



Briefing note on key human rights concerns in Kazakhstan for the meeting of the EU-Kazakhstan Cooperation Council on 3 March 2015:

Torture and other ill-treatment ¹

In recent years the Kazakhstani government has implemented several positive measures in its fight against torture. However, torture and other ill-treatment are still widely used and continued international attention and political will of the Kazakhstani authorities are needed to achieve lasting results.

Recent positive steps the authorities have taken include the setting up of a National Preventive Mechanism (NPM) in 2013, which started visiting detention facilities across the country in 2014, the abolition of the statute of limitations applicable to the offence of torture and the exclusion of torturers from prisoners amnesties in Kazakhstan's new Criminal Code that came into force in January 2015.

However, in its November 2014 concluding observations following the review of Kazakhstan's third periodic report to the United Nations (UN) Committee against Torture, the Committee expressed concern about "persistent allegations of torture and ill-treatment committed by law enforcement officials, including the threat of sexual abuse and rape, in temporary detention isolation facilities (IVSs) and remand centres (SIZOs) under the jurisdiction of the Ministry of Internal Affairs and the National Security Committee for the purpose of extracting "voluntary confessions" or information to be used as evidence in criminal proceedings" (Paragraph 7).

There continues to be virtual impunity for torture and other forms of ill-treatment in Kazakhstan. The Committee against Torture expressed concern "at reports that most allegations of torture and ill-treatment continue to be referred for preliminary investigation to the same department as that in which the persons accused of torture are employed" and that "data based on official sources reveal[s] that less than 2 per cent of the complaints of torture received by the State have led to prosecutions" (Paragraph 8).

This briefing summarizes key gaps and weaknesses in the legislative and institutional frameworks and outlines practices that continue to facilitate torture and virtual impunity for the perpetrators. It cites key

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recommendations adopted by the UN Committee against Torture in November 2014 – highlighted in bold Italics in the text below – that we believe should be addressed as a matter of urgency.

Safeguards at the time of arrest/apprehension

In 2012, the Constitutional Council of Kazakhstan took a positive step by clarifying that a person is deprived of his or her liberty as soon as “his or her freedom of movement is restricted, that is from the moment that he or she is forcibly detained in a given location, brought to an internal affairs office or taken into custody.”

However, in practice detainees are still usually held incommunicado during the first hours of detention, without access to legal counsel and medical personnel, and family members are often notified with a considerable delay. Police often use torture to obtain confessions at an early stage of criminal proceedings.

In its November 2014 concluding observations the Committee against Torture urged the authorities to ***“take effective measures to guarantee that all detained persons are afforded, by law and in practice, all fundamental legal safeguards against torture and ill-treatment from the very outset of deprivation of liberty”*** (Paragraph 12). Among specific steps that Committee recommended Kazakhstan to take is to ***“ensure [...] that persons deprived of their liberty are able to request and receive independent medical assessments promptly following arrest”*** (Paragraph 12(g)).

We are also concerned that under the new Criminal Procedure Code, the gravity of criminal charges alone can be the basis for the pre-trial detention of suspects charged with 12 types of crimes. The law does not require judges to take into account any other factors, such as whether the accused might cause harm to public safety, whether there is a risk of absconding or interference with the course of justice.

Impunity

Complaints about torture are first routed to the Internal Security Department of the Ministry of the Interior, which generally dismisses such complaints as unfounded. Kazakhstan lacks an independent mechanism to promptly, thoroughly and impartially investigate all reports of torture and other ill-treatment. Those who lodge complaints are at risk of reprisals and detainees are often subjected to further violence.

In its November 2014 concluding observations the Committee against Torture recommended the authorities to ***“[e]stablish an effective, fully resourced, independent and accountable body that is able to carry out prompt, impartial, thorough and effective investigations, including preliminary investigations, into all allegations of torture and ill-treatment, ensuring that such investigations are never undertaken by personnel employed by the same ministry as the accused persons”*** (Paragraph 8(a)).

The problem of widespread impunity for torture is further exacerbated by frequent violations of international fair trials standards and the lack of an independent judiciary. In the large majority of cases judges continue to treat defendants’ complaints of torture as an attempt to avoid prosecution and punishment. Defendants are required to prove that they were tortured in order to challenge the admissibility of evidence presented by prosecutors.

Reparation including compensation

In Kazakhstan victims of torture are not awarded with the full range of reparations from the state, including rehabilitation, compensation, public apology and guarantees of non-repetition. Thus, in its concluding observations of November 2014, the Committee against Torture recommended Kazakhstan ***“to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation”*** (Paragraph 22(a)).

Alexander Gerasimov, Rasim Bayramov and Ivan Rozhnov are the only known torture victims to have been awarded compensation in Kazakhstan. In all cases where perpetrators of torture have not been brought to justice, civil courts routinely deny compensation claims. The only exceptions are the cases of Alexander Gerasimov and Rasim Bayramov, who were awarded compensation following decisions by the Committee against Torture under the Individual Complaints Procedure stating that the men should be awarded with full and adequate reparation, including compensation and rehabilitation.

Independent oversight of places of detention: The National Preventive Mechanism

While the establishment of the NPM is a step in the right direction, we are concerned that its current monitoring mandate does not cover all places of deprivation of liberty. The monitoring group has no access to orphanages, nursing homes for the elderly and disabled, army barracks, and it is not permitted to inspect offices of police departments. In many cases the NPM is required to announce its visits to the NPM coordinating authority, the Human Rights Ombudsman. The Coalition against Torture is concerned that the Ombudsman's office in Kazakhstan does not fulfill the requirement of independence as outlined in the Paris Principles, considering that the Ombudsman is a state employee appointed to the office by Presidential decree. When NPM members receive torture allegations and urgently want to visit a specific detainee, the visit has to be approved by the Ombudsman's office. This procedure has caused significant delays and in some cases staff of the Ombudsman's office have refused to approve requests for visits claiming that evidence of torture was needed to be in writing and signed by the alleged victim to justify an urgent visit and that "a mere suspicion" that somebody had been tortured was not sufficient.

In November 2014, the Committee against Torture recommended the authorities, among other issues addressing the above concerns, to ***"[take measures] to improve the ability of the mechanism to carry out urgent and unannounced visits to places of detention upon its request"*** and to ***"consider authorizing the mechanism to publicize its findings and recommendations shortly after undertaking visits"*** (Paragraph 13).

Non-Refoulement

The principle of non-refoulement in cases where those forcibly sent back are at risk of torture or other ill-treatment is typically disregarded with respect to cases from countries of the Commonwealth of Independent States (CIS) that are signatories to the Minsk Convention. Kazakhstan lacks administrative and judicial guidelines and criteria for determining the risk of torture in destination countries, and appeals against returns based on the risk of torture routinely fail. The appeal procedure following an administrative decision to deny an applicant refugee status is superficial and routinely ends in sustaining the decision of the state body.

In November 2014, the Committee against Torture recommended the authorities of Kazakhstan to ***"[t]ake all the necessary measures to ensure the effective implementation of the principle of non-refoulement"*** (Paragraph 16).

Torture definition in domestic legislation

The definition of torture included in the new Criminal Code of Kazakhstan is still not fully in line with the definition contained in the Convention against Torture. The law allows overly broad exemptions, and punishments remain incommensurate with the gravity of the crime.

Thus, the Committee against Torture recommended the authorities to ***"amend its legislation to include a definition of torture in the Criminal Code that is in full conformity with the Convention"*** (Paragraph 24) and ***"ensure that those convicted are punished with appropriate penalties that are commensurate to the gravity of the crime of torture"*** (Paragraph 9).