Key concerns and recommendations on torture and ill-treatment in Kazakhstan, April 2016

In recent years the authorities of Kazakhstan have implemented some significant positive steps in the area of torture prevention and eradication, but we are concerned that torture and other forms of ill-treatment are continuing and that impunity is still the norm. From January 2015 to March 2016 the NGO Coalition against Torture in Kazakhstan registered over 195 new cases of men, women and children who allege having been subjected to torture or ill-treatment. In its November 2014 Concluding Observations, the United Nations (UN) Committee against Torture pointed out that less than two percent of torture complaints led to prosecutions. The situation remains largely unchanged.

Failure to effectively investigate allegations of torture and other ill-treatment

Until the new Criminal Procedure Code (CPC) came into force in January 2015 preliminary checks had to be conducted before deciding whether to open an investigation into torture or ill-treatment. In the large majority of cases law enforcement officers conducted these checks and decided against carrying out a full investigation. Based on extensive monitoring and work on individual cases, the NGO Coalition against Torture in Kazakhstan concluded that investigations continue to be ineffective despite the introduction of positive legislative changes pertaining to the procedure of reporting crimes and the investigation. The new CPC stipulates that reporting a crime – of torture or other – should trigger an immediate investigation. However, in practice cases are only forwarded for investigation once they are registered in the Unified Register of Pre-Trial Investigations and we are aware of many cases involving allegations of torture and ill-treatment where law enforcement duty officers have refused to record complaints in the Register. Officers often use a provision contained in the new CPC that allows law enforcers to subject the information contained in crime reports to preliminary checks if the information lacks clarity and detail, which is often the case with statements of torture. The problem lies with the fact that the crime report is routinely referred for this checking to the same body whose staff are implicated in the complaint of torture. In practice, such checks are highly superficial consisting typically of interviews only with the alleged perpetrators. Bodily injuries, if documented, are usually ascribed to accidents or natural causes. As a result, the allegations are frequently found to be unsubstantiated and hence not meriting full investigation. The NGO Coalition is also aware of cases where duty officers maintained that they could not register the complaint because the complainant had not filled in the form properly.

While many victims of torture refrain from lodging complaints for fear of reprisals and/or because of lack of faith in the justice system, 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
When a criminal case is opened into an allegation of torture or other forms of ill-treatment the investigation is supervised by Special Prosecutor Units (SPU) which operate under the Prosecutor General. There have been several cases where SPUs conducted investigations effectively, but in most cases investigations have not been conducted promptly, thoroughly, impartially and independently, as required by international human rights law. While SPUs lead investigations, in many cases investigative activities are actually carried out by Criminal or Financial Police. Even in cases where the Coalition is aware of strong evidence that torture took place, investigations have been terminated for “lack of evidence of a crime”. Other investigations into torture allegations have been suspended indefinitely because the police claimed not to be able to establish the identity of the perpetrator/s. Another problem is that the legislation does not stipulate a time limit for investigations, resulting in a situation where they often continue for many months without producing tangible results. Torture victims considering lodging a complaint also have to be mindful that they may be subjected to penalties of three to seven years’ imprisonment for falsely reporting a crime. According to the Prosecutor General’s Office of Kazakhstan, criminal proceedings are initiated against the complainant when an investigation into torture allegations is terminated for “lack of evidence of a crime”. Reportedly, such proceedings were recently initiated in 97 such cases and false crime reporting has been confirmed in ten of them.

The numerous problems associated with investigations into reports of torture stem from the lack of effectiveness of the existing investigation mechanism coupled with the prejudiced attitude of investigatory and regulatory agencies vis-à-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.

**Implementation of UN treaty body decisions on individual cases**

Kazakhstan accepted the individual complaints procedures provided under Article 22 of the Convention against Torture and the Optional Protocol to the International Covenant on Civil and Political Rights in 2008 and 2009 respectively. In the case of Mumin Nasirov, Kazakhstan diligently implemented the Committee against Torture’s request not to extradite Nasirov to Uzbekistan, where he would have been at risk of torture. However, in five other cases Kazakhstan returned a total of 31 people to countries such as China, Russia, Kyrgyzstan and Uzbekistan in recent years where they were believed to be at risk of torture, ignoring the Committee’s request – by way of interim measures – to halt the extraditions. The Committee against Torture and the Human Rights Committee both found Kazakhstan guilty of breaching its international obligations to prevent or not to permit torture or cruel, inhuman or degrading treatment in nine cases of out of a total of 12 admitted cases that involved allegations of such treatment or that highlighted the risk of torture such as in the five extradition cases mentioned above. In two cases Kazakhstan has taken steps to partly implement the treaty bodies’ recommendations: two men – Alexander Gerasimov and Rasim Bayramov – were awarded compensation for moral harm suffered through torture, however the payments were inadequate and the perpetrators have still not been brought to justice. The case of Rasim Bayramov, who died of complications resulting from tuberculosis he contracted in prison after an unfair trial marred by torture allegations, is described in the annex. It clearly demonstrates the urgency of setting up a mechanism to promptly and effectively implement all
decisions issued under the individual complaints procedures of UN treaty bodies in relation to cases from Kazakhstan.

