



Human Rights Watch Submission to the United Nations Committee Against Torture on Kazakhstan October 2014

Introduction

This memorandum, submitted to the United Nations Committee Against Torture (“the Committee”) ahead of its upcoming review of Kazakhstan, highlights areas of concern Human Rights Watch hopes will inform the Committee’s consideration of the Kazakh government’s (“the government”) compliance with the International Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). It contains information on Kazakhstan’s treatment of detainees, in particular of individuals detained in the aftermath of the December 2011 Zhanaozen violence and of asylum seekers to Kazakhstan, that is inconsistent with the Convention, and proposes specific recommendations that Committee members could raise with the government of Kazakhstan.

Human Rights Watch has closely monitored the human rights situation in Kazakhstan for many years. Since violent clashes broke out in Zhanaozen, an oil town in western Kazakhstan and the site of an extended labor strike in December 2011, we have monitored **and reported on the authorities’ response to the violence**, as well as the ensuing crackdown on free speech and dissent through misuse of overly broad laws that continues to date. As part of this work, we have documented grave violations of the prohibition on torture and have produced materials describing these findings, including a [letter](#) to the **Prosecutor General’s office in February 2012** and in detailed press releases.¹

Human Rights Watch has also documented violations of the right of asylum seekers and refugees to be protected from forced return to countries where they face a risk of torture, in

¹ Letter from Human Rights Watch to the Prosecutor General of Kazakhstan, February 1, 2012, <http://www.hrw.org/news/2012/02/01/kazakhstan-letter-prosecutor-general-regarding-december-events-zhanaozen-and-shetpe>; “Kazakhstan: Protect Detainees From Torture, Ill-Treatment,” **Human Rights Watch news release, December 22, 2011**, <http://www.hrw.org/news/2011/12/22/kazakhstan-protect-detainees-torture-ill-treatment>; and “Kazakhstan: Suspend Trial, Investigate Torture Allegations,” **Human Rights Watch news release, April 23, 2012**, <http://www.hrw.org/news/2012/04/23/kazakhstan-suspend-trial-investigate-torture-allegations>.

particular the cases of those seeking refuge from neighboring countries such as Uzbekistan.

Human Rights Watch’s findings are consistent with patterns of torture and ill-treatment more broadly in Kazakhstan as documented by Kazakh human rights groups as well as other international organizations, including the United Nations and Amnesty International. In his December 2009 report, for example, the UN special rapporteur on torture concluded that “evidence obtained through torture (including threats) or ill-treatment is commonly used as a basis for conviction” and that “existing complaints mechanisms are ineffective.” The report also stated that the UN received “many credible allegations of beatings with hands and fists, plastic bottles filled with sand and police truncheons, and of kicking, asphyxiation through plastic bags and gas masks used to obtain confessions from suspects.”

While the Kazakh government has taken some steps to address the problem of ill-treatment and torture in the years since it was last reviewed by the Committee, including, for example, issuing an invitation to the special rapporteur on torture and adopting a National Preventative Mechanism under the Optional Protocol to the Convention on Torture, ill-treatment and torture are common in places of detention and impunity remains the norm. Kazakhstan also took a step backward in 2011 when it transferred authority over the penitentiary system from the Ministry of Justice to the Ministry of Internal Affairs.

As noted above, the Committee’s upcoming review takes place against the backdrop of a broader deterioration in the human rights climate in Kazakhstan, with detrimental effects in particular on freedom of expression, assembly, and religion as the authorities have moved to narrow the space for dissent.

Furthermore, in addition to the cases highlighted below, we wish to draw the Committee’s attention to two other cases that further serve to illustrate the government’s intolerance of criticism: the continued imprisonment of opposition leader [Vladimir Kozlov](#) following a flawed trial,² and the forced confinement since July 2014, in a practice reminiscent of

² “Kazakhstan: Opposition Activists Arrested,” Human Rights Watch news release, January 25, 2012, <http://www.hrw.org/news/2012/01/24/kazakhstan-opposition-activists-arrested>; “Kazakhstan: Opposition Leader Jailed,” Human Rights Watch news release, October 9, 2012, <http://www.hrw.org/news/2012/10/09/kazakhstan-opposition-leader-jailed>; and “Kazakhstan: Ensure Fair Hearing for Opposition Leader,” Human Rights Watch news release, November 16, 2012, <http://www.hrw.org/news/2012/11/15/kazakhstan-ensure-fair-hearing-opposition-leader>.

