

# KAZAKHSTA N

**Crackdown on human  
rights: abuse of power  
and freedoms curtailed**

*Amnesty International  
Submission to the UN  
Universal Periodic Review,  
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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Kazakhstan in October-November 2014. In it, Amnesty International evaluates the implementation of recommendations made in the previous cycle of the UPR, noting that while the government of Kazakhstan has accepted most of the recommendations, it has failed to implement essential recommendations with respect to freedom of expression, torture and other ill-treatment, and *non-refoulement*.

Amnesty International is concerned about the restrictions on the right to freedom of assembly, and arbitrary detention and excessive use of force against peaceful protesters. The government has also continued its crackdown on the free media and imposed legislative restrictions on the internet. Torture and other ill-treatment in detention facilities remain widespread, and the authorities have failed to bring the perpetrators to justice. In breach of its *non-refoulement* obligation, Kazakhstan has forcibly returned asylum-seekers to countries where they are at risk of torture and other ill-treatment. Amnesty International also the introduction of new counter-terrorism legislation and the flouting of fair trial standards in criminal proceedings against suspects of terrorist crimes.

In the final section, Amnesty International makes a number of recommendations to the government of Kazakhstan to address these human rights concerns.

# FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in February 2010, Kazakhstan accepted 121 and rejected seven of the 128 recommendations made to it by other states.<sup>1</sup>

## **Freedom of expression**

None of the recommendations on freedom of expression accepted by Kazakhstan during the previous UPR have been implemented, and the crackdown on the free media has continued during the reporting period.

The government also accepted recommendations to decriminalize defamation and slander.<sup>2</sup> However, the draft Criminal Code retains defamation and slander, including against state officials, as crimes and increases the punishment for these crimes by up to three years' imprisonment or by a fine of up to USD 30,000.

In 2013, Communications legislation was amended to allow state bodies to use or suspend communications services – such as mobile, landline and internet connections – in case of “social emergency”. The lack of a clear definition of “social emergency” makes this provision open to abuse.

## **Torture and other ill-treatment**

Kazakhstan declared at its last UPR that it “would not rest until all vestiges of torture had been fully and totally eliminated”, and accepted recommendations to improve safeguards against torture in all detention facilities and to “continue to apply a zero-tolerance approach to torture and other cruel, inhuman or degrading treatment or punishment”.<sup>3</sup> However, a year later, control of the entire prison system was

transferred from the Ministry of Justice back to the Ministry of Internal Affairs. Access for independent public monitors to detention facilities, a key safeguard against torture, had improved substantively under the Ministry of Justice, but has been problematic under the Ministry of Internal Affairs. Many allegations of torture received by Amnesty International come from individuals held in facilities controlled by the Ministry of Internal Affairs.

In September 2013, the General Prosecutor instructed the Prosecutor's Office to "open a criminal investigation into every incident of torture" and acknowledged that "the situation in regard to violations of basic human rights remains of concern".<sup>4</sup>

In November 2013, Kostanai court awarded 2 million Kazakhstani Tenge (roughly equivalent to USD 13,000) in compensation to Aleksandr Gerasimov following a decision by the UN Committee against Torture in May 2012 which found Kazakhstan responsible for torture.<sup>5</sup> However, the authorities have yet to carry out a full and independent investigation into Aleksandr Gerasimov's complaint of torture.

#### **Violation of *non-refoulement* obligations**

Despite accepting recommendations to ensure that the *non-refoulement* principle is upheld,<sup>6</sup> there have been incidents over the reporting period where Kazakhstan has returned asylum-seekers and refugees to countries where they were at real risk of torture or other ill-treatment (see also below).

Legislation was amended in January 2011 to include a new provision guaranteeing judicial review of extradition orders<sup>7</sup> and prohibiting extradition to a country where there is a real risk of torture<sup>8</sup> (although not other ill-treatment). However, this requirement continues to be ignored by the courts.

The Law on Refugees which came into force in 2010 excludes certain categories of asylum-seekers from qualifying for refugee status, including those charged in their country of origin with membership of illegal, unregistered or banned political or religious groups.<sup>9</sup>

## **THE NATIONAL HUMAN RIGHTS FRAMEWORK**

In April 2012, Kazakhstan's Constitutional Council issued a decree defining the moment of detention as the "precise moment when a person is deprived of his/her liberty and freedom of movement".<sup>10</sup> However, in practice the time of detention is sometimes deliberately recorded inaccurately by law enforcement officials, leading to periods of unrecorded detention. During these periods, detainees are reportedly subjected to torture and other ill-treatment as they are deprived of key safeguards.

In January 2013, new counter-terrorism legislation was introduced with broader measures for countering terrorism and extremism.<sup>11</sup> In the new law, "extremism" is defined, *inter alia*, as "inciting social or class hatred", which in the absence of legal clarification is widely used to curb political expression. The draft Criminal Code lowers the age of criminal liability for terrorist offences to 14 years.

# PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

## VIOLATION OF THE RIGHT TO FREEDOM OF ASSEMBLY

Freedom of assembly is restricted in Kazakhstan, and peaceful protestors continue to be detained and fined.

Activists are required to obtain prior permission from the local authorities for any public gathering or single-person picket. Distributing leaflets, joining spontaneous protests or wearing clothing displaying political slogans without prior permission are often regarded as violations of legislation on public protests. In several incidents over the past four years, law enforcement officials have used excessive force to break up unauthorized peaceful meetings, including strikes. In dozens of cases, the organizers and participants have been fined or sentenced to administrative detention for up to 15 days.

During Independence Day festivities on 16 December 2011 in the town of Zhanaozen, 15 protesters were killed and hundreds wounded by the security forces. On that day, young men and striking oil workers tore down festive displays in the town's central square and reportedly attacked the police with stones. Eyewitnesses report that some police fired warning shots into the air, while others fired directly into the crowd. Video footage shows security forces aiming and shooting at protesters running away, and beating those lying injured on the ground. Statistics from the General Prosecutor's Office indicate that 130 people were detained and 16 arrested on charges of organizing and participating in "mass disorder"; however, according to eyewitness accounts as many as 700 individuals were detained following the clashes.

## VIOLATION OF THE RIGHT TO FREEDOM OF EXPRESSION

Respect for the right to freedom of expression has significantly deteriorated over the past four years, with further legislative restrictions proposed and civil society activists regularly targeted by the authorities for exercising their right to freedom of expression.

In November 2012, the Almaty City Prosecutor's Office instigated proceedings to close down eight print media outlets and 23 websites owned by a single media group, as well as one other newspaper and its websites, and two independent internet-based TV channels. It accused them of "extremism", "inciting social discord" and of posing a threat to national security. These constitute most of the existing 40 independent media outlets and websites in Kazakhstan; most of them have since been closed down.

Administrative regulations are used by the authorities in Kazakhstan to harass independent media. The publication of the *Pravdivaya Gazeta* newspaper was suspended for three months in August 2013 for exceeding its print-run by 1,000; it was subsequently repeatedly fined for minor transgressions and in February 2014 it was closed down by a court's decision. The Almaty authorities also brought administrative proceedings against the *Ashyk-Alan* newspaper for failing to inform them of a temporary suspension of the publication over the summer. In August 2013, the newspaper was fined and banned from publishing for three months.

The internet is considered a mass medium in Kazakhstan, and as such is subject to all media-related regulations and restrictions. Social networks and blogs are often targeted through these restrictions in order to obstruct access to information. Hundreds of internet-based resources are blocked every year by court decisions taken in closed proceedings, due to their supposedly extremist or otherwise illegal content.

## **TORTURE AND OTHER ILL-TREATMENT**

Torture and ill-treatment remain pervasive in Kazakhstan.<sup>12</sup> In February 2011, the UN Committee against Torture stated that “since the consideration of the previous periodic report in 2008, torture and ill-treatment, including the threat of sexual abuse and rape, committed by law enforcement officials, remain an issue of serious concern in the State party, and do not occur in isolated or infrequent instances”.<sup>13</sup>

Amnesty International continues to receive reports of torture and other ill-treatment in prisons used primarily for disciplinary purposes, and often by some prisoners against other prisoners with the acquiescence of the prison authorities.

Numerous reports of torture and other ill-treatment emerged in the aftermath of the Zhanozen events (see also above). Released detainees and relatives have reported that scores of people were kept incommunicado in police custody, in overcrowded cells. There were also reports of people being stripped naked, beaten, kicked and doused with cold water in the police courtyard in sub-zero temperatures. Independent monitors were generally not allowed access to the police stations and on the few occasions when they were allowed to join special inspections, they were not allowed to interview detainees in private.<sup>14</sup>

A 2009 Supreme Court directive, instructing judges to examine all allegations of torture made in court,<sup>15</sup> has not led to a change in judicial practice.