Currently six further complaints involving allegations of torture and ill-treatment that were submitted by the NGO Coalition against Torture in Kazakhstan are pending with the Committee against Torture and the Human Rights Committee.

**Recommendations**

The Kazakhstani authorities should be requested to take the following steps:

- Ensure that the Special Prosecutor Units lead the investigation of all cases involving allegations of torture and other forms of ill-treatment and carry out all investigatory activities without any involvement of law enforcement agencies.
- Establish a publicly accountable and transparent mechanism within the Prosecutor General’s Office to oversee the investigation of allegations of torture and ill-treatment.
- Establish a mechanism to promptly and fully implement all decisions by United Nations treaty bodies on individual cases and ensure that compensations awarded to torture victims for moral damages are fair and adequate.

Annex: Cases involving allegations of torture/ill-treatment in Kazakhstan, April 2016

Need for an effective investigation into allegations that police tortured Alexander Albrandt

Alexander Albrandt is believed to have been tortured by police of the Kushmurun branch of Auliekol district in the northern Kostanay region of Kazakhstan in August 2014. A forensic medical examination that was conducted six days later recorded extensive injuries over many parts of his body. Investigations into the allegations have been conducted by law enforcement agencies and have not yielded tangible results. The case should be referred to the Special Prosecutors Unit at the Prosecutor General’s Office for a full investigation.

On 23 August 2014 police detained Alexander Albrandt as he was returning from visiting a friend to his home in the village of Kushmurun. Albrandt alleged that police took him to an office at the local police station, where officers subjected him to beatings. Subsequently, two officers took him to Auliekol Central Hospital to establish his alcohol intake and Albrandt told medical personnel that police had ill-treated him. Afterwards, to retaliate, police reportedly beat him, hit him on his back, threw him on the ground and an officer pushed his knee on his throat and burnt his face using gas and a cigarette lighter. The officers reportedly also threatened to abandon him outside the village and beat and kicked Albrandt so severely that he lost consciousness several times. Later that day police took him to the temporary police detention facility in Auliekol where he was held until 25 August. That day he was taken to court for his remand hearing and reportedly learnt that he was accused of having destroyed a car window with an empty beer bottle. Although Alexander Albrandt insists he is innocent he offered to pay for the damage in order to be released from custody. He approached a forensic medical expert on his own initiative and after examining Albrandt on 29 August in the city of Kostanay the expert recorded bruises on his right ear, his face, arms, torso and left thigh and abrasions at the back of his head and his left knee joint.

On 19 September 2014 criminal proceedings were opened against the alleged perpetrators for “exceeding official authority” (Article 308 of the Criminal Code of Kazakhstan that was in force at the time). Since then law enforcement agencies have closed the case several times following superficial investigations and prosecutors’ offices have repeatedly reopened it. Most recently, on 16 February 2016, the Prosecutor General’s Office once again referred the case to the Financial Police for investigation.

Recommendations:
- Raise concern that investigations of allegations that Alexander Albrandt was subjected to torture by
police of Kushmurun village in August 2014 have not been conducted by independent investigatory mechanisms, but by law enforcement officers.

• Refer the case of Alexander Albrandt to the Special Prosecutors Unit at the Prosecutor General’s Office for investigation, and ensure that the Special Prosecutors Unit carry out all investigatory activities without any involvement of law enforcement agencies.

For further information on the case of Alexander Albrandt, refer to: http://iphronline.org/kazakhstan-open-letter-to-prosecutor-general-on-cases-of-alleged-torture-20150623.html

Iskander Tyugelbaev’s allegations of abuse in a prison colony need to be investigated

Iskander Tyugelbaev sustained a serious head injury after guards reportedly abused the prisoner in a prison colony in Eastern Kazakhstan in May 2015. An investigation into his allegations conducted by the Financial Police concluded that he sustained the injuries during an epileptic fit, but Tyugelbaev is not an epileptic. We call on the authorities to refer the case to the Special Prosecutors Unit at the Prosecutor General’s Office for a full and effective investigation.

