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25 February 2016

FOLLOW-UP TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE'S
CONCLUDING OBSERVATIONS ON KAZAKHSTAN (CAT/C/SR.1286 and
CAT/C/SR.1287)¹

The Committee against Torture (CAT) requested the State party to provide, by 28 November 2015, follow-up information in response to the Committee's recommendations relating to: (a) the effective investigation of allegations of torture; (b) transfer of detention authority to the Ministry of Justice; (c) the Human Rights Commissioner (Ombudsman) and National Preventive Mechanism; and (d) the administration of justice, as contained in paragraphs 8, 10, 13 and 15 respectively of the present document.

I. Effective investigation of allegations of torture

Recommendation # 8:

(a) Establish an effective, fully resourced, independent and accountable body that is able to carry out prompt, impartial, thorough and effective investigations, including preliminary investigations, into all allegations of torture and ill-treatment, ensuring that such investigations are never undertaken by personnel employed by the same ministry as the accused persons;

(b) Ensure that such an independent body is also empowered to receive and act on complaints of alleged torture and ill-treatment by law enforcement officials, including complaints of sexual violence; ensure that persons deprived of their liberty are able to transmit confidential complaints to such bodies; and ensure that this body is able to protect effectively complainants from reprisal;

(c) Provide the Committee with information on the number of complaints of torture made by persons deprived of their liberty, the number of claims of acts of torture

¹ Some of the NGOs who prepared this document – the NGO Coalition against Torture in Kazakhstan, Helsinki Foundation for Human Rights (Poland), International Partnership for Human Rights (Belgium) – received financial assistance from the European Union and Open Society Foundations that contributed to its production, within the project “Action for Freedom from Torture in Kazakhstan and Tajikistan”. The contents of the document are the sole responsibility of the organizations issuing it and can under no circumstances be regarded as reflecting the positions of the European Union.



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and ill-treatment that have been investigated and by which body(ies); the number of persons prosecuted and under what charges; and the penalties applied for those found guilty.

The following concerns addressed in the UN CAT's concluding observations relating to the effective investigation of torture allegations continue to be valid:

Laws and policies concerning the state's protection of human rights and prevention of torture and ill-treatment remain to be inconsistently implemented in practice (point 7).

Most allegations of torture and ill-treatment continue to be referred for preliminary investigation to the same department as that in which the persons accused of torture are employed (point 8).

Comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, security and prison personnel, including in detention facilities is still absent (point 27).

Based on extensive monitoring and work on individual cases, the NGO Coalition against Torture in Kazakhstan concluded that investigations continue to be ineffective despite positive legislative changes pertaining to the procedure of crime reporting and the investigation. In January 2015, the new criminal and criminal procedure codes entered into force. According to the new Criminal Procedure Code, crime reporting should trigger immediate investigation. However, there still remains a provision allowing law enforcers to subject the information contained in the crime report to preliminary checks. To perform the checking, the crime report is routinely referred to the same body whose staff are being accused of torturing the victim. As a result, the allegations are usually found unsubstantiated and hence not meriting investigation. Even if an allegation of torture or other forms of ill-treatment is registered it is often dismissed due to the alleged lack of evidence. Yet, such investigations or checks are very superficial in practice consisting typically of interviews only with the alleged perpetrators. Bodily injuries, if documented, are usually ascribed to accidents or natural causes. Incarcerated victims are especially vulnerable to retaliation for complaining about torture. There is no mechanism of transferring such victims to institutions other than those that are also under the authority of the Ministry of Internal Affairs.

In general, torture victims prefer not to lodge complaints given these and other problems it might cause. The NGO Coalition against Torture in Kazakhstan is aware of cases in recent years where perpetrators of torture or other law enforcement officers threatened victims with further violence or other reprisals when they wanted to lodge complaints about torture or other forms of ill-treatment. Many decided not to complain out of fear for their own or their family's safety or they withdrew their complaints at a later stage.

