DEAD END JUSTICE

IMPUNITY FOR TORTURE IN KAZAKHSTAN

AMNESTY INTERNATIONAL

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Cover photo: Barrier at the entrance to the EC-164/4 high security prison, known as “Zhaman Sopka” (Kazakh for "bad hill") in North Kazakhstan. ©Private

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EXECUTIVE SUMMARY

> **"I have been waiting for justice for over seven years, worrying and suffering. All in vain. And my country, the Republic of Kazakhstan, and its officials […] did nothing to restore my legal right to a remedy…"**

Vasily Maklakov, 54 year old torture survivor in Kazakhstan, in an interview with his lawyer cited in court, April 2014.

Of the hundreds of reports of torture that human rights organizations receive each year in Kazakhstan, just a handful ever lead to a conviction, indicating that impunity for torture and other ill-treatment by law enforcement officials remains commonplace in Kazakhstan's criminal justice system. Despite positive revisions to the Criminal Code and Criminal Procedure Code in the last four years, and the introduction of a new Criminal Code and Criminal Procedure Code in 2015, legal remedies available to victims of this gross human rights violation remain ineffective. The official complaints process, and the appeal procedures against inaction and failure to investigate acts of torture and other ill-treatment, are onerous and riddled with loopholes that allow perpetrators to evade justice. Public distrust of state institutions, including the justice system, and the lack of an effective victim and witness protection system, means that very few victims attempt to seek justice and reparations beyond the first official rejection of their complaint.

The failure to investigate effectively all allegations and bring every official responsible for, or complicit in, torture and other ill-treatment to justice flouts Kazakhstan's obligations under international human rights law. Crucially, it also undermines public confidence in the criminal justice system and people's trust in law enforcement services. From the point of view of those who have suffered torture and other ill-treatment and members of their families, the search for justice and reparation is an arduous, frustrating and often hopeless process, and for some it is also directly associated with further personal risks. As well captured by Roza Akylbekova, Director of The Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR), impunity for torture and other ill-treatment engenders amongst survivors of torture as well as the general public "feelings of helplessness and intimidation".

METHODOLOGY

This report is based on fact-finding visits to Kazakhstan carried out between 2011 and 2015, and on additional desk research into impunity for torture and other ill-treatment. In the course of this research, Amnesty International delegates met with representatives of human rights organizations, expert lawyers, and victims and their relatives. Notably, only a very small number of known torture victims were willing to go public with their stories; for others, the risk of retaliation, or the sense that pursuing complaints of torture was futile, were just too

great. While small, this limited sample is enough to illustrate the deficiencies and failures in the current system of investigation of torture cases.

INTERNATIONAL AND NATIONAL LEGAL STANDARDS

As a signatory to the International Covenant on Civil and Political Rights (ICCPR) and to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Kazakhstan has an obligation to prevent and prohibit any act of torture and other ill-treatment, and to investigate effectively every credible allegation of torture and other ill-treatment brought to their attention, bring perpetrators to justice and provide adequate reparations to victims.

These obligations are reflected in Kazakhstan's national legislation, including the Constitution (Article 17), which expressly prohibits torture, and the Criminal Code, which was amended in 2002 to list torture as a crime rather than as a procedural violation against a criminal suspect's rights. In 2011, the crime of torture was made a crime against the constitutional rights of citizens rather than a crime against the interests of the state justice system. Also in 2011, the mandate of the Special Prosecutor's Units (SPUs)[1] was extended to give them the power to lead the investigation in all cases involving allegations of torture. The new Criminal Code introduced in 2015 abolished the statute of limitations in relation to torture cases, excluded those charged or convicted of torture from benefitting from amnesties and increased the maximum punishment to 12 years.

In 2012, the Prosecutor General Askhat Daulbayev instructed prosecutors to "open a criminal investigation into every incident of torture" and deal with every complaint of torture directly. In the same year, the internal instructions for prosecutors were amended to give Special Prosecutors the direct authority to investigate the crime of torture; prosecutors do not otherwise have investigative powers.

Public Monitoring Commissions (PMC) have been mandated to enter prisons to monitor conditions, including registering complaints of torture, since 2004, and in 2013, Kazakhstan adopted the necessary legislation to set up a National Preventive Mechanism (NPM), in line with its obligations under the Optional Protocol to the CAT (OPCAT).

This strong legal and institutional framework has, unfortunately, not resulted in justice and reparations for victims of torture and other ill-treatment. Despite the introduction of legislative safeguards against torture and procedures for assessing complaints, investigations into allegations of torture and other ill-treatment have fallen far short of international standards of prompt, thorough and impartial investigations and have failed to deliver justice. As a result, the use of torture and ill-treatment by law enforcement bodies in Kazakhstan remains largely unchecked and unpunished.

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[1] Special Prosecutor's Units (SPUs) were originally established to deal with a small number of complicated and high-profile cases at their own discretion. They are a distinct prosecutorial division within the Prosecutor General's Office.

PROCEDURES FOR INVESTIGATION

On paper, there are clear procedures in place relating to torture cases. However, the complexity of the procedures means that without legal support, it is difficult for victims to effectively access justice.

Any victim of torture in Kazakhstan has the right to report what has happened to them as a crime to the law enforcement services (the Criminal Police, the Agency on Civil Service Matters and Anti-Corruption [formerly the Financial Police], or the National Security Committee or the Prosecutor's Office). Under the new Criminal Procedure Code (introduced in 2015), the registration of any report of a crime (including torture) leads immediately to the instigation of a criminal investigation. This is an improvement on the previous Criminal Procedure Code, under which all reports of crimes, prior to the institution of a criminal case, had to go through a process of preliminary assessment, or screening (*dosledsvtvennaya proverka*) to establish whether there was a case for a full criminal investigation. According to the Criminal Procedure Code, the investigation should not be carried out by the same agency whose members are accused of having committed the acts of torture and ill-treatment.

However, despite the existence of clear procedures established by law, practice is very different. In many cases, victims of torture and ill-treatment are not made aware of the fact that they have the right to report torture or other ill-treatment as a crime (unless they are in contact with a lawyer or an NGO that informs them of this right), particularly those who are in pre-trial detention or who have been convicted and are in prison. Instead, they are ordinarily told by state custody officials to lodge a complaint of procedural "wrongdoing" against the official(s) involved. A complaint of procedural "wrongdoing" leads to a three-day, prosecutorial verification (overseen by a Prosecutor, but often carried out by the Internal Investigation Department of the agency whose officers have been accused of the torture or ill-treatment), after which the prosecutor decides whether or not to open a criminal investigation. The continued existence of this loophole, and the failure of prosecutors to automatically reclassify complaints of procedural "wrongdoing", undermine the positive reforms to the Criminal Code and the Criminal Procedure Code.

FAILURES IN THE INVESTIGATION AND PROSECUTION OF TORTURE CASES

The Coalition of NGOs of Kazakhstan against Torture recorded between 350 and 400 complaints of torture and other forms of ill treatment in Kazakhstan annually in 2013 and 2014.[2] Of the cases recorded by independent NGOs, not all are then registered with law enforcement bodies, and a very small number eventually result in prosecution. These figures are backed up by official statistics from the Prosecutor General's Office: in the first seven months of 2015, ten cases of torture reached court, of which five resulted in a conviction. Of

[2] Coalition of NGOs of Kazakhstan against Torture, *Встречи с представителями Европейского Союза в рамках международной адвокации, май 2015 г.* [*Meeting with representatives of the European Union within the framework of international advocacy*], 18 May 2015, http://www.bureau.kz/novosti/sobstvennaya_informaciya/spravochnyi_dokument_po_voprosam_pytok (accessed 23 September 2015) (Coalition of NGOs against Torture, *Встречи с представителями Европейского Союза в рамках международной адвокации, май 2015г* [*Meeting with representatives of the European Union within the framework of international advocacy*]).

those convicted only one received a prison sentence.[3]

Most of the examples included in this report involve cases that were begun under the previous Criminal Procedure Code. As such, they were subjected to an initial screening that concluded that no torture had taken place (often despite strong evidence to the contrary) or that the perpetrators could not be identified; accordingly, no criminal investigation followed. This is not surprising, given that often, these preliminary screenings were carried out by the Internal Investigations Department of the law enforcement agency whose members were accused of the abuse, meaning that the investigations were not impartial and very rarely performed with due diligence. With no legal status at this preliminary screening stage, victims were left in the dark, often only learning that their complaint had been "screened" at all when they received the official reply informing them that it had been found to be groundless. Subsequently, appealing this decision plunged victims into what lawyers in Kazakhstan have termed "bureaucratic ping pong", with the case being passed back and forth between different prosecutors and law enforcement agencies, with none making genuine efforts to investigate. As the cases in this report illustrate, this "bureaucratic ping pong" lasts for years; in many cases, it is still going on.

Interviews with lawyers in 2015 revealed that even in cases where a criminal investigation is opened immediately (as should now routinely the case under the new Criminal Procedure Code), a thorough and impartial investigation is not guaranteed and numerous barriers obstruct redress for victims of torture and other ill-treatment. Prosecutors and other agencies tasked with investigating cases of torture and ill-treatment rarely believe the victims' allegations, adopting the default position that no torture has taken place and that the complainant has made the allegation up to avoid responsibility for their crime. This assumption that victims are lying underlies the failure of investigators to collect and document evidence, and the tendency of prosecutors to ignore forensic or medical evidence submitted by complainants or their lawyers.

Other barriers to justice include the failure to keep the victim informed of developments in the investigation, claims that the perpetrators cannot be identified, and the dragging out of investigations and subsequent hearings, as cases are referred back and forth between different agencies and courts, trapping the victim in yet more "bureaucratic ping pong". In one worrying new development, lawyers report that cases of torture and ill-treatment are now being automatically registered as crimes, but are then getting "stuck" with an investigating agency for months and months, with no time limit for conclusion of the investigation. When the victim finally receives a refusal not to go forward with the case, the "ping pong" starts just as before if the victim and their lawyer decide to appeal. Harassment and intimidation of victims, their lawyers and families from the law enforcement officers who have been accused of torture during this period also acts as a significant barrier, particularly for prisoners, as

[3] Statistics obtained from the Prosecutor General's Office following a written request from the Coalition of NGOs of Kazakhstan against Torture. In the other four cases that resulted in a conviction, none of the perpetrators received a custodial sentence; two law enforcement officers were sentenced to restrictions on their freedom, and two were given suspended sentences.

there are currently no effective safeguards in place to protect complainants and witnesses from retaliation.

WHY IS THE SYSTEM FAILING?

The underlying factor behind the barriers to justice facing victims of torture in Kazakhstan is that it is not in the interests of the agencies and individuals who carry out investigations of torture to do so impartially and objectively. Instead, investigations into allegations of torture and other ill-treatment are marred by corporate solidarity between members of law-enforcement agencies, the desire to avoid conflict with colleagues and peers, and deliberate efforts to avoid independent oversight. These underlying factors have become the main barriers for accessing justice and reparations for victims of torture and other ill-treatment in Kazakhstan.

Amendments were made to the previous Criminal Procedure Code in 2011 stipulating that the investigation into a complaint of torture and other ill-treatment should be run by an outside agency (i.e., the Financial Police – now the Agency on Civil Service Matters and Anti-Corruption – if the allegation was made against a member of the Criminal Police, and vice versa), in order to avoid bias in the investigation. Amnesty International's research shows that this division of responsibility for investigations between the Criminal and Financial police has not addressed effectively the issue of independence and impartiality, because apart from professional solidarity and "back scratching", these two agencies continue to rely on each other for the investigation of other crimes, and have little interest in jeopardizing good working relations. The Prosecutor General's Office is ultimately responsible for the investigation of cases of torture, but also for prosecuting all other crimes and ensuring convictions. Pressure from prosecutors' offices to ensure convictions and the high prevalence of impunity support the institutional acceptance of the use of torture and other ill-treatment during interrogations among law-enforcement agencies.

In the face of these significant barriers, it is NGOs and NGO-appointed lawyers that have stepped in to support victims and provide them with effective legal counsel, including for the purpose of challenging law-enforcement agencies' inaction and resistance to investigate and prosecute acts of torture and ill-treatment. In all the cases included in this report, NGOs provided legal and psychological support to victims and their relatives. NGOs have also played an important role in collecting and documenting evidence of torture and other ill-treatment, essential for a successful investigation and prosecution in torture cases, but something which state agencies have often failed to do. This is particularly relevant when the victim is in police custody (before he or she has been charged), and a licensed lawyer (*advokat*) is the only person who can have physical access to the detainee, apart from penitentiary officials and members of Public Monitoring Commissions and the National Preventative Mechanism (see below). These various forms of support play an important part in encouraging victims and their families to seek justice and reparations by pursuing complaints.

STEPS TO TACKLE IMPUNITY

Tasking Special Prosecutor's Units to investigate allegations of torture (as defined in the Criminal Code), allowing Public Monitoring Commissions access to prisons, and the establishment of the National Preventative Mechanism are all positive steps, but have not proved to be sufficient in tackling impunity.

Special Prosecutor's Units (SPUs) are part of the Prosecutor General's Office, but function as a distinct prosecutorial division. Since 2011, the SPUs have had a mandate to lead the investigation of all cases involving allegations of torture; the internal instructions for prosecutors were amended a year later to give SPUs the direct authority to investigate the crime of torture (prosecutors do not otherwise have investigative powers). This was a very positive step, and in some cases, the SPUs have proved to be effective in investigating allegations of torture. However, this research shows that this remains the exception rather than the rule: SPUs' involvement in cases is inconsistent, often not reflecting the severity of the case, but rather other factors such as the public profile of the victim, or pressure from the victim's lawyer. Lack of resources and capacity impede their effectiveness, as does the lack of clarity in legislation governing criminal investigations, since the Criminal Procedure Code does not specify the role of prosecutors in the investigation or screening of torture and other ill-treatment complaints. SPUs, as a result, have often failed to carry out investigations of torture cases themselves, instead supervising in name only investigations carried out by law enforcement agencies, and accepting their findings uncritically.

