available in order to provide judges with options to weigh the factors of each case, including a range of non-custodial sanctions. Prison sentences should be regarded as a sanction of last resort and should be imposed only when the seriousness of the offence would make any other sanction clearly inadequate. Sentencing needs to be free from discrimination, neutral as to the gender, ethnic origin, socio-economic or other status of the offender, and sanctions should be consistent, handing down similar sanctions in similarly situated cases.

Participants will discuss the impact of the reclassification of offences undertaken in recent years in some participating States, reviewing criminal sanctions and establishing misdemeanours as compared to criminal acts. The reclassification of offences was considered to allow for the «humanization» and restructuring of criminal law and was intended to reduce sanctions for minor offences that do not result in serious harm to the society.

The working group allows for a discussion on available sanctions and sentencing practices in the participating States in the region with a view to proportionality of sanctions. This should include reflection on how judges should weigh the various aggravating and mitigating factors in a case to determine a sanction that is adequate in the individual case. Participants should also scrutinize specificities in procedural rules applicable to misdemeanours as compared to crimes and whether the classification of offences has an impact on the exercise of fair trial rights.

13.00 – 14.30 Lunch

13.30 - 14.30 Day 2 Side Events

C) Side Event: ODIHR's tools to support OSCE participating States

(organized by ODIHR Democratization Department)

Venue: Diplomat Room

D) Side Event: Lawyers as an element and not obstacle to justice

(organized by the International Bar Association)

Venue: Signature Room

14.30 – 15.45 Plenary session 4: Judicial system

Venue: Ballroom (Plenary room)

Moderation:

- Ms. Gulmira Mamatkerimova, Member of EWG on monitoring of judicial reform under the President, Kyrgyzstan

Panellists/agenda:

- Rapporteurs of Working Groups 4 and 5
- Q & A/Discussion

The rapporteurs from Working Groups 4 and 5 will consolidate and present the main observations from their respective groups, with a view to highlighting key issues and recommendations. The reports will serve as a basis for further discussion in plenary session 4.

15.45 – 16.00 Tea/coffee break

16.00 – 17.45 Plenary session 5: Reforms of the penitentiary system

Venue: Ballroom (Plenary room)

Moderation:

- Ms. Takhmina Ashuralieva, Law Programme Coordinator, Soros Foundation, Kyrgyzstan

Panellists:

- Ms. Stephanie Selg, Advisor on Torture Prevention, Human Rights Department, ODIHR
- Ms. Yulia Denisenko, Consultant, Penal Reform International Central Asia, Kyrgyzstan
- Mr. Nicholas Hardwick, former Chief Inspector of prisons and probation, UK

This session seeks to assess progress in the participating States in implementing the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

The panel will introduce the Guidance Document on the Nelson Mandela Rules, published by ODIHR and PRI in August 2018. Provisions relating to access to legal representation and legal aid are envisaged as a focus area in light of its relevance to other issues on the agenda of this Expert Forum.

Furthermore, the session will take stock of new policies, programmes and lessons learned regarding the prevention and countering of violent extremism and radicalization that lead to terrorism (VERLT) in prisons.

It has been established that lack of respect for human rights and poor and overcrowded prison conditions are factors conducive to VERLT in prison and that lack of safety and security in prisons may force individuals to seek protection from gangs or drive them into the hands of violent extremist groups.

Participants will share their experience with prison management for offenders convicted of violent extremist offences, and the risk of recruitment and grooming by extremists amongst the 'regular' prison population. This involves the need for individualized and evidence-based risk assessments and risk assessment tools in the context of VERLT. Practices with regard to training of prison staff as well as with programmes seeking to disengage individuals from violence will also be discussed.

Rehabilitation and reintegration of former offenders is the third main topic suggested for discussion in this plenary session. The panel will share experiences on conditions to facilitate rehabilitation and examples of successful programmes. The importance of co-ordination between prison and community services, and how it can be achieved, will also be emphasized.

Panellists and participants are encouraged to point out any specific issues faced by female prisoners, children and juveniles in the context of prison reforms.

