



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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1 August 2018

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 18, 24 and 54 of the concluding observations on the report submitted by Kazakhstan ([CCPR/C/KAZ/CO/2](#)), adopted at the 117th session in July 2016.

On 18 April 2017, the Committee received the reply of the State party. At its 123rd session, held in July 2018, the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Report on follow-up to concluding observations (see CCPR/C/123/2). I hereby attach, for ease of reference, a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Taking into account that the next periodic report of the State party is due by 15 July 2020, the Committee requests the State party to provide this information in the context of its next periodic report.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

H.E. Mr. Zhanar Aitzhanova
Ambassador Extraordinary and Plenipotentiary
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Report on follow-up to concluding observations of the Human Rights Committee, CCPR/C/123/2:

New assessment of replies¹

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- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
 - B Reply/action partially satisfactory:** The State party took steps towards the implementation of the recommendation but additional information or action remains necessary.
 - C Reply/action not satisfactory:** Response received but actions or information not relevant or do not implement the recommendation. The action taken or information provided by the State party does not address the situation under consideration.
 - D No cooperation with the Committee:** No follow-up report received after reminder(s).
 - E Information or measures taken are contrary to or reflect rejection of the recommendation**
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Kazakhstan

Concluding observations:	CCPR/C/KAZ/CO/2, 11 July 2016
Follow-up paragraphs:	18, 24 and 54
Follow-up reply:	CCPR/C/KAZ/CO/2/Add.1, 7 December 2016 CCPR/C/KAZ/CO/2/Add.2, 18 April 2017
Committee's evaluation:	Additional information required for paragraphs 18[C], 24[B][C] and 54[C][C][B]
Non-governmental organizations:	Confederation of Independent Trade Unions of Kazakhstan, 7 June 2017; NGO Coalition of Kazakhstan against Torture, 6 June 2017; Amnesty International, 13 June 2017

Paragraph 18: Accountability for human rights violations in connection with the Zhanaozen events

The State party should carry out an independent, impartial and effective investigation into the individual deaths and injuries in connection with the events in Zhanaozen, as well as into all allegations of torture and ill-treatment, with a view to ensuring proper accountability for perpetrators, restoration of the rights of convicted persons to a fair trial, and effective remedies, including adequate compensation, for all victims of human rights violations or their families.

Summary of State party's reply

The criminal investigations into the events in Zhanaozen were open and transparent and a public commission was involved. In December 2011, the Procurator General of Kazakhstan proposed that United Nations experts take part in the

¹ Adopted by the Committee at its 118th session (17 October – 4 November 2016). The full assessment is contained in CCPR/C/119/3.



investigation, and members of Penal Reform International went to Mangistau to talk with locals and visit detention centres.

The judicial proceedings were conducted in the most open manner possible. The Internal Affairs Department of Mangistau province looked into the allegations of torture brought by defendants and did not institute criminal proceedings; that decision was upheld by the court.

The court found 34 persons guilty of organizing and participating in riots. In May 2012, the court found five police officers guilty of improper exercise of authority, and imposed a punishment of five to seven years on them. In March 2012, all victims and members of their families received 79.4 million tenge.

Information from non-governmental organizations

NGO Coalition of Kazakhstan against Torture

No independent, impartial and effective investigation has been conducted into the deaths and injuries in Zhanaozen. The investigation referred to by the State party was incomplete and involved torture, threats and intimidation.

The number of people killed in December 2011 has not been established. Witness allegations of the mass use of torture and detainment have not been investigated.

Amnesty International

The investigation carried out by the State party was not complete or adequate. Most of the defendants alleged that they had been tortured or ill-treated in detention in order to extract confessions, but no investigation was carried out. Instead, the allegations were passed to the Ministry of Internal Affairs, which had officers involved in the torture accusations, and the Ministry dismissed all the allegations as unfounded. At trial, the judge dismissed the complaints.

