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Summary of Concerns on Torture and Ill-treatment

Briefing for the United Nations Committee against Torture

November 2008



Introduction

Kazakstan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) on 29 June 1998. Kazakstan's initial report on measures taken to implement its obligations under the Convention against Torture was reviewed in May 2001¹. The Committee against Torture is scheduled to examine Kazakstan's second periodic report at its 41st session in November 2008.

Amnesty International remains concerned that despite efforts by the authorities of Kazakstan to fulfil their obligations under the CAT and implement recommendations made by the Committee in 2001 torture and other ill-treatment remain widespread and such acts continue to be committed with virtual impunity.

Among the positive developments welcomed by Amnesty International are the ratification of the Optional Protocol to the Convention against Torture (OPCAT) and the signing of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Moves to reduce the scope of the death penalty in Kazakstan have also been welcome developments (see section 5.1). Notwithstanding some reservations about it, (described below under Section 1.2), the recent introduction of a law requiring a person to be brought before a judge following detention is a welcome development. Other positive measures include the creation of Public Monitoring Commissions which are granted access to most - but not all - prison and detention facilities throughout the country; the transfer of the majority of prison and detention facilities from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice, and the creation of the office of an Ombudsman. Though it is not fully in conformity with the definition set out in Article 1 of the Convention, Kazakstan has adopted a law making the offence of torture committed by law enforcement officials punishable as an offence under its criminal law as required by the Convention against Torture (see Section 1.1).

The implementation of these legislative reforms and other safeguards against torture and other ill-treatment has remained at the forefront of Amnesty International's concerns.

According to reports received by Amnesty International from domestic and international non-governmental organizations (NGOs) and inter-governmental organizations (IGOs), lawyers, diplomats, citizens and foreign nationals, beatings by law enforcement officers, especially in temporary pre-charge detention centres, in the streets or during transfer to detention centres, are still routine. From interviews Amnesty International conducted in 2006 and 2008 with concerned organizations and individuals it has emerged that torture or other ill-treatment in detention continues to be widespread, despite the safeguards against torture or other ill-treatment which the authorities have introduced and the education, reform and training programmes for law enforcement forces and the judiciary often run in conjunction and in cooperation with NGOs and IGOs.

While, by all accounts, Kazakstan had implemented a successful reform of its penitentiary system - starting with the transfer of the prison system to the Ministry of Justice in late 2001 - with significant improvements in the conditions of detention in post-conviction detention centres, the last two years have reportedly seen a decline in prison conditions, and many of the abusive practices reoccurring more and more often.

Comparatively few law enforcement officers – even according to official figures – have been brought to trial and held accountable for violations they have committed, including torture, and yet scores of people throughout the country routinely allege that they have been arbitrarily detained and tortured or ill-treated in custody in order to extract a “confession”. Evidence based on such “confessions” is still routinely admitted in court. Corruption in law enforcement and the judiciary is believed to contribute largely to a climate of

¹ Concluding observations of the Committee against Torture: Kazakhstan. 17/05/2001. A/56/44, paras. 121-129. (Concluding Observations/Comments)

impunity. This climate of impunity leads to a lack of public confidence in the criminal justice system. It was reported to Amnesty International that people only rarely lodge complaints as they feel that they will not obtain justice, nor get compensation. Many are not willing to testify against law enforcement officers out of fear of reprisals against themselves or their relatives and associates.

The fight against terrorism and other threats to national security are frequently invoked as crucial in securing stability – national and regional -- by the authorities. 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, such as banned Islamic groups and asylum-seekers from neighbouring countries, in particular from China and Uzbekistan. In the name of countering terrorism and relying on agreements with other countries, asylum-seekers and refugees have been forcibly returned or extradited to China and Uzbekistan, where they face a real risk of torture and other serious human rights violations, in blatant contravention of Kazakstan's obligations under the Convention against Torture and other human rights treaties and refugee law. Even though fewer extraditions have been reported in the last couple of years, asylum-seekers from China and Uzbekistan remain extremely vulnerable to arbitrary detentions, threats of forcible return and intimidation. 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 and the fight against terrorism, with suspects often branded guilty in public before the start of their trials. Terrorism with loss of life is the only Article in the Criminal Code which can be punished by death in peacetime.

This briefing focuses on Amnesty International's most pressing concerns about the failures of the authorities in Kazakstan to implement fully and effectively Articles 2, 3, 4, 11, 12, 13, 15 and 16 of the Convention against Torture. It is intended that this briefing will complement briefings submitted to the Committee against Torture by domestic and international NGOs with which Amnesty International cooperates.

In writing the present briefing the organization has taken into consideration the Second Periodic Report submitted by Kazakstan in 2006 on its implementation of the Convention against Torture²; the List of Issues to be considered during the Committee against Torture's examination of the Second Periodic Report of Kazakstan which were issued by the Committee against Torture in July 2008³; and the September 2007 Baseline report on Human Rights in Kazakstan prepared by a working group under the Presidential Human Rights Commission⁴. This briefing covers the period 2002-2008 with more emphasis on recent years.

² CAT/C/KAZ/2, 17 January 2008, Second periodic reports of States parties due in 2004, Addendum, Kazakhstan

³ CAT/C/KAZ/Q/2, 31 July 2008, List of issues to be considered during the examination of the second periodic report of Kazakhstan(CAT/C/KAZ/2)

⁴ Bazovi doklad o situatsii s pravam cheloveka v Respublike Kazakstan (Baseline report on Human Rights in Kazakstan), source ref: baz_doklad_rus.doc

1. Effective legislative, administrative, judicial or other measures to prevent acts of torture (Articles 2, 4 & 11)

1.1. Definition of torture

Article 17 of the Constitution guarantees that no one may be subject to torture, violence, or other cruel, inhuman or degrading treatment or punishment⁵.