Day 2 Side Event 18.00 – 19.00

E) Side Event: Developments in Central Asia on alternatives to detention

(organized by Penal Reform International)

Venue: Diplomat Room

DAY THREE, 29 NOVEMBER 2018

Day 3 Side Event 8.00 – 8.45

F) Side Event: Judicial practice in the matter of crimes against women and girls in the Kyrgyz Republic

(organized by the Kyrgyz Association of Women Judges (CAGHS))

Venue: Diplomat Room

9.00 – 11.00 Working Groups sessions 6 + 7

Working Group 6: Reintegration and resocialization of offenders

Venue: Diplomat Room

Moderator:

- Ms. Parvina Navruzova, Access to Justice and Judicial Reform Programme Coordinator, Human Rights Center, Tajikistan

Resource persons:

- Mr. Isak Enstrom, Corrections Specialist, UNDP New York

Working Group 6 will allow for more in-depth discussion on reforms in participating States relating to rehabilitation and reintegration of (former) prisoners and ways in which services in prison and following release can be better coordinated.

Resource persons will elaborate on the role of prison staff in the rehabilitation of prisoners, including the instrument of sentence planning and the need for prison officers to receive training and develop the necessary skills.

During this session participants should examine the conditions under which rehabilitation programmes can be successful, including humane prison conditions and 'de-militarization' of prison management. The relevance of prison infrastructure could also be subject of discussion, in light of plans in the region to replace some of the dilapidated prison infrastructure with newly built prisons. This could be an opportunity to reflect on the need for new approaches to the design of prisons, which reduce idleness, stress, fear and trauma, stimulate participation in positive activities and support work with prisoners to encourage reintegration into society as law-abiding citizens.

Rehabilitation programmes are typically structured around the requirements of men, providing fewer, less varied and often gendered types of educational and training opportunities for women. Activities usually mirror domestic work conventionally conducted by women in the household, rather than equipping them for paid jobs in the economy. Participants should therefore include in their deliberations the availability and quality of rehabilitation programmes available to female prisoners, and their gender-specific reintegration needs.

Working Group 7: Discipline, sanctions and incident prevention in prison

Venue: Signature Room

Moderator:

- Mr. Koen Marquering, Acting Head of the UNODC Programme Office in the Kyrgyz Republic

Resource persons:

- Ms. Sharon Critoph, Independent Criminal Justice Expert, UK
- Mr. Batyr Saparbaev, Expert on penitentiary reform, UNODC

The use of disciplinary measures in prison constitutes a necessary tool of prison management in order to provide security and order. Yet, at the same time, disciplinary sanctions can infringe on the human rights of prisoners and jeopardize staff-prisoner relations if security and disciplinary measures are excessive or unfair.

Disciplinary sanctions tend to be overused, creating a punitive and repressive environment, for example unnecessary restrictions on movement, possessions or activities, routine body searching or the disproportionate or prolonged use of solitary confinement.

The Nelson Mandela Rules promote methods to prevent disciplinary offences and to resolve conflict in prisons by applying conflict prevention, mediation and other alternative dispute resolution mechanisms. Furthermore, they acknowledge the approach of 'dynamic security' to prevent and resolve conflicts before they escalate. 'Dynamic security' is a term used to describe the concept of prison staff actively and frequently observing and interacting with prisoners to gain a better understanding of individual prisoners and assessing the risks they represent as well as those they might be exposed to.

The working group should discuss current prison rules and practices with regard to incident prevention, incident management and disciplinary sanctions, including the use of solitary confinement. Participants should also consider the particular effects of disciplinary sanctions and solitary confinement on women prisoners and juveniles, and discuss specific safeguards needed.

11.00 – 11.15 Tea/coffee break

11.15 – 12.30 Plenary session 6: Reforms of the penitentiary system

Venue: Ballroom (Plenary room)

Moderation:

- Mr. Koen Marquering, Acting Head of the UNODC Programme Office in the Kyrgyz Republic

Panellists/ agenda:

- Rapporteurs of Working Groups 6 and 7
- Q & A/Discussion

The rapporteurs from Working Groups 6 and 7 will consolidate and present the main observations from their respective groups, with a view to highlighting key issues and recommendations. The reports will serve as a basis for further discussion in plenary session 6.

