



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/KAZ/Q/2
9 September 2008

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Forty-first session

Geneva, 3 – 21 November 2008

**List of issues to be considered during the examination of the
second periodic report of KAZAKHSTAN (CAT/C/KAZ/2)**

Article 1

1. According to the State party report, paragraph 13, article 347-1 of the Criminal Code entitled “torture”, is in full accordance with the wording of article 1 of the Convention. Please explain how instigation, consent and/or acquiescence of a public official or other person acting in an official capacity is covered by the definition. Does it also cover acts carried out by official agencies or other entities other than the law enforcement authorities, such as contractors, individuals or groups of persons acting at the instigation of, or with the consent or acquiescence of, a public authority? If so, please provide examples.

2. According to the State party report, paragraph 14, “Physical and mental suffering caused as a result of legitimate acts on the part of officials shall not be recognized as torture”. Please elaborate.

Article 2

3. Does the State party’s law specifically provide that no exceptional circumstances may be invoked as a justification of torture? Is there an explicit legal provision which clearly stipulates that an order from a superior officer or a public authority may not be invoked as a justification of torture? If so, please provide examples of its application by courts.

4. Please elaborate on any measures undertaken to ensure that suspects are immediately informed of their rights when taken into custody (State party report, para. 42). In that regard, please provide information on the rights of detained persons or individuals deprived of their liberty to contact family members to inform them of their whereabouts. In the light of the Committee's previous concluding observations (A/56/44, para.129(f)), please also elaborate on the safeguards provided to ensure that suspects are able to obtain prompt access to an independent medical doctor at their request. Please indicate how the State party protects and monitors implementation of these safeguards (State party report, para. 101).

5. According to some information received by the Committee, while national legislation limits detention in police custody to a maximum of 72 hours, in practice, people may be held in police custody for longer periods instead of being transferred to pre-trial detention centres under the control of the Ministry of Justice. Please provide detailed information on these exceptions and include detailed statistics, for the years 2002-2007, broken down by region, on the number of persons held in police custody and the length of their detention.

6. Please provide detailed information, including statistical data, on pre-trial detention, including on any mandatory limit to pre-trial detention.

7. Does the State party have a programme of unannounced inspections of pre-trial detention centres and other places of confinement, by independent impartial investigators? If so, are these findings made public? Please indicate if the public oversight commission is empowered to monitor police custodies and pre-trial detention centers (State report, para. 71) and provide information on the approval process in place for non-governmental organizations to examine these places.

8. The Committee has received information regarding alleged instances of deprivation of liberty without the protection of required judicial guarantees. The Committee has received further information on alleged prosecutions of individuals resulting from their political opinions. Please provide relevant information regarding these cases.

9. Please provide detailed information on the programmes and activities of the Office of the Ombudsman and the Office of the Human Rights Commissioner, including information on the availability of human and financial resources. Please comment on any plans to establish a national human rights institution in accordance with the Paris Principles. Furthermore, please provide statistical information on the number and nature of complaints submitted annually by prisoners to the Office of the Ombudsman and the Human Rights Commission, elaborating on the findings and recommendations addressed to the relevant authorities in these cases and any follow-up since 2002.

Article 3

10. The State party report has not provided information on measures taken to ensure the implementation of article 3 of the Convention. Please indicate what legal guarantees have been established to meet the requirements of article 3 of the Convention in cases of expulsion or return

(refoulement) of foreigners, which department of the Government is responsible for making decisions on matters of extradition, expulsion and return, and any procedures in place to challenge such decisions. In this regard, please provide statistical data, disaggregated by age, sex and nationality on:

- (a) The number of asylum requests registered and granted;
- (b) The number of deportation or expulsions;
- (c) The number of rejected asylum-seekers and undocumented migrants who are held in administrative detention;
- (d) The countries to which these persons were expelled.

