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EXECUTIVE SUMMARY

This briefing outlines Amnesty International's main concerns in advance of the United Nations (UN) Human Rights Committee's review of Kazakhstan's second periodic report during its 117th session in June 2016.

Torture and other ill-treatment (Arts. 2 and 7) by members of law enforcement bodies and prison authorities remain largely unchecked and unpunished, despite positive amendments included in the new Criminal Code and Criminal Procedure Code (January 2015). While criminal investigations are now routinely instigated following a complaint of torture or other ill-treatment, investigations for the most part are perfunctory, marred by what are often shared interests between police and prosecutors, and a default position that the victim is not telling the truth. Investigations can drag on for months or even years, during which time victims, their families and their legal representatives can face intimidation and harassment, with investigators eventually concluding that no torture or other ill-treatment has taken place, despite compelling evidence to the contrary. Inevitably, this leaves victims exhausted and demoralized, with many abandoning their complaints or other victims never coming forward at all; this in turn helps to perpetuate a climate of impunity for torture and other ill-treatment. Special Prosecutor's Units, whose remit includes the investigation of allegations of torture (as defined in the Criminal Code), have succeeded in bringing successful prosecutions in a number of cases,¹ but their involvement in torture investigations remains inconsistent.

Despite repeated calls to investigate the human rights violations that occurred in connection with the demonstrations in Zhanaozen in 2011 (Arts. 2, 6, 7, 14(g) and 21), most recently from the UN Committee against Torture in 2014 and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2015, to date the Kazakhstani authorities have not fully investigated reports of excessive use of force and torture and other ill-treatment by law enforcement officers against those involved in the demonstrations. Investigations into allegations of torture and other ill-treatment made at the time were inadequate, partly because they were carried out by the Internal Investigations Department of one of the law enforcement agencies whose officers were among those accused of violating the rights of protestors who were detained. The judge presiding at the trial of those accused of organizing or participating in the demonstrations dismissed the allegations as attempts by the defendants to avoid responsibility for their crimes.

The authorities in Kazakhstan have shown their commitment to monitoring conditions of detention and preventing torture and other ill-treatment (Arts. 7 and 10) through their support to the National Preventative Mechanism (NPM) and to civil-society led Public Monitoring Commissions (PMCs). However, both bodies face restrictions on which institutions they can visit, and do not have the right to make unannounced visits. Both bodies are also under-resourced, and the independence of the NPM is compromised by the fact that it reports to the Ombudsman, a post directly appointed by the President.

The right of individuals to a fair trial (Art. 14) is compromised by restricted access to legal counsel. Lawyers working on cases of torture or other ill-treatment reported to Amnesty International that they had on occasion faced obstruction, intimidation, and harassment. This included not being able to talk to their clients in confidence, as well as representatives of prison administrations attending court hearings en masse in an attempt to intimidate victims and their legal representatives.

¹ At a meeting between AI delegates and representatives of the Office of the Prosecutor General in Astana on 2 March 2016, the head of the Special Prosecutor's Unit state that in 2015, of 640 criminal cases of torture that were registered, 250 were investigated by the SPUs; in the same year, 13 investigations of reports of torture by SPUs led to prosecution, compared to just one led by other investigators.

Restrictions on freedom of expression (Art. 19) include attempts to silence or close down critical voices in the media, with the closure of independent news sites and publications on national security or administrative grounds, as well as prosecutions targeting individual journalists and editors. The authorities have also used legal powers included in the 2014 Communications Law to block access intermittently or permanently to Kazakhstan-based and international news sites on the grounds of national security. In addition, authorities appear to be using Article 174 of the Criminal Code – which specifies criminal sanctions for vaguely worded offences of inciting “social, national, clan, class or religious discord” – to silence dissent and limit the right of people in Kazakhstan to voice critical opinions, with several people facing criminal investigations and prosecutions for inciting national “discord” for posts made on social media sites. This is an apparent attempt to close down social media spaces as an arena where people in Kazakhstan can express themselves (relatively) freely, in the absence of independent media outlets, and restrictions on public protest.

Freedom of peaceful assembly (Arts. 19 and 21) remains heavily restricted, with administrative penalties (including administrative detention) and criminal penalties in place for violating the strict rules on holding assemblies. Authorities have also used “preventative” administrative detention to stop peaceful protests from going ahead, most recently to stop people joining protests against unpopular land reforms, which took place across the country in April and May of this year. NGOs fear increasing restrictions on the right to freedom of association (Arts. 19 and 22), following the establishment of a central “operator” to raise funding and administer state and non-state funds to NGOs, including funding from outside of Kazakhstan.

Discriminatory (Arts. 2, 19 and 26) draft legislation “On Protection of Children from Information Harming their Health and Development (Law on Child Protection)” contains sanctions for “propaganda of non-traditional sexual orientation” among minors. While the legislation was dismissed by the Constitutional Council in May 2015, the initiators of the law have vowed to bring it back before parliament. The possibility that it might return has the effect of stifling open discussion of LGBTI rights in Kazakhstan, contributing to a negative environment in regard to LGBTI people and the issues that they face.