12.30 – 13.30 Concluding session – Final Remarks

Venue: Ballroom (Plenary room)

Moderation:

- Mr. Ghenadie Barba, Chief of the Rule of Law Unit, ODIHR

Panellists/agenda:

- Ms. Andrea Huber, Deputy Chief of the Rule of Law Unit, ODIHR: Summary of discussions and recommendations
- Interventions from country delegations on “take-aways” from the Expert Forum
- Mr. Kanybek Bokoev, Deputy Chairperson, Supreme Court of the Kyrgyz Republic
- Ms. Ashita Mittal, Regional Representative for Central Asia, UN Office on Drugs and Crime
- Mr. Ryszard Komenda, Regional Representative of the UN Office of the High Commissioner for Human Rights for Central Asia
- Ms. Ingibjörg Sólrún Gísladóttir, Director of the OSCE Office for Democratic Institutions and Human Rights
- Ambassador Pierre von Arx, Head of OSCE Programme Office in Bishkek

The concluding session will take stock of key outcomes and recommendations during the Expert Forum and collect views and reactions of participants as to next the reform steps in their participating States. The session will focus on results and seek to capture efforts envisaged by participants to implement recommendations of the Expert Forum in the next few years with a view to assessing progress at the Eighth Expert Forum on Criminal Justice for Central Asia in 2020.

13.30 – 14.30 Lunch

Conference documents will be available at the following link: <https://goo.gl/x1TcGk>

Note on conference evaluation:

Please share with us your feedback on the Expert Forum by using the QR-code or this online link, which leads to a form that combines Russian and English version: <https://bit.ly/2A9U2EK>



SEVENTH EXPERT FORUM ON CRIMINAL JUSTICE FOR CENTRAL ASIA

ANNEX 2

November 27-29, 2018,
Bishkek, Kyrgyzstan

Experts' biographies

Marijan Bitanga (Croatia)

Mr. Bitanga has been working as a judge of the Country Court at Zadar since 2009. Prior to that, from 1996 he served as a judge of the Municipal Court at Zadar, holding also the position of President of Criminal Court Division (1998-2002) and President of the Court (2002-2009). Prior to that, he worked as a Chief Inspector of the Ministry of Interior (1991-1996) as well as judge of Misdemeanour Court at Zadar (1986-1991). Mr. Bitanga is also a Vice-President of the Association of Croatian Judges and lecturer at the University of Zadar and the Judicial Academy of Croatia. He was actively involved in the implementation of Croatian reforms, including courts network and land registry reforms.

Sharon Critoph (the UK)

Sharon Critoph is human rights professional with over 23 years of experience working for national and international organizations. Sharon works as an independent consultant, specializing in research, monitoring, advocacy and policy development, with particular expertise in the fields of criminal justice, penal reform and torture prevention. Ms. Critoph previously worked at Amnesty International for 15 years, and later spent three years as a detention monitor for a local human rights organization in Cambodia. She has undertaken numerous consultancy projects for ODIHR and other organizations. Ms Critoph co-authored the 2018 Guidance Document on the Nelson Mandela Rules published in August 2018 by ODIHR and Penal Reform International.

Yulia Denisenko (Kazakhstan)

National Consultant of the Representative Office of the International Prison Reform in Central Asia (PRI), a private forensic expert with the right to conduct «psychological and philological examination» and «religious examination». Language expert, Master of Social Sciences specializing in religious studies, consultant on influencing and resisting social and psychological manipulation in destructive groups. Professional journalist, author of the methodological guide "Rehabilitation with social dependence", which provides practical tools for de-radicalization of those convicted for extremist and terrorist crimes. She founded the Foundation for Assistance to Victims of Destructive Religious Trends, the first in Central Asia, and later she headed the Kazakhstan's Association of Religious Studies Centers. Ms. Denisenko was a member of the Council for Relations with Religious Associations under the Government of the Republic of Kazakhstan, contributed to a number of draft laws relating to countering extremism and terrorism. She is a member of the Assembly of the People of Kazakhstan. In 2016 she was recognized by the state award "Certificate of Honor of the Republic of Kazakhstan", as well has medals: "20th anniversary of the Assembly of the People of Kazakhstan"; «Unity»; "25th anniversary of the Border Guard Service of the National Security Committee of the Republic of Kazakhstan"; «25th anniversary of Kazakhstan's independence.»