Cases brought to the attention of the NGO Coalition against Torture in Kazakhstan in 2014 and 2015 that have either been dismissed or indefinitely suspended include: (a) cases of deaths in custody under suspicious circumstances (e.g. the case of Alexey Mamuch-Ogly, 29 year-old, who died in a prison hospital in April 2014 allegedly of liver cirrhosis after less than 3 years in prison and whose death certificate did not state the cause of his death. According to his mother, the cause of death was never investigated and his medical records file was not shared with her despite her numerous requests); (b) a case of post-traumatic trauma (the case of Iskander Tyugelbaev, a 25 year-old prisoner, who fell into a coma after being beaten during a "planned search operation" in May 2015 at the OB-156/18 prison in Eastern Kazakhstan); and c) other cases of torture or ill-treatment (e.g. the case of Alexander Albrandt, 52 year-old, Kostanay region. By the time of writing, the investigation into his allegations of police abuse had been dragging on for over a year.

The Coalition observed that problems associated with investigations into reports of torture stem from the lack of effectiveness of the existing investigation mechanism and the prejudiced attitude of investigatory and regulatory agencies vis-a-vis complaints by suspects, accused or individuals who are kept in custodial institutions. At the heart of the problem lies the authorities' reluctance to expose the law enforcement system to public criticism and their fear that doing so would increase public distrust of law enforcement agencies even further. The NGO Coalition documented many cases where investigations have not been conducted adequately, i.e. where not all available methods and means were responsively employed throughout the investigation. In those instances where criminal cases are opened into allegations of torture, they are investigated by offices of Special Prosecutors under the Prosecutor General. The Coalition supports the idea that a body other than the police should investigate complaints of torture but points to the need for improving the institution of special prosecutors especially in terms of its public accountability and transparency.

Another problem regarding the investigation of torture is the lack of an accessible and safe complaint mechanism, especially for persons deprived of or limited in their freedom, including patients of special institutions for compulsory treatment and temporary isolation facilities (special detention centres). Detainees are not always aware or informed of what complaint channels are available to them by law. In many closed institutions complaint boxes are out of daily or free access of detainees. Often, detainees report that their complaints do not leave the institution after they pass them to the administration for mailing. When detainees complain to an overseeing prosecutor or public monitors they risk facing even harsher treatment by the guards at the knowledge or consent of the administration. As a result, many cases of torture go unreported. In prisons, the prisoners' despair caused by inhuman treatment or torture – especially during mass searches to uncover prohibited items – sometimes leads to riots or massive self-mutilation to draw public attention to what is going on. In written complaints to the NGO Coalition, prisoners say they do not see any other way of complaining than that.

Conclusion: Kazakhstan has not implemented the UN CAT's recommendation no. 8.

II. Transfer of authority over detention facilities to the Ministry of Justice

Recommendation # 10:

The State party should transfer authority for all detention and investigation facilities, including prisons, temporary holding facilities (IVSs) and remand centres (SIZOs) away from the Ministry of Internal Affairs.

The following concern of the UN CAT relating to its recommendation regarding the transfer of the authority for all detention and investigation facilities away from the Ministry of Internal Affairs continues to be valid:

Authority over the penal correction system remains with the Ministry of Internal Affairs. Places of detention are controlled by the government ministry with responsibility for the police and internal security. [...] Detention is seen as a tool of the investigative process or a means to compel prisoners to confess to the charges against them and thus amplifies the risk of torture and ill-treatment in such places of detention (point 10).

Victor Akhmetov from Kostanay region was unofficially held in the police department of the town of Zhetikara for four hours. When he was about to leave he was charged with an administrative offence ("Disorderly conduct", Art. 330, part 1 of the Code of the Republic of Kazakhstan on Administrative Offences), arrested and placed in the Special Detention Centre for

Administrative Detainees that, like all other detention facilities, is under the jurisdiction of the Ministry of Internal Affairs. For 7 days in a row he was repeatedly taken to the police station and beaten to make him “confess” to murdering his mother. His complaint of torture was dismissed as unfounded, despite the broken jaw he had sustained, which the investigators said was the result of a private fight.

