

**KAZAKHSTAN:
NO EFFECTIVE
SAFEGUARDS
AGAINST
TORTURE**

**AMNESTY
INTERNATIONAL**



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1. INTRODUCTION

In December 2008, after examining Kazakhstan's implementation of the State's obligations under the Convention against Torture, the Committee against Torture called on the authorities "to apply a zero-tolerance approach to the persistent problem of torture" and to "publicly and unambiguously condemn practices of torture in all its forms, directing this especially to police and prison staff, accompanied by a clear warning that any person committing such acts or otherwise complicit or participating in torture or other ill-treatment be held responsible before the law for such acts".¹

The Committee against Torture requested the Kazakhstani government to respond to four issues of particular concern within 12 months. These concerns included the lack of a clear definition of detention resulting in *de facto* unacknowledged detention of individuals deprived of their liberty, and the admission in trial proceedings of evidence obtained as a result of torture.

The government said they were addressing these issues and other recommendations by the Committee against Torture, including through further proposals for legislative amendments to the criminal and criminal procedural codes and by clamping down on abusive practices.

Some actions have been taken by the government. In May 2009 the UN Special Rapporteur on torture visited Kazakhstan at the invitation of the government. In line with its obligations under the Optional Protocol to the Convention against Torture (OPCAT), and in cooperation with civil society, the authorities have also been developing a National Preventive Mechanism which would allow unannounced and independent monitoring of all detention facilities.

In September 2009 the authorities presented a National Human Rights Action Plan for 2009-2012 at the Annual Human Dimension Implementation Meeting of the Organization for Security and Cooperation in Europe (OSCE). The Plan, approved by President Nazarbaev in May 2009, was to allay fears, expressed by domestic and international human rights organizations, that Kazakhstan was failing to address its human rights commitments under the OSCE, including on the prevention of torture and other cruel, inhuman or degrading treatment, on the eve of assuming the OSCE's chairmanship-in-office in January 2010. The Plan acknowledged that human rights violations committed by law enforcement agencies, including arbitrary detentions, torture or other ill-treatment, were widespread (see below).²

Nevertheless, despite the good intentions shown by the measures noted above and the extensive education, reform and training programmes for law enforcement forces and the judiciary often run in conjunction and in cooperation with non-governmental organizations (NGOs) and international governmental organizations (IGOs), it has become evident that torture or other ill-treatment of individuals deprived of their liberty, whether formally detained or in *de facto* unacknowledged detention, continue to be routinely used. Amnesty International conducted interviews in 2009 with victims of torture or other ill-treatment and their relatives, government officials, NGOs and IGOs, lawyers, diplomats, citizens and foreign

nationals. Amnesty International is concerned that in June 2009 in a meeting with Amnesty International at the Ministry of Internal Affairs, for example, senior officials insisted that torture only happened in exceptional circumstances. However, according to others interviewed, beatings by law enforcement officers, especially before formal detention takes place, in the streets or during transfer to detention centres, in interrogation rooms in police stations and in unofficial places of detention were still routine. Moreover in May 2009 the UN Special Rapporteur on torture issued a statement at the end of his nine-day visit to Kazakhstan in which he outlined his initial findings: "I conclude that the use of torture and ill-treatment certainly goes beyond isolated instances." He also said that he "received many 'credible allegations' of beatings with hands and fists, plastic bottles filled with sand and police truncheons," and that he "was also told of kicking, asphyxiation through plastic bags and gas masks used to obtain confessions from suspects". In several cases, these allegations were supported by forensic medical evidence.³ In his report issued in February 2010 the Special Rapporteur reiterated these concerns and concluded that "considerable gaps between the law and reality remain".⁴

The National Human Rights Action Plan identified poor training of law enforcement officials as one of the underlying causes of the continuing use of torture or other ill-treatment in custody. It also pointed to the exacerbating fact that law enforcement officers often lacked very basic and elementary knowledge of domestic legislation and criminal procedures as well as international human rights obligations which Kazakhstan is bound by.

In November 2009 the European Court of Human Rights, in its judgment in the case of *Kaboulov v. Ukraine* (ruling that the extradition of the applicant to Kazakhstan would violate Ukraine's obligations under the European Convention on Human Rights), stated that from the materials it examined, "it appears that [in Kazakhstan] any criminal suspect held in custody runs a serious risk of being subjected to torture or inhuman or degrading treatment, sometimes without any aim or particular purpose."⁵

The fight against terrorism and other threats to national security continue to be invoked by the authorities as crucial to securing national and regional stability. However, all too frequently, pursuance of these aims is invoked when targeting vulnerable groups or groups perceived as a threat to national or regional security. Amnesty International is particularly concerned that officers of the National Security Service (NSS) violate human rights, including by resorting to torture or other ill-treatment in pursuance of these aims. Among those particularly targeted by the NSS are Islamic groups and Islamist parties, either unregistered or banned in Kazakhstan, religious minorities, and asylum-seekers from neighbouring countries, in particular from China and Uzbekistan. Although presumption of innocence is enshrined in law, it is violated on a regular basis, particularly in the context of so-called national security cases, including high-profile criminal cases linked to the prosecution of state officials and leading political actors, and in the fight against terrorism, with suspects often branded guilty in public before the start of the trials. Relatives of such suspects often find themselves accused of being terrorists or criminals themselves. Terrorism with loss of life is the only Article in the Criminal Code, which can be punished by death in peacetime.

Access to justice and redress remained elusive for scores of people throughout the country who routinely alleged that they had been arbitrarily detained and tortured or otherwise ill-

treated in custody in order to extract a “confession”. Comparatively few law enforcement officers – even according to official figures – have been brought to trial and held accountable for human rights violations they have committed, including torture. Evidence based on such “confessions” has still been routinely admitted in court, though the practice violates Article 15 of the Convention against Torture and Kazakhstan’s domestic legal requirements. Corruption in law enforcement and the judiciary is believed to contribute largely to a pervasive climate of impunity. This climate of impunity leads in turn to a lack of public confidence in the criminal justice system. It was reported to Amnesty International that people only rarely lodged complaints against police misconduct, because they did not believe they would obtain justice. This is consistent with findings by IGOs, NGOs, and lawyers who monitor complaints mechanisms or assist with lodging complaints against torture or other ill-treatment. The Special Rapporteur on torture concluded that there were no meaningful complaints mechanisms in the country.

Many are not willing to testify against law enforcement officers out of fear of reprisals against themselves or their relatives and associates. And many of those brave enough to exercise their right to complain about torture find that there are very few people and organizations they and their families can turn to for support, least of all the authorities. Many of the families who complain about police misconduct become the target of intimidation campaigns. In those cases in which criminal charges have been brought against an individual, relatives sometimes find themselves publicly portrayed as criminals, or morally questionable individuals, guilty by association.

According to information available to Amnesty International, to date no individual who was subjected to torture or other ill-treatment in custody has succeeded in obtaining adequate reparation, including compensation, through the courts. NGOs have told Amnesty International that in Kazakhstan the state is under no obligation to offer financial compensation even in cases in which torture by law enforcement officers has been proven beyond a reasonable doubt and a court has quashed a conviction because the evidence was found to be based on a confession extracted under torture.