On 21 December 2002 Article 347-1 defining torture and making it a specific criminal offence was added to the Kazakhstan Criminal Code⁶. Although, the Second Periodic Report of Kazakhstan⁷ states that the definition of torture set out in Article 347-1 of the Criminal Code is in full accordance with the definition of torture set out in Article 1 of the Convention against Torture, Amnesty International is concerned that the definition is in fact more restrictive, as it limits criminal responsibility and accountability for torture to law enforcement officials. It does not expressly criminalize torture carried out by other public officials, other persons acting in an official capacity, or individuals acting with the consent or acquiescence of public officials. Amnesty International considers that in order for Kazakhstan to comply fully with its obligations under Article 4 of the Convention against Torture to make all acts of torture offences punishable under its criminal law, the law should be amended so as to expand the list of possible perpetrators to correspond, at a minimum, with the wording contained in Article 1 of the Convention against Torture.

There are a number of provisions of the Criminal Code under which law enforcement officials can be prosecuted for ill-treatment. Until the introduction of Article 347-1 prosecutions for acts of torture and other ill-treatment were brought under Articles 308 and 347 of the Criminal Code (respectively criminalizing "Excess of authority or official powers" and "Coercion to make a confession"). From information provided by both NGOs and officials it appears that when prosecuted, law enforcement officials continue to be charged with "exceeding authority" rather than under Article 347-1 for torture, in cases in which severe physical or mental pain and suffering has been intentionally inflicted on an individual. For figures please see section 3.3. For concerns about inadequate investigations of reports of torture or other ill-treatment, please see section 3.2.

1.2. Judicial Review of Detention

1.2.1 New legislation

At the end of August 2008 a law introducing into national legislation judicial review of the decision to detain a person entered into legal force. In May 2007 a constitutional amendment to Article 16 of the Constitution⁸ had removed the power to sanction arrest from the prosecutor's office and placed this authority exclusively with the courts. While this measure has been likened by commentators in Kazakhstan to a law on habeas corpus this is a misnomer as the law requires the authorities to bring people deprived of their liberty before a court following detention; it does not create a procedure whereby the detainee or someone on his or her behalf may bring a petition challenging the lawfulness of their detention before a court for rapid consideration as

⁵ Article 17 1. A person's dignity shall be inviolable. 2. No one must be subject to torture, violence or other treatment and punishment that is cruel or humiliating to human dignity.

⁶ Article 347-1 Torture: (a) The deliberate infliction of physical or mental suffering by an investigator, the person conducting the initial inquiry or any other official in order to obtain from the person being tortured or a third party information or a confession, or to punish such person for an act that he or she committed or is suspected of having committed, and also to intimidate or coerce him or her or a third party, or for any reason based on discrimination of any kind[.]

⁷ CAT/C/KAZ/2, point 13, page 6

⁸ Article 16 of the Constitution: 1. Everyone shall have the right to personal freedom 2. Arrest and detention shall be allowed only in cases stipulated by law and only with the sanction of a court. The detained person shall be provided with the right to appeal.

required by Article 9.4 of the ICCPR. The authority to sanction arrest, in this instance, does not refer to the authority to issue arrest warrants. It refers to the authority to rule on whether or not the decision by the competent law enforcement officials to detain a suspect in a pre-charge facility and the application to the court by the prosecutor's office to keep the suspect in detention pre-trial are conform with the law and are appropriate.

Amnesty International considers that the obligation to bring people deprived of their liberty before a judicial authority promptly after detention is a key safeguard against torture or other ill-treatment and removes the absolute power over the detainee which the detaining law enforcement authorities might otherwise have over them. The organization considers the introduction of this law to be a positive development in Kazakhstan. However, the organization is concerned about aspects of the law and its implementation.

While the law gives the detainee and his lawyer the right to be present during this court hearing, which is public, and the right to appeal against the decision taken by the judge, independent experts have raised concerns that defence lawyers will not be given the opportunity to familiarize themselves with the materials submitted by the prosecutor's office; they will not be permitted to present evidence or call witnesses at the hearing.

The law does not require that the detained person be brought *promptly* before the court following detention. Instead, the law sets 60 hours following formal detention as the maximum time frame for the prosecutor's office to apply to the court for judicial review of detention. i.e. the prosecutor's application must be lodged no later than 12 hours before the expiry of the 72-hour pre-charge detention limit. The court must consider the prosecutor's application no later than eight hours after it has been lodged. This in effect means that the detained person is not required to be brought before the court until 68 hours after they have been formally detained. This is of particular concern, as Amnesty International's research indicates that torture or other ill-treatment often occurs during apprehension, detention, transfer to a pre-charge detention facility and during initial interrogation, often in the absence of a defence lawyer.

Neither this law nor the Criminal Procedural Code precludes the judge who conducts the initial review of detention from presiding over the trial of the same individual. Furthermore, Amnesty is concerned that judges are not exercising their authority to independently and impartially decide on the legality of the arrest and detention and the necessity for continued detention. Rather they may merely "rubber stamp" the prosecutors' requests for detention rather than give due consideration to releasing the person, including on bail; this concern is based on research indicating that in the past, judges have rarely gone against the decisions taken by the prosecutor's office or have questioned evidence presented by the prosecution during trials.

