
SHADOW REPORT SUBMITTED BY ACAT AND ILI TO THE HUMAN RIGHT COMMITTEE ON CIVIL AND POLITICAL RIGHTS IN KAZAKHSTAN

Submitted to the Human Rights Committee
in advance of its examination of Kazakhstan periodic report under the ICCPR
117th session, June- July 2016



ACAT and ILI submit the following report for the consideration of the Human Rights Committee, in advance of its examination of Kazakhstan periodic report under the International Covenant on Civil and Political Rights (ICCPR) at the 117th Session (June-July 2016).

ACAT

The Action des chrétiens pour l'abolition de la torture (Action by Christians for the Abolition of Torture, or ACAT) is a Paris-based Christian NGO for the defence of human rights that was founded in 1974 and has been recognised as being of public use. Basing its action on international law and acting for the benefit of all, without prejudice to ethnicity, ideology or religion, ACAT fights against torture and for the abolition of the death penalty, the protection of victims and in defence of the right to asylum, drawing on a network of almost 39,000 members and donors. In particular, it plays a supervisory role with regard to action taken by responsive institutions such as the police, the gendarmerie, the judicial system or the prison administration system. This role relies on affidavits and in-depth research. In 2015, ACAT conducted an inquiry into the use of force by law enforcement. ACAT also acts to promote the right to asylum, and has been providing asylum seekers with legal aid since 1998, acting within associations and collectives to fight for this fundamental freedom. Based on the information it collects, ACAT leads educational and awareness-building initiatives, and runs campaigns supported by members and sympathisers.

www.acatfrance.fr

ILI

International Legal Initiative Public Foundation is non-profit human rights defending NGO, focusing on protection and promotion of human rights, especially civil and political rights, such as freedom of assembly, freedom of association, rule of law, fair trial standards, freedom of torture and protection of vulnerable people - migrants, refugees, asylum seekers, trafficked victims, homeless and undocumented people.

Table of content

Table of content 3

Article-By-Article Analysis 4

- 1. Constitutional and legal framework within which the Covenant is implemented (Art. 2) 4
- 2. Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26)..... 5
- 3. Violence against women, including domestic violence (arts. 3, 6 and 7) 6
- 4. Counter-terrorism measures..... 6
- 5. Right to life and excessive use of force (arts. 2, 6 and 21)..... 7
- 6. Prohibition of torture and other cruel, inhuman and degrading punishment (arts. 2 and 7) 8
- 7. Liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)..... 11
- 8. Conditions of detention (art. 10)..... 12
- 9. Elimination of slavery and servitude (art. 8) 13
- 10. Right to a fair trial and independence of the judiciary (art. 14)..... 14
- 11. Freedom of movement; treatment of aliens, including refugees and asylum seekers (arts. 6, 7, 12 and 13)..... 15
- 12. Right to privacy and family life (art. 17) 16
- 13. Freedom of conscience and religious belief (arts. 2, 18, 19, 21 and 22)..... 17

Article-By-Article Analysis

1. Constitutional and legal framework within which the Covenant is implemented (Art. 2)

In the list of issues, the HRC asked the authorities of Kazakhstan to provide examples of cases in which the provisions of the Covenant have been referred to by National Courts and to indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol to the Covenant and to provide information on measures taken to ensure full compliance with the Committee's views adopted in relation to the State party in Communications. The HRC asked the authorities to report on measures taken to ensure the full independence of the Human Rights Commissioner (Ombudsman) in accordance with the Paris principles.

1. On 18 June 2006, the Constitutional Council of Kazakhstan ruled that when the provisions of an international convention contradict the Constitution, this international convention in full or in part should not be executed. Courts almost never apply or refer to the international Covenant on Civil and Political Rights in their decision neither to international conventions ratified by Kazakhstan.
2. There is no specific procedure in place for the implementation of the Committee's Views under the Optional Protocol to the Covenant and to provide information on measures taken to ensure full compliance with the Committee's views adopted in relation to the State party in Communications. However in practice, Kazakhstan has implemented CAT decisions in few cases. For example, in November 2013, a local court in the north of Kazakhstan, the Kostanai court awarded 2 million Kazakhstani Tenge (13000 \$) in compensation to Aleksandr Gerasimov following a UNCAT decision from May 2012¹. The decision was upheld by the Appeal Court. The local police department was condemned to pay and a department of the Ministry of Interior was held accountable for torture on the basis of the UNCAT decision.
3. The authorities did not take any measures to ensure the full independence of the Human Rights Commissioner (Ombudsman) in accordance with the Paris principles. The Decree of the President of the Republic of Kazakhstan N 947 adopted on 19 September 2002, relating to the Commissioner for human rights² prescribes that the Ombudsman is appointed and relieved by the President of the Republic of Kazakhstan³. The Ombudsman has a too limited mandate and lack adequate financial and human resources. No steps have been taken to establish offices of the Ombudsman in all the regions of the country. The UNCAT⁴ recommended that Kazakhstan adopt the legislative or other measures necessary to bring the Office of the Human Rights Commissioner into full compliance with the Paris principles.

Recommendations:

- To take all measures to strengthen knowledge and capacities of judges and lawyers on the provisions of the Convention
- To ensure the implementation at the national level of the Committee's Views adopted in relation to the State party in communications
- To reform the status of the Human Rights Commissioner and ensure the full independence in accordance with the Paris principles

¹ UNCAT, CAT CAT/C/48/D/433/2010, Communication No. 433/2010, Gerasimov v. Kazakhstan
http://www.ohchr.org/Documents/HRBodies/CAT/Jurisprudence/CAT-C-48-D-433-2010_en.pdf

² http://www.ombudsman.kz/en/about/commissioner_%20for_%20human_%20Rights.php

³ Article 2 of the Decree of the President of the Republic of Kazakhstan N 947, 19 September 2002

⁴ CAT/C/KAZ/CO/3

2. Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26)

In the list of issues, the HRC asked the authorities of Kazakhstan to indicate whether steps had been taken to adopt comprehensive anti-discrimination legislation and to provide further information on measures taken to address discrimination. The HRC also asked the authorities to provide further information on measures taken and relate progress with regard to “a) increasing the representation of women in legislative and executive bodies, especially in decision-making positions; and (b) reducing the wage gap between men and women.