IMPUNITY FOR TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING PUNISHMENT (ARTS. 2 AND 7)

The new Criminal Code² and Criminal Procedure Code,³ which came into force in January 2015, include positive amendments, such as: an increase in the maximum penalty for torture to 12 years; the abolition of the statute of limitations in relation to cases of torture; and the exclusion of those charged with or convicted of torture from amnesties. In addition, the amendments include provisions that allegations of torture or other ill-treatment should be automatically registered and investigated as criminal offences, and by a different agency from the one whose officers are accused of abuse (a

² Уголовный Кодекс Республики Казахстан [Criminal Code of the Republic of Kazakhstan], law № 226-V ЗРК, 3 July 2014, promulgated 1 January 2015.

³ Уголовно-Процессуальный Кодекс Республики Казахстан [Criminal Procedure Code of the Republic of Kazakhstan], law № 231-V ЗРК, 4 July 2014, promulgated 1 January 2015.

change that had in fact been incorporated into the previous Criminal Code in 2011). This nullifies the previous system whereby all complaints of torture or other ill-treatment were subjected to an initial internal screening (usually carried out by the same agency whose officers were accused of the abuse – see the account of the failures in the investigation of reports of torture and other ill-treatment following the events in Zhanaozen, detailed below). That initial screening often concluded that no torture or other ill-treatment had taken place (despite strong evidence to the contrary) or that the perpetrators could not be identified, resulting in the dismissal of most complaints. While the Prosecutor General had issued instructions that prosecutors should “open a criminal investigation into every incident of torture” in 2012, codifying this provision was nevertheless a very welcome step. Another positive step was the extension of the mandate of the Special Prosecutor’s Units (SPU) in 2011 to give them the power to lead the investigation in all cases involving allegations of torture.⁴ Further, a decree issued by the Prosecutor General in October 2015 states that any allegation of torture or ill-treatment categorised as a complaint of procedural “wrongdoing” (a lesser offence) against law enforcement or prison officials should automatically be reclassified as a criminal complaint of torture.⁵

However, Amnesty International’s research on impunity for torture and other ill-treatment in Kazakhstan (detailed in the report *Dead End Justice: Impunity for Torture in Kazakhstan* - Index: EUR 57/3345/2016) has found that it remains extremely difficult for victims of torture or other ill-treatment to obtain justice. The official complaints process, the failure to investigate allegations of torture and other ill-treatment, and the appeal procedures against such inaction are onerous and contain many loopholes that allow perpetrators to evade justice, and leave victims exhausted and demoralized, with many abandoning their complaints or other victims never coming forward at all. As a result, the use of torture and other ill-treatment by members of law enforcement bodies in Kazakhstan remains largely unchecked and unpunished.

Interviews which Amnesty International carried out with lawyers in the course of its research in 2015 revealed that even in cases where a criminal investigation is opened immediately (as should now routinely be the case under the new Criminal Procedure Code), a thorough and impartial investigation is not guaranteed and numerous barriers obstruct redress for victims of torture and other ill-treatment. Prosecutors and other agencies tasked with investigating cases of torture and other ill-treatment rarely believe the victims’ allegations, adopting the default position that no torture or other ill-treatment has taken place and that the complainant has made the allegation up to avoid responsibility for their crime. This assumption that victims are lying is a factor underlying the failure of investigators to collect and document evidence, and the tendency of prosecutors to disregard forensic or medical evidence submitted by complainants or their lawyers. Shared interests within law enforcement bodies are also a significant barrier to effective investigations, as law enforcement officials depend on their colleagues in other agencies for assistance with the investigation of other crimes. This means that when officials from one agency are called upon to investigate complaints of torture and other ill-treatment made against officials in another agency, they have little interest in jeopardizing this mutually dependent relationship by exposing torture and other ill-treatment; the two respective agencies are still part of the same system, and are disinclined to take steps that might be seen as undermining each other. As a result, in the majority of cases, the respective agencies conclude that there is no evidence of wrongdoing by law enforcement officials from the counterpart agency, even when the allegations of torture and other ill-treatment are

⁴ Special Prosecutor’s Units (SPUs) were originally established to deal with a small number of complicated and high-profile cases at their own discretion. They are a distinct prosecutorial division within the Prosecutor General’s Office.

⁵ Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan* (Index: EUR 57/3345/2016), London, 2016, <https://www.amnesty.org/en/documents/eur57/3345/2016/en/>. Unless otherwise stated, information in this section is taken from this report.

supported by strong evidence.

A recent development that lawyers reported to Amnesty International is that alleged cases of torture and other ill-treatment are now being automatically registered for criminal investigation, but are then getting “stuck” with an investigating agency for many months, with no time limit for conclusion of the investigation. During this period, harassment and intimidation of victims, their lawyers and families by the law enforcement officers who have been accused of torture or other ill-treatment in some cases results in their withdrawing the allegations. This is particularly the case for prisoners who make allegations of torture or other ill-treatment, as there are currently no effective safeguards in place within the prison system to protect complainants and witnesses from retaliation from staff and other inmates under the acquiescence of prison administration.