Committee's evaluation

[C]: The Committee notes the information provided by the State party but regrets the lack of concrete information on measures taken after the adoption of the Committee's concluding observations. The Committee requests that the State party respond to the allegations that the investigation involved torture, threats and intimidation, and that it provide information on the action taken to follow up on those allegations in the Zhanaozen trial. The Committee reiterates its recommendations.

Paragraph 24: Torture and ill-treatment

The State party should take robust measures to eradicate torture and ill-treatment and to effectively investigate, prosecute and punish such acts, inter alia, by:

(a) **Ensuring that standards of proof and credibility for evidence applied when determining whether a criminal investigation into an alleged act of torture or ill-treatment should be pursued are appropriate and reasonable;**

(b) **Ensuring that investigations into allegations of torture and other ill-treatment are carried out by an independent body and are not unduly delayed, and that "special prosecutor units" are themselves responsible for conducting all investigations into torture and ill-treatment and do not delegate investigative work to law enforcement agencies acting under their supervision;**

(c) **Ensuring that sanctions for the crime of torture are commensurate with the nature and gravity of the crime, both in law and practice;**

(d) **Refraining from using the charge of “false reporting of a crime” against alleged victims of torture or ill-treatment;**

(e) **Ensuring that victims of torture and ill-treatment have, both in law and practice, access to full reparation, including rehabilitation, adequate compensation and the possibility of seeking civil remedies independent of criminal proceedings;**

(f) **Ensuring that oversight of the penitentiary system is exercised by an agency independent of the police and internal security forces.**

Summary of State party’s reply

(a) Major reforms of criminal law and criminal procedure law have been implemented, based on a principle of zero tolerance for torture. Torture, violence, threats and other unlawful measures and cruel treatment are prohibited during investigations;

(b) Complaints of torture submitted during an investigation are considered within three days, under the new criminal procedure law;

(c) Torture is a serious offence, with a maximum penalty of up to 12 years’ deprivation of liberty and the confiscation of property. Those convicted of torture are not exempt from liability after the expiration of the statute of limitations, and amnesties are not permitted;

(e) A project called “A society without torture” has been launched to bring laws and practices regarding torture into line with the State party’s international obligations. The project is under discussion, with the planned measures presented at the fourth Prison Forum, held in January 2017. There is a two-year implementation period.

The Government has taken measures to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol in domestic law, such as defining torture as a crime, improving mechanisms for the arrest and transfer of suspects, and introducing simplified pretrial proceedings and plea bargains;

(f) The national preventive mechanism has been established, with unimpeded access to inspect any closed criminal corrections facility. Detention conditions at these facilities have improved, with a steady decrease in the prison population, but each year approximately 700 allegations of unlawful methods of inquiry and violence at correctional facilities are registered in Kazakhstan. Over the past five years, 158 officials have been convicted of torture, and since 2008 the United Nations has found that Kazakhstan has violated the provisions of the Convention against Torture in 10 cases.

Information from non-governmental organizations

NGO Coalition of Kazakhstan against Torture

(a) The zero-tolerance policy to torture is the basis for the implementation of institutional reforms. However, the plan is designed to be implemented within two years, while immediate measures should be taken;

(b) According to the “A society without torture” project, investigations into torture should be conducted by an independent body, but this has not yet been implemented;

(c) The definition of torture has not been brought into line with article 1 of the Convention against Torture. The sanctions for torture have not been increased and there is still a possibility for amicable agreement or conditional conviction of the perpetrators;

(d) Those who report crimes continue to be warned about criminal liability for false reporting;

(e) Victims of torture are unable to receive compensation from the State budget, because they can only be compensated by those identified as guilty of torture or their employer;

(f) The criminal executive system continues to be under the jurisdiction of the Ministry of Internal Affairs (the police), instead of a civil agency.