Significantly, pressure from NGO caseworkers and lawyers has led to SPUs conducting effective investigations into allegations of torture and other ill-treatment in certain cases. This illustrates the potential of the SPUs to play an important role in achieving justice for victims in Kazakhstan, as well as the importance of civil society in ensuring public oversight and scrutinizing the work of these agencies.

Made up of representatives of civil society, Public Monitoring Commissions (PMCs) are mandated to visit and monitor detention facilities run by the Ministry of Internal Affairs (MVD), including prisons, pre-trial detention centres, and police detention facilities. Before the National Preventative Mechanism was established in Kazakhstan in July 2013, PMCs were the only civil society representatives allowed to visit detention facilities run by the MVD. PMCs can talk to prisoners and detainees and register allegations of torture. A 2010 Joint Decree "On cooperation of Law Enforcement Bodies with Civil Society Members During the Conduct of [Pre-Investigation] Screening of Complaints of Torture and Other Unlawful Methods of Conduct of Criminal Procedure Inquiry and Investigation as well as of Investigation of Such Complaints"[4] instructs law enforcement agencies to work together with

[4] См. Совместный приказ Генерального Прокурора Республики Казахстан от 3 февраля 2010 года № 10, Министра юстиции Республики Казахстан от 2 февраля 2010 года № 31, Министра внутренних дел Республики Казахстан от 2 февраля 2010 года № 46, Председателя Комитета национальной безопасности Республики Казахстан от 2 февраля 2010 года № 16 и Председателя Агентства Республики Казахстан по борьбе с экономической и коррупционной преступностью (финансовой полиции) от 2 февраля 2010 года № 13 «О взаимодействии правоохранительных органов и субъектов гражданского общества при осуществлении проверок жалоб о пытках и иных недозволенных методах ведения дознания и следствия, а так же уголовного преследования по данным фактам» / [Joint Decree of the Prosecutor General of the Republic of Kazakhstan of 3 February 2010 #10, Ministry of Justice of the Republic of Kazakhstan of 2 February 2010 #31, Ministry of Internal Affairs of the Republic of Kazakhstan of 2 February 2010 #46, Chair of the Committee of National Security of the Republic of Kazakhstan of 2 February 2010 #16 and the Chair of the Agency of the Republic of Kazakhstan on Fighting Economic and Corruption Crimes (Financial Police) of 2 February 2010 #13 "On Cooperation

PMCs during torture investigations. For instance, under the decree, law enforcement agencies can authorise members of the PMC to interview victims in detention, and these testimonies can then be submitted as evidence. In practice, however, this decree is not widely implemented. In addition, there are many restrictions on what PMCs can do; for instance, they cannot make unannounced visits. PMCs have the potential to provide independent, civil-society led scrutiny of complaints and investigations of torture and other ill-treatment in Kazakhstan, but their capacity to act independently and effectively needs to be strengthened.

The National Preventative Mechanism began functioning in January 2014, with members elected each year by a coordinating committee.[5] As with the PMCs, members are primarily drawn from civil society. Like the PMCs, the NPM faces a number of bureaucratic obstacles; for instance, the NPM must obtain written permission from the Ombudsman to perform urgent and unplanned visits. The Ombudsman's Office, which oversees the NPM, could also do more to better communicate the role of the NPM as a preventative rather than investigative body. At present, prisoners who have come into contact with the NPM have assumed that it is a mechanism for receiving complaints, and the fact that it has not been very effective at passing prisoners' complaints of torture on to investigating authorities raises the danger that the mechanism will soon lose public trust if this continues.

CONCLUSIONS

For all the difficulties in documenting and assessing the scale of a widely underreported phenomenon, there is little doubt that torture and ill-treatment remains a pervasive problem in Kazakhstan that is sustaining a prevailing culture of impunity. Piecemeal reforms over the last decade have failed to significantly chip away at this egregious human rights violation. Sweeping cultural and organisational change is difficult to achieve; radical institutional reform likewise. And yet, there are concrete steps, and easily deliverable changes, that Kazakhstan could introduce, within the current institutional framework, to tackle torture and ill-treatment far more effectively than it has done to date.

The authorities in Kazakhstan must, first, do more to ensure that the mechanisms already in place for the monitoring of complaints of torture and their investigation are able to function effectively. For a start, prosecutors need to begin reclassifying all complaints of procedural "wrongdoing" that they receive as criminal complaints, to close the loophole that currently exists allowing torture complaints to be dismissed before they reach the stage of criminal investigation. Pending the establishment of a fully independent police complaints mechanisms, the role of the SPUs in investigating allegations of torture should be strengthened. They have already shown their effectiveness in a small number of cases. They should be mandated to assume responsibility for investigating *all* complaints of torture automatically, and be required to be personally involved in investigative work, rather than relying entirely on investigations that they supervise in name only, but which are carried out by law enforcement agencies.

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of Law Enforcement Bodies with Civil Society Members During the Conduct of [Pre-Investigation] Screening of Complaints of Torture and Other Unlawful Methods of Conduct of Criminal Procedure Inquiry and Investigation as well as of Investigation of Such Complaints". (См. Совместный приказ от 3 февраля 2010 года [Joint Decree of 3 February 2010])

[5] Full details of the NPM and its relationship to the Ombudsman's Office are given below on page 55.

Second, the positive role of NGOs in documenting abuses and assisting victims and investigative agencies alike, should be recognized and built on. In the face of the considerable barriers to justice and reparations faced by victims of torture and other ill-treatment in Kazakhstan, and in the absence of fully independent investigative processes, it is a small number of NGOs that have stepped in to support victims and their families, providing legal counsel and representation, collecting and documenting evidence and offering psychological and moral support.

The PMCs need to have unhindered access to places of detention, and the right and the capacity to talk to prisoners who have alleged torture in confidence; these rights need to be recognised in law and respected by prison officials and law enforcement officers. The capacity of the NPM needs to improved, and it needs to be given sufficient resources to be able to carry out its role effectively, in accordance with the Optional Protocol to the Convention Against Torture (OPCAT).

To oversee these changes and to improve the quality of the investigation of cases involving torture and other ill-treatment (a task that neither the PMCs or the NPM are mandated to perform), the Prosecutor General should establish an advisory council, drawing on the expertise of members of the National Coalition of NGOs of Kazakhstan against Torture, as well as on the coordinating council of the PMCs and the Ombudsman's office. Meeting regularly, perhaps twice yearly, and with a mandate to identify and address systemic shortcomings in the investigation of complaints of torture and to review some individual cases, this would be an important step towards realising justice for victims of torture in Kazakhstan.

RECOMMENDATIONS TO THE KAZAKHSTANI AUTHORITIES

- Clarify the mandate of the Special Prosecutor's Units (SPUs) to specify that they should:
  - take charge of the investigation of **all** cases involving allegations of torture and other ill-treatment; and
  - be actively involved in the investigation of torture allegations themselves, rather than delegating all investigative work to law enforcement agencies acting under their supervision.
- Establish an advisory committee under the auspices of the Prosecutor General, to meet twice a year to oversee the investigation of complaints of torture and other ill-treatment. This committee could identify and make recommendations to address systemic shortcomings in the investigation of torture cases, and review individual cases. The committee should include experts from civil society, including the Coalition of NGOs of Kazakhstan Against Torture, as well as representatives from the coordinating council of the PMCs and the Ombudsman's office.
- Amend and update the Joint Decree on "Cooperation of Law Enforcement Bodies with Civil Society Members During the Conduct of [Pre-Investigation] Screening of Complaints of Torture and Other Unlawful Methods of Conduct of Criminal Procedure Inquiry and Investigation as well as of Investigation of Such Complaints" to:

    - formalize the right of officially recognized public monitoring mechanisms to have unhindered access to victims of torture and other ill-treatment in prisons and detention facilities; and
    - stipulate that all complaints of torture submitted via officially recognized public monitoring mechanisms are subject to a full, criminal investigation.
- Ensure that the PMCs and the National Preventative Mechanism (NPM) have the resources that they need to be able to carry out their roles effectively, including provision of adequate training for members to improve the quality of monitoring.
- Work towards the establishment of a separate, fully independent police complaints mechanism with the sole responsibility of investigating allegations of torture and other ill-treatment, in consultation with the advisory committee mentioned above and with wider civil society.
- Ensure that prosecutors reclassify all complaints of procedural "wrongdoing" involving allegations of torture and other ill-treatment as criminal complaints.
- Introduce into domestic practice the criteria and recommendations set forth in the Istanbul Protocol for the effective documentation and investigation of torture and other ill-treatment.
- Ensure that all alleged victims of torture and other ill-treatment have immediate access to an independent medical examination on request and that copies of the resulting medical records and supporting evidence are provided without delay to victims and their lawyers.
- Ensure that lawyers representing victims of torture and other ill-treatment are able to perform their professional duties without intimidation or improper interference, in accordance with the UN Basic Principles on the Role of Lawyers.[6]

[6] United Nations, "Basic Principles on the Role of Lawyers. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990", http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx (accessed 5 November 2015).

METHODOLOGY

This report is based on fact-finding visits to Kazakhstan carried out between 2011 and 2015, and on additional desk research into impunity for torture and other ill-treatment. In the course of this research, Amnesty International delegates met with representatives of international and non-governmental organizations, human rights organizations, expert lawyers and individuals affected by the issues presented in this report, including victims and their relatives. Names and sources of information and individuals have, in some instances, not been used for reasons of confidentiality and / or at the request of victims or their relatives. During the 2015 research mission, Amnesty International was able to meet with representatives from the national Ombudsman's office, but not with any other government representatives, despite repeated requests for meetings. However, the Prosecutor General's Office did respond to written requests for information made by Amnesty International and by the Coalition of NGOs of Kazakhstan against Torture, with which Amnesty International has collaborated in the research for this report.

Notably, only a very small number of known torture victims were willing to go public with their stories. Amnesty International believes that there is a significant number of unknown cases of individuals having suffered torture and other ill-treatment at the hands of law enforcement officials in Kazakhstan that have decided not to complain and to remain quiet due to fear of retaliation. Given the public's general distrust of state institutions, including the justice system, and the lack of an effective victim and witness protection system, this research found that very few victims attempted to seek justice and reparations beyond the first official rejection of their complaint. This accounts for the limited number of cases cited in this report directly and in detail, despite the fact that NGOs receive reports of a large number of cases of torture and other ill-treatment each year. Only a handful of individuals are prepared to talk openly about their experience, even anonymously. Of those who have initially presented official complaints about their torture and ill-treatment, very few have persevered and pursued justice and reparations in the face of the significant barriers detailed in this report.

Such a small sample of victims who were willing to talk to Amnesty International and be included in this report inevitably means that the data captured here does not reflect the diversity of cases and victims who have been subjected to torture and ill-treatment in Kazakhstan. For instance, just two of the victims featured in this report are women,[7] and most of the individuals whose cases are included here do no not belong to the majority Kazakh ethnicity. Most of the case studies also come from one district, Kostanai (in northern Kazakhstan), where committed lawyers and human rights defenders have fought tirelessly to

[7] This small number of women reflects official statistics. Very few women victims of torture are included in the figures released by the Prosecutor General's office each year. This also reflects reports made to the NGOs belonging to the Coalition of NGOs of Kazakhstan against Torture, very few of which involve women victims.

secure justice and reparations for victims of torture and other ill-treatment detained in the large number of penal facilities located in this region. Nevertheless, this limited sample illustrates the current system's legal and institutional deficiencies and failings, and provides the background to the suggested recommendations for improvement.

In addition to these individual cases, failings in the investigations into the use of torture and other ill-treatment against protestors and others who were detained following the events in Zhanaozen in 2011 are highlighted throughout this report, in order to further illustrate the weaknesses and flaws in the systems currently in place to scrutinize reports of torture and other ill-treatment at the hands of members of the security forces.

PROTESTS IN ZHANAOZEN[8]

On 16 December 2011, celebrations for the 20th anniversary of Kazakhstan's independence in the town of Zhanaozen, southwest Kazakhstan, were marred by violent clashes between protesters and police. At least 15 people were killed and more than 100 seriously injured after the police used excessive force.

In the immediate aftermath of the violence, hundreds of people were detained for participating in violent mass disorders. According to some sources, lists seen at the central police station in Zhanaozen contained the names of as many as 700 individuals detained in the aftermath of the clashes. The majority of these were released after a few days. A number of those who were released and some relatives of detainees reported that scores of women and men had been rounded up and taken to unofficial places of detention or kept incommunicado in overcrowded cells, often underground, in police custody. They described how male and female detainees were tortured or otherwise ill-treated in detention by being stripped naked, made to lie or crouch on a cold concrete floor, doused with cold water, and beaten and kicked by security officers, often to the point of losing consciousness. They would then be doused with cold water again and beaten at regular intervals in cycles lasting for hours.[9] Women and men were held together in the same cells during the initial hours of police detention.

Most of the 37 defendants, put on trial in March 2012 in the regional capital Aktau for organizing or participating in the violence in Zhanaozen, alleged that they were tortured or otherwise ill-treated in detention by security forces in order to extract "confessions", which they then retracted in court. The torture methods described by the defendants were consistent with the allegations made by many of the released detainees in December 2011. Ten of the witnesses for the prosecution withdrew their testimonies against the defendants during the trial proceedings and complained that they had been tortured or otherwise ill-treated into giving evidence implicating the defendants.