4. Kazakhstan is multiethnic country where indigenous ethnic group - the Kazakhs, comprise the majority of the population. There are two dominant ethnic groups in Kazakhstan: ethnic Kazakhs (63.1%) and ethnic Russians (23.7%) with a wide array of other groups represented, including Ukrainians, Uzbeks, Germans, Chechens, Koreans, and Uyghurs.
5. Kazakhstan has not taken steps to adopt comprehensive anti-discrimination legislation and has not taken any measures to address discrimination based on other grounds than sex. The definition of discrimination does not encompass both direct and indirect discrimination on the grounds of race and ethnic origin, which may lead to hindrances in access to justice for victims of racial discrimination.
6. Minorities continue to be underrepresented, in particular non-Kazakh ethnic groups, in political life, decision-making, at all levels, civil service and private sectors.
7. Participation and representation of women in legislative and executive bodies especially in decision-making positions remains very low. Following the last elections in 2016 to the lower room, on 107 seats, 29 women were elected (27.1%). AT the Senate, the representation of women is even lower since the elections of 2014, on 47 seats, 3 women were elected (6.4%)⁵. The average salary of women amounts to 61 % of that among men and there is still a list of prohibited types of labor activities.
8. In 2013, and 2014, several parliamentarians called for the adoption of legislation against same-sex relations but until now, no bill has been proposed.

Recommendations:

- To adopt a comprehensive anti-discrimination legislation
- To renew the invitation to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and to the working group on the issue of discrimination against women in law and in practice
- To ensure the implementation of recommendations from International human rights mechanisms such as the concluding observations from the CEDAW Committee⁶ and the Committee on Elimination of Racial Discrimination⁷

⁵ Inter-Parliamentary Union, Women in national parliaments, <http://www.ipu.org/wmn-f/classif.htm>

⁶ CEDAW/C/KAZ/CO/3-4

⁷ CERD/C/KAZ/CO/6-7

3. Violence against women, including domestic violence (arts. 3, 6 and 7)

The HRC asked the authorities to report on measures to prevent and combat all forms of violence against women.

9. Some reforms have been adopted by the authorities to prevent and combat all forms of violence against women. There is a law on the prevention of domestic violence⁸ and also some articles in the Administrative code and Criminal procedure code, etc. However, there is room for improvement. For example, there is no law against sexual harassment at work.
10. According to the official numbers, about 500 women and young girls die every year from domestic violence and about 20.000 rapes are registered annually by the police.

Recommendations:

- *To ensure the adoption of all necessary laws to fight against violence against women*
- *To renew the invitation to the Special Rapporteur on violence against women, its causes and consequences*

4. Counter-terrorism measures

The HRC asked the authorities to report on measures taken to clarify the broad definition of “extremism” in the 2013 counter-terrorism legislation, inter alia as “inciting social or class hatred”. The HRC also asked the authorities to respond to reports stating that counter-terrorism activities continue to particularly target some groups and prisoners serve their sentences for terrorism-related offences under cruel, inhuman and degrading conditions.

11. Authorities did not take any measure to clarify the broad definition of extremism in the 2013 counter-terrorism legislation. The new Criminal code lowers the age of criminal liability for terrorist offences to 14 years. The crime of “terrorism with loss of life”⁹ is the only once punishable by death.
12. Counter-terrorism activities continue to particularly target members or presumed members of banned or unregistered Islamic groups and Islamist parties, members of religious minorities, and asylum seekers.
13. Prisoners serve their sentences for terrorism-related offences in Shymkent and Arkalyk high security prisons under cruel, inhuman and degrading conditions. For example, in Dzheskasgan prison camp, the prisoner Rafis Galiulin is subjected to torture¹⁰. On 28-29 October 2014, he was transferred to the prison No. 159/25 which is a Department of the Correctional System located in the Karaganda region, called the Dzheskasgan Camp. From 6 to 11 November 2014 he was ordered, under torture, to carry out derogatory orders and forced to give a statement denouncing his membership of “Khizb ut-Takhrir” in front of a video camera. Galiulin was repeatedly beaten in the region of his liver, kidneys and his lower back by 10 people. The Committee of National security¹¹ in charge of National Interior Security is regularly accused of committing torture particularly against religious and ethnic minority in the name of the fight against terrorism.

⁸ Law on prevention of domestic violence from 4 December 2009

⁹ Article 49.1 of the Criminal code

¹⁰ <http://www.ahrca.eu/index.php/kazakhstan/165-religion/559-kazakhstan-a-prisoner-is-tortured-and-forced-to-leave-khizb-ut-takhrir>

¹¹ Komiteit Natsional'noi Bezopasnosti-KNB

Recommendations:

- *To ensure counter-terrorism legislation is in accordance with international human rights standards including the International Covenant on civil and political rights*
- *To ensure respect in practice of the provisions of the ICCPR while countering terrorism including articles 2, 7, 9-10 and 14*
- *To renew the invitation to the United Nations Special Rapporteur on human rights while countering terrorism*

5. Right to life and excessive use of force (arts. 2, 6 and 21)

The HRC asked the authorities to provide reports on the progress made towards the abolition of the death penalty and whether steps have been taken to become a party to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. The HRC also asked the authorities to report on measures taken to ensure an independent, impartial, thorough and effective investigation of human rights violations committed in connection with the events in Zhanaozen on 16 and 17 December 2011.