This report is based on and updates Amnesty International’s concerns about torture and impunity in Kazakhstan (see previous reports *Kazakhstan: Submission to the UN Universal Periodic Review* and *Kazakhstan: Summary of concerns on torture and ill-treatment – a briefing to the United Nations Committee against Torture*).⁶ The report is not intended to be comprehensive but instead it focuses on those issues which have been identified as the most pressing, where timely and decisive action by the Kazakhstani authorities could have a profound and long-lasting impact on all individuals deprived of their liberty and their families. Amnesty International urges the government to implement key safeguards against torture, which would demonstrate that the authorities are serious about respecting their international human rights commitments. The key safeguards include: ending the practice of *de facto* unacknowledged and incommunicado detention, banning the admissibility of torture confessions in court proceedings, giving access to independent public monitors to detention facilities under the Ministry of Internal Affairs and the National Security Service and creating a truly independent complaints mechanism.

2. GOVERNMENT ACTION ON TORTURE OR OTHER ILL-TREATMENT

Kazakhstan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998 and has been submitting required reports to the Committee against Torture on measures taken to implement its obligations under this Convention.

In 2008 Kazakhstan also ratified the Optional Protocol to the Convention against Torture (OPCAT), which provides for unannounced and independent monitoring of all places where people are deprived of their liberty. In line with its obligations under OPCAT the authorities have been developing a National Preventive Mechanism (NPM) in close cooperation with domestic and international NGOs and IGOs. Although at the time of its ratification of this treaty Kazakhstan did not make use of its right to postpone⁷ its implementation of its obligations under the Protocol (under Article 24 of OPCAT), in February 2010 the government made a declaration (under Part IV of OPCAT)⁸ which will allow Kazakhstan to postpone the establishment of the NPM for up to three years. Discussions on the legal framework of the NPM are still ongoing.

The government has issued open invitations to all UN Special Mechanisms and in May 2009 the Special Rapporteur on torture visited Kazakhstan at the invitation of the government. Kazakhstan is also cooperating with the UN Universal Periodic Review (UPR)⁹ and the country's human rights situation was reviewed in February 2010. In its presentation to the UPR the government delegation reiterated that the Kazakhstani authorities were committed to a policy of zero-tolerance on torture and that they "would not rest until all vestiges of torture had been fully and totally eliminated".¹⁰

Legislative and other proposals to specifically address the majority of recommendations made to the authorities by the Committee against Torture in December 2008 have been developed jointly by several government ministries and agencies, including the Ministries of Justice and Internal Affairs and the Office of the Prosecutor General.

A Supreme Court Normative Ruling on safeguards against torture issued on 28 December 2009 clarifies obligations under domestic legislation and international law to prevent torture and addresses key recommendations by the Committee against Torture on ending the use of *de facto* unacknowledged detention and the absolute inadmissibility in court of evidence extracted under torture.¹¹

The National Human Rights Action Plan for 2009-2012 identifies key failures by the Kazakhstani authorities to implement in practice and respect international obligations and commitments in regard to torture or other ill-treatment. It contains recommendations and a broad plan of action to effect meaningful change. The Plan, approved by President Nazarbaev in May 2009, was to allay fears, expressed by domestic and international NGOs, that

Kazakhstan was failing to address its human rights commitments under the Organization for Security and Cooperation in Europe (OSCE), including on the prevention of torture and other cruel, inhuman or degrading treatment.¹² In his report the Special Rapporteur on torture advises that in regard to Kazakhstan's OSCE chairmanship "translating international norms into tangible changes in people's lives, including those 'behind bars', is of particular importance".¹³

As part of a European Union (EU) - Central Asia strategy agreed in 2007 by the EU and the five former Soviet Central Asian republics, Kazakhstan has started to participate in regular EU-Kazakhstan Human Rights Dialogues. These formal dialogues address Kazakhstan's international human rights obligations, including on the prevention of torture. In July 2009 Kazakhstan hosted a joint EU-Kazakhstan civil society seminar which discussed access to justice and prevention of torture or other ill-treatment in places of detention and brought together international and domestic experts, NGOs, EU, OSCE and government representatives.

3. TORTURE OR OTHER ILL-TREATMENT BY SECURITY FORCES

Following recommendations by the Committee against Torture in 2001 the prison system was transferred from the jurisdiction of the Ministry of Internal Affairs (MVD) to that of the Ministry of Justice the same year. In 2004 the pre-trial detention or remand centres - known as investigation isolation facilities (sledstvenni izoliator or SIZO) - under the MVD were also transferred to the Ministry of Justice. However, the SIZOs of the National Security Service (NSS) were not transferred to the Ministry of Justice, nor were the temporary pre-charge detention facilities under the MVD, some of which were located in police stations, others outside, known as temporary detention isolation facilities (izoliator vremenogo soderzhania or IVS).

Most of the allegations of torture or other ill-treatment received by Amnesty International as well as domestic NGOs are made by individuals in police custody, often before they are admitted to an IVS, or when detained by the NSS, often in the context of national security and the fight against terrorism.

3.1. TORTURE OR OTHER ILL-TREATMENT BY POLICE

3.1.1 *DE FACTO* UNACKNOWLEDGED AND INCOMMUNICADO DETENTION

According to information received by Amnesty International most instances of torture or other ill-treatment occur before the “formal detention” of a suspect, i.e. before the detained person is registered at the police station.

According to the law, key safeguards for detained persons, such as the rights to legal assistance, to medical assistance, to contact relatives and to be informed of one’s rights and any charges, only apply to persons who have been formally detained, i.e. once an individual detained in connection with a criminal case has been registered at the police station. The law does not require these rights -- which are key safeguards against torture and other ill-treatment -- to be granted to individuals brought in for questioning as witnesses in a criminal case, or to asylum-seekers or foreign nationals taken to a police station to check their documents.

According to the law a person must be registered at a police station no later than three hours after he or she has been apprehended; the registration constitutes formal detention¹⁴. The exact time and place of apprehension and the reason for the detention should be registered. However, the law does not define the actual moment of detention.

According to information received by Amnesty International, law enforcement officials often

do not abide by the existing law on detention, as they fail to register detainees within the required three hours after an individual has been deprived of their liberty.

Amnesty International is concerned that in such cases, people are deprived of their liberty in *de facto* arbitrary and incommunicado detention, at the discretion of the detaining law enforcement officials; during this time, they are without adequate protection against torture or other ill-treatment and are outside of the protection of the law.

During his fact-finding visit in May 2009, the Special Rapporteur on torture found that “since the moment of apprehension and delivery to a police station is not recorded, it is impossible to establish whether the three-hour maximum delay for the first stage of deprivation of liberty is respected; in fact we received many allegations that the first hours of (unrecorded) detention are used by law-enforcement organs for the extraction of confessions by means of torture”.¹⁵

When interviewed about the rights of individuals deprived of their liberty and how they were applied in practice by police officers, officials in the Department for Internal Affairs in Kostanai (DVD) stated to Amnesty International that police officers were under strict orders to inform everyone deprived of their liberty of their rights, including the right to remain silent and the right to lodge a complaint. The officials said that in general these procedures were adhered to, at least at the Kostanai Regional Department of Internal Affairs DVD. They also stated that detainees were seen by medical personnel and that there was a duty prosecutor on hand to supervise detention. However, when pressed further as to when individuals were informed of their rights, at the actual moment when they were apprehended in the street, at their home, or in other locations, or when their detention was registered in the local police station or regional DVD, the deputy head of the Kostanai DVD emphatically stated “after three hours, in accordance with the law”, i.e. after formal detention.¹⁶

Crucially the law does not require the names of the detaining officers to be recorded in the detention register. Instead it is the investigating officer assigned to the case who enters the details in the log and signs it. In general this officer will not have participated in the apprehension of the detainee. Amnesty International is concerned that in practice this omission in law allows law enforcement officers to use torture or other ill-treatment with virtual impunity from the actual moment of apprehension until formal detention since their participation is not officially recorded and therefore is difficult to prove.