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[8] For more information, see: Amnesty International, *Kazakhstan: Progress and nature of official investigations called into question 100 days after violent clashes between police and protesters in Zhanaozen*, (Index: EUR 57/001/2012), https://www.amnesty.org/download/Documents/24000/eur570012012en.pdf (accessed 1 July 2015) (Amnesty International, *Kazakhstan: Progress and nature of official investigations called into question*) and Amnesty International *Old Habits: The routine use of torture and other ill-treatment in Kazakhstan* (Index: EUR 57/001/2013), http://www.amnesty.org/fr/library/info/EUR57/001/2013/en (accessed 1 July 2015).

[9] Amnesty International, *Kazakhstan: Progress and nature of official investigations called into question.*

As noted by the Committee against Torture in its Concluding Observations on Kazakhstan's third periodic report (2014), investigations into allegations of torture and ill-treatment following the events in Zhanaozen have never been fully and effectively investigated by the authorities.[10]

This research report should be read in conjunction with Amnesty International's submission on Kazakhstan to the United Nations Committee Against Torture, (EUR 57/002/2014),[11] hereafter referred to as the Amnesty International 2014 CAT Submission. This submission provides important information on the definition of torture provided for in Kazakhstani legislation, as well as the use of torture and other ill-treatment in extracting evidence and "confessions". As discussed in greater detail in the Amnesty International 2014 CAT submission, the definition of torture in the Criminal Code encompasses other forms of cruel, inhuman and degrading treatment, beyond the definition of torture included in the Convention.

[10] United Nations Committee against Torture (UN CAT), "Concluding observations on the third periodic report of Kazakhstan", CAT/C/KAZ/CO/3, Geneva, 12 December 2014 (UN CAT, "Concluding observations", 2014).

[11] Amnesty International, *Kazakhstan Submission to the United Nations Committee Against Torture: 53rd Session of the United Nations Committee Against Torture (3-28 November 2014)* (Index: EUR 57/002/2014), https://www.amnesty.org/en/documents/eur57/002/2014/en/ (accessed 21 September 2015) (Amnesty International, *Kazakhstan Submission to the United Nations Committee Against Torture*, 2014).

LEGAL STANDARDS

> **"Everything is in place already – the laws are there. What is needed is that these services become transparent in their work and that there is public oversight over their activities".**

Defence lawyer Oleg Matveev, interviewed by Amnesty International in May 2014

INTERNATIONAL STANDARDS

As a signatory to the International Covenant of Civil and Political Rights (ICCPR) and to the Convention Against Torture (CAT), Kazakhstan has an obligation to protect its citizens from being subject to torture or cruel, inhuman or degrading treatment or punishment (ICCPR Article 7), to prevent acts of torture (CAT Article 2) and to ensure that all acts of torture are offences under criminal law (CAT Article 4). Beyond these obligations (which, as discussed in Amnesty International's 2014 CAT Submission, are broadly reflected in Kazakhstan's Criminal Code), the authorities in Kazakhstan also have a duty under international law to investigate effectively every incident of torture and other ill-treatment brought to their attention, bring perpetrators to justice and provide adequate reparations to victims.

This right to remedy and reparations is enshrined in several human rights instruments, including the Universal Declaration of Human Rights (Article 8). The ICCPR stipulates in Article 3(a) that states have a duty "[t]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

The Convention Against Torture provides in Article 12 that "each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction". Article 13 requires States parties to "ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of his complaint or any evidence given." Under Article 22, the CAT also provides for a mechanism of individual communications before the Committee, allowing victims or their representatives to lodge complaints for consideration by the Committee if they have "… exhausted all available domestic remedies [or] the application of the remedies is unreasonably prolonged or is

unlikely to bring effective relief to the person who is the victim of the violation of this Convention".[12]

The specific obligations of states regarding the right to remedy and reparation in cases of human rights violations (including torture and other ill-treatment) under human rights law were laid out in 2005 under UN General Assembly Resolution 60/147, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law".[13] According to this set of principles, states have a duty to:

- adopt appropriate and effective legislation and administrative procedures that provide fair, effective and prompt access to justice;[14]
- investigate human rights violations effectively, promptly, thoroughly and impartially;[15]
- submit to prosecution persons allegedly responsible for human rights violations, and if found guilty, punish them;[16]
- treat victims with humanity and respect for their dignity;[17] and
- ensure equal and effective access to justice and access to information concerning violations and reparation mechanisms.[18]

The UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol, has established an accepted criteria and recommendations for an effective investigation into allegations of torture and other ill-treatment, even in the absence of express complaints.[19] It

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[12] Convention Against Torture, Article 22, point 4(b). See: OHCHR, Factsheet No.17 on "The Committee Against Torture", OHCHR, Geneva, http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf (accessed 1 July 2015). In total, six complaints of torture against Kazakhstan have been submitted to the Committee against Torture since February 2008, including one case featured in this report (Oleg Evloev); this includes two cases of individuals fighting extradition to a third country where they would be at risk of torture and other ill-treatment. See http://www.ohchr.org/EN/HRBodies/CAT/Pages/Jurisprudence.aspx (accessed 1 July 2015). In addition, two complaints of torture against Kazakhstan have been submitted to the UN Human Rights Committee since September 2009 (including the case of Dmitry Rakishev, included in this report) (http://www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx, accessed 24 September 2015).

[13] United Nations General Assembly Resolution, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", A/RES/60/147, New York, adopted 16 December 2005.

[14] Annex to A/RES/60/147, point 2(b).

[15] Annex to A/RES/60/147, point 3(b).

[16] Annex to A/RES/60/147, point 4.

[17] Annex to A/RES/60/147, point 10.

[18] Annex to A/RES/60/147, point 11(a)(c).

[19] In addition to the Istanbul Protocol, the European Court of Human Rights has also released guidance

suggests that "[I]nvestigators, who shall be independent of the suspected perpetrators and the agency they serve, must be competent and impartial. They must have access to or be empowered to commission investigations by impartial medical or other experts. The methods used to carry out these investigations must meet the highest professional standards, and the findings must be made public".[20] The protocol recommends that the investigative authority should have sufficient financial and technical resources, and have the authority to summon officials and witnesses to testify. It also stipulates that victims of torture and other ill-treatment and their families must have full access to any investigations and must be kept fully informed of progress in the case, and that measures must be taken to protect alleged victims of torture or other ill-treatment, their families and other witnesses from reprisals for co-operating with the investigative procedures.

The Protocol emphasizes that law enforcement officials allegedly involved in torture should not be involved in investigative procedures: "Those potentially implicated in torture or ill-treatment should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses or their families, as well as those conducting the investigation".[21] State agents suspected of torture or other ill-treatment should be suspended from active duty during the investigation.[22] As will be illustrated by the cases in this report, at present, the recommendations included in the Istanbul Protocol are far from being routinely implemented in investigations into torture in Kazakhstan.

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on complaints against police in the case of a death or serious injury in police custody or as a consequence of police practice. The guidance lays out five principles for effective investigation: independence (there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence); adequacy (the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible); promptness (the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law); public scrutiny (procedures and decision-making should be open and transparent in order to ensure accountability); and victim involvement (the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests). (Council of Europe, "Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police", CommDH (2009)4, Council of Europe, Strasbourg, 2009, p.3.) While Kazakhstan is not a member of the Council of Europe (and hence, is not bound by the European Court of Human Rights), these principles nevertheless reflect international customary law standards, and provide a strong framework that could be adopted by Kazakhstani authorities as guidelines for the investigation of complaints of torture and other ill-treatment.

[20] OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series No. 8/Rev.1, OHCHR, Geneva, 1999, revised 2004, Annex 1, p.59 (OHCHR, *Istanbul Protocol*).

[21] OHCHR, *Istanbul Protocol*, Annex 1, p.59.

[22] United Nations, *Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38*, E/CN.4/2003/68, United Nations Economic and Social Council, 2002, para 26(k).

NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK

In recent years, Kazakhstan has made positive legislative amendments to address the problem of impunity for torture and other ill-treatment.[23] Article 17 of the Constitution of the Republic of Kazakhstan expressly prohibits torture and other treatment and punishment that is cruel or humiliating to human dignity, and in 2011, torture was reclassified as a crime against the Constitution: Article 141.1 in the Criminal Code prohibiting torture was moved from the chapter on "Crimes against Justice and the Order of Execution of Punishments", where it had been designated as a procedural violation, to the chapter on "Crimes against Constitutional Rights and Freedoms of the Individual".[24] At the same time, the Article was amended to extend criminal responsibility for torture to individuals acting at the instigation or with the consent or acquiescence of public officials.[25] Also in 2011, the mandate of the Special Prosecutor's Units (SPUs)[26] was extended, giving them the power to lead the investigation of all cases involving allegations of torture.

That same year, however, in a regressive step, the president signed a decree authorizing the transfer of the prison system from the Ministry of Justice back to the authority of the Ministry of Internal Affairs (*Ministerstvo Vnutrennykh Del* - MVD) where it remains. The Kazakhstani authorities had allowed some independent public monitoring of places of detention under the authority of the Ministry of Justice from 2005 to 2011, but access for independent monitors to police cells under the MVD and other detention facilities under the National Security Service since the transfer of the prison system back to the MVD has been more problematic, and most allegations of torture are received from these institutions.

In 2012, Prosecutor General Askhat Daulbayev instructed prosecutors to "open a criminal investigation into every incident of torture" and deal with every complaint of torture directly, either overseeing police investigations or conducting their own investigations. In the same year, the internal instructions for prosecutors were amended to give SPUs the direct authority to investigate the crime of torture; prosecutors do not otherwise have investigative powers.[27]

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[23] For a discussion of the definition of torture under Kazakhstani legislation, and of sentencing guidelines under the Criminal Procedure Code, please see Amnesty International, *Kazakhstan Submission to the United Nations Committee Against Torture*, 2014.

[24] This is now Article 146 under the new Criminal Code.

[25] However, the notion of "all persons acting in an official capacity" is not explicitly included, leaving room for impunity for torture when committed by, for example, other state employees, such as janitors or guards working in psychiatric institutions.

[26] Special Prosecutor's Units (SPUs) were originally established to deal with a small number of complicated and high-profile cases at their own discretion. They are a distinct prosecutorial division within the Prosecutor General's Office.

[27] The 18 July 2013 update to the Decree of the Prosecutor General on the Organization of Investigation by Prosecutor's Offices of 7 March 2012.

In 2014, Kazakhstan adopted a new Criminal Code[28] and new Criminal Procedure Code;[29] both codes came into force in January 2015. The new Criminal Code retains the amendments detailed above, and also abolishes the statute of limitations applicable to the offence of torture and increases the maximum punishment to 12 years. The new Criminal Code, according to article 78, also excludes those charged and/or convicted of torture from benefitting from amnesties. However, article 68, which regulates the exemptions from punishment for a crime, was not amended. Under article 68, a first-time offender charged under parts 1 or 2 of article 146 (torture), for which the maximum punishment is five years as these crimes are categorized as "not serious" under the official classification, can, during the pre-conviction period, "reconcile" with the victim and provide compensation, which puts an end to the criminal prosecution.

Additionally, in line with its obligations under the OPCAT, Kazakhstan adopted in 2013 the necessary legislation[30] to set up a National Preventive Mechanism (NPM). The NPM operates under the supervision of the Ombudsman. Members of the NPMare elected every year by the Mechanism's coordinating council; the members of the co-ordinating council itself are selected by the Ombudsman.[31]

The Kazakhstani authorities have repeatedly asserted their commitment to upholding and implementing Kazakhstan's international human rights obligations in regard to the full investigation of complaints of torture and other forms of ill-treatment, and its eradication. When Kazakhstan's human rights record was assessed for the first time under the UN Universal Periodic Review (UPR) process in early 2010, the state delegation reiterated in its presentation that the Kazakhstani authorities were committed to a policy of zero tolerance on torture, and that they "would not rest until all vestiges of torture had been fully and totally eliminated".[32] During Kazakhstan's second review before the UPR in 2014, the official state delegation stated that "[w]ork is continually under way to preclude offences connected with torture".[33]

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[28] Criminal Code of the Republic of Kazakhstan of July 2014, Law № 226-V (hereafter 'new Criminal Code').

[29] Criminal Procedure Code of the Republic of Kazakhstan of 4 July 2014, Law № 231-V (hereafter 'new Criminal Procedure Code').

[30] Law "On amendments and additions to some legislative acts of Kazakhstan on the establishment of a national preventive mechanism aimed at preventing torture and other cruel, inhuman or degrading treatment or punishment" of July 2013, Law № 111-V.

[31] The Ombudsman is appointed by the president of Kazakhstan.

[32] UN General Assembly Human Rights Council, Universal Periodic Review, "Report of the Working Group on the Universal Periodic Review – Kazakhstan", A/HRC/14/10, Geneva, March 2010.

[33] UN General Assembly Human Rights Council, Universal Periodic Review, "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Kazakhstan", A/HRC/WG.6/20/KAZ/1, Geneva, October 2014.

Unfortunately, these bold promises have not been borne out by reality. Despite the introduction of legislative safeguards against torture and other forms of ill-treatment and of procedures for assessing complaints, investigations into allegations of torture and other ill-treatment have fallen far short of international standards of prompt, thorough and impartial investigations and have failed to deliver justice and reparations for victims. Impunity for human rights violations by the police and security services, including torture and other ill-treatment, remains fundamentally unchallenged. In November 2014, the UN Committee against Torture (CAT) expressed concern at "the gap between legislation and protection from torture", noting that the use of torture and other ill-treatment to obtain confessions "went beyond isolated incidents".[34]

[34] UN Committee against Torture,"Committee against Torture considers the report of Kazakhstan", 18 November 2014, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15309&LangID=E#sthash.TzD4M9r4.dpuf (accessed 29 July 2015).