14. The maintenance of the death penalty for 17 types of crime in the new Criminal code enacted on 1 January 2015 is inconsistent with the policy of gradual reduction of the grounds for the imposition of the death penalty, as set out in the 2010-2020 legal policy concept paper, even though Kazakhstan has been moving away from the death penalty for years.
15. On December 16, 2011, clashes broke out between police, oil workers, and others in the central square of Zhanaozen, site of an extended oil worker's strike. During the violence, disproportionate and indiscriminate use of force by law enforcement resulted in deaths and serious injuries (12 people were killed and dozens injured) and mass detention. Released detainees and relatives of detainees reported that scores of men and women had been rounded up and kept incommunicado in police custody. Detainees claimed that they were held in overcrowded cells, they were stripped naked, beaten, kicked and doused with cold water outside in sub-zero temperatures. They said that they heard screams coming from interrogation rooms. Independent monitors were not allowed access to the police stations. In June 2012, 34 oil workers were convicted despite the use of testimony obtained by torture and ill-treatment (R. Tuletayeva, M. Dosmagambetov, S. Aspentayev, T. Kalieyev and others). Since then, there have been no further steps to credibly investigate allegations of torture made by persons detained in connection with the 2011 violence in Zhanaozen. Responsible were not brought to justice and victims or their families were not provided any adequate remedies.

Recommendations:

- *To ratify the second optional Protocol to the ICCPR AIMING AT THE Abolition of the death penalty*
- *To abolish death penalty in law and respect the moratorium in practice*
- *To respect the rights to freedom of peaceful assembly and of association. Take all steps to avoid the excessive use of force during peaceful demonstrations and follow the recommendations of Mr. Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association made after his visit to Kazakhstan from 19 to 27 January 2015¹²*

¹² A/HRC/29/25/Add.2

- To ensure that excessive use of force, ill-treatment and torture are followed by independent, impartial, thorough and effective investigation including in connection with the 2011 violence in Zhanaozen. Ensure that victims and their families receive adequate remedies

6. Prohibition of torture and other cruel, inhuman and degrading punishment (arts. 2 and 7)

The HRC asked the authorities to indicate whether steps have been or are being taken to amend the definition of torture, to ensure that sanctions for the crime of torture are commensurate with the gravity of the crime; and to provide, in law and in practice, reparation to victims of torture. The HRC also asked the authorities to respond to reports stating that torture and ill-treatment, is regularly perpetrated in all places of detention and that no independent investigation mechanism has been set up. Finally, the HRC asked the authorities to provide updated information on statistics relating to torture.

16. Kazakhstan authorities declared several times they “*would not rest until all vestiges of torture had been fully and totally eliminated*” and that they were committed to a “*policy of zero tolerance of torture*”. However, despite some positive developments, reform of law is still needed and torture persists in Kazakhstan.
17. The Constitution of Kazakhstan specifically prohibits torture and prescribes: “*No one must be subject to torture, violence or other treatment and punishment that is cruel or humiliating to human dignity.*”¹³
18. In January 2015, new Criminal code and new Code of criminal procedure entered into force.
19. However, despite some reforms, the definition of torture in the Criminal code¹⁴ is not in accordance with the definition given by the International Convention. In application of the Criminal code, torture or ill-treatment can either be prosecuted as torture¹⁵, or as “*exceeding authority and abuse of power*”¹⁶. Individuals acting at the instigation of, or with the consent of acquiescence of public officials can now bear individual criminal responsibility for torture. However, the definition remains limited, since it does not extend to “*all persons acting in an official capacity*”.
20. Torture is punishable by a fine up to 12 years imprisonment¹⁷ when leading to death or serious damages to health. The new Criminal code prescribes that the author of torture cannot be amnestied¹⁸. It also eliminated the statute of limitations for the crime of torture.
21. In application of provisions relating to “*Exemption from criminal responsibility in connection with reconciliation*”¹⁹, if charged under part 1 or 2 of Article 146²⁰, a first time offender can during the pre-conviction period “*reconcile with the victim and provide compensation*”. This procedure put an end to the criminal prosecution.
22. Victims of torture do not receive any reparation such as adequate compensation and rehabilitation, and civil remedies, independently of criminal proceedings.

¹³ Article 17 of the Constitution of Kazakhstan

¹⁴ Article 146 of the Criminal code

¹⁵ Article 146 of the Criminal code

¹⁶ Article 362 of the Criminal code

¹⁷ Article 146 of the Criminal code

¹⁸ Article 78 of the Criminal code

¹⁹ Article 68 of the Criminal code

²⁰ The maximum punishment is 5 years and whereby this is not a “serious” crime under the official classification

