

# TREATY BODY MONITOR

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## COMMITTEE AGAINST TORTURE 41<sup>ST</sup> SESSION KAZAKHSTAN, 2<sup>ND</sup> REPORT 6-7 NOVEMBER 2008

Key facts .....	1
Information submitted to the Committee .....	1
State report.....	1
List of issues.....	2
NGO information.....	2
Themes and issues.....	3
Definition of torture .....	3
Torture and ill-treatment of detainees.....	4
Complaint mechanism for torture victims .....	4
Non-refoulement.....	4
Independence of the judiciary.....	5
Other issues .....	5
Conclusions and next steps .....	5

### Key facts<sup>1</sup>

Ratification	Reservations	Party to Optional Protocol?	Other core treaties ratified
1998	None	Yes	ICERD, ICESCR, CEDAW, CRC

### Information submitted to the Committee

#### State report

Kazakhstan submitted its 2<sup>nd</sup> report to the Committee against Torture (the Committee) on 17 January 2008.<sup>2</sup> Kazakhstan last appeared before the Committee on 9 May 2001.<sup>3</sup> The 2<sup>nd</sup> report was submitted three years

<sup>1</sup> The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

<sup>2</sup> CAT/C/KAZ/2 available at [www2.ohchr.org/english/bodies/cat/cats41.htm](http://www2.ohchr.org/english/bodies/cat/cats41.htm).

<sup>3</sup> All relevant documents from this session are available at [www2.ohchr.org/english/bodies/cat/cats24.htm#26<sup>th</sup>](http://www2.ohchr.org/english/bodies/cat/cats24.htm#26th).

late. Compiled by Kazakhstan's Ministry of Justice, the report emphasises recent legislative reform to prevent torture and other inhuman or degrading treatment. The Government reiterates its commitment to international human rights standards and to humanising criminal punishment. The brief 24-page report outlines the reform of the penal correction system and lists recently adopted legislative acts relevant to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). Further, the report asserts that torture is criminalised and defined in national legislation in accordance with the wording of the Convention. The State points out efforts of the Government to reduce the size of Kazakhstan's prison population and the improvement of treatment and conditions of detainees. While the report thoroughly discusses new regulations of the penal system, it fails to mention other relevant issues such as the *non-refoulement* of asylum-seekers and alleged abuse of political opposition leaders. There is no mention of areas where more improvement is needed.

### List of issues

After having studied the report, on 31 July 2008, the Committee provided its list of issues to the State.<sup>4</sup> The Committee sought clarification on the definition of torture under Kazakh law. Further, the Committee questioned the status of the public oversight committee and the function of the office of the Ombudsman. The Committee also sought clarification on juvenile justice standards and availability of redress and compensation to victims of torture. The State was also questioned on when it plans to ratify the Optional Protocol to the Convention. Kazakhstan notably ratified the Optional Protocol after the submission of the list of issues in October 2008.

The State did not provide a timely written response. The answers to the questions were made available to the Committee members in Russian only shortly before the examination. These were not posted online.

### NGO information

Amnesty International and a consortium of non-governmental organisations (NGOs) called NGOs of Kazakhstan<sup>5</sup> submitted **written reports** to the Committee.<sup>6</sup> Amnesty International was critical of Kazakhstan's violation of Article 3 of the Convention on the prohibition of *refoulement* of asylum-seekers from Uzbekistan and China. Furthermore, it was also concerned that the restrictive definition of torture limits its scope of criminal applicability. While Amnesty International acknowledges Kazakhstan's recent reform of the penitentiary system, it criticises that the majority of law enforcement officers do not abide by existing regulations. Amnesty International also criticises the absence of a *habeas corpus* type procedure allowing someone deprived of liberty to challenge the legality of such detention.

NGOs of Kazakhstan submitted a comprehensive 45-page report covering Kazakhstan's implementation of the Convention on an article by article basis. The report focuses on Article 2, the obligation to prevent torture, specifically in reference to lack of safeguards against torture during detention and arrest; use of unofficial places of detention; ineffective registration of detention; lack of safeguards during interrogation; and mistreatment of women and juveniles. The report is also critical over the absence of effective mechanisms to investigate complaints of torture and to ensure criminal prosecution of those guilty. The report provides background information on 15 cases of alleged torture and describes subsequent refusal by authorities to investigate cases. NGOs of Kazakhstan provided a thorough list of recommendations to the Government, including bringing the domestic definition of torture into compliance with the Convention, introducing further measures to guarantee protection from torture, and designating a specialised body to investigate allegations of torture and forced confessions.

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<sup>4</sup> CAT/C/KAZ/Q/2, available at [www2.ohchr.org/english/bodies/cat/cats41.htm](http://www2.ohchr.org/english/bodies/cat/cats41.htm).