Isak Enstrom (Sweden)

Isak Enstrom works as a Corrections Specialist at the UNDP Headquarters in New York providing technical, programmatic and policy support to regional and country-specific rule of law programmes. He is also part of the Global Focal Point for Police, Justice and Corrections: an interagency arrangement providing coherent, UN system-wide Rule of Law support, acting as a bridge between peacekeeping, development and humanitarian actors. He has an extensive corrections background in the Swedish Prison and Probation Service, with experience in detention centers, prisons and probation offices. Most recently, he worked as an expert in their Office for International Affairs. Previously Mr. Enstrom served as Corrections Advisor to the United Nations Peacekeeping Mission in South Sudan, supporting juvenile justice and the establishment of a Probation and Aftercare Unit in the South Sudan Prison Service.

Andy Griffiths (the UK)

Andy Griffiths has been a Managing Director at iKat Consulting since 2013. He is a former Senior Detective and Senior Investigating Officer, having completed 30 years of police service with the UK police, specializing in interviewing and investigation. He is now an Associate Tutor at the College of Policing (UK), Visiting Research Fellow in Criminal Investigation at the University of Derby, and Criminal Justice at the University of Portsmouth, as well as offering training and consultancy to commercial organizations internationally. He has also contributed to investigations into miscarriages of justice in the USA, New Zealand and the UK. As a senior detective he led numerous major crime investigations and contributed to United Kingdom national policy on police interviewing. He was awarded his PhD for research on the effectiveness of training on real life suspect and witness interviews and has numerous publications in this field. He has also lectured on this subject in countries as diverse as the US, Armenia, China, South Korea and Australia.

James Hamilton (Ireland)

Since retiring early as Director of Public Prosecutions in 2011, James Hamilton has worked as an independent consultant dealing with issues of rule of law, public law, judicial and prosecutorial systems, constitutional justice, criminal justice law, and anti-corruption. Prior to this, he served as head of the prosecution service in Ireland for 12 years and as a legal advisor for 18 years in the Attorney General's Office. As a Member of the Council of Europe's Venice Commission from 1998 until 2014 he gathered considerable experience supporting the Commission's activities and acted as a rapporteur on many subjects including the Laws on the Prosecutors' Offices in Serbia, Bulgaria, Hungary, Russia and Ukraine, and on the judicial system in many countries. Mr Hamilton has worked for both the European Union and the Council of Europe on anti-corruption issues and criminal justice systems in many countries. His current professional legal activities include membership of the EU Commission's Group of Experts on Corruption since 2012 (reappointed in 2016). In 2013 he was appointed as an independent adviser to the First Minister of Scotland on the Scottish Ministerial Code.

Nicholas Hardwick (the UK)

Nicholas Hardwick is a Professor in Criminal Justice at the School of Law, Royal Holloway University of London. He is involved in a range of projects providing support to emerging detention monitoring systems and assessment of places of deprivation of liberty in a variety of different jurisdictions. He was Chair of the Parole Board for England and Wales from 2016 to 2018. From 2010 to 2016, he was Chief Inspector of Prisons for England and Wales that is the lead body in the UK's National Preventative Mechanism (NPM) established to meet the obligations arising from the Optional Protocol to the Convention against Torture (OPCAT). From 2003 to 2010 was the first Chair of the Independent Police Complaints Commission. Working for NGOs at the beginning of his career, Mr Hardwick worked with young offenders for the National Association for the Care and Resettlement of Offenders (NACRO), was Chief Executive of the British Refugee Council from 1995 to 2003, a member and later the Chair of the Executive Committee of the European Council of Refugees and Exiles (ECRE). He is a trustee of the NGO Prisoners Abroad, which supports UK citizens who are or have been imprisoned abroad and their families, and has served on the boards of many other charities concerned with homelessness, refugees and prisons. He was awarded a CBE (Commander of the Most Excellent Order of the British Empire) in 2010..

