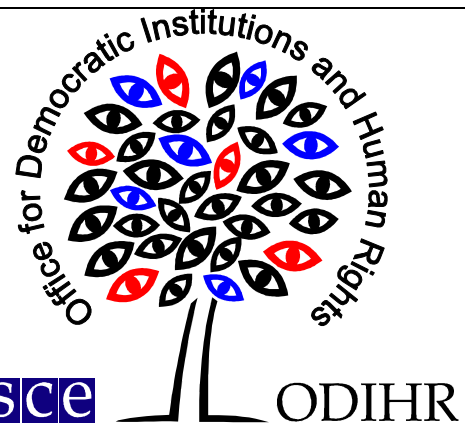


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Opinion

On the draft Law on Crime Prevention of the Republic of Kazakhstan

**based on an English translation of the law
commissioned by the ODIHR and the OSCE Centre in Astana.**

This Preliminary Opinion has benefited from the contributions made by Dr. Natalia Lopashenko, Director of the Saratov Center for the Study of Organized Crime and Corruption and Professor at the Saratov Law State Academy, Russia

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1. INTRODUCTION

1. *Since late 2008, the OSCE ODIHR and the OSCE Centre in Astana have been providing recommendations to a package of laws being developed in the Republic of Kazakhstan, which have the aim of counteracting domestic violence. The recommendations provided were on request of the authorities involved in the process of drafting and were provided in the form of preliminary opinions¹ as well as in the form of consultations which took place in Astana on 22 January 2009, 26 February 2009 and 1 June 2009.*
2. *The process of consultations on the package of laws related to domestic violence, revealed that the draft Law on Crime Prevention of 26 November, 2009, as revised on 8 June 2009 (hereinafter referred to as ‘the Draft Law on CP’ or ‘the Draft’) as well as the draft Law ‘on Changes and Amendments to Some Legislative Acts of the Republic of Kazakhstan On Crime Prevention’, submitted by the Government of the Republic of Kazakhstan to the Majilis of the Republic of Kazakhstan together with the reviewed draft law (Resolution no. 1087 of the Government of the Republic of Kazakhstan of 26 November 2008) (hereinafter ‘Draft Law On Changes and Amendments’) are pivotal, in addressing the issue of prevention of domestic violence. For the purposes of clarity and given that the draft laws cover two related but also distinct fields, the assessment shall be provided in two separate Opinions.*
3. *In view of the above, on 5 June 2009, the Head of the OSCE Centre in Astana sent a letter to the Majilis of the Parliament of Kazakhstan suggesting that a round table be organized to discuss the Draft Law on CP and the Draft Law on Domestic Violence (hereinafter, referred to as, ‘the Draft Law on DV’) and the ODIHR’s opinions on both draft laws at the end of June 2009. At a later date, the Majilis of the Parliament passed both draft laws in a first reading.*
4. *On 26 June 2009, the Deputy of the Majilis of the Parliament of Kazakhstan sent a letter to the Head of the OSCE Center in Astana enclosing four draft laws, including the Draft Law on CP and the Draft Law on DV, as well as the accompanying acts which amend other legislation of Kazakhstan, with a request for the OSCE to conduct an assessment This Opinion is provided as a response thereto.*

2. SCOPE OF REVIEW

5. The scope of the Opinion covers only the above-mentioned Draft Law on CP as well as the draft Law on Changes and Amendments, which was submitted

¹ Preliminary Opinion on the Draft Laws of the Republic of Kazakhstan on Domestic Violence of 22 December, 2008- ODIHR Opinion-Nr.:GEND-KAZ/115/2008 (MASz), Preliminary Opinion on the Draft Laws of the Republic of Kazakhstan on Domestic Violence of 20 February, 2009- ODIHR Opinion-Nr.: GEND/KAZ/115/2008 rev.1 (MASz) and; Preliminary Opinion on the Package of Laws and Draft Laws of the Republic of Kazakhstan Related to Domestic Violence: ODIHR Opinion-Nr.:GEND-KAZ/133/2009 (MASz).

for review. Therefore, the Opinion does not constitute a full and comprehensive review of the question of crime prevention in light of all available framework legislation governing the issue in the Republic of Kazakhstan. Instead, it focuses on the balance of effective crime prevention on the one hand and maintaining human rights and rule of law standards on the other.

6. The Opinion is based on unofficial translations of the Draft Law on CP. Errors from translation may result.
7. In view of the above, the OSCE ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Draft Law on CP that the OSCE ODIHR may make in the future.

3. EXECUTIVE SUMMARY

8. Since the version of 26 November, 2008 of the Draft Law on CP, the version of 8 June, 2008 contains many positive changes. However, in order to ensure the compliance of the Draft with international standards and obligations to which the Republic of Kazakhstan is signatory and has committed, it is recommended as follows:
 - A. To readdress fundamental crime prevention purposes and amend the Draft accordingly; [par. 16]
 - B. to amend the Preamble of the Draft to reflect main principles of crime prevention; [par. 17]
 - C. To expand the title and text of the Draft to cover both crimes and offences; [par. 18]
 - D. To specify the normative legal acts referred to in Article 2; [par. 19]
 - E. To amend Article 3 and limit the purpose of the law to crime prevention; [par. 21]
 - F. To include in the Draft a provision on the essentials of crime prevention; [par. 22]
 - G. To amend Articles 3 par. 2 (1), 4, par. 1, as well as any other provisions referring to the rights of citizens, to cover the protection of the rights, freedoms and statutory interests of all natural and judicial persons, including state institutions, on the territory of Kazakhstan; [par. 23]
 - H. To include the detection and elimination of causes and conditions promoting crime in Article 3, par. 2 as a separate objective of crime prevention; [par. 24]

- I. To amend Article 3 par. 2 (4) by deleting references to persons without permanent residence and documents and ensuring that state adaptation and rehabilitation services are offered to all former detainees; [par. 25]
- J. To delete Article 3 par. 2 (6) and include the promotion of legal awareness in the list of general measures of crime prevention under Article 19; [par. 26]
- K. To grant non-state actors a greater role in the prevention of crimes and offences; [pars. 29 and 31]
- L. To review and compare the competencies of different entities in crime prevention under Chapter 2 and other legislation; [par. 32]
- M. To ensure that local records-keeping and procedures mentioned in Article 6 par. 2 (3) is consistent in all regions of Kazakhstan; [par. 33]
- N. To delete competences involving law and order and national security functions in Articles 7 par. 2 (9) or refer to other legislation;
- O. To amend Article 7 par. 1 by cross-referencing it with programs mentioned in Article 12 par. 3; [par. 35]
- P. To amend Article 9 by distinguishing between persons who have not yet been convicted of crimes and convicted persons. [par. 36]
- Q. To expand the role of education agencies in crime prevention under Article 11; [par. 38]
- R. To clarify the competences of state and regional inter-agency commissions on crime prevention under Article 16 and their mutual relationship; [par. 39]
- S. To expand the crime prevention measures listed in Chapter 3 and ensure that all measures listed in Chapter 2 are included in Chapter 3; [par. 42]
- T. To reformulate the general prevention measures in Article 19 to encompass more general crime prevention factors and delete measures that are too specific; [par. 47]
- U. To rephrase Article 20 par. 1 to include special prevention measures against all criminal behavior and mention specific programs; [par. 49]
- V. To delete Article 20 par. 2 and replace it with special crime prevention measures more focused on detecting and eliminating causes and conditions promoting unlawful behaviour in Kazakhstan in general; [par. 54]
- W. To delete Article 21 and thereto connected provisions; (Articles 23-29)

- X. To review Article 26 and clarify the nature of measures taken by courts, ensuring that the article does not create the possibility of punishment for the same offence twice; [par. 64]
- Y. To delete all references to compulsory treatment and preventive registration for record-keeping of persons with addictions, illnesses (except for cases involving contagious tuberculosis) or mental disorders; [par. 65]
- Z. In the case that Article 22 remains in the draft Law on CP, to delete the par 1 (5) or specify the “other cases envisaged in the laws of Kazakhstan”; [par. 66]
- AA. To delete all remaining references to antisocial behavior; [par. 71]
- BB. To include in the Draft Law on CP a period of vacatio legis that is longer than the 10 days foreseen in Article 30; [par. 72]
- CC. To include in the Draft Law on CP a monitoring mechanism to assess the operation of the law once it has been passed; [par. 73]
- DD. Prior to passing the Draft Law on CP, to review which existing laws in Kazakhstan need to be amended and ensure the availability of sufficient funds (regulatory and financial impact assessment) and the necessity of secondary regulations to ensure proper implementation. [par. 74]

4. ANALYSIS AND RECOMMENDATIONS

4.1 International Standards in Crime Prevention

- 9. While crime prevention used to be a domestic issue that differed from country to country, the increasing internationalization of crime and criminal organizations has led to increased cooperation and standardization in this field.
- 10. According to Article 3 of the Guidelines for the Prevention of Crime drafted by the UN Economic and Social Council² (hereinafter “UN Guidelines on the Prevention of Crime”), crime prevention “comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes”. These same Guidelines stress the need for community (i.e. civil society) involvement and cooperation/partnerships in crime prevention (Article 5).