Soviet-era punishment, of independent lawyer [Zinaida Mukhortova](#) in involuntary psychiatric detention, where she remains to date.³

We strongly believe that continued sustained monitoring and engagement with the Kazakh government by the Committee, the UN more broadly, as well as other human rights bodies are crucial to ensure that the rights of all people in Kazakhstan are fully respected. We look forward to the **spotlight brought by the Committee's review on Kazakhstan's problematic torture record**, and the resulting authoritative assessment of the steps needed to address the concerns identified, as a significant contribution toward furthering urgently needed reforms in the country.

III-treatment, Torture, and Lack of Accountability in the Aftermath of the Zhanaozen December 2011 Violence (**Convention Articles 2, 12, 13, 15, and 16**)

On December 16, 2011, Kazakhstan's Independence Day, clashes broke out between police, oil workers, and others in the central square of Zhanaozen, an oil town in western Kazakhstan and the site of an extended oil workers' strike. In the immediate aftermath of the violence—in which 12 people were killed and dozens injured—Human Rights Watch documented serious allegations of ill-treatment and torture made by detainees.

In December 2011, Human Rights Watch researchers in Zhanaozen spoke to several people who witnessed or were subjected to physical abuse by police in custody between December 16 and 19. These individuals described how police variously kicked and beat detainees who had been brought into custody with truncheons, stripped them naked and walked on them, and subjected them to freezing temperatures. Human Rights Watch also documented the death on December 22 of a 50-year-old man, from injuries he apparently sustained in custody.

On June 4, 2012, an Aktau court convicted 34 oil workers and others on charges relating to violent clashes with police in December 2011, imprisoning 13 of the defendants, despite the use of testimony obtained by torture and ill-treatment. Many defendants had testified that they suffered beatings, suffocation, psychological pressure, and other ill-treatment, apparently to coerce testimony against themselves or others.

³“Kazakhstan: Lawyer in Forced Psychiatric Detention,” **Human Rights Watch news release, August 16, 2013**, <http://www.hrw.org/news/2013/08/15/kazakhstan-lawyer-forced-psychiatric-detention>; and “Abuse, Detention, Occupational Hazards in Kazakhstan,” **Human Rights Watch dispatch, July 9, 2014**, <http://www.hrw.org/news/2014/07/09/dispatches-abuse-detention-occupational-hazards-kazakhstan>.

Information about these allegations of ill-treatment and torture is detailed in the following sections.

Bazarbai Kenzhebaev

On December 22, Bazarbai Kenzhebaev, 50, died from wounds apparently sustained while he was in [police custody](#) between December 16 and 18.⁴ Police arrested Kenzhebaev at **about 5 p.m. while he was walking the short distance between his daughter's house and** the maternity hospital, where she had just given birth, and brought him to the Zhanaozen Main Police Department. He was released after he was repeatedly and severely beaten by law enforcement agents in custody.

Before he succumbed to his injuries, Kenzhebaev described to his family the ill-treatment and torture he faced. He told them that when he was detained, he was thrown onto a bus and beaten, and that he was forced to walk through two lines of police officers who beat him all the way up and down from the basement to the third floor of the police station **where he was questioned. He also said that he was taken to “the garage” where the floor** had been covered in ankle-deep water, and that the detainees were made to sit in a squat position in this freezing water with their hands behind their heads.

Kenzhebaev's relative described to Human Rights Watch in detail the torture Kenzhebaev endured:

They started to beat [him] with truncheons [*dubinki*] as soon as he was loaded up [onto the bus], then dragged through the lines [of police], then, when they dragged [him] to the basement of the GOVD [police station], they made [him] undress and right in the basement, lie face down on the floor. They lay there, and the OMON walked on them with their boots and beat them, they especially stepped on [his] head, so that [his] face would hit the floor.

