

**KAZAKHSTAN NGOS AND
OPEN SOCIETY JUSTICE INITIATIVE
JOINT SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW OF
KAZAKHSTAN**

**United Nations Human Rights Council Universal Periodic Review
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The Charter for Human Rights, the Committee on the Rule of Law and Human Rights Reform Monitoring, the Kazakhstan International Bureau for Human Rights and the Rule of Law, Legal Policy Research Center, MediaNet, the *Sauygu* Public Foundation (“Coalition”), and the Open Society Justice Initiative welcome this opportunity to present their joint submission to the Universal Periodic Review (UPR) of the Republic of Kazakhstan. The following submission addresses **VIOLATIONS OF THE PROHIBITION ON TORTURE** and includes recommendations to the Government. We urge the Human Rights Council to examine Kazakhstan’s record on torture and to ensure that the below recommendations are reflected in the outcome document.

In particular, we urge the Human Rights Council to ensure that the UPR addresses:

- the lack of effective safeguards against torture, including the state’s failure to maintain proper custody records of those deprived of their liberty and to observe the right of detainees to timely access to a lawyer and doctor, and to notify family members of their detention;
- the need for an effective mechanism for investigation of complaints of torture, and the importance of holding perpetrators accountable for acts of torture;
- courts’ unlawful admission of evidence obtained under torture;
- the lack of adequate access to compensation for victims of torture.

We hope that the Human Rights Council will take up the call of the UN Committee against Torture, which stated in its conclusions regarding the 2008 report of Kazakhstan that the Government of Kazakhstan should establish a “zero tolerance” policy toward torture and should publicly and unequivocally condemn torture in all its forms and manifestations.

THE PROBLEM OF TORTURE IN KAZAKHSTAN

Torture in Kazakhstan is both widespread and institutionalized. Following his May 2009 visit to Kazakhstan, the UN Human Rights Council Special Rapporteur on Torture and other forms of Cruel, Inhuman, and Degrading Treatment or Punishment stated that, “the use of torture and ill-treatment *certainly goes beyond isolated instances*” (italics are ours). The Special Rapporteur on Torture reported receiving “many credible allegations of beatings with hands and fists, plastic bottles filled with sand, police truncheons; of kicking, asphyxiation through plastic bags and gas masks used to obtain confessions from suspects.”

I. LACK OF SAFEGUARDS AT THE TIME OF ARREST

The law in Kazakhstan requires that police officers register arrests within three hours of the time of apprehension. However, police routinely hold people they arrest for more than three hours, and sometimes even for days, in unregistered and incommunicado detention before officially acknowledging their detention and transferring them to a detention facility. It is during this time that police most often subject detainees to torture for the purpose of securing a confession or other testimony or information.

Serik Abilev, 29, was apprehended by police at 20:45 on June 25, 2008 in Lenino village, in Fedorovsky district of Kostanay province. Police held him for more than six hours (until 4:00 o'clock on June 26) in the office of the local police inspector without registering his detention. During that time, four police officers and two civilians tortured Mr. Abilev with the purpose of extracting a confession from him on charges of theft. The men beat him with a baseball bat on his legs and feet and threatened to rape him with a police truncheon. They also forced a gas mask onto Mr. Abilev, whose hands were cuffed, and then ignited cotton in front of the breathing opening so that the smoke would cause asphyxiation. As a result of these acts of torture, Mr. Abilev suffered a double fracture of his right leg, an injury to his chest, abrasions on various parts of his body, and a fracture of his right foot. (Reported by the Kazakhstan International Bureau for Human Rights and Rule of Law office in Kostanay)

Denis Polienko, 19, was detained at 9 o'clock in the morning on November 21, 2006 at his work in Schuchinsk district in Akmola province. Officers brought him to the local police department, but did not register his detention. Officers did not allow Mr. Polienko to call his family to notify them of his detention and did not provide him with an attorney. During 36 hours of unacknowledged, incommunicado detention, officers tortured Denis Polienko in order to extract a guilty confession from him in connection with the robbery and murder of one of his neighbors. Two officers beat Mr. Polienko, subjected him to asphyxiation with a plastic bag, threatened to sodomize him, and threatened to harm members of his family. According to statements made by Mr. Polienko, unable to stand the torture he finally agreed to the officers' demands and wrote a "voluntary confession." (Reported by the Open Society Justice Initiative office in Almaty)

Domestic norms provide that detainees shall be informed of their procedural rights not immediately, but only within three hours of the moment of actual arrest. As a result, authorities routinely fail to inform detainees about their procedural rights at the time of detention, including the right to an attorney, the right to make a phone call, the right to remain silent, the right to be informed about the reason for one's detention, and the right to receive medical help or examination. The absence of effective safeguards to protect detainees from torture means that those taken into custody are vulnerable to abuse, particularly during the initial stage of detention.

