



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

**Additional follow-up information provided by Kazakhstan on
the implementation of the concluding observations of the
Committee against Torture (CAT/C/KAZ/CO/2)***

[18 February 2011]

* In accordance with the information transmitted to State parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

1. In paragraph 7 of the concluding observations and recommendations, the Committee called on Kazakhstan to apply a zero-tolerance approach to the problem of torture and ill-treatment and to “publicly and unambiguously condemn practices of torture in all its forms” accompanied by a clear warning that those responsible for or complicit in such acts will “be held responsible before the law for such acts and subject to penalties”. It further called for the establishment of effective mechanisms for complaints of sexual violence, or the threat of such violence and for measures to “change the performance evaluation system of investigators so as to eliminate any incentive for obtaining confessions”. The emphasis in this recommendation was on action in response to the “consistent allegations concerning the frequent use of torture and ill-treatment” to extract confessions to be used as evidence in criminal proceedings. The Committee is pleased to learn of the adoption of an action plan to eradicate torture and a regulatory decision of the Supreme Court in December 2009. It was also very interested to learn from the 25 February 2010 reply to the Committee that there will be constant publicity in the mass media regarding human rights, particularly measures taken to warn against and prevent torture. In this connection, the Committee would appreciate it if your Government would forward copies of the advertisements and other mass media information which it has prepared and disseminated in this regard. If any of these items included statements or clarifications by leading officials of Kazakhstan, would you kindly inform the Committee? Also, please clarify what organs and media they have been published in and which of these are directed to the public and which to police, procurators and judges.

1. The Committee’s recommendations are available to the public in print form and on the Internet. They are posted on the Ministry of Justice website at www.minjust.kz/ru/node/9916.

2. The text of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is available to all citizens on websites, at libraries and on the law database of the Federal Legal Information Centre of the Ministry of Justice. The database is set up at all public service centres throughout the country and may be printed and handed out free of charge to citizens who so request. A request is granted promptly.

3. Furthermore, human rights digital libraries attached to local authorities and representative bodies have been created in nearly all provinces of Kazakhstan. The National Human Rights Commission under the Office of the President and the Office of the Commissioner for Human Rights (Ombudsman) provide information on the human rights situation annually in their reports. Human rights issues and measures taken to prevent and warn against torture are consistently covered in the electronic and conventional news media in the form of articles by journalists and clarifications provided by scholars and State officials alike. Their work is published in print at the national and provincial levels. Moreover, publications are posted on the websites of State bodies, including the Ministry of Justice, the Ministry of Internal Affairs and the Office of the Procurator-General, and those of non-governmental organizations. The information is aimed at a wide audience and is available to all citizens. Please find attached copies of relevant publications.

2. In addition, in the light of the continuation of allegations of abusive treatment, please provide the Committee with information on the number of cases alleging torture or ill-treatment of detainees, the number of personnel charged and how many of these have been investigated and with what results. Please clarify whether any such cases can be found to have resulted from the public campaign and whether any law enforcement personnel have been disciplined as a result.

4. Any violation of the constitutional rights and freedoms of citizens is subject to an official investigation. Persons guilty of using unlawful methods of investigation, interrogation, detention, remand in custody or arrest face not only disciplinary but also

criminal liability. It is worth noting that there has been a downward trend in the number of violations of the constitutional rights of citizens in recent years (428 cases in 2000 and 152 in 2008). In 2009, 122 cases of violations of the constitutional rights of citizens were recorded. All the cases were investigated. The investigations led to disciplinary action against 128 officers (56 of them senior officials). In 2008, two criminal cases involving torture were brought against internal affairs officers, who were handed various sentences of deprivation of liberty under article 347-1 of the Criminal Code.

5. In 2009, two criminal cases were brought against internal affairs officers for offences contrary to article 347-1 of the Criminal Code. In 2010, one officer of the penal system was convicted of using physical force against prisoners. Criminal cases involving excess of authority were brought against 10 officers of the penal system. Furthermore, disciplinary action was taken against 99 officers of the system for the incidents. In 2010, 60 criminal cases involving excess of authority (article 308 of the Criminal Code) and 3 criminal cases involving coercion to testify (art. 347) were brought against police officers.

6. Seven criminal cases involving torture (art. 347-1) were brought against police officers (three from the East Kazakhstan province Department of Internal Affairs, one each from the Akmola, Kostanay and North Kazakhstan province Departments of Internal Affairs and one from the Central Department of Internal Affairs for transport). Two of the cases were dismissed (one in connection with the death of the accused and the other because of reconciliation of the parties); one has been referred to court; officers have been convicted in one case; and three others are under investigation.