In a positive development, on 28 December 2009, the Supreme Court issued a normative ruling on safeguards against torture – which has the force of law – in which it defined detention as the deprivation of liberty of an individual, i.e. the inability of an individual to move around freely or to pursue their own activities. However, the ruling retains the problematic three-hour registration period and states that an individual detained must be handed over to the care of an investigator promptly but not later than three hours after the actual moment of his or her deprivation of liberty in order for the investigator to decide on formal detention. In addition, according to the ruling the investigator should inform the detained individual of any charges against them and their rights, including the right to a lawyer from the moment of actual apprehension. Domestic NGOs have also expressed concern that the ruling does not provide for the apprehending officers to inform people of their rights or to sign the detention order.

DENIS POLIENKO

Denis Polienko spent 48 hours in custody in the Akmola region of Kazakhstan in November 2006. He was 19 years old at the time. Police officers allegedly beat him so severely that they broke his ribs and facial bones. He said that they put a plastic bag on his head and tried to asphyxiate him; they also threatened to rape him and harass his family. As a result of the alleged torture Denis Polienko “admitted” to a crime he said he did not commit and signed a “confession”. His detention had not been registered. When Denis Polienko lodged a complaint against two of the officers who had apprehended him and subsequently allegedly tortured him in *de facto* unacknowledged detention, their names were struck out of the court documents by the appeal court as there was no official record that they had detained him. It has subsequently been difficult for Denis Polienko and his family to file a civil claim for compensation without named defendants.

Human rights organizations in Kazakhstan have long urged the authorities to close this loophole and make the detaining law enforcement officers legally accountable for their actions. In its Concluding Observations of December 2008 the UN Committee against Torture similarly singled out the fact that there appeared to be insufficient safeguards during the initial period of detention as an issue of particular concern and urged the Kazakhstani authorities to “promptly implement effective measures to ensure that a person is not subject to *de facto* unacknowledged detention and that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention”.¹⁷ The Committee requested that the government report within 12 months on what steps had been taken to ensure that the actual moment of deprivation of liberty was recorded as the time of detention and that all rights were granted to the detained individual from that point in time. By March 2010 no response had been received. Legislative amendments proposed in 2009 to specifically address the 2008 recommendations by CAT failed to include measures to end *de facto* unacknowledged detentions.

Amnesty International has been told that detaining law enforcement officials often offer detainees the option of not being brought into and registered at the police station in exchange for a bribe. Such bribes reportedly constitute important sources of income for more junior police officers. In his report the Special Rapporteur on torture writes that corruption appears to be a “quasi-institutionalized practice”.¹⁸ Amnesty International has been told about cases in which a detainee has been released after paying a bribe and that it becomes more expensive and more difficult to buy a detainee’s release once they are formally registered in a pre-charge detention centre. As a consequence many detainees or their relatives will readily agree to pay a bribe in order to avoid being formally detained. In such circumstances many people will not then lodge a complaint about the ill-treatment they have suffered out of fear of reprisals against themselves or their relatives. At the same time, lack of information about the right to lodge a complaint and fear of reprisals appear to be underlying causes of underreporting incidents of torture or other ill-treatment.

Amnesty International has also been told that the majority of law enforcement officers continue to work according to a quota system – albeit unofficially – where they are ranked and assessed by the number of crimes they have successfully solved. Such a system exacerbates the risk that police officers will keep a suspect in *de facto* unacknowledged detention and resort to torture or other ill-treatment to obtain a confession to a hitherto unsolved crime. According to reliable sources the number of detentions tends to go up towards the end of the year, for example if a police station’s annual quota of solved crimes

has not been met.

RASIM BAIRAMOV AND ALEKSANDR BRUIKHANOV

There was a knock on the apartment door one morning in July 2008 and two plainclothes police officers took Rasim Bairamov down to the local station in Rudni “to have a word”. He said that instead of a “word” he was beaten repeatedly all over his body with fists and chairs. He was kicked, had a gas mask pulled over his head and the air supply turned off. This went on for hours, with an occasional break when the police officers called his grandmother or his sister to bring food and cigarettes. That is when his sister realized that Rasim Bairamov was not in a cell in the pre-charge detention centre but was kept in one of the investigators’ offices and that his detention had not been registered. Although deprived of his liberty, he was officially not detained and therefore had no right to a lawyer. The police allegedly used torture or other ill-treatment to pressure Rasim Bairamov and his friend Aleksandr Bruikhanov, two young men in their twenties with no previous criminal record, to confess to having stolen some money and three bottles of beer from a shop some four weeks earlier. Both of them denied these accusations. When Rasim Bairamov’s sister saw the bruises on his body and asked the police officers to stop beating him, she said that she in turn was insulted and threatened. After 48 hours of alleged beatings, sleep deprivation and threats to harm their families Rasim Bairamov and Aleksandr Bruikhanov signed a confession. At this point their detention was formally registered and they were informed of their rights.

DMITRI TIAN

In October 2008, Dmitri Tian was summoned to a police station in Astana to be questioned as a witness in a murder case. He said that rather than being questioned as a witness he was stripped to his underwear, made to stand with his legs wide apart, and beaten with plastic bottles filled with water and truncheons to make him confess to the murders of a mother and her three children. He said that his detention was not recorded and that the police officers did not inform him of his rights. When he tried to complain he was allegedly beaten again.

3.1.2 SOLITARY CONFINEMENT IN POLICE CUSTODY

NGOs told Amnesty International in June 2009 that independent monitors had identified a type of detention or punishment cell in some of the police stations and IVS pre-charge facilities in Almaty region, known colloquially as “stakan” – drinking glass or glass jug in Russian – because of its long narrow windowless shape. The monitors had been given access to detention facilities under the MVD in Almaty region in 2008 as part of an eight-month pilot project on independent monitoring of police custody. Following protests by the NGO monitors the use of the “stakan” had reportedly been banned in Almaty region and in some pre-charge detention facilities the cells had been dismantled. When interviewed by Amnesty International in June 2009 about the use of “stakans” in other detention facilities under the authority of the MVD, officials first denied all knowledge of these types of cells – even though the Special Rapporteur on torture had raised the same concern just four weeks earlier¹⁹, then conceded that they were sometimes used in police stations to hold detainees pending transfer to either a pre-charge or a pre-trial detention facility. Amnesty International was told that detainees would “as a rule not be held in a ‘stakan’ for more than 36 hours”.²⁰

Given that a “stakan” is a small windowless room that affords only standing or sitting room,

accommodates no bed or chair or table and no toilet facilities, Amnesty International believes that confining a person to such a cell for up to 36 hours and possibly longer amounts to cruel, inhuman or degrading treatment.

3.2 TORTURE OR OTHER ILL-TREATMENT BY OFFICERS OF THE NATIONAL SECURITY SERVICE

Amnesty International is concerned about allegations of routine torture and other ill-treatment in SIZO pre-trial detention centres under the jurisdiction of the NSS, especially in the context of national and regional security and anti-terrorism operations conducted by the NSS.

Counter-terrorism operations, internal security as well as investigations into large-scale fraud, foreign, unregistered or banned groups, organizations or parties, such as banned or unregistered religious organizations or groups, fall into the remit of the NSS. The NSS is directly accountable only to the President. Independent monitoring groups have no access to NSS SIZOs.

