



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

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Summary record of the first part (public)* of the 1270th meeting

Held at the Palais Wilson, Geneva, on Monday, 17 November 2014, at 10 a.m.

Chairperson: Mr. Grossman
later: Mr. Tugushi

Contents

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

Third periodic report of Kazakhstan

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1270/Add.1.

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The meeting was called to order at 10.05 a.m.

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

Third periodic report of Kazakhstan (CAT/C/KAZ/3; CAT/C/KAZ/Q/3)

1. *At the invitation of the Chairperson, the delegation of Kazakhstan took places at the Committee table.*
2. **Mr. Zhakupov** (Kazakhstan) said that, immediately upon gaining independence, Kazakhstan had embarked on the path of building a democratic State governed by the rule of law. There had been progress at the legislative, institutional and practical levels in the implementation of recommendations made by the Committee against Torture. There was a total prohibition of torture under the Constitution and under existing legislation. All measures taken by the Government were aimed at creating a “zero tolerance” attitude to torture. The Strategy for the Development of the Republic of Kazakhstan to 2050, adopted in 2012, devoted particular attention to the modernization of the national human rights system. An independent and effective judiciary had been formed in order to protect human rights and freedoms. The requirements for candidates for the judiciary had been made stricter and the procedure for appointing judges more transparent. Specialized judges had been appointed, with the result that the effectiveness and quality of justice had been improved. A juvenile justice system had been set up in 2012.
3. New legislation had been adopted to ensure that only the judiciary could authorize certain specific actions, including detention. The process would be completed by 2020. Legislative restrictions had been placed on the use of detention, which had been reduced threefold — and in the case of minors sevenfold — and been replaced by alternative sanctions. In 2013, there had been 17,000 persons held in detention, whereas in 2014 to date there were only 7,000.
4. The country’s criminal legislation was undergoing a thorough reform. The new Code of Criminal Procedure provided that no one participating in a criminal trial could be subjected to torture or other cruel, inhuman or degrading treatment. If breached, that provision invalidated the trial concerned. Torture was also prohibited during investigations. The same provision appeared in the new Act on Agencies of the Ministry of Internal Affairs, which regulated the activities of the police. Evidence obtained through torture was inadmissible and the burden of proof lay on the prosecution. Criminal judges were not permitted to order additional investigations, which meant that, where there was doubt as to a person’s guilt, courts were required to provide justification for the person’s continued detention. A new institute for the training of examining judges had been established.
5. The role of lawyers had been strengthened. An examining judge could call for an expert opinion, the questioning of witnesses and the documents or material evidence required for the defence of an accused person. Evidence provided by the defence must be included in the record of a criminal case. A bill was also being introduced on the deposition of evidence, with the active participation of the prosecution, the judiciary and the defence. The use of torture at an early stage of an investigation would therefore not be possible. The role of the prosecution was to be enhanced so that it was not simply an instrument of criminal prosecution but acted as a defender of human rights. A procurator was required to ascertain whether a person had been tortured or ill-treated. Where necessary, he or she would order a medical report. There were special procurators who carried out independent investigations to determine whether torture had been used. Any complaints to that effect were to be directed to the procurator. An examining judge was required to order the procurator in charge to carry out an immediate investigation. If such a complaint was made during a trial, the court was required to suspend the case while the complaint was

investigated and the result of the investigation had to be reflected in the court record. The investigating procurator was required to transmit his or her decision within three days. The new Code of Criminal Procedure therefore established an effective mechanism for the lodging of complaints and their speedy investigation.

6. The Government's policy in that regard had meant that even trivial complaints were registered and all complaints fully investigated. As a result, there had been a huge increase in the number of petitions and complaints. In 2010–2012, there had been no more than 60, whereas in 2013 alone they had reached 965. The effectiveness of such investigations meant that law enforcement officials who had been guilty of torture could be prosecuted. In the past, only 2 or 3 officials a year had been prosecuted, but in 2013, 44 had been convicted, and in 2014 to date 20 had been convicted.