The official cause of Kenzhebaev's death was given as “rupture of the small intestine and blunt abdominal trauma.”

The response of the authorities to Kenzhebaev's death was inadequate. The prosecutor general's office initially denied any responsibility, claiming in a statement issued on December 22, the day of his death, **that Kenzhebaev died from wounds inflicted “during**

⁴ “Kazakhstan: Detainee Dies After Police Beating,” Human Rights Watch news release, December 22, 2011, <http://www.hrw.org/news/2011/12/22/kazakhstan-detainee-dies-after-police-beating>.

the mass disturbances.” Later, however, charges were brought against Zhenisbek Temirov, the head of the Zhanaozen temporary detention facility where Kenzhebaev was held, for “allow[ing] illegal detention of Kenzhebaev and not arranging timely hospitalization.”

Although Temirov was sentenced on May 17, 2012 to five years in prison and ordered to pay 1 million tenge (US\$6,750) in damages to Kenzhebaev’s family, to date not a single law enforcement officer has been held accountable for ordering or carrying out the beatings that lead to Kenzhebaev’s death. Furthermore, according to a recent [media report](#), Temirov was released from prison in spring 2014.⁵ Human Rights Watch is not aware on what grounds Temirov was released.

Allegations of Ill-Treatment and Torture by Defendants Put on Trial for Involvement in the December 2011 Zhanaozen Events

On March 27, 2012, the trial against 37 defendants accused of participating in or organizing mass riots in Zhanaozen in December 2011 began in Aktau. At trial, defendants testified that they had suffered beatings, suffocation, psychological pressure, and other ill-treatment, apparently to coerce testimony against themselves or others. The coerced testimony of at least one defendant was used against other defendants, including two of whom were sentenced to prison. Defendants testified that the abusive treatment was carried out by police officers and investigators, agents of Kazakhstan’s National Security Committee (KNB), and, in at least one case, an officer from the Zhanaozen prosecutor’s office.

On April 10, 2012, Esengeldy Abdrakhmanov, one of the defendants, told the court he contracted tuberculosis after he was detained and mistreated, according to the Zhanaozen 2011 Committee, a group of civil society activists who monitored the trial. Abdrakhmanov told the court that he was stripped naked, made to lie on the cold floor of the police station, and doused with cold water. He said that he and other detainees were beaten simply for raising their heads and that a police officer jumped on his back.

On April 11, 2012, Tanatar Kaliev, an oil worker charged with organizing mass riots, testified that he was ill-treated during the investigation. Media reports quoted him as testifying,

⁵ Макпал Муканкызы, “Заключённый по «Жанаозенскому делу» вышел на свободу,” *Radio Azattyk*, September 23, 2014, <http://rus.azattyq.org/content/shabdai-otkelov-zhanaozen-osvobozhdenie/26601647.html> (accessed September 16, 2014).

I feel ill right now because—since I was grabbed on December 18 and beaten ruthlessly during questioning—my health deteriorated. Interrogations were conducted under major physical, psychological pressure, they beat my head with a stool, threatened there would be problems for my older son.

He also told the court that, after he was detained,

I literally stood there in blood—the whole floor was covered in blood. Questioning **took place for days, they didn't let me sleep. I didn't have a lawyer. They tricked me, saying if I say everything they tell me, they'll let me go home and nothing will happen to my family.**

According to the Zhanaozen 2011 Committee, which monitored proceedings on April 17, 2012, Parakhat Dyusenbaev testified that he was threatened with rape and humiliated sexually. The Zhanaozen 2011 Committee reported that at least two others also testified they had been threatened with rape. Dyusenbaev told the court,

They summoned me to the GOVD [police station], to Colonel Kadyrov. He screamed and threatened to hang charges of arson on me. He beat my head against the wall. My hands were tied behind me. They took off my trousers **and said that he'll force a bottle in me.** He started to beat me in the behind, in the groin, on my sides. I started crying and told him that my father died, my sister is wounded, and asked him to stop doing this. Even after I came out of the hospital, for a long time, I **couldn't walk.**

Nursultan Mukhashev, who is 17 years old, told the court on April 19 that he was questioned without his mother present, and that the investigator hit him as he was being questioned.

