AMNESTY INTERNATIONAL

KAZAKHSTAN

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FOLLOW UP TO THE PREVIOUS REVIEW

During its first Universal Periodic Review (UPR) in February 2010, Kazakhstan accepted 121 and rejected seven of the 128 recommendations made by other states.[1]

Freedom of expression:
None of the recommendations on freedom of expression accepted by Kazakhstan during the previous UPR have been implemented, and the crackdown on the free media has continued during the reporting period.

The government also accepted recommendations to decriminalize defamation and slander.[2] However, the draft Criminal Code (scheduled for adoption in May 2014) retains defamation and slander, including against state officials, as crimes and increases the punishment for these crimes to up to three years' imprisonment or a fine of up to USD 30,000.

Besides, in 2013 the Communications Law was amended to allow state bodies to use or suspend communications services – such as mobile, landline and internet connections – in case of, *inter alia*, "social emergency". The lack of a clear definition of "social emergency" makes this provision open to abuse.

Torture and other ill-treatment:
Kazakhstan declared at its last UPR that it "would not rest until all vestiges of torture had been fully and totally eliminated," and accepted recommendations to improve safeguards against torture in all detention facilities and in particular to "continue to apply a zero-tolerance approach to torture and other cruel, inhuman or degrading treatment or punishment".[3] However, a year later, control of the entire prison system was transferred from the Ministry of Justice back to the Ministry of Internal Affairs. Access for independent public monitors to detention facilities, a key safeguard against torture, had improved substantively under the Ministry of Justice, but has been problematic under the Ministry of Internal Affairs. Many allegations of torture received by Amnesty International come from individuals held in facilities controlled by the Ministry of Internal Affairs.

In September 2013, the General Prosecutor instructed the Prosecutor's Office to "open a criminal investigation into every incident of torture" thus acknowledging that "the situation in regard to violations of basic human rights remains of concern".[4]

In November 2013, Kostanai court awarded 2 million Kazakhstani Tenge (roughly equivalent to USD 13,000) in compensation to Aleksandr Gerasimov following a UN Committee against Torture decision in May 2012 which found Kazakhstan responsible for torture in 2007.[5] However, the authorities have yet to carry out a full and independent investigation into Aleksandr Gerasimov's complaint of torture.

Violation of *non-refoulement* obligations:
Despite accepting recommendations to ensure that the *non-refoulement* principle is upheld,[6] there have been incidents over the reporting period when Kazakhstan has returned asylum seekers and refugees to countries where they were at real risk of torture or other ill-treatment (details below).

Legislation was amended in January 2011 to include a new provision guaranteeing judicial review of extradition orders[7] and prohibiting extradition to a country where there is a real risk of torture[8] although not other ill-treatment. However, this requirement continues to be ignored by courts.

The Law on Refugees which came into force in 2010 excludes certain categories of asylum seekers from qualifying for refugee status, including those charged in their country of origin with membership of illegal, unregistered or banned political or religious groups.[9]

THE NATIONAL HUMAN RIGHTS FRAMEWORK

In April 2012, Kazakhstan's Constitutional Council issued a decree defining the moment of detention as the "precise moment when a person is deprived of his/her liberty and freedom of movement".[10] However, in practice detention times are sometimes deliberately recorded inaccurately by law enforcement officials, leading to periods of unrecorded detention. During these periods, detainees are reportedly subjected to torture and other ill-treatment as they are deprived of key safeguards.

In January 2013, new counter-terrorism legislation was introduced which provides for broader measures for countering terrorism and extremism,[11] and the draft Criminal Code lowers the age of criminal liability for terrorist offences to 14 years. "Extremism" in the new counter-terrorism legislation is defined, *inter alia,* as "inciting social or class hatred", which in the absence of legal clarification is widely used to curb political expression.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Violation of the right to freedom of assembly:
Freedom of assembly is restricted in Kazakhstan, and peaceful protestors continue to be detained and fined.

Activists are required to obtain prior permission from the local authorities for any public gathering or single-person picket. Distributing leaflets, joining spontaneous protests or wearing clothing displaying political slogans without prior permission are acts often regarded as violations of this regulation. In several incidents over the last four years, law enforcement officials have used excessive force to break up unauthorized peaceful meetings, including strikes. In dozens of cases, the organizers and participants have been fined or sentenced to administrative detention for up to 15 days.