7. Victims of torture were entitled to free legal assistance and access to social, medical and psychological services. They also received full rehabilitation and compensation. A bill was currently being drafted on the establishment of a compensation fund, the beneficiaries of which would include victims of torture.

8. Extradition was prohibited in cases where there were grounds for believing that the person extradited would be at risk of torture or discrimination on the grounds of race, faith or other grounds. Kazakhstan carefully monitored the implementation by receiving countries of diplomatic assurances that persons extradited from Kazakhstan would not be at risk.

9. The new Criminal Code contained a range of provisions on the implementation of the country's international obligations. Under article 146 of the Code, proceedings could be instituted against not only law enforcement officials but other responsible persons, and also persons who perpetrated torture with the overt or tacit agreement of such persons. The provisions of the Code were identical with those of the Convention. The penalties for torture had been increased, with sentences of up to 12 years' imprisonment and confiscation of property. Those convicted of torture could not be released early or under an amnesty.

10. Kazakhstan had ratified the Optional Protocol to the Convention in 2008 and, in 2013, it had become one of the few States that had established a national preventive mechanism (NPM) to combat torture. The NPM was based on the "Ombudsman plus" model, which gave the Ombudsman wide powers. It was entirely independent of all branches of government, and unlawful interference in its activities was prohibited. It was provided with sufficient funds to carry out its work. The 112 members of the NPM had been appointed in February 2014. All were representatives of civil society. It had started its work in March and, of the 597 penal institutions in the country, it had visited 165, including 47 temporary holding facilities.

11. Kazakhstan constantly sought to improve conditions of imprisonment. Between 2011 and 2014, a total of 2 billion tenge (approximately US\$ 12 million) had been spent on repairs to 98 prisons and the rebuilding of 4 prisons. A total of 26 temporary holding facilities had been closed, while 7 that were located underground had temporarily ceased operations. Over 60 per cent of such facilities met international standards, largely thanks to visits by human rights organizations. The prison system was gradually moving towards single-cell occupancy. Prisoners could move freely within the prison during the day, but were kept in single cells for their own safety at night, in accordance with the recommendations of the Special Rapporteur on the question of torture. There were currently five institutions operating along those lines, two more were currently being introduced, and another was planned for 2015. Video surveillance was being installed in all facilities. Food rations for detainees had been increased by one and a half times, and complaints about the quantity or quality of food had practically ceased. Meals were provided by commercial

firms three times a day in temporary holding facilities. Bedding was changed more frequently and the quality of furnishings had been improved.

12. Medical services had also been improved. All specialized institutions had a medical unit and a detainee was examined for evidence of torture upon arrival. The health service had been provided with much new medical equipment and detainees were given information on leading a healthy life. As a result of such initiatives, the death rate in Kazakh prisons had fallen by 14 per cent in 2014. A plan to transfer the functions of the medical service for detainees from the Ministry of Internal Affairs to the Ministry of Health had been approved. The Government provided support for private firms using the labour of detainees in prisons.

13. The Government was engaged in a programme to reform the law enforcement agencies with a view to bringing the system up to international standards by 2020. The reforms were aimed at creating a situation in which the public saw the police as a social partner providing services, rather than as a criminal prosecution body. Kazakhstan was therefore engaged in the demilitarization of the law enforcement agencies. Unscheduled performance evaluations had been carried out in order to raise levels of training. In particular, the law enforcement agencies had been required to change their evaluation criteria and no longer give priority to crime detection rates.

14. The need to achieve results had been one of the reasons for the existence of torture. Any complaint of torture was subject not only to a criminal investigation but also to an internal inquiry into the management of the law enforcement agencies. Thus the Law Enforcement Service Act had been amended to provide for the dismissal of a senior official whose subordinate had committed a gross violation of a person's constitutional rights. The new practice of publicly announcing a court's judgement at the perpetrator's place of work in cases of torture had been found to be effective. A provision had also been introduced requiring police officers to inform an arrested person of his or her rights and obligations, under the so-called Miranda rule. Video surveillance had been installed in interrogation rooms and police offices. Medical examinations of detainees were carried out by civilian doctors and specialists both before and after questioning.