1.2.2. Habeas Corpus

Amnesty International is concerned that Kazakhstan has yet to adopt a law which establishes a habeas corpus type of procedure as they are required to do under Art 9.4 of ICCPR: *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

Amnesty International considers that the creation of this procedure would be a further important safeguard against torture or other ill-treatment and other violations of the rights of detainees which frequently occur in Kazakhstan.

1.3. Definition of 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 a person must be registered at a police station no later than three hours after he or she has been apprehended, which constitutes formal detention⁹. The register needs to list the exact time and place of apprehension and the reason for the detention. However, the law does not define the actual moment of detention when law enforcement officers, for example, stop an asylum-seeker on the street to check his or her documents or bring a suspect for questioning to a police station or other detention facility.

The law also only extends the rights to a lawyer, to contact relatives, and to be informed of one's rights and any charges to persons who have been formally detained, i.e. once an individual detained in connection with a criminal case is brought into and registered at the police station. The law does not require these rights to be granted -- which are key safeguards against torture and other ill-treatment -- to individuals brought in for questioning in a criminal case, or to asylum-seekers or foreign nationals brought to a police station for a document check.

According to the information received by Amnesty International, law enforcement officials often do not even abide by the existing law on detention, as they do not register detainees within the required three hours of the time that the individual is 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; they are without adequate protection against torture or other ill-treatment and are outside of the protection of the law during this time.

1.4. Transfer of the prison system from the Ministry of Internal Affairs to the Ministry of Justice

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) in Kazakhstan - 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 in police stations and in NSS departments, both known as temporary detention isolation facilities (izoliator vremenogo sodержania or IVS).

1.4.1. Lack of adequate access for independent monitors to IVSs under the Ministry of Internal Affairs

By all accounts transfer of the prison system to the Ministry of Justice was followed by significant improvements in the conditions of detention in post-conviction prisons. Access to SIZOs also improved, especially after the creation of a Central Public Monitoring Commission in 2004 and Regional Public Monitoring Commissions in 2005 which had the right to visit SIZOs. However, according to information received by Amnesty International the conditions of detention in post-conviction prisons have deteriorated again, particularly in the last couple of years. Please see section 4.2 for more details.

⁹ 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.

Amnesty International is also concerned about reports of widespread torture or other ill-treatment in IVSs to which Public Monitoring Commissions do not have automatic or guaranteed access. According to the information received by Amnesty International the Public Monitoring Commissions' access to IVSs was sporadic and 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 to consistently follow up allegations of torture or other ill-treatment by law enforcement officials.

1.4.2. Lack of access for independent monitors to IVS and SIZOs under the National Security Service (NSS)

Amnesty International is very concerned about allegations of routine torture or other ill-treatment in IVSs and SIZOs 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 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.

Amnesty International is concerned that the NSS has used counter-terrorism operations to target vulnerable groups or groups perceived as a threat to national and regional security, such as asylum-seekers from Uzbekistan and China and members or suspected members of banned Islamic groups or Islamist parties such as Hizb-ut-Tahrir¹⁰. In December 2007 a court in Karaganda sentenced 29 men, all alleged members of Hizb-ut-Tahrir, to between five and seven years' imprisonment for membership of a banned organization. Most of the accused had been held in NSS IVS and SIZO facilities with very little access to lawyers, relatives or medical assistance. In February 2008 a court in Shymkent sentenced 14 men to long terms of imprisonment (of up to 19 years) for being members of a terrorist group and planning a terrorist attack on the local NSS department. In both cases relatives complained that the men had been arbitrarily detained, that they had been tortured or otherwise ill-treated in both pre-charge and pre-trial detention in order to confess to crimes they had not committed. The trials were closed to the public allegedly for reasons of national security and independent observers consequently were not able to access the courtroom and monitor the trial. It is believed that in both cases no investigations into the allegations of torture or other ill-treatment by the accused were initiated by the courts and information extracted as a result of "confessions" extracted under torture was admitted as evidence by the trial judges.

A particular worry in criminal cases brought by the NSS against alleged members of banned Islamic group or Islamist parties is the possibility of the accused being sentenced to death in a closed or secret trial, based on self-incriminatory confessions allegedly extracted under torture. Terrorism with loss of life is the only offence in the Criminal Code carrying a possible death sentence. 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 has also received allegations in some high-profile criminal cases linked to the prosecution and conviction *in absentia* of the former son-in-law of President Nazarbaev, Rakhat Aliev, for planning an alleged coup attempt and several other charges, that associates or employees of Rakhat Aliev were arbitrarily detained by NSS officers, held incommunicado in pre-charge and pre-trial detention facilities where they were tortured or otherwise ill-treated with the aim of extracting "confessions" that they had participated in the alleged coup plot. In at least one case, relatives have alleged that the trial was secret and that the accused did not have access to adequate defence.

1.5. Public monitoring

¹⁰ 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 and in Uzbekistan.

As part of legislative and administrative reforms Regional Independent Public Monitoring Commissions with the power to inspect detention facilities were established in 2005. These Public Commissions, made up of members of domestic NGOs and citizens recruited through newspaper advertisements, should have had unimpeded access to all detention facilities. In practice, however, access to IVS facilities has not been granted consistently. The Commissions have also not been granted the right to make unannounced visits to detention facilities, which restricts their ability to successfully investigate allegations of torture or other ill-treatment.