Amnesty International

(b) There is no fully independent body to investigate torture in Kazakhstan. The Prosecutor General has established special prosecutor units that can investigate cases of torture, but they do so at the instruction of the Prosecutor General; they are not directed to do so under the Criminal Procedure Code. Clarification of the mandate of the Units is needed to specify that they should investigate ex officio all cases involving torture and ill-treatment allegations;

(d) Complainants are warned of criminal liability for false reporting;

(f) The national preventive mechanism does not monitor all places of detention; it remains under the supervision of the Ombudsman's Office, which compromises its independence; and it must receive written permission from the Ombudsman before a visit, restricting its ability to respond quickly to reports of torture or ill-treatment.

Committee's evaluation

[B] (a) and (b): The Committee welcomes the State party's reply, but requests further information on measures taken after the adoption of the Committee's concluding observations to ensure that standards of proof and credibility for evidence applied are appropriate and reasonable for determining whether acts amount to torture or ill-treatment. In particular, the Committee requests information on the dates and content of the reforms of criminal law and criminal procedure referred by the State party.

On the investigations carried out by the State party, the Committee notes the information provided but regrets that the State party has failed to address whether investigations are carried out by an independent body. The Committee requires that the State party clarify the entity responsible for investigating allegations of torture and ill-treatment, and whether or not the investigating entity is fully independent. The Committee also requires further information regarding the special prosecutor units, specifically: (a) clarification of the mandate of the units, including regarding their ability to investigate ex officio all cases involving torture and ill-treatment allegations; and (b) comments on information received that the units delegate investigative work to law enforcement agencies.

[C] (c) to (f):

Regarding the sanctions for the crime of torture, the Committee welcomes the information provided, but notes the lack of information on measures taken after the adoption of the Committee's concluding observations. The Committee requests that information as well as information on: (a) the distinction between torture and other cruel, inhuman and degrading treatment or punishment in the Criminal Code, and if such a distinction exists, an indication of whether there is a difference in penalty; (b) the possibility for amicable agreement or conditional conviction of the perpetrators; and (c) the impact the "A society without torture" project has had on the imposition of sanctions for the crime of torture that are commensurate with the nature and gravity of the crime.

The Committee notes that the State party has not provided information regarding the use of "false reporting of a crime" and reiterates its recommendation.



In relation to reparation for victims, the Committee welcomes the information on the “A society without torture” project, which focus on the rehabilitation of victims, among other issues. However, the Committee regrets the insufficient information provided about this plan and how the State party ensures that victims of torture and ill-treatment have access to full reparation, adequate compensation and the possibility of seeking civil remedies. The Committee requires that the State party address these points and further elaborate on what that project entails, when it will be launched and how it will assist in providing rehabilitation to victims.

Concerning an oversight system, the Committee notes the information provided, but requires further information on the national preventive mechanism and its independence to carry out its functions. In particular, the Committee requests information on: (a) whether the national preventive mechanism covers all places of detention, without restriction, in the State party; and (b) if the national preventive mechanism requires any prior authorization before conducting a visit to a detention facility.

Paragraph 54: Freedom of association and participation in public life

The State party should bring its regulations and practice governing the registration and functioning of political parties and non-governmental organizations, as well as the legal frameworks regulating strikes and trade unions, into full compliance with the provisions of articles 19, 22 and 25 of the Covenant. It should, inter alia:

- (a) Refrain from criminalizing public associations, including political parties, for their legitimate activities under criminal law provisions that are broadly defined and not compliant with the principle of legal certainty;**
- (b) Clarify the broad grounds for the suspension or dissolution of political parties;**
- (c) Ensure that the new legislation on the allocation of funds to public associations will not be used as a means of undue control and interference in the activities of such associations nor for restricting their fundraising options.**

Summary of State party’s reply

(a) The right to freedom of association is a constitutional right. The Political Parties Act (amended in 2009), which regulates State registration of political parties, complies with international standards.

The Constitution prohibits the direct funding of trade unions, but trade unions may still hold jointly-funded events with international bodies. Kazakhstan law does not prohibit cooperation between national and foreign trade unions or with international federations;

(c) Legislation adopted in 2015 pertaining to the activity of NGOs introduced new forms of State assistance to NGOs through grants and awards. The grants are issued and monitored by a specialized operating body, separate from the entities that allocate regular funds, and NGO applications are considered by an independent expert commission.

