

# KAZAKHSTAN

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE

FOLLOW-UP TO THE CONCLUDING OBSERVATIONS OF KAZAKHSTAN'S SECOND PERIODIC REPORT

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# 1. INTRODUCTION

In advance of the upcoming review of the follow-up information to the Concluding Observations (CCPR/C/KAZ/CO/2) provided by the Government on 28 December 2016 and 9 May 2017, Amnesty International submits the following information in relation to paragraphs 18, 24 and 54 of the Concluding Observations to the United Nations (UN) Human Rights Committee (the Committee). This document supplements the information submitted by Amnesty International prior to the 117<sup>th</sup> session in June 2016.<sup>1</sup>

## 2. ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS IN CONNECTION WITH THE ZHANAOPEN EVENTS (PARAGRAPH 18)

Amnesty International regrets that in their follow-up information, the Kazakhstani authorities continue to maintain that there is no need for further investigation into the human rights violations committed in connection with the events in Zhanaozen in December 2011. This is despite calls for a full and effective investigation by the UN Committee against Torture in 2014,<sup>2</sup> the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2015,<sup>3</sup> as well as the Human Rights Committee in its Concluding Observations in 2016. These calls draw attention to the inadequacies in the Kazakhstani authorities' earlier investigations into the events in 2011 and their failure to hold those alleged to be responsible for the torture and other ill-treatment of detainees to account.

As stated in Amnesty International's original submission, to date the authorities have not fully and effectively investigated allegations of human rights violations committed in connection with the events in Zhanaozen in December 2011, during which at least 15 people were killed<sup>4</sup> and over 100 were seriously injured when the police reportedly used excessive force. In addition to reports of excessive use of force, law enforcement officials reportedly carried out torture and other ill-treatment against those involved in the demonstrations who were detained, resulting in the death of one detainee.

Most of the 37 defendants put on trial in March 2012 in the regional capital Aktau (accused of organizing or participating in violence in connection with the demonstrations in Zhanaozen) alleged that they were tortured or otherwise ill-treated in detention by security forces in order to extract "confessions", which they retracted in court.<sup>5</sup> The torture and other ill-treatment methods described by the

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<sup>1</sup> Available at <https://www.amnesty.org/en/documents/eur57/4122/2016/en/>

<sup>2</sup> United Nations Committee against Torture (UN CAT), "Concluding observations on the third periodic report of Kazakhstan", CAT/C/KAZ/CO/3, Geneva, 12 December 2014.

<sup>3</sup> Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to Kazakhstan*, A/HRC/29/25/Add.2, Geneva, 2015, p.20.

<sup>4</sup> This figure is disputed. In their response to Amnesty International's report *Dead End Justice: Impunity for Torture in Kazakhstan*, representatives of the Office of the Prosecutor General stated that only 14 people died. See: Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan* (Index: EUR 57/3345/2016), London, 2016, Annex 1, <https://www.amnesty.org/en/documents/eur57/3345/2016/en/>.

<sup>5</sup> For more information, see: Amnesty International, *Kazakhstan: Progress and nature of official investigations called into question 100 days after violent clashes between police and protesters in Zhanaozen*, (Index: EUR 57/001/2012), London, 2012, <https://www.amnesty.org/download/Documents/24000/eur570012012en.pdf>; and: Amnesty

defendants – which included accounts of being stripped naked, made to lie or crouch on a cold concrete floor, doused with cold water, and beaten and kicked by security officers, often to the point of losing consciousness – were consistent with the allegations made by many others who had also been detained, but were subsequently released without charge. Ten of the witnesses for the prosecution withdrew their testimonies against the defendants during the trial proceedings and complained that they had been tortured or otherwise ill-treated into giving evidence implicating the defendants. However, instead of a full and effective investigation, these allegations of torture and other ill-treatment made at the trial were passed on for internal screening (*proverka*) to the Internal Investigations Department of the Ministry of Internal Affairs (MVD), the agency whose officers were among those accused of perpetrating the torture and other ill-treatment. The Internal Investigations Department of the MVD dismissed as unfounded all the allegations regarding the use of torture or other ill-treatment; at a subsequent court hearing in May 2012, the court did not question the objectivity of the review carried out by the Internal Investigations Department and the trial of the defendants continued on the assumption that no torture or other ill-treatment had occurred.<sup>6</sup> Despite lawyers for the victims of torture and other ill-treatment requesting information about the screening review, no details were made public nor otherwise available (including to lawyers) and the MVD Internal Investigations Department provided only general replies about the lack of evidence against the alleged perpetrators.