The Commissions are empowered to make recommendations following prison visits; however, by law the prison administration is not obliged to implement these recommendations.

Amnesty International has been told that the Commissions are often not able to recruit enough members to make their prison visits effective. The great distances that members often have to travel to access detention facilities make regular prison visits and effective follow-up difficult. Commission members are also not always given unimpeded and private access to detainees and prisoners. Prisoners have reported that they have been punished by the prison administration for having complained to members of the Commissions of torture or other ill-treatment during visits to post-conviction detention facilities.

1.6. International Obligations

In September 2007 Kazakstan signed the Optional Protocol to the Convention against Torture (OPCAT), allowing unannounced and independent monitoring of all detention facilities. In June 2008, following ratification of OPCAT by both houses of parliament in Kazakstan, President Nursultan Nazarbaev signed the law on ratification of OPCAT. It was due to enter into legal force at the end of July 2008. However, upon ratification Kazakstan made use of its right of postponement under Article 24 of OPCAT and entered a declaration under Part IV of OPCAT to postpone the establishment of a National Preventative Mechanism by three years on grounds that the authorities needed time to implement their obligations under OPCAT.

Amnesty International welcomes Kazakstan's ratification of OPCAT and in particular the fact that parliament did not make a declaration under Part III of OPCAT which allows for unrestricted visits to any places of detention within the country by members of the Subcommittee on Prevention. However, by Kazakstan entering a declaration under Part IV of OPCAT, Amnesty International is concerned that it will be at least another three years before a National Preventative Mechanism will be agreed and established and will be able to undertake unannounced and unrestricted visits to all places of detention. Given the reportedly growing number of complaints of ill-treatment and cruel and inhuman or degrading treatment and deterioration of conditions in post-conviction detention centres over the last couple of years and the lack of capacity and resources of Public Monitoring Commissions, this delay is a worrying development, and puts into question the intention of the authorities to put into practice effective legislative, judicial, administrative or other measures to prevent acts of torture in accordance with their obligations under Article 2 of the Convention.

In September 2007 Kazakstan signed the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), recognizing the competence of the Human Rights Committee to receive and consider individual complaints. In February 2008 Kazakstan made declarations under Articles 21 & 22 of the Convention against Torture allowing for individual complaints to be lodged with the Committee against Torture.

2. Refoulement (Article 3)

2.1. Lack of international protection for asylum-seekers

The authorities' cooperation with Uzbekistan, Russia and China in the name of regional security, including the fight against terrorism, has resulted in violations of Kazakstan's obligations under international human rights and refugee law. Refugees are not effectively protected and continue to be at risk of *refoulement* or abductions. The situation of refugees and asylum-seekers from the Commonwealth of Independent States (CIS) - in particular religious asylum-seekers from Uzbekistan - and that of Uighur asylum-seekers from the Xianjiang Autonomous Republic of China (XUAR) has remained very difficult. There is no national state status determination process in place and no system for giving protection to refugees and asylum-seekers. The government has not acknowledged the right of asylum-seekers from the CIS and XUAR to seek international protection in Kazakstan. The office of the UN High Commissioner for Refugees (UNHCR) in Kazakstan was tasked with assessing this category of asylum-seekers and determining their status. Those afforded UN mandate refugee status were put forward for resettlement to a third country. Those not given mandate refugee status found themselves with no access to protection and at risk of being forcibly returned to Uzbekistan or China, or abducted by members of the Uzbekistani or Chinese security services. Officers of the Uzbekistani and Chinese security services are believed to be operating relatively freely on Kazakstani territory. Even though fewer extraditions have been reported over the last couple of years, asylum-seekers from China and Uzbekistan remain extremely vulnerable to arbitrary detention, threats of forcible return and intimidation.

It is very difficult to know how many asylum-seekers have been secretly forcibly returned to China or Uzbekistan. Amnesty International's research has found that not all those entitled to international protection have registered their asylum claim with the UNHCR, either because they were unaware of their right to do so, or because they feared discovery by the authorities of Kazakstan and their countries of origin once their claim was registered with UNHCR. Many of these asylum-seekers have been charged with or are suspected of anti-state or terrorism offences in their countries of origin. To Amnesty International's knowledge, there are no official statistics about asylum-seekers from the CIS and XUAR in Kazakstan.

There is no procedure in national law to challenge an order of deportation on the grounds of risk of serious human rights violations a person faces upon return. Having now made declarations under Article 22 of the Convention against Torture Amnesty International is hopeful that the authorities in Kazakstan will ensure that people facing an order of deportation are informed of their right to petition CAT. Furthermore in the event they consider that they face a real risk of torture or other ill-treatment if returned Amnesty International is also hopeful that when individuals make such petitions the Kazakstani authorities will ensure that transfer is suspended at least until such time as CAT completes consideration of the case.

2.2. Uzbekistan

Amnesty International is concerned that Kazakstan has forcibly returned asylum-seekers to Uzbekistan in blatant disregard of its obligations under Article 3 of the Convention against Torture. The UN Special Rapporteur on torture stated in his 2003 report on the findings of his fact-finding mission to Uzbekistan in 2002 that torture was systematic and systemic in Uzbekistan¹¹. When reviewing the human rights situation in Uzbekistan the UN Committee against Torture concluded in November 2007 that torture continued to be widespread and systematic¹².