PROCEDURES FOR INVESTIGATING TORTURE AND OTHER ILL-TREATMENT IN KAZAKHSTAN

LODGING A COMPLAINT

Under both the old and the new Criminal Codes, torture is a crime[35] and should be reported to the law enforcement agencies (the Criminal Police, the Financial Police,[36] or the National Security Committee or the Prosecutor's Office). This applies to all victims, regardless of whether they have been convicted of a crime and imprisoned or are detained in a secure closed facility (such as a psychiatric unit), are detained awaiting trial, or are free and have not been charged with any crime.

However, the new Criminal Procedure Code still contains the provision that a person who is the subject of criminal proceedings and who has been subjected to torture or other ill-treatment during their arrest or pre-trial detention can make a complaint of procedural "wrongdoing" to a prosecutor or judge against the police officers involved in the abuse (or any other security or law enforcement officers).In practice, criminal suspects, witnesses and defendants are rarely made aware of the fact that they have the right to report torture or other ill-treatment as a crime (unless they are in contact with a lawyer or an NGO that informs them of this right). Instead, they are ordinarily told by state custody officials to lodge a complaint of procedural "wrongdoing" against the official(s) involved, under Article 105 of the new Criminal Procedure Code.[37] This Article (corresponding to Article 108 of the previous Criminal Procedure Code) governs the complaints procedure against "actions or decisions of persons carrying out pre-trial investigation" in the course of arrest, search, seizure and other pre-trial activities, torture is mentioned as one amongst several relevant "violations of law" (alongside the use of "violence" and "threats", and "violation of the right to defence").

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[35] As discussed above in the section on Methodology, the definition of torture included in the Criminal Code is broad and encompasses other forms of cruel, inhuman and degrading treatment, beyond the definition of torture included in the Convention against Torture.

[36] The Financial Police have now been renamed the Agency on Civil Service Matters and Anti-Corruption.

[37] Article 105 of the new Criminal Procedure Code (corresponding to article 108 of old Criminal Procedure Code) governs the complaints procedure against "actions or decisions of persons carrying out pre-trial investigation". Torture is mentioned there as one of the "violations of law" that happen during arrest, search, seizure, and other methods of crime investigation among other abuses such as "violence", "threats", and "violation of the right to defence". In the new criminal procedure code, these procedural violations require checks from a prosecutor that should be performed within three days of receiving a complaint before getting back to the complainant. In comparison, reports of crimes, according to the new criminal procedure code, do not require any preliminary screening and should prompt investigation right after the crime report was registered.

Under separate legislation governing prisons and other closed facilities (e.g. psychiatric facilities, juvenile detention centres), prisoners and all those who are detained in such facilities who are subjected to torture or other ill-treatment are typically instructed to use internal mechanisms of complaint to register internal violation reports, even though they have the same right as anyone else to report torture as a crime directly to the Prosecutor's Office.

Whereas the procedure for reporting a crime, including torture and other ill-treatment, is detailed in the Criminal Procedure Code (Article 181), the internal complaints procedures for those who allege abuses by law enforcement officials or staff in prisons or other secure closed facilities are governed by bylaws and internal guidelines, and leave very little space for victim participation and his or her protection. For instance, when a person makes a complaint under the internal complaints procedures, he or she (and his or her legal representative) has no official status in the investigation and cannot lodge a motion for additional evidence to be examined, or for additional witnesses to be interrogated. In addition, the internal investigations procedure is confidential, although prosecutors can access them and provide oversight, if they choose to.

PRELIMINARY SCREENING

Before the new Criminal Procedure Code came into force in January 2015, all reports of crimes, prior to the institution of a criminal case, had to go through a screening process (*dosledstvennaya proverka*) to determine the elements of the crime, including whether a crime had actually taken place. In cases of torture and other ill-treatment, while they were officially under the supervision of a prosecutor, the investigative work required for the preliminary screening was usually carried out by the same internal investigation units *within* the agency whose officers were accused of carrying out the abuse; this in turn created an incentive for impunity.

Under the new Criminal Procedure Code, no preliminary screening is required before instigating a criminal investigation (Article 35). The Code states that investigations shall be carried out once a report of a crime is registered (and this is the case for torture just as it is for any other crime),[38] and will be terminated only if the investigating body fails to establish that a crime took place after having "exhaust[ed] all possibilities to collect additional evidence".[39] As such, under the new Criminal Procedure Code, when a person reports torture or other ill-treatment as a crime to a law enforcement agency, a criminal investigation should be launched immediately.

When somebody who is subject to criminal proceedings makes a report of procedural "wrongdoing" (as detailed above), rather than reporting torture as a crime, the new Code stipulates that the complaint should be reviewed initially by the prosecutor to conduct a "prosecutorial verification" and decide within three days whether to take any action or

[38] Article 34, new Criminal Procedure Code.

[39] Article 35, part 2, new Criminal Procedure Code.

decline the complaint, and respond to the complainant accordingly.[40] Following the conclusion of this prosecutorial verification, the prosecutor concerned either decides to open a criminal investigation into the complaint, classing it as torture or "exceeding authority or abuse of power" (Article 362 of the new Criminal Code), or dismisses the complaint as unfounded. Accordingly, in such cases, preliminary screening of torture and other ill-treatment cases still appears to be in place.[41] In effect, this opens up a loophole in the system, allowing prosecutors to close down investigations prematurely, when they decide to decline the complaint.

The lack of a uniform approach to reviewing torture and ill-treatment complaints persists, therefore, putting criminal suspects who are encouraged to submit a complaint of procedural "wrongdoing" rather than being made aware of their right to register a crime of torture at a considerable disadvantage, and leaving room for impunity and injustice.Instead, at the stage when a prosecutor receives notice of a complaint of procedural "wrongdoing", he or she should immediately reclassify the complaint as one of torture or other ill-treatment that should be investigated as a criminal offence.

CRIMINAL INVESTIGATIONS

In response to recommendations from the UN Special Rapporteur on torture after his visit to Kazakhstan in 2009, the government of Kazakhstan indicated its commitment to ensuring "that investigations into allegations of torture are conducted by a body independent from the body investigating the case against the alleged victim".[42] In 2011, the Criminal Procedure Code was amended to stipulate that if a complaint is brought against the Criminal Police, the investigative function will be fulfilled by the Financial Police,[43] and vice versa, under the supervision of a prosecutor.[44] This is a general standard applicable to all criminal investigations, not just torture and other ill-treatment: an investigating authority should be unbiased in its inquiry and have no conflict of interest with the prosecuted party. The same safeguard is in place regardless of whether the criminal investigation has been initiated following a prosecutorial verification that resulted in the decision to launch a criminal investigation into an allegation of torture or ill-treatment (following a complaint of procedural "wrongdoing"), or following a complaint made directly to a law enforcement agency. However,

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[40] Under Article 108 of the previous Criminal Procedure Code, the Prosecutor had up to five days to review a complaint of torture, and up to seven days to review other complaints.

[41] The same applies to prisoners making complaints of torture or other ill-treatment under the Penal Execution Code.

[42] UN General Assembly Human Rights Council, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Mission to Kazakhstan", A/HRC/13/39/Add.3, Geneva, 2009, n.6. Available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/13specialsession/A.HRC.13.39.Add.3_en.pdf (accessed 1 July 2015).

[43] The Financial Police are vested with investigatory powers over complaints of torture, as torture is deemed an official malfeasance, which falls within the investigatory authority of the Financial Police.

[44] Article 187 of the new Criminal Procedure Code (Article 192 of the previous Criminal Procedure Code).

it only comes into effect *once* a criminal investigation has been launched, with no such stipulation in regard to the "prosecutorial verification" that still takes place following a complaint of procedural "wrongdoing". In such cases, the prosecutor has no obligation to assign the investigation of the complaint to an outside agency. Where SPUs are involved, they have the power to conduct investigative work themselves. This offers the potential to improve the impartiality and effectiveness of investigations into police abuses, however, as discussed below, this authority is used inconsistently.

APPEALING A REFUSAL TO OPEN A CRIMINAL INVESTIGATION

Under both the new Criminal Procedure Code and the previous Criminal Procedure Code, when a complainant receives notification of a refusal from a prosecutor to initiate a criminal investigation into their complaint of torture, he or she has the option to appeal the decision to a Prosecutor's office (i.e. the Prosecutor General's Office, or a regional prosecutor), as the body responsible for supervising the legality of criminal proceedings. A complainant also has the option to appeal the decision in court.

FAILURES IN THE INVESTIGATION AND PROSECUTION OF TORTURE AND OTHER ILL-TREATMENT

The Coalition of NGOs of Kazakhstan against Torture recorded between 350 and 400 complaints of torture and other forms of ill-treatment in Kazakhstan annually in 2013 and 2014.[45] Of the cases recorded by independent NGOs, not all were then registered with law enforcement bodies, and a very small number eventually resulted in prosecution, with the Committee against Torture noting in its Concluding Observations on Kazakhstan in 2014 that "less than 2 per cent of the complaints of torture received by the State have led to prosecutions".[46]

Statistics from the official website of the Prosecutor General's Office also point to the low number of registered crimes and of convictions: in 2013 and the first half of 2014, 31 police officers were convicted of torture-related crimes (including for crimes committed in earlier years). From January to September 2014, 43 crimes of torture were registered (with no details as to how many criminal cases were opened), with 47 individuals identified as alleged victims, including 11 prisoners, three underage college students and one elderly person.

During the same period, 17 torture-related cases were submitted to court for trial and 30 cases were closed because of the absence of evidence of a crime.[47] In the first seven months of 2015, 94 criminal cases of torture were registered, and 291 criminal cases of torture were terminated (although it is unclear from the statistics when these cases were initiated).[48] Ten cases reached court, and 5 people were found guilty of torture, of whom only one was sentenced to two years in prison.[49]

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[45] Coalition of NGOs Against Torture, "Встречи с представителями Европейского Союза в рамках международной адвокации, май 2015 г." ["Meeting with representatives of the European Union within the framework of international advocacy"].

[46] UN CAT, "Concluding observations", 2014, p.3.

[47] Official website of the Office of Prosecutor General, statistics, available at http://service.pravstat.kz/portal/page/portal/POPageGroup/Services/Pravstat (accessed 29 July 2015).

[48] Statistics obtained from the Prosecutor General's office following a written request from the Coalition of NGOs of Kazakhstan against Torture.

[49] Two of the law enforcement officers who were convicted were sentenced to restrictions on their freedom, and two were given suspended sentences.

However, these numbers do not reflect the real situation of torture and other ill-treatment in Kazakhstan, where many cases are categorized and investigated as "exceeding authority or abuse of power" (Article 362 of the new Criminal Code), rather than as the crime of torture.[50] The crime of "exceeding authority or abuse of power" covers a wide range of different forms of abuse carried out by any state official in a position of power, not just law enforcement employees.[51] As such, its use in torture cases serves to mask the true nature of the crime and the extent of the use of torture and other ill-treatment within the criminal justice system in Kazakhstan.

DISMISSAL OF COMPLAINTS FOLLOWING PRELIMINARY SCREENING

Under the previous Criminal Procedure Code, in the majority of cases preliminary screening concluded that the complaints were unfounded or they found that the perpetrators could not be identified. For instance, in the case of 37 defendants charged with participation in violent clashes in Zhanaozen (see page 16 for full case details), after initial screening, the Internal Investigations Department of the Ministry of Internal Affairs (MVD) dismissed all the allegations of torture against the defendants as unfounded. Despite requests for information about the screening review from lawyers for the victims of torture and other ill-treatment, no details of the investigation were made public (including to lawyers) and the MVD Internal Investigations Department provided only general replies about the lack of evidence against the alleged perpetrators.

One of the main difficulties with the preliminary screening process in place prior to the introduction of the new Criminal Procedure Code was the lack of clarity about what it should comprise, or who should conduct it. Amendments to the previous Criminal Procedure Code in 2011 stipulating that the investigation into a complaint of torture and other ill-treatment should be run by an outside agency (i.e., the Financial Police if the allegation was made against a member of the Criminal Police, and vice versa) only apply once a criminal case is officially opened. This meant that preliminary screenings into torture were routinely run as internal investigations, conducted by officers from *within* the agency whose members were accused of carrying out the ill-treatment. This hampered the impartiality of the investigation, and meant that investigators usually did not check the complaint objectively and with due diligence. The regional Internal Investigations Departments that carried out these investigations were divisions vested with wide-ranging and unspecified powers, one of which was the consideration of complaints concerning illegal acts committed by law enforcement officials, including allegations of torture and other ill-treatment.[52] In addition, those making a

[50] Amnesty International was not able to obtain details of the number of prosecutions under this article of the Criminal Code.

[51] Both crimes carry similar maximum penalties, but unlike torture, "exceeding authority and abuse of power" is included in the statute of limitations and persons convicted of "exceeding authority and abuse of power" can be amnestied. Like the article in the Criminal Code relating to torture, "exceeding authority and abuse of power" is not subject to prosecutorial verification.