The judge presiding at the trial dismissed complaints of torture or other ill-treatment made by defendants, saying that defendants who raised allegations of torture and other ill-treatment during court proceedings did so only in order to avoid responsibility for the crimes that they had committed; this was despite the fact that the allegations were reiterated under oath, and were consistent with accounts given by others who had been detained and released.<sup>7</sup>

Amnesty International urges the authorities in Kazakhstan to:

- Open a full, impartial, and effective investigation into allegations and evidence of excessive use of force and of torture and other ill-treatment by law enforcement officers against those involved in the demonstrations in Zhanaozen in 2011, as called for by the UN Committee against Torture, by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and by the UN Human Rights Committee.

## 3. TORTURE AND ILL-TREATMENT (PARAGRAPH 24)

Torture and other ill-treatment remains an issue of grave concern in Kazakhstan, and the situation has changed little from that detailed in Amnesty International's 2016 report *Dead End Justice: Impunity for Torture in Kazakhstan*.<sup>8</sup> This is despite positive amendments included in the new Criminal Code and Criminal Procedure Code (both adopted in 2015) and changes to the procedures for registering and investigating reports of torture, as detailed in information provided by the Kazakhstani authorities to the Committee's Concluding Observations.

Safeguards against torture and other ill-treatment such as the right to information about one's rights and the reasons for the arrest, the right to notify one's family or close ones at the time of the arrest, the right to a lawyer, the right to see a doctor, and the right to complain about treatment while in detention apply only to those who have already been registered as suspects. These safeguards do not apply before then, at the time of a suspect's actual deprivation of liberty. In addition, they only apply in full to those deprived of their liberty on criminal grounds. People who are detained on administrative grounds and those who have been placed in psychiatric care, drug treatment, or foster care institutions against their will do not enjoy these essential safeguards, or are only entitled to some of them.

Registering a complaint of torture or other ill-treatment with the police continues to be difficult, often futile, and sometimes dangerous. No fully independent body to investigate torture or other ill-treatment exists in Kazakhstan. Complainants are warned of criminal liability for false reporting (Article 419 of the Criminal Code), regardless of the crime they report. Practice shows that this deters many victims of

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International, *Old Habits: The routine use of torture and other ill-treatment in Kazakhstan*, (Index: EUR 57/001/2013), London, 2013, <http://www.amnesty.org/fr/library/info/EUR57/001/2013/en>.

<sup>6</sup> Amnesty International, "Kazakhstan Submission to the United Nations Committee Against Torture, 53rd Session of the United Nations Committee against Torture (3-28 November 2014)", (Index EUR 57/002/2014), London, 2014, <https://www.amnesty.org/en/documents/eur57/002/2014/en/>, p.12.

<sup>7</sup> Amnesty International, *Old Habits: The routine use of torture and other ill-treatment in Kazakhstan*, (Index: EUR 57/001/2013), London, 2013, <http://www.amnesty.org/fr/library/info/EUR57/001/2013/en>.

<sup>8</sup> Amnesty International, *Dead End Justice: Impunity for Torture in Kazakhstan*, (Index EUR 57/3345/2016), March 2016, Amnesty International, London, <https://www.amnesty.org/en/documents/eur57/3345/2016/en/>.

torture from registering a complaint, as they realize that without an independent investigative body in place there is little chance for them to have their allegations properly investigated, but great risk that they will end up being prosecuted for false reporting instead.

When a person who is already in detention makes a report of torture, there are no means for him or her to be transferred to a facility outside the control of the Ministry of Internal Affairs facilities to ensure his or her safety, as the penitentiary, pre-trial, and police detention systems are all within this Ministry, as is the investigating body.

Prisoners who resort to self-harm, such as self-mutilation in a group with others, risk extended incarceration for violating “lawful demands of the prison administration”. The possibility of these prisoners having been subjected to ill-treatment or torture which may have resulted in this course of action on their part is usually not investigated and there have been cases when prisoners were sentenced to additional terms in prison after they attempted to draw public attention to their ill-treatment by cutting their wrists.

The Special Prosecutor Units established under the Prosecutor General can investigate cases of torture but they are not directed to do so under the Criminal Procedure Code.<sup>9</sup> They do this at the instruction of the Prosecutor General and not by a law of higher hierarchy.