² Accepted by the UN Economic and Social Council by resolution 2002/13 at its 37th plenary meeting on 24 July 2002: <http://ww2.unhabitat.org/programmes/safercities/documents/declarations/ny.pdf>

11. Within the European Union, the European Council, by decision of 28 May 2001³, set up a European Crime Prevention Network to develop various aspects of crime prevention at a Union level and support crime prevention activities on a local and national level within the European Union. Article 1 par. 3 of the above decision defines crime prevention as measures intended to reduce crime and citizens' feeling of insecurity, directly or indirectly, and the causes of crime and stresses the need for government, competent authorities, criminal justice agencies, local authorities, specialized European associations, private and voluntary sectors, researchers and the public, supported by the media, to cooperate in the field of crime prevention.
12. There are manifold approaches to crime prevention. Article 6 of the UN Guidelines on the Prevention of Crime lists four main approaches: 1) Enhancing the well-being of potentially volatile parts of the population through social, economic, health and educational measures (prevention through social development or social crime prevention); 2) Improving conditions in targeted neighbourhoods with the help of local community members (locally based crime prevention); 3) Reducing opportunities for crime while increasing the risk of apprehension and minimizing benefits (situational crime prevention); and 4) Preventing recidivism through social integration of offenders and other prevention mechanisms (reintegration programmes). At the same time, Member States must respect the rule of law and human rights as laid down in international instruments to which they are party in all aspects of crime prevention.
13. The Hungarian National Strategy for Social Crime Prevention⁴ (hereinafter "the Hungarian Strategy") applies a number of the best practices laid down in the UN Guidelines on the Prevention of Crime⁵. It stresses that crime prevention cannot be implemented solely via law enforcement and criminal justice services, but necessitates a professional and civil movement, governed and supported by the state, which enhances the self-defence capabilities of society⁶. The implementation of fruitful crime prevention thus requires central and regional state authorities to constantly cooperate with non-governmental organizations, churches, actors in business and economic life, and small communities of citizens. Action plans to prevent crime will only deliver lasting and beneficial results if measures curbing the effect of causes of crime, affecting victimisation and reducing the opportunity for crime are applied simultaneously in every community⁷. The Hungarian Strategy identifies five priority areas: prevention and reduction of juvenile delinquency; improvement of urban security; prevention of violence within the family; prevention of becoming victimized and creating proper means to help victims of criminal acts; and prevention of re-offending.

³ Council Decision of 28 May 2001 setting up a European crime prevention network (2001/427/JHA): http://www.eucpn.org/docs/1_15320010608en00010003.pdf

⁴ Available in the English language only, translation into Russian may be provided on request.

⁵ See "Hungary Works with UNODC on National Crime Prevention Strategy", UN press release of 26 February 2004 (UNIS/CP/467): <http://www.unis.unvienna.org/unis/pressrels/2004/uniscp467.html>

⁶ The National Strategy for Social Crime Prevention of Hungary (2003), p. 3: <http://www.eukn.org/binaries/hungary/bulk/policy/2006/12/246-kk06-hungarian-national-strategy-for-community-crime-prevention.pdf>

⁷ Ibid, p. 4

14. The Finnish National Crime Prevention Program⁸ (hereinafter “the Finnish Program”) also met with considerable interest outside Finland⁹. As the Hungarian Strategy, the Finnish Program foresees the involvement in crime prevention of not only the State but also municipalities, the business community, the Church, civic organizations and also private individuals¹⁰ and focuses on local crime prevention in municipalities¹¹. The Finnish Program’s policy for action is based on three main measures, namely decreasing suitable opportunities for crime (crime should be made more difficult or less profitable), preventing the development of individuals into offenders (e.g. targeting criminogenic risk factors connected with childhood or supporting young persons in danger of marginalization) and interrupting criminal careers that have already begun.
15. Since both the Hungarian Strategy and the Finish Program reflect international standards in crime prevention, this Opinion will refer to them as examples of best practices in this field, next to the UN Guidelines on the Prevention of Crime.

4.2 Purpose and Objectives of the Draft Law on Crime Prevention

16. The Draft Law on CP has been assessed based on the standards of crime prevention. While it does include some of the crime prevention measures mentioned above, it is noted that for the most part, the Draft lacks a number of factors that have proven to be useful ingredients of effective crime prevention programs elsewhere. Instead of conducting research on the main reasons for crime in Kazakhstan and systematically setting about amending certain risk factors in the society of Kazakhstan, preventive measures are based on the random selection of “risk groups” and monitoring their behaviour to prevent them from committing crimes. Societal and sociological factors enhancing crime are disregarded, while at the same time the competences of state institutions appear to focus more on law and order and on maintaining national security than on the actual prevention of crime. Moreover, the prevention of victimization and support to victims of crime is almost non-existent in this Draft. Aside from being unnecessarily restrictive, it remains doubtful whether the approach taken by the Draft is actually targeting the right people and will thus make a real difference in the field of crime prevention. While the version of the Draft Law on CP, of 8 June, 2009 seeks to address some of these concerns, it is nevertheless recommended to re-address the concerns discussed above and throughout the Opinion prior to adopting the Law. A number of these issues will be discussed in greater detail in the following paragraphs.
17. In addition to the more general comments above, it is recommended to amend the Preamble of the Draft to reflect general principles of crime prevention, e.g. positive responses to causes for crime and conditions. Its current wording

⁸ Available in the English language only, translation into Russian may be provide on request.

⁹ The National Crime Prevention Program of Finland (1999), Foreword p. 1:

<http://www.rikosentorjunta.fi/uploads/b5qs9pt42ny.rtf>

¹⁰ Ibid, Decision in Principle of the Council of State on a National Crime Prevention Programme, p. I

¹¹ Ibid, p. II

states that the law “specifies the legal, economic and social framework and principles of action of state agencies, bodies of local government, organizations of all forms of ownership and physical persons, for the purpose of crime prevention”. This wording reflects that the law deals only with the competences of governmental and non-governmental bodies in the field of crime prevention, but not with the overarching theme of crime prevention itself.

18. Also with regard to the wording of the title and contents of the Draft, it is noted that the Draft only refers to the prevention of crimes, but not offences. Since other legislation, e.g. Criminal Code of the Republic of Kazakhstan (hereinafter referred to as, the “Criminal Code”) and the Code of Administrative Offences the Republic of Kazakhstan, (hereinafter referred to as, the “Administrative Code”) differentiate between crimes and administrative offences, it is recommended to specify that the Draft covers the prevention of crimes and administrative offences, so as to avoid confusion and remain consistent with other legislation.
19. Further, Article 2 states that legislation of the Republic of Kazakhstan related to crime prevention shall be based on the Constitution, international treaties, this Law and other normative legal acts. In the interests of clarity, it is recommended to specify which legislation Article 2 refers to and the placement of the Draft and other relevant laws in the hierarchy of legal acts. That is, Article 2 should specifically state which law takes precedence over other laws in which situations and whether the Law on Crime Prevention would function as a *lex specialis* in all issues relating to crime prevention.
20. It is common for laws and action plans on crime prevention to focus on the prevention of crimes/offences through timely detection and elimination of causes and conditions promoting crimes/offences¹². In Article 3 of the Draft, the main purpose of the law is listed as “the establishment of a single policy in [...] crime prevention, law and order and public security”. This purpose is not restricted to crime prevention, but also covers law and order and public security. This could cause confusion among potential users of the law and raises serious questions as to the hierarchy of laws.
21. Furthermore, while the term “law and order” (formerly Article 1 par. 11) no longer appears in the version of 8 June 2009, of the draft Law on CP, it nevertheless remains in Article 3 of the draft Law on CP. At the same time, both this term and the term “public security” are also defined in the Criminal Code and Code on Administrative Offences, which are superior laws than the Draft on CP. If certain terms are used in different laws, their definitions should be consistent. Moreover, a narrow interpretation of Article 3 par. 1 could create the impression that the Draft applies only to the prevention of crimes in the field of public security and public order. In this case, the scope of the law would be very limited and would fail to cover a number of other crimes not directed against public security and order, e.g. property crimes and crimes directed against other persons. As this was surely not the intention of the

¹² See the Hungarian Strategy (footnote 6) and the Finish Program (footnote 9)

lawmakers, it is recommended to amend Article 3 accordingly, preferably by deleting the terms “law and order” and “public security” from the main purpose of the Draft and limiting the latter to crime prevention. The purpose could thus be rather to establish the basis on which the prevention of crime could take place, namely through the elimination, neutralization and transformation of its causes and conditions.