11. Please indicate in which cases Kazakhstan would seek diplomatic assurances from a third country to which an individual is to be extradited, returned or expelled. What monitoring mechanisms are in place to assess if the assurances have been honoured? Has Kazakhstan received any such request for diplomatic assurances? Please also provide examples, if any, of cases in which national authorities did not proceed with the extradition, refoulement or expulsion of an individual for fear that he or she would be tortured.

Article 4

12. Please explain how article 347-1 of the Criminal Code correlates with crimes containing similar elements in their provisions, in particular, for the following offences of the Criminal Code: abuse of office (article 307), excess of official duties (article 308), coercion to testify (article 347), subornation or coercion to give false testimony or deviate from giving testimony, to give false expert opinion or translation (article 354). In that regard, please also provide the definition of these offences and the statistical data on prosecutions related to them.

Articles 5, 6, 7, 8 and 9

13. Please indicate any legislative or other measures in place to implement the provisions of article 5 of the Convention and whether acts of torture are considered universal crimes under national law, regardless of their location and the nationality of the perpetrator and the victim.

14. How are criminal cases handled when Kazakhstan refuses to extradite an individual to another country where a person is suspected of actions falling under the definition of article 1 of the Convention? Which agencies review such cases, and under what law? Have there been any such cases handled by national law enforcement agencies? If so, please specify.

Article 10

15. Please give detailed information on training programmes provided to persons enumerated in article 10 of the Convention in order to inform them about the prohibition of torture, including their

obligation not to follow orders to commit torture. Please indicate when and how often this training is provided and also outline information on the availability of gender-sensitive training.

16. Please provide information on the training of forensic doctors and medical personnel dealing with persons in detention, including asylum-seekers and refugees, to detect physical and psychological evidence of torture.

Article 11

17. Please describe the procedures planned or in place to keep under systematic review interrogation rules, instructions, methods, practices and custody arrangements with a view to preventing instances of torture in accordance with article 11 of the Convention. If so, please indicate the frequency of this review.

18. Please inform the Committee about measures that are planned or in place to ensure that torture and other cruel, inhuman or degrading treatment or punishment is not applied in practice. In this regard, please indicate if there is a systematic review of interrogation methods, especially during apprehension and in the first hours of detention, and indicate how this is done in practice.

19. Please indicate if juveniles and adults and women and men are separated in all situations of detention.

20. Please elaborate on the measures taken to ensure that juvenile justice standards are in compliance with international obligations. Please provide information on alternative socio-educational measures for persons under the age of 18 in conflict with the law. Please also provide statistical information on the number of juveniles in detention, including the length of sentences being served. Please provide information on the progress, if any, to introduce specialized juvenile courts throughout the country, as recommended by the Committee on the Rights of the Child in its concluding observations (CRC/C/KAZ/CO/3, paras. 69 and 70).

Article 12

21. Please provide further information on the system allowing for inspections of prisons and other places of detention, including by indicating any administrative body that can request and/or undertake inspections (see the Committee's previous concluding observations, para. 129 (g)). Please comment on the effectiveness of investigations of torture in the State party's territory, including by providing statistical data and information on any measures taken to ensure prompt and impartial investigations into alleged violence of law enforcement personnel.

22. The Committee has received information regarding allegations that members of the security forces, including police, have tortured, beaten and otherwise mistreated detainees. Have these allegations been investigated? If so, please provide information on the findings of these investigations and remedial measures, including those instituted to prevent future acts of torture.

Article 13

23. Please clarify who is the competent authority to receive and review complaints and provide information on the procedures for dealing with complaints. Please provide information on the number and content of complaints alleging torture, ill-treatment or inhuman or degrading punishment from prisoners received by the competent authorities, on their investigation and on the number of convictions of prison wardens, public officials, border guards and other persons who may be involved in the custody, interrogation or treatment of individuals subject to any form of arrest, detention, or imprisonment for such offences under various articles of the Code of Criminal Procedure. Please provide statistical data on investigations into cases of police abuse, on the number of complaints of unlawful methods of investigation and on the number of complaints found justified by the prosecutor. Please provide examples, if any.

