

**To the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

*Re: Draft Law on the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Matter of the Establishment of National Preventive Mechanisms Aimed at the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment*

12 June, 2012, Astana

**Dear Professor Evans,  
Dear Members of the Subcommittee,**

We would like to approach you to request clarification regarding the SPT's position on the current draft law on NPM which provides call for tenders to assign the function of NPM in Kazakhstan. We would also like to alert you to the interpretation of Article 4 (2) OPCAT according to which the term «detention» results in a limitation of the mandate of an NPM.

During the meeting of the working group (Working Group) on the draft law “On the amendments and additions to certain legislative acts of the Republic of Kazakhstan on the matter of the establishment of national preventive mechanisms aimed at the prevention of torture and other inhuman or degrading treatment or punishment” (Draft Law) held in the Parliament of Kazakhstan on June 5, 2012, the members of the Working Group on the Draft Law were informed about a response received by the Government of Kazakhstan from the UN Subcommittee on Prevention of Torture (SPT) to a query on aspects of the Draft Law. The representatives of the Government of Kazakhstan (Government) referred to this response and argued that the SPT had agreed with the envisaged system, within which the Ministry of Justice (MoJ) administers the implementation of NPM during an initial period. In particular, the governmental representative argued that SPT's position is in line with the logic of the Draft Law which provides system of the “state social order” (state procurement of NGO services) where the MoJ is responsible for the distribution of the grants/orders. According to the Government, the SPT was well informed about the current progress as the Draft Law had been attached to the letter of inquiry sent by the Government to SPT earlier.

Notwithstanding that the Russian translation of the letter was read out loud a few times during the meeting of the Working Group in order to get a clear understanding of its meaning, the representatives of the civil society of Kazakhstan have agreed to refer to you directly to avoid any further misinterpretation of the SPT's position on the matter in question.

Firstly, we would like to kindly ask you to comment on the SPT's letter described above, in particular with regard to the following questions: Does SPT indeed believe that the MoJ may implement the functions of a state procurer of NGO services as members of the NPM? And what is the position of SPT in general regarding the state contracting with NGOs for the purposes of a NPM through the executive power (here – the ministry), if a NPM is expected to remain independent in its functions from any outside influence including from state actors. In case SPT does not see a problem with state procurement of NGO services for the purposes of effective NPM functioning, what should, in the opinion of SPT, be the criteria for such state procurement?

We would like also to use this opportunity to refer to you the question of interpretation of Article 4 OPCAT with regard to the mandate of NPMs.

As flagged above, according to the Government the wording of Article 4 (2) of the OPCAT in Russian language - “под стражей” (detention) - would mean a limitation for the mandate of NPMs which would encompass only penitentiary facilities and other facilities where inmates are “controlled by the guards”. According to this interpretation, the current Draft Law includes only prisons, pre-trial detention facilities, institutions for compulsory treatment of alcoholism and institutions for deviant children, whereas child institutions in general, psychiatric institutions, military institutions and social care houses would not fall under the scope of preventive monitoring by the NPM to be established.

We would therefore like to ask the SPT to clarify the interpretation of the OPCAT with regard to the mandate of NPMs regarding the places of deprivation of liberty that NPMs are supposed to monitor?

We look forward to your guidance on the interpretation of the OPCAT, will continue to participate in the discussions about the Draft Law and stand ready to share information and the position and concerns of civil society with the SPT at any time.

**Sincerely yours,**

**Penal Reform International  
(PRI) office in Central Asia**

**Coordinative Council of  
Public Oversight Boards**

**Coalition of Kazakhstan  
NGOs against Torture**