15. Kazakhstan devoted particular attention to the protection of women's and children's rights. In 2010, control of the system of temporary facilities for the reintegration and rehabilitation of minors had been transferred from the police to the education service. Steps had been taken to abolish the corporal punishment of children in all institutions. The Gender Equality Strategy for 2006–2016 was being implemented and the Act on State Guarantees of Equal Rights and Equal Opportunities for Men and Women and the Domestic Violence Prevention Act had been adopted in 2009. Government grants were allocated to 28 crisis centres that had been set up to combat domestic violence.

16. Law enforcement officials were routinely given human rights training. The curriculum of police academies contained a course on human rights, including instruction in United Nations instruments, the Optional Protocol to the Convention and national legislation on the prevention of torture. Persons directly involved in investigating complaints of torture were given specialized training in the Istanbul Protocol and, in 2015, such training would be provided by international experts. Members of the NPM were also given courses in the law. In cooperation with independent experts, methodological recommendations on preventive visits had been drawn up.

17. Places of deprivation of liberty were monitored by 15 supervisory commissions, the members of which included 114 representatives of human rights organizations. State bodies engaged in a constructive dialogue with all human rights NGOs by means of social councils attached to every law enforcement agency. The question of the prevention of torture by the police had been discussed at one such meeting.

18. Kazakhstan aspired to establish a State governed by the rule of law, which would protect the rights and freedoms of every person. He acknowledged, however, that there was still far to go.

19. **Ms. Gaer** (Country Rapporteur) commended the progress made in certain aspects of the country's legislation, but noted that, since the State party's last report, the Committee had received numerous reports on the gap between legislation on the prevention of torture and implementation of the law in practice. There remained consistent allegations of torture, especially in isolation facilities and including threats of sexual abuse and rape, to extract confessions for use as evidence. It seemed that such abuses occurred between a suspect's arrest and the formal registration of arrest at a police station. There was also a failure to record signs of torture and judges frequently ignored complaints. In that connection, she drew attention to the discrepancy between the claims in paragraphs 195–197 of the State party's report and paragraph 209, which said that no case of torture had been recorded in 2009–2012. Moreover, other sources, including some which cited official data, claimed that torture was frequent, including at the investigatory stage. NGOs claimed that 602 complaints had been submitted to prosecutors in 2012 and 965 in 2013, but that, of those, only 2 per cent had led to prosecutions. She requested confirmation of that situation and also updated information on the number of claims of torture made at every stage of an investigation. She asked how many prosecutions or convictions there had been and under what article of the Criminal Code.

20. Turning to specific cases of torture, she said that the poet Aron Atabek had been held in solitary confinement in a maximum security jail for writing a book. He had been beaten many times and denied adequate medical care. He had even been refused medicine and crutches sent by his family. She asked whether he was still in solitary confinement and whether a review of his case had been undertaken.

21. An anti-corruption advocate, Zinaida Mukhortova, had been detained against her will in psychiatric hospitals on a number of occasions. Her case had been the subject of a special appeal by seven United Nations special rapporteurs and, in the Human Rights Council, Austria had recommended that Kazakhstan should release her. Detention on mental health grounds should be carried out only in exceptional cases and only with the support of qualified medical personnel. She asked why the State party had not supported the recommendation by Austria.

22. Thirdly, she noted that most of the 37 defendants and at least 10 witnesses in the trial following the violent clashes in Zhanaozen in December 2011 had stated that they had been forced to make confessions, held incommunicado and beaten. Rosa Tuletaeva claimed to have been suffocated and hung by her hair. She remained in detention, but her complaints of torture had been ignored and no one had been charged. Five police officers had been prosecuted for abuse of power in connection with the incident, but no one had been charged with the death of Bazarbai Kenzhebaev, an accidental witness of the incident, who had died from wounds sustained in police custody. The former United Nations High Commissioner for Human Rights, Navi Pillay, had recommended that an independent international investigation of the events in Zhanaozen, together with their causes and aftermath, should be carried out, and she (Ms. Gaer) asked whether the delegation would accept that recommendation and whether the cases of four persons still detained would be reviewed.