The establishment of the National Preventative Mechanism (NPM) in 2014, overseen by the Office of the Human Rights Ombudsman, has been a positive development. However, the current mandate does not cover monitoring of all places of detention and all state-run residential institutions; for instance, members of the NPM monitoring groups are not permitted to inspect army barracks and care homes for elderly or disabled people. In addition, the NPM Coordination Council remains under the supervision of the Ombudsman’s Office, which compromises its independence, as the Ombudsman is directly appointed by the President.<sup>10</sup> In order to undertake an urgent and unplanned visit, NPM members have to receive written permission from the Ombudsman, which can only be obtained during working hours, restricting the NPM’s ability to respond rapidly to emerging reports of torture and other ill-treatment.

Amnesty International calls on the authorities in Kazakhstan to:

- Clarify the mandate of the Special Prosecutor’s Units (SPUs) to specify that they should:
  - investigate *ex officio* all cases involving allegations of torture and other ill-treatment; and
  - be actively involved in the investigation of such allegations themselves, rather than delegating all investigative work to law enforcement agencies acting under their supervision.
- Establish an advisory committee under the auspices of the Prosecutor General, to meet twice a year to oversee the investigation of complaints of torture and other ill-treatment. This committee could include experts from civil society, as well as representatives from the coordinating council of the Public Monitoring Commissions (PMCs) and the Ombudsman’s office. The committee mandate would include identifying and making recommendations to address systemic shortcomings in the investigation of torture and other ill-treatment cases;
- Work towards the establishment of a separate, fully independent police complaints mechanism with the sole responsibility of investigating allegations of torture and other ill-treatment, in consultation with the advisory committee mentioned above and with wider civil society;
- Cease the practice of automatically opening criminal proceedings for “false reporting of a crime” (Article 419 of the Criminal Code) in cases where the investigation of a complaint of torture has been terminated due to lack of evidence;
- Adopt a separate law on the NPM, to include a unified definition of “places of detention” suggested in Article 4 of the Optional Protocol to the Convention Against Torture; and
- Transfer the prison system from the Ministry of Internal Affairs back to the authority of the Ministry of Justice.

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<sup>9</sup> Under Decree No.22 of the Prosecutor General of the Republic of Kazakhstan (7 March 2012), torture was added to the list of priority list of crimes to be investigated by Special Prosecutors. Coalition of NGOs of Kazakhstan against Torture, *Борьба с пытками в Казахстане: справочная информация* [The struggle against torture: background information], Almaty, 2015, p.5.

<sup>10</sup> This means that currently, the Ombudsman does not meet the criteria laid out in the “Principles relating to the Status of National Institutions (The Paris Principles)”, Adopted by General Assembly resolution 48/134 of 20 December 1993.

# 4. FREEDOM OF ASSOCIATION AND PARTICIPATION IN PUBLIC LIFE (PARAGRAPH 54)

In the period since Amnesty International's original submission, the Kazakhstani authorities have targeted a number of NGOs in a manner that calls into question their commitment to upholding the right to freedom of association. The period June 2016 - May 2017 saw legal cases against three NGOs for alleged failure to pay taxes, based on a very ambiguous interpretation of the tax law, as well as the prosecution of activists in the trades union movement. This follows a pattern of consistently suppressing all forms of dissent, whether expressed on the streets or online, detailed in Amnesty International's recent briefing *Think Before You Post: Closing Down Social Media Space in Kazakhstan*.<sup>11</sup>

## 4.1 PERSECUTION OF NGOS

In August 2016, the tax authorities began inspections at the International Legal Initiative ("ILI") human rights NGO and two other NGOs: the Liberty Foundation and Dignity (Kadyr Kassiet).<sup>12</sup> These inspections followed a written complaint from an individual "concerned citizen", who accused the NGOs of being linked to public protests that had taken place in Kazakhstan earlier in 2016. In the complaint, the "concerned citizen" referred to a newspaper article published on 11 July 2016 on a pro-government news site that accused the three NGOs of using foreign grant money to "influence political processes".

At the end of December 2016, the ILI and the Liberty Foundation were ordered to pay hefty fines for allegedly failing to pay taxes: ILI received a fine of the equivalent of EUR 3700, and the Liberty Foundation, EUR 8300. In February 2017, the ILI appealed the Almaty tax directorate's decision in court; this resulted in a ruling on 6 April 2017 by the Special Inter-District Economic Court of Almaty, which found the ILI guilty of failing to pay taxes.