3.2.1. HUMAN RIGHTS VIOLATIONS BY NSS OFFICERS IN THE CONTEXT OF NATIONAL SECURITY AND THE FIGHT AGAINST TERRORISM

The fight against terrorism and other threats to national security are frequently invoked by the authorities as crucial to securing national and regional stability. However, all too frequently, pursuance of these aims is invoked when targeting vulnerable groups or groups perceived as a threat to national or regional security, and in pursuance of these aims the NSS often violate human rights, including by resorting to torture or other ill-treatment. Among those particularly targeted are Islamic groups and Islamist parties, either unregistered or banned in Kazakhstan, religious minorities, and asylum-seekers from neighbouring countries, in particular from China and Uzbekistan.

The Special Rapporteur on torture stated in May 2009 that “there are some groups that run larger risks of cruel, inhuman and degrading treatment than others”²¹, noting that the likelihood for foreigners to be subjected to such treatment seems to be “higher than average”.

HARASSMENT OF REFUGEES AND ASYLUM SEEKERS

In September 2009 armed and masked NSS officers raided the homes in Almaty of three refugees and two asylum-seekers from Uzbekistan during the night. The officers who did not identify themselves detained the men in the presence of their families and took them to an unidentified location for interrogation. This was later identified as the building of the Almaty NSS. The men reported that they were beaten, that at least one of the refugees had his nose broken during the arrest and that some of the men were handcuffed and had plastic bags put over their heads. They said that the officers threatened them with deportation to Uzbekistan where they were reportedly wanted for the murder of a policeman. Despite the fact that they all had registration papers from the office of the UN High Commissioner for Refugees (UNHCR) in Kazakhstan the men were not allowed to contact UNHCR, their families or a legal representative. They were released without charge several hours later. The NSS later denied that they had used excessive force and described the raids and detentions as a mere document check.

Amnesty International continues to receive allegations that members or suspected members of Islamist parties banned in Kazakhstan, such as Hizb-ut-Tahrir,²² targeted in counter-terrorism operations, are subject to arbitrary and prolonged incommunicado detention by the NSS. In several cases Amnesty International received reports from family members that their relatives were tortured or otherwise ill-treated in order to coerce a confession to crimes which they claimed they had not committed.

To effectively remedy this situation the Special Rapporteur on torture has recommended that the burden of proof should be transferred to the prosecutor's office, who should prove beyond reasonable doubt that a confession was not obtained by torture.²³

ZHASULAN SULEIMENOV AND KUAT ZHOBOLAEV

In November 2009 a court in Astana convicted two cousins of terrorism and sentenced them to eight years in prison after what independent observers called a "blatantly unfair trial". Zhasulan Suleimenov, a disabled paraplegic, and his younger cousin Kuat Zhobolaev both alleged in court that they had been tortured by NSS officers in order to force them to confess to having set up a terrorist cell and to having called for terrorist acts to be committed in Kazakhstan. The court did not call for an investigation of the allegations or declare the confessions as inadmissible evidence. Zhasulan Suleimenov had been detained together with five acquaintances in Russia in January 2009 by officers of the Federal Security Service of the Russian Federation, reportedly at the request of the Kazakhstani NSS. He had been on his way to Russia to receive medical treatment. In February the six were extradited from Russia to Kazakhstan. Zhasulan Suleimenov was kept in incommunicado detention for three days before being transferred to the NSS SIZO in Astana. The others were released without charge. While in the SIZO he was reportedly beaten on his legs and other parts of his body, handcuffed and suffocated, denied food and water and basic hygienic care. NSS officers reportedly threatened to harm his mother and his younger cousin. His relatives claimed that he was not given the specialized medical care a paraplegic like him needs. Kuat Zhobolaev's family reported that he was kept in *de facto* incommunicado detention for two months, during which time he, too, was said to be tortured and ill-treated. The families of both men lodged numerous complaints to the prosecutor's office about their allegations of incommunicado detention, torture, denial of medical care by the NSS as well as lack of access to families and independent legal advice, all of which were turned down as lacking in fact.

3.2.2. UNOFFICIAL PLACES OF DETENTION USED BY THE NSS

In 2009 reports emerged which appeared to confirm persistent allegations that the NSS was using unofficial places of detention such as rented apartments and houses – so-called safe houses - to keep individuals in *de facto* unacknowledged and incommunicado detention.

NGOs and lawyers told Amnesty International that in some cases the individuals detained were told by the officers apprehending them that they were being placed in a witness protection scheme and that for their own safety all details of the safe houses had to be kept strictly secret. In fact, reports suggest that their status was changed from witness to suspect while they were kept in secret detention, with no access to a lawyer of their own choice, independent medical care and their families.

"WITNESS PROTECTION"

Days before Mukhtar Dzhakishev, the former director of the Kazakhstan National Atomic Energy Company, was detained by NSS officers in Almaty in May 2009, seven of his co-directors and other staff were also detained by NSS officers. However, they were told they were being put into a witness protection scheme and taken to a safe

house. Nevertheless, reports indicate that the men were handcuffed and blindfolded and flown by special plane from Almaty to Astana. Their families were not told their whereabouts. Lawyers hired by the families were not given access; instead the NSS assigned state-appointed lawyers for the men. The wives were eventually given access to their husbands some two weeks after their detention. The meetings took place in the NSS SIZO in Astana where the men were transferred to from the “safe house”.

The meetings in the NSS SIZO in Astana were not private and it was impossible to confirm whether the men had been ill-treated. Some of the wives expressed fears that their husbands appeared to have been, if not physically ill-treated, then at the very least intimidated into refraining from making any complaints. The men continue to be detained in what the NSS calls “safe accommodation”, but which in fact is an unofficial detention facility.

4. INDEPENDENT MONITORING OF PLACES OF DETENTION

4.1. REGIONAL INDEPENDENT PUBLIC MONITORING COMMISSIONS

As part of the legislative and administrative reforms which saw the transfer in 2004 of the SIZO pre-trial detention facilities under the MVD to the Ministry of Justice, Regional Independent Public Monitoring Commissions with the power to inspect detention facilities were established in 2005. A legally binding agreement between these Public Monitoring Commissions, made up of members of domestic NGOs and citizens recruited through newspaper advertisements, and the Ministry of Justice's Penitentiary Committee should have given them unimpeded access to all detention facilities under the jurisdiction of the Ministry of Justice. No official agreements between the MVD and the NSS and the Public Monitoring Commissions were signed. In practice, monitoring conditions of detention in pre-trial and post-conviction detention facilities under the Ministry of Justice is comparatively easier than monitoring conditions in the IVS pre-charge detention centres under the MVD as independent monitors, the Ombudsman's office, lawyers and relatives are generally granted access. However, access to IVS facilities and police custody under the MVD has not been granted consistently (see below) and access has been systematically denied to NSS SIZOs.

The Public Monitoring Commissions have also not been granted the right to make unannounced visits to detention facilities under the jurisdiction of the Ministry of Justice, which restricts their ability to successfully investigate allegations of torture or other ill-treatment. Amnesty International has been told that Public Monitoring Commissions generally have to submit a schedule of planned visits to the Regional Prison Service, so that prison authorities can in turn fit these visits into their work plans.

Where access to detention facilities has been granted, Commission members have reported that they are not always given unimpeded and private access to detainees and prisoners. Amnesty International is even more concerned about reports that detainees and prisoners have been punished by the administration of the respective pre-charge, pre-trial or post-conviction detention facility, after having complained about torture or other ill-treatment to members of the Commissions during inspection visits.