During Independence Day festivities on 16 December 2011 in the town of Zhanaozen, fifteen protesters were killed and hundreds wounded by the security forces. On that day, young men and striking oil workers tore down festive displays in the town's central square and reportedly attacked police with stones. Eyewitnesses claim that some police fired warning shots into the air, while others fired directly into the crowd. Video footage from the scene shows security forces aiming and shooting at protesters running away, and beating those lying injured on the ground. Statistics from the General Prosecutor's Office show that 130 people were detained and 16 arrested on charges of organizing and participating in "mass disorder"; however, eyewitness accounts indicate that as many as 700 individuals were detained after the clashes.

Violation of the right to freedom of expression:
The situation in relation to freedom of expression has significantly deteriorated over the last four years, with further legislative restrictions proposed and civil society activists targeted regularly by the authorities for exercising this right.

In November 2012, the Almaty City Prosecutor's Office instigated proceedings to close down eight print media outlets and 23 websites owned by a single media group, as well as one other newspaper and its websites, and two independent internet-based TV channels. It accused them of extremism, "inciting social discord" and of posing a threat to national security. These were almost all of the existing 40 independent media outlets and websites in Kazakhstan. Most of the outlets concerned have since been closed down.

Administrative regulations are used by the authorities in Kazakhstan to harass independent critical media. The publication of the *Pravdivaya Gazeta* newspaper was suspended for three months in August 2013 for exceeding its declared print-run by 1,000; it was subsequently repeatedly fined for minor transgressions and in February 2014 closed down by a court's decision. The Almaty authorities also brought administrative proceedings against the *Ashyk-Alan* newspaper for failing to inform them about a temporary suspension of the publication for a summer break. In August 2013, the newspaper was fined and banned from publishing for three months.

The internet is considered a mass medium in Kazakhstan, and as such is subject to all media-related regulations and restrictions. Social networks and blogs are often targeted through these restrictions in order to obstruct access to information. Hundreds of internet-based resources are blocked every year by court decisions taken in closed proceedings, due to their supposedly extremist or otherwise illegal content.

Torture and other ill-treatment:
Torture and ill-treatment remain pervasive in Kazakhstan.[12] In February 2011, the UN Committee against Torture stated that "since the consideration of the previous periodic report in 2008, torture and ill-treatment, including the threat of sexual abuse and rape, committed by law enforcement officials, remain an issue of serious concern in the State party, and do not occur in isolated or infrequent instances".[13]

Amnesty International continues to receive reports of torture and other ill-treatment in prisons used primarily for disciplinary purposes, and often by some prisoners against other prisoners with the acquiescence of the prison authorities.

Numerous reports of torture and other ill-treatment emerged in the aftermath of the Zhanozen events (see also above). Released detainees and relatives have reported that scores of people detained in Zhanozen were kept incommunicado in police custody, in overcrowded cells. There were also reports of people being stripped naked, beaten, kicked and doused with cold water in the police courtyard in sub-zero temperatures. Independent monitors were not allowed access to the police stations and on the few visits where they were allowed to join special inspections, they were not allowed to interview detainees in private.[14]

A Supreme Court directive, issued in 2009,[15] instructing judges to examine all allegations of torture made in court, has not led to a change in judicial practice.

For example, in March 2012, most of the 37 defendants on trial for organizing or participating in the protests in Zhanaozen alleged that they had been tortured or otherwise ill-treated in detention by security forces in order to extract confessions. Despite their allegations in court that the prosecution case was based on coerced evidence, the judge stated that the allegations of torture and other ill-treatment were an attempt by the defendants to avoid justice, and sentenced them to terms of imprisonment.[16] In its decision on a case from Kazakhstan published in December 2013,[17] the UN Committee against Torture concluded that Kazakhstan had "failed to ascertain whether or not statements admitted as evidence in the proceedings have been made as a result of torture" and found Kazakhstan guilty of violating Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Impunity for human rights violations by the security forces, including torture and other ill-treatment and excessive use of force, remains broadly unchallenged.[18] In December 2011, the General Prosecutor's Office acknowledged abusive use of force, including of firearms, by some police officers in Zhanozen, and opened a criminal investigation. In May 2012, five senior security officers were found guilty of abuse of office and sentenced to prison terms of between five and seven years. Reportedly, many more security officials had used excessive force in Zhanaozen, and there have been hundreds of allegations of torture and ill-treatment of those arrested for participating in strike actions and protests in Zhanaozen and

elsewhere. However, the authorities assert that they have conducted thorough and impartial investigations into all these allegations, and in October 2012 the General Prosecutor's Office asserted that there was no need to bring further criminal charges against other security officers.