<sup>5</sup> NGOs of Kazakhstan is a working group of the following organisations: Kazakhstan International Bureau for Human Rights and Compliance with the Rule of Law, Charter for Human Rights, Committee on Monitoring the Penal Reform and Human Rights, Feminist League, Penal Reform International, and Medianet.

<sup>6</sup> The NGO reports are available at [www2.ohchr.org/english/bodies/cat/cats41.htm](http://www2.ohchr.org/english/bodies/cat/cats41.htm).

At the beginning of the session, the coalition of NGOs of Kazakhstan gave an **oral presentation** on the situation of human rights in Kazakhstan and summarised its written report to the Committee.

## Themes and issues

The delegation of Kazakhstan was led by Mr Dulat Kusdavletov, the Vice-Minister of Ministry of Justice. He was supported by a high-level delegation consisting of representatives of the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Health, Agency against Financial and Corruption Crimes, and the National Centre of Human Rights.<sup>7</sup>

Mr Kusdavletov made the opening remarks to the Committee, in which he stressed Kazakhstan's liberalisation and discussed the challenges faced by the State in fighting terrorism. He explained that the Kazakh Government understands that all citizens, especially the vulnerable members of the population, must have access to their rights. Further, Mr Kusdavletov stressed Kazakhstan's main priorities as fighting corruption, terrorism, and slavery, with high emphasis on preventing torture. The establishment of the Institute of Civic Society and the current Parliamentary efforts to further bring Kazakh legislation in compliance with international standards were raised as examples of progress made. The delegation acknowledged remaining challenges to implementation and the maintenance of a transparent criminal justice system. The introductory statement set a cooperative tone for the discussion between the delegation and the Committee.

Because the delegation submitted its written responses only in Russian and no translations were made available to the Committee members, the Committee members had to re-ask all the same questions presented in the list of issues. This affected the quality and depth of the dialogue. While the delegation did provide detailed answers they did not always answer the questions directly, as was the case with questions on independence of the judiciary and alleged abuse of political opposition such as the Aliyev case.

## Definition of torture

Committee members expressed concern that the definition of torture in Article 347-1 of the Criminal Code does not contain all the elements of the Convention's definition in Article 1. Particularly, Committee member Mr Claudio Grossman pointed out that Kazakhstan's definition restricts the prohibition against torture to acts committed by 'public officials' and not to 'other persons acting in legal capacity'. It moreover omits acts that might result from instigation, consent, or acquiescence of a public official. Further, Committee member Ms Essadia Belmir was concerned about the provision in Kazakh law which prevents liability of torture if a public official is acting 'legally'. She asked the delegation to clarify this concept. The delegation did not address this question during the dialogue but promised to provide written answers to all unanswered questions.

In its concluding observations,<sup>8</sup> the Committee urges Kazakhstan to bring its definition of torture into full conformity with that of the Convention, and to ensure that all public officials can be prosecuted under Article 347-1 of the Criminal Code.

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<sup>7</sup> Other representatives included Mrs Madyna Zharbosunova, Special Envoy, Mr Abdrashid Zhukenov, Chairman of the Criminal Board of the High Court, Mr Aydar Tastemirov, Chief of the Internal Security Department of the Ministry of Internal Affairs, Mr Bolat Dembayev, Chief of Department on Supervision of Legality of Consideration of Criminal Cases in Courts of the State Office of Public Prosecutor, Mr Bakhytzhan Seksenbayev, Deputy Director of the Department of Medical Assistance of Ministry of Health, Mr Dulat Bayzhanov, Mrs Mugulsum Amirova, Head of the Experts Department of the National Centre of Human Rights, Mrs Asel Utegenova, Head of Department of Multicultural Cooperation of the Ministry of Foreign Affairs, Mrs Karligash Kondikerova, Chief Examiner of Department of International Law of the Ministry of Justice.

<sup>8</sup> CAT/C/KAZ/CO/2, available at [www2.ohchr.org/english/bodies/cat/cats41.htm](http://www2.ohchr.org/english/bodies/cat/cats41.htm).

## **Torture and ill-treatment of detainees**

The Committee was very concerned about reported physical and psychological abuse of detainees to force confessions. Particularly, Committee members questioned the delegation about reports of beatings of detainees with plastic bottles filled with water and allegations of sexual harassment. Mr Xuexian Wang inquired how the inadmissibility of forced confessions has been implemented in practice. In its answers, the delegation did not address the mentioned allegations, but merely explained the existing norms that prevent the use of forced confessions in court. The delegates emphasised that the courts are responsible for taking all measures to authenticate presented evidence and testimony. The delegation did not explain what checks exist in the judicial system to ensure such fair trial proceedings.

In its concluding observations, the Committee expresses concern over the consistent allegations of the frequent use of torture and ill-treatment committed by law enforcement officers. The Committee members urge the State to apply a zero-tolerance approach to the persistent problem. To accomplish this, the Committee recommends that Kazakhstan publicly and unambiguously condemn practices of torture and eliminate incentive for obtaining forced confessions during investigations. The State is also urged to guarantee that the Public Monitoring Commissions have the unlimited right to conduct unannounced visits to these facilities at their own initiative.