At least five of the defendants—Shabdol Utkilov, Rosa Tuletaeva, Zhanat Muryimbaev, Kairat Edilov, and Mels Sarybaev—told the court that during the investigation, officers or investigators attempted to coerce testimony from them by suffocating them using plastic bags.

Rosa Tuletaeva, a labor activist and oil worker who was charged with organizing the mass riots, told the court that she was repeatedly suffocated with a plastic bag during the investigation: **“I started to suffocate ... I wanted to take a breath, but everything started to spin and I lost consciousness. They put that bag over my head over and over again....”** She

told the court that the officers said to her, **“You’ll do everything that we say ... you’ll take responsibility for it all.”**

Maksat Dosmagambetov, an oil worker, said his kidneys were badly beaten and he suffered broken ribs. He named several of the officers who beat him, trial monitors reported.

Impunity for Ill-Treatment and Torture in the Context of the Zhanaozen Trial

The allegations of ill-treatment and torture by defendants in the trial of 37 were not investigated in a manner capable of bringing the perpetrators to justice and that is required by international law.

In April 2012, the Aktau City Court presiding judge forwarded information about the **defendants’ allegations of torture and ill-treatment to the Mangistau regional prosecutor’s office for review**, and requested a response within 10 days, in accordance with national law. **Instead of the regional prosecutors’ office, an Interior Ministry police agency, the Department for Internal Security, conducted a preliminary investigation sometime in April. It then issued a decision not to open an investigation, announcing, “There was no evidence of a crime in the actions of the law enforcement agents that responded to the mass unrest on December 16.” The prosecution read the decision at a May 3, 2012 court hearing for the defendants.**

The Internal Security Department also claimed that defendants **“who allege the police beat them, did not file complaints, and were not medically treated after that, are attempting to avoid criminal punishment.”** However, **at least one defendant, Dosmagambetov, had filed a claim on December 30, 2011, alleging he had been mistreated following his detention.** His lawyer told Human Rights Watch that a medical examination conducted in response **concluded that several of Dosmagambetov’s ribs had been broken and that he had bruises** but that the investigation did not lead to any disciplinary action.

Dosmagambetov’s lawyer also represented four other defendants who alleged mistreatment and who did not receive a medical examination after the judge referred the allegations to the prosecutor’s office, indicating a broader failure by the authorities to investigate the allegations seriously.

There was no indication of whether the authorities questioned any of the officers who were on duty when the ill-treatment and torture are alleged to have taken place, or what other investigative steps the authorities took.

Breach of the Principle of *Non-Refoulement* (Convention Article 3)

Since the entry into force in January 2010 of the Law on Refugees, the Kazakh government renewed pressure on refugees and asylum seekers, especially those from Uzbekistan who are devout Muslims and fear religious persecution in Uzbekistan.

On June 9, 2011, in blatant violation of the *non-refoulement* principle, Kazakh authorities [extradited](#) to Uzbekistan at least 28 men whom Uzbek authorities wanted on various anti-state and religion-related charges, despite interim measures issued by the Committee on December 2010 directing the Kazakh government to refrain from extraditing the men to Uzbekistan based on the credible risk of torture they could face there if returned.⁶ The men had been detained a year earlier and were subsequently denied refugee status by Kazakh authorities. Serious due process violations marred judicial review of their refugee claims and extradition orders.

Previously, in late 2010, Kazakh authorities had unlawfully extradited to Uzbekistan four other asylum seekers and since then have continued to extradite Uzbekistan nationals. For example, on March 13, 2013, authorities forcibly returned Khairullo Tursunov to Uzbekistan, ignoring a February 28 Committee communication to stall his extradition.