23. In 2010, substandard of detention (overcrowding, lack of food and of adequate health care in the 94 prisons and Provisory detention centres (SIZO)²¹ of the country lead to riots and at least 147 auto mutilation cases. As a result, in July 2011, the Government decided to transfer the jurisdiction over all detention and investigation facilities, temporary detention facilities, pre-trial detention facilities and prisons back to the Ministry of Internal Affairs despite recommendations made by international human rights mechanisms including the Committee against torture²². The United Nations Committee against torture expressed its concerns that: *“when places of detention are controlled by the same government ministry with responsibility with the police and internal security, that arrangement creates an incentive for the investigating authorities to seek to use detention as a tool of the investigative process or a mean to compel prisoners to confess to the charges against them and thus amplifies the risk of torture and ill-treatment in such places of detention.”*
24. In practice, ill treatment and torture continue to be used in all places of detention (prisons, as well as in temporary detention facilities and pre-trial detention facilities), for the purpose of eliciting information or confession that are used as evidence in court. In practice, existing legal safeguards are routinely not implemented.
25. Allegations of torture and ill-treatment continue to be referred for investigation to the authorities that are accused of perpetrating such acts rather than to independent prosecutors. Even when the complaints are registered, they are not always followed by satisfying investigations. In May 2015, Iskander Touguelbaiev was beaten up in prison and was in a coma for 3 days. When he recovered, he could neither speak nor walk. Until now, he does not know if his torturers will be prosecuted.
26. Between the 1st January and the 30th November 2015, about 119 complaints have been registered and 465 cases relating to torture have been closed or judges. In 11 cases, there was a trial and only 5 persons have been judged guilty and only one was condemned to imprisonment²³.
27. In 2014, a law setting up a National Prevention Mechanism (NPM) entered into force implementing the Kazakhstan obligation under the OPCAT²⁴. The NPM is part of the Office of the Human Rights Ombudsman and thus is not independent from the government. The NPM does not have the mandate to cover all places of deprivation of liberty²⁵, has little opportunity to conduct unannounced visits, is not allowed to publish its findings and disclose directly to the general public and lack sufficient capacities and funds. In 2014, the Ombudsman reported that he received 96 complaints alleging torture, violence, and other cruel and degrading treatment and punishment, and stated that this was an increase compared with previous years and likely due to the NPM’s monitoring activities. In its first report published in March and covering activities in 2014, the NPM reported that the risk of human rights violations was high at temporary detention centres, especially in the first few hours. The Public Monitoring Commission (PMC) corroborated that report and elaborated that torture typically occurred during the initial period of detention. Suspects often were beaten during transit or in police stations (namely, in police officer’s own cars. Often these police officers have not any signs of belonging to the police - uniform, badge etc.).
28. Allegations of torture are usually found unsubstantiated and hence not meriting investigations and can be followed by reprisals against victims. As a consequence, most of the time, torture victims prefer not to lodge complaints. Vadim Kuramshim, human rights

²¹ Sledstvennyi Izolator

²² CAT/C/KAZ/CO/3 §10

²³ Amnesty International, Annual report 2015/2016

²⁴ Law “On amendments and additions to some legislative acts of Kazakhstan on the establishment of a national preventive mechanism aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment” of July 2013, Law № 111-V.

²⁵ No access to offices of police departments, orphanages, military barracks nursing homes for the elderly and disabled, military barracks

defender and prominent activist campaigning against torture in prisons was arrested in December 2012. He has been repeatedly beaten by police and threat to other torture, including sexual violence while in pre-trial detention and submitted to physical and psychological pressure after conviction. When he tried to lodge a complaint, his lawyer was deprived of her license to practice law and the other lawyer faced disciplinary sanction. Kazakh authorities officially denied any allegations of torture and no investigation was conducted.

29. The NGO Coalition against Torture in Kazakhstan received several cases that have been dismissed or indefinitely suspended.²⁶
30. In 2014, the UNCAT found Kazakhstan responsible for torturing Rasim Bairamov. Bairamov had been apprehended for alleged robbery and severely beaten by police and prison staff in 2008. In partial implementation of the UNCAT decision, Kazakhstan granted Bairamov compensation and opened a criminal investigation into his treatment in custody. However, in September, authorities closed the case for lack of “evidence of a crime.”
31. The failure to conduct prompt, thorough and impartial investigations into torture cases as for consequence that impunity for torture and ill-treatments perpetrators remains unchallenged. Authorities turn a blind eye to acts of torture and ill-treatments. No consideration at remand hearings or during trials by judge of allegation/evidence of torture or ill-treatment. Judges fail to exclude evidence extracted under torture, some perpetrators of torture have been punished but climate of impunity persists, victims usually do not have access to adequate redress.

Recommendations:

- *To amend the Criminal code in order to ensure the definition of torture is in complete conformity with the international definition*
- *To widen access to places of detention to independent public monitors*
- *To ensure that in practice, no statement obtained through torture can be used in court*
- *To ensure the implementation of principles contained in the United Nations Istanbul Protocol on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*
- *To strengthen the mechanisms such as the NPM and the Ombudsman and ensure they can fulfill their mandate independently*
- *To ensure prompt, thorough, impartial and independent investigations into all allegations of torture/ill-treatment and bring anyone reasonably suspected of being responsible to justice. • Implement the recommendations of UN human rights bodies and procedures as a matter of priority*
- *To follow the recommendations from international human rights mechanisms including recommendations made by the UNCAT in 2014*

²⁶ NGO Coalition against Torture in Kazakhstan, Helsinki Foundation for Human Rights (Poland), International Partnership for Human Rights, OMCT, *Follow-up to the UNCAT's concluding observations on Kazakhstan* (CAT/c/sr.1286 and cat/c/sr.1287)

7. Liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)

The HRC asked the authorities to respond to reports stating that, in practice, persons deprived of their liberty are not duly informed of their rights upon arrest and detention and are often denied access to counsel. The HRC also asked to indicate the measures taken to ensure that an arrested or detained person is informed promptly of his or her rights, and clarify whether, under the current criminal procedure legislation, the failure to provide such information is considered a violation of procedural rights. The HRC asked the authorities to indicate whether the State party had taken measures to ensure that persons detained are brought before a judge within 48 hours, and within 24 hours in the case of juveniles, and respond to reports that, in practice, inaccurate recording of the time of arrest and the detention of individuals in unregistered facilities is used to circumvent the existing 72hour period. The HRC also asked the authorities to report on steps taken to ensure that judicial control of detention satisfies the standards required under article 9 (3) of the Covenant, and provide information, on the use of non-custodial alternative measures to pretrial detention in practice. The HRC asked the authorities to clarify the average duration of pretrial detention. The HRC asked the authorities to explain how the practice of administrative arrest and detention of persons, with the approval of the prosecutor, for up to 30 days in temporary administrative detention centres on grounds of lack of permanent place of residence or documents verifying their identity. Finally, the HRC asked the authorities to comment on reports of forced psychiatric detention of human rights defenders.

