

Response by the Coalition against Torture in Kazakhstan to the Committee against Torture's List of Issues

A SUMMARY OF KEY CONCERNS¹

Despite several positive developments in recent years, Kazakhstan fails to meet its international legal obligations as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and torture continues to be widely used across the country.

Criminalization and Punishment of Torture (Article 1, Issues 1-2)

The definition of torture included in the new Criminal Code that was adopted in 2014 and will come into force in January 2015 is still not fully in line with the definition contained in the Convention against Torture. The law allows overly broad exemptions, and punishments remain incommensurate with the gravity of the crime. Kazakhstan took a positive step by abolishing the statute of limitations applicable to the offence of torture in its new Criminal Code. The new Criminal Code also excludes those convicted of torture from benefitting from amnesties.

Safeguards at the Time of Arrest/Apprehension (Article 2, Issues 4-9)

In 2012 the Constitutional Council took a positive step by clarifying that a person is deprived of his or her liberty as soon as "his or her freedom of movement is restricted, that is from the moment that he or she is forcibly detained in a given location, brought to an internal affairs office or taken into custody." However, in practice detainees are still often held incommunicado during the first hours of detention, without access to legal counsel and medical personnel and family members are often notified with a considerable delay. Police often use torture to obtain confessions at an early stage of criminal proceedings. According to the new Criminal Procedure Code, the gravity of criminal charges alone can be the basis for the pre-trial detention of suspects charged with 12 types of crimes, creating a *de facto* presumption of guilt. These problems are exacerbated by the absence of effective legal safeguards against unlawful deprivations of liberty.

¹ This document is based on information from the Coalition against Torture in Kazakhstan and drafted by International Partnership for Human Rights (Brussels).



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Independent Oversight of Places of Detention (Article 2, Issues 10-13)

In 2002 Kazakhstan was the first country in the region to have transferred pre-trial and penitentiary facilities from the jurisdiction of the Ministry of Internal Affairs to the Ministry of Justice. However, in 2011 jurisdiction over these facilities was returned to the Ministry of Internal Affairs, by Presidential decree. As a result, pre-trial detention facilities are run by the same agency that investigates crimes in violation of international standards.

In 2008, Kazakhstan ratified the Optional Protocol to the Convention against Torture and in 2013, it adopted the necessary legislation to set up a National Preventive Mechanism (NPM). Earlier in 2014, the NPM started visiting detention facilities across the country. However, its current monitoring mandate does not cover all places of deprivation of liberty. The monitoring group has no access to orphanages, nursing homes for the elderly and disabled, army barracks, and it is not permitted to inspect offices of police departments. In many cases the NPM is required to announce its visits to the NPM coordinating authority, the Human Rights Ombudsman. The Coalition against Torture is concerned that the Ombudsman's office in Kazakhstan does not fulfill the requirement of independence as outlined in the Paris Principles, considering that the Ombudsman is a state employee appointed to the office by Presidential decree. When NPM members receive torture allegations and urgently want to visit a specific detainee, the visit has to be approved by the Ombudsman's office. This procedure has caused significant delays and in some cases staff of the Ombudsman's office have refused to approve requests for visits claiming that evidence of torture was needed to be in writing and signed by the alleged victim to justify an urgent visit and that "a mere suspicion" that somebody had been tortured was not sufficient.

Independence of the Judiciary and Criminal Justice Reform (Article 2, Issues 14-15)

The problem of widespread impunity for torture is further exacerbated by frequent violations of international fair trial standards and the lack of an independent judiciary. The law does not clearly define the grounds for disciplinary liability of judges. Prosecutors typically dominate judicial processes, and judges rarely acquit defendants in criminal proceedings. During trials, judges continue to treat defendants' complaints of torture as attempts to avoid prosecution and punishment. Civil courts generally deny compensation claims of victims against law enforcement agencies in the absence of a criminal conviction.

Human Trafficking (Article 2, Issue 19)

Positive steps have been taken by the government, as evidenced by increasing numbers of criminal cases. But while managers of brothels are held criminally accountable, owners receive only administrative penalties. Victims of trafficking are not provided adequate protection and assistance, but are, in many cases, charged with violations of immigration rules. Independent groups estimate that the actual number of victims of trafficking is much greater than the number reported by law enforcement authorities.

Non-Refoulement (Article 3, Issues 21-25)

The principle of non-refoulement is typically disregarded with respect to cases from the Commonwealth of Independent States (CIS) that are signatories to the Minsk Convention. Kazakhstan lacks administrative and judicial guidelines and criteria for determining the risk of torture in destination countries, and appeals against returns based on the risk of torture routinely fail. The appeal procedure following an administrative decision to deny an applicant refugee status is superficial and routinely ends in sustaining the decision of the state body.

Rights of Prisoners (Article 11, Issues 31-35)

Since pre-trial and penitentiary facilities were returned to the jurisdiction of the Ministry of the Interior in 2011, law enforcement agencies conducting criminal investigations have had ubiquitous access to detention facilities, in violation of international norms. Internal security troops maintaining prison security do not bear any personal identification. Prison administrations conduct regular search and seizure operations, and prisoners have been punished when they have complained about these procedures. Abuse of prisoners including torture has evidently been a source of protests taking the form of self-mutilation. The number of deaths in custody has remained constant since 2008. Suicide is among the most common causes of death in custody. Medical care for inmates is inadequate.

Impunity (Article 12, 13, Issues 36-39)

Complaints about torture are first routed to the Internal Security Department of the Ministry of the Interior, which generally dismisses such complaints as unfounded. Less than two percent of all complaints involving torture or other ill-treatment are prosecuted. Kazakhstan lacks an independent mechanism to promptly, thoroughly and impartially investigate all reports of torture and other ill-treatment. Those who lodge complaints are at risk of reprisals and detainees are often subjected to further violence.

Compensation Practices (Article 14, Issues 40-41)

Alexander Gerasimov and Ivan Rozhnov are the only known torture victims to have been awarded compensation in Kazakhstan. Civil courts routinely deny compensation claims lodged by torture victims in the absence of a criminal conviction of the perpetrator. The case of Alexander Gerasimov is the only known exception. He was awarded compensation following a decision by the Committee against Torture under the Individual Complaints Procedure stating that the man should be awarded adequate compensation and that “a civil proceeding and the victim’s claim for reparation should not be dependent on the conclusion of a criminal proceeding”. In Kazakhstan victims of torture are not awarded with the full range of reparations from the state, including rehabilitation, compensation, public apology and guarantees of non-repetition.

Admissibility of Evidence (Article 15, Issues 42-43)

In the large majority of cases judges continue to treat defendants’ complaints of torture as an attempt to avoid prosecution and punishment. Defendants are required to prove that they were tortured in order to challenge the admissibility of evidence presented by prosecutors. A 2009 Supreme Court resolution aimed at addressing these shortcomings did not, in general, affect the negative practices of courts with regard to complaints of torture.

Human Rights Defenders (Issue 47)

The number of human rights defenders, leaders of religious groups or trade unions and journalists who have been subjected to threats and violence has decreased. However, particularly those activists who have a public profile and who operate in the south of the country continue to face threats, many of which are violent.