3. Your Government's reply also indicates that Parliament is considering bills on investigation, oversight and the grounds and procedures for arrest and detention. The Committee looks forward to receiving further, more detailed and specific information on the law and bills noted in the reply. In particular, would you kindly clarify whether Kazakhstan has reached a decision on revising the definition of torture of the Criminal Code to bring it into line with the Convention against Torture?

7. The bill on the grounds and procedures for detaining citizens provides for amendments to the Federal Act on the procedures and conditions for the detention in custody of persons suspected or accused of criminal offences. An article regulating the grounds and procedures for public oversight of special institutions of the internal affairs offices will be included. The bill also seeks to cover the grounds and procedures for the integration and rehabilitation of minors, and for the detention of persons in temporary holding facilities, detoxification stations, remand centres, special administrative detention centres and specialized medical institutions for the mandatory treatment of alcohol, drug and substance abuse, all of which are currently regulated by by-laws.

8. The bill also provides for reducing to 24 hours the period during which a person may be held in custody without the sanction of a procurator. Parliament is currently considering a bill to humanize criminal law and strengthen the guarantees of due process in criminal proceedings, by which the definition of torture will be brought into line with the Convention. This bill also provides for the reduction of criminal penalties and the decriminalization of offences that do not present a major threat to public security, including in the area of finance, those offences being reclassified as administrative offences and made punishable by greater administrative penalties, including through the introduction of administrative *res judicata*. The bill furthermore revises the criteria for determining the seriousness of individual offences and accordingly provides for lighter penalties. It also provides greater scope for non-custodial penalties, including fines, public service and restriction orders.

4. The Committee has expressed concern that allegations of threats to detainees, including of sexual abuse and violence against family members as well as to detainees,

have been reported. Please also clarify whether the Government intends to adopt measures to ensure in practice the establishment of prompt, impartial and effective mechanisms to receive and investigate complaints of torture or ill-treatment, including threats of and/or actual sexual violence. In this regard, what consideration has been given to the possibility of establishing an independent and effective oversight mechanism independent of the Office of the Procurator-General to conduct investigations?

9. In accordance with the Optional Protocol to the Convention, efforts are being made to establish a national preventive mechanism. Kazakhstan has chosen the “Ombudsman plus” model, whereby the Commissioner for Human Rights (Ombudsman) and non-governmental organizations are involved in the national preventive mechanism.

5. With regard to paragraph 9, the Committee noted with concern that basic legal safeguards are not effective in practice. Your response to this in your letter to the Committee also referred to the Supreme Court regulatory decision of 28 December 2009, entitled “On the application of the criminal and criminal procedural legislation on personal freedom and respect for the inviolability of human dignity, combating torture, violence or other cruel or degrading treatment or punishment”, which requires judges and procurators to ensure that any detention and subsequent conditions of detention are lawful. In this regard, the Committee requests additional information about the measures that have been taken in practice to ensure the fundamental safeguards of detainees from the moment of actual deprivation of liberty, in particular access to lawyers, notification of family members and access to independent medical examinations without the interference or presence of law enforcement agents or procurators.

10. Chapters 17 and 18 of the Code of Criminal Procedure regulate the work of investigating officers in apprehending criminal suspects, bringing them to the internal affairs authorities, detaining them in temporary holding facilities and conducting preliminary inquiries.

11. Article 68 of the Code of Criminal Procedure requires investigating officers to inform the suspect or accused promptly of his or her legal rights. Furthermore, Act No. 230-IV of 11 December 2009 introduced amendments to articles 68 and 69 of the Code, in accordance with which a suspect or accused person is entitled to be informed immediately of his or her rights by the person who has detained him or her or the criminal procuratorial body. The amendments (Act No. 149-IV of 7 April 2009) to the Act on State protection of parties to criminal proceedings set out the persons responsible for taking safety measures and expand the list of protected persons. An Act amending certain federal legislative acts on qualified legal assistance was adopted in December 2009; it provides not only for enhancing the role of lawyers in criminal proceedings but also for increasing the rights of injured parties, including the right to free legal assistance and compensation from the State for harm caused by an offence.

12. The amendments made to the Code reinforce the principle of the adversarial nature and equality of rights of the parties to criminal proceedings. Under the Act, a lawyer is admitted to criminal proceedings as soon as persons suspected of an offence are interrogated. This applies to all the parties to the proceedings.