For example, in March 2012, most of the 37 defendants on trial for organizing or participating in the protests in Zhanaozen alleged that they had been tortured or otherwise ill-treated in detention by security forces in order to extract confessions. Despite their allegations in court that the prosecution case was based on coerced evidence, the judge stated that the allegations of torture and other ill-treatment were an attempt by the defendants to avoid justice, and sentenced them to terms of imprisonment.<sup>16</sup> In its decision on a case from Kazakhstan published in December 2013,<sup>17</sup> the UN Committee against Torture concluded that Kazakhstan had “failed to ascertain whether or not statements admitted as evidence in the proceedings have been made as a result of torture”. The Committee found Kazakhstan guilty of violating Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Impunity for human rights violations by the security forces, including torture and other ill-treatment and excessive use of force, remains broadly unchallenged.<sup>18</sup> In December 2011, the General Prosecutor’s Office acknowledged abusive use of force, including of firearms, by some police officers in Zhanozen, and opened a criminal investigation. In May 2012, five senior security officers were found guilty of abuse of office and sentenced to prison terms of between five and seven years. Reportedly, many more security officials had used excessive force in Zhanaozen, and there have been hundreds of allegations of torture and ill-treatment of those arrested for participating in strike actions and protests in Zhanaozen and elsewhere. However, the authorities assert that they have conducted thorough and impartial investigations into all these allegations, and in October 2012 the General Prosecutor’s Office asserted that there was no need to bring further criminal charges against other security officers.

## **VIOLATION OF NON-REFOULEMENT OBLIGATION**

Following the entry into force of the Law On Refugees, which excludes certain categories of asylum-seekers from qualifying for refugee status (see also above), the Central Commission on the Determination of Refugee Status reviewed all cases of individuals previously recognized as persons entitled to international protection by UNHCR, and in most cases revoked their status. Dozens have since been forcibly returned to Uzbekistan and to China where they risk torture or other ill-treatment.

In June 2011, Kazakhstan extradited 28 ethnic Uzbek refugees and asylum-seekers to Uzbekistan, notwithstanding the fact that they were at real risk of torture there. At least 12 of them were subsequently sentenced to long prison terms following unfair trials in Uzbekistan. In June 2012, the UN Committee against Torture concluded that by extraditing the men Kazakhstan was in breach of Articles 3 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>19</sup>

## **HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF NATIONAL SECURITY AND THE FIGHT AGAINST TERRORISM**

Since 2011, the authorities have significantly stepped up counter-terrorism operations following a number of bomb explosions, suspected suicide bombings and violent attacks by unidentified armed groups throughout the country. Many people, including both security forces and civilians, were killed during these violent incidents, which the authorities have described as terrorist attacks by illegal Islamist groups.

Although the presumption of innocence is enshrined in law, this guarantee is violated on a regular basis, particularly in the context of national security and the fight against terrorism, with suspects often branded guilty in public by state officials before the start of the trials. Crimes of "terrorism with loss of life" in Article 49.1 of the Criminal Code, are the only ones punishable by death in peacetime. (Kazakhstan is abolitionist for ordinary crimes).

Some of those convicted of terrorist crimes are reported to be serving prison sentences in cruel, inhuman and degrading conditions in high security prisons in Shymkent or Arkalyk. No independent monitoring access has been allowed to these prisons.

# RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

## Amnesty International calls on the government of Kazakhstan to:

### *Freedom of assembly*

- Ensure the right to freedom of peaceful assembly to all persons wishing to peacefully express their views, in accordance with international human rights law and Kazakhstan's Constitution;
- Amend the Law on Peaceful Assembly so as to bring the requirement to notify the authorities in advance of the intention to hold a public event into line with international human rights law standards on spontaneous demonstrations.<sup>20</sup>

### *Freedom of expression*

- Ensure that journalists, human rights defenders and other civil society activists are able to seek, receive and impart information, and to carry out their legitimate activities without intimidation, hindrance, harassment or pressure;
- End the arbitrary interference by local authorities in the work of independent media, including the imposition of unduly severe administrative sanctions for minor transgressions;
- Decriminalize libel and slander in the Penal Code;
- Review and amend legislation intended to combat extremism to ensure that it cannot be used to limit right to the freedom of expression, including by suppressing publication of views critical of the authorities in printed, broadcast or online media;
- Amend the 2013 Communications Law to preclude the use of the vaguely defined concept of "social emergency" to suspend or suppress legitimate communications and exchanges of information, or otherwise to limit freedom of expression.

### *Freedom from torture and other ill-treatment*

- Establish an adequately resourced independent mechanism to investigate all allegations of torture and other ill-treatment by members of law enforcement agencies, or by persons acting on the orders of or with the acquiescence of members of such agencies;
- Ensure in practice 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;
- Ensure that all persons deprived of their liberty are informed promptly of the reasons for their detention, any charges against them, and allowed prompt and regular access to a lawyer of their choice;
- Ensure that all past allegations of the use of torture or other ill-treatment, as well as all instances of abusive use of force by law enforcement officials, are promptly, effectively and independently investigated, and to hold accountable any official found to have sanctioned or conducted such acts;



- Ensure effective access for independent public monitors to all detention facilities and other penitentiary institutions under the Ministry of Internal Affairs.

*Violation of non-refoulement obligation*

- Ensure that no one is forcibly returned, by means of extradition or otherwise, to a country where they would be at risk of torture or other ill-treatment.