Karuzhan Smailov, 19, was detained by Astana police on suspicion of burglary at 24:00 on August 6, 2009. When officers asked Smailov to sign the arrest report, he asked them about his right to a phone call. At that point the officers took away his mobile phone and his ID card. Mr. Smailov was not allowed access to a lawyer or a doctor and was not

provided the opportunity to notify his family of his whereabouts. Police at the Esil District Police Department of Astana beat Mr. Smailov and subjected him to humiliating treatment for the purpose of extracting a confession. (Reported by the Kazakhstan International Bureau for Human Rights and Rule of Law office in Astana)

II. LACK OF EFFECTIVE INVESTIGATION

In contravention of well-established international human rights norms, allegations of torture by Kazakhstan law enforcement rarely prompt an effective and thorough investigation capable of leading to identification and punishment of the perpetrators. Kazakhstan's complaints mechanism for victims of torture does not provide those who have suffered abuse genuine access to justice. Reports of torture during criminal inquiry or investigation may be reviewed either as complaints about the actions of law enforcement officers or as statements (writs) regarding a crime. In practice, reports about torture in police custody are generally reviewed as complaints and are examined by Internal Security Departments of the Ministry of Internal Affairs. These investigations are confidential and closed to scrutiny by the victim or members of the public. The claimant is not informed about the course of the investigation, does not have a legal right of access to the investigation materials, and does not have the right to petition for a medical examination, to summon witnesses, or to provide additional evidence relevant to the case. Invariably, the internal investigation by the police ends with a rejection of the victim's claims and decision to decline to open a criminal case. The result is that, even when a victim is courageous enough to stand up and lodge a complaint, torture in Kazakhstan is committed with impunity.

Alexander Gerasimov, 40, sustained torture by police in Kostanay province in March 2007. The officers beat him severely with blows to his kidneys, threatened him with sexual violence, and suffocated him with a plastic bag until he bled from his nose, ears and abrasions on his face, before finally losing consciousness. Mr. Gerasimov has medical evidence supporting his account of these events. Mr. Gerasimov's numerous complaints and appeals to government bodies have received only superficial examination. An internal investigation by police resulted in the dismissal of Mr. Gerasimov's allegations of torture as unsubstantiated. The Prosecutor's office then ordered the case be sent for additional examination, but referred it to the financial police as an abuse-of-authority claim. The financial police in turn said they found no cause for opening an investigation and dismissed the allegations citing lack of evidence. As a result, no one has been held accountable for the torture and incommunicado detention of Mr. Gerasimov and he has not obtained redress or compensation for the ill-treatment he suffered. (Reported by the Open Society Justice Initiative office in Almaty)

Andrey Peskov, 29, and Serik Kaliyev, 43, were subjected to repeated torture in prison 161/12 in Kostanay province by prison officials during the period October 2008 to December 2008. As a result of the torture inflicted on him, Mr. Peskov was compelled to undergo removal of his gall bladder. However, the prison administration maintains that all of the bodily injuries that Mr. Peskov suffered were in fact self-inflicted. Prison authorities did not honor Mr. Kaliyev's demands for examination by a doctor. In spite of Mr. Kaliyev's demands, he was not examined by a doctor. Following an 11-month

internal investigation of the inmates' charges, the Directorate of Internal Affairs in Arkalyk decided against bringing criminal charges against the alleged perpetrators, citing a lack of evidence. (Reported by the Kazakhstan International Bureau for Human Rights and Rule of Law office in Kostanay)