32. Authorities regularly use “preventive detention” against participants in planned protests. In May 2016, with the aim to prevent demonstration against the land reform law, about 30 individuals have been arrested by police and sentenced to 10-15 days in administrative detention. These include civil society activists, human rights defenders and social media users, including Makhambet Abzhan (Astana), Max Bokayev (Atiray), Bakhytzhan Toregozhina (Almaty) and Lukpan Akhmediarov (Uralsk). Trials have often been held at night, in a rushed manner, and in the absence of defense lawyers, giving rise to serious concerns about violations of the right to a fair trial. Dozens of individuals have been pressured to sign pledges that they would not take part in the planned protests. Others have been summoned by police and questioned in relation to criminal cases on “inciting social discord” and other offenses opened in this context. Around ten individuals have been assigned as witnesses in such cases.

33. Zinaida Mukhortova who had lodged a complaint about local officials in Balkhash has been repeatedly subjected to involuntary psychiatric detention and to force psychiatric from 2009 to 2014. In December 2014, following criticism and pressure from the UN, OSCE and EU Zinaida Mukhortova was released from a psychiatric hospital.

Recommendations:

- To put an end to preventive detention, force psychiatric detention or other means as a way to silence any dissidence or critic of the regime or the system or as a way to impeach the exercise of human rights***
- To immediately release all individuals arrested in order to prevent demonstration***

8. Conditions of detention (art. 10)

The HRC asked the authorities to indicate what measures have been or are being taken to ensure that the penitentiary system is conducive to the rehabilitation of offenders and to their reintegration into society. The HRC also asked the authorities to report on the use of internal troops for security operations in prisons and respond to corresponding allegations of widespread violence against prisoners by such troops in the penitentiary facilities AP-162/3 (Pavlodar region) and OV-156/18 (East Kazakhstan region). Please indicate what measures are taken to ensure that public monitoring commissions and the national preventive mechanism function effectively; that the mandate of the national preventive mechanism extends to all places of deprivation of liberty; and that the mechanism can undertake urgent and unannounced inspections without prior authorization and make its findings public.

34. Conditions of detention continue to be characterized violence among prisoners and self-mutilation by prisoners, poor quality of food in insufficient quantity and inadequate medical care; lack of appropriate facilities for persons with disabilities; the use of prolonged solitary confinement in prisons, including as punishment, lack of free legal assistance for those prisoners, because free legal defense services can only be provided during the criminal process. Overcrowding continue to be a major issue in Kazakh detention facility.
35. The Kazakh authorities have taken few measures to ensure that the penitentiary system is conducive to the rehabilitation of offenders and to their reintegration into society. The Criminal code which entered into force in 2015
36. Public Monitoring Commissions (PMCs) composed of representatives of civil society, are mandated to visit and monitor detention facilities run by the Ministry of Internal Affairs, including prisons, pre-trial detention centers, and police detention facilities. Law enforcement agencies have to work together with PMCs during torture investigations²⁷. However, The National Preventive mechanism's still does not provide for visits to all places of deprivation of liberty. For example, the NPM is not allowed to visit offices in police station. In May 2015, the NPM released its first annual report. In this report the NPM indicates that in 2014, the NPM made 14 special visits in response to reports of the risk of or actual torture or other ill-treatment. 12 of these reports came from those detained in institutions of the penal system under the Ministry of Internal Affairs. In addition, some monitoring groups of NPM are under influence of ex-staff of penitentiary system, for example, in Almaty.

Recommendations:

- *To amend the Criminal code and the Criminal procedural code to ensure the implementation of international human rights standards*
- *To ensure the independency and effectiveness of the National mechanisms in charge of the monitoring of conditions of detention and the prevention of torture*

²⁷ 2010 Joint Decree "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"

9. Elimination of slavery and servitude (art. 8)

The HRC asked the authorities to report on measures taken to improve efforts related to the identification of victims of trafficking, as well as investigation and prosecution; and to provide sufficient State-funded shelters and longer-term rehabilitation to victims of trafficking; and to ensure that legal alternatives are available to foreign victims who may face hardship or retribution upon removal. The HRC also asked the authorities to indicate the steps taken to address the issue of domestic servitude, forced and bonded labour, and to ensure that victims of forced and bonded labour are identified and recognized as such and are provided with shelter, as well as legal, financial and social support; to clearly designate slavery and slavery-like practices, including domestic servitude, and forced and bonded labour, as crimes in the Criminal code; to address abuses against migrant workers in the cotton sector, such as poor and hazardous working conditions, delayed payment and confiscation of identity documents; and to monitor the working conditions of migrant workers and to ensure that they are able to report on rights violations without fear of reprisal, and have access to effective judicial redress and compensation.