22. To enhance the focus of the law on crime prevention, the Draft should instead concentrate on the essentials of crime prevention, namely: Obtaining realistic data on the status of crimes/offences, the identification of causes and conditions for certain crimes/offences and evaluations of the background and personality of recidivist offenders. Some aspects of these essentials have been integrated in the version of 8 June, 2009 (such as i.e., Article 10 par 3). A government can only attempt to effectively prevent crime in its country if it is aware of realistic crime/offences rates and the causes of certain crimes/offences and bases all further action on this knowledge.
23. The purpose of the Draft as stated in Article 3 par. 1 is not reflected in all of the objectives of the Draft listed in Article 3 par. 2 of the Draft Law on CP. The coordination of activities and participants of the crime prevention system (Article 3 par. 2 (5)) and the improvement of the crime prevention system (Article 3 par. 2 (3)) are directly linked to crime prevention. However, the objective of protecting the rights, freedoms and statutory interests of citizens from unlawful encroachment (*translated as “trespass” in the English translation*) (Article 3 par. 2 (1)) is primarily an objective of administrative and criminal legislation and should only be a secondary result of a law on crime prevention. At the same time, limiting the protection of the above rights to citizens suggests that persons, who are not citizens, as well as organizations and state institutions, do not come within the ambit of the Draft Law on CP. This equally applies to Article 4, par. 1, where the protection of citizens’ rights, freedoms and statutory interests is listed as one of the principles of crime prevention. If pursued, such focus on the protection of citizens alone would be in violation of international treaties ratified by Kazakhstan¹³ and OSCE commitments¹⁴. It is thus recommended to amend Article 3 par. 2 (1), Article 4, par. 1, and Article 36 par. 1, as well as any other provisions in the Draft Law on CP protecting only the rights of citizens. The Draft Law on CP should seek to protect the rights, freedoms and statutory interests of all natural and legal persons, including state institutions, on the territory of Kazakhstan.
24. The actual purpose of crime prevention, i.e. the detection and elimination of causes and conditions promoting crime, is only listed in Article 3, par. 2 (3). Given the relevance of this to the very idea of crime prevention, it is recommended to include it as a separate objective in Article 3, par. 2.

¹³ See the principle of non-discrimination in Article 2 of the International Covenant on Civil and Political Rights (1966), ratified by the Republic of Kazakhstan on 24 January 2006

¹⁴ See the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990: “(5.9) – all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”

25. While Article 3 par. 2 (4) dealing with social adaptation and rehabilitation of persons released from prison is in line with the usual standards of crime prevention¹⁵, placing former detainees on the same social level as persons without permanent residence and documents, is not. Including persons without permanent residence and documents into this provision suggests that the State considers them to be potential criminals merely because of the fact that they have no permanent residence and papers. If this was the intention of the lawmakers, it would risk violating the principles of legality (*nullum crimen sine lege*) and of rule of law (*nulla poena sine lege*)¹⁶, since the mere fact of not having permanent residence in Kazakhstan and of not having documents does not entail criminal liability under the criminal laws of Kazakhstan. Also, by limiting the group of former prisoners and detainees to persons who have lost contact with their relatives, Article 3 par. 2 (4) deprives other former detainees (presumably the majority) of state adaptation and rehabilitation services.
26. The objective of raising legal awareness and legal culture of the public under Article 3 par. 2 (6) appears to be too broad to be the objective of not only this law, but any law. Instead of including this objective in the objectives of the Draft under Article 3, it is recommended to include it in the general crime/offence prevention measures listed in Article 19 of the Draft Law on CP.
27. The principle of confidentiality stated in Article 4 par 8 of the draft Law on CP is welcomed. Preventive actions should take place following proper procedure and taking into consideration the right to privacy and home of the persons concerned as protected by Article 142 of the Criminal Code of Kazakhstan¹⁷, Article 18 of the Constitution of Kazakhstan¹⁸ (hereinafter “the Constitution”) and Article 17 of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”). In this context, it should also be noted that OSCE participating States have committed to protect persons’ rights to private and family life and domicile. These rights may only be subjected to such restrictions as are prescribed by law and consistent with international human rights standards¹⁹.
28. It is noticeable that the Draft is not very explicit with regard to the involvement of non-state actors in the field of crime prevention. Practice in many participating States of the OSCE has shown that non-governmental organizations, funded and supported by the government, are best positioned to take on crime prevention activities. Laws may also set out broad parameters for the duties of government agencies responsible for crime prevention, which

¹⁵ See the Article 6 par. 4 of the UN Guidelines on the Prevention of Crime (par. 10 and footnote 2)

¹⁶ See Article 15 of the International Covenant on Civil and Political Rights , adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, see also par. 70 infra.

¹⁷ Criminal Code of the Republic of Kazakhstan, No. 168-1 c 1, adopted on 16 July 1997, last amended on 17 July 2009

¹⁸ Constitution of the Republic of Kazakhstan, adopted by referendum on 30 August 1995, last amended on 21 May 2007

¹⁹ See par. 24 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 3 October 1991

may include the duty to gather and publish information and education materials on aspects of crime/offence prevention, foster collaboration among those working on crime/violence prevention, provide training and technical assistance in necessary intervention and prevention, and develop national strategies for aspects of crime/offence prevention. The Hungarian Strategy and the Finnish Program also focus on an effective partnership between the State and non-state actors such as non-governmental organizations, religious entities, actors in business and economic life and private individuals to effectively prevent crime²⁰. While some articles refer to “other organisations” (for instance Article 7 par 6), the Draft Law on CP does not go into detail to outline the participation of non-governmental organizations in crime prevention.

29. As it stands, the Draft thus does not foresee an equal partnership between state and non-state actors for the purposes of crime prevention, as proposed by Article 5 of the UN Guidelines on the Prevention of Crime²¹. In the interests of effective crime prevention, it is thus recommended to grant non-state actors, in particular non-governmental organizations, a greater and more equal role in prevention of crimes and offences.

4.3 The Inter-Action of Different State Bodies in the Field of Crime Prevention

30. Chapter 2 of the Draft outlines the State of Kazakhstan’s crime prevention system, i.e. the competences of different state bodies in the field of crime prevention. Articles 5 – 17 of the Draft are included in Chapter 2.
31. While the Chapter is welcomed since it establishes the tasks of many institutions and their co-ordination, as mentioned above, the role of non-governmental organizations could be better defined in the Draft Law on CP.
32. Overall, the competences of the entities listed under Chapter 2 should be reviewed and compared to one another, to ensure that there is no overlap of competences and that there is consistency in the work of different agencies in crime prevention. Such a review should also include a comparison of competences of the same bodies listed in other legislation, again to ensure consistency of different legislation. Redundant tasks already laid down in other laws should then be deleted and precise references to other legislation included wherever necessary. The following paragraphs will raise some of these and other points in greater detail.
33. Article 6 specifies the authority of local representative and executive bodies in crime prevention. Article 6 par. 2 (3) states that local representative and executive bodies should keep regional records of citizens and organizations involved in crime prevention (and provision of public order), identify types of incentives and a motivation procedure.. It is recommended to ensure that all

²⁰ See par. 14 supra.

²¹ See par. 10 supra.

regions of Kazakhstan adopt consistent methods of record-keeping and procedures.

34. Article 7 sets out important tasks of the bodies of internal affairs, and while not specified whether these will be the tasks of the police, the ministry of interior or others, in general most of the tasks set out are welcomed. However Article 7 par. 2 (9) of the Draft Law on CP states that bodies of internal affairs shall “conduct criminal prosecution and filing in cases of administrative offences, also fulfil executive and regulatory functions for the maintenance of public order and provisions of public security”. These competences appear to have more to do with prosecution, law enforcement and public security than with crime prevention and should be deleted, given that these issues are already regulated in other national legislation on crimes/offences and administrative offences.
35. Article 7 par. 1 specifies that bodies of internal affairs will develop and implement comprehensive program documents for the prevention of certain types of crimes or other specific behaviour²². It is not clear why such documents would be developed for addiction to drugs, alcohol and toxic substances, or homelessness, also included in the above list, as these actions are not criminal offences in Kazakhstan. While the prevention of alcoholism and drug use is in itself a good and worthy cause, including it in a law on crime prevention should be connected with State offered programs and treatments for alcohol and drug abusers to help eradicate causes for violence or other crimes. Article 7 par. 1 should be amended accordingly and cross-referenced with the programs envisaged in Article 12 par 3 of the Draft Law on CP which speaks of the development of such programs. Furthermore, homelessness, being a foreign citizen or stateless person, is assumingly also not a crime in Kazakhstan, and thus, the question remains why these various ‘states’ or categories, need to be ‘prevented’.
36. In Article 9 on the competences of the institutions of justice, par. 3 states that they shall “in co-operation with law-enforcement agencies, ensure implementation of preventative and investigative and search operations for the purpose of preventing crimes committed by convicted persons, also by persons contained in pre-trial facilities of the criminal penitentiary system”. This Article is recommended to be clarified to ensure that persons who are accused but have not stood trial and are thus not convicted as guilty, do not fall within the same category as those already convicted and are thus not subjected to the same measures.
37. The role of educational agencies as outlined in Article 11 appears to focus on repressive measures such as monitoring and registering students for truancy, established by par 4. This would imply that these preventive measures would

²² The types listed under Article 7 par. 1 are: Crimes infringing on the person, property, public order, public security, morals, road safety and procedures of administration, addiction to drugs, alcohol and toxic substances, crimes committed by previously convicted persons, foreign citizens or stateless persons, domestic violence, juvenile crime and neglect and homelessness and crimes related to illicit trafficking of drugs, weapons and explosives.

include interviews, official warnings, registration of data, and compulsory and restrictive measures outlined in subsequent articles of the Draft Law on CP.

