

KAZAKHSTANI HR NGOs COMMENTS
to the Information provided by the Republic of Kazakhstan on Follow-up to the
Concluding Observations on the Second Periodic Report of Kazakhstan

June 6, 2017

1. Pursuant to para. 56 of the Concluding Observations on the Second Periodic Report of Kazakhstan¹ “*in accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 18 (accountability for human rights violations in connection with the Zhanaozen events), 24 (torture and ill-treatment) and 54 (freedom of association and participation in public life)*”.

2. The Republic of Kazakhstan presented its reports on the implementation of these recommendations ahead of schedule in December 2016 (with respect to the recommendation 18)² and April 2017 (with respect to the recommendations 24 and 54)³.

3. Before submission of comments and additional information on the implementation of recommendations 18, 24 and 54, we consider it necessary to bring to the attention of the Committee the amendments made to paragraph 3 of article 4 of the Constitution of the Republic of Kazakhstan, adopted by the Parliament of the Republic of Kazakhstan on 10 March 2017.

4. Prior to the introduction of such amendments, paragraph 3 of article 4 of the Constitution of the Republic of Kazakhstan stated that, “*international treaties ratified by the Republic shall have priority over its laws and shall be applied directly, except where an international treaty implies that a law is required to be adopted for its implementation.*” After the Constitution of the Republic of Kazakhstan has been amended, paragraph 3 of article 4 holds: “*International treaties ratified by the Republic shall have priority over its laws. **The procedure and conditions for the execution of international treaties, to which Kazakhstan is a party, in the territory of the Republic of Kazakhstan shall be defined by the legislation of the Republic.***” Accordingly, by operation of such amendments, international treaties, including human rights treaties ratified by the Republic of Kazakhstan, do not now apply directly, but are regulated by the legislation of the next level, which defines the terms and conditions and procedure for their application.

5. Below follow some comments and information on recommendations 18, 24 and 54.

¹ See the UN Doc. CCPR/C/KAZ/CO/2

² See the UN Doc. CCPR/C/KAZ/CO/2/Add.1

³ See the UN Doc. CCPR/C/KAZ/CO/2/Add.2

A. Recommendation 18: Accountability for human rights violations in connection with the Zhanaozen events

6. The recommendation 17/18 is related to the Zhanaozen incidents and the investigations of the human rights violations. The Committee recommended that *“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, to all victims of human rights violations or their families”*.

7. Over the period from June 2016 to the present, Kazakhstan has not complied altogether with the recommendation of the UN High Commissioner on Human Rights to conduct an independent, impartial and effective investigation into the deaths and injuries of citizens during the events in Zhanaozen in December 2011. It was never conducted, neither in the roots of the strike nor the reasons for the shooting of Zhanaozen residents during 16-18 December 2011.

8. The previous investigation, to which Kazakhstan refers in its report on the implementation of the recommendations (para. 18 of the Concluding Observations of the HR Committee), was incomplete and was attended by torture, threats and intimidation of local residents.

9. The exact number of people killed on 16-18 December 2011 has not been established yet. A number of eyewitnesses, including Elena Kostyuchenko, journalist of *Novaya Gazeta*, Russia, saw on 16 December two rooms full of corpses, and the corpses, which were brought later, had to be put on the ground in front of the hospital. No independent investigation was conducted and the information that some seriously wounded were taken by ambulances to the regional centre, the city of Aktau, and died there in the regional hospital was neither confirmed nor disproved.

10. The difficulties in determining the number of dead is that the authorities persecuted those who tried to find out the fate of those people. Thus, the journalist of the newspaper *Uralskaya Nedelya* Alla Zlobina was accused of defamation for disseminating information about the likely burial of the killed Zhanaozen residents in the Aktau cemetery. The testimony of the relatives of the deceased that in those days they were not let take away the corpses until they agreed that the death certificate would state the cause of death not related to gunshot wound, has not been verified or confirmed or disproved as a result of the independent investigation.