Recently, law enforcement agencies also appear to be exploiting provisions in the new Criminal Procedure Code that allow them not to start a criminal investigation into any alleged crime when a statement lacks sufficient detail on the facts of the crime alleged, or to abandon a criminal investigation if their preliminary investigations reveal a lack of corroborating evidence. This is a common occurrence in regard to allegations of torture or other ill-treatment, as in practice, investigators appear to require a higher standard of credibility for cases of torture and other ill-treatment than for other crimes. As a result, reports of torture or other ill-treatment are more likely to be declared inadmissible due to lack of evidence. Another development observed since the introduction of the new Criminal and Criminal Procedure Codes is the apparent punitive use of criminal investigations under Article 419 of the Criminal Code for “false reporting of a crime” against those whose allegations of torture or other ill-treatment have been investigated and deemed to be unfounded. In its commentary in response to Amnesty International’s recent research report (*Dead End Justice: Impunity for Torture in Kazakhstan* - Index: EUR 57/3345/2016), the Office of the Prosecutor General stated that when an investigation into a complaint of torture or other ill-treatment is terminated due to lack of evidence, prosecutors automatically open criminal proceedings against the complainant for “false reporting of a crime”, for which the penalty is between three and seven years’ imprisonment. According to the Office of the Prosecutor General, of 97 cases of “false reporting of a crime” relating to allegations of torture or other ill-treatment that have been investigated, 10 have already proceeded to court.⁶

Special Prosecutor’s Units (SPUs) are part of the Prosecutor General’s Office, but function as a distinct prosecutorial division; they report directly to the Prosecutor General. There are regional SPUs across Kazakhstan, however these units often cover a large area, and they are not present in every region.⁷ Originally established to investigate or supervise the investigation of a small number of complicated and high-profile cases at their own discretion,⁸ in 2011 their mandate was extended to include the power to investigate all cases involving allegations of torture (as defined in the Criminal Code).⁹ The SPUs can either carry out investigative tasks themselves or oversee the investigation carried out by another law enforcement agency. As of mid-2015, SPUs were involved in the majority

⁶ Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*, Annex 1. The Office of the Prosecutor General did not provide a timeframe for these cases.

⁷ At a meeting with representatives of the Office of the Prosecutor General in Astana on 2 March 2016, the head of the Special Prosecutor’s Unit stated to AI delegates that there were 87 Special Prosecutors for the whole country, of whom 20 were based in the capital Astana.

⁸ No definitive list exists detailing which crimes SPUs should investigate.

⁹ Under Decree No.22 of the Prosecutor General of the Republic of Kazakhstan (7 March 2012), torture was added to the list of priority list of crimes to be investigated by Special Prosecutors. Coalition of NGOs of Kazakhstan against Torture, *Борьба с пытками в Казахстане: справочная информация [The struggle against torture: background information]*, Almaty, 2015, p.5.

of cases of torture and other ill-treatment that had reached the stage of criminal investigation, according to the Coalition of NGOs of Kazakhstan against Torture.¹⁰ However, Amnesty International's research has found that the involvement of the SPUs in investigation of torture or other ill-treatment is not consistent, and nor is the quality of their investigations. In many cases the SPUs are not proactive in investigating complaints, despite being mandated to do so by by-laws. Instead, SPUs seem to see their role as supervising investigations rather than being responsible for carrying them out. In this supervisory role, the SPUs have been over-reliant on the conclusions of investigations carried out by the Internal Investigation Departments of law enforcement agencies, or have referred cases back to the agency whose members are accused of torture or other ill-treatment for further investigation, rather than stepping in to conduct an independent investigation. The SPUs, too, are prone to prioritizing shared interests with the agencies of law enforcement over effective and impartial investigations of allegations of torture and other ill-treatment. Amnesty International has recommended that authorities should clarify the mandate of the SPUs to specify that they should: take charge of the investigation of all cases involving allegations of torture and other ill-treatment; and be actively involved in the investigation of allegations themselves, rather than delegating all investigative work to law enforcement agencies acting under their supervision. Encouragingly, this recommendation was accepted at a meeting of Amnesty International Delegates with representatives of the Office of the Prosecutor General in March 2016.¹¹

FAILURE TO ADEQUATELY INVESTIGATE HUMAN RIGHTS VIOLATIONS IN CONNECTION WITH THE ZHANAOPEN EVENTS (ARTS. 2, 6, 7, 14(G) AND 21)

To date the authorities have not fully and effectively investigated allegations of human rights violations committed in connection with the events in Zhanaozen in December 2011, during which at least 15 people were killed¹² and over 100 were seriously injured when the police used excessive force. In addition to reports of excessive use of force, law enforcement officials reportedly carried out torture and other ill-treatment against those involved in the demonstrations, resulting in the death of one detainee. Both the UN Committee against Torture in its Concluding Observations on Kazakhstan's third periodic report (2014),¹³ and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (who visited Kazakhstan in January and August 2015) have called for full and effective investigations.¹⁴

Most of the 37 defendants put on trial in March 2012 in the regional capital Aktau (accused of organizing or participating in violence in connection with the demonstrations in Zhanaozen) alleged that they were tortured or otherwise ill-treated in detention by security forces in order to extract "confessions", which they then retracted in court.¹⁵ The torture methods described by the

¹⁰ Coalition of NGOs of Kazakhstan against Torture, «Борьба с пытками: достаточно ли мы делаем?» Отчет Коалиции НПО Казахстана против пыток [“The struggle against torture: are we doing enough?” Report of the Coalition of NGOs of Kazakhstan against Torture], Almaty, June 2015, p.7.