Conclusion: Kazakhstan has not implemented the UN CAT’s recommendation no. 10.

III. The Human Rights Commissioner (Ombudsman) and National Preventive Mechanism

Recommendation # 13:

The mandate of the Office of the Human Rights Commissioner (Ombudsman) should be broadened to enable it to function effectively as both the national human rights institution in accordance with the Paris Principles and as the national preventive mechanism (NPM).

The mandate of the National Preventive Mechanism should be broadened to include monitoring of all places of deprivation of liberty such as offices of police departments and of the National Security Service, orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes, and military barracks and to examine the conditions and treatment of children in penitentiary and non-penitentiary institutions.

Measures should be taken to improve the ability of the NPM to carry out urgent and unannounced visits to places of detention upon its request.

The State party should consider authorizing the NPM to publicize its findings and recommendations shortly after undertaking visits rather than only on an annual basis and to ensure that NPM members and the public can assess whether their recommendations have been acted upon. The annual and other reports of the NPM should not be subject to prior review and approval by the President before publication.

The following concern of the UN CAT relating to its recommendation on the NPM and the Ombudsman continues to be valid:

The National Preventive Mechanism (NPM) has not always been able to undertake ad hoc visits due to bureaucratic constraints. The NPM’s mandate still does not provide for visits to all places of deprivation of liberty, such as orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes, elderly homes, and military barracks. The findings and recommendations of the NPM are only made public in the form of an annual report that is subject to prior review and approval by the President. The Office of the Human Rights Commissioner (Ombudsman) is still lacking independence (point 13).

In 2015, the NPM’s Coordination Council extended the monitoring mandate of the NPM to cover offices in police stations. However, this has not yet been reflected in legislation. Also, as before, the NPM’s mandate still does not provide for visits to all places of deprivation of liberty as defined in the Optional Protocol to the Convention against Torture, including orphanages, medical social institutions for children with certain disabilities, special boarding schools, nursing homes, homes for the elderly, and military barracks. In May 2015, the NPM released its first annual report². The report indicates that in 2014, apart from preventive visits, the NPM made 14 special

²http://www.ombudsman.kz/en/publish/docs/doklad_spec/detail.php?ID=2865

visits in response to reports of the risk of or actual torture or other ill-treatment. 12 of these reports came from those detained in institutions of the penal system under the Ministry of Internal Affairs. As a result of these ad hoc visits, 4 criminal cases were instituted, 3 of which were subsequently suspended. The grounds given by investigators included that there was no evidence to suggest that a crime had taken place at all or that the suspect had carried out a criminal act. It is noteworthy that with respect to one of the suspended cases (the case of Alexey Ushenin, see below), the Coalition submitted a complaint to the UN Committee against Torture precisely in connection with the lack of an effective investigation of Alexey Ushenin's complaint of torture. The case is currently pending with the CAT for a review on the merits.