37. Kazakhstan became a major destination for migrant and seasonal workers, in particular from neighboring Uzbekistan, Kyrgyzstan and Tajikistan, as well as from China.
38. The legal framework is very complex and has led to illegal labor migration. Illegally working migrants are particularly vulnerable to forced and bonded labor.
39. The Criminal code does not prescribe for criminal liability for forced labor
40. Child labour persists among children of migrant workers and Kazakh children alike. In tobacco and cotton plantations, children account for more than half of the total workforce²⁸.
41. The economy of Kazakhstan is the largest in Central Asia, mainly owing to its natural resources, in particular oil and natural gas, and its agricultural assets (vegetable, tobacco and cotton plantations). Economic growth has supported the development of other sectors as well, in particular the construction industry and domestic work.
42. The Special Rapporteur on contemporary forms of slavery, including its causes and consequences conducted an official visit to Kazakhstan from 25 to 27 March 2014, to follow up on the mission she conducted in 2012, to assess new developments and the initiatives taken by the Government in response to her recommendations.

Recommendations:

-To renew the invitation to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

-To implement recommendations of International human rights mechanisms including the ones made by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences during his visit to Kazakhstan from 25 to 27 March 2014²⁹

²⁸ International Labour Organization, International Programme on the Elimination of Child Labor, and Center for Study of Public Opinion, "Child labour in tobacco and cotton growing in Kazakhstan", rapid assessment report, Almaty, 2006.

²⁹ A/HRC/27/53/Add.2

10. Right to a fair trial and independence of the judiciary (art. 14)

The HRC asked the authorities to provide information on the procedures and criteria for the selection, appointment, disciplining, suspension and dismissal of judges. The HRC also asked the authorities to report on measures taken to ensure, in law and in practice, the impartiality of judges and their full independence from the executive branch; to address corruption in the judiciary; to review the broad powers of the prosecution in the judicial process; to ensure the full compliance of judicial proceedings with article 14 of the Covenant; to ensure that State-appointed lawyers are impartial and provide legal advice in the best interest of their clients; and to address prosecutorial bias in criminal cases and the low rate of acquittal.

43. The Constitution³⁰ prescribes that the “*election and discharge from office, the Chairperson of the Supreme Court, the Chairpersons of the Collegium of Justice, and judges of the Supreme Court of the Republic at the proposal of the President of the Republic of Kazakhstan, and swearing them into office*” shall belong to the exclusive jurisdiction of the Senate, as well as the approval of the appointment of the Procurator General and the Chairperson of the Committee of National Security by the President of the Republic of Kazakhstan, the deprivation of inviolability of the Procurator General, the Chairperson and judges of the Supreme Court of the Republic. The Constitution prescribes the independence of judges³¹.
44. The justice system of Kazakhstan needs to be reformed. It is still dependent of authorities. For example, Heads of each court in Kazakhstan can influence decisions of judges.
45. The new Criminal procedural code entered into force in 2015, however,
46. However, judicial procedures do not comply with international human rights standards including because of the lack of procedural safeguards in disputes with the state (administrative justice); the broad powers of prosecutors office undermining the independence of the court; the possibility of an arbitrary limitation of publicity of court process; the excessive court interference in private legal relations; violation of the principle of judicial independence in the process of attracting participants liable for "contempt of court"; limitation of the ability of the parties to use evidence; legal uncertainty and unpredictability of the legal provisions; violation of the right to protection and the choice of the defender.
47. In civil procedures, prosecutors exercise too much power in appealing Courts' decisions.

Recommendations:

- *To ensure the implementation of article 14 of the ICCPR in law and practice*
- *To renew the invitation to the Special Rapporteur on the independence of judges and lawyers*

³⁰ Article 55 of the Constitution

³¹ Article 77 of the Constitution

11. Freedom of movement; treatment of aliens, including refugees and asylum seekers (arts. 6, 7, 12 and 13)

The HRC asked the authorities to report on measures taken to bring the compulsory residence registration system (*propiska*) into line with article 12 of the Covenant. The HRC also asked the authorities to report on measures taken to guarantee accessible and effective procedures for determining refugee status at all border points, including at international airports and transit zones, and to establish an efficient referral procedure at all border points; to end the practice of forcible return of asylum seekers before a decision on their asylum claims has been taken; to ensure, in practice, the exercise of the right to an effective appeal, with suspensive effect, of expulsion/extradition by persons whose asylum applications have been rejected; to ensure strict compliance with the principle of non-refoulement in practice, including while extraditing individuals on the basis of bilateral or multilateral extradition agreements or regional instruments, and to revisit the policy of reliance on diplomatic assurances to justify the return of foreign nationals to countries where they may face a real risk of torture or other form of ill-treatment.

48. The refugee law promulgated on 1st January 2010 prescribes the respect of the principle of non-refoulement, the access and transparency of the asylum procedure and the right to appeal. The law also created a national procedure of determination of the refugee status. A national Central Committee replaced the UNHCR in granting the refugee status. In application of this law, the authorities should not return any persons at risk of torture.
49. Asylum seekers without valid travel documents or visas were not allowed to enter the State party and apply for asylum and asylum seekers were forcibly returned to their countries of origin before final decisions on their asylum claims were reached.
50. In practice, Kazakhs authorities regularly return asylum seekers to ensure their diplomatic relations with neighboring states. Over the last 4 years, Kazakhstan has forcibly returned individuals to torture: Uzbek, ethnic Uighurs, and Chechen illegally despite clear risk of torture upon return. Kazakhstan makes bilateral extradition agreements and the regional Minsk Convention prevail over its international obligation of non-refoulement. Kazakhstan continues the practice of forcible return including when decision on their asylum claims hasn't been taken yet. Kazakhstan also ignore provisions of article 3 of the International Convention against torture which provides that *"No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."*
51. Few years ago, 28 individuals fled Uzbekistan to Kazakhstan, claiming to be persecuted because of religious practice. They sought asylum in Kazakhstan where most of them were recognized as refugees by the UNHCR between 2005 and 2010, others were in the process of requesting asylum. They saw the cancellation of their status after the entry into force of the Kazakh refugee law. In 2010, they were all arrested and threatened to be extradited to Uzbekistan. Following the submission of an individual communication, UNCAT granted interim measures to prevent imminent extradition. Despite these measures, on 9 June 2011, the 28 were forced to return to Uzbekistan. These persons were not given the possibility to appeal before Kazakh courts. UNCAT provisory measures were not respected³² and Kazakhstan returned these men before the UNCAT decision. Kazakh diplomats based in Tashkent went to visit 18 of the complainants in Uzbek prison allegedly to inquire about their conditions of detention. But they make them sign a pre-typed document that Kazakhstan drafted stating that they were not tortured in Uzbek jails and that they were withdrawing