Furthermore, Amnesty International has been told that the Commissions are often unable to recruit enough members to ensure a comprehensive and effective mechanism of prison visits. The great distances that members often have to travel to access detention facilities make regular prison visits difficult and thereby hamper effective prevention of torture or other ill-treatment by way of follow-up visits.

The Commissions are empowered to make recommendations to the Prison administration and the relevant Ministry following visits to pre-trial and post-conviction detention facilities; however, by law the prison administration is not obliged to implement these

recommendations.

4.1.1. ACCESS TO IVS AND POLICE CUSTODY UNDER THE MINISTRY OF INTERNAL AFFAIRS BY PUBLIC MONITORING COMMISSIONS

According to the information received by Amnesty International, the Public Monitoring Commissions' access to IVSs has been sporadic and has depended on the relations between the heads of relevant local or regional internal affairs departments and members of the local Public Monitoring Commissions. This makes it difficult for the Commissions to consistently follow up allegations of torture or other ill-treatment by law enforcement officials.

Senior officials at the Ministry of Internal Affairs told Amnesty International in June 2009 that access to IVSs by members of Public Monitoring Commissions was not problematic as long as they had proper accreditation and arranged ahead for a visit with the Head of the pre-charge detention facility. Similarly, access had been granted in the past to domestic and international NGOs, diplomats and the UN Special Rapporteur on torture. The officials also pointed out that in 2008, the Ministry of Internal Affairs had granted access to its IVS facilities and police stations in Almaty region to NGO monitors and allowed them to conduct unannounced and unsupervised inspections as part of an eight-month pilot project. They also pointed out that the NGO monitors had found no instances of torture or other ill-treatment in IVS facilities and police custody in Almaty region during this monitoring project, a fact confirmed to Amnesty International by some of the monitors. Officials of the Ministry of Internal Affairs told Amnesty International in June 2009 that a draft law proposing to extend such independent monitoring to similar facilities throughout several regions of Kazakhstan was awaiting approval by Parliament. The law was still pending in March 2010.

4.2. OMBUDSMAN AND PRESIDENTIAL HUMAN RIGHTS COMMISSION

In principle and in law both the Presidential Human Rights Commission and the Office of the Ombudsman have the right to unimpeded, unlimited and unannounced access to all detention facilities, including those under the authority of the NSS and the MVD. However, both institutions lack adequate resources. Shortages of staff and the absence of regional offices seriously impede regular inspections and follow-up visits.

A working group on torture under the Ombudsman established in 2008 has made some prison visits: however, the group is not perceived as fully independent because its composition includes government officials from the Prosecutor General's office, the Ministries of Internal Affairs and Justice as well as independent NGOs, foreign IGOs and diplomatic representatives.

With regard to NSS detention facilities, in theory, both the Ombudsman's office and the Presidential Human Rights Commission have the right to make an unlimited number of unannounced visits to the NSS SIZOs. However, in practice few such visits reportedly take place. One high-profile human rights defender, who is also a member of the Public Oversight Committee under the MVD²⁴, was granted a one-off visit in July 2009 to the former head of the Kazakhstan National Atomic Energy Company detained in the Astana NSS SIZO. The Special Rapporteur on torture was also given access to NSS pre-trial detention facilities during his visit in May 2009. However, no further access by independent monitors has been

reported since.

4.3. SPECIAL RAPPORTEUR ON TORTURE

The Special Rapporteur on torture expressed regret in his report that he was not allowed to make unannounced visits to detention facilities and that “considerable efforts had been made to prepare the various detention facilities and the detainees for his inspections, which contradicts the very idea of independent fact-finding and unannounced visits. It also makes the task of assessing conditions of detention and torture objectively more difficult.”²⁵

5. LACK OF EFFECTIVE AND INDEPENDENT INVESTIGATIONS

5.1. RIGHT TO LODGE A COMPLAINT

Many victims of torture or other ill-treatment are reluctant to exercise their right to lodge a complaint for fear of reprisals against themselves, their families or associates and for lack of confidence in the effectiveness of the complaint procedures.

As the monitoring by several NGOs has shown, many others do not even realize that torture or other ill-treatment is a criminal offence in Kazakhstan and that they have the right to lodge a complaint with the prosecutor's office and bring a criminal case against the perpetrators of torture or other ill-treatment.

Individuals may file complaints of torture either as general complaints of police misconduct or as a criminal report. In the latter case the authorities are obliged by law to open a criminal investigation, after an initial check. In practice, NGOs report that complaints of torture or other ill-treatment by law enforcement officers are invariably treated as general complaints of police misconduct and are referred by the prosecutor's office to the Directorate of Internal Security of the respective Department of Internal Affairs for an internal investigation. As a consequence the investigation is treated confidentially and the complainant has no right of access to the materials of the investigation, making it almost impossible to challenge the outcome of the investigation. According to NGOs complaints of torture (or other ill-treatment) are mostly dismissed as unfounded.

5.2. INVESTIGATIVE MECHANISM

According to NGOs and IGOs who have closely monitored the implementation of the complaints procedures most complaints of torture by law enforcement officers are passed by the prosecutor's office to the Directorate of Internal Security of the respective Department of Internal Affairs for further investigation. In practice, this means that one section of law enforcement investigates members of another section of law enforcement.

RASIM BAIRAMOV AND ALEKSANDR BRUIKHANOV

The mothers of Rasim Bairamov and Aleksei Bruikhanov have been tirelessly sending complaints for two years about the torture and other ill-treatment that their sons reported to have been subjected to in *de facto* unacknowledged detention in Rudni police station in 2008. They have asked for a criminal investigation to be opened against two specific police officers named by their sons as the main perpetrators and for criminal charges of torture to be brought against them. However, their requests to open a criminal case have invariably been turned down by prosecutors at all levels on the basis that an internal investigation by the respective Directorates of Internal Security at district, regional and national levels did not find any evidence of human rights violations committed by the police officers. The dismissal was issued despite the fact that Aleksey Bruikhanov had provided a medical certificate confirming the presence of injuries on his upper body at

the time of his admission to the pre-charge detention centre in Kostanai. The refusal letters from the prosecutor's office often cite the dismissal of the young men's torture allegations by the courts of first instance and appeal as sufficient corroborating evidence that the police officers did not torture them to obtain a confession, even if the courts did not order an investigation into the allegations. This means that the families and the two young men are caught in a vicious circle whereby the prosecutor's office bases its refusal to open a criminal case on the decision by a court that has based its dismissal of the torture allegations on the testimony of the police officers accused of having committed the violation.

The Kazakhstani Criminal Procedural Code does not explicitly call for a prompt and impartial investigation into a complaint of torture or other ill-treatment. Instead it requires the competent authorities to register a complaint and to open a criminal case into the complaint if "sufficient evidence is presented that a criminal offence has been committed", and to inform the complainant of the decision.²⁶ However, the law gives the competent authorities from 72 hours to up to two months to decide whether or not to open a criminal case into allegations of torture or ill-treatment and to inform the complainant.