In April 2008, the European Court of Human Rights ruled that the extradition of 12 refugees from Russia to Uzbekistan "would give rise to a violation of Article 3 [prohibition of torture] as they would face a serious risk of being subjected to torture or inhuman or degrading treatment there." The Court also stated that it was "not convinced by the Government's argument that they had an obligation under international law to cooperate in fighting terrorism and had a duty to extradite the applicants who were accused of terrorist activities,

¹¹ Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted in accordance with Commission resolution 2002/38, Addendum, MISSION TO UZBEKISTAN, E/CN.4/2003/68/Add.2, 3 February 2003.

¹² Conclusions and Recommendations by the Committee against Torture, CAT/C/UZB/CO/3, 26 February 2008.

irrespective of a threat of ill-treatment in the receiving country” and reiterated that “even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct.” The Court also was “not persuaded that the assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment” in this case¹³. The 12 Uzbek men had been sought for their alleged participation in the Andizhan events of May 2005 when hundreds of people, including women and children, were killed after Uzbekistani security forces fired on mainly peaceful demonstrators gathered in the centre of Andizhan and as they fled. Amnesty International has documented numerous cases of forced returns by the authorities in Kazakhstan of asylum-seekers or criminal suspects to Uzbekistan over the years. Most of those forcibly returned to Uzbekistan have been held in incommunicado detention, thereby increasing their risk of being tortured or otherwise ill-treated. They have often been sentenced to long prison terms in cruel, inhuman and degrading conditions following an unfair trial with evidence based on confessions extracted under torture.

In November 2005 Kazakhstan forcibly returned nine Uzbekistani men, including four registered asylum-seekers, to Uzbekistan. According to Amnesty International's research they were held incommunicado and only two were initially given access to lawyers upon return to Uzbekistan. They were sentenced to long prison terms following closed trials. They all claimed to have been tortured while in pre-trial detention. Imam Rukhiddin Farkhuddinov, for example, was sentenced to 17 years in a strict regime prison camp on anti-state charges, including terrorism, after a closed trial. The judge reportedly ignored his complaint that his confession was extracted as a result of torture and accepted the alleged “tainted” confession as evidence against the accused in the trial. Rukhiddin Farkhuddinov had been held incommunicado for four months following his return to Uzbekistan.

In August 2007 the National Security Service of Kazakhstan confirmed that they had detained more than 50 members of banned Islamist parties or Islamic groups and returned them to Uzbekistan. They were not given the opportunity to challenge the decision to forcibly return them to Uzbekistan, including on the basis of risk.

Despite the fact that asylum-seekers are at great risk of torture if returned to Uzbekistan, Kazakstani migration police have continued to cooperate with their Uzbekistani counterparts and transmitted information on asylum-seekers and refugees to them, including addresses and contact numbers, fingerprints, and photographs. Amnesty International has also received information that Uzbekistani authorities have exerted pressure on relatives in Uzbekistan to get those seeking protection to return voluntarily, in some cases even paying for relatives to travel to Kazakhstan to trace the refugees and convince them to return.

In May 2008 three Uzbekistani asylum-seekers were detained by Kazakstani police officers after they left the UNHCR office in the centre of Almaty. According to the men, they were interrogated by Kazakstani and Uzbekistani officers and threatened with forcible return to Uzbekistan. They were only released after the joint intervention of representatives of the office of the UNHCR and, the Kazakhstan International Bureau of Human Rights. Earlier in May 2008 a refugee was detained by armed masked security officers as he left his apartment in Almaty to attend English language lessons. The officers reportedly hit him in the back with automatic rifle butts, handcuffed him and kept him incommunicado for several hours in a police cell, all the while threatening him with deportation to Uzbekistan. ■

2.3. China

Over recent years, Amnesty International has monitored growing numbers of forcible returns of Uighur asylum-seekers and refugees to China from several neighbouring countries, including Kazakhstan. Such cases appear to have increased with the intensification of China's crackdown in XUAR following the attacks in the USA of

¹³ *Ismoilov and Others VS Russia* (Application no. 2947/06), European Court of Human Rights Judgment, Strasbourg, 24 April 2008.

11 September 2001, and in some cases there was evidence that the Chinese authorities had instigated or taken part in such forcible returns.

The fate of Uighurs returned to China from Kazakstan and other countries has often been difficult to establish due to tight restrictions on information, including the threat of reprisals against family members who pass such information abroad. However, in some cases, returnees were reported to have been subjected to serious human rights violations, including torture, unfair trial and even execution. Its shared border with China and its large native Uighur population makes Kazakstan the most common first country of 'refuge' for Uighurs fleeing the XUAR. Yet Kazakstan is possibly one of the most unsafe countries of asylum for Uighurs.

In the context of its policies in the XUAR, China has made great efforts to ensure that its Central Asian neighbours cooperate in returning Uighurs who are suspected of being "separatists, terrorists or religious extremists". This relationship has been strengthened in recent years under the auspices of the Shanghai Cooperation Organization (SCO) which groups China, Russia, Kazakstan, Kyrgyzstan, Uzbekistan and Tajikistan. The Secretariat of the SCO was formally established in Beijing in January 2004 and a regional "anti-terror" centre was officially opened in Tashkent, Uzbekistan, in June 2004. Largely spearheaded by China, the organization has been described as a "major force" in combating "terrorism" by Chinese officials and one of its key aims appears to be to quell the activities of Uighur nationalists in both the XUAR and Central Asia. China also has an extradition agreement with Kazakstan.