The operating body includes a board of directors composed of civil society representatives, an executive board, and an internal audit service. NGO awards are issued to organizations based on a public proposal and assessment of their activities. The allocation of funds is not used as a means of control over or undue interference in the activity of these associations.

Information from non-governmental organizations

Confederation of Independent Trade Unions of Kazakhstan

(a) The State party has deliberately prevented the registration of trade unions so that they are unable to meet the legal requirements and are thus forced to cease activity. Owing to the forced closure of the Confederation of Independent Trade Unions of Kazakhstan, a hunger strike was held, which the State party deemed illegal. Some 63 protestors had to pay fines, and the chairman of the trade union, Amin Yeleusinov, and the labour inspector, Nurbek Kushakbayev, were detained and arrested on criminal charges. According to Mr. Kushakbayev's lawyers, the prosecutor did not prove Mr. Kushakbayev's guilt, the investigations were biased, and the lawyers did not have an opportunity to fully prepare. Mr. Kushakbayev and Mr. Yeleusinov were sentenced to 2 and a half years and 2 years in prison, respectively. The criminal prosecution relating to the Confederation chairman, Larisa Kharkova, was ongoing as at January 2017.

NGO Coalition of Kazakhstan against Torture

(a) A new law, adopted in 2016, requires commercial entities, non-profit organizations and individuals to report on all foreign income received. Since the adoption of that law, three NGOs have faced sanctions. Members of one of them, the International Legal Initiative, believe that it was sanctioned in order to intimidate and harass its members.

Some activists involved in public associations, such as the trade unionist Nurbek Kushakbayev, have been sentenced under article 174 of the Criminal Code, which criminalizes incitement of "social, national, generic, racial, class or religious hatred" or insulting "national honour and dignity of religious feelings of citizens". Mr. Kushakbayev was sentenced because he called for continued participation in a strike deemed illegal by the court. Olesya Khalabuzar, a civic activist, is also facing charges under article 174 because of her participation in a public association.

Amnesty International

(a) The International Legal Initiative and the Liberty Foundation, which were accused of being linked to public protests and influencing political processes, were ordered to pay large fines for allegedly failing to pay taxes. Members of the International Legal Initiative believe that the fines and ensuing legal case was designed to intimidate and harass them. Leading or participating in an unregistered organization remains a criminal and administrative offence, with leaders receiving harsher penalties.

The authorities in Kazakhstan have acted to suppress the independent trade union movement by bringing far-reaching charges of inciting illegal strikes. Nurbek Kushakbaev and Amin Yeleusinov were accused of inciting an illegal strike after they were involved in the oil workers' hunger strike, protesting against the closure of the Confederation of Independent Trade Unions of Kazakhstan.

Committee's evaluation

[C] (a): The Committee acknowledges the information provided by the State party, but regrets that it has not provided information on measures taken after the adoption of the Committee's concluding observations. The Committee reiterates its recommendation and requests that the State party comment on information received that the new trade union laws regarding registration have been used to deliberately prevent trade unions from being able to function. The Committee would appreciate information regarding why and under what process the Confederation was closed down, and asks for the State party's comments on the detention and arrest of Amin Yeleusinov and Nurbek Kushakbayev.



[C] (b): The Committee regrets that the State party has provided no information regarding the grounds for the suspension or dissolution of political parties. The Committee reiterates its recommendation and requests information in this regard.

[B] (c): The Committee notes the information provided by the State party, but requests more information about the efforts made to alleviate undue control and interference in the activities of public associations, specifically regarding: (a) the regulations under which grants are awarded by the State party; (b) how members of the specialized operating body are appointed; (c) how members of the independent expert commission considering applications are appointed and who the commission consists of; and (d) if any other mechanisms are in place to ensure that control over or undue interference in funding is not taking place.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report: 15 July 2020.