23. She also asked about the case of Evgeny Zhovtis, a human rights defender, who had been questioned for weeks as a witness rather than as a suspect. His lawyer had been given limited access and only witnesses called by the prosecution had been permitted to testify. The judge had rejected all requests by the defence. Mr. Zhovtis had been given a prison sentence and refused permission to attend his appeal. She was concerned that defence counsel generally lacked the power to collect evidence and that prosecutors could decide to

take action restricting people's rights without judicial authorization. She noted that the executive controlled the judiciary and judges could not contest any disciplinary action taken against them. She asked whether further action would be taken to strengthen defence counsel and provide judges with greater oversight of prosecutions.

24. Following the Committee's recommendation in 2002, the State party had informed it that the control of prisons had been transferred from the Ministry of Internal Affairs to the Ministry of Justice, but it appeared that, in 2011, control had been transferred back to the Ministry of Internal Affairs and she wondered why the State party had reversed a trend in modern criminology. Control by the Ministry of Justice would create a fairer balance of power between the procurator, defence counsel and the judge, whereas, under the Ministry of Internal Affairs there was limited civilian oversight, a militarized culture, the risk that fair process would be jeopardized and the possibility that the authorities would use pretrial detention as a tool in the investigative process. She asked how the State party would guard against the possibility of a growing incidence of torture in detention.

25. She commended the change in the law to provide fundamental safeguards for arrested persons, but asked whether the law was applied from the moment of a person's arrest and whether such a person was informed of his rights to see a lawyer and to inform his relations. She also asked what steps were taken to ensure that registration took place within three hours of the actual time of arrest rather than the time when a suspect signed the registration document.

26. It was reported that the National Security Committee continued to use rented premises as safe houses for interrogation purposes. As the State party had informed the Human Rights Council under the universal periodic review, 850 people who had been unlawfully detained had been released from such houses and 44 prosecutions had been instituted for the violation of constitutional rights, 24 of which had been brought before the courts. She asked whether the State party had introduced measures to stop such means of investigation. The State party had also told the Human Rights Council that it had introduced habeas corpus, but arrested persons were often not informed of their rights and she asked whether officials had been sanctioned for such an omission. She asked whether officials were required to bring a person before the courts and whether procedures existed for a person to petition for a review of the legality of his or her arrest. If so, she asked how many petitions had been made and how many granted. She also requested further information about the use of doctors. She understood that the prison medical service had been transferred to the Ministry of Health. She asked who would be responsible for requesting the medical examination of a detainee and who authorized such an examination. She commended the fact that access to State lawyers had been improved but wondered how often such a lawyer was provided.

27. She welcomed the establishment of public monitoring bodies, which would play an important role. She asked whether such bodies were empowered to speak privately to individuals in detention and whether such individuals had experienced torture or ill-treatment. She wanted to know how many allegations of torture had resulted in the prosecution of those responsible. She asked how many visits had been made to temporary detention facilities and whether the monitoring bodies could make unannounced visits. She wondered whether their findings were made available to the public and whether officials could be held accountable.

28. She asked whether measures were taken to prevent reprisals against detainees. She enquired whether officials against whom torture allegations were made were suspended prior to the investigation of their claims. It was commendable that the NPM had already visited 168 of the country's 600 penal institutions, but she was concerned that reports of visits by the NPM were passed to the local authorities and were published only in annual reports, which had to be approved by the President. She noted that the NPM could not

monitor police departments, State-run orphanages, nursing homes or military barracks and that no visit could be carried out without the permission of the Ombudsman, which could be sought only during working hours. She understood that some requests had already been rejected on inappropriate grounds. She asked whether information on allegations of torture had been shared with other bodies and whether any prosecutions had been instituted. She enquired how the authorities responded to the visits and recommendations made and whether visits without the prior approval of the Ombudsman would be permitted.