In May 2009, the UN Special Rapporteur on torture expressed concern at the "almost total absence" of official complaints (of ill-treatment), raising doubt about whether there is in fact a meaningful complaint mechanism, and stating that "it appears that most detainees refrain from filing complaints because they do not trust the system or are afraid of reprisals".²⁷

5.3. EFFECTIVENESS OF INVESTIGATIONS

DENIS POLIENKO

Denis Polienko complained about the treatment he was subjected to, but the investigation launched by the Internal Security Directorate of the Department of Internal Affairs reportedly was not effective. He reported that he was not even questioned about the allegations of torture he had made, nor was he called to identify the place where the alleged torture happened or the officers accused. A forensic medical examination of Denis Polienko reportedly was only conducted nine months after the alleged torture took place. The medical commission concluded that he was in good health. However, the commission apparently did not follow up on his complaints about pain in his abdomen, his ribs, his broken nose and his worsening vision. The district court, reviewing Denis Polienko's case in 2008, reportedly refused his lawyer's request to exclude evidence extracted under torture, basing the refusal on the findings of the investigation by the Internal Security Directorate and the medical commission.

This case is representative of many similar cases which have come to Amnesty International's attention and illustrates the absence of an independent and effective mechanism to investigate complaints of torture promptly, thoroughly and impartially. In many cases the complainant was not even summoned, no or inadequate forensic investigations were undertaken, and the delay in conducting medical examinations in order to verify injuries reported by the complainant impeded the collection of evidence.

Amnesty International was told by MVD officials in June 2009 that medical personnel examine detainees after their formal detention has been registered and they are about to be admitted to the IVS pre-charge detention centre. NGOs have pointed out that this is not to launch an investigation into torture if signs of abuse are discovered on the body of the

detainee, but to ensure that the detainee, his lawyer or his family cannot claim that the injuries were sustained in the IVS.

The lack of medical evidence of injuries sustained during detention remains a reason for closure of investigations. Detainees are by law examined by a medical doctor when they enter a pre-trial detention facility and medical personnel are obliged to register any signs of torture or other ill-treatment.

Official forensic medical examinations usually need to be ordered by a court, which – given the possible two-month delay for a decision on whether a criminal case is opened – impedes the chance to document and assess physical signs of torture or other ill-treatment while they are still visible. Until then, victims of torture or other ill-treatment can only obtain unofficial medical examinations should they succeed in having an independent doctor examine them.

Law enforcement officers accused of having committed torture or other ill-treatment generally refute the allegations, stating that the complainant resisted arrest or that they acted in self-defence or that the injuries had been sustained prior to detention. Subsequently, in many cases no criminal case is opened or the case is closed for lack of sufficient corroborating evidence²⁸.

5.4. TARGETING FAMILIES

Many victims are not willing to testify against law enforcement officers out of fear of reprisals against themselves or their relatives and associates. In his report the Special Rapporteur on torture stated that he “learned that in certain cases threats are made against family members of the detainee”. Such behaviour, the Special Rapporteur went on to say, besides going counter to international standards, renders any complaints system meaningless and should be addressed in a determined manner.²⁹

Many of those brave enough to exercise their right to complain about torture find that there are very few people and organizations they and their families can turn to for support, least of all the authorities. Amnesty International has been told that law enforcement officers hope that threats against family members will stop detainees from lodging complaints or intimidate them into withdrawing their complaints. Threats may also stop relatives from publicizing torture allegations.

Families of detainees become the target of intimidation campaigns and are left at the mercy of local law enforcement authorities, especially those who cannot afford to, or refuse as a matter of principle, to bribe officials. Often they are threatened with violence, including rape, and many find themselves publicly portrayed as criminals, or morally questionable individuals, guilty by association.

Many family members Amnesty International spoke to are doubly traumatized, first by the torture allegedly suffered by their husbands, siblings, parents or children and secondly by the cruel, inhuman and degrading treatment they experience at the hands of law enforcement officials. This abusive treatment affects all aspects of a family's life, often disrupting the children's education and the parents' and grandparents' professional and social lives. Many

partners, parents or older children lose their jobs as a result of being identified publicly by law enforcement officers or by the media as related to a criminal, even though the person has not been convicted, in clear violation of the presumption of innocence..

DMITRI TIAN

When Irina Tian was asked why she and her husband did not seek medical help immediately after he was released from *de facto* unacknowledged detention and get a medical certificate to record the injuries he sustained at the hands of the police officers, she replied that they did not know that they were supposed to do that because they had never had any dealings with the police before. They simply did not expect Dmitry Tian to be beaten or otherwise ill-treated by the police in order to force him to confess to a crime. It never occurred to Irina Tian that anyone would doubt that her husband had been ill-treated. She never expected to be threatened with violence by the police, to live in fear of the very people she expected to uphold the law. She is constantly worried about the safety of her four children. She was also dismissed from her job.

KARKHU FAMILY

The mother and daughter of Inessa Karkhu, a 38-year-old accountant who has been serving eight years on charges of fraud, have both been at the receiving end of threats by law enforcement officers. Inessa Karkhu's mother was beaten by police officers as she tried to stop other officers beating her daughter. She needed surgical treatment. Her granddaughter has received anonymous threats via text messages to her mobile phone. Some have threatened her with sexual violence if she and her grandmother refused to stop publicizing Inessa Karkhu's case. She stopped going to classes after police investigators turned up at her school and informed staff and her classmates that she was the daughter of a criminal and should be shunned.

6. PROSECUTIONS

Given the number of complaints about torture or other ill-treatment received by NGOs alone – such as the Kazakhstan Coalition against Torture, for example, which registered more than 600 cases of torture in 18 months between 2007 and 2009 – the official figures of law enforcement officers prosecuted for and convicted of torture under Article 347-1 (Torture) are comparatively low. In 2006 seven police officers were sentenced, in 2005 two, in 2004 three and in 2003 just one police officer.³⁰ In a letter to NGOs in April 2008 the Prosecutor General's Office explained that in 2007 some 570 law enforcement officers had disciplinary procedures invoked against them for violating the rights of citizens during pre-trial proceedings, and 51 criminal cases were opened against law enforcement officials, 24 of which were for using physical force. Out of those 24 only three criminal cases were brought under Article 347-1.³¹ The Ministry of Internal Affairs told Amnesty International in June 2009 that only two criminal cases were brought in 2008 and not a single case in the first half of 2009, which they presented as proof that torture only happened in exceptional circumstances and not routinely. In the second half of 2009 one police officer was convicted for torture.

Amnesty International considers that impunity (as a result of the lack or paucity of prompt, thorough, independent, impartial and effective investigations and prosecutions of law enforcement officers in connection with allegations of torture or other ill-treatment) is partly rooted in the role of the office of the prosecutor. Despite reforms, the prosecutor's office, as well as being responsible for the prosecution of ordinary criminal cases, also has to decide whether there are sufficient grounds for bringing a criminal case against law enforcement officials accused of human rights violations, including torture or other ill-treatment. Oversight responsibility resides with the prosecutor's office even if the investigation into the alleged violations is carried out by the Directorate for Internal Security of the relevant Department of Internal Affairs. In his report following his visit to Kazakhstan in May 2009 the Special Rapporteur on torture further elaborated that the dual role of the prosecutor's office "leads to the paradox, that if allegations of torture or ill-treatment are raised at a latter stage of a criminal process and they have to be processed by the prosecutor's office, the latter, by demanding an investigation, basically admits that it has not fulfilled its monitoring role. Therefore, while the prosecutors appear to have some formal control over the police, in many contexts, they appear to tend to ignore grave violations".³²