In May 2015 guards of prison colony OV 156/18 in the Eastern Kazakhstan region reportedly beat Iskander Tyugelbaev so severely while conducting a routine search and seizure operation that he sustained a concussion, fell into a coma and required a perforation of his skull. After the surgery Iskander Tyugelbaev came to, but since then he has had difficulties moving and has been unable to speak. A forensic medical expert who examined Tyugelbaev in June 2015 concluded that the injuries are consistent with his allegations of torture.

In May 2015, only after Iskander Tyugelbaev’s foster mother submitted a complaint to the regional Financial Police, was an investigation opened into the allegations of torture/ill-treatment. Thanks to his lawyer’s efforts – to protect him from reprisals by prison guards during the investigation – Tyugelbaev was not transferred back to the prison colony after the surgery, but to an investigation isolation facility. However, Tyugelbaev was later returned to prison colony OV 156/18 where he remains today. On 1 April 2016, the Financial Police closed the case for “lack of evidence of a crime”. They claim that Tyubelbaev was not beaten but sustained the injuries during an epileptic fit. However, Tyugelbaev, has no medical history of epilepsy.

Recommendations:

• Express concern that the investigation conducted by the Financial Police into allegations that the prisoner Iskander Tyugelbaev was subjected to physical abuse during a routine search and seizure
operation in prison colony OV 156/18 in Eastern Kazakhstan in May 2015 was not conducted effectively.

- Call on the authorities to refer Iskander Tyugelbaev's case to the Special Prosecutors Unit at the Prosecutor General's Office, which should be tasked to investigate the case without any involvement of law enforcement agencies.

**UN Committee against Torture's Decision to effectively investigate Rasim Bayramov's allegations of torture still not implemented**

The case of Rasim Bayramov, who died of complications resulting from an illness he contracted in prison after an unfair trial marred by torture allegations, demonstrates the urgency of setting up a mechanism to promptly and effectively implement all decisions issued under the individual complaints procedures of United Nations (UN) treaty bodies regarding cases from Kazakhstan.

In 2008, police officers of the city of Rudny in Kostanay region detained Rasim Bayramov and allegedly kicked and beat him all over his body, pushed him off a chair, dragged him along the corridor by his hair, and threatened him with sexual abuse if he did not confess to having stolen some money and three bottles of beer from a local store. They deprived him of sleep at night and gave him nothing to eat or drink for over two days. Eventually, they reportedly forced him into signing a confession. Although Bayramov and his mother repeatedly complained about torture and procedural violations to local police and prosecution authorities, no effective investigation was opened into the allegations.

Bayramov turned to the United Nations (UN) Committee against Torture in May 2011, with the support of the Kostanay branch of the Kazakhstan International Bureau for Human Rights and Rule of Law and the Open Society Justice Initiative. In May 2014 the Committee ruled that his treatment at the hands of police amounted to torture, that Bayramov should receive reparation and that an effective investigation be conducted into the allegations of torture in order to bring to justice those responsible for abusing him. Thanks to this decision, a court in Kazakhstan ruled in December 2014 that he be given the equivalent of around EUR 260 for moral damages suffered as a result of torture. The authorities did not conduct an effective investigation into Bayramov’s allegations and the Prosecutor General's Office informed him in August 2015 that the case had been closed for “lack of evidence of a crime”. In February 2016, after Bayramov’s death and following a complaint by his lawyer, the Kostanay Regional Prosecutor’s Office reopened the case and referred it to the Special Prosecutors Unit at the Prosecutor General’s Office for investigation, but on 24 March the Special Prosecutors Unit closed the case for “lack of evidence of a crime”. The prosecutors failed to address the conclusions of a psychiatric examination stating that Bayramov’s allegations fully correspond with and are
supported by the psychological evidence found during a psychiatric examination that had been conducted in line with the standards of the Istanbul Protocol.

In the last few months of his life Rasim Bayramov was in a state of depression, suffering from his experience of abuse and feelings of helplessness in the face of continuing injustice.

Recommendations:

- Express concern about the case of Rasim Bayramov who died in February 2016 of complications resulting from an illness he contracted in prison after an unfair trial marred by torture allegations.
- Urge the authorities to promptly conduct an effective investigation into the allegations in order to bring to justice those found responsible, in line with the May 2014 Decision of the United Nations Committee against Torture.
- Establish a unified mechanism to implement all decisions that United Nations treaty bodies issue to Kazakhstan under their respective individual complaints procedures.

For further information on the case of Rasim Bayramov, refer to: http://iphronline.org/kazakhstan-justice-must-prevail-for-torture-victim-20150128.html