*Human rights violations in the context of national security and the fight against terrorism*

- Ensure that the principles of fair trial are fully and scrupulously observed in criminal proceedings against anyone suspected of a crime, including those suspected of terrorist activities;
- Grant independent public monitors immediate access to high-security prisons.

# ENDNOTES

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<sup>1</sup> Report of the Working Group of the Universal Periodic Review, A/HRC/14/10, paragraphs 95 - 97, and Addendum, A/HRC/14/10/Add.1.

<sup>2</sup> Ibid, recommendations 76 (Norway); 77 (Republic of Korea); 11 (United Kingdom of Great Britain and Northern Ireland); 13 (Slovenia); 14 (Sweden); 20 (Czech Republic); 21 (Netherlands); 22 (Australia); 23 (Finland); 24 (Norway); 25 (United States of America); 26 (Canada).

<sup>3</sup> Ibid, recommendation 43 (Algeria), 44 (Germany), 47 (Azerbaijan), 48 (Slovenia), 61 (Czech Republic), 62 (Norway), 64 (Czech Republic), 65 (France).

<sup>4</sup> Press Service of the General Prosecutor's Office, Kazakhstan  
[http://tengrinews.kz/kazakhstan\\_news/vozbujdat-ugolovnyie-dela-za-primenenie-pyitok-potreboval-prokuror-kazahstana-242052/](http://tengrinews.kz/kazakhstan_news/vozbujdat-ugolovnyie-dela-za-primenenie-pyitok-potreboval-prokuror-kazahstana-242052/)

<sup>5</sup> Committee against Torture, Communication No, 433/2010, 10 July 2012 (CAT/C/48/D/433/2010)  
[http://www.ohchr.org/Documents/HRBodies/CAT/Jurisprudence/CAT-C-48-D-433-2010\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/CAT/Jurisprudence/CAT-C-48-D-433-2010_en.pdf)

<sup>6</sup> Report of the Working Group of the Universal Periodic Review, A/HRC/14/10, recommendation 92 (Belgium), recommendation 7 (Czech Republic).

<sup>7</sup> Article 531-1, Criminal Procedural Code.

<sup>8</sup> Ibid, article 532.

<sup>9</sup> This exclusion affects in particular observant Muslims from Uzbekistan who worship in mosques that are not under state control or are members or suspected members of Islamist parties or Islamic movements banned in Uzbekistan. The exclusion also affects asylum seekers of Uighur origin from the Xinjiang Autonomous Republic (XUAR) in North West China who are charged with or suspected of belonging to separatist movements or parties.

<sup>10</sup> <http://www.constcouncil.kz/rus/resheniya/?cid=11&rid=783>

<sup>11</sup> Law No. 63 "On the introduction and amendments to several legislative acts of the Republic of Kazakhstan on the issue of counter-terrorism".

<sup>12</sup> The General Prosecutor's office reported a significant increase in torture complaints over the past two years, with 187 complaints registered in 2011, 602 in 2012 and 662 in the first nine months of 2013.

<sup>13</sup> List of Issues submitted to Kazakhstan for preparation of Kazakhstan's 3<sup>rd</sup> periodic report in February 2011 (CAT/C/KAZ/Q/3)

<sup>14</sup> See Amnesty International, *Old habits: The routine use of torture and other ill-treatment in Kazakhstan*, <http://www.amnesty.org/en/library/info/EUR57/001/2013/en>

<sup>15</sup> See <http://adilet.zan.kz/rus/docs/P090000075S>.

<sup>16</sup> See Amnesty International, *Old habits: The routine use of torture and other ill-treatment in Kazakhstan*, <http://www.amnesty.org/en/library/info/EUR57/001/2013/en>

<sup>17</sup> CAT/C/51/D/441/2010

<sup>18</sup> See Amnesty International, *Old habits: The routine use of torture and other ill-treatment in Kazakhstan*, <http://www.amnesty.org/en/library/info/EUR57/001/2013/en>

<sup>19</sup> The CAT concluded in June 2012 following an oral hearing in May 2012 into a complaint

lodged by 29 Uzbek men against the decision by Kazakhstan to extradite 28 of them to Uzbekistan despite their complaints of risk of torture upon return by saying that diplomatic assurances « *cannot be used as an instrument to avoid the application of the principle of non-refoulement* ».

<sup>20</sup> In particular the International Covenant on Civil and Political Rights.

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>1</sup>

“Return to Torture: Extradition, Forcible Returns and Removals to Central Asia” July  
2013; Index EUR 04/001/2013

“Old Habits: the Routine Use of Torture and Other Ill-treatment in Kazakhstan” July  
2013; Index EUR 57/001/2013

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<sup>1</sup> All of these documents are available on Amnesty International’s website:  
<http://www.amnesty.org/en/region/kazakhstan>

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