7. FAILURE TO EXCLUDE EVIDENCE ELICITED AS A RESULT OF TORTURE OR ILL-TREATMENT

Article 116 of the Code of Criminal Procedure states that evidence based on confessions extracted under torture is not admissible in court proceedings³³ and the normative ruling by the Supreme Court on 28 December 2009 reaffirmed the absolute inadmissibility of such evidence. Nevertheless in practice, according to defence lawyers, independent trial monitors, diplomats, NGOs, IGOs, relatives of defendants and defendants themselves, judges rarely exclude evidence elicited as a result of torture or other ill-treatment and often base their verdict on the confession of the accused. In their report on a two-year trial monitoring project in Kazakhstan in 2005 and 2006 the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) wrote that in 40 per cent of the trials observed where the accused had complained that their confession had been extracted as a result of torture or other ill-treatment, the judges ignored these allegations and admitted the alleged "tainted" confessions as evidence in the trials. In the other trials the OSCE/ODIHR report found that the judges started examinations of the allegations and called those law enforcement officials accused to be questioned in court. When the law enforcement officers denied the accusations the investigation went no further and the confessions were accepted as evidence against the accused in the trial.³⁴ In December 2008 the Committee against Torture welcomed assurances by the Kazakhstan delegation that judges no longer admitted evidence obtained under torture as evidence but nevertheless expressed grave concerns at reports that judges continued to ignore requests for investigations into torture allegations and failed to stop court proceedings. In June 2009 officials at the Prosecutor General's office and the Ministry of Internal Affairs told Amnesty International that in the majority of cases defendants who raised allegations of torture during court proceedings only did so in order to avoid responsibility for the crimes they had committed.

In December 2009 the Special Rapporteur on torture stated that he had not received information on cases where evidence had been excluded because it was found to have been obtained under torture.

In June 2009 Dmitri Tian and Oleg Evloev were sentenced to 25 years' and life imprisonment respectively by a court in the capital Astana for the premeditated murders of a woman and her three young children. Both men alleged that they had been tortured in detention in order to force them to confess to the murders. Both continued to deny that they had committed the murders. In court the judge instructed the jury not to consider the allegations of torture. The judge did not order an investigation into the allegations but confined himself to asking the police officers accused of torture whether they had committed such acts. They denied any wrongdoing. Video testimony showing evidence of ill-treatment of one of the defendants was reportedly lost by the prosecution. In November the Supreme Court turned down the appeals

by both defendants. No investigations into the torture allegations were ordered.

RASIM BAIRAMOV AND ALEKSANDR BRUIKHANOV

Aleksei Bruikhanov and Rasim Bairamov gave a detailed account in court of how they had been tortured in *de facto* unacknowledged detention in order to force them to confess to a crime they said they had not committed. Aleksei Bruikhanov provided a medical certificate as evidence of injuries inflicted before he was formally detained and transferred to a pre-charge detention centre. Both named two police officers as the main perpetrators. The judge summoned the police officers to the court for questioning. He reportedly asked them whether they had tortured the young men, a charge they denied. The judge did not order any further investigation into the allegations of torture but instead concluded, based on the “reliable” testimony by the police officers, that the “defendants had confessed voluntarily, without any physical or psychological pressure from outside.” [footnote – verdict] He dismissed defence witnesses as biased and unreliable and told Aleksei Bruikhanov that he had most likely been injured during a fight amongst detainees in the pre-charge detention centre and was using the torture allegations as a means of avoiding justice. Aleksei Bruikhanov and Rasim Bairamov were sentenced to five years in prison.

Amnesty International was told that the judiciary in Kazakhstan is still working on a score card principle in which the efficiency and quality of a judge in Kazakhstan is based on the number of convictions he or she hands down. A high conviction rate is seen as a sign of a good and successful judge and therefore judges are reluctant to acquit or to send a case for re-investigation as promotion and career prospects may be jeopardized by a lower than 95 per cent conviction rate.

Although presumption of innocence is enshrined in law, it is violated on a regular basis in all types of criminal cases, and particularly in the context of so-called national security cases and in the fight against terrorism. In a number of such cases, Amnesty International was informed that the courts had not initiated investigations into allegations of torture or other ill-treatment by the accused and “confessions” extracted under torture were admitted as evidence by the trial judges.

A particular concern in criminal cases based on the fight against terrorism and other threats to national security, is the existence of the death penalty for terrorist offences with loss of life in the Criminal Code. Terrorism with loss of life is the only Article in the Criminal Code which can be punished by death in peacetime. Although a moratorium on executions is in place, as there is no law suspending the use or imposition of the death penalty, the moratorium could be revoked at any time. Amnesty International is concerned that individuals accused of terrorism could be sentenced to death in an unfair trial, based on self-incriminatory confessions allegedly extracted under torture.

8. NO ADEQUATE REPARATION

According to information received by Amnesty International to this day no individual who was subjected to torture or other ill-treatment in custody has succeeded in obtaining adequate reparation, including compensation, through the courts.

NGOs have told Amnesty International that in Kazakhstan the state is under no obligation to offer financial compensation even in cases where torture by law enforcement officers has been proven beyond a reasonable doubt. This is reportedly because the law excludes individuals who have been subjected to torture from recovering monetary damages through civil remedies. Although two rulings by the Supreme Court in 1999 and 2001 clarify that individuals deprived of their liberty who have been subjected to violence and cruel and degrading treatment are eligible for compensation, the civil code does not list torture or other ill-treatment as acts which can be invoked as grounds for compensation. Additionally civil proceeding cannot be initiated unless criminal proceedings against the alleged perpetrators have started. NGOs believe that the fact that there is no financial risk attached to the use of torture or other ill-treatment makes it harder to combat the practice.

Amnesty International is concerned that the lack of adequate reparation in those cases where torture or other ill-treatment by law enforcement officers can be proved beyond reasonable doubt only exacerbates the feeling that there is no justice for the survivors of torture and their families in Kazakhstan.

9. RECOMMENDATIONS

Amnesty International is calling on the authorities of Kazakhstan:

- To continue to condemn the use of torture or other ill-treatment unreservedly and publicly and to constantly send the message to security forces that the use of torture or other ill-treatment is unlawful and will not be tolerated;
- To ensure that it is made clear during the training of all officials involved in the custody, interrogation or medical care of detainees and prisoners that torture or other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment;
- To ensure prompt, impartial and comprehensive investigations of all complaints of torture or cruel, inhuman or degrading treatment or punishment of any person subjected to any form of arrest, detention or imprisonment, as well as when there are reasonable grounds to believe that torture or other ill-treatment has occurred even if no complaint was made; and bring anyone suspected of such violations to justice;
- To consider establishing a fully resourced independent agency to investigate all allegations of human rights violations committed by officers of all law enforcement agencies or by persons acting on orders of such agencies or with the knowledge or complicity of such agencies;
- To ensure that this agency is mandated to carry out detailed reviews of past investigations conducted by law enforcement officers into allegations of torture or other ill-treatment and of judicial proceedings in such cases, and that it be given effective access to remand and court hearings, investigations and other relevant processes;
- To suspend any police officer or law enforcement official who is under investigation for having committed acts of torture or other ill-treatment, on full pay for the duration of the investigation and to ensure that complainants, witnesses and others at risk are protected from intimidation and reprisals;
- To ensure that all individuals deprived of their liberty are given prompt, regular and confidential access to medical examinations at all stages of the criminal process without interference from security forces, prosecutors or prison personnel;
- To ensure that the law is amended so that individuals deprived of their liberty are registered promptly, from the moment of apprehension, and not only after a three-hour time limit;
- To ensure that all people deprived of their liberty are informed promptly of the reasons for their detention, of any charges against them, and allowed prompt and regular access to a lawyer of their choice, as well as to their relatives and an independent medical practitioner;