According to the official Chinese media, during a visit to the XUAR in May 2004, President Nazarbaev of Kazakstan said that: "Kazakstan will always adhere to the one-China policy and is willing to strengthen cooperation with China in the fight against terrorism, separatism and extremism for regional peace and stability". This, and other statements made by SCO members, suggested that China's neighbours appeared to have adopted China's concept of "separatism", which encompasses peaceful opposition activities, and were ready to cooperate with China to crack down on such activities.

Amnesty International was concerned that such cooperation appeared to be aimed at ensuring the forcible return of Uighurs to China, notwithstanding the high risks they face of serious human rights violations, including torture, arbitrary detention and even execution, and in violation of Kazakstan's obligations under international law.

Uighur asylum-seekers in Kazakstan face an ever-present risk of being detained by the police as "illegal immigrants", which puts them in greater danger of being forcibly returned to China. Local NGOs working with Uighur asylum-seekers in Kazakstan have also reported cases where Uighurs have "disappeared" and were presumed to have been forcibly returned to China.

In November 2004 the NSS announced that Kazakstan had extradited 14 Uighurs to China and Kyrgyzstan in the past six years. They were all reportedly members of the East Turkestan Liberation Party and had been accused of "extremist" activities. They had not been given the opportunity to challenge their orders of deportation, including on the basis of risk of serious human rights violations in XUAR.

Two Uighur men originally from XUAR were held in incommunicado detention in China after having been forcibly returned from Kazakstan in May 2006. They were at risk of serious human rights violations, including torture or other ill-treatment, and possibly the death penalty, should their "crimes" be deemed to be "serious". The Kazakstani authorities deported the two men for violations of their rules of stay in Kazakstan. One of the men, Abdukadir Sidik, reportedly fearing for his safety, had fled China in 2004 and been detained by Kazakstani border officials when he crossed the border. He had been subsequently charged by the Kazakstani authorities with illegally crossing the border and sentenced to six months' imprisonment. However, according to Abdukadir Sidik he actually spent 18 months in detention, and in a letter written from prison in 2006 before he was forcibly returned, Abdukadir Sidik reported that he had been interrogated and threatened by Chinese police officers while in detention in Kazakstan.

3. Impunity (Articles 12 and 13)

3.1. Corruption

Amnesty International has been told that often detaining law enforcement officials offer detainees the possibility of not being brought into and registered at the police station in exchange for a bribe; such bribes are reportedly important sources of income for more junior police officers, who are frequently tasked with carrying out detentions. Many detainees or their relatives will readily agree to pay a bribe in order to avoid being formally detained, especially if they have been beaten or otherwise ill-treated during their detention. Amnesty International has been told 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. This has also been given as the reason why many people will not lodge a complaint about the treatment they have suffered out of fear of reprisals against themselves or their relatives. Many will not have been told that they have the right to lodge a complaint about any torture or ill-treatment by law enforcement officials they have been subjected to, as they will not have been registered as formally detained.

3.2 Lack of effective and independent investigations

In September 2008 the international NGO, Justice Initiative, sent a complaint to the UN Special Rapporteur on torture on behalf of Denis Polienko, who claimed to have been tortured by police officers while in detention at a police station in the Akmola region of Kazakhstan in November 2006. According to Denis Polienko, during the 48 hours he spent in custody police officers beat him so severely that they broke his ribs and facial bones; 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 torture he "admitted" to a crime he did not commit and signed a "confession". The police officers then reportedly brought criminal charges against him on the basis of this confession. 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 adequate; he was not questioned about the allegations of torture he had made, nor was he called to identify the place where the alleged torture happened. A forensic medical examination of Denis Polienko was reportedly 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, has 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 typical of many similar cases which have come to the attention of Amnesty International. It highlights the inadequacies of investigations into reports of torture or other ill-treatment. Articles 12 and 13 of the Convention against Torture call for a prompt and impartial investigation into allegations of torture by competent authorities; however, national legislation in Kazakhstan does not specifically call for a prompt and impartial investigation. The Kazakhstan Criminal Procedural Code obliges the competent authorities, including the prosecutor or the investigator-in-charge among others, to register a complaint and 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 decision¹⁴. However it gives the competent authorities from 72 hours to up to

¹⁴ Articles 186 & 177 of the Criminal Procedural Code: **Article 177. Reasons and Grounds for the Institution of a Criminal Case** 1. The following shall be recognised as reasons for institution of a criminal case: 1) applications of citizens; 2) confession; 3) report of an official person of a state body or person who performs managerial functions at a organisation; 4) communication in mass media; 5) direct discovery of evidence of crime by official persons and bodies authorised to institute criminal cases. 2. The availability of sufficient evidence indicating the symptoms of a crime when there are no circumstances, which exclude proceedings on a given criminal case, shall be the basis for the institution of a criminal case.

two months' time to decide whether or not to open a criminal case into the allegations of torture or ill-treatment.

Nor is there an independent mechanism or structure which can investigate complaints of torture promptly, thoroughly and impartially. 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. As in the example cited above, the investigation is in the majority of cases not impartial nor thorough with the complainants often not interviewed in person. 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, and in many cases no criminal case is opened or the case is closed for lack of sufficient corroborating evidence.

As the case example above illustrates, in order to determine whether injuries have been sustained before, during or after detention and whether they resulted from abuse by law enforcement officials, investigations need to be launched promptly in all cases where detainees have visible bodily injuries or where they allege that they have been tortured or otherwise ill-treated. 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. However, medical personnel working within the penitentiary system are not independent and, according to NGOs and other sources, often do not register signs of torture. Furthermore, prompt access to a competent and independent medical examination is problematic because a defence lawyer, for example, does not have the right to order an official forensic medical examination of his or her client, but only to provide the court with independently-obtained medical certificates. Given that it can take up to two months for a decision to be reached on whether to open a criminal case into an allegation of torture or other ill-treatment, physical signs of torture may no longer be present at the time of the official forensic medical examination.