Violation of *non-refoulement* obligation:
Following the entry into force of the Law On Refugees, which excludes certain categories of asylum seekers from qualifying for refugee status (see also above), the Central Commission on the Determination of Refugee Status reviewed all cases of individuals previously recognized as persons entitled to international protection by UNHCR, and in most cases revoked their status. Of these, dozens have since been forcibly returned to Uzbekistan and to China where they risk torture or other ill-treatment.

In June 2011, Kazakhstan extradited 28 ethnic Uzbek refugees and asylum seekers to Uzbekistan, notwithstanding the fact that they were at real risk of torture there. At least 12 of them were subsequently sentenced in Uzbekistan to long prison terms following unfair trials. In June 2012, the UN Committee against Torture concluded that by extraditing the men Kazakhstan was in breach of Articles 3 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[19]

Human rights violations in the context of national security and the fight against terrorism:
Since 2011, the authorities have significantly stepped up counter-terrorism operations following a number of bomb explosions, suspected suicide bombings and violent attacks by unidentified armed groups throughout the country. Many people, including security forces and civilians, were killed during these violent incidents, which the authorities described as terrorist attacks by illegal Islamist groups.

Although presumption of innocence is enshrined in law, it is violated on a regular basis, particularly in the context national security and the fight against terrorism, with suspects often branded guilty in public by state officials before the start of the trials. The crime of "terrorism with loss of life", in Article 49.1 of the Criminal Code, is the only one punishable by death (Kazakhstan is abolitionist in practice).

Some of those convicted of terrorist crimes are reported to be serving prison sentences in cruel, inhuman and degrading conditions in high security prisons in Shymkent or Arkalyk. No independent monitoring access has been allowed to these prisons.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Kazakhstan to:

Freedom of assembly

- Ensure the right to freedom of peaceful assembly to all persons wishing to peacefully express their views, in accordance with international human rights law and Kazakhstan's Constitution;
- Amend the Law on Peaceful Assembly so as to bring the requirement to notify the authorities in advance of the intention to hold a public event into line with international human rights law standards on spontaneous demonstrations;[20]
- Ensure that the Law on Peaceful Assembly is not used to impose undue restrictions on individuals wishing to express their view publicly.

Freedom of expression

- Ensure that journalists, human rights defenders and other civil society activists are able to seek, receive and impart information, and to carry out their legitimate activities without intimidation, hindrance, harassment or pressure;

- End the arbitrary interference by local authorities in the work of independent media, including the imposition of unduly severe administrative sanctions for minor transgressions;
- Decriminalize libel and slander in the Penal Code;
- Review and amend legislation intended to combat extremism to ensure that it cannot be used to limit the freedom of expression, including by suppressing publication of views critical of the authorities in either printed, broadcast or online media;
- Amend the 2013 Communications Law to preclude the use of the vaguely defined concept of "social emergency" to suspend or suppress legitimate communications and exchanges of information, or otherwise to limit freedom of expression.

Freedom from torture and other ill-treatment

- Establish an adequately resourced independent mechanism to investigate all allegations of torture and other ill-treatment by members of law enforcement agencies, or by persons acting on orders of, or with the acquiescence of members of such agencies;
- Ensure in practice that no statements obtained as a result of torture or other ill-treatment are used as evidence in trial proceedings, except as evidence against a person accused of torture or other ill-treatment;
- Ensure that all persons deprived of their liberty are informed promptly of the reasons for their detention, any charges against them, and allowed prompt and regular access to a lawyer of their choice;
- Ensure that all past allegations of the use of torture and other ill-treatment, as well as all instances of abusive use of force by law enforcement officials, are promptly, effectively and independently investigated, and to hold accountable any official found to have sanctioned or conducted such acts;
- Ensure effective access for independent public monitors to all detention facilities and other penitentiary institutions under the Ministry of Internal Affairs.

Violation of non-refoulement obligation

- Ensure that no one is forcibly returned, by means of extradition or otherwise, to a country where they would be at risk of torture or other ill-treatment.

Human rights violations in the context of national security and the fight against terrorism

- Ensure that that the principles of fair trial are fully and scrupulously observed in criminal proceedings against anyone suspected of a crime, including those suspected of terrorist activities;
- Grant independent public monitors immediate access to high-security prisons.