III. ADMISSION OF EVIDENCE OBTAINED UNDER TORTURE

Judicial practice runs contrary to domestic legal provisions giving courts the responsibility to declare inadmissible any evidence obtained illegally. Criminal judges in Kazakhstan tend to treat defendants' complaints of torture as attempts to obstruct justice or evade punishment. Typically, courts fail to adequately inquire into defendants' complaints of torture and, although the police are obviously in a privileged position to provide evidence of the circumstances of the interrogation, require defendants to prove their allegations. This practice is at odds with settled international human rights jurisprudence which imposes on governments the burden of explaining the cause of injuries to detainees who were demonstrably of sound condition at the time they were detained. Not surprisingly, courts typically conclude that the allegations are unsubstantiated. As a result, evidence extracted under torture is used to incriminate defendants, and defendants are deprived of the opportunity to seek investigation and redress for the torture they have suffered. According to the results of NGO trial monitoring conducted during the period 2005–2006, funded by the OSCE Center in Kazakhstan, out of the 79 registered cases of complaints of torture by defendants, 40 percent were completely ignored by the judges and the remainder were addressed only by a superficial examination.

Alexey Brukhanov, 25 and Rassim Bayramov, 27, alleged at trial in Rudny, Kostany Province, in October 2008 that they had been tortured by two specific police officers. The court summoned the two police officers for testimony at trial. Upon briefly interrogating them, the court reported that based on the officers' "indisputable" testimonies "the defendants had confessed voluntarily, without any physical or psychological pressure from outside." No further investigation of the defendants' complaints of torture followed. The court found the defendants guilty without reservation and regarded their complaints of torture as "a means to avoid justice." (Reported by the Kazakhstan International Bureau for Human Rights and Rule of Law office in Kostanay)

Maxim Lissenko, 22, alleged that police tortured him to extract a confession during his unregistered detention. At trial in Kostanay on December 4, 2008, the court found the defendant's allegations regarding a forced confession unsubstantiated as there were "no significant violations of the Criminal Procedure Code of Kazakhstan [...] that could render the existing evidence inadmissible." The court cited the "failure" of the defense to support its claims of torture by "not having identified the perpetrators" and by not providing evidence of the injuries the defendant sustained as a result of his alleged torture. The court found Mr. Lissenko guilty and sentenced him to imprisonment. (Reported by the Kazakhstan International Bureau for Human Rights and Rule of Law office in Kostanay)

IV. LACK OF COMPENSATION

Even when torture by the police can be proved, there is no state obligation to compensate the victim financially, in direct breach of the internationally-recognized right to compensation for torture. In Kazakhstan, victims of torture - unlike the victims of certain other types of misconduct by state officials - are not entitled to recover monetary damages through civil remedies. Thus, there is no financial risk to the police in practicing torture.

RECOMMENDATIONS TO THE GOVERNMENT OF KAZAKHSTAN

As a matter of priority, we urge the Human Rights Council to call on the Government of Kazakhstan to implement the following **seven** critical reforms to stop torture:

- 1) Recognize in law and respect in practice the right of everyone, regardless of his/her procedural status to be informed,
 - (a) of the reason for his/her arrest at the moment of arrest; and
 - (b) in writing of his/her rights and procedural safeguards from the actual moment of deprivation of liberty such as: the right to remain silent, right to consult a lawyer of his/her choice and in private from the very outset of police custody and before the first interview or interrogation or be provided with a free lawyer, if the person cannot afford one; and to inform his/her relatives of the arrest at the time of arrest; and further, of the implications of waiving any of these rights.
 - (c) Ensure that this information is provided to the detainee in writing in a language he/she understands and that he/she is informed about the implications of waiving these rights.
- 2) Ensure effective maintenance of records of state custody and visits by witnesses and others to police stations.
- 3) Establish an effective and independent mechanism for investigating complaints of torture in compliance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- 4) Establish an effective mechanism for monitoring prisons and all places of detention including investigation cells of the Committee for National Security and temporary detention facilities of the Ministry of Internal Affairs.
- 5) Ensure punishment for acts of torture that corresponds to their gravity and the responsibility of the respective perpetrator(s).
- 6) Ensure that courts provide for careful investigation of defendants' allegations of torture, and place the burden of proof on the prosecution to establish that all

statements by the defendant were made in full knowledge of his rights and on a voluntary basis before admitting them into evidence.

- 7) Ensure an explicit right of victims of torture to seek redress in civil courts.