¹¹ See: Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*, Annex 1.

¹² This figure is disputed. In their response to Amnesty International's report *Dead End Justice: Impunity for Torture in Kazakhstan*, representatives of the Office of the Prosecutor General stated that only 14 people died. See: Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*, Annex 1.

¹³ United Nations Committee against Torture (UN CAT), “Concluding observations on the third periodic report of Kazakhstan”, CAT/C/KAZ/CO/3, Geneva, 12 December 2014.

¹⁴ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to Kazakhstan*, A/HRC/29/25/Add.2, Geneva, 2015, p.20.

¹⁵ For more information, see: Amnesty International, *Kazakhstan: Progress and nature of official investigations called into question 100 days after violent clashes between police and protesters in Zhanaozen*, (Index: EUR 57/001/2012), London, 2012, <https://www.amnesty.org/download/Documents/24000/eur570012012en.pdf>;

defendants – which included accounts of being stripped naked, made to lie or crouch on a cold concrete floor, doused with cold water, and beaten and kicked by security officers, often to the point of losing consciousness – were consistent with the allegations made by many others who had also been detained but were subsequently released without charge. Ten of the witnesses for the prosecution withdrew their testimonies against the defendants during the trial proceedings and complained that they had been tortured or otherwise ill-treated into giving evidence implicating the defendants. However, instead of a full and effective investigation, these allegations of torture and other ill-treatment made at the trial were passed for internal screening (*proverka*) to the Internal Investigations Department of the Ministry of Internal Affairs (MVD), the agency whose officers were among those accused of perpetrating the torture and other ill-treatment. The Internal Investigations Department of the MVD dismissed as unfounded all the allegations regarding the use of torture or other ill-treatment; at a subsequent court hearing in May 2012, the court did not question the objectivity of the review carried out by the Internal Investigations Department and the trial of the defendants continued on the assumption that no torture or other ill-treatment had occurred.¹⁶ Despite lawyers for the victims of torture and other ill-treatment requesting information about the screening review, no details were made public or otherwise available (including to lawyers) and the MVD Internal Investigations Department provided only general replies about the lack of evidence against the alleged perpetrators.

The judge presiding at the trial dismissed complaints of torture or other ill-treatment made by defendants, saying that defendants who raised allegations of torture and ill-treatment during court proceedings only did so in order to avoid responsibility for the crimes that they had committed; this was despite the fact that the allegations were reiterated under oath, and were consistent with accounts given by others who had been detained and then released.¹⁷

RECOMMENDATIONS

Amnesty International recommends that authorities in Kazakhstan should:

- Ensure that the rule of automatic registration of all credible reports of torture or other ill-treatment as a crime is applied consistently, and in particular, once reported, the complaint of torture or other ill-treatment is investigated promptly and thoroughly;
- Protect victims and witnesses of torture or other ill-treatment from harassment and intimidation from law enforcement and prison officers. In particular, develop mechanisms to ensure that prisoners are kept safe from reprisals by prison staff and other inmates under the acquiescence of prison administration while their complaints of torture or other ill-treatment are being investigated;
- Cease the practice of automatically opening criminal proceedings for “false reporting of a crime” (Article 419 of the Criminal Code) in cases where the investigation of a complaint of torture has been terminated due to lack of evidence; and
- Open a full, impartial, and effective investigation into the excessive use of force and of torture and other ill-treatment by law enforcement officers against those involved in the demonstrations in Zhanaozen in 2011, as called for by the UN Committee against Torture and by the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

and: Amnesty International, *Old Habits: The routine use of torture and other ill-treatment in Kazakhstan*, (Index: EUR 57/001/2013), London, 2013, <http://www.amnesty.org/fr/library/info/EUR57/001/2013/en>.

¹⁶ Amnesty International, “Kazakhstan Submission to the United Nations Committee Against Torture, 53rd Session of the United Nations Committee against Torture (3-28 November 2014)”, (Index EUR 57/002/2014), London, 2014, <https://www.amnesty.org/en/documents/eur57/002/2014/en/>, p.12.

¹⁷ Amnesty International, *Old Habits: The routine use of torture and other ill-treatment in Kazakhstan*.