11. The facts of the mass use of torture when starting from 16 December 2011, with the introduction of a state of emergency in the streets of Zhanaozen, everyone was checked and if a person did not have any documents or a photo or if a video of shooting was found in a cell phone, they were detained and taken to the commandant's office and pre-trial detention centre, have not been investigated. Thus, according to various witnesses, from

several dozens to several hundred people were kept only in the garages of the pre-trial detention centre in Zhanaozen. Many eyewitnesses, who found themselves there, described in detail how they were tortured. During the trial in the "37 oil workers" case, 19 out of 37 defendants said they had been tortured. G. Zhuaspayeva's, a lawyer, filed a motion, which the court sent to the police in Zhanaozen. In its response the Zhanaozen police said that there had been no torture, which the court found to be satisfactory. No impartial independent investigation into the facts of torture was made. UN Special Rapporteur on freedom of peaceful assembly and freedom of association, Maina Kiai, personally met with relatives of the killed, wounded and victims of torture in January 2015 and described such facts in his report on the mission to Kazakhstan.

12. The Special Rapporteur also pointed out that *"in view of the lack of a clear idea of the sequence of events, he supports the call to the Office of the United Nations High Commissioner for an independent international investigation into the incident. Thanks to such an independent investigation, it will be possible to shed light meticulously on the circumstances of the crisis, restore confidence in the justice system and allow victims to overcome their injuries, including with the help of moral reparation."* In his recommendations, he stressed the need to *"conduct an international independent investigation into the tragic events in Zhanaozen and Shetpe in order to hold accountable those who are guilty of violations of human rights and provide reparation to the victims."* That 2015 recommendation, repeated by the Committee in July 2016, was not implemented.

B. Recommendation 24: Torture and ill-treatment

13. In paragraph 23 of the Concluding Observations, the Committee raised concerns about reports mentioning allegations of torture and lack of appropriate investigations and sanctions. The Committee was also concerned about:

(a) The reported high rates of torture and the high number of claims of torture dismissed at threshold due to the allegedly excessive evidentiary standard required to pursue an investigation under the new Criminal Procedure Code;

(b) The reported unduly prolonged duration of investigations into allegations of torture and/or ill-treatment;

(c) The very low rate of effective prosecution, the mild punishments imposed and the involvement of interested law enforcement agencies in investigating allegations of torture or ill-treatment;

(d) The practice of automatically charging unsuccessful complainants of torture or ill-treatment with the crime of "false reporting of a crime";

(e) Failure to provide full reparation to victims of torture or ill-treatment;

(f) Allegations that the number of cases of torture and ill-treatment have increased since the transfer of jurisdiction over detention, investigation and penitentiary facilities from the Ministry of Justice back to the Ministry of Internal Affairs (arts. 2 and 7).

14. In its recommendations, the Committee said that the Government should take “*robust measures to eradicate torture and ill-treatment and to effectively investigate, prosecute and punish such acts*”. In particular the Committee requested to:

(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.

15. At the highest level since 2008 Kazakhstan has been voicing out that all its actions are aimed at the policy of "zero tolerance" to torture. This principle is the basis for many reforms and the implementation of institutional reforms in the field of the rule of law. Last year, the General Prosecutor's Office of Kazakhstan initiated the project "Society without torture". The concept is based on improving legislation, improving the effectiveness of institutions capable of eradicating torture, and bringing laws and practices in line with international standards and principles. These steps of the State should be welcomed.

16. The action plan adopted by the General Prosecutor's Office of the Republic of Kazakhstan includes three main directions: the prevention of torture, investigation into tortures and rehabilitation of victims and fully covers the recommendation 24 of the Concluding Observations made by the UN Human Rights Committee. However, it should be noted that this Concept is designed to be implemented within two years, while the practice requires immediate measures.

17. As far as criminalization of torture is concerned, the definition of torture has not yet been brought in line with Article 1 of the UN Convention against Torture. No distinction was made between torture and other cruel, inhuman, degrading treatment or punishment. The sanctions for the crime of "Torture" have not been increased to not less than 6 years of imprisonment and the possibility for amicable agreement or conditional conviction of the perpetrators has not been removed. The pool of subjects of the crime "Torture" has not been expanded, in particular with respect to "persons, acting in their official capacity.

18. On the issue of providing effective guarantees of protection against torture, despite the fact that the State implemented the Miranda Rules in the Code of Criminal Procedure of the Republic of Kazakhstan and improved the procedures for delivery and detention, however, in practice problems still exist.

19. The registration of actual detention with simultaneous communication to the detainee of his rights would serve as an additional guarantee of protection against torture, for example, immediate telephone notification of a third party (supervisory authority, advocate) about the detention and planned route for delivering a detainee, or video recording of the detention process with the help of dashboard camera or chest video-recorder with the indication of the time and date of recording with immediate transfer of data to the supervisory authority.