38. Since criminal behaviour often already starts at an early age due to outside circumstances and influences, the role of schools in preventing crime cannot be emphasized enough. Especially with regard to children, merely interviewing them and warning them to discontinue certain behaviour will only bring about temporary changes, but will not be sufficient to counterbalance the strong influences that they are exposed to from the family, neighbourhood and their peers. It is recommended that education facilities adopt a less restrictive, but instead more encompassing approach: Schools should e.g. provide for regular counselling and generally focus on students in threat of marginalization²³, often also involving family members. Extracurricular activities should be provided to children and disputes between students could be resolved via certain dispute settlement mechanisms involving their peers. These activities should of course not be compulsory, same as the sports activities mentioned in Article 15 par. 2 which should be offered but not forced on the respective persons. The above are merely a few examples of how educational facilities can help in crime prevention²⁴. Possibly some of these measures have already been envisioned by the respective institutions, but they have so far not been outlined in the Draft Law on CP. The activities of educational facilities need to be undertaken in cooperation with the competent law enforcement agencies, which should intervene in cases of crime or imminent crime. The role of educational entities outlined in Article 11 should thus be expanded, taking into account the above suggestions.
39. Article 16 par. 2 states that activities of crime prevention shall be coordinated by an Inter-Agency Commission on Crime Prevention under the Government of Kazakhstan, but also under the *akims* of provinces. This implies that there is one state Inter-Agency Commission on Crime Prevention and at the same time a number of regional inter-agency commissions on crime prevention (as also implied by Article 16 par. 4 outlining the composition of such regional commissions). The existence of regional commissions next to the state commission should be clarified in Article 16. The relationship between the state and regional commissions should then also be outlined in terms of hierarchy and competences. Regional commissions on crime prevention

²³ See the Finnish National Program (footnote 9), p. 28

²⁴ See also the Hungarian Strategy (footnote 6, p. 51), which states that the educational policy should:

- Set up an early warning system for school failures;
- draw up and regularly assess remedial programs;
- set up cooperation between teachers involved in school children and youth protection and local crime/alcohol/drug prevention workers;
- set up forums at country and metropolitan level for those with management responsibility for school children and youth protection;
- integrate non-violent conflict-resolution techniques into national education syllabuses;
- develop decision-making, problem-solving, communication, self-assessment, stress management and interest-assertion skills;
- draw up schemes that respond to truancy and other deviant acts;
- set up and run school clubs providing recreational and community-creating activities; and
- incorporate schemes into education syllabuses to raise respect for nature and the environment.

should also receive statutes that correspond to and do not conflict with the statute of the State's Inter-Agency Commission on Crime Prevention.

4.4 Measures of Crime Prevention

40. In the Draft, crime prevention measures are listed under Chapter 3. It is noticeable that these measures do not appear to focus on detecting and eliminating causes and conditions for crimes/offences. Criminological research is not specifically listed as a crime prevention measure. Instead, those measures that are included in the Draft are either very vague or they focus on monitoring certain groups of people considered to be especially prone to criminal behaviour.
41. The starting point of any crime prevention strategy should be an assessment of the existing criminal statistics and tendencies in different parts of a country. Crime/offence prevention can only be effective if the starting point is the identification of deviant behaviour. Based on these tendencies, certain crime-promoting factors and circumstances can then be identified. Only then will the competent partners in crime prevention know which crime-promoting factors their programs should focus on. Highly efficient prevention can only be obtained by eliminating, neutralizing or transforming factors that produce or promote crimes/offences.
42. In the Draft, the starting point for many crime prevention measures appears to be the competencies of the public authorities and managerial bodies. Similarly, some of the measures that public institutions are held to take under Chapter 2²⁵ are not included in the measures listed under Chapter 3. It is thus recommended to compare Chapter 3 and Chapter 2 and ensure that all of the preventive measures included in the competences of certain institutions are also included in provisions on crime prevention measures, in particular since, some of the measures ascribed to various bodies, such as in Article 6 (8) are particularly crucial in crime prevention.
43. The Draft specifically names three types of crime prevention measures: General measures, special measures and individual measures.
44. In the Draft, general crime prevention measures (Article 19) include socio-economic measures involving protection for vulnerable population groups and improvement of the economy in general. Administrative measures to eliminate errors in the management of the economy, social sphere and law-enforcement are also included in Article 19, as are ideological measures aimed at instilling basic values and morality in the population and scientific and technical achievements preventing crime.
45. General measures of crime/offence prevention are usually understood as measures that have a positive influence on individuals, thereby indirectly preventing their deviant behaviour. Crime/offence prevention is not the main

²⁵ To name a few: Measures of local representative and executive bodies related to promoting unemployment (Article 6 par. 2 (4) Article 14 (2)), programs of internal affairs bodies related to different aspects of crime prevention, criminological forecasts (Article 7 par. 11)), etc.

purpose of these measures. General measures should thus be directed at improving the quality of everybody's life in society and of some categories of population in particular (e.g. of children, the elderly, the disabled, etc). They usually aim at strengthening and developing civil society institutes and democracy, enhancing the welfare of the state and society. General measures may further focus on the (cultural, social) development and education of members of society. A number of such general measures are now binding commitments for the Republic of Kazakhstan through international instruments that the State ratified, for instance, the International Covenant on Economic, Social and Cultural Rights²⁶ (1966) and the International Covenant on Civil and Political Rights (1966)²⁷.

46. While certain aspects of the general prevention measures contained in Article 19 are commendable, these measures are at times too specific, at times not specific enough. For example, Article 19 par. 1 foresees socio-economic measures for social protection for vulnerable groups, but not for the entire population and without specifying which categories of persons are considered "vulnerable". Article 19 par. 2 deals specifically with administrative measures directed at eliminating errors in the management of certain spheres, but not with any other administrative procedures. At the same time, Article 19 par. 3 speaks of instilling a general moral attitude in citizens, but does not mention non-citizens. It then again becomes very specific when it intends to "cultivate intolerance to unlawful behaviour and antisocial actions". Also, the exact nature of "scientific and technical achievements preventing crime" listed in Article 19 par. 4 remains unclear and needs to be defined.
47. Moreover, Article 19 should be expanded to include measures strengthening civil society and enhancing social welfare. Education and health measures, especially for children, should also be mentioned, as should victim protection, particularly in fields like domestic violence. It is thus recommended to reformulate the general prevention measures in Article 19 to encompass more general crime prevention factors and to delete those parts of Article 19 that are too specific. Certain national crime prevention strategies of other countries, e.g. Hungary and Finland²⁸, may be consulted for comparison.
48. Special crime prevention measures are listed in Article 20 par. 1 of the Draft and involve regional and state programs focusing on the prevention of specific types of crimes/offences (e.g. "crimes infringing upon the individual, property and public order").
49. In essence, Article 20 does not mention any special crime prevention measures at all, but merely refers to regional and state programs that shall contain such measures. In this regard, it is not clear why Article 20 does not mention any programs and does not include any reference to provisions in Chapter 2 outlining such programs. Also, it is not specified why regional and state programs would focus on specific crimes individually, and not on the

²⁶ Ratified by the Republic of Kazakhstan on 24 January 2006

²⁷ Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, ratified by the Republic of Kazakhstan on 24 January 2006

²⁸ See footnotes 6 and 9 supra

phenomenon of crime per se. If the selection undertaken by the lawmakers implies that such crimes are more common, then Article 20 should mention that this selection was based on extensive criminological research and analysis. Since the criminal offences mentioned in Article 20 are already too numerous for individual programs to deal with all of them, it is likely that in the end, only a few criminal offences would be addressed through special programs, while the majority would not. In addition, the programs would most likely be adopted as agency regulations, meaning through administrative norms that do not have the power of law. If different state agencies thus plan and implement individual programs for specific criminal offences, then this does not seem to be in compliance with the “single state policy in crime prevention” stated as the main purpose of the law in Article 3. While such programs are no doubt necessary, specific special prevention measures and their implementation would acquire greater strength and importance if they were based on a law such as the Draft Law on CP. It is recommended to rephrase this provision to cover the prevention of all crimes/offences, regardless of their nature. Instead of focusing on different types of crimes/offences, it could be more useful to have programs focusing on different circumstances potentially promoting criminal behaviour, e.g. structurally weak regions and neighbourhoods, juvenile delinquency, victimization of certain categories of persons. In this context, victimization is the quality of potential victims that, to a degree, could promote criminal behaviour in others. The above are mere examples to guide policy makers and lawmakers in the right direction – it will of course be up to the responsible organs themselves to initiate further measures in crime prevention following intensive research on the main circumstances for criminal behaviour in Kazakhstan.