Another example of the difficulty of a victim of torture or other ill-treatment receiving prompt effective independent and necessary medical care is the case of the independent philosopher Nurlan Alimbekov. Nurlan Alimbekov was detained by officers of the NSS in August 2007 on suspicion on having incited national, racial or religious hatred and discord through the mass media in relation to private emails which he sent to contacts.. At the time of his detention at his parents' home and during transfer to local NSS office he was not told why he was being detained. Nurlan Alimbekov alleges that that no warrant for his arrest was provided and that he was beaten by the three NSS officers who came to detain him. He was also reportedly beaten during his transfer by car to the NSS local office by two officers. At the local NSS office he was handcuffed and allegedly beaten by three officers who wanted him to confess to inciting national and religious hatred. He was transferred to the regional NSS pre-trial detention centre and his lawyer was able to visit him the following day. At the request of his lawyer the investigator in charge ordered a forensic medical examination of Nurlan Alimbekov. The examination only took place 10 days after the beatings took place. No x-rays were taken of Nurlan Alimbekov's chest despite complaints about pain in his ribcage and difficulties breathing. The forensic examination concluded that he had only superficial bodily injuries, consistent with someone resisting arrest. At the beginning of September at the insistence of Nurlan Alimbekov an x-ray was ordered at the local tuberculosis clinic. The examination found that he had a deformation of one his ribs, however he was not given a copy of the medical certificate. Ten days later a medical doctor at the pre-trial detention centre examined Nurlan Alimbekov and concluded that he was in good health. He was then

Article 186. The Procedure for the Institution of a Criminal Case 1. When there are reasons and grounds, as indicated in Article 177 of this Code the inquest officer, the body of interrogation, the head of the investigation department, the investigator or the procurator shall pass a resolution on the institution of a criminal case.

transferred to a pre-trial detention centre in the city of Almaty where he was examined by prison medical personnel as required by law. The report of this medical examination reportedly was not added to Nurlan Alimbekov's case file. At the end of November, nearly three months after his initial detention, Nurlan Alimbekov was x-rayed and examined at a hospital in the city of Shimkent, where doctors diagnosed a fracture of the seventh left rib. Nurlan Alimbekov complained that he had not received any appropriate medical treatment or care. The first complaint lodged by his lawyer against the ill-treatment reportedly went unanswered. A second complaint to the regional prosecutor's office with the lawyer's request for a criminal case to be opened against the officers accused of the ill-treatment was denied on the grounds that the injuries documented by the first forensic medical examination were consistent with those of someone resisting arrest.

Because complaints of torture or other ill-treatment are investigated by either the prosecutor's office or the department of internal affairs, those bodies who have respectively sanctioned the detention of the complainant, brought criminal charges against him or her, and conducted the investigation into these charges, often with the use of illegal methods such as torture or other ill-treatment, many victims of torture are reluctant to exercise their right to lodge a complaint out of fear of reprisals against themselves or their families and associates. Additionally, as the monitoring by several NGOs has shown, many victims of torture or other ill-treatment do not realize that torture is a criminal offence in Kazakhstan and that consequently they have the right to lodge a complaint and bring a criminal case against the perpetrators of the ill-treatment. Many do not realize that they have the constitutional right to complain about torture or other ill-treatment.

3.3. Prosecutions

Given the number of complaints about torture or other ill-treatment received by NGOs alone – such as the Kazakhstan International Bureau for Human Rights, for example, which published information on more than 50 cases in their monthly bulletins for the first nine months of 2008 – 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 officer¹⁵. 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 347-1¹⁶.

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. As in other former Soviet republics the prosecutor's office, as well as being responsible for the investigation and 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 will be carried out by the Directorate for Internal Security of the relevant Department of Internal Affairs. In 2001, in his general report to the UN Commission on Human Rights, the UN Special Rapporteur on torture drew attention to "the conflict of interest inherent in having the same institutions responsible for the investigation and prosecution of ordinary law-breaking being also responsible for the same functions in respect of law-breaking by members of those very institutions". The Rapporteur went on to say that: "Independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement"¹⁷.

¹⁵ Official statistics from the General Prosecutor's Office quoted in the Baseline Report on Human Rights in Kazakhstan

¹⁶ Letter from the General Prosecutor's Office of the Republic of Kazakhstan to the Kazakhstan International Bureau on Human Rights, ref. 20-25067-07, dated 27 November 2007

4. Failure to exclude evidence elicited as a result of torture or ill-treatment (Article 15)

Article 116 of the Code of Criminal Procedure states that evidence based on confessions extracted under torture is not admissible in court¹⁸. 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 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. While in the other trials the OSCE 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 trial¹⁹.