20. Moreover, procedural guarantees of protection against torture do not apply equally to all persons who have been detained or imprisoned in any form, but mainly to persons detained on suspicion of committing criminal offenses. Such guarantees should be extended to persons who were placed in special medical, educational and other institutions against their will.

21. The practice of warning those who report crimes, including torture, about criminal liability for false reporting of crime continues. The practice of the NGO Coalition of Kazakhstan against Torture shows that such requirement stops many complainants from reporting tortures to the law enforcement bodies, since in the absence of an independent investigative body, there is a serious problem proving the fact of torture, and the complainants risks that a criminal case for false reporting could be opened against him.

22. A recommendation to conduct an independent investigation has not yet been implemented, although it was noted in the Concept adopted by the General Prosecutor's Office of the Republic of Kazakhstan "The Society without torture". The investigation into torture should be conducted by an independent body, which, as the NGO Coalition of Kazakhstan against Torture thinks, can be the Special Prosecutors Unit of the General Prosecutor's Office, subject to its transparency, accessibility and civil accountability.

23. The issue of funding of reparation to victims of torture by the state budget without the need to identify those guilty of such acts as required now by the civil legislation of Kazakhstan has not yet been resolved. Furthermore, at present victims of torture are unable to receive compensation from the state budget, because they can only be compensated by those found guilty, if any, or their employer.

24. The criminal executive system continues to be under the jurisdiction of the Ministry of Internal Affairs of the Republic of Kazakhstan (police), rather than the jurisdiction of a civil agency.

C. Recommendation 54: Freedom of association and participation in public life

25. In paragraph 53 of the Concluding Observations, the Committee is concerned by the limitation on the freedom of association and especially:

(a) the regulations on the registration of public associations, including political parties, impose undue restriction on the exercise of freedom of assembly and political participation;

(b) the fact that associations, including political parties, can be held criminally responsible for carrying out their legitimate activities, including under the offence of incitement to “social, national, clan, class or religious discord”;

(c) the broad grounds for the suspension or dissolution of political parties;

(d) the restrictive legal framework regulating strikes and the mandatory affiliation of trade unions to regional or sectorial federations under the 2014 Act on Trade Unions may adversely affect the right to freedom of association under the Covenant;

(e) the fact that civil society organizations fear that the establishment of a central “operator” and other provisions under the Law of 2 December 2015 regulating the allocation of funds to public associations may be used to tighten control over them and limit their ability to receive funds from abroad (arts. 22 and 25).

26. In the paragraph 54, the Committee recommended to bring State 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 was recommended to:

(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.

27. However the information received does not show any progress on that matter. On the contrary, new measures adopted by the Government seem to go against the recommendation.

28. Over the past time, there have been no positive changes in the legislation on political parties and trade unions.

29. It should be noted first that since September 2016, the State established a new Ministry on Religious and Civil Society Affairs. This Ministry encompasses two Committees respectively in charge of the religious and civil society issues.

30. In January 2017, the court ordered to liquidate the Confederation of Independent Trade Unions of Kazakhstan, which was the only independent nation-wide trade union association. It was liquidated due to the fact that it could not confirm the necessary number of industrial and territorial trade union organisations that should be part of it - the requirement introduced by the new and very repressive Trade Union Law adopted in

2014, which was harshly criticized by the International Labour Organisation and international trade union organisations, including the International Confederation of Free Trade Unions.

31. Besides a new CSO's law was passed in July 2016 regulating the financial matters of the CSOs. According to this law, commercial entities, non-profit organisations and even individuals are required to report on every foreign income received (from 1 tenge (about 0,3 cents)) within 10 days if the foreign funding is related to 1) legal aid / dissemination of legal information, 2) sociological polls, 3) collection and analysis of any information.

32. In addition, every quarter, the abovementioned organisations and individuals are obliged to report to the tax administration on all their expenses related to use of these foreign funds. In case of failure to provide the requested information, the administrative penalties can vary from fines to the decision of closing the organisation.

33. Since the adoption of the law, three NGOs faced sanctions (up to 30.000 USD), namely the International Legal Initiative (ILI), the Foundation "Liberty" and the Public Association "Kadir Kasiet" ("Dignity") for the non-payment of the income tax⁴.