- To ensure that no statements obtained as a result of torture or other ill-treatment are used as evidence in trial proceedings, except as evidence against a person accused of torture or other ill-treatment;
- To ensure that in practice the burden of proof is shifted to the prosecution to prove beyond reasonable doubt that statements were not obtained as a result of torture or other ill-treatment;
- To ensure that all trials, including of terrorism suspects, scrupulously observe international standards for fair trial;
- To ensure the whereabouts of all individuals, including suspects accused of involvement in terrorist acts, detained by NSS officers are promptly disclosed and that they are allowed prompt and regular access to a lawyer of their choice, as well as to their relatives and an independent medical practitioner;
- To establish an effective, truly independent and fully resourced National Preventive Mechanism in full compliance with OPCAT;
- To transfer detention facilities under the authority of the Ministry of Internal Affairs and the National Security Services to the Ministry of Justice;
- Pending this transfer and the establishment of the National Preventive Mechanism amend the law and take practical steps to ensure that Public Monitoring Commissions are given access to those detained in MVD and NSS facilities and are given the right to make unannounced inspection visits to facilities under the jurisdiction of the Ministry of Justice;
- To ensure that relatives of individuals subjected to torture or other ill-treatment are not themselves subjected to cruel, inhuman and degrading treatment by law enforcement officers and to investigate promptly and thoroughly any complaints of such treatment and bring those responsible to justice;
- To amend the law so as to ensure that victims of torture or other ill-treatment and their dependants are entitled to obtain prompt reparation from the state, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

ENDNOTES

1 Consideration of Reports submitted by States Parties Under Article 19 of the Convention, Concluding Observations of the Committee against Torture, Kazakhstan, CAT/C/KAZ/CO2, 12 December 2008.

2 http://www.undp.kz/userfiles/plan_en.pdf National Human Rights Action Plan of the Republic of Kazakhstan 2009-2012, p.98.

3 <http://www2.ohchr.org/english/issues/torture/rapporteur/press>.

4 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Kazakhstan, A/HRC/13/39/Add. 3, 16 December 2009, pp 2, 8.

5 *Kaboulov v. Ukraine*, Application no. 41015/04, Council of Europe: European Court of Human Rights, 19 November 2009, available at: <http://www.unhcr.org/refworld/docid/4b0bef482.html> [accessed 23 February 2010].

6 Kazakhstan: Submission to the UN Universal Periodic Review (EUR 57/001/2009) September 2009, Kazakhstan: Summary of concerns on torture and ill-treatment – a briefing to the United Nations Committee against Torture (EUR 57/001/2008).

7 The Optional Protocol to the Convention against Torture obliges member states, within 12 months of acceding to OPCAT, to establish an independent National Preventive Mechanism mandated to carry out unannounced visits to all places of deprivation of liberty.

8 Depository notification C.N.57.2010.TREATIES-2 of 8 February 2010

9 The Universal Periodic Review (UPR) is an opportunity for the UN Human Rights Council to examine the human rights record of all member states. Each country is reviewed every four years with the aim of ensuring that states are meeting all of their human rights obligations. Amnesty International submitted a briefing on Kazakhstan to the UPR in September 2009.

10 Draft report of the Working Group on the Universal Periodic Review, Kazakhstan, A/HRC/WG.6/7/L.9, 16 February 2010, p.4

11 Normativnoe postanovlenie Verkhovnogo Suda Respubliki Kazakhstan ot 28 dekabria 2009 No.7 O primenenii norm ugovornogo i ugovornogo-protsessualnogo zakonodatelstva po voprosam sobliudeniia lichnoi svobody i neprikosnovennosti dotoinstva cheloveka, protivodeistvia pitkam, nasiliu, drugim zhestokim ili unizhaiushchim chelovecheskoe sostoinstvo vidam obrashcheniia i nakazaniia. Normative Ruling No. 7 of 28 December 2009 by the Supreme Court of Kazakhstan on the application of criminal and criminal procedural legislation in relation to the observance of personal freedoms and the inviolability of human dignity, the counteraction to torture, violence, other cruel or degrading treatment and punishment

12 http://www.undp.kz/userfiles/plan_en.pdf National Human Rights Action Plan of the Republic of Kazakhstan 2009-2012

13 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Kazakhstan, A/HRC/13/39/Add. 3, 16 December 2009, p. 21

14 Article 134 of the Criminal Procedural Code of Kazakhstan on the procedure for detaining a person suspected of having committed a crime states under point 1 that "not later than three hours after the actual detention the investigator or the person conducting the initial investigation writes a report of the detention in which the basis for the detention, the place and the time of detention (in hours and minutes), the results of the body search and also the time of the report are all recorded. The report is shown to the detained person and his or her rights are explained to them as per Article 68 of the CPC, including the right to a defence lawyer and to testify in the presence of this lawyer. This is also recorded in the detention report. The report is signed by the person establishing it and the detained person. The person conducting the initial investigation or the investigator are obliged to inform the prosecutor in writing about the detention no later than 12 hours after the detention report has been established.

15 Report of the Special Rapporteur on torture, 16 December 2009, pp 18-19.

16 Interview with deputy head of Kostanai DVD and press officer by Amnesty International delegates in June 2009.

17 CAT, Concluding observations of the Committee against Torture (Extracts for follow-up) Kazakhstan

18 Report of the Special Rapporteur on torture, p. 19

19 Report of the Special Rapporteur on torture, p. 33, 34, 46

20 Amnesty International interview with officials at the Ministry of Internal Affairs in Astana in June 2009

21 <http://www2.ohchr.org/english/issues/torture/rapporteur/press>,

22 Hizb-ut-Tahrir (the party of liberation) a transnational Islamic movement with origins in the Middle East, which aspires to establishing a caliphate, does not advocate the use of violence. Hizb-ut-Tahrir is banned in Kazakhstan.

23 Report of the Special Rapporteur on torture, p. 22

24 A central Public Oversight Council monitoring the activities of police officers was set up under the Ministry of Internal Affairs in 2007. Similar Public Oversight Councils were subsequently set up in the regions under the Regional Departments of Internal Affairs. The Public Oversight Councils comprise members of the public, such as prominent journalists, medical doctors, academics and sometimes human rights activists. The role of the Public Oversight Councils is purely advisory.

25 Report of the Special Rapporteur on torture, p.

26 Articles 186 & 177 of the Criminal Procedural Code.

27 <http://www2.ohchr.org/english/issues/torture/rapporteur/press>,

28 In the absence generally of video and sound recording in police stations.

29 Report of the Special Rapporteur on torture, p.16

30 Official statistics from the Prosecutor General's Office quoted in the Baseline Report on Human Rights in Kazakhstan.

31 Letter from the Prosecutor General's Office of the Republic of Kazakhstan to the Kazakhstan International Bureau on Human Rights, ref. 20-25067-07, dated 27 November 2007

32 Report of the Special Rapporteur on torture, p.

33 Article 77 points 7, 8 and 9 of the Constitution also enshrine the inadmissibility of evidence obtained under duress: 7) no person shall be compelled to give testimony against oneself, one's spouse and close relatives whose circle is determined by law. The clergy shall not be obligated to testify against those who confided in them with some information at a confession; 8) any doubts of a person's guilt shall be interpreted in the favour of the accused; 9) evidence obtained by illegal means shall have no juridical force. No person may be sentenced on the basis of his own admission of guilt.

34 Results of Trial Monitoring in Kazakhstan 2005-2006, http://www.osce.org/documents/cia/2007/02/23411_en.pdf, pp. 9 and 81-86

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