Amnesty International has been very concerned about the failure to exclude evidence elicited as a result of torture over a number of years, especially in criminal cases which carry a possible death sentence. For example, in August 2006 Rustam Ibrahimov, a former member of an elite special unit of the security services and a defendant in the trial for the murder of opposition politician Altinbek Sarsenbaev, was sentenced to death. He was convicted of having carried out the murder. Because of a moratorium on executions his death sentence was later commuted to life imprisonment. Yerzhan Utembaev, the former head of the Senate's secretariat and the main defendant in the trial, was sentenced to 20 years in prison. He had been accused of having ordered the murder of Altinbek Sarsenbaev. In December 2006 the Criminal Chamber of the Supreme Court began a review of the verdicts of these two men and eight other defendants also sentenced to prison terms in August. It upheld the verdicts of the court of first instance. Yerzhan Utembaev, the main defendant on trial for the murder of Altinbek Sarsenbaev, had retracted his confession in court in June 2006. He claimed that he had been put under severe psychological pressure in pre-trial detention to admit to having ordered and organized the murder of the former government minister and opposition politician. Rustam Ibrahimov stated in court that the charges against him had been fabricated and that he had been coerced into signing a confession.

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.

5. Cruel, inhuman or degrading treatment or punishment (Article 16)

5.1. The death penalty

¹⁷ Report to 2001 session of the UN Commission on Human Rights E/CN.4/2001/66, para 1310 (<http://daccessdds.un.org/doc/UNDOC/GEN/G01/106/82/PDF/G0110682.pdf?OpenElement>).

¹⁸ 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.

¹⁹ Results of Trial Monitoring in Kazakhstan 2005-2006, http://www.osce.org/documents/cia/2007/02/23411_en.pdf, pp. 9 and 81-86]

Amnesty International regards the death penalty as the ultimate cruel, inhuman and degrading punishment. In May 2007 the scope of the application of the death penalty permitted by the constitution was reduced from 10 "exceptionally grave" crimes to one – that of terrorism leading to loss of life. The death penalty also remains a possible punishment for "exceptionally grave" crimes committed during times of war. A person sentenced to death in Kazakhstan retains the right to petition for clemency²⁰. A moratorium on executions, which had been imposed in 2003, remained in force and no death sentences were passed during 2007 and the first 10 months of 2008. All 31 prisoners on death row had their sentences commuted to life imprisonment.

Amnesty International is concerned that the death penalty could be applied to acts committed outside Kazakhstan and that members of vulnerable groups, both Kazakhstani nationals and foreigners, could be sentenced to death for their alleged participation in terrorist acts entailing loss of life committed, for example in Uzbekistan or China, under regional anti-terrorism agreements. The concern is heightened in view of the documented failure of judges to exclude evidence extracted under torture and the numerous reports of the authorities using national and regional security and the fight against terrorism to target vulnerable groups such as asylum-seekers and groups perceived to be a threat to national and regional stability. For example in November 2004 the NSS announced that it had arrested nine Kazakhstani and four Uzbekistani nationals in connection with a series of explosions and attacks on police checkpoints in March and April 2004 and three suicide bombings in July 2004 in neighbouring Uzbekistan. Four Kazakhstani women who reportedly had trained as suicide bombers were also detained. All detainees were described as members of a previously unknown organization, the Mujahedin of Central Asia, an armed group reportedly with links to the IMU and Al-Qa'ida. While it was not clear that the death penalty had been considered during the trial – as the trial proceedings were closed to the public on national security grounds – to the best of Amnesty International's knowledge none of the accused were sentenced to death.

5.2. Prison conditions

Whereas by all accounts Kazakhstan had implemented a successful reform of its penitentiary system - starting with the transfer of the prison system to the Ministry of Justice in late 2001 - with significant improvements in the conditions of detention in post-conviction detention facilities praised by international and local NGOs, IGOs and diplomats who had either been involved in reform programmes or had monitored progress of the implementation of the latter, the last two years have reportedly seen a decline in prison conditions, with many of the abusive practices reoccurring more and more often.

2007 saw a number of disturbances in prisons camps throughout the country with large groups of prisoners committing acts of self-mutilation, such as slicing their abdomens, hands and necks, reportedly in protest at deteriorating conditions of detention. The South Kazakhstan Regional office of the prosecutor opened a criminal case into the abuse of office, and the unlawful use of police equipment, by prison officials in relation to 77 prisoners committing acts of self-mutilation. The prosecutor's office was quoted by the press as admitting that prison officers had beaten and otherwise ill-treated prisoners. Nevertheless the prison officials were not charged under Article 347-1 (Torture). The prisoners themselves were charged with organizing disturbances in order to disrupt the functioning of the prison, a criminal offence under Article 361 of the Criminal Code punishable from one to up to 10 years' imprisonment.

NGOs told Amnesty International that the conditions of detention in prisons had severely deteriorated since 2006 and that they were receiving increasing numbers of complaints of torture or ill-treatment from prisoners

²⁰ Article 15 of the Constitution of the Republic of Kazakhstan as amended on 21 May 2007 reads as follows: 1. Everyone shall have the right to life. 2. No one shall have the right to arbitrarily deprive a person of life. The law shall establish the death penalty as an extraordinary measure of punishment for especially grave crimes and grant the sentenced person the right to appeal for pardon ".

or from relatives. It was becoming increasingly difficult for prisoners to lodge complaints about torture or other ill-treatment by prison officers, according to these reports, because all correspondence was vetted by the prison administration and complaints could only be forwarded to the local prosecutor's office with the permission of the prison administrator, in contravention of the rights of prisoners and detainees. NGOs were told that prisoners had to pay the prison administration to see a medical doctor or to get medical treatment, or to send letters or make phone calls to their families, that they were often locked up in punishment cells for extended periods of time for either complaining about cruel, inhuman or degrading treatment or punishment or for disobeying orders by prison officers. Some methods of punishment meted out to prisoners reportedly included being forced to clean toilets with their bare hands and wash the floor naked.