[52] Provisions of the Department of Internal Security of the Ministry of Internal Affairs of the Republic of Kazakhstan, #13 of 27 October 2011.

complaint of torture or ill-treatment had no legal status in regard to these internal investigations, meaning they and their representatives could not submit evidence or gain access to the papers relating to the investigation.[53]

Most activities of these Internal Investigations Departments were regulated by by-laws and internal regulations which were not accessible to the public. In 2008, a report by human rights NGOs to the Committee Against Torture highlighted that: "… it has proved impossible to familiarize [ourselves] with the Act regulating the work of this structure [Internal Investigations Departments]. The representative of the Department of Internal Security of the Almaty branch of the [Ministry of Internal Affairs] told us that the document was secret".[54] Kazakhstani human rights lawyers interviewed for this report said that there was nothing written in open source legislation that provided legal basis for complaints of torture or other ill-treatment to be referred to the Internal Investigations Departments of the very same law enforcement or security bodies that the complaint was made against.[55]

In this context, it is hardly surprising that investigations at the preliminary screening stage were opaque and "behind closed doors", with victims not kept informed as to what stage their case had reached. Victims were not routinely interviewed as part of this preliminary screening, and often, were not even aware that a screening review of their complaint was underway until they received an official reply informing them that it was found to be groundless, that no compelling evidence of torture was found and therefore a criminal investigation would not be initiated, as the case of Oleg Evloev shows. The lack of information provided in these replies indicated the perfunctory nature of the investigations, with no details on what steps had been taken to investigate the allegations.

OLEG EVLOEV

Oleg Evloev complained of having been tortured over a period of 70 days, beginning in December 2008. Despite lodging his original complaint of torture with the Prosecutor's Office in Astana on 10 December 2008, Oleg Evloev'scomplaint was checked only in May 2009. After a two-week review process, the Internal Investigations Department of the Department of Internal Affairs of Astana refused to initiate criminal proceedings against the police officers who Oleg had identified as his torturers, due to lack of evidence. The

[53] Coalition of NGOs in Kazakhstan Against Torture, "Kazakhstan Responses to the List of Issues on Implementation of CAT Submitted by national civil society organizations for consideration at the 53rd session in Geneva 3-28 November, 2014", Almaty, 2014, p.18 (Coalition of NGOs in Kazakhstan against Torture, "Kazakhstan Responses to the List of Issues on Implementation of CAT).

[54] NGOs of Kazakhstan, *Альтернативный доклад НПО Казахстана, О выполнении Республикой Казахстана Конвенции ООН против пыток и других жестоких, бесчеловечных или унижающих человеческое достоинство видов обращения и наказания, 2008 г* [Alternative report of NGOs of *Kazakhstan, on Kazakhstan's implementation of the UN Convention Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2008*], Almaty, 2008, http://www1.umn.edu/humanrts/russian/cat/Raltngoreport_kazakhstan.html (accessed 10 December 2015).

[55] Interview with Anastassiya Miller, Director of the Kostanai branch of the Kazakhstan International Bureau for Human Rights and Rule of Law, May 2014.

victim was not involved in the review process and he did not know what it comprised. In addition, he was only provided with the decision in July 2009, after his conviction on 16 June 2009. During his trial, Oleg Evloev stated that he had been tortured, but the judge ignored his complaint and Oleg was not able to challenge the internal investigation of his complaint of torture during the trial, as he did not know that it was under investigation.

After the trial, Oleg Evloev and his family attempted to appeal the refusal to mount a criminal investigation of the torture he was subjected to, contacting both the Ministry of Internal Affairs and the Prosecutor's Office, but this did not yield any positive result.[56] In December 2013, the UN Committee against Torture upon considering this case found that Oleg Evloev "was never promptly informed by the authorities who investigated his complaints, as to whether the investigation was being carried out and at what stage the investigation was".[57]

The Committee found Kazakhstan was in breach of its obligations under the Convention against Torture and urged the State to conduct a proper, impartial and independent investigation in order to bring to justice those responsible of having subjected Oleg Evloev to torture, and to provide the complainant with redress and fair and adequate reparation, including compensation and full rehabilitation. Finally, the Committee instructed the State to take the appropriate measures to prevent similar violations in the future.[58]

Following the statement of the Committee against Torture, Oleg Evloev made a claim for moral damages, but this was dismissed by the Saryarkinskii Regional Court.[59] By the time of writing, Oleg Evolev had not received any kind of reparation.

LACK OF ACCESS TO LEGAL COUNSEL AND COMPLAINTS MECHANISMS IN PRE-TRIAL DETENTION AND PRISONS

In its initial consolidated report, the National Preventative Mechanism (NPM) noted that those held in pre-trial detention and in prison often lacked access to information about their rights, or about how to complain about torture and other ill-treatment, or how to contact human rights organizations for support (once convicted of a crime, prisoners are not entitled

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[56] Kazakhstan International Bureau for Human Rights and the Rule of Law / Coalition of NGOs in Kazakhstan Against Torture / Open Society Foundation, *Обстоятельства совершения пыток и наказания виновниых в Казахстане* [*The Current State of Torture and Punishment of Perpetrators in Kazakhstan*], Almaty, 2014, pp.30-31 (KIBHR, *Обстоятельства совершения пыток и наказания виновниых в Казахстане* [*The Current State of Torture and Punishment of Perpetrators in Kazakhstan*]).

[57] UN Committee against Torture, "Committee against Torture Communication No. 441/2010 Decision adopted by the Committee at its fifty-first session,28 October to 22 November 2013", CAT/C/51/D/441/2010, Geneva, 17 December 2013, p.16 (UN Committee against Torture, "Committee against Torture Communication No. 441/2010").

[58] UN Committee against Torture, "Committee against Torture Communication No. 441/2010", p. 17.

[59] KIBHR, *Обстоятельства совершения пыток и наказания виновниых в Казахстане* [*The Current State of Torture and Punishment of Perpetrators in Kazakhstan*], p.31.

to any state-provided legal aid).[60] The NPM identified this as a significant barrier to preventing torture and ill-treatment in prisons and pre-trial detention centres.

Lawyers interviewed by Amnesty International in 2015 also highlighted the difficulties that they often face in gaining access to their clients who are in prison or pre-trial detention, and in being able to speak to them in confidence. One lawyer told Amnesty International how she had initially been stopped by the prison authorities from speaking to her client alone "because she was a woman", and therefore would be "unsafe" alone in a room with her male client. Later, she was allowed to see her client, but their interview was observed by a prison officer standing at the open window, meaning they could only communicate by writing notes to each other.[61] In addition, with the exception of letters to lawyers, all correspondence between prisoners and the outside world is read by prison officials, including letters to monitoring bodies such as the PMCs and the NPM; this includes written complaints of torture and other ill-treatment made to these bodies (the only exceptions are letters written to courts and to prosecutors).[62]

According to international law, States are obliged to respect the confidentiality of communications and consultations within the professional relationship between lawyers and their clients.[63] Governments must ensure that detainees can consult and communicate with counsel without delay, interception and censorship.[64]

Inevitably, the lack of confidentiality, interception and censorship of communications between detainees and their counsel acts as a barrier to justice for victims of torture and other ill-treatment, as they are unable to speak in confidence to their lawyers or obtain legal counsel on how to proceed with registering a complaint.

"BUREAUCRATIC PING-PONG"

Under the old Criminal Procedure Code (before the introduction of the clause stipulating that a criminal investigation should be launched automatically in all cases), preliminary screening of torture complaints was followed by a decision whether or not to open a criminal

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[60] National Preventative Mechanism, *Консолидированный доклад участников национального превентивного механизма по итогам превентивных посещений, выполненных в 2014 году* [*Consolidated report of members of the National Preventative Mechanism, based on the results of preventative visits, undertaken in 2014*], Astana, 2015.

[61] Interview with Svetlana Kovlyagina, lawyer (who works in Pavlodar), 3 September 2015, Astana.

[62] Coalition of NGOs of Kazakhstan against Torture, *Пытки в Казахстане: вчера. Сегодня. Завтра? Отчет Коалиции НПО Казахстана против пыток. Июнь 2015* ["Torture in Kazakhstan: yesterday. Today. Tomorrow? Report of the Coalition of NGOs of Kazakhstan against Torture. June 2015"], Almaty, 2015, p.11 (Coalition of NGOs of Kazakhstan against Torture, *Пытки в Казахстане: вчера. Сегодня. Завтра?* ["Torture in Kazakhstan: yesterday. Today. Tomorrow?]).

[63] United Nations, "Basic Principles on the Role of Lawyers", Principle 22.

[64] See UN Human Rights Committee, "General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial", UN Doc. CCPR/C/GC/32, 2007, para. 34.

investigation. If the decision was made not to open a criminal investigation, the victim could appeal. However, as illustrated in the cases in this report, often the prosecutor assigned to review the case failed to do so thoroughly and impartially, and tended to agree with the initial decision. He or she would either find the police refusal to open a criminal investigation on the basis of the preliminary screening to be lawful (in which case the victim was not able to initiate a new complaint until the prosecutor's decision was overturned by a higher ranking prosecutor), or simply send the case back to the corresponding Internal Investigations Department for additional screening with the same predictable result.

In many cases the Internal Investigations Department claimed to have been unable to find evidence of torture and rejected the request for a criminal investigation. The prosecutor usually supported this decision, although he or she had the power to order the instigation of a criminal case or to refer the case again to a different law enforcement agency (for example, the Financial Police if the complaint was made against the Criminal Police) for further screening. This is what the lawyers and NGO caseworkers in Kazakhstan have called "bureaucratic ping-pong", as responsibility for investigating complaints of torture and ill-treatment is passed from agency to agency, with none making genuine efforts to investigate. Even once a criminal investigation was launched, this "ping pong" could continue for years, with investigators failing to keep the complainant informed of developments in the case; claims that the perpetrators responsible for the torture or ill-treatment cannot be identified, even when the victim had identified specific officers; and the dragging out of investigations and subsequent trials, as cases were referred back and forth between different agencies and courts. Inevitably, this often had the effect of leaving the victim exhausted and despairing of ever achieving redress, as the case of Vasily Maklakov so aptly illustrates.

VASILY MAKLAKOV

Vasily Maklakov has struggled for redress since he was detained and tortured in 2006. Although he can identify the two officers who were responsible for torturing him, and despite several medical documents testifying to his injuries,[65] the investigation against the police officers believed to be responsible has been opened and then suspended several times, due to a purported inability to identify the perpetrators. This is despite the fact that in May 2014, Vasily Maklakov's lawyer told Amnesty International that his client "can remember all the police officers from the South Kostanai Police Department who detained him illegally on 25 and 26 June [2006]. Vasily Maklakov later also found out the names of the police officers responsible [...]. In addition, the injuries he sustained in police detention are clearly documented".

On 25 June 2006 at about 5 am Vasily Maklakov was detained at his workplace, a public baths (*banya*), after he and his co-worker called the police in connection with a break in and a violent robbery. At around 7 am

[65] In Kazakhstan, a lawyer can request that an investigator or a judge consider medical evidence submitted by an independent medical expert. This evidence will carry less weight in court than a report submitted by a member of the official forensic medical service, but it will still be considered. To have a patient examined by an official forensic medical expert, a referral needs to be made by a state official, such as in investigator, or the court.

Vasily Maklakov was taken home by police officers to fetch his ID and then taken to the building of the South Kostanai Police Department. There, Vasily Maklakov underwent a medical examination which recorded the injuries he had sustained during the break in and attack by the intruders. He was subsequently detained for over 24 hours in the South Kostanai Police Department.

Vasily Maklakov says that police officers tortured him to force him to admit to committing the robbery at the *banya*. Vasily Maklakov stated that the officers hit him with a plastic bottle filled with water on various parts of his body, particularly the head and back, and that they hit him with a chair and kicked him. They also sexually humiliated him. That night he was taken to a centre for administrative detainees and held there although his administrative detention was not registered, and no one told him why he was being held nor how long he would be there. "They treated me like a dumb animal … I was ashamed at being treated this way by younger people who could have been my sons".Vasily Maklakov was eventually released without charge the following day.

For over nine years, Vasily Maklakov has fought for redress. He repeatedly appealed to the Prosecutor's Office, but his statements were forwarded for investigation to the Internal Investigations Department of the Kostanai (regional) department of the Ministry of Internal Affairs, who repeatedly refused to initiate criminal proceedings.

On 28 September 2011, Kostanai Regional Court finally ruled that Vasily Maklakov's complaint should be investigated and sent the case to the Kostanai Regional Prosecutor's Office to initiate criminal proceedings against the two police officers involved. On 7 February 2012, a criminal case was opened under Article 308.2 of the previous Criminal Code ("Exceeding authority and abuse of power"), but neither Vasily Maklakov nor his defence lawyer were informed of this development. The criminal case was then again sent to the Internal Investigations Department of the Kostanai regional department of the Ministry of Internal Affairs.

More than four months after the initiation of the criminal investigation into his allegation of torture, on 21 June 2012 Vasily Maklakov was questioned by the investigator as a victim. After this, neither he nor his defence lawyer received any further information about the progress of investigations, until they were informed in July 2012 that the police investigator of the Internal Investigations Department of Kostanai regional MIA had ruled to close the investigation on the grounds that the identity of the police officers had not been established. This was despite Vasily Maklakov's statement and the decision of Kostanai Regional Court 10 months earlier, which clearly stated the names of the police officers involved.

The prosecutor gave the order to reopen criminal proceedings and start investigations on 9 October 2012. The case was passed to the Financial Police for investigation and Vasily Maklakov was summoned for questioning and to take part in an identification parade. However, on 23 November 2012 the senior investigator of the Financial Police of Kostanai Region ordered the investigation to be discontinued. Vasily Maklakov's defence lawyer only learned of this in February 2013, when he received the procedural document which said that "the criminal case under Article 308.2 of the Criminal Code was discontinued since the guilt of [the two police officers] was not proven". This decision was overturned by the Kostanai Regional Prosecutor's Office after Vasily Maklakov's lawyer appealed. The criminal case was returned for investigation once more to the Internal Investigations Department of the Kostanai Regional department of the Ministry of Internal Affairs.