Daniyar Kanafin (Kazakhstan)

Daniyar Kanafin is an attorney of the Almaty City Bar and a board member of the National Bar Association. The Union of Lawyers of Kazakhstan awarded him the title of "Attorney of the Year" in 2009. Before and during his activity as an attorney, Mr. Kanafin lectured in various universities throughout Kazakhstan. He was the Dean of a Faculty of the Kazakh State Law University and the Scientific Secretary of the Dissertation Council (2002-2003). In 2013 the Ministry of Justice of Kazakhstan awarded him the "Contribution to the improvement of judicial authorities" medal. Mr. Kanafin holds a PhD in Law. He is an Associate Professor, and the Deputy Head of the Center for Training and Professional Development of Lawyers of the Almaty City Bar. Mr. Kanafin has authored over 65 scientific papers.

Aslan Kulbaev (Kyrgyzstan)

Aslan Kulbaev - PhD in Law, associate professor, teaches at the Zhusup Balasagyn Kyrgyz National University. He is a Kyrgyz lawyer and a member of the International Association for the Promotion of Justice. Mr. Kulbaev has participated in the development of a number of draft laws on judicial reform in Kyrgyzstan, including drafting the new Criminal Procedure Code of 2017 and other regulatory and legal acts. He served as an independent expert in a number of UN programmes, the Soros Foundation and the OSCE. Mr. Kulbaev is the author and co-author of 7 monographs, about 50 scientific articles on criminal justice, the judicial system, agencies of interior and the legal profession. He was awarded the Chingiz Aitmatov Prize of the Kyrgyzstan Government "For the best work in the field of science and new technologies".

Dmitriy Nurumov (Kazakhstan)

Mr. Nurumov works as a consultant for governments, international organizations and NGOs on strategic criminal justice reforms, focusing on digitalization of law enforcement and improving human rights safeguards in criminal proceedings. Mr. Nurumov is a Managing Director of Revanta BV, a consultancy based in the Netherlands. During 2015-2016, he served as Special Adviser on Ukraine for the OSCE High Commissioner on National Minorities (HCNM). In 2011-2014 he worked at OSCE/HCNM as Senior Legal Adviser, and at ODIHR Rule of Law Unit as Rule of Law Programme Coordinator in Central Asia from 2003 to 2011, as well as for an ODIHR trial monitoring project in Armenia. Before joining ODIHR, Dmitriy Nurumov was a Legal Expert for the OSCE Centre in Almaty from 2001 to 2003, worked for the International Organization for Migration (IOM) and for a local NGO in Kazakhstan. In 2000, he was awarded a PhD in International Public Law at Moscow State Institute of International Relations. He has written numerous publications on criminal procedure, human rights, and constitutional law. Dmitriy Nurumov is licensed to practice criminal law in Kazakhstan. He is also a Board Member for Penal Reform International (PRI) and member of the advisory board of the Legal Policy Research Centre (LPRC, Kazakhstan).

Gulchehra Rakhmanova (Tajikistan)

Gulchehra Rakhmanova is the head of the Legal Initiative Public Foundation, focused on helping to reform the juvenile justice system in Tajikistan. She is a national expert and trainer in international mechanisms for children's rights protection for UNICEF Tajikistan, as well as an expert in the State Working Group on Juvenile Justice System Reform under the Ministry of Justice of the Republic of Tajikistan. She has been working in this field since 2004.

Jago Russell (the UK)

Jago Russell is a lawyer who has been the Chief Executive of Fair Trials International since 2008. Fair Trials International is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international human rights standards. Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns. Before joining Fair Trials International, Mr. Russell worked as a practising solicitor, as a policy specialist at the human rights charity, Liberty, and as a Legal Specialist in the UK Parliament.

Batyr Saparbayev (Kyrgyzstan)

Batyr Saparbayev is a Legal Expert of the UN Office on Drugs and Crime, Programme Office for Central Asia. He provides expert support to UNODC projects related to the penitentiary system of the Kyrgyz Republic. He regularly provides consultations on national legislation related to crime prevention, criminal justice and reform of the penal system. He is a member of the Working Group on the development of the Criminal and Criminal Procedure Code and the Criminal Executive Code, and the Code of Offences. He has more than 30 years of work experience in the penitentiary system of Kyrgyzstan. Mr. Saparbaev has been honored with several state awards of the Kyrgyz Republic, departmental awards of the Ministry of Internal Affairs, Ministry of Justice and the State Penitentiary Service of the Kyrgyz Republic.