29. Shortage of time prevented her from asking further questions about domestic violence, the definition of torture and the commensurate punishment for torture. It appeared that, in the case of Anatoly Petrenko, the perpetrators of his torture had been given light sentences. She also had further questions to ask about extradition and non-refoulement. In that connection, she asked how Kazakh legislation could state that there was a prohibition on returning a person to his or her country if that person was at risk of torture “unless otherwise provided for in international treaties” of which Kazakhstan was a signatory. She wondered how regional conventions could override the State party’s non-derogable obligations under article 3 of the Convention.

30. **Mr. Tugushi** (Country Rapporteur) asked the delegation to supply details about the development of education and training programmes for police and prison officers and how they addressed the application of the Convention and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

31. He requested further information about the training offered at the centre administered by the Ministry of Internal Affairs Committee on the Penal Correction System, who the beneficiaries were, whether the training was mandatory and whether it included any special programmes concerning the prevention of torture. He enquired about the legal education initiatives of the in-house counsel of institutions of the penal correction system. Were there any plans to provide continuing education and training to public officials? Were there any plans to implement further ad hoc human rights training programmes such as the one organized with the Kazakh International Bureau for Human Rights and Rule of Law in 2012? He wished to know whether medical staff in prisons received training in how to identify signs of torture pursuant to the Istanbul Protocol and whether any gender-specific training was available.

32. Committee members were concerned about the transfer of responsibility for prisons and detention centres from the Ministry of Justice to the Ministry of Internal Affairs, and about the fact that soldiers were being used as prison staff. The Committee had received reports about humiliating and degrading search techniques being used against prisoners, as well as other abuses of their rights, including inadequate nutrition and forced labour, and it was concerned that prisoners who complained were subjected to threats and intimidation. He wished to know what legislative changes were envisaged to address that situation.

33. Although the periodic report recognized that self-mutilation was viewed as covered by the right to freedom of expression, the Committee was concerned that measures had been reintroduced to make it an offence punishable by imprisonment. He noted that tuberculosis was responsible for as many as 40 per cent of deaths in custody, and asked what measures had been taken to eradicate it and whether such deaths automatically gave rise to an autopsy and inquiry.

34. In the light of information received by the Committee that prisoners often found it impossible to lodge complaints because their correspondence was censored or suppressed, he wished to know more about the complaints procedure and whether the authorities did in fact screen prisoners’ letters to the Ombudsman or other monitoring bodies. Was it true that public monitoring commissions had once been able to visit places of detention throughout the country but now could only visit institutions in their own region?

35. He asked the delegation to provide details about redress and compensation, and wondered what steps had been taken to bring relevant Kazakh legislation into line with the Convention. He requested details about the amount of compensation ordered by the courts and about how many torture rehabilitation facilities were operating in Kazakhstan, how they were funded and staffed, who used them and what services they offered.

36. He wished to know how many cases of torture had been cited in criminal proceedings since 2008 and how many times courts had ruled evidence inadmissible because of torture. He asked to be informed whether a judge could order an investigation if a prisoner alleged torture, and whether people already imprisoned on the strength of confessions would have their cases reviewed. He requested information on any legal and administrative measures taken to combat hazing and other ill-treatment in the Armed Forces and steps taken to prevent corporal punishment in juvenile detention facilities.

37. **The Chairperson** asked the delegation to inform the Committee about the sentences handed down in criminal prosecutions for torture between 2009 and 2012. What measures were in place to ensure that detentions were effectively registered within three hours?

38. He asked how many habeas corpus proceedings had been launched and how the unofficial quota system for “cases solved” worked in practice. He would welcome statistical information about temporary holding facilities. The rules on the medical examination of prisoners, as outlined in paragraph 8 of the list of issues, did not satisfy Committee standards and he asked the delegation to confirm whether or not the information given was accurate. He wished to know how legislation on refugees was implemented in practice.

39. *Mr. Tugushi (Vice-Chairperson) took the Chair.*

40. **Mr. Bruni** wished to know whether legislative measures to increase the size of cells in prisons and detention centres had been adopted and how many square metres were now available to each detainee. He asked the delegation to explain how solitary confinement was regulated, what purpose it served, who had the power to implement it, how long it lasted and whether it was periodically reviewed.