On 28 October 2013 the senior investigator of Kostanai Regional Police Department announced that the proceedings had been suspended on the grounds that the perpetrators could not be identified.

When Amnesty International spoke to Vasily Maklakov's lawyer in September 2015, he said: "The case is 'buried'. Maklakov himself has refused [to take it any further]. How long can we go on? We've been working on it for nine years. Three experts confirmed the facts [...] A person is weak, he can't fight against the system. The state needs to fight against itself."

CRIMINAL INVESTIGATIONS INTO ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT RARELY MAKE IT TO COURT

Even in cases where a report of torture or other ill-treatment leads to a criminal investigation, a thorough and impartial investigation is not guaranteed and numerous barriers obstruct adequate reparations for victims.

ASSUMPTION THAT ACCUSATIONS OF TORTURE AND ILL-TREATMENT ARE A "DEFENCE TACTIC"

One major barrier to criminal investigation into allegations of torture and other ill-treatment is the presumption on the part of prosecutors and other agencies that complainants are lying, even in the face of compelling evidence. Officials at the Prosecutor General's Office and the Ministry of Internal Affairs informed Amnesty International that in their view, in the majority of cases, defendants who raised allegations of torture and ill-treatment during court proceedings only did so in order to avoid responsibility for the crimes that they had committed.[66] A similar view was expressed in 2012 by the judges presiding at the trial of 37 defendants prosecuted following the events in Zhanaozen (see page 16 for full details) who dismissed complaints of torture made by the defendants, despite the fact that the allegations were reiterated under oath, and were consistent with accounts given by others who had been detained and then released. This is also the view taken by the authorities in the case of Anatolii Krivobokov, detailed below (see page 49), and in other cases documented by Amnesty International.

FAILURE TO COLLECT EVIDENCE

The assumption that defendants are lying when they make allegations of torture and ill-treatment underlies the reluctance on the part of prosecutors and others involved in the criminal proceedings, including in some cases, even state-appointed lawyers[67] to collect and document evidence, or for prosecutors or investigating authorities to take medical and forensic evidence into account in their consideration of a case. As discussed in greater detail in the Amnesty International 2014 CAT submission, one reason for this is that torture and other ill-treatment often take place before the suspect's arrest has been officially registered, in periods of unrecorded detention when detainees are effectively outside the protection of the law, and are deprived of key safeguards such as the right to know their rights, right to access legal counsel and to inform their relatives of their whereabouts.[68] In addition, at the

[66] Response to a written request from Amnesty International to the Prosecutor General's office, made in early 2013.

[67] If a defendant is not able to pay for a lawyer, they are provided with a lawyer appointed and paid by the state. See Amnesty International 2014 CAT submission p.7 for more details.

[68] See Amnesty International, *Kazakhstan Submission to the United Nations Committee Against Torture*, 2014, pp.7-8. See also "Доклад неправительственных правозащитных организаций Казахстана о

point when an arrest is officially registered, medical officers do not automatically conduct an impartial examination of the person under arrest for signs of torture and ill-treatment; this only happens if such an examination is requested by the detainee or his or her lawyer.[69]

Even in cases where evidence of torture and other ill-treatment that took place during unrecorded detention has been documented by a medic, this is no guarantee that the medical evidence will be accepted by the prosecutor, as the case of R.O. illustrates.

R.O.

In December 2012, R.O.,[70] a 22 year-old man, told the NGO Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) that on 21 December 2012 he was detained by police in his home in Almaty. He was then taken to the Zhetisu District Police Station where police officers tortured him by burning him with an iron and a cigarette lighter and suffocated him with a plastic bag. The police officers also threatened him with sexual abuse in order to make him testify against his father who had been detained on suspicion of murder. R.O. was held for 17 hours in unregistered (i.e. officially unacknowledged) detention.

Upon his release, R.O. underwent a medical examination that confirmed injuries consistent with his allegations of ill-treatment. He then filed a complaint with the Zhetisu District Prosecutor's Office which referred the complaint to the Zhetisu police Internal Investigations Department for internal screening. Two months later, in February 2012, the police Internal Investigations Department of Zhetisu concluded that no criminal case could be opened against the officers accused of torturing R.O. as there was no evidence of a crime. The city Prosecutor's Office supported this decision. Both agencies effectively brushed aside the results of R.O.'s medical examination and his detailed statement to come to this conclusion. R.O. was discouraged by this and subsequently refused to pursue his complaint further.

In cases of deaths in custody, criminal investigations are automatically opened. Often, if there is no evidence other than the fact of the death and the words of witnesses, the case is closed on the grounds of lack of evidence, including failure to identify the perpetrator. In addition, such cases are on occasion opened long after the death has occurred, and only if the victims' relatives or an NGO pursues justice. This is what happened in the case of Dmitry Rakishev, who died of the injuries inflicted upon him in 2011. His case is under consideration by the UN Human Rights Committee,[71] after the Astana office of the

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выполнении Республикой Казахстан Международного Пакта о Гражданских и Политических Правах (дляпредставления в Комитет по правам человека Организации Объединенных Наций)" ["Report of non-governmental organizations of Kazakhstan on the Republic of Kazakhstan's implementation of the International Covenant on Civil and Political Rights (for presentation to the Committee on Human Rights of the United Nations"], Almaty, 2011, pp.7-8, and National Preventative Mechanism, *Консолидированный доклад* [*Consolidated report]*, 2014, p.24.

[69] Coalition of NGOs in Kazakhstan against Torture, *Проблемы с предотвращением, выявлением, расследованием случае впыток в Казахстане* [*Problems with the prevention, identification, investigation of cases of torture in Kazakhstan*], Almaty, 2015.

[70] R.O. did not wish for his identity to be revealed.

[71] The UN Human Rights Committee monitors the implementation of the UN International Covenant on Civil and Political Rights (ICCPR). It is distinct from the UN Human Rights Council.

Kazakhstan International Bureau for Human Rights and the Rule of Law submitted an individual communication. By contrast, without the support of an NGO and a lawyer, the relatives of Aleksei Mamuch-Ogli have waited over a year for any information about how Aleksei died in prison.

DMITRY RAKISHEV AND ALEKSEI MAMUCH-OGLI: UNEXPLAINED DEATHS IN CUSTODY

The case of Dmitry Rakishev, highlights significant flaws in investigation procedures in Kazakhstan, most notably the instigation of a criminal investigation far too long after the incident took place, despite a death in police custody which should have triggered a prompt and thorough investigation. It also highlights the important role of NGOs in supporting survivors of torture and their families to press for full investigations and, where appropriate, prosecutions. In this case, the Astana office of the Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR) lodged dozens of complaints to various authorities, with the aim of bringing those responsible for the death of Dmitry Rakishev to justice. It was due to the KIBHR's efforts that the case was eventually investigated and brought to court, in autumn 2012.[72]

Dmitry Rakishev, a 21-year-oldman, died in a temporary detention facility in Stepnogorsk on 8 May 2011, after being detained while serving a suspended sentence for robbery. The reasons for his detention were not made clear to his family. On 28 April 2011, Dmitry left his home to go to the local police station where he had to sign in regularly under the conditions of his suspended sentence. He did not return home that day, and the next day the police told Dmitry's parents that he was in detention, referring to a court order to detain Dmitry Rakishev on new criminal charges. According to the police, when Dmitry Rakishev was detained on 29 April, he had already been injured and was drunk. Between 30 April and his death on the morning of 8 May, an ambulance was called to the temporary detention facility for Dmitry several times. On 7 May, Dmitry was taken for an X-ray to the local hospital, which showed that two of his ribs had been fractured. An independent medical expert consulted later by the lawyer acting on behalf of Dmitry Rakishev's family estimated that the injuries had been sustained seven or eight days previous to 7 May, when Dmitry was already in police detention. Dmitry's two cellmates testified that he had sustained the injuries in detention. The official medical record states that Dmitry died of traumatic pneumonia.

Initially, the police refused to open a criminal investigation into Dmitry Rakishev's death. However, after the efforts of the Astana office of the KIBHR, who between 2011 and 2014 lodged over 50 complaints to different official bodies demanding that those responsible for Dmitry Rakishev's death be brought to justice, a case was opened in October 2011 by the Financial Police against the head of the detention facility. In autumn 2012, the head of the detention facility was convicted of negligence and sentenced to three years in prison but was released immediately under an amnesty law in force at that time. The persons who actually caused Dmitry Rakishev's injuries were never identified or tried before a court, and none of the medical staff who had seen Dmitry during his detention were prosecuted, despite an official forensic report concluding that they had failed

[72] KIBHR, *Обстоятельства совершения пыток и наказания виновниых в Казахстане* [*The Current State of Torture and Punishment of Perpetrators in Kazakhstan*], p.38.

in their duty of care towards him.[73]

In 2014, the KIBHR made an individual communication to the UN Committee on Human Rights in this case. The complaint is still under consideration.[74]

When Amnesty International spoke to the mother of **Aleksei Mamuch-Ogli** in September 2015, she was still waiting to find out how her son had died in prison over a year earlier, on 14 April 2014.

Aleksei Mamuch-Ogli was sentenced on 18 May 2011, at the age of 26, and moved to the strict regime prison OV-156/6 at Shemonaikha. According to his mother, he was a fit and healthy young man. When she visited him in pre-trial detention, he seemed fine and did not complain of any illness, or of any ill-treatment. However, in February 2014 he was admitted to hospital for an emergency operation on his stomach; the surgeon who operated on him told his mother that he had a tumour in his abdomen. His mother recalled that previously that month, Aleksei Mamuch-Ogli had complained to his prison division guard of severe stomach ache, but the prison administration did not take any action for three days, until Aleksei Mamuch-Ogli had to be admitted to hospital as an emergency case for surgery. The surgery took place in an ordinary hospital, and Aleksei Mamuch-Ogli's mother recalled her distress at visiting him at the end of February and seeing her ill son naked and handcuffed to the hospital bed by both wrists, surrounded by three prison guards.

Shortly after the operation in February 2014, Aleksei Mamuch-Ogli was moved to the medical prison camp at Semei. His mother visited him on 3 April at the prison hospital, and found that he was still very ill, in pain and too weak to last the two hours allocated for her visit. Several days later, on 14 April, he died.

When Aleksei Mamuch-Ogli died, the prison authorities rang his mother immediately, and also sent a telegram. But they did not give her any information about how her son had died, and when the death certificate arrived, it did not list the cause of death. When his older brother went to collect Aleksei Mamuch-Ogli's body from the prison in April 2014, it had already been washed and wrapped (according to custom), meaning that he could not examine it for signs of mistreatment. However, the doctors at the morgue told his brother that at some point Aleksei Mamuch-Ogli must have suffered a severe beating that caused organ failure. In addition, Aleksei Mamuch-Ogli's mother recalled that her son had been very distressed during her last visit (shortly before he died), and had wept, requesting that his mother "go after" the director of the prison and his prison division guard, implying that he had been ill-treated. Aleksei Mamuch-Ogli's mother was later told by the prison authorities that he had died of cirrhosis of the liver, but she never saw a medical report, and this information contradicted what she had been told earlier by the surgeon who had operated on Aleksei Mamuch-Ogli in February 2014.

Aleksei Mamuch-Ogli's death in prison should have triggered an immediate and thorough investigation. This investigation may have taken place, but Aleksei Mamuch-Ogli's mother was never given any information about any investigation, or its findings. When Amnesty International met her, Aleksei's mother had recently made contact with a human rights organization in a town near her home, and hoped that they would be able to help

[73] KIBHR, *Обстоятельства совершения пыток и наказания виновниых в Казахстане* [*The Current State of Torture and Punishment of Perpetrators in Kazakhstan*], p.38.

[74] KIBHR, *Обстоятельства совершения пыток и наказания виновниых в Казахстане* [*The Current State of Torture and Punishment of Perpetrators in Kazakhstan*], p.38.

her find out what had happened to her son. Without the support of a lawyer or NGO caseworker, for over a year, she had been left completely in the dark. That said, despite the urge to fulfil her son's last wish to "go after" the officials who he said had mistreated him, Aleksei's mother is concerned that doing so will jeopardise her own and her elder son's safety.

HARASSMENT, INTIMIDATION AND LACK OF PROTECTION FOR VICTIMS AND WITNESSES

During this "bureaucratic ping pong", complainants, their relatives and other witnesses may be subject to harassment, threats, and intimidation from the law enforcement officers who have been accused of torture, as the case of Konstantin Mukhin illustrates. The distress that this can cause to already traumatized victims of torture and ill-treatment can lead complainants to drop the allegations that they have made, again acting as a significant barrier to effective investigation and access to justice and reparations.

KONSTANTIN MUKHIN

Konstantin Mukhin was diagnosed with post-traumatic stress following torture sustained while he was held in administrative detention. He then tried to commit suicide after the police officers whom he had accused of ill-treating him subjected him to harassment and intimidation.

Konstantin Mukhin was detained on 4 June 2014 for a minor administrative offence: when police officers asked him to show his identity document he threw the sunflower seeds he had been eating on the ground in order to get his documents out. He was arrested for disorderly conduct by police officers who, as it turned out, suspected him of rape and murder of a seven-year-old girl.

Konstantin was taken to an administrative detention centre and, on 5 June, was found guilty of disorderly conduct (Code of Administrative Offences, Article 330.1) by Rudnyi Administrative Court. He was sentenced to three days' administrative detention. While in administrative detention in the town of Rudnyi, from 4 to 7 June 2014, law enforcement officers allegedly tortured Konstantin to get him to confess to the murder of the girl. He was beaten, humiliated and threatened with sexual abuse, causing him serious psychological trauma. After his release, the injuries on Konstantin's body were documented by doctors. Two days later, Konstantin Mukhin went to see a psychologist who concluded that he was suffering from post-traumatic stress.