MONITORING CONDITIONS OF DETENTION AND PREVENTING TORTURE AND OTHER ILL- TREATMENT (ARTS. 7 AND 10)

LIMITATIONS ON THE NATIONAL PREVENTATIVE MECHANISM AND ON PUBLIC MONITORING COMMISSIONS

The establishment of the National Preventative Mechanism (NPM) in 2014, overseen by the Office of the Human Rights Ombudsman, has been a positive development. However, the current mandate does not cover monitoring of all places of detention and all state-run residential institutions; for instance, members of the NPM monitoring groups are not permitted to inspect offices of police departments (which are on occasion used to question suspects). In addition, the NPM Coordination Council is under the supervision of the Ombudsman's Office, which compromises its independence, as the Ombudsman is directly appointed by the President, and his/her activities are governed by Presidential decree.¹⁸ In order to undertake an urgent and unplanned visit, NPM members have to receive written permission from the Ombudsman, which can only be obtained during working hours, restricting the NPM's ability to respond rapidly to emerging reports of torture and other ill-treatment. Furthermore, the NPM is not allowed to publish the results of its findings until its annual report is approved by the Ombudsman. Amnesty International's research also found that budgetary constraints severely limit the capacity and effectiveness of the NPM, and that the Coordination Council (which oversees the works of the NPM) had faced difficulties in recruiting high calibre members for the NPM regional groups.¹⁹

The NPM's primary role is to prevent torture and other ill-treatment from occurring in secure facilities (including prisons and pre-trial detention centres). It is not mandated to take up individual complaints of torture and other ill-treatment, and is competent only to pass these on (if received) to the Ombudsman's Office, which is not fully independent and also has limited resources. Amnesty International's research in 2015 found that in some cases, complaints of torture and other ill-treatment made to the NPM are sometimes not being acted upon.²⁰ This presents the danger that the NPM will lose public trust as an effective mechanism for reporting torture and other ill-treatment (and ultimately preventing it). The Ombudsman's Office, which oversees the NPM, could also do more to better explain the role of the NPM to the public.

In some cases, civil-society led Public Monitoring Commissions (PMCs) have been effective in pushing for the effective investigation of allegations of torture and other ill-treatment in detention facilities run by the Ministry of Internal Affairs that they are able to visit (including prisons, pre-trial detention centres and police detention facilities). However, in some areas of Kazakhstan, PMCs are not aware of the full extent of their mandate and the relevant Kazakhstani authorities have failed to cooperate with the PMCs, as instructed to do under a 2010 decree of the Prosecutor General.²¹ In

¹⁸ This means that currently, the Ombudsman does not meet the criteria laid out in the "Principles relating to the Status of National Institutions (The Paris Principles)", Adopted by General Assembly resolution 48/134 of 20 December 1993.

¹⁹ See: Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*.

²⁰ See: Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*.

²¹ Joint Decree of the Prosecutor General of the Republic of Kazakhstan of 3 February 2010 #10, Ministry of Justice of the Republic of Kazakhstan of 2 February 2010 #31, Ministry of Internal Affairs of the Republic of Kazakhstan of 2 February 2010 #46, Chair of the Committee of National Security of the Republic of Kazakhstan

addition, PMC monitoring is restricted to facilities under the Ministry of Internal Affairs, which excludes state-run residential homes, children's homes, nursing homes for older persons, and military barracks, for instance, and PMCs cannot make unannounced visits.²²

The limitations of the PMCs as a mechanism for monitoring torture and other forms of ill-treatment were apparent following the demonstrations and subsequent events in Zhanaozen in December 2011. Without access, independent monitors from the PMCs found it difficult to verify the allegations of torture and other ill-treatment made by people who were detained. Even in instances where the authorities allowed public monitors to join an official commission of investigation, visits were planned in advance and access to places of detention was strictly controlled by the authorities, with no private interviews of detainees allowed.²³

PMCs have the potential to provide independent, civil-society led scrutiny of complaints and investigations of torture and other ill-treatment in Kazakhstan, but they need to be adequately resourced and their capacity to act independently needs to be strengthened, in a way that enables them to operate effectively and that builds public trust in them as an institution.

RECOMMENDATIONS

Amnesty International recommends that authorities in Kazakhstan should:

- Ensure that the National Preventative Mechanism (NPM) has the resources to enable it to carry out its role effectively; this should include provision of adequate training for members to improve the quality of monitoring;
- Give PMCs and the NPM the authority to make unannounced visits, in particular urgent unannounced visits in response to reports of torture and other ill-treatment. In the case of the NPM, remove the requirement that NPM members obtain written permission from the Ombudsman before proceeding with a visit to a place of detention;
- Provide the Office of the Ombudsman with the autonomy and the resources to assess all reports of torture or other ill-treatment that it receives from members of the NPM promptly.

INTIMIDATION OF LAWYERS AND OBSTRUCTION OF COMMUNICATION BETWEEN DEFENDANTS AND COUNSEL (ART. 14)

Amnesty International's research on impunity for torture in Kazakhstan found that lawyers and human rights defenders working on cases involving complaints of torture and other ill-treatment on

of 2 February 2010 #16 and the Chair of the Agency of the Republic of Kazakhstan on Fighting Economic and Corruption Crimes (Financial Police) of 2 February 2010 #13 "On Cooperation of Law Enforcement Bodies with Civil Society Members During the Conduct of [Pre-Investigation] Screening of Complaints of Torture and Other Unlawful Methods of Conduct of Criminal Procedure Inquiry and Investigation as well as of Investigation of Such Complaints".