41. **Mr. Domah** asked whether it was the police who investigated complaints of torture once such complaints had been made before the courts and how independence and impartiality could be guaranteed. If the investigation concluded that torture had not taken place, could a defendant resubmit the case before the court for a judicial ruling?

42. He commended Kazakhstan for the introduction of electronic tags but was concerned that they seemed intended to reduce the prison population rather than to address human rights issues. He wished to know whether the tags would be used for prisoners facing pretrial detention and expressed concern that tags seemed to be assigned on the basis of administrative decisions without judicial supervision.

43. He asked the delegation to explain what measures were being taken to meet the State party’s obligation under article 11 of the Convention and to provide further details about Supreme Court Regulatory Decision No. 7 of 28 December 2009.

44. **Mr. Zhang Kening** said he was encouraged by the educational initiatives on international human rights standards being organized by the Ministry of Internal Affairs and asked the delegation to elaborate on how training was conducted. He wished to know how stateless persons were identified in Kazakhstan in the light of reports which suggested that no specific procedure for determining statelessness was in place. He asked the delegation to comment on information received from NGOs that, under the Kazakh Civil Code, compensation for moral damage resulting from unlawful acts committed by security officials was not available in the case of torture.

45. **Mr. Modvig** requested detailed information about the redress received by victims in the 46 cases in which persons had been convicted for torture in 2012. He was concerned at reports that non-medical staff examined prisoners for signs of torture before referring them to medical staff, and asked how many medical investigations of alleged torture had been conducted in 2012 and whether the State party had the intention of offering routine medical screening for torture to all prisoners.

46. He commended Kazakhstan for involving civil society in the NPM but expressed concern about the relationship of dependency between the chosen NGOs and the Commission on Human Rights. What arrangements were in place to ensure that NGOs participating in the NPM received financial compensation while maintaining their integrity vis-à-vis the Commission on Human Rights? He asked why unregistered human rights NGOs were prohibited in Kazakhstan and wished to know if there were any plans to lift that prohibition.

47. **Ms. Pradhan-Malla** welcomed the fact that the legal definition of human trafficking was in keeping with the terms of the Palermo Protocol; however, she was concerned about low reporting rates and the low success rate of cases brought to trial.

48. She would be interested to know whether prostitutes had access to health care and whether exit programmes were in place for those who wished to abandon prostitution. The Committee was concerned at reports that while managers of brothels could be held criminally accountable, owners tended to face only administrative sanctions. The expulsion of trafficking victims who had been brought into Kazakhstan illegally was another source of concern. She asked the delegation to provide information about any bilateral, regional or international cooperation initiatives in the field of trafficking.

49. **Mr. Gaye** asked the delegation to provide more information about implementation of the principle of universal jurisdiction for acts of torture under article 5 of the Convention since the consideration of the previous report in 2008. He asked whether any of the beneficiaries of a recent Amnesty Act and presidential pardon had been responsible for crimes of torture or ill-treatment.

50. He wished to know who made decisions on expulsion under the 2009 Refugees Act, what recourse was open to unsuccessful asylum seekers and whether victims of torture could only obtain reparation once a conviction had been secured, as NGO reports suggested. Attention should be given to the situation of drug addicts, HIV/AIDS sufferers and other vulnerable groups in detention.

51. **Ms. Gaer** asked what measures were being taken to strengthen the independence of the Office of the Ombudsman, enhance cooperation between the Ombudsman and the authorities, and ensure that allegations of torture or ill-treatment were not investigated only by the very agencies against which the allegations had been made. She asked for data on allegations of sexual violence in places of detention and wished to know what steps the State party was taking to prevent prison violence, including sexual violence. She also asked the delegation to comment on reports that prison officers, glad not to have to become involved themselves, had condoned gang violence in some facilities. She enquired what steps the State party had taken to ensure that the principle of non-refoulement was applied and that every person whose request for asylum was rejected had the opportunity to appeal, whether such appeals had a suspensive effect and how the Government intended to ensure that the promises it secured from the authorities of the countries to which it deported foreign nationals were kept.

The public part of the meeting rose at 12.05 p.m.