On 28 August 2011, for 12 consecutive hours, Alexey Ushenin, then 34 years old, was tortured by a group of police officers in the building of the Department of Internal Affairs in the city of Uralsk. They tried to obtain a confession from him that he had engaged in "hooliganism with the use or attempted use of a weapon". Police hit Alexey on his hands and feet and bashed his head against the wall. He was choked with a plastic bag that was pulled over his head until he lost consciousness, and then he was reanimated with ammonia. Police officers burned his body with cigarettes including his anus after they had pushed a rubber truncheon into it. The officers threatened to kill his pregnant wife. Alexey lost consciousness five times. After this torture, Alexey Ushenin was unable to move for several days. Both the medical records of the temporary detention facility and of the investigation-isolation facility where he was placed after being tortured contained information about injuries. On 31 August 2011, during the authorization of Alexey Ushenin's arrest, a judge of Terektinsky District Court in the village of Fedorivka in West Kazakhstan region ignored the injuries on his body and his allegations of torture. On 14 September 2011, the prosecutor's office of Uralsk initiated a criminal case for aggravated torture (Art. 141-1, part 2, para. "a" of the Criminal Code of Kazakhstan). On 23 September 2011, the case was referred for additional checks to the financial police of Uralsk. On 30 September 2011, a forensic medical examination was conducted, with the participation of an assistant of the city prosecutor, which confirmed the presence of burn wounds, contusions on the neck, abrasions, and scars on the abdomen. The expert concluded that "given the localization of the burn wounds on the anatomical parts of the body, the wounds could have been self-inflicted by Ushenin". On 30 December 2011, the case was dismissed "for lack of evidence". In protest, Alexey Ushenin attempted suicide by swallowing 8 nails folded in a cross. In response to the West Kazakhstan branch of the Kazakhstan International Bureau for Human Rights and Rule of Law, a member organisation of the NGO Coalition, the prosecutor's office of West Kazakhstan region reported in February 2012 that "the arguments set out in Mr Ushenin's appeals about sustaining injuries and burns were refuted by the testimony of the medical staff, police and detention center officers of SI-170/1 of Uralsk city, as well as during the confrontation of Mr. Ushenin Alexey with others, and other collected materials of the criminal case". During the main trial Alexey Ushenin repeatedly informed the court that he had signed the confession under torture, but to no avail. Alexey Ushenin was sentenced to five and a half years in prison.

The NPM's official report, in the Coalition's view, lacks firmness in its conclusions. Thus, according to the NPM's report on its activities in 2014, not torture – which the report addressed as well – but "poor sanitary conditions, lack of necessary medicines and poor food", "the need to make minor or major repairs of buildings and facilities, or to construct new ones", and "inadequate control and supervision by the state authorities" were named as the *main* problems with regard to the prevention of torture, cruel, inhuman or degrading treatment in places of detention.

The NPM has not proved effective in responding to calls for urgent monitoring in cases of alleged torture. This is mainly due to the bureaucratic process of coordinating such visits by the Ombudsman. Moreover even when the NPM visited the institution in response to a complaint, in

most cases it did not report any violations. At the same time, the NGO Coalition against Torture in Kazakhstan continues to receive many credible complaints of torture or other ill-treatment from closed facilities. There have been cases where the Coalition received complaints about torture shortly after the NPM had visited the institution in response to a complaint, but failed to report any violations. Indeed, not all regional NPM groups are seen to be unbiased and many detainees do not see the NPM as a safe and effective complaint mechanism.

The Coalition sees the NPM as a government-censored mechanism lacking operational independence.

Conclusion: Kazakhstan has only partly implemented the UN CAT's recommendation no. 13.

IV. The administration of justice

Recommendation # 15

The State party should undertake a structural reform of the system of administration of justice with a view to balancing in practice and ensuring equality of arms between the respective roles of the prosecutor and the defence counsel in judicial proceedings and ensuring the independence of the judiciary. The State party should reform the system of prosecution and subject prosecutors to greater oversight by judges. Defence lawyers should be allowed to collect and present evidence from the outset of judicial proceedings as well as to call defence witnesses and should have prompt, effective and unimpeded access to all evidence in the hands of the prosecution.

The following concern of the UN CAT relating to the above recommendation remains valid today:

There continues to be a lack of balance between the respective roles of the prosecutor, the defence counsel and judges. The dominant role of the prosecutor throughout judicial proceedings remains in place. There is a lack of judicial control over the actions of prosecutors and that judges are overly deferential to prosecutors due to a lack of their independence from the executive branch. [Defense lawyers continue to lack power to collect and present evidence.] Defendants are not permitted to attend appeal proceedings in person and investigators can hand-select state-appointed defence lawyers, which serves as a disincentive for defending their clients (point 15).