34. In August 2016, the tax authorities began inspections at these NGOs based in Almaty and in Astana. These inspections followed a written complaint from an individual whom the authorities described as a "concerned citizen", made on 3 August 2016 to the Almaty city prosecutor's office.

35. At the end of December 2016, the ILI and the "Liberty" Foundation were ordered to pay ruinous fines for allegedly failing to pay taxes: ILI received a fine of the equivalent of EUR 3700, and the Liberty Foundation, EUR 8300. In February 2017, the ILI appealed the Almaty tax directorate's decision in court, which resulted in the ruling on 6 April 2017.

36. On 6 April 2017, the Special Inter-District Economic Court of Almaty found the International Legal Initiative ("ILI") human rights NGO guilty of failing to pay taxes. This followed a tax inspection carried out by the city tax authorities six months earlier. The ILI is convinced that the tax inspection and the subsequent legal case are designed to intimidate and harass them for the work they do.

37. A similar decision was adopted by the court in May against the Liberty Foundation. Pursuant to the court decision in favour of the State, corporate income tax was collected from both non-governmental human rights organisations with respect to grants made by the international and foreign organisations, in particular the Norwegian Helsinki Committee and the Equal Rights Trust (with respect to a grant from the European Union to support civil society in Kazakhstan to fight against discrimination).

⁴ See «Kazakhstan: Harassment on the part of the Kazakh tax authorities against human rights NGO "International Legal Initiative" », 17 April 2017, OMCT-FIDH, <http://www.omct.org/human-rights-defenders/urgent-interventions/kazakhstan/2017/04/d24295/>

38. These new financial reporting obligations add heavy burden on non-profit organisations and increase the control over their work. The justification of the adoption of such laws is not clear and these measures go against the HR Committee's recommendation.

39. In addition, article 174 of the Criminal Code which criminalize incitement of "social, national, generic, racial, class, or religious hatred" or insult to "the national honour and dignity of religious feelings of citizens" is now more frequently used to silence human rights defenders and related activists, as well as religious minorities.

40. Reference to the article 174 was made in several cases recently decided by the courts, including some of the following ones which reflects pressure on civic activists and bloggers:

1) On 23 September 2016, Yerzhan Orazalinov was sentenced to five years in prison on extortion charges believed to have been politically motivated. An environmental rights activist, Orazalinov is known for having initiated a number of lawsuits against major industrial companies in this context.

2) On 14 October 2016, a Zhezkazgan court deemed blogger Nataliya Ulasik "socially dangerous" and ordered her to be forcibly placed in a psychiatric institution for an unspecified period of time. The court had initiated a psychiatric examination of her when hearing a criminal case on defamation initiated on the basis of a complaint filed by her former husband. During the trial, she was denied access to qualified legal assistance and the court refused to allow an alternative, independent psychiatric examination.

3) On 28 November 2016, Max Bokayev and Talgat Ayanov were convicted of "inciting social discord", "organizing an unauthorized rally" and "disseminating information known to be false" and sentenced to five years in prison each. They were also banned from engaging in civic activities for three years upon their release. The two activists were charged for organizing a peaceful rally against land reforms in the city of Atyrau in April 2016. This rally was one of a series of protests on this issue that took place across Kazakhstan in spring 2016. The EU, the US, Canadian and other governments, as well as international human rights organizations have called for the release of Bokayev and Ayanov.

4) On 14 December 2016, blogger Ruslan Ginatullin was sentenced to six years in prison on charges of "inciting ethnic discord". He was charged for reposting a video critical of the separatist side in the conflict in Donbass (Ukraine).

5) On 27 December 2016, an Aktobe court sentenced the blogger Sanat Dosov to three years in prison on charges of "inciting social discord. The charges against him were initiated because of a series of Facebook posts in which he criticized Russian President Vladimir Putin. Among others, he wrote that Putin was "ruining" Russia, criticized his social policies and condemned Russia's involvement in the conflict in eastern Ukraine.

6) On 3 March 2017, a court in the city of Karaganda sentenced civic activist and a lawyer Sanat Bukenov to four years in prison on charges of falsely accusing the Balkhash deputy police chief, judge, prosecutor and deputy governor of corruption. These charges were brought against him after he drew attention to allegations that local authorities had unlawfully confiscated property of children raised in orphanages. Thus, he was persecuted because of his attempts to promote justice. During the trial, he stated that he had been subjected to torture in pre-trial detention, allegations that were not properly investigated.