Konstantin Mukhin's lawyer lodged a complaint on 9 June 2014 before Kostanai Regional Prosecutor's Office about the actions of the police officers. On 11 June, the lawyer then requested that the Special Prosecutor's Office for Kostanai Region open a criminal case against the officers involved, under the crime of torture (Article 141.1 of the previous Criminal Code). She received a reply on 4 July from the Rudnyi City Prosecutor's Office refusing to open a criminal case "due to the lack of evidence of a crime" in the actions of the police officers. On 8 July the lawyer appealed this refusal to Kostanai Regional Prosecutor's Office and on 24 July received the reply that a criminal case for torture had been opened.

During the time between the appeal of the refusal of Rudnyi City Court and the opening of a case by the Regional Prosecutor's Office, Konstantin was subjected to constant harassment by the policemen who he had accused of torture. The officers visited him at home and threatened him. Konstantin was put under such pressure that he tried to drown himself in the river, leaving a suicide note asking people to blame the police for his death. Konstantin's mother saved him and he was subsequently treated in a psychiatric hospital.

In December 2014, the case was again closed due to lack of evidence.[75]

Lawyers and human rights defenders working on cases involving torture and other ill-treatment can also face harassment and intimidation. This can include refusals on the part of law enforcement agencies to hand over information necessary to the case, or representatives of the prison administration attending court hearings en masse as a form of intimidation. One of the important roles that NGOs in Kazakhstan have played in cases of torture and other ill-treatment that have reached the stage of prosecution and trial is in supporting lawyers who take on these cases, helping them to withstand this intimidation and to mount an effective case (see the case of Ivan Rozhnov on page 52 for an example).

Caseworkers and lawyers who themselves work for NGOs often receive training in international legal standards relating to torture and other forms of ill-treatment in criminal justice systems, increasing their capacity to provide good quality legal counsel to victims, and / or to advise other lawyers who are providing legal counsel.[76]

JUSTICE, RARELY ATTAINED, IS STILL PARTIAL

Even in cases that do result in the prosecution of some of the perpetrators, the outcome may not represent justice for victims and their families. Most complaints of torture and ill-treatment following the detention of protesters and bystanders in Zhanaozen in 2011 (see full details on page 16) were never officially registered, as the victims feared further persecution. Of the complaints that were registered, only one case ended up in court. In that case, the victim, 50-year-old Bazarbai Kenzhebaev, died on 21 December 2011, two days after being released from police custody, after telling his family and a journalist from Russia of the torture he had been subjected to in the Zhanaozen City Police Station. Only one person was brought to justice for this, the then acting Head of the City Police Station, Zhenishbek Temirov, who was charged with exceeding authority and abuse of power resulting in serious injury (Article 308 of the previous criminal code).

Zhenisbek Temirov was found guilty of having authorized the arbitrary detention of individuals in the Zhanaozen City Police Station, which eventually led to the death of Bazarbai Kenzhebaev. Zhenisbek Temirov was sentenced to five years in prison by Aktau City Court on 17 May 2012 and ordered to pay 1 million Kazakh Tenge (US$6,800) in moral damages to the victim's family. However, investigations by the Prosecutor General's Office failed to identify any of the law enforcement officers alleged by witnesses to have tortured and otherwise ill-treated Bazarbai Kenzhebaev and others who were detained, and to bring them to justice. In July 2012, an appeal court lifted the confiscation order on the property of Zhenishbek Temirov that was supposed to satisfy the reparation order. Now, the damages will be paid by the convicted prisoner from his salary for the work he does in prison. In practice, this means that the compensation may never be paid, given that this salary is very low.

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[75] Coalition of NGOs in Kazakhstan against Torture, *Информационный бюллетень, 11 февраля 2015* [*Information bulletin, 11 February 2015*], Almaty, 2015, http://www.bureau.kz/novosti/sobstvennaya_informaciya/article_7951 (accessed 12 August 2015).

[76] Interview with Anara Ibraeva, lawyer, 1 September 2015, Astana.

A WORRYING NEW TREND: "STAGNANT" INVESTIGATIONS

The new Criminal Procedure Code was expected to put an end to "bureaucratic ping pong", given that the earlier requirement to screen all reports of torture and ill-treatment before they were registered as a crime has been removed. However, lawyers interviewed by Amnesty International for this research identified a new problem: torture and ill-treatment cases that are automatically registered as crimes get "stuck" with an investigating agency for months and months, with no time limit specified in the new Criminal Procedure Code for concluding the investigation.

Furthermore, the victim and his or her counsel are not kept informed as to what stage the investigation has reached, and when he or she finally receives a refusal not to go forward with the case, the "ping pong" starts just as before, if the victim and their lawyer decide to appeal.[77]

In addition, as discussed above, torture or ill-treatment can either be prosecuted as torture (Article 146 of the new Criminal Code), or as "exceeding authority and abuse of power" (Article 362 of the new Criminal Code). While both crimes carry similar sentences, unlike torture, "exceeding authority and abuse of power" is included in the statute of limitations and persons convicted of "exceeding authority and abuse of power" can be amnestied. The broad definition of torture included in Article 146 of the Criminal Code means that investigating bodies are often unsure whether the abuse that a victim has suffered counts as torture, and so they seek convictions for "exceeding authority and abuse of power". The prosecution of cases involving torture or ill-treatment as "exceeding authority and abuse of power" hides the true extent of torture and ill treatment in Kazakhstan. In September 2015, one lawyer reported that in most of the torture cases on which she works, the crime is classed as "exceeding authority and abuse of power", and the criminal investigation proceeds on this basis,[78] even if the alleged abuse falls within the definition of torture included in the Criminal Code.

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[77] Interviews with: Anara Ibraeva, lawyer, 1 September 2015, Astana; KhamidaAitkaliyeva, lawyer, Astana, 2 September 2015; Svetlana Kovlyagina, lawyer (who works in Pavlodar), 3 September 2015, Astana;AimanUmarova, lawyer, Taldykorgan, 4 September 2015; Gulnara Zhuaspaeva, lawyer, Almaty, 6 September 2015.

[78] Interview with Gulnara Zhuaspaeva, lawyer, Almaty, 6 September 2015.

WHY IS THE SYSTEM FAILING?

"A raven won't peck out the eye of another raven"

Proverb cited by a lawyer interviewed by Amnesty International, April 2014.

The underlying factor behind the barriers to justice facing victims of torture and other ill-treatment in Kazakhstan is that it is not in the interests of the agencies and individuals who carry out the investigations to do so impartially, independently and objectively. Instead, investigations are marred by corporate solidarity, the desire to avoid conflict of interest, and deliberate efforts to avoid independent oversight. As one lawyer interviewed by Amnesty International put it, the investigative system just doesn't work: the police and the Prosecutor's Office have no capacity or inclination to investigate cases properly.[79]

As discussed above, the Kazakhstani authorities have taken steps to address the problem of lack of impartiality in torture and ill-treatment investigations through changes to the previous Criminal Procedure Code in 2011, stipulating that such allegations should be investigated by either the Criminal Police or the Financial Police, depending on which body the complaint had been made against; typically, it is the Internal Investigations Department of the respective agency that carries out the investigation. Amnesty International's research has shown that this division of responsibility for investigations between the Criminal and Financial police has not addressed effectively the issue of independence and impartiality. This highlights the importance of the Special Prosecutor's Units (SPUs – see page 46 for further details) fulfilling their mandate to lead on the investigation of all cases involving allegations of torture and other ill-treatment, and the need for the eventual creation of a fully independent police complaints mechanism.

Law enforcement officials depend on their colleagues in other agencies for investigation of other crimes. This means that when officials from the Financial Police are called upon to investigate complaints of torture and ill-treatment made against the Criminal Police (and vice versa), they have little interest in jeopardizing this mutually dependent relationship by exposing torture and other ill-treatment; the two respective forces are still part of the same system, and are disinclined to take steps that might be seen as undermining each other. As a result, in the majority of cases, the respective agencies conclude that there is no evidence of wrongdoing by law enforcement officials from the counterpart agency, even when the allegations of torture and other ill-treatment are supported by strong evidence. In cases where the complainant then appeals, this inevitably leads to yet more "bureaucratic ping pong", resistance and delays.

In addition, as discussed above, the preliminary screening of complaints of torture and other ill-treatment that occurred under the previous Criminal Procedure Code was routinely carried out by the Internal Investigations Department of the agency under investigation, leading to a clear conflict of interest. For instance, in 2011, preliminary screening to establish the

[79] Interview with Anara Ibraeva, lawyer, Astana, 1 September 2015.

veracity of allegations of torture after the events in Zhanaozen (see page 16 for the full case) was performed by the Internal Investigations Department of the Ministry of Internal Affairs – members of the very security force accused of committing the crime. This followed an order from the Prosecutor General's Office, which, in turn, had been ordered by the presiding judge to perform the checks into the veracity of the defendants' allegations. The investigation was assigned to the same team of Specialist Prosecutors who had conducted the initial investigation into the violent clashes in Zhanaozen and therefore had a clear conflict of interest and could not act impartially as required under the Istanbul Protocol and other international human rights law and standards.

Under the present system, the Prosecutor General's Office is ultimately responsible for the investigation of allegations of torture and other ill-treatment, and for ensuring that the various different police agencies obey the law (its so-called "supervisory function"). But at the same time, the Prosecutor General's Office also has ultimate responsibility for prosecuting crimes and ensuring convictions. This leads to a clear tension between these two functions, compromising the capacity of the Prosecutor General's Office to maintain impartiality when it comes to investigating complaints of abuse committed by law enforcement officers. In turn, pressure to ensure convictions from the Prosecutor's Office and impunity for torture and other ill-treatment serves to support the de facto institutional acceptance of the use of torture and other ill-treatment during interrogation among law-enforcement agencies.

As one lawyer remarked of the police, prosecutors and prison authorities, "it's all one system",[80] all watching out for each other's shared interests. This lack of independent investigation mechanisms and independent oversight is a major weakness in the systems in place to investigate complaints of torture and other ill-treatment in Kazakhstan.

The resilience of this "one system" is most apparent when it comes to complaints of torture and ill-treatment made by prisoners against prison officials. In such cases, prisoners are extremely vulnerable to retaliation, and this will continue for as long as impunity for torture and other ill-treatment remains the norm. In one case reported by a lawyer interviewed by Amnesty International in September 2015, prison officers were prosecuted for abusing a prisoner, but the prisoner then suffered worse abuse at the hands of other prison officers, and was moved back to the prison where he had originally been mistreated, despite a court order stating that he should not be sent back to this prison.[81]

The consequences of such failures add to the barriers in accessing justice for torture and other ill-treatment, as other prisoners reporting their own experiences of torture and other forms of ill-treatment are deterred from presenting any complaint.

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[80] Interview with Gulnara Zhuaspaeva, lawyer, 6 September 2015, Almaty.

[81] Interview with Svetlana Kovlyagina, lawyer (who works in Pavlodar), 3 September 2015, Astana. Svetlana Kovlyagina did not provide the name of the victim or any further details about the case.

ISKANDER TUGELBAEV

A beating sustained during a routine "pre-planned search measure" on 12 May 2015[82] at the prison where he was being held in Eastern Kazakhstan put Iskander Tugelbaev in a coma for three days, and has left him unable to speak or walk unaided, according to his lawyer.[83] Despite these serious injuries, the investigation into Iskander Tugelbaev's complaint was dismissed due to "lack of evidence". Iskander Tugelbaev's lawyer is still waiting to hear the outcome of her appeal against the decision to suspend the investigation

Iskander Tugelbaev's injuries were so severe that specialist surgeons had to be flown in to operate on him. However, the prison authorities did not automatically contact the local prosecutor to register the case, despite the severity of Iskander Tugelbaev's injuries. The case was only registered with the Prosecutor at the instigation of IskanderTugelbaev's aunt (who brought him up), on 25 May 2015, after she found out what had happened to her nephew (the prison authorities did not contact her straight away, and she in fact only found out after another prisoner at the prison colony contacted her through a third party).

The prison authorities have stated that Iskander Tugelbaev sustained the injuries to his head after he fell down during a seizure, but his family state that he has no history of seizures or epilepsy. The findings of an independent medical expert's report commissioned by the lawyer indicate that Iskander Tugelbaev's injuries and his loss of speech were consistent with having been tortured.

As of early September 2015, when Amnesty International spoke to his lawyer, IskanderTugelbaev was receiving treatment at a special prison hospital in Semei. This treatment, however, was due to come to an end soon, and then the prison authorities planned to move him back to the prison colony where he had been beaten, where, according to his lawyer, he would be at risk of intimidation to withdraw the torture allegations, and of further ill-treatment. His lawyer was trying to get him moved to another facility, but believed that even if he was moved, he would remain at risk of retaliation.

The case was registered with the Prosecutor at the end of May and was investigated by the Financial Police, who closed down the investigation due to "lack of evidence of a crime". Iskander Tugelbaev's lawyer is still waiting to hear the outcome of her appeal against the decision to suspend the investigation. To date, there has been no involvement from either a regional or the national Special Prosecutor in this case.

Another lawyer reported to Amnesty International that she had dealt with cases of individuals who had suffered torture at the hands of prison officers, but who were too frightened of retaliation to lodge official complaints, or who had been pressured into withdrawing complaints.[84] Currently, there are no safeguards in place for victims or witnesses of torture and other ill-treatment within the prison system, and prisoners who have made a complaint of torture are not automatically transferred to a different facility. In one such case, a lawyer

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[82] Radio Free Europe Radio Liberty, "Kazakh Inmate's Mother To Sue Prison For 'Maiming Son'", 12 June 2015, http://www.rferl.org/content/kazakhstan-inmates-mother-sues-prison-for-maiming-son/27068685.html (accessed 21 September 2015).