13. Medical examinations of citizens, including detainees, are carried out by experts who serve in the public health-care system. There is no reason to create a separate health-care service. Medical examination experts are not part of the internal affairs or justice system. Domestic law provides for the right of the parties concerned to call on accredited independent experts if conflicts arise. Currently, 20 independent expert organizations are operating under the National Association of Health Professionals. It is also worth noting the

adoption of Presidential Decree No. 1039 on 17 August 2010, by which the functions and powers of the Ministry of Internal Affairs relating to the work of detoxification stations have been transferred to the Ministry of Health, except those of bringing in persons who have disturbed the public peace.

6. The Committee would also be grateful to receive further information regarding any measures taken or being considered to be taken to register persons deprived of their liberty from the very moment of apprehension and to record periods of pretrial detention and investigation so as to ensure that all official personnel who have been engaged in the arrest, transport, questioning and detention of the suspect are noted in the register. Has any procurator or judge been sanctioned for failing to conduct an investigation?

14. No information is available.

7. Regarding paragraph 18, the Committee would appreciate receiving information on the analysis of the jurisprudence of cases of torture as indicated in your reply.

15. No information is available.

8. We would also be grateful for clarification on measures to ensure that all acts of torture are criminalized in accordance with the requirements of the Convention.

16. A number of laws and regulations to combat torture and protect the rights of prisoners have been adopted. They include the following:

(a) Federal Act amending the law on further improvements to the penal and correctional system, signed on 10 December 2009. The Act provides for the possibility of detaining in a single correctional colony convicts under various regimes in lockable premises (cells) by creating segregated maximum security sections. This will address the problem of institutions located in areas far away from prisoners' families and allow for regular visits. Furthermore, the Act provides for mechanisms to institute rigorous imprisonment as a form of criminal punishment and measures to increase the effectiveness of non-custodial penalties and improve the legal and social protection of prison personnel;

(b) Presidential Decree No. 1039 on measures to increase the effectiveness of law enforcement activities and of the judicial system of 17 August 2010, by which the Government has been instructed to draft and submit bills to Parliament by the end of the year for the purpose of implementing the recommendations of the Committee;

(c) The 2010–2012 national plan of action to implement the recommendations of the Committee, approved by Government Decision No. 71 in February 2010;

(d) Supreme Court regulatory decision No. 7 on implementation of the provisions of criminal and criminal procedure law relating to respect for personal liberty and the inviolability of human dignity and to the prevention of torture, violence and other cruel or degrading treatment or punishment, adopted on 28 December 2009. The decision clearly defines the legal framework for criminal liability for the use of torture and excess of authority;

(e) Instructions for the verification of reports of torture and other unlawful methods involving the cruel treatment of persons involved in criminal proceedings and held in special institutions and the prevention of use of such methods, approved by Order No. 7 of the Procurator-General's Office on 1 February 2010. The instructions provide for the direct participation of the procurator in verifying reports and investigating criminal cases of torture and other illegal methods of inquiry and investigation involving the ill-treatment of parties to criminal proceedings;

(f) The Minister of Justice (Order No. 30 of 1 February 2010), the Minister of Health (No. 56 of 29 January 2010), the Minister of Internal Affairs (No. 41 of 1 February 2010) and the Chairperson of the National Security Committee (No. 15 of 30 January 2010), by agreement with the Procurator-General's Office (1 February 2010), confirmed the joint order on ensuring the mandatory participation of forensic specialists in medical examinations of persons held in temporary holding facilities, remand centres and institutions of the penal system to determine the presence of signs of bodily injury. The order provides for the timely and proper medical examination of persons in temporary holding facilities and remand centres and persons who have reported that they have sustained bodily injury;

(g) A joint order on cooperation between law enforcement bodies and civil society actors to verify complaints of torture and other unlawful methods of inquiry and investigation and prosecute these cases was approved by the Minister of Justice (Order No. 31 of 2 February 2010), the Procurator-General (No. 10 of 3 February 2010), the Minister of Internal Affairs (No. 46 of 2 February 2010), the Chairperson of the National Security Committee (No. 16 of 2 February 2010) and the Chairperson of the Agency to Combat Economic Crime and Corruption (No. 13 of 2 February 2010). The order provides for effective and objective verification, with the participation of representatives of civil society, of complaints of torture and other unlawful methods of inquiry and investigation;

(h) Rules for the operation of general-education and vocational schools in correctional institutions of the penal system, approved by Order No. 169 of the Minister of Justice of 21 December 2009;

(i) Order No. 194 of the Minister of Justice on approval of the rules for visiting penal institutions and remand centres of 28 June 2010. The rules set out the procedures for visits by civilians, representatives of the mass media and others in correctional institutions and remand centres;

(j) Order No. 64 of the Minister of Justice on approval of the rules for the application of penalties in the form of rigorous imprisonment in remand centres of the judicial authorities penal system of 25 February 2010. The rules regulate the procedure for carrying out penalties in the form of rigorous imprisonment;

(k) A Government decision was adopted on 31 May 2010 on the reorganization of State institutions of the Ministry of Justice Committee of the Penal Correction System providing for an increase in the number of inspections to 591 in 2010 and to 592 in 2011 to give greater scope for imposing non-custodial penalties as an alternative to deprivation of liberty.