24. Please provide information on the measures in place to guarantee the confidentiality of complaints and to protect complainants from possible reprisals. Please elaborate on any witness protection programmes for victims of torture, ill-treatment and related violations.

Article 14

25. Please provide the Committee with information on cases in which redress and compensation was ordered by the courts for victims of torture or cruel, inhuman or degrading treatment or punishment, or for their families, since 2001. Please indicate what services exist for the treatment of trauma and other forms of rehabilitation of torture victims and what financial allocations have been made for this purpose?

Article 15

26. Please inform the Committee of any concrete measures in place to ensure, in practice, respect for the principle of inadmissibility of evidence obtained through torture. Please provide examples of any judicial cases that have been dismissed due to the introduction of such evidence or testimony in any proceeding (State party report, para. 138).

Article 16

27. According to the State party report (para. 29) “there has been a steady trend towards the reduction of the prison population in Kazakhstan”. Please indicate what measures have been taken to reduce the prison population. Please provide information for the years 2002-2007 on the number of imprisoned persons and the ratio of staff to prisoners, as well as the occupancy rate in relation to the accommodation capacity. Please provide information on the number of deaths in custody during this period, with a breakdown by the causes of death.

28. Please provide information on any independent inspections of psychiatric institutions and their follow-up, and elaborate on the bodies undertaking these activities. Please also elaborate on their findings and describe the situation of patients, including the use and extent of any coercive measures.

29. Please provide further information on the joint order approving laws and regulations concerning the medical treatment, sanitation and well-being of persons held in correctional institutions and remand centres, including how this order is enforced in practice and whether there are any implementing measures and monitoring mechanisms in place (State party report, paras. 35 and 90 (b)). Furthermore, please provide detailed information, including statistical data, on the progress achieved in lowering the incidence of tuberculosis in places of detention (see the Committee's previous concluding observations, para. 125) and outline any programmes for the prevention or treatment of HIV/AIDS in detention facilities, and the results obtained.

30. Please provide updated information on the adoption of the draft law on domestic violence and indicate whether it includes specific provisions on marital rape (see the concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/KAZ/CO/2, paras. 15 and 16). Please also provide information on other measures taken to prevent, report, investigate and respond to cases of domestic violence.

31. Please provide information on the number of proceedings initiated and convictions entered for trafficking of women and children. In that regard, please indicate if any instances of complicity by State officials in trafficking occurred, and if so, if they were investigated and sanctioned (see the concluding observations of the Committee on the Rights of the Child, paras. 67 and 77, and of the Committee on the Elimination of Discrimination against Women, paras. 17 and 18).

32. Please provide information on the improvement of the efforts undertaken to eradicate acts of maltreatment and degrading punishment of children living in boarding schools, remand homes and detention centres. Please indicate if there are child-friendly complaints mechanisms in place to protect children from cruel, inhuman and degrading treatment or punishment (see the concluding observations of the Committee on the Rights of the Child, paras. 34 and 35).

Other

33. Please indicate if there is any legislation in place aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about the content and implementation of such legislation. If not, please indicate whether the adoption of such legislation is under consideration and any steps have been taken to demonstrate this commitment.

34. When does the State party envisage ratifying the Optional Protocol to the Convention against Torture? What steps have been taken to set up or designate a national mechanism which would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

35. Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threat of terrorist acts, and please describe if, and how, these measures have affected human rights safeguards in law and practice. Please describe the relevant training

given to law enforcement officers, the number and types of convictions entered under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, the number of complaints related to non-observance of international standards, and the outcome of and follow-up to these complaints.

36. Please indicate whether the Convention against Torture can be directly invoked before the State party's domestic courts (see the concluding observations of the Committee on the Rights of the Child, paras. 7 and 8). If so, please give specific examples.