²² See Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*.

²³ Amnesty International, *Old Habits: The routine use of torture and other ill-treatment in Kazakhstan*.

occasion face obstruction, harassment and intimidation.²⁴ This can include law enforcement agencies refusing to hand over information necessary to the case, or representatives of the prison administration attending court hearings en masse in an attempt to intimidate victims and their legal representatives. Lawyers interviewed by Amnesty International in 2015 also highlighted the difficulties that they often face in gaining access to their clients who are in prison or pre-trial detention, and in being able to speak to them confidentially, including in cases where their clients have complained of ill-treatment. For instance, lawyers reported having to wait for several hours for the prison director to approve permits to meet prisoners, or being denied access under other pretexts. In addition, with the exception of letters to lawyers, courts and prosecutors, under current legislation all correspondence between prisoners and the outside world is read by prison officials; this applies to letters to monitoring bodies such as the PMCs and the NPM, including written complaints of torture and other ill-treatment made to these bodies.²⁵

RECOMMENDATIONS

Amnesty International recommends that authorities in Kazakhstan:

- Ensure that adequate time and facilities are available immediately upon request for lawyers to meet and have confidential communication with their clients who are in pre-trial detention or in prison, including face-to-face visits, and ensure that prison authorities do not impose arbitrary restrictions that might prevent this;
- Act to ensure that law enforcement agencies cooperate with lawyers representing victims of torture and other ill-treatment by handing over information necessary to the case;
- Allow prisoners and detainees to write confidentially to monitoring bodies such as the PMCs and the NPM; and
- Address the practice of intimidation of victims and their lawyers during court cases brought against members of prison and law enforcement agencies.

²⁴ See: Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*.

²⁵ Coalition of NGOs of Kazakhstan against Torture, *Пытки в Казахстане: вчера. Сегодня. Завтра? Отчет Коалиции НПО Казахстана против пыток. Июнь 2015* [*Torture in Kazakhstan: yesterday. Today. Tomorrow? Report of the Coalition of NGOs of Kazakhstan against Torture. June 2015*], Almaty, 2015, p.11.

RESTRICTIONS ON FREEDOM OF EXPRESSION (ART. 19)

RESTRICTIONS ON AND HARASSMENT OF INDEPENDENT AND CRITICAL MEDIA

Attempts to silence or close down critical voices in the media continue in Kazakhstan. In February 2015, an appeal against the closure of the newspaper *Adam Bol* by the Almaty City Court on grounds of national security (after it published an interview with a member of the opposition who was based in Ukraine) was rejected; later that year, its successor publication *Adam* was also closed down by the court, initially on the grounds that it was registered to publish in Russian and Kazakh, but was only publishing in Russian, and later because it had violated a three-month ban by illegally continuing to publish content via its Facebook page.²⁶

In December 2015, police in Almaty raided the offices of independent news outlet Nakanune.kz and the homes of journalists Guzyal Baidalinova (who owns the website) and of Yulia Kozlova. Both were arrested under Article 274 of the Criminal Code for “knowingly disseminating false information”, after the outlet published articles on the activities of Kazkommertsbank (a leading commercial bank). Yulia Kozlova was also charged with narcotics possession after law enforcement officers claimed to have found drugs at her home, but these charges were thrown out by the court in February 2016. Guzyal Baikalinova was sentenced to one and a half years’ imprisonment in May 2016. Several of the journalists who work on Nakanune.kz previously worked at *Respublika*, an independent newspaper which had been critical of the Kazakhstani authorities and which was closed down by court order in 2012, at the request of the Prosecutor General who branded the publication “extremist”. Yulia Kozlova and human rights defenders monitoring the case consider the criminal investigation under Article 274 to be an attempt to close down Nakanune.kz and silence its criticisms of the authorities.

Since February 2016 Seitkazy Matayev, chairman of Kazakhstan Journalists Union and head of the National Press Club, has been under house arrest with a criminal investigation being conducted against him for tax evasion. Other journalists and human rights defenders have labelled these allegations as politically motivated, with the aim of forcing the closing down of the activities of the Journalists Union and the National Press Club, and the KazTAG news agency, with which Seitkazy Matayev is also associated. Seitkazy Matayev’s son, Aset Matayev, director of the KazTAG news agency, was also placed under house arrest on 28 March 2016.

BLOCKING OF INTERNET CONTENT

Amendments to the Communications Law adopted in 2014 gave the Office of the Prosecutor General, on its own authority, without a court order, the power to compel internet providers to block access to internet content, should the Prosecutor General deem that content to be “extremist” or a security threat. These powers are used by the authorities to block access to Kazakhstan-based and international news sites, in some cases intermittently and in some cases permanently. This has included blocking access on the Radio Free Europe / Radio Liberty website – and its Kazakhstani service, Azattyq – to certain content relating to the presence of Kazakhstani citizens in territory in Syria held by the armed group calling itself Islamic State. The authorities have also blocked such content on the Kyrgyzstani news site kloop.kg.