50. Par. 2 of Article 20 deals with the detection and elimination of causes and conditions promoting unlawful behaviour among certain social groups (e.g. minors, previously convicted persons, alcohol and substance abusers, persons serving a sentence). The wording of Article 20 par. 2 is highly problematic, as it seems to suggest that persons belonging to the above groups are more likely to commit crimes/offences than others. While this may apply for previously convicted persons, persons serving a prison sentence and, to a degree, certain alcohol abusers, it is inappropriate to include minors in this list per se.
51. The selection of groups appears inconsistent – certain groups are defined by previous actions (e.g. (any) previously convicted persons, alcohol abusers, (any) persons serving a sentence) and others by age (minors). This suggests that these groups, for no objectively justifiable reason, are treated differently than other social groups, which would suggest discriminatory state policies. Furthermore, it is not clear whether the list is exhaustive or closed, and this is also recommended to be clarified.
52. The supposed detection and elimination of causes and conditions for crimes/offences based on the targeted monitoring of certain social groups is also not in line with modern crime prevention, which bases itself on studying crime rates and individual offenders’ profiles. It thus attempts to detect and eliminate causes and conditions promoting unlawful behaviour specifically

among *uncertain* social population groups, meaning the population as a whole. Targeting specific social groups with presumed propensity to criminal behaviour invites unjustified State monitoring of select groups of persons, potentially leading to repressive measures and State intervention into persons' private lives, which would be against one of the principles proclaimed by the Draft Law on CP itself (Article 4 par 8).

53. It should be noted here that generally, it is impossible to predict crimes/offences in advance. Presumably, anybody could realistically commit a crime/offence under certain circumstances (theoretically, anybody may commit a crime/offence against another individual or property and anybody driving a vehicle may commit a vehicle-related crime/offence). Whether somebody will commit a crime/offence or not cannot possibly be assessed until the crime/offence has happened. Prior to that, unless a person is caught red-handed in the preparation for a crime/offence (which in certain cases may already entail criminal responsibility), any intent for the commission of a crime/offence could never be substantiated sufficiently to justify repressive measures. Not even the fact that a person has already committed a similar crime/offence in the past can serve as absolute evidence that he/she will commit this or a different crime/offence in future.
54. For the above reasons it is recommended to delete Article 20 par. 2 and replace it with special crime prevention measures more focused on detecting and eliminating causes and conditions promoting unlawful behaviour in Kazakhstan in general. Any specialization should be based on the research discussed in par. 49 supra. When drafting this part of the Draft Law on CP, the drafters should make sure to include special measures that both the Criminal and Administrative Codes of Kazakhstan do not already include. These codes may also have a preventive impact, and any interference with their competencies must be avoided.
55. Finally, Article 21 of the Draft deals with individual crime prevention measures. Article 21 par. 1 states that the aim of individual prevention is to influence a certain person of certain limited groups of people for the purpose of "preventing them from committing a crime, also of eliminating causes and conditions promoting crime".
56. As already indicated in Article 21, this purpose of individual prevention demonstrates that according to the lawmakers, criminal behaviour is greatly a matter of individual personality, and only remotely due to any outside circumstances and conditions. While another objective of Article 21 par. 1 is to eliminate causes and conditions promoting crime, this appears to be only a secondary element of crime prevention, since Article 21 mainly focuses on individually "influencing" persons liable to commit crimes and not at all on changing or improving any surrounding crime-promoting circumstances.
57. While it may be true that certain personalities are more liable to break the rules than others, this cannot be the only basis for measures of crime prevention. External circumstances, such as weak law-enforcement bodies in countries in transition, lack of perspective for certain parts of the population,

impunity in certain fields such as domestic violence, lack of proper education and counselling in school, always need to be taken into account when discussing crime prevention. Measures of crime prevention should always focus not only on certain risk groups but should attempt to eliminate all potential risk factors.

58. For this reason, the purpose and especially the effectiveness of individual prevention measures under Article 21 are highly questionable. While seeming to promote crime prevention, this article is for the most part of a singularly repressive nature. Article 21 par. 2 lists nine kinds of individual prevention measures: Only two out of nine individual crime prevention measures are of relatively neutral, non-restrictive character – the preventive interview (Article 21 par. 2 (1)), under certain conditions, and reporting on the elimination of causes and conditions promoting crime (Article 21 par. 2 (3)).
59. What raises particular concern is compulsory measures of a medical character (Article 21 par. 1 (4), a rather vague reference to “establishment of special requirements to the behaviour of the offender” (Article 21 par 1 (5), and mostly the deprivation of parental and/or related rights (Article 21 par. 1 (7)). Such measures touch upon fundamental rights of persons, the right to privacy, the right to family and certainty of law, and thus, in general terms, could cause the advertent or inadvertent violation by the State authorities, of these rights.
60. Furthermore, all individual prevention measures are solely based on the competent authorities’ assumption that certain individual persons were, due to their prior behaviour, liable to commit crimes/offences. In such cases, individuals are obliged to submit to an interview and will receive an official warning. Their data is registered and kept on file and in the worst case, they could even be subjected to compulsory treatment, lose custody of their children, undergo administrative supervision, and receive administrative, disciplinary and criminal penalties. The competent authorities may exercise all of the above restrictive measures based only on *their assumption that, due to prior behaviour, a person may commit a criminal act.*
61. Under normal conditions, a person can only be obliged to submit to state authorities if there is a reasonable suspicion of his/her having committed a crime/offence. It thus appears unnecessarily restrictive to allow state authorities to intervene in a person’s private life for the purposes of *future* crime prevention on the basis of something as vague as a mere assumption. Since the restrictive character of individual crime prevention measures appears to belong more in the field of law and order and not so much in the field of crime prevention, Article 21 and its purposes and aims appear to be misplaced. In particular, the Draft Law on CP does not indicate whether the restrictive measures applied will benefit from the same guarantees of rights and freedoms that are afforded to offenders under the Kazakh Criminal Code, Criminal Procedure Code and the Administrative Offences Act. There is thus a risk that the Draft Law on CP could create parallel criminal measures with very weak guarantees of personal freedoms and rights of those to whom the measures are applied.

62. At the same time, it is doubtful whether interviews, warnings, supervision and even fines and detention will really prevent persons from committing crimes. If the motivation for criminal behaviour is there or a crime is lucrative enough, potential criminals will not be deterred by interviews and warnings. In domestic violence cases, the violence will not stop after a warning or a short period of detention – further measures are needed to protect potential victims, such as protection orders, protective shelters and victim protection programs.
63. For the above reasons, it is recommended to delete Article 21 and thereto connected provisions (Articles 23- 29) in their current forms. The only conceivably effective individual crime prevention measures would be those involved in protecting potential victims of crime, who have been threatened or where circumstances otherwise indicate their propensity for being attacked. Any assumption of criminal behaviour of people based on their past behaviour must be avoided.
64. While Article 26 of the Draft Law appears reasonable, as it seeks to establish crime prevention measures by way of court decision, it is unclear whether these measures will be in addition to the punishment or penalty received by the perpetrator under the Administrative Offences Code or whether they shall be instead of such penalty/punishment. Providing repressive measures on top of (in addition to) already received punishment (which in itself, is supposed to have deterrent effect) may amount to punishing an offender twice for the same offence and would thus be in violation of the prohibition to be punished twice for the same act. This provision should be re-considered and clarified.
65. Regarding compulsory medical treatment laid down in Article 21 par 2 (4) already mentioned above, while it is welcomed that the Kazakh health authorities wish to provide treatment to certain persons, such treatment should be offered but should not be compulsory. Aside from the fact that people can really only be cured effectively if they agree to a certain treatment, compulsory treatment should only be possible in the case of contagious forms of tuberculosis or other cases where there is a direct threat to public health. In all other cases, compulsory treatment would constitute an illegal interference into each individual's personal life and would violate Article 18 of the Constitution and Article 17 of the ICCPR. The same is true for preventive registration for record-keeping. It is thus recommended to delete all references to compulsory treatment and preventive registration for record-keeping of persons with addictions, illnesses (except for cases involving contagious tuberculosis) or mental disorders.
66. Furthermore, Article 22 par 1 (5) states that grounds for the application of individual measures shall include “other cases envisaged by law of the Republic of Kazakhstan”. While this article is recommended to be deleted in full, it is noteworthy that such referencing is susceptible to a very broad and arbitrary interpretation and should thus be avoided.