Stephanie Selg (Switzerland)

Stephanie Selg is the Adviser on torture prevention in the Office for Democratic Institutions and Human Rights (ODIHR) at the Organization for Security and Co-operation in Europe. Before this, she worked as the assistant to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment in Washington DC, served as a legal adviser to the EULEX Human Rights Review Panel in Kosovo and was a senior legal adviser to the Temporary International Presence in Hebron, Palestine. She is a lawyer by training, specializing in international human rights, humanitarian and comparative constitutional law.

Stefano Sensi (Italy)

Stefano Sensi is a Human Rights Officer at the United Nations Office of the High Commissioner for Human Rights (OHCHR). Mr. Sensi is currently working in the Special Procedures Branch, providing support to the mandate of the Special Rapporteur on the independence of judges and lawyers. During his 16 years with the United Nations, his responsibilities included inter-governmental issues and for civil and political rights; serving as OHCHR advisor on human rights and disability; assisting several independent experts appointed by the Human Rights Council; and providing substantive and technical support to several human rights treaty bodies. Before joining the United Nations, Mr Sensi taught international human rights law and environmental law at the University of Salford (United Kingdom) and worked in a private law firm in Rome. Stefano Sensi holds an LL.M. in Public International Law from the School of Oriental and African Studies (SOAS, London), and a Law degree with distinction from the University La Sapienza, Rome. He was called to the Italian Bar in November 2000.

Nadia Stefaniv (Ukraine)

Ms Stefaniv has been working as a judge since May 1990. For 10 years, she worked in Kalush district court (Ivano-Frankivsk region). Later, from 2002 until December 2017, she was a judge of the Appeal Court of the Ivano-Frankivsk region, being as well the Chairperson of the Appeal Court between 2010 – 2014. Her specialization is civil and criminal law. In 2017, successfully passing the competition, she was appointed to the Supreme Court (as a Cassation Criminal Court judge). As of 2015, Ms. Stefaniv is a co-founder and member of the board of the NGO "All-Ukrainian Association of Women Judges". She is also one of the co-authors of the draft law "On child-friendly justice".

Leila Sydykova (Kyrgyzstan)

Leila Sydykova holds a PhD in Law and is a University Professor of criminal law and criminology and criminal-executive law. She is the Vice-President of the Kyrgyz-Slavic University of Kyrgyzstan. Ms Sydykova has also participated in the preparation of several bills in the Parliament of the Kyrgyz Republic. She was the Scientific Director of projects of the Penal Code, the Criminal Executive and Criminal Procedural Codes of Kyrgyzstan of 1997. She is a member of the State Commission for Academic Degrees and Titles of Kyrgyzstan. She was a member of the Central Election Commission, consultant of the Supreme Court of the Kyrgyz Republic, member of the National Council on Justice, as well as several state committees of the Kyrgyz Republic. She was the chair of NGO «Independent legal scholars of the Kyrgyz Republic» and worked as an independent expert for UN programmes, for the Soros Foundation and for the OSCE. In 2014 she chaired the working group on drafting the new Criminal Code, Code of Misdemeanours and Code of Offences of the Kyrgyz Republic, as well as many other draft laws. Ms. Sydykova is the honored Worker of Education of the Kyrgyz Republic. In 2009, she was awarded the highest state medal «Honour». She was awarded the title of Honored Lawyer of the Kyrgyz Republic.

Elizabeth Tiarks (the UK)

Elizabeth Tiarks graduated from Durham University with a BA (Hons) in Philosophy, after which she studied law and trained as a barrister, qualifying in 2006. She practiced in criminal law and combined her practice with further studies, completing an MA in Philosophy at Durham University with distinction. She was awarded her PhD in Law from Durham University in 2016 and has been lecturing at Northumbria University since 2015. Ms Tiarks' research focuses on sentencing, philosophy of punishment and restorative justice.

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of victims of trafficking, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).



In cooperation with the
OSCE Field Operations in Central Asia

SEVENTH EXPERT FORUM
ON CRIMINAL JUSTICE
FOR CENTRAL ASIA

27-29 November 2018
Bishkek, Kyrgyzstan