7) On 7 April 2017, an Astana court sentenced trade unionist Nurbek Kushakbayev to 2.5 years in prison on charges of calling for the continued participation in a strike deemed illegal by court, a new criminal code provision that was used for the first time. He was also ordered to pay about 75 000 EUR in compensation to the oil company and banned from engaging in trade union activities for two years upon his release. Kushakbayev and his fellow trade union activist Amin Yeleusinov were detained after leading a hunger strike at the oil company in early 2017 to protest against the closure of the Confederation of Free Trade Unions of Kazakhstan by court in January 2017. International trade union associations and human rights organizations have spoken out in support of Kushakbayev and Yeleusinov.

8) On 2 May 2017, an Astana district court sentenced Jehovah Witnesses follower Teymur Akhmedov to five years in prison for “inciting religious discord”. The charges were brought against him because of discussions on religious issues he had in private with a group of young people. During these discussions, he made statements about other faiths that the prosecution claimed were offensive. The young people in question pretended to be students but appeared to have been engaged by security services to initiate the discussions and record the conversations.

9) On 16 May 2017, an Astana district court sentenced trade unionist Amin Yeleusinov to two years in prison on charges of embezzling trade union funds and insulting, disobeying and using violence against police when he was detained in January 2017. He was also banned from engaging in civic and trade union activities for five years upon his release and ordered to pay some 20 000 EUR in compensation to the oil company’s trade union. During the trial, it was announced that he had reached a settlement with the prosecution, whereby he admitted his guilt in exchange for a less harsh sentence. However, his lawyer stressed that this did not mean that they agree with the charges. Hundreds of trade union members, whose funds Yeleusinov allegedly embezzled, petitioned in his support.

10) A criminal case has been opened in relation to Larisa Kharkova, the President of the Confederation of Free Trade Unions of Kazakhstan on charges of embezzlement of trade union funds. She has been designated a “suspect”. The case against her was opened after the CFTUK was closed down by court in January 2017 for allegedly failing to meet registration requirements under Kazakhstan’s restrictive Trade Union Law.

11) The journalist Zhanbolat Mamay was arrested in February 2017 and is currently in pre-trial detention on charges of laundering money allegedly stolen from the BTA Bank

by Mukhtar Ablyazov, an opposition politician and former BTA bank head who has been charged in absentia. The charges against Mamay are believed to have been initiated in retaliation for his journalist activities and to be aimed at silencing his newspaper, which has previously been subjected to pressure (including through punitive defamation lawsuits). Media and human rights groups have called for his release. He was allegedly subjected to ill-treatment by fellow detainees in pre-trial detention, allegations that have not been properly investigated.

12) A criminal case has been opened against civic activist Alexander Kharlamov on charges of “inciting religious discord” because of his writings on issues of religion, atheism and the influence of science on Christianity. Previously, in 2013, he spent six months in pre-trial detention on similar charges. Since his release, he has continued to provide assistance to victims of unlawful actions by local officials.

13) Since the end of 2016 young politician and civic activist Aslan Kurmanbayev is under investigation on charges of “inciting social discord” because of Facebook posts. He has repeatedly expressed positions critical of the authorities and has, among others, called for boycotting the EXPO-2017 in Astana. Up to now he has not been designated a “suspect”.

14) A civic activist Olesya Khalabuzar is facing charges of involvement in an organization whose activities “are detrimental to the health of citizens” and “inciting ethnic discord.” The case was opened in the beginning of 2017. The former charges are related to a video posted on social media in which members of her organization threatened to engage in self-immolation to protest against unjust court decisions. The latter charges are related to leaflets that police claim were confiscated during a search of her apartment and the office of her organization and that allegedly contain propaganda against representatives of other nationalities. Olesya Khalabuzar has, among others, campaigned against proposed legislative changes on land ownership in Kazakhstan.

International Legal Initiative

“Liberty” Foundation

Kazakhstan International Bureau for Human Rights and the Rule of Law

“Charter for Human Rights” Foundation

Union of Crisis Centers

“Kadyr-Kassiyet” Public Association

“Ar.Rukh.Khak” Foundation

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