On May 30, 2011, Kazakh authorities also extradited Ershidin Israil to China, despite the clear risk of torture he faced if returned. Israil, an Uighur refugee who had fled to Kazakhstan after the July 2009 Urumqi riots, was denied refugee status by Kazakh authorities.

National Legislation Regulating the Prevention and Prohibition of Torture (Convention Articles 1 and 4)

Since 2008, Kazakhstan has taken some important steps to bring national legislation in line with international standards. In January 2008, for example, Kazakhstan issued a declaration recognizing the competence of the Committee to consider individual

⁶ “Kazakhstan: Forced Returns to Uzbekistan Illegal,” Human Rights Watch news release, June 10, 2011, <http://www.hrw.org/news/2011/06/10/kazakhstan-forced-returns-uzbekistan-illegal>. For more information on the case, please see: Letter from Human Rights Watch to the Prosecutor General of Kazakhstan, December 2, 2010, <http://www.hrw.org/news/2010/12/01/kazakhstan-letter-prosecutor-general-regarding-29-asylum-seekers>; and Joint letter from Human Rights Watch and four other NGOs to the Prosecutor General of Kazakhstan, June 7, 2011, <http://www.hrw.org/news/2011/06/07/kazakhstan-joint-letter-prosecutor-general-regarding-32-asylum-seekers>.

complaints. In October 2008, Kazakhstan ratified the Optional Protocol to the Convention but made a declaration under its article 24 to postpone the establishment of its National Preventative Mechanism (NPM).

After some delay, in July 2013 the government adopted a law establishing an NPM. In early 2014, the National Commissioner for Human Rights (Office of the Ombudsman) established a Coordination Council in cooperation with civil society and public monitoring commissions, which, in mid-2014, began to fulfill its mandate.

While the introduction of the NPM is a notable development, unfortunately the law regulating the NPM does not allow representatives access to all places of detention in Kazakhstan. Monitors are restricted from accessing police department offices as well as homes for the elderly and disabled.

In addition, monitors have informed Human Rights Watch that they are concerned that the NPM is not sufficiently independent under the designation of the Office of the Ombudsman, in particular due to the lack of financial independence from the state (the **NPM's budget is set by Kazakhstan's executive**) and a **requirement that monitors must** coordinate their activities with the ombudsman, which limits their ability to effectively respond to allegations of ill-treatment and torture. Furthermore, monitors are restricted from carrying out unannounced visits to places of detention outside daytime hours during the work week.

The UN special rapporteur on torture expressed similar concerns about the independence of the Office of the Ombudsman after his visit to Kazakhstan in 2009. In his report he noted, **"The Commissioner is not considered to be sufficiently independent, has limited resources (both human and financial) and does not have regional offices in this vast state."**

Finally, while the definition of torture in the new Criminal Code under article 146 was revised to incorporate some of the recommendations made by the special rapporteur on torture in 2009, Human Rights Watch is concerned that it still is not fully compliant with the Convention. It remains too narrow, as it does not cover acts committed by persons **"acting in an official capacity,"** but only those acts committed by public officials or individuals acting at the instigation or with the consent or acquiescence of public officials.

Recommendations for Steps the Government of Kazakhstan Should Be Urged to Take:

- Fully investigate, in an impartial and thorough manner, all allegations of torture and ill-treatment in connection with the Zhanaozen violence and hold the perpetrators accountable.
- Review all June 2012 Zhanaozen-related convictions, starting with the cases of those individuals still serving prison sentences—labor activists Rosa Tuletaeva and Maksat Dosmagambetov, and Naryn Zharylgasynov and Kanat Zhusipbaev—given the widespread allegations by defendants at trial that they were subjected to ill-treatment and torture.
- Ensure that all asylum seekers in Kazakhstan are given prompt access to careful, thorough, and individualized refugee status determination in which their due process rights are protected, and that no asylum seeker is returned to a place where he or she faces a real risk of ill-*treatment* or torture.
- Review the law on the National Preventive Mechanism with a view to address inconsistencies with the requirements of the Optional Protocol to the Convention.
- Amend the definition of torture in the Criminal Code to make it fully compatible with Convention standards.