Kazakhstan's tax legislation exempts all non-profit organizations from paying tax on the income that they receive from donors, provided that the organization meets two criteria: (1) its work should not be designed to create profit, and (2) it should not redistribute any of the organization's income between its members. In its decision on 6 April, the court agreed that ILI was a non-profit NGO, but despite this, the court interpreted the law to mean that only those NGOs that rely on grants provided by the state shall be exempt from taxation. The tax legislation was amended in 2009 to include additional provision to permit tax exemption specifically for NGO-run projects funded by the state. However, these amendments did not revoke the tax exemption rule for other non-profit NGOs that do not receive funding from the state.

On 31 May 2017, the Special Inter-District Economic Court of Almaty also rejected Liberty Foundation's appeal against the tax directorate's decision, upholding the decision that the Liberty Foundation had failed to pay the correct tax on income received from international donors. The tax authorities discontinued their inspection of Dignity (Kadyr Kassiet) in May 2017 on the grounds that no irregularities had been found.

The ILI believes that the tax inspection and the subsequent legal case were designed to intimidate and harass the organization for the work they do. Specifically, ILI see this case as punishment for the fact that they provided legal assistance to peaceful protestors who were detained on 21 May 2016 in Almaty, Kazakhstan's largest city. This included monitoring police stations in Almaty to see and document how police were bringing in and treating protestors who had been arrested.

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<sup>11</sup> Amnesty International, *Think Before You Post: Closing Down Social Media Space in Kazakhstan*, (Index EUR 57/5644/2017), February 2017, London, <https://www.amnesty.org/en/documents/eur57/5644/2017/en/>.

<sup>12</sup> A full account of this case can be found in Amnesty International, "Kazakhstan: Persecution of NGO for 'failure to pay taxes' as authorities again clamp down on dissent", (Index EUR 57/6205/2017), 10 May 2017, London, <https://www.amnesty.org/en/documents/eur57/6205/2017/en/>.

Leading, or participating in, an unregistered organization remains a criminal and administrative offence, and “leaders” of associations are treated as a separate category of offenders in relation to this offence, providing for harsher penalties. The definition of “leader” is broad, potentially including any active member of an NGO or other civic association.

Legislative changes introduced at the end of 2015 mandated the creation of a central state database of NGOs. Failure to supply accurate information on a regular basis for the database could lead to fines or a temporary ban on activities. In February, the ILI challenged the provision in a civil court, but lost the case; the NGO believes that this legal challenge is another reason why it was targeted by the tax authorities.

## 4.2 CRIMINAL CHARGES AGAINST TRADE UNIONISTS

The authorities in Kazakhstan have also acted to suppress the independent trades union movement, pursuing trade unionists on far-fetched charges of inciting illegal strikes.

Trade union activist Nurbek Kushakbaev, a labour inspector for the trade union organization of the oilfield service enterprise Oil Construction Company (OCC), was found guilty under Article 402 of the Criminal Code, for inciting participation in an illegal strike.<sup>13</sup> He was sentenced to two-and-half years’ imprisonment in April 2017.

Nurbek Kushakbaev was accused of inciting an illegal strike after hundreds of oil workers in Mangistau oblast’ began a hunger strike at the beginning of January 2017, as part of a protest against the liquidation of the Confederation of Independent Trades Unions of Kazakhstan (CITUK). Nurbek Kushakbaev was one of the leaders of the hunger strike, which lasted for two weeks, from 5 to 21 January 2017. Around 600 members of the OCC Trade Union took part. Nurbek Kushakbaev and the chair of the OCC Trade Union, Amin Yeleusinov, were arrested a day before the end of the hunger strike, on 20 January, and taken in handcuffs from Aktau to Astana. Amin Yeleusinov was charged and convicted under charges that were unrelated to the hunger strike (Article 189 of the Criminal Code, “misappropriation or embezzlement” of property), and sentenced to two years imprisonment in May 2017. In the period 19 – 24 January, 63 oil workers were detained, brought before the court, and fined.

Amnesty International calls on the authorities in Kazakhstan to:

- Clarify the tax legislation in regard to tax exemption for non-profit organizations;
- Desist from using tax and other administrative legislation to silence NGOs and other civil society groups;
- Allow independent trade unions to operate;
- Immediately and unconditionally release Nurbek Kushakbaev; and
- Respect and uphold the rights to freedom of association, expression and peaceful assembly

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<sup>13</sup> For further details of this case, see: Amnesty International, “Kazakhstan: Workers’ rights: trade unionist Nurbek Kushakbaev jailed on trumped up charges”, (Index EUR 57/6053/2017), 11 April 2017, Amnesty International, London, <https://www.amnesty.org/en/documents/eur57/6053/2017/en/>.



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