17. The following bills have been drafted:

(a) Bill amending certain legislative acts on the establishment of national preventive mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment. The bill provides for the establishment of national preventive mechanisms to prevent torture in places of restriction of liberty;

(b) Bill amending certain legislative acts on the continued humanization of criminal legislation and strengthening guarantees of due process in criminal proceedings. The bill provides for the decriminalization of certain elements of minor and ordinary offences and for a definition of torture (Criminal Code, art. 347-1) in accordance with the definition under the Convention. Provision has also been made for alternative jurisdiction under article 347-1 to investigate criminal cases of torture committed by law enforcement officials (for example, a case involving police officers would be reviewed by financial police bodies). The list of offences subject to non-custodial penalties has been expanded;

(c) Bill amending certain legislative acts concerning probation, providing for the establishment under the Ministry of Justice Committee of the Penal Correction System of a national model of probation for non-custodial penalties;

(d) Draft order of the Minister of Justice on amending certain orders of the Minister of Justice. The draft is aimed at banning torture, ensuring the decent treatment of prisoners and bringing the protection of prisoners' rights, including the right to health care, education, work and leisure, into line with international standards. In February 2010, the Ministry of Internal Affairs, together with other relevant bodies, approved a joint order on cooperation among law enforcement bodies and civil society actors in investigating complaints of torture and other unlawful methods of inquiry and investigation and on criminal prosecution of such cases in order to ensure a thorough and objective review of reports and information on torture and other unlawful methods of investigation and inquiry and to prevent illegal interference in the activities of investigators or persons conducting inquiries.

18. The order provides for measures to increase the effectiveness of the work of reviewing complaints and reports of torture and other unlawful methods of conducting inquiries and investigations. It will improve the quality of the decisions taken, enhance the image of the State services, build citizens' trust in State bodies, promote human rights and set uniform criteria for registering appeals. The Ministry of Internal Affairs regularly sends it regional branches newsletters, surveys and guidelines on the investigation of various categories of offences, including those involving juveniles, the inspection of reported incident scenes and other measures to prevent the use of unlawful methods of investigation and inquiry and unlawful detention. Furthermore, the Ministry has drafted an instruction on the prevention and prohibition of torture. Postboxes for letters, complaints and proposals from citizens have been set up at branches of the migration and traffic police services and at police stations, and hotlines have been installed in every internal affairs unit to ensure that unlawful acts by internal affairs officials are dealt with promptly.

19. The Human Rights Centre, together with the Charter for Human Rights, consistently monitors the special institutions of the internal affairs offices. During a check in 2009 of the special institutions of the Department of Internal Affairs in Astana, Almaty and Almaty province, human rights defenders gave a positive assessment of the observance of the rights of citizens, the conditions of detention and the level of amenities and medical care, and their compliance with international standards. A Community Board for Police Oversight, reporting to the Ministry of Internal Affairs, was established in 2007; it includes prominent national public figures, members of Parliament, lawyers and journalists, and aims to uphold the principle of transparency of work and public accountability of the police. Similar community boards have been established in the regional departments of internal affairs and others operate in all the municipal and district branches of the internal affairs bodies in Astana, Almaty and the provinces.

20. The community boards consistently take up the question of the rule of law and the protection of the rights and freedoms of citizens. The boards have helped to forge close contacts with civil society, identify problems in the relations between the public and the police and avert potential negative phenomena.

9. Please provide information on the charges under earlier provisions 308 and 347 of the Criminal Code as well as of any cases of torture under the new provision 347-1. Also, please provide data on sentences meted out under each and comment on whether they are commensurate with the gravity of the crimes of torture and ill-treatment. Please provide data on cases of prosecutions, trials and convictions thereof.

21. Any violation of the constitutional rights and freedoms of citizens is subject to an official investigation. Persons guilty of using unlawful methods of investigation,

interrogation, detention, remand in custody or pretrial detention face not only disciplinary but also criminal liability. It is worth noting that there has been a downward trend in the number of violations of the constitutional rights of citizens in recent years (428 cases in 2000 and 152 in 2008). In 2009, 122 cases of violations of the constitutional rights of citizens were filed. Investigations were conducted into all the cases. The investigations led to disciplinary action against 128 officers (56 of them senior officials).