## **Complaint mechanism for torture victims**

In reference to wide-spread allegations of abuse of detainees by law enforcement officials, many of the Committee members questioned the delegation on existing complaint mechanisms for victims of torture and how such complaints against law enforcement officers are currently addressed. Committee member Mr Luis Gallegos Chiriboga expressed concern over the absence of independent and impartial mechanisms to investigate complaints of torture and asked about protection of victims. Committee member Ms Myrna Kleopas referred to the reports by NGOs that while over 100 complaints of torture were submitted by NGOs, none were investigated, in violation of the Convention. The delegation provided a brief response citing that Kazakhstan is currently reviewing Article 109 of the Criminal Proceedings to ensure timely investigation of complaints against police officers. Further, it mentioned two cases, that of Mr Fishenko and Mr Tarshilov, who were acquitted due to a court finding the relevant evidence inadmissible and resulting from mistreatment by police officers.

In its concluding observations, the Committee stresses that Kazakhstan should establish an effective mechanism for receiving complaints of torture and sexual violence, including in custodial facilities, and ensure that the prohibition of torture is included in training curricula of law enforcement officers.

## **Non-refoulement**

On *non-refoulement* of asylum-seekers, the Committee was concerned that Kazakhstan does not secure diplomatic assurances against torture for those deported to China and Uzbekistan. The Committee urged Kazakhstan to monitor the post-deportation situation of refugees and to ensure that anti-terrorist security measures are not used to justify *refoulement*. In its response, the delegation did not mention the publicised cases of rendition of asylum-seekers to Uzbekistan and China, but merely explained that rendition is under the mandate of the Prosecutor General. The Kazakh representatives also mentioned the two conditions for denial of extradition: if Kazakhstan provides political refugee for individuals in question, and if the crime for which extradition is requested is not a crime under Kazakh jurisdiction. At the same time, the delegation did not cite any cases of denial of extradition based on these conditions.

In its concluding observations, the Committee expresses further concern over the forcible return of asylum-seekers to Uzbekistan and China under unknown conditions, unknown treatment, and lack of information on

the current whereabouts of such persons. The Committee urges Kazakhstan to adopt a legislative framework regulating expulsion, *refoulement*, and extradition in fulfilment Article 3 of the Convention. Kazakhstan is further asked to prioritise the Convention over less protective bilateral or multilateral agreements.

### Independence of the judiciary

The Committee members also expressed concern over the independence of Kazakhstan's judiciary. Committee members Ms Belmir, Mr Abdoulaye Gaye, and Mr Fernando Mariño Menendez questioned the delegation on the independence of its judges. The delegation agreed that an independent judiciary is crucial for a democratic State; at the same time, it insisted that the independence of the Kazakh judiciary is ensured through appointment of judges by the President. Ms Belmir asked follow-up questions regarding this statement, pointing out that such a relationship between the President and the judiciary in fact contradicts the independent function of the justice system. She did not receive a satisfactory response. The State did acknowledge that there remains much work to be done to improve the professionalism and credibility of its judiciary. An example of recent reform cited by the delegation was the use of juries in some of Kazakhstan's courts. Also mentioned was the increase in requirements and professional experience for judges to practice.

In its concluding observations, the Committee reiterates its concern over the independence of Kazakhstan's judiciary especially in light of the President appointing all regional judges. The Committee recommends that Kazakhstan guarantee the independence of its judiciary by ensuring the separation of powers.

### Other issues

In light of Kazakhstan's conditional **chairing of the Organization for Security and Cooperation in Europe (OSCE) in 2010**, the Committee questioned Kazakhstan on its promised trajectory of reform. The delegation listed several institution-building initiatives, particularly on fighting human trafficking and creating an independent Ombudsman.

The Committee also allotted significant attention to the question of combating **trafficking in persons**. The Committee was pleased at the recent advancements in fighting the phenomena, but was still concerned over its continued prevalence and recommended that Kazakhstan ensure full enforcement of anti-trafficking legislation and implementation of the National Plan of Action.

The Committee expressed concern over the lack of examples of cases in which individuals received **compensation as victims of torture**. The Committee urged the State to provide compensation, redress, and rehabilitation to victims.

### Conclusions and next steps

The delegation was not able to answer all questions due to not having submitted its written responses and being limited by the time constraints of the interactive dialogue. Nevertheless, the Committee expressed its appreciation for the level of cooperation and openness to the process exhibited by the Kazakh delegation. The Committee further emphasised the need to train law enforcement officers and prosecute acts of torture. Kazakhstan's delegation also thanked the Committee for its comments and promised to provide unanswered questions in writing to the Committee.

Kazakhstan is invited to submit its 3<sup>rd</sup> periodic report by 21 November 2012.

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