4.5 Antisocial Actions

67. Although the term “anti-social behaviour” has been deleted (from Article 1 of the prior version of the Draft Law on CP), which is welcomed, it still appears in some provisions (i.e., Article 16 par. 3 (5) and so too the term “moral attitude”.
68. Use of such terms makes uniform application of the law impossible. In practice, authorities would have a sheer unlimited margin of appreciation in determining which actions are “antisocial“ or actions which do not display the requisite level of “moral attitude” and could thus target any person for any kind of behaviour with complete impunity. This is incompatible with the purpose of a law on crime prevention, which should aim at reducing and preventing crime, and not provide authorities with a *carte blanche* to accost persons who, for various reasons, are considered undesirable.
69. The result could be that imposing such measures on individuals who have not committed any crimes/offences entails significant and unjustified limitations on their rights and freedoms. They would also in this case not benefit from the same guarantees of rights and freedoms that are afforded to criminal offenders under the Kazakh Criminal Code, Criminal Procedure Code and the Administrative Offences Act (see par. 61 supra).
70. Such severe and potentially repressive consequences for actions that are not classified as criminal offences are in direct violation of Article 15 of the ICCPR, stating that nobody shall be held guilty of a criminal offence for an act that did not constitute a criminal offence at the time when it was committed. Article 15 thereby embodies the principles of legality (*nullum crimen sine lege*²⁹) and the rule of law (*nulla poena sine lege*³⁰) in the field of criminal law³¹. State Parties to the ICCPR (as is Kazakhstan) may under no circumstances derogate from Article 15 (Article 4 par. 2 of the ICCPR). Furthermore, it could raise issues under Article 17 of the ICCPR stating that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.
71. For the above reasons, it is recommended to remove all references to antisocial actions from the Draft, in particular any provisions where purportedly “antisocial” behaviour is used as a justification for repressive individual crime prevention measures.

²⁹ Meaning no crime except in accordance with the law

³⁰ Meaning no punishment except in accordance with the law

³¹ Jonathan Bair: *The International Covenant on Civil and Political Rights and its (First) Optional Protocol – A Short Commentary Based on Views, General Comments and Concluding Observations by the Human Rights Committee*, Frankfurt/Main, Peter Lang GmbH, 2005, p. 76

4.6 The Implementation of the Law

72. Article 30 of the Draft states that the Law shall enter into force 10 days following publication. It is recommended to extend the *vacatio legis*, meaning the deferment of the entry into force of a law to at least six months to ensure that the competent authorities will have enough time to prepare for implementing the new law.
73. It would also be beneficial for the law to include a monitoring mechanism, allowing for an assessment of the operation of the law following e.g. two years of its implementation. Practice in many OSCE participating States has shown that continual revision and strengthening of laws will ensure that measures introduced by new legislation are working in practice.
74. Finally, it is recommended that prior to passing the Draft, the availability of sufficient funds to implement the Law on Crime Prevention be borne in mind. It is further recommended that in order to prevent the Law from being implemented inconsistently or arbitrarily, secondary regulations are ready at the time when the Law will acquire effect, in particular as regards certain articles of concern which are the subject of this Opinion.

[END OF TEXT]

ANNEX 1

as of 9 am 08.06.2009

Law of the Republic of Kazakhstan

On Crime **Prevention**

This Law specifies legal, **economic and social framework** of action of state agencies, bodies of local self-government, organizations and **physical persons** for the purpose of crime prevention.

Chapter 1. General Provisions

1. Main terms used in this Law

This Law uses the following **main** terms:

- 1) crime prevention is a package of legal, social, economic, organizational interventions and other measures implemented **by crime prevention entities**, directed at the maintenance and strengthening of law and order by means of detection, examination, elimination of causes and conditions promoting crime, infringing upon the person, property and public order;
- 2) legal education is a package of measures of educational, informative and organizational character directed at cultivating **law-abiding behaviour in physical persons, raising the level of legal knowledge and** legal culture of the population;
- 3) social adaptation is a series of measures implemented by crime prevention entities, directed at cultivation of a personality capable of accepting and observing generally accepted rules and standards of public behaviour;
- 4) social rehabilitation is a package of measures implemented by **crime prevention entities** directed at the provision of legal, social, psychological, and pedagogical assistance to a person with unlawful behaviour, also the process of overcoming a psychological **and/or** moral trauma;
- 5) **criminological expertise** – excluded;
- 6) **individual preventive work**– excluded;
- 7) **crime** – excluded;
- 8) **antisocial actions** – excluded;
- 9) law-abiding behaviour is conscious behaviour of a person, adhering to statutory norms of behaviour, not violating **rights, freedoms and legal interests of other persons, the society and the state**;
- 10) **a person subject to prevention** - excluded;
- 11) **law and order** – excluded;
- 12) **information monitoring is collection, generalization, and analysis of information about persons inclined to unlawful behaviour, and/or having committed crimes**;
- 13) **crime prevention entities are state bodies, bodies of local self-government, organizations and physical persons involved in crime prevention**;

Article 2. Legislation of the Republic of Kazakhstan Related to Crime Prevention

1. Legislation of the Republic of Kazakhstan related to crime prevention shall be based on the Constitution of the Republic of Kazakhstan, **and shall consist of** this Law and other normative legal acts of the Republic of Kazakhstan, regulating relationships in the area of crime prevention.
2. Should international treaties ratified by the Republic of Kazakhstan specify other rules than those **included in** this Law, the rules of the international treaty shall apply.

Article 3. Purposes and objectives of this Law

1. **Purposes** of this Law is establishment of a single policy of the state in the area of crime prevention, provision of law and order, and public security.
2. The objectives of this Law are:
 - 1) protection of the rights, freedoms and statutory interests of **a person and a citizen** from unlawful trespass;
 - 2) reduction of the crime rate;
 - 3) improvement of the crime prevention system, also detection and elimination of causes and conditions promoting crime;
 - 4) social adaptation and **social** rehabilitation of persons having returned from institutions of confinement and having lost connections with relatives, also of persons without permanent residence and documents;
 - 5) coordination of activities of entities and participants of the crime prevention system;
 - 6) raising legal awareness of citizens.

Article 4. Crime Prevention Principles

Crime prevention shall be based upon the principles of:

- 1) protection of and respect for rights, freedoms and statutory interests of citizens;
- 2) legality;
- 3) publicity;
- 4) unity of rights and obligations;
- 5) humanity;
- 6) scientific validity;
- 7) comprehensive approach and differentiation of prevention measures;
- 8) confidentiality.**

Chapter 2. Authority of Crime Prevention Entities

Article 5. Crime Prevention Authority of the Government of the Republic of Kazakhstan

The Government of the Republic of Kazakhstan shall:

- 1) develop and provide for implementation of, state policy in the area of crime prevention;
- 2) approve program documents **in the area of** crime prevention;
- 3) establish and abrogate a republican inter-agency commission on crime prevention;
- 4) ensure interaction between crime prevention entities and coordinate their activities;
- 5) ensure timely measures to prevent critical demographic processes, deter sharp growth of unemployment and decline in the public standard of living, which entail an increase in crime rates.**

Article 6. Authority of Local Representative and Executive Bodies

1. **Local** representative bodies shall:
 - 1) approve program documents **in the area of crime prevention and consider reports on their implementation;**
 - 2) as nominated by akims, approve members of local inter-agency commissions on crime prevention.
 - 3) approve and control implementation of, local budgets in the line of crime prevention.**
2. Local executive bodies of a province (city of the republican importance, capital) shall:
 - 1) develop and implement program documents in the area of crime prevention;**
 - 2) ensure interaction between crime prevention entities;
 - 3) keep a regional record (registration) of citizens and organizations involved in crime prevention, identify types of incentives **and the procedure of their motivation;**
 - 4) promote employment of the population;
 - 5) submit to respective **local representative bodies** for approval nominated members of inter-agency commissions on crime prevention, **and ensure their functioning ;**
 - 6) ensure establishment and functioning of **organizations of the crime prevention system;**
 - 7) ensure provision of specialized social services to persons in difficult life situations;
 - 8) take measures to eliminate causes and conditions promoting crime, related to mental disorders, addiction to alcohol, narcotic drugs and toxic substances;**
 - 11) ensure **organization of legal awareness raising for citizens.**

Article 7. **Authority of** Bodies of the Interior

Bodies of the interior shall:

- 1) **in cooperation with other interested state bodies**, develop and implement program documents for the prevention of:
 - crimes infringing on **the person**, property, public order, public security, morals, road safety and procedures of administration;
 - addiction to drugs, alcohol and toxic substances;
 - crimes committed by previously convicted persons, foreign citizens or stateless persons;
 - domestic violence;
 - juvenile crime, neglect **and homelessness;**
 - crimes related to illicit trafficking of drugs, weapons, and explosives;
- 2) participate in legal education of the population, study public opinion about the law and order status and about measures to enhance efficiency of law-enforcement agencies **in the area of crime prevention;**
- 3) implement crime prevention measures;**
- 4) carry out monitoring and registration of persons;**
- 5) carry out registration for prevention and implement preventive control;**
- 6) cooperate with citizens and organizations, involved in the protection of public order and prevention of crime;**
- 7) cooperate with security entities;**
- 8) inform other law-enforcement bodies about imminent or committed crimes that become known to them and that fall under the competence of these bodies;
- 9) criminally prosecute and process cases of administrative offenses, implement executive and administrative functions of protecting the public order, preventing and suppressing crimes that infringe upon rights and freedoms of a person **and a citizen**, interests of the society and the state;

10) ensure organization of specialized training courses in crime prevention for employees of bodies of the interior;

11) make criminological forecasts in the area of general crimes, and plan associated prevention measures for the protection of law and order;

Article 8. **Authority of Agencies of the Financial Police**

Agencies of the financial police shall:

- 1) participate in the development and implementation of crime prevention programs, including activities to prevent crimes infringing on property;**
- 2) in the frames state policy implementation in the field of combating corruption and crime in the area of economy, carry out legal education and legal awareness raising among the population;**

Article 9. **Authority of Institutions of Justice**

Institutions of justice shall:

- 1) coordinate activities of state agencies for legal education and legal awareness raising;
- 2) carry out legal expertise of draft normative legal acts for the purpose of preventing adoption of norms promoting crime;**
- 3) in cooperation of law-enforcement agencies, ensure implementation of preventive and investigation and search operations for the purposes of preventing crimes committed by convicted persons, also by persons contained in pre-trial facilities of the criminal penitentiary system;**
- 4) carry out educational work with convicted persons in compliance with the Criminal Executive Code of the Republic of Kazakhstan;**
- 5) carry out registration of and implement preventive control over persons convicted to penalties not **associated with isolation from the society, also** persons convicted to a conventional or suspended sentence;
- 6) inform law-enforcement bodies about imminent or committed crimes outside penitentiary facilities that become known to them;

Article 10. **Authority of the Prosecution Agencies**

Prosecution agencies shall:

- 1) Ensure supreme supervision over precise and uniform application of the Law on Crime Prevention of the Republic of Kazakhstan;**
- 2) Ensure coordination of activities of law-enforcement agencies in crime prevention;**
- 3) Develop state legal statistics and keep special records;**

Article 11. **Authority of the Authorized Education Agency**

The **Authorized Education Agency** shall:

- 1) cooperate with state bodies and organizations on issues of legal education of students and inmates of educational institutions;**
- 2) develop and implement in the practice of educational institutions programs and methodologies directed at cultivating law-abiding behaviour in students and inmates of educational institutions;**
- 3) in cooperation with agencies of the interior and public health, conduct targeted prevention activities to prevent, detect, and suppress crime, addiction to alcohol, narcotic drugs and toxic substances among students and inmates of education institutions;**

4) together with local executive bodies, ensure registration for monitoring of minors who for unexcused reasons do not attend or systematically fail to attend classes in institutions of elementary, basic secondary and secondary education, also of those voluntarily leaving boarding schools.

Article 12. Authority of the Authorized Public Health Agency

The **authorized public health agency** shall:

- 1) **arrange for activities promoting** healthy lifestyle;
- 2) develop methodologies for early detection and prevention of systematic use of alcohol, non-medical use of narcotic drugs and psychotropic substances;
- 3) **together with agencies of the interior, develop programs to prevent addictions to alcohol, narcotic drugs, and toxic substances;**

Article 13. Authority of Public Health Institutions

Public health institutions shall:

- 1) **promote healthy lifestyle, medical knowledge, giving up harmful habits that have an adverse affect on health;**
- 2) **provide addiction treatment, psychological, mental, preventive assistance and carry out medical rehabilitation of those who need it;**
- 3) **detect, register and monitor persons suffering from addictions to alcohol, narcotic drugs and toxic substances, and mental disorders;**
- 4) **implement programs for prevention of addictions to alcohol, narcotic drugs and toxic substances;**
- 5) **notify bodies of the interior about visits of persons having suffered from crimes, and about provision of medical assistance to them.**

Article 14. Authority of the Authorized Social Protection Agency

The **authorized social protection agency** shall:

- 1) **in cooperation with other interested state bodies, develop and implement program documents regulating migration of the population;**
- 2) **develop methodological recommendations on using active forms of employment promotion;**
- 3) **participate in the development of state policy directed at comprehensive solution of poverty elimination issues.**

Article 15. Authority of the Physical Culture and Sports Agency

The **authorized physical culture and sports authority** shall:

- 1) participate in the implementation of **program documents directed at health promotion** by means of physical culture and sports;
- 2) **together with bodies of the interior, arrange for involving persons inclined to crime in physical culture and sports.**

Article 16. Coordination of Crime Prevention Entities

1. Coordination of crime prevention entities shall be ensured for the purposes of increasing prevention efficiency by developing and implementing coordinate actions for timely detection, deterrence and prevention of crimes, elimination of causes and conditions promoting crime;
2. Activities of crime prevention entities in the Republic of Kazakhstan shall be coordinated by inter-agency crime prevention commissions.

Inter-agency crime prevention commissions shall be established under the Government of the Republic of Kazakhstan, also under akimats of provinces

(cities of the republican importance, the capital) and districts (cities of the province importance).

3. An Inter-agency Crime Prevention Commission shall be **an advisory body**.

Main **objectives** of the Inter-agency Commission shall include:

- 1) coordination of crime prevention entities;
- 2) evaluation of the efficiency of **activities of** crime prevention entities;
- 3) **development** of proposals for improving the crime prevention legislation **of the Republic of Kazakhstan**;
- 4) **monitoring of implementation of program documents in the area of** crime prevention;
- 5) submission for consideration by the Government of the Republic of Kazakhstan, **akimats of provinces (cities of the republican importance, the capital) and districts (cities of the province importance)** of proposals for improving crime prevention measures;
- 6) adoption of measures to protect and restore human and civil rights and legitimate interests, detection and deterrence of causes and conditions promoting crime and antisocial actions;
- 7) preparation and submission of crime prevention information to the President of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan, respective local **representative and executive** bodies;
- 8) hearing of **reports** of heads and officials of crime prevention **entities** about their activities, **and development of proposals for improving the activities**;
- 9) submission to state and other organizations of proposals for holding officials disciplinarily **and otherwise liable for a failure to take crime prevention measures**;

4. Members, the authority and procedures of inter-agency commissions shall be established by regulations approved by the Government of the Republic of Kazakhstan, akimats of provinces (cities of the republican importance, the capital) and districts (cities of the province importance).

Article 17. Forms of Coordination

1. Coordination of crime prevention entities shall be provided by the Inter-agency Commission On Crime Prevention in the following main forms:

- 1) development of proposals and recommendations for improving the **activities of crime prevention entities**;
- 2) exchange of information;
- 3) study and dissemination of good practices;
- 4) implementation of joint prevention operations;
- 5) holding of sessions and meetings;
- 6) issuance of newsletters (bulletins) and other informational publications.

2. State agencies and institutions that receive information about imminent or committed crimes, also about persons subject to individual preventive influence, shall immediately inform crime prevention entities according to their authority **specified by laws of the Republic of Kazakhstan**.

Chapter 3. Crime Prevention Measures

Article 18. Crime Prevention System

Crime prevention shall be ensured by means of general, special and individual measures.

Article 19. General Crime Prevention Measures

General crime prevention **measures** shall be ensured by application of:

- 1) socio-economic measures for social protection of the most vulnerable population groups and improvement of the economy in general;
- 2) administrative measures directed at elimination of errors and omissions in the management of economy, social sphere, law-enforcement, also at the improvement of regulatory, informational, methodological and resource frameworks for crime prevention;
- 3) ideological measures eliminating or restricting criminal factors by cultivating in citizens a moral attitude oriented at basic human values, **law-abiding behaviour**, intolerance to unlawful behaviour, increasing general, everyday and legal culture of the population;
- 4) scientific and technical achievements preventing crime.

Article 20. Special Crime Prevention Measures

Special **crime prevention** measures shall include development and implementation of republican and regional programs directed at:

- 1) prevention of separate types of crime infringing upon the person, property, **and** public order;
- 2) detection and elimination of causes and conditions promoting unlawful behaviour among certain social population groups: minors, **persons suffering from addictions to alcohol, narcotic drugs and toxic substances**, previously convicted persons; persons serving a criminal sentence.

