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Excellency,

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture, I refer to the examination of the second periodic report of Kazakhstan (CAT/C/KAZ/2) at its 41st session, held on 6 and 7 November (CAT/C/SR.842 and CAT/C/SR.845). The Committee adopted Conclusions and Recommendations (CAT/C/KAZ/CO/2) in which further comments by the Government of Kazakhstan were requested on its response to the Committee's recommendations listed in paragraphs 7, 9, 18 and 29.

On behalf of the Committee, thank you for your Government's reply in its communication of 25 February 2010 (CAT/C/KAZ/CO/2/Add.1). The additional comments provided have been reviewed with care, and they have assisted the Committee in its ongoing analysis of the issues of concern under the Committee's Follow-Up Procedure. However, there remain many outstanding questions about the implementation in practice of the legislative and other instructions adopted by your Government and described in the 25 February 2010 letter. As a result, I am writing to seek further information to enable completion of analysis of the progress made regarding implementation of the Committee's recommendations in practice. We would be grateful if your reply would reach us as soon as possible and in any event by 13 December 2010 so that we may assess whether your response has been commensurate with the aims of this Follow-Up Procedure which focuses on serious, protective, and achievable measures.

In particular, the Committee would be grateful for further clarification as to the following points.

In paragraph 7 of the Conclusions and Recommendations, the Committee called on Kazakhstan to apply a zero-tolerance approach to the problem of torture and ill-treatment, and to "publicly and unambiguously condemn practices of torture in all of its forms" accompanied by a clear warning that those responsible or complicit in such acts will "be held responsible before the law for such acts and subject to penalties..." It further called for establishment of effective mechanisms for complaints of sexual violence or the threat of such violence, and for measures to "change the performance evaluation system of investigators so as to eliminate any incentive for obtaining confessions..." The emphasis in this recommendation was on action in response to the "consistent allegations concerning the frequent use of torture and ill-treatment" to extract confessions to be used as evidence in criminal proceedings.

H.E. Mr. Mukhtar Tileuberdi
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The Committee is pleased to learn of the adoption of an action plan to eradicate torture and a regulatory resolution of the Supreme Court in December 2009. It was also very interested to learn from the 25 February 2010 reply to the Committee that there will be constant publicity in mass information media regarding human rights, and particularly measures taken to warn against and prevent torture. In this connection, the Committee would appreciate if your Government would forward copies of the advertisements and other mass media information which it has prepared and disseminated in this regard. If any of these items included statements or clarifications by leading officials of Kazakhstan, would you kindly inform the Committee? Also, please clarify what organs and media they have been published in, and which of these are directed to the public, and which to police, prosecutors and judges. In addition, in light of the continuation of allegations of abusive treatment, please provide the Committee with information on the number of cases alleging torture or ill-treatment of detainees, the number of personnel charged, how many of these have been investigated and with what results? Please clarify whether any such cases can be found to have resulted from the public campaign, and whether any law enforcement personnel have been disciplined as a result.

Your Government's reply also indicates that the Parliament is considering bills on investigation, oversight and the grounds and procedures for arrest and detention. The Committee looks forward to receiving further, more detailed and specific information on the law and draft bills noted in the reply. In particular, would you kindly clarify whether Kazakhstan has reached a determination to revise the definition of torture of the Criminal Code to bring it in compliance with the Convention against Torture?

The Committee has expressed concern that allegations of threats to detainees, including of sexual harm and violence to family members as well as to detainees, have been reported. Please also clarify whether the Government intends to adopt measures to ensure *in practice* the establishment of prompt, impartial and effective mechanisms to receive and investigate complaints of torture or ill-treatment, including threats and/or actual sexual violence. In this regard, what consideration has been given to the possibility of establishing an independent and effective oversight mechanism independent of the General Prosecutor's Office (or procuracy) to conduct investigations?