³² UNCAT, CAT/C/48/D/444/2010, Communication No. 444/2010, Abdussamatov et al. v. Kazakhstan http://www.ohchr.org/Documents/HRBodies/CAT/Jurisprudence/CAT-C-48-D-444-2010_en.pdf

their complaint. ACAT received information at that time from some of the complainants stating that Kazakh diplomats came with SNB and prison officers. They were threatened with reprisals if they refused to sign. Acat also receive testimonies from them alleging acts of torture upon return to Uzbekistan.

52. There is also risk of torture and ill-treatments upon return to Kazakhstan.

53. UNCED recommended³³ that the State party “*adopt the measures necessary to ensure in practice that all asylum seekers [...] have unhindered access to effective refugee status determination procedures [...] before proceeding to an expulsion, return or extradition, all relevant procedures have been exhausted and a thorough individual examination has been carried out [...] and diplomatic assurances are evaluated with the utmost care.*” UNCAT made the same recommendations³⁴. During a UPR session, the Kazakh delegation stated that there was no need to implement recommendations regarding non-refoulement as legislation was in strict compliance with it.

Recommendations:

- *To respect the international and national human rights standards in relation with freedom of movement; treatment of aliens, including refugees and asylum seekers*
- *To put an end to the refoulement and all practices violating human rights of asylum seekers*
- *To ensure the implementation of decisions of the human rights mechanisms including the decision of the UNCAT relating to the Communication No. 444/2010*

12. Right to privacy and family life (art. 17)

The HRC asked the authorities to provide information about the legal safeguards in place against arbitrary interference with the privacy, home and correspondence of individuals, including with regard to the protection of personal data, and their observance in practice. The HRC also asked the authorities to report on measures taken to ensure that surveillance activities require prior judicial authorization and conform with the State party’s obligations under the Covenant and that such surveillance activities are subject to independent oversight mechanisms. Please respond to reports that anonymity and privacy online are restricted and that the monitoring of online activities has an adverse impact on the right to privacy and freedom of expression.

54. In 2014, several amendments to the Law on communication were adopted. The new provisions allow the services of the General prosecutor to force the Internet Service providers to block access to specific content considered as “extremists” or that may constitute a threat for security without any prior decision by a Court. In practice, these new provisions have been used several times in 2015.

Recommendations:

- *To put an end to the violation of the right to privacy*

³³ CED/C/KAZ/CO/1

³⁴ CAT/C/KAZ/CO/3, para 16

13. Freedom of conscience and religious belief (arts. 2, 18, 19, 21 and 22)

The HRC asked the authorities to explain the restrictions imposed on the exercise of freedom of religion. The HRC also asked the authorities to respond to allegations of harassment, intimidation, threats and arbitrary detention of human rights defenders. The HRC asked the authorities to provide information on the implementation of the Committee's previous recommendations concerning article 21 of the Covenant³⁵. The HRC asked the authorities to provide information on measures taken to guarantee, both in law and in practice, the free exercise of freedom of association, With regard to the Committee's previous recommendations³⁶, The HRC asked the authorities to report on measures taken to revise the undue requirements for registration of political parties and clarify the broad grounds for the suspension or dissolution of political parties.

55. The Constitution prescribes that *"The right to freedom of conscience must not specify or limit universal human and civil rights and responsibilities before the state."*³⁷ This article does not comply with article 18 of the Covenant. In practice this provision is used to limit the right to freedom of conscience.

56. Early parliamentary elections and early presidential elections were held respectively on March and April 2015. Nursultan Nazarbaïev has been elected for the 5th consecutive time, securing 97.7% of the vote. According to OSCE, a comprehensive review of the current legal framework for elections and fundamental freedoms should be undertaken and steps should be taken in law and in practice to ensure elections are in conformity with OSCE commitments and other international obligations and standards. For example, OSCE recalled that *"Media should be able to operate free from any intimidation or pressure, including excessive or arbitrary lawsuits and disproportionate administrative actions."*³⁸ In January 2015, the *Democratic Choice of Kazakhstan*, a political party was dissolve, charged of political extremism, inciting social tension and threatening national security, by court order. In March 2016, Yermek Narymbayev and Serikzhan Mambetalin were released from house arrest after an appeal upheld their conviction but suspended their prison sentences. A ban on them conducting political activity for 5 years was upheld.

57. The 2011 Law on Religious Activity and Religious Associations prescribes the mandatory registration (re-registration) of religious organizations and of missionary activities, the ban on unregistered religious activities, the restrictions on the importation and distribution of religious materials, and the penalties for violations of the legislation in question. These provisions are not compatible with the State party's obligations³⁹. In practice, these provisions are used to justify harassment of religious leaders, arbitrary arrests and convictions, censorship and banning of religious literature, ...