22. In 2008, two criminal cases involving torture were brought against internal affairs officers, who were sentenced to various terms of deprivation of liberty under article 347-1 of the Criminal Code. In 2009, two criminal cases were brought against internal affairs officers for offences contrary to article 347-1 of the Criminal Code. In 2010, one officer of the penal system was convicted of using physical force against prisoners. Criminal cases involving excess of authority were brought against 10 officers of the penal system. Furthermore, disciplinary action was taken against 99 officers of the system for the incidents.

23. In 2010, 60 criminal cases involving excess of authority were brought against police officers under article 308 and 3 criminal cases involving coercion to testify under article 347 of the Criminal Code. Seven criminal cases involving torture (art. 347-1) were brought against police officers (three from the East Kazakhstan province Department of Internal Affairs, one each from the Akmola, Kostanay and North Kazakhstan province Departments of Internal Affairs, and one from the Central Department of Internal Affairs for transport). Two of the cases were dismissed (one in connection with the death of the accused and another because of reconciliation of the parties); one has been referred to court; officers have been convicted in one criminal case; and three others are under investigation.

10. What additional educational efforts have been made to ensure that judges, procurators, and lawyers are fully apprised of the guidelines and the Supreme Court instructions, and have they been made mandatory? Also, please clarify what topics regarding the prohibition against torture are covered in the training on human rights at the Procurator-General's Office and the Ministry of Internal Affairs cited in your reply.

24. Article 116 of the Code of Criminal Procedure establishes that factual information may not be used as evidence if such information has been obtained by means that contravene the provisions of criminal procedure legislation and that, by infringing the rights of participants in proceedings as guaranteed by law or depriving such persons of those rights, or by violating other rules of criminal procedure during the investigation or prosecution of a case, have influenced or may influence the reliability of the factual information obtained, including the use of torture, violence, threats or deception or other illegal acts.

25. On 28 December 2009, the Supreme Court issued regulatory decision No. 7 on implementation of the provisions of criminal and criminal procedure law relating to respect for personal liberty and the inviolability of human dignity and to the prevention of torture, violence and other cruel or degrading treatment or punishment. The decision is of a regulatory nature and must be applied by all courts of Kazakhstan, in accordance with the Act on laws and regulations.

26. The decision clearly defines the legal framework for criminal liability for the use of torture and excess of authority. It also establishes that judges may not in their work make use of information declared by the accused person to have been obtained from him or her using torture or other cruel or degrading treatment. Claims filed by accused persons during proceedings to the effect that they have been subjected to torture must be registered with the court and transmitted to the police agencies, which are required to institute criminal proceedings and initiate an investigation into the torture claim.

11. And similarly, what specific topics are addressed in the advanced training of judges in human rights, as indicated in the reply, how many such classes are required and what amount of time do they cover? Finally, please provide the number of judges and procurators who took the courses and in what locations.

27. No information is available.

12. As regards paragraph 29, the Committee would appreciate receiving clarification on how the Supreme Court's regulatory decision of 28 December 2009 is effective in ensuring the courts' inadmissibility of evidence extracted under torture. Please provide the Committee with the number of the complaints of torture by defendant and crime, the number of cases where the courts rendered confessions inadmissible as a result of these complaints, the number of criminal and disciplinary proceedings taken as a result, the sanctions imposed and the remedies and reparations granted to the victims. Has there been a review of past cases of persons currently imprisoned on the basis of confessions and will such cases be re-examined or dismissed because of the admission of coerced evidence? Please clarify whether the rule in the Supreme Court's regulatory resolution about the exclusion of alleged coerced evidence will be formalized in the Criminal Code.

28. There is no need to amend the Criminal Code as article 116 of the Code of Criminal Procedure establishes that factual information may not be used as evidence if such information has been obtained by means that contravene the provisions of criminal procedure legislation and that, by infringing the rights of participants in proceedings as guaranteed by law or depriving such persons of those rights, or by violating other rules of criminal procedure during the investigation or prosecution of a case, have influenced or may influence the reliability of the factual information obtained, including the use of torture, violence, threats or deception or other illegal acts. Torture itself is a criminally punishable offence.

13. Please also provide information, particularly on cases where the right to defence counsel has been waived, as to measures taken to ensure, in accordance with the Convention, that any statement which is established to have been made as a result of torture shall not be invoked in any proceeding, except against a person accused of torture as evidence that the statement was made, as required by article 15.

29. There are no official statistics on such cases. The accused or suspect may not waive his or her right to counsel under basic criminal procedure.