With regard to paragraph 9, the Committee noted with concern that basic legal safeguards are not effective in practice. Your response to this in your letter to the Committee also referred to the 28 December 2009 adoption of the Supreme Court's "normative judgments" entitled "On the application of the criminal and criminal procedural legislation on personal freedom and respect for the inviolability of human dignity, combating torture, violence or other cruel or degrading treatment or punishment" and the fact that judges and prosecutors now are required to investigate the legality of detention in various ways. In this regard, the Committee requests additional information about the measures that have been taken in practice to ensure the fundamental safeguards of detainees from the moment of actual deprivation of liberty, in particular access to lawyers, notification of family members, and access to independent medical examinations without the interference or presence of law enforcement agents or prosecutors. The Committee would also be grateful to receive further information regarding any measures taken or being considered to be taken to register persons deprived of their liberty from the very moment of apprehension and to record periods of pre-trial detention and investigation so as to ensure that all official personnel who have been engaged in the arrest, transport, questioning, and detention of the suspect are noted in the register. Has any prosecutor or judge been sanctioned for failing to conduct an investigation?

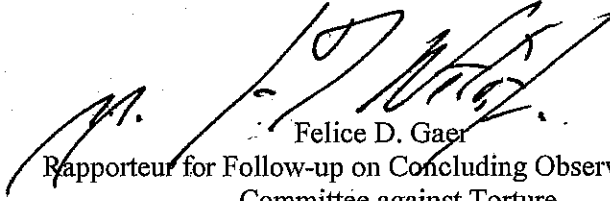
Regarding paragraph 18, the Committee would appreciate receiving information on the analysis of the jurisprudence of cases of torture as indicated in your reply. We would also be grateful for clarification on measures to ensure that all acts of torture are criminalized in accordance with the requirements of the Convention. Please provide information on the charges under earlier provisions 308 and 347 of the Criminal Code as well as of any cases of torture under the new provision 347-1. Also, please provide data on sentences meted out under each and comment on whether they are commensurate with the gravity of the crimes of torture and ill-treatment? Please provide data on cases of prosecutions, trials and convictions thereof. What additional educational efforts have been established to ensure judges, prosecutors, and lawyers are fully apprised of the guidelines and the Supreme Court instructions, and has it been made mandatory? Also, please clarify what topics regarding the prohibition against torture are covered in the trainings on human rights at the General Prosecutor's Office and Ministry of Interior which are cited in your reply? And similarly, what specific topics are addressed in the advanced

training of judges in human rights, as indicated in the reply, how many such classes are required and covering what amount of time. Finally, please provide the number of judges and prosecutors who took the courses, and in what locations.

As regards paragraph 29, the Committee would appreciate receiving clarification on how the Supreme Court's regulatory resolution of 28 December 2009 is effective in ensuring the courts' inadmissibility of evidence extracted under torture. Please provide the Committee with the number of the complaints of torture by defendant and crime; the number of cases where the courts rendered confessions inadmissible as a result of these complaints, the number of criminal and disciplinary proceedings taken as a result, the sanctions imposed, and the remedies and reparations granted to the victims. Has there been a review of past cases of persons currently imprisoned on the basis of confessions, and whether such cases will be re-examined or dismissed because of the admission of coerced evidence? Please clarify whether the rule in the Supreme Court's regulatory resolution about the exclusion of alleged coerced evidence will be formalized in the Criminal Code. Please also provide information, particularly on cases where the right to defense counsel has been waived, as to measures taken to ensure, in accordance with the convention, that any statement which is established to have been made as a result of torture shall not be invoked in any proceeding, except against a person accused of torture as evidence that the statement was made, as required by article 15.

The Committee looks forward to pursuing the constructive dialogue it has started with the Government of Kazakhstan on the implementation of the Convention, and in this context, to receiving clarification to our follow-up questions.

Accept, Excellency, the assurances of my highest considerations.



Felice D. Gaer
Rapporteur for Follow-up on Concluding Observations
Committee against Torture