58. The law prescribes criminalization of and harsh penalties for defamation⁴⁰ and insult⁴¹, for public insult or other encroachment on the honor and dignity of the President of Kazakhstan⁴², for public insult of a State official by the mass media or information communication networks⁴³ and for dissemination of knowingly "false information"⁴⁴. These provisions are regularly used against individuals trying to exercise their right to freedom of

³⁵ CCPR/C/KAZ/CO/1, para. 26

³⁶ CCPR/C/KAZ/CO/1, para. 27

³⁷ Article 22 of the Constitution

³⁸ OSCE/ODIHR, Election Observation Mission, Early presidential election, 26 April 2015

Final Report <http://www.osce.org/odihr/elections/kazakhstan/174811?download=true>

³⁹ Article 18 of the ICCPR

⁴⁰ Article 130 of the Criminal code

⁴¹ Article 131 of the Criminal code

⁴² Articles 373 and 375 of the Criminal code

⁴³ Article 378 of the Criminal code

⁴⁴ Article 274 of the Criminal code

expression and in practice; several persons have been arrested and convicted on this ground because they had posted commentaries on social networks. The Prosecutor General or his deputies are allowed to instruct an authorized body to shut down or suspend a network or means of communication, the provision of communication services and access to Internet resources without a court order⁴⁵. Social media, blogs and other Internet-based resources, are regularly blocked, allegedly for their extremist content (see below). Several press organs have been forced to close or impeached to work under administrative false reasons or because they were accuse by the authorities to threat public security. Authorities regularly interfere with professional journalistic activity and shut down independent newspapers and magazines (e.g. Respublika, Golos Respubliki, Assandi Times, Pravdivaya Gazeta and ADAM bol), television channels (e.g. K+) and news websites for minor irregularities or on extremism-related charges. In 2015, several Medias have been forced to close or did not have the possibility to work, most of the time because they were accused to threaten public safety. In December 2014, Adam Bol, a newspaper was forced to close for national security reasons by the authorities. In February 2015, the appeal submitted to contest this decision was rejected.

59. In October 2015, despite repeated calls from the international community, several legislative provisions have been adopted by the Parliament relating to the access of NGOs to funding. These provisions have entered into force in October. A central operator will be in charge of administrating and dividing the private funds and the State subventions⁴⁶. To head an association of to be a member of an association non-legally recognised is an infraction to the Criminal code or the Administrative code. The State did not take any steps to amend the overly broad and vague definitions of offences contained in the 2014 Criminal code, notably in articles 174 (or article 164 in the 1997 Criminal code) and 404 (or article 337-1 in the 1997 Criminal code), in the Code on Administrative Offences and in the 2005 Law on Countering Extremism, which are reportedly used extensively to curtail freedom of religion and belief and freedom of expression and association.
60. The 1995 Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations requires prior authorization to hold public events. The local representatives and local executive authorities detain broad powers to designate specific sites where authorized assemblies can be held and to decide on the time of such events.
61. At the beginning of 2016, planned land reforms, in particular amendments to the Land Code, which were adopted without any public discussion, have given rise to widespread public discontent. In late April to early May 2016, a series of peaceful rallies were held in different cities of Kazakhstan to protest these reforms. In a number of cities, law enforcement authorities resorted to repressive measures against participants. Over 30 protest participants were brought to justice and ordered by court to pay large fines for taking part in protests held without the advance permission required by Kazakhstan's restrictive Law on Assemblies. Such permission is regularly denied on various pretexts, and protest organizers often do not even attempt to obtain permission, knowing that their requests are likely to be rejected. Requests to hold peaceful protests submitted to local authorities have been rejected.
62. Ahead of new nation-wide land reform rallies planned to be held on 21 May, authorities have unleashed a widening crackdown on civil society activists, human rights defenders, journalists, bloggers, social media users and other citizens expressing their intention to take part in these peaceful protests. In many cases, individuals have been targeted after releasing announcements on social media. Some journalists have been detained when carrying out their work or warned by police not to show up at planned land reform protests. On 12 May

⁴⁵ Law No. 200-V of 23 April 2014

⁴⁶ *New draft law threatens the independence and existence of NGOs in Kazakhstan, warns UN rights expert, 15 October 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16608&LangID=E>*

2016, the UN Special Rapporteurs on the situation of human rights defenders, freedom of opinion and expression, and freedom of peaceful assembly and of association, as well as the first vice-chair of the UN Working Group on Arbitrary Detention called on Kazakhstan's government "to protect the rights to freedom of peaceful assembly and freedom of expression after mass arrests, detention and criminal prosecutions following demonstrations over proposed land reforms across the country."⁴⁷ However, instead of heeding this call, the authorities have further stepped up efforts to forcefully suppress criticism of land reforms.

Recommendations:

- To ensure the respect in law and practice of the freedom of conscience and religious belief, including by putting an end to the harassment in law and in practice of civil society organizations⁴⁸
- To put an end to the crackdown on individuals who try to express their right to expression and peaceful assembly including those who are currently taking an interest in the land reform issue and are seeking to peacefully express their position on this issue
- To release all human rights defenders, journalists, civil society representatives and all persons arrested because they tried to exercise their rights guaranteed by the Constitution and the International conventions ratified by Kazakhstan including the ICCPR
- To ensure the follow up of recommendations made by International human rights mechanisms including the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, after his Visit to Kazakhstan, from 25 March to 4 April 2014.

⁴⁷ UN human rights experts urge Kazakhstan to halt clampdown on land reform protesters, 12 May 2016, <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19951&LangID=E#sthash.uuQsqXeO.dpuf>

⁴⁸ Open Dialog Foundation, *The harassment of civil society in Kazakhstan*, 26 June 2015, <http://en.odfoundation.eu/a/6629,report-the-harassment-of-civil-society-in-kazakhstan>

ACAT

7 Rue georges lardennois
75019 Paris

Tél. +33 (0)1 40 40 42 43
email. acat@acatfrance.fr

www.acatfrance.fr

 [@ACAT_France](https://twitter.com/ACAT_France)