²⁶ AdilSoz, “«Единое СМИ» журнал ADAM закрыт решением суда по истребованию прокуратуры” [“‘United Media’ magazine ADAM closed on the decision of the court at the request of the prosecutor”], 22 October 2015, <http://www.adilsoz.kz/news/show/id/1869> [last accessed 4 November 2015].

PROSECUTIONS FOR INCITING “DISCORD” ON SOCIAL MEDIA

The new Criminal Code, which came into force in January 2015, retains criminal sanctions for defamation (Article 130) and for vaguely worded offences of inciting “social, national, clan, class or religious discord” (Article 174). Authorities appear to be using Article 174 to silence dissent and limit the right of people in Kazakhstan to voice critical opinions, with several people facing criminal investigations and prosecutions for inciting national “discord” after making posts on social media. The use of Article 174 in this way appears to be an attempt to close down social media spaces as an arena where people in Kazakhstan can express themselves (relatively) freely, in the absence of independent media outlets and in a context of restrictions on public protest. Prosecutions have included:

- Yermek Narymbaev and Serikzhan Mambetalin (both long-term critics of President Nursultan Nazarbayev), who were sentenced to three and two years’ imprisonment respectively (reduced to shorter sentences on appeal) for posting extracts from an unpublished book deemed to denigrate the Kazakh people on their Facebook pages;
- blogger Igor Sychev, who was sentenced to five years’ imprisonment in November 2015 after making a post on the social media site VKonakte stating “Let’s imagine there was a vote in the town of Ridder [his home town]” and inviting people to say whether they would be for or against the town becoming part of the Russian Federation;
- Saken Baikenov, a member of the “Antigeptil” group of activists (who are campaigning against the launch of Russian Proton-M rocket carriers from the Baikonur Cosmodrome in Kazakhstan, which use highly corrosive heptyl fuel), who was sentenced to two years of restricted liberty for posts on Facebook; and
- Tatiana Shevtsova-Valova, who received a four-year suspended sentence for posts on Facebook supporting the incorporation of Kazakhstan into the Russian Federation, and using a derogatory term to refer to Kazakhs.

Clause 2 of Article 174 singles out “leaders” of associations as a separate category of offenders in relation to charges of “discord”, subject to harsher penalties if convicted. In November 2015, Bolatbek Blyalov, the director of the Institute of Democracy and Human Rights and a member of the “Antigeptil” group of activists, became the first person to be arrested and charged as a leader of an association for “discord” under Article 174.2, for video posts made on YouTube. As of May 2016, Bolatbek Blyalov remained in pre-trial detention.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, who visited Kazakhstan in January and August 2015, expressed concern that the criminalization of “incitement of discord” in the Criminal Code could also be used to criminalize the activities of political parties and trade unions.²⁷

RECOMMENDATIONS

Amnesty International recommends that authorities in Kazakhstan should:

- Cease the harassment and intimidation of independent and critical journalists and media outlets, including through the courts;
- Cease the blocking of content on news sites on spurious “national security” grounds; and
- Ensure that Article 174 of the Criminal Code (incitement to “social, national, clan, class or religious discord”) is not used to silence dissent and to limit the right of people in Kazakhstan to voice critical opinions, on social media websites and elsewhere, in legitimate exercise of their right to freedom of expression.

²⁷ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to Kazakhstan*, p.7

RESTRICTIONS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION (ARTS. 19, 21, 22)

RIGHT TO PEACEFUL ASSEMBLY

The right of peaceful assembly remains heavily restricted. Permission from local authorities is needed to hold any kind of street protest and this is often refused, or permission is given to hold the event in another, non-central, location. Penalties of up to 75 days' administrative detention are in place for breaches of the laws on holding assemblies, including organizing or participating in an illegal demonstration (Article 488 of the Administrative Offences Code and Articles 155 and 400 of the Criminal Code). Article 400 of the Criminal Code forbids providing "assistance" to "illegal" assemblies, including by "means of communication", which the Special Rapporteur on the rights to freedom of peaceful assembly and association has interpreted as designed to prevent activists from using social media and other communication tools to organize.²⁸

Authorities use "preventive" detention to stop peaceful protests from going ahead. In January 2015, journalists were arrested on their way to a protest in Almaty in support of banned media outlet *Adam Bol*; they were taken to local police stations to "acquaint them with the law", and released shortly after. On 28 April 2016, protests against unpopular changes to the Land Code,²⁹ in Aktau did not go ahead when protestors were stopped by police from entering the town's main square; in Almaty and Astana, protestors were briefly detained by police; and in Kyzylorda on 1 May, police briefly detained a number of demonstrators and removed them from the central square.

