

## **JOINT SUBMISSION BY KAZAKHSTANI NGOS: RULE OF LAW ISSUES – RECOMMENDATIONS\***

### **The right to life**

- Conduct a thorough and impartial investigation into the December 2011 Zhanaozen events. Bring to justice anyone suspected of being responsible for the use of firearms against the population.
- Conduct a thorough and impartial investigation into the allegations of torture and ill-treatment of defendants and witnesses in the Zhanaozen trial of oil workers and bring the perpetrators to justice.
- Eliminate the death penalty from the Constitution and remove the death penalty as a form of punishment from criminal legislation.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

### **The right to liberty**

- Ensure that the rights of arrested persons are guaranteed from the moment of actual apprehension, including compulsory and immediate notification of all procedural rights.
- Provide to all arrested persons immediate access to lawyers, including legal aid lawyers, guaranteed by the state.
- Ensure that judicial control over the legality and grounds for arrest, including observance of the rights of arrested persons, takes place within 48 hours of arrest.
- Ensure that the procedure for judicial sanctioning of pre-trial detention is in accordance with international standards.

### **Independence of the judiciary and guarantees of a fair trial**

- Ensure that the members of the Supreme Judicial Council are appointed by judges themselves, and eliminate the possibility of membership by law enforcement officials to prevent undue influence over the judiciary.
- Amend legislation to ensure that the grounds for disciplinary liability of judges (including dismissal) are clearly defined, as well as the criteria for establishing a judge's "failure to satisfy requirements of the office". Ensure that judges are not held liable for the conscientious judicial interpretation of the law, which may be contrary to the opinion of the Supreme Court. The disciplinary procedure must comply with international principles of fair trial and adversary process, respecting the right of judges for judicial review of imposed disciplinary sanctions.
- Exclude from the legislation any provisions that would allow for the practice of dismissal of judges under the pretext of budget cuts.
- Limit the powers of the Chairman of Court to performing representative functions and those of management over administration of courts. Exclude any powers of the Chairman in matters of judicial career, disciplinary proceedings, anti-corruption activities, and compliance with judicial ethics.
- Exclude from the Criminal Procedure Code exclusive powers of prosecutors that contradict the requirement of equality of parties before the court, such as to claim case files from the court, to protest against the court decision, including those that entered into force, and to suspend its execution. Amend the legislation to ensure that any interference with the enjoyment of human

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\*This document lists the recommendations included in joint UPR report on rule of law issues submitted by the Kazakhstan NGO Coalition against Torture, the Legal Policy Research Centre and the Public Foundation "Charter for Human Rights."

rights, including the right to counsel, right to privacy of the home, correspondence etc., are carried out only with the approval of the court on the basis of objective criteria established by law.

- Ensure that the Criminal Procedure Code provides equal opportunities for the prosecution and the defense to gather evidence. Take measures to ensure that the recording of evidence is carried out by an independent investigative judge and remove any dependence on law enforcement agencies to initiate forensic examinations.
- Develop and implement new quality performance indicators for the law enforcement and the judiciary to eradicate the accusatory nature of the justice process. The judicial decision of acquittal in itself should not be used as the basis for disciplining a prosecutor or a judge.

### **Torture And Ill-Treatment**

- Establish penalties for torture according to their severity. Exclude fines and prohibition to hold certain positions as the main forms of punishment for torture, as it is currently prescribed by Part 1 of the Article 141-1 of the Criminal Code. Also abolish the possibility of reconciliation and parole for persons convicted for the crime of "Torture". Adopt provisions in the draft penal code, prohibiting the application of amnesties to those convicted of torture and abolish the statute of limitations for torture.
- Incorporate into domestic law provisions on the right of victims of torture and ill-treatment to compensation, and ensure the functioning of clearly defined enforcement mechanisms for redress.
- Amend domestic legislation to the effect that only the Department of Special Prosecutors and its field offices are authorized to investigate allegations of torture and related crimes. Develop rules of investigation to exclude any interaction of special prosecutors with the law enforcement bodies accused of committing torture. Establish a public oversight mechanism over the work of the Department.
- Increase the capacity of personnel involved in documenting and investigating cases of torture, including medical professionals and experts, in accordance with the Istanbul Protocol.
- Bring the institution of the Commissioner for Human Rights (Ombudsman office) in line with international principles on national institutions for the promotion and protection of human rights (Paris Principles).
- Amend the regulations governing the activities of the NPM to ensure that NPM members have the opportunity to visit any place of detention and to determine necessary funding levels, based on the assessment of needs of the NPM, as established by the Coordination Council.
- Conduct a thorough analysis of the judicial practice in all cases where evidence alleged to have been obtained through torture was declared admissible in court.
- Established effective channels for submitting complaints on prisoners' rights in places of detention. Review the current practice of comprehensive censorship of prisoners' correspondence and bring it in line with requirements of the UN Human Rights Committee and the Standard Minimum Rules for the Treatment of Prisoners. Continue the reform of the medical service in the prison system and transfer the medical service to the Ministry of Health.
- Ensure that all persons in penal institutions are provided with adequate opportunities, time and facilities for meetings and consultations with lawyers without delay, without interception or censorship and in full confidentiality.
- Decriminalize the article of the Criminal Code, which stipulates liability for self-mutilation.