Article 21. Individual Crime Prevention Measures

1. The purpose of individual **crime** prevention shall be systematic purposeful influence on legal consciousness **and behaviour of a person or a limited group of persons for the purpose of preventing them from committing a crime, also of eliminating causes and conditions promoting crime.**

2. Individual **crime** prevention measures shall include:

- 1) a preventive interview;
- 2) an official warning on **inadmissibility of crime perpetration**;
- 3) reporting on elimination of causes and conditions promoting crime;
- 4) **compulsory measures of medical character**;
- 5) **establishment of special requirements to the behaviour of the offender**;
- 6) **administrative penalty**;
- 7) **deprivation or restriction of rights of parents, abrogation of child adoption, dismissal from guardianship/trusteeship, early termination of a patronage agreement**;
- 8) **penalty as ruled by court**;
- 9) **establishment of administrative supervision.**

3. Individual crime prevention measures shall be determined in view of individual specifics of the persons against whom they are taken, the nature and degree of impact that their crimes and antisocial actions have on public security.

4. **A decision on using individual crime prevention measures may be appealed against by interested persons as stipulated by the legislation of the Republic of Kazakhstan.**

5. **Individual crime prevention measures against minors shall be applied in view of specifics established by the Law of the Republic of Kazakhstan on Prevention of Juvenile Crime, Neglect and Homelessness.**

6. **Individual crime prevention measures against perpetrators of domestic violence shall be applied in view of specifics established by the Law of the Republic of Kazakhstan on Prevention of Domestic Violence.**

7. Individual crime prevention measures shall be applied in compliance with this Law and other laws of the Republic of Kazakhstan.

Article 22. Grounds for Using Individual Crime Prevention Measures

- 1. Grounds for using individual crime prevention measures shall include:**
 - 1) Applications or notifications by physical persons and legal bodies;**
 - 2) Direct detection of a committed or attempted crime;**
 - 3) Detected causes and conditions promoting crimes;**
 - 4) Materials obtained from other state bodies, bodies of local self-government;**
 - 5) Other cases envisaged by laws of the Republic of Kazakhstan.**
- 2. Applications and notifications about a committed or attempted crime or a real threat of its commission shall be considered by state bodies in the order established by the legislation of the Republic of Kazakhstan.**

Article 23. Preventive interview

1. A preventive interview shall be conducted by a crime prevention entity with a person (a limited group of persons):

- 1) who have committed or attempt to commit a crime;**
- 2) who pose a direct threat of committing a crime;**
- 3) at whose place of residence or primary stay there are causes and conditions for committing a crime.**

A preventive interview shall be conducted along with using other individual crime prevention measures.

2. Main objectives of a preventive interview are detection of causes and conditions for unlawful behaviour, explanation of social and legal consequences of crime and persuasion in the need of lawful behaviour.

Article 24. Official warning on inadmissibility of crime perpetration

1. A person posing a threat of committing a crime shall be officially warned by bodies of the interior about inadmissibility of crime perpetration.

2. A official warning on inadmissibility of crime perpetration shall indicate time and place of its issuance, by whom and to whom it is issued, the character of the crime threat, legal consequences in case of committing the crime or violation of the official warning on inadmissibility of crime perpetration.

The official warning on inadmissibility of crime perpetration shall be served upon a person against whom it is issued against his/her signature. Should the person refuse to sign, a respective record shall be made in the warning.

3. The official warning on inadmissibility of crime perpetration shall be issued to a sane person having reached the age of 16 by the moment of its issuance.

4. A violation of the official warning on inadmissibility of crime perpetration shall entail a liability as envisaged by the Code On Administrative Offences of the Republic of Kazakhstan.

5. The person against whom the official warning on inadmissibility of crime perpetration is issued shall be registered for further monitoring.

Article 25. Report on Elimination of Causes and Conditions Promoting Crime

1. In case of detecting causes and conditions promoting crime, state bodies shall send a report on their elimination to the head or an official of a respective organization.
2. The head of official of the respective organization shall within a month present to the state body in writing information about results of the report consideration and measures taken.

Article 26. Establishment of Special Requirements to Behaviour of Offender

1. A court may establish special requirements to behaviour of an offender for the purpose of preventing the person from committing new crimes;
2. Establishment of special requirements to the behaviour of offender shall be a measure of administrative-legal influence and shall be applied against a person having committing an administrative offence both along with imposition of an administrative penalty and instead of it when exempting the person having committed an administrative offense from administrative liability.
3. Establishment of special requirements to the behaviour of offender shall entail restriction of certain rights and imposition of certain responsibilities on the person having committing an administrative offense.
4. The procedure for establishing special requirements to the behaviour of offender, its terms, rights and responsibilities of parties in cases of administrative offenses shall be specified by the Code on Administrative Offenses of the Republic of Kazakhstan.
5. The person to whose behaviour special requirements are established, shall be registered for prevention by bodies of the interior and shall be made subject to preventive control.

Article 27. The purpose and procedure of registration

1. For the purpose of identifying a group of persons against whom individual crime prevention measures are taken, crime prevention entities shall have the following types of registration:
 - 1) registration for monitoring;
 - 2) registration for prevention.
2. No consent of the registered persons is required for including information about them in the registers of crime prevention entities, unless specified otherwise in the laws of the Republic of Kazakhstan.
3. Information kept in the registers may be used solely for the purposes of addressing crime prevention objectives that are within the authority of the crime prevention entity.
4. The registers shall be kept as specified by central executive bodies of the crime prevention entities, within their authority.

Article 28. Registration for Monitoring

1. Monitoring registers shall be kept to monitor information about persons inclined to unlawful behaviour and/or having committed offenses.
2. The following persons shall be registered for monitoring:

- 1) Persons to whom an official warning on inadmissibility of crime perpetration has been issued;
- 2) Persons suffering from addictions to alcohol, narcotic drugs or toxic substances;
- 3) Persons previously tried for crimes against a person, property, and public order;
- 4) Persons having served a sentence for grave and particularly grave crimes or having been sentenced twice or more times to imprisonment for a deliberate crime, against whom no administrative control has been established;
- 5) Foreign citizens and stateless persons violating rules of stay in the Republic of Kazakhstan.

Laws of the Republic of Kazakhstan may also envisage other reasons for registration for monitoring.

3. Reasons for registration for monitoring over persons specified in paragraph 2 of this Article shall include:
 - 1) official warnings on inadmissibility of crime perpetration;
 - 2) documents of public health institutions with records of persons suffering from addictions to alcohol, narcotic drugs substances;
 - 3) court writs and sentences.
4. Registration for monitoring shall not entail any restrictions of rights or imposition of responsibilities upon registered persons.

Article 29. Registration for Prevention

1. The following persons shall be registered for prevention:
 - 1) Persons against whom a protective order has been issued;
 - 2) Persons against whose behaviour special requirements have been established;
 - 3) Persons against whom a decision on release on parole has been made;
 - 4) Persons against whom administrative supervision has been established;
 - 5) Persons against whom a sentence has been made that is not associated with isolation from the society, also a conventional or suspended sentence;

Laws of the Republic of Kazakhstan may also envisage other reasons for registration for prevention.

2. Preventive control shall include systematic monitoring of compliance with the established restrictions and fulfilment of imposed responsibilities by the registered persons. Rights and responsibilities of the persons, also the procedure of providing the preventive control are specified by laws of the Republic of Kazakhstan.

Chapter 5. Final Provisions

Article 30. Responsibility or Violation of the Law On Crime Prevention of the Republic of Kazakhstan

Persons guilty of violating the Law of the Republic of Kazakhstan On Crime Prevention shall bear responsibility as established by laws of the Republic of Kazakhstan.

Article **41. Procedure of Enactment** of this Law

This Law shall enter into force 10 calendar days **after its first** official publication.

List of Excluded Articles

- 1. Article 5. Crime prevention entities**
- 2. Article 10. Authorized agencies in the area of financial monitoring and control; provision of tax proceeds and other necessary payments to the budget; customs; state property and privatization; working with insolvent debtors**
- 3. Article 13. Agencies of National Security**
- 4. Article 17. Mass media**
- 5. Article 18. Agencies on Emergency Situations**
- 6. Article 26. Crime Prevention Institutions providing social rehabilitation and reintegration**
- 7. Article 29. Preventive Record-Keeping and Control**
- 8. Article 30. Preventive Registration for Record-Keeping**
- 9. Article 31. Prevention Card and Prevention File**
- 10. Article 32. Termination of Control and Deregistration from Prevention Records**
- 11. Article 33. Grounds for Termination of Control and Deregistration**
- 12. Article 35. Rights and obligations of persons subject to individual crime prevention measures**
- 13. Article 36. Obligations of officials and head of crime prevention organizations**
- 14. Article 37. Control and Supervision over Activities of Crime Prevention Entities**
- 15. Article 39. Training of staff for the Crime Prevention System**
- 16. Article 40. Scientific Validity of Crime Prevention**