Authorities have also used the Administrative Offences Code to detain would-be protestors for longer periods of administrative detention. Large rallies against the changes to the Land Code were planned for 21 May 2016 in towns across Kazakhstan, but between 17 and 20 May, at least 34 people were arrested and sentenced to 10-15 days' administrative detention (under Article 488 of the Administrative Offences Code) for organizing "unsanctioned" meetings. Most of those arrested and detained between 17 and 20 May had done nothing more than use posts on social media to state publicly their intention to participate in the planned protests, or to provide information about the demonstrations. On 21 May itself, police blocked access to the sites where demonstrations were due to take place; in addition, in Almaty alone, 500 would-be protestors were temporarily detained in police stations and released only after they had signed statements stating that they had taken part in an unsanctioned meeting. Dozens more were temporarily detained in police stations in other towns and cities.³⁰

²⁸ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to Kazakhstan*, p.12.

²⁹ Changes to the Land Code that would allow state-owned agricultural land to be privatized and sold off to Kazakhstani citizens or leased for up to 25 years to foreigners prompted wide-spread protests across the country, beginning in Atyrau on 21 April. The proposed changes were dropped in May, but demonstrations have continued.

³⁰ See Amnesty International, "Urgent Action: Kazakhstan: detained for stating intention to attend a rally", EUR 57/4067/2016, 20 May 2016; and Amnesty International, "Kazakhstan: Release activists arrested in disturbing crackdown over Land Code protest", 20 May, <https://www.amnesty.org/en/latest/news/2016/05/kazakhstan-release-activists-arrested-in-crackdown-on-land-code-protest/>

Authorities also attempt to tightly control the spread of information about on-going protests. For example film director Marat Teleuov was detained and questioned for eight hours by police, after filming and photographing protests on the “land issue” in Aktobe on 29 April 2016 and posting the footage on Facebook and on YouTube, and one of Radio Azzatyq’s correspondents was detained on the two occasions that she tried to enter the town of Zhanaozen to cover planned demonstrations, on 29 April and again on 30 April. Several journalists were among those detained in Almaty and other cities and towns on 21 May, and access to Radio Azzatyq’s website was also blocked.

FREEDOM OF ASSOCIATION

Amendments to the Law on Non-profit Organizations signed into law on 2 December 2015 will lead to the establishment of a central “operator” to raise funding and administer state and non-state funds to NGOs, including grants from international organizations, diplomatic missions, and international NGOs, for projects and activities that comply with a limited, government-approved list of acceptable issues. Failure on the part of NGOs to supply accurate information for the operator’s centralized database may lead to fines or a temporary ban on activities. Civil society activists in Kazakhstan are extremely concerned that these legislative amendments will be used to tighten state control over NGOs and their activities, and to limit their ability to raise funds from outside the country apart from via the central operator.³¹

RECOMMENDATIONS

Amnesty International recommends that authorities in Kazakhstan should:

- Immediately desist from using “preventive detention” as a means of stopping peaceful protests from going ahead;
- Provide guarantees that the newly-established central “operator” to raise funding and administer state and non-state funding will not be used to tighten state control over NGOs and their activities.

DRAFT DISCRIMINATORY LEGISLATION ON “PROPAGANDA OF NON-TRADITIONAL SEXUAL ORIENTATION” (ARTS. 2, 19 AND 26)

Legislation “On Protection of Children from Information Harming their Health and Development (Law on Child Protection)” containing sanctions for “propaganda of non-traditional sexual orientation” among those under 18 was passed by the Mazhilis (lower chamber of the parliament) in three readings, and approved by the Senate (upper chamber of the parliament) in February 2015. While this law was then dismissed by Constitutional Council of the Republic of Kazakhstan in May 2015, the dismissal was on technical grounds (relating to discrepancies between the Russian and Kazakh language versions of the text and the fact that the text “lacked sufficient clarity”), and the initiators of the law remain committed to bringing it back before the parliament at a later date.³²

³¹ Discussions at public events and interviews with representatives of NGOs based in Almaty, February and March 2016.

³² See: Amnesty International, “Kazakhstan: Rejection of Homophobic Law welcome while concerns about

By seeking to outlaw such “propaganda” – a term which can be construed broadly enough to incorporate demonstrating for, providing information about, or even simply discussing, the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people – the law would have amounted to a breach of the country’s international obligations to protect LGBTI people from discrimination and to ensure the right to freedom of expression for all. Additionally, such potentially over-broad references to “propaganda” could lead to other unlawful restrictions on a wide range of speech and expression. Although not yet passed, the existence of this draft legislation and the possibility that it might yet return has the effect of stifling open, positive and / or neutral discussion of LGBTI rights in Kazakhstan, contributing to an existing climate of self-censorship among LGBTI people, and a negative media environment in regard to LGBTI people and the issues that they face.³³

RECOMMENDATIONS

Amnesty International recommends that authorities in Kazakhstan should:

- Ensure that the provisions in the draft law “On Protection of Children from Information Harming their Health and Development (Law on Child Protection)” that discriminate against LGBTI persons are completely removed, should the draft law be presented again before the parliament.

pending discriminatory provisions remain”, EUR 57/1790/2015, 2 June 2015,
<https://www.amnesty.org/en/documents/eur57/1790/2015/en/>.

³³ See: Article 19, “*Don’t Provoke, Don’t Challenge*” *The Censorship and Self-Censorship of the LGBT Community in Kazakhstan*, London, Article 19, 2015.

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