[1] Report of the Working Group of the Universal Periodic Review, A/HRC/14/10, paragraphs 95 -97, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/124/92/PDF/G1012492.pdf?OpenElement and Addendum, A/HRC/14/10/Add.1, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/138/98/PDF/G1013898.pdf?OpenElement.

[2] Report of the Working Group of the Universal Periodic Review, A/HRC/14/10, recommendations 76 (Norway); 77 (Republic of Korea); 11 (United Kingdom of Great Britain and Northern Ireland); 13 (Slovenia); 14 (Sweden); 20 (Czech Republic); 21 (Netherlands); 22 (Australia); 23 (Finland); 24 (Norway); 25 (United States of America); 26 (Canada).

[3] Recommendation 43. "To continue efforts to eliminate torture and improve the conditions of detention and the protection of the rights of detainees, and to share relevant experiences with interested countries" (Algeria); 44. "To continue to apply a zero-tolerance approach to torture and cruel, inhuman or degrading treatment or punishment" (Germany); 47. "To further improve prison conditions" (Azerbaijan); 48. "To improve the standards and the situation of human rights in prisons, and to carry out an independent investigation into cases of violence in prisons" (Slovenia); 61. "To adopt strict safeguards to ensure that no statement obtained through torture can be used in courts" (Czech Republic); 62. "To ensure that all trials, including those of terrorism suspects, comply with international standards for fair trials" (Norway); 64. "To establish effective complaint mechanisms for the victims of torture, with a special focus on persons in detention, so that any misconduct by police, prison

or detention staff receives a full and independent investigation and regular punishment" (Czech Republic); 65. "To establish an independent monitoring mechanism for all places of detention, in keeping with the provisions of the Optional Protocol to the Convention against Torture, in order to effectively prevent torture" (France);

[4] Press Service of the General Prosecutor's Office, Kazakhstan http://tengrinews.kz/kazakhstan_news/vozbujdat-ugolovnyie-dela-za-primenenie-pyitok-potreboval-prokuror-kazahstana-242052/

[5] http://www.ohchr.org/Documents/HRBodies/CAT/Jurisprudence/CAT-C-48-D-433-2010_en.pdf

[6] Accepting recommendation 92 (Belgium); and to review recommendation 7 (Czech Republic).

[7] Article 531-1, Criminal Procedural Code.

[8] Ibid, article 532.

[9] This exclusion affects in particular observant Muslims from Uzbekistan who worship in mosques that are not under state control or are members or suspected members of Islamist parties or Islamic movements banned in Uzbekistan. The exclusion also affects asylum seekers of Uighur origin from the Xinjiang Autonomous Republic (XUAR) in North West China who are charged with or suspected of belonging to separatist movements or parties.

[10] http://www.constcouncil.kz/rus/resheniya/?cid=11&rid=783

[11] Law No. 63 "On the introduction and amendments to several legislative acts of the Republic of Kazakhstan on the issue of counter-terrorism".

[12] The General Prosecutor's office reported a significant increase in torture complaints over the past two years, with 187 complaints registered in 2011, 602 in 2012 and 662 in the first nine months of 2013.

[13] List of Issues submitted to Kazakhstan for preparation of Kazakhstan's 3rd periodic report in February 2011 (CAT/C/KAZ/Q/3)

[14] See Amnesty International, *Old habits: The routine use of torture and other ill-treatment in Kazakhstan*, http://www.amnesty.org/en/library/info/EUR57/001/2013/en

[15] See http://adilet.zan.kz/rus/docs/P090000075S_

[16] See Amnesty International, *Old habits: The routine use of torture and other ill-treatment in Kazakhstan*, http://www.amnesty.org/en/library/info/EUR57/001/2013/en

[17] CAT/C/51/D/441/2010

[18] See Amnesty International, *Old habits: The routine use of torture and other ill-treatment in Kazakhstan*, http://www.amnesty.org/en/library/info/EUR57/001/2013/en

[19] The CAT concluded in June 2012 following an oral hearing in May 2012 into a complaint lodged by 29 Uzbek men against the decision by Kazakhstan to extradite 28 of them to Uzbekistan despite their complaints of risk of torture upon return by saying that diplomatic assurances *« cannot be used as an instrument to avoid the application of the principle of non-refoulement ».*

[20] In particular the International Covenant on Civil and Political Rights.