[83] Interview with Gulnara Zhuaspaeva, lawyer, 6 September 2015, Almaty.

[84] Interview with Svetlana Kovlyagina, lawyer (who works in Pavlodar), 3 September 2015, Astana.

interviewed by Amnesty International reported that she had requested the transfer, but her client had to wait for more than three weeks before he was moved.[85]

[85] For safety reasons we cannot include the name of the lawyer who provided this information, or their client's name.

STEPS TO TACKLE IMPUNITY

SPECIAL PROSECUTOR'S UNITS

Special Prosecutor's Units (SPUs) are part of the Prosecutor General's Office, but function as a distinct prosecutorial division; they report directly to the Prosecutor General. There are regional SPUs across Kazakhstan, however these units often cover a large area, and they are not present in every region. Originally established to investigate or supervise the investigation of a small number of complicated and high-profile cases at their own discretion,[86] in 2011 their mandate was extended to include the power to investigate all cases involving allegations of torture (as defined in the Criminal Code).[87] The internal instructions for prosecutors were amended a year later to give SPUs the direct authority to investigate the crime of torture (prosecutors do not otherwise have investigative powers and are reliant on investigations carried out by law enforcement agencies). They are able to initiate an investigation themselves (at the decision of the chief Special Prosecutor), or can be instructed to begin an investigation by the Prosecutor General. In a welcome development, SPUs are now involved in the majority of cases of torture and other ill-treatment that reach the stage of criminal investigation, according to the Coalition of NGOs of Kazakhstan against Torture.[88] The responsibilities of SPUs are set out by the Decree of the Prosecutor General of Kazakhstan, which was last updated on 27 March 2015.[89] The SPUs can either carry out investigative tasks themselves or oversee the investigation carried out by the law enforcement agencies.

OLGA AND ELENA SHARAFUTDINOVA

Following an attempt to arrest Olga Sharafutdinova and her daughter Elena Sharafutdinova in 2012, the two women lodged complaints against the arresting officers, accusing them of physical abuse and of exceeding authority and abuse of power. It took two years for the case to reach court and for the police officers concerned to be prosecuted. In the intervening period, Olga and Elena

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[86] No definitive list exists detailing which crimes SPUs should investigate.

[87] Under Decree No.22 of the Prosecutor General of the Republic of Kazakhstan (7 March 2012), torture was added to the list of priority list of crimes to be investigated by Special Prosecutors. Coalition of NGOs of Kazakhstan against Torture, *Борьба с пытками в Казахстане: справочная информация* [*The struggle against torture: background information*], Almaty, 2015, p.5.

[88] Coalition of NGOs of Kazakhstan against Torture, *«Борьба с пытками: достаточно ли мы делаем?» Отчет Коалиции НПО Казахстана против пыток* [*'The struggle against torture: are we doing enough?' Report of the Coalition of NGOs of Kazakhstan against Torture*], Almaty, June 2015, p.7.

[89] Приказ Генерального Прокурора Республики Казахстан от 27 марта 2015 года № 48 «Об утверждении Инструкции об организации досудебного расследования в органах прокуратуры» [Order of the Prosecutor General of the Republic of Kazakhstan of 27 March 2015 #48 "On strengthening the instructions on the organization of pre-trial investigation in the agencies of the prosecutor"], http://online.zakon.kz/Document/?doc_id=38331001 (accessed 16 July 2015) (Приказ Генерального Прокурора Республики Казахстан от 27 марта 2015 года № 48 [Order of the Prosecutor General of the Republic of Kazakhstan of 27 March 2015 #48]).

Sharafutdinova were passed "from pillar to post", as their case went back and forth between the Kostanai City Police Department, the Kostanai Regional Prosecutor's Office, and the Financial Police, with each failing to carry out a full investigation. It was only when the Specialist Prosecutor's Unit (SPU) became involved that the case was finally effectively investigated.

On 12 July 2012, two police officers attempted to arrest Olga Sharafutdinova, a stall holder in Kostanai, for selling them beer after licensing hours. In separate incidents on 12 and 16 July, Olga and her mother Elena Sharafutdinova say they were subjected to physical abuse and ill-treatment at the hands of the police as they resisted what they saw as unlawful arrest, and that after they lodged a complaint against the police they were subjected to forced drugs tests, physical and psychological intimidation and ill-treatment. They also reported being held in an administrative detention centre without the correct paperwork and without being informed of the reasons for their detention, nor being allowed to see a lawyer.

On 19 July, Olga and Elena Sharafutdinova appeared before a judge at Kostanai Administrative Court, charged with trying to resist arrest. Although the judge remarked that it looked like a case of exceeding authority and abuse of power by the police, she neither closed the case nor ordered an investigation into police actions. In August, Olga was found guilty of illegally selling alcohol and given a fine of 8,000 tenge (around US$40).

Following this court ruling, Olga and Elena Sharafutdinova's attempts to bring the police officers to justice began. In July 2012, Olga Sharafutdinova filed complaints with Kostanai City Police Department and the Kostanai Prosecutor's Office. Both complaints were passed on to the Kostanai police Internal Investigations Department for initial screening, but the City Police refused to open a criminal investigation, saying that there was no evidence of illegal actions by the police officers. On 1 August 2012, Olga appealed this refusal to the Kostanai Regional Prosecutor's Office, which asked the police Internal Investigations Department to carry out "additional checks". On 1 September 2012, the same internal investigator restated his refusal to initiate an investigation "due to the absence of elements of an offence". Olga appealed this second refusal to the Kostanai Prosecutor's Office which returned the file for a third time on 16 October to the Internal Investigations Department for "additional checks". One month later, on 16 November, the same investigator again issued a refusal to open a criminal case against the police, and on 24 December 2012, Kostanai City Prosecutor's Office upheld this decision. On 25 January 2013, Olga submitted an objection to Kostanai Regional Prosecutor's Office which once more sent the case for internal review, and the same investigator issued a fourth refusal on 1 February 2013 to open a criminal case. He justified this decision by saying that his previous refusal had not been overturned by the Prosecutor's Office.

On 5 March 2013, Kostanai Regional Prosecutor's Office upheld this refusal. However, on 26 April 2013, it opened a criminal investigation into exceeding authority and abuse of power by the police officers involved, and ordered the Internal Investigations Department of the police to investigate the case. It is unclear why the Regional Prosecutor decided to open a criminal investigation at this stage. A new internal investigator decided in May 2013 to suspend the investigation, and then in the summer, to terminate it due to lack of evidence. On 25 November 2013, Kostanai Regional Prosecutor's Office overruled this decision and referred the case to the Financial Police for investigation, but on 27 December 2013, the Financial Police issued a decision to stop the proceedings. On 29 January 2014, the Kostanai Regional Prosecutor's Office overturned this refusal and sent the case back to the Financial Police, who again issued a decision to stop the proceedings.

On 7 March 2014, Kostanai Regional Prosecutor's Office overturned the Financial Police's decision and this time referred the case to the SPU of Kostanai Region "for a full and objective investigation". On 12 April 2014,

a prosecutor from the SPU suspended the proceedings but later resumed the checks. The case eventually reached court. The trial against the three police officers accused of ill-treating Elena and Olga on charges of "abuse of power with the use or threat of violence", [90] started on 29 July 2014 in Kostanai City Court no. 2. On 1 September 2014, the two police officers were found guilty and each was sentenced to two years suspended sentence. In November 2014, the Kostanai Oblast Appeal Court increased the sentence to five years, with three years on probation.

The extension of the mandate of the SPUs to include investigations into allegations of torture was a positive step, indicating the willingness of the Kazakhstani authorities to address issues of conflict of interest and lack of impartiality and independence. In some cases, such as that of Olga and Elena Sharafutdinova (detailed above), SPUs have proved effective in investigating such allegations, but Amnesty International's research shows that this remains the exception rather than the rule. The quality of investigations by the SPUs is not always satisfactory – for reasons of inertia or lack of capacity – andin many cases the SPUs are not proactive in investigating complaints, despite being mandated to do so by law.

Lack of resources and capacity is an important factor: one lawyer told Amnesty International that a regional Special Prosecutor she had met was solely responsible for four regions, with no assistants.[91]

Another factor is the lack of clarity in legislation governing criminal investigations. All decrees made by the Prosecutor General instructing prosecutors to act decisively on complaints of torture are subservient to the Criminal Procedure Code. However, it is not clear from the existing legislation and internal guidelines whether SPUs should lead the investigation in *all* cases involving torture and other ill-treatment. The most recent decree detailing their functions only specifies that they should take on the investigation where there is a conflict of interest, and does not specify whether and when the SPUs themselves should carry out the investigation, or oversee it.[92] In practice, the general rule appears to be that torture and other ill-treatment are investigated by law enforcement officials – either Criminal or Financial Police – with supervision from Special Prosecutors.

This lack of clarity may account for the fact that as indicated in some of the case studies included in this report, SPUs seem to see their role as supervising investigations rather than being responsible for carrying them out. In this supervisory role, the SPUs have been over-reliant on the conclusions of investigations carried out by the Internal Investigation Departments of law enforcement agencies, or have referred cases back to the agency whose members are accused of torture or other ill-treatment for further investigation, rather than stepping in to conduct an independent investigation. The SPUs, too, are prone to prioritizing corporate solidarity with the agencies of law enforcement over effective and impartial investigations of allegations of torture and other ill-treatment. For instance, while torture and other ill-treatment should now automatically be investigated as a crime, internal police force regulations stipulate that an internal investigation should also be conducted for possible disciplinary violations. These internal investigations are performed by the same agency whose

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[90] Article 308, part 4 of the previous Criminal Code of Kazakhstan (Article 362, part 4 of the new Criminal Code).

[91] Interview with Gulnara Zhuaspaeva, lawyer, 6 September 2015, Almaty.

[92] Приказ Генерального Прокурора Республики Казахстан от 27 марта 2015 года № 48 [Order of the Prosecutor General of the Republic of Kazakhstan of 27 March 2015 #48].

officers are accused of the violation, meaning that they are not impartial. In some cases, lawyers report that the criminal investigators use the findings of this internal investigation to conclude that no torture or ill-treatment had taken place.

Such flaws are evident in the case of Anatoly Krivobokov, where the SPU involved proved to be too ready to accept the denial of the alleged perpetrators, concluding that the case was unfounded as only the complainants' account alleged torture.

ANATOLY KRIVOBOKOV

Anatoly Krivobokov, born in 1984, was sentenced to 14 and a half years in prison for rape in 2013. Following two days of torture at the hands of police officers, Anatoly Krivobokov "confessed" to the crime, but later retracted this confession.

Anatoly Krivobokov was detained on 7 January 2013 but his detention was not officially registered until 8 January. During his unregistered detention, Anatoly Krivobokov was reportedly tortured in an office of Karatal District Police Station, Almaty Region. One police officer beat him on the head and kidneys, kicked him and threatened him with a gun. Two other police officers then handcuffed Anatoly Krivobokov to a chair with his hands behind him. One of the officers held his legs and the other placed a plastic bag over his head to suffocate him until he lost consciousness. They repeated this five or six times. The officers threatened that unless Anatoly Krivobokov confessed his guilt, they would take him into the yard and shoot him and claim that he tried to escape. He was deprived of sleep and kicked regularly throughout the night. Forensic medical experts who examined Anatoly Krivobokov after he "confessed" on 8 January recorded multiple injuries on his body, consistent with having been tortured during his detention over the previous 24 hours.[93]

Anatoly Krivobokov was charged with rape on 10 January 2013. The next day he attempted to commit suicide in his cell at the police station and was taken to hospital. He tried to inform the judge ruling on his detention in custody that he had been tortured but the judge said it was beyond his remit to review complaints of ill-treatment during arrest and questioning at that stage, and suggested he write to the Prosecutor's Office.[94] During his trial on 20 March 2013, Anatoly Krivobokov again complained that he had been tortured in order to force him to confess, but the judge dismissed his allegations as not credible, saying he should have used complaints mechanisms available before trial. Anatoly made a second suicide attempt on 24 May 2013.

In fact, Anatoly Krivobokov had first complained on 14 January 2013 to the Almaty Region Prosecutor's Office about being tortured. The Prosecutor's Office replied that his complaint was found to be without grounds after preliminary screening supervised by the regional Special Prosecutor's Unit (but carried out by the police Internal Investigations Department) during which the police officers in question had denied torturing Anatoly Krivobokov. Neither he nor his state-appointed defence lawyer was able to see the investigation file relating to his torture case, as Anatoly Krivobokov had no legal status as a victim at this "preliminary screening" stage.

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[93] KIBHR, *Обстоятельства совершения пыток и наказания виновниых в Казахстане* [*The Current State of Torture and Punishment of Perpetrators in Kazakhstan*], p.33.

[94] Instructions issued by the Supreme Court of Kazakhstan to judges tell them to not ignore complaints of torture at this stage but does not require that judge inquire pro-actively how the accused was treated during police detention and apprehension.

Anatoly Krivobokov appealed the refusal to open a criminal case to the Prosecutor General's Office. On the second submission of his appeal, the Prosecutor General's Office replied that a criminal case would not be instigated as there was no evidence of torture apart from Anatoly Krivobokov's own statement.

Shortly after SPUs were first instructed to look into torture cases, the December 2011 events in Zhanaozen took place (see page 16 for details) involving allegations of police torture and other ill-treatment used against those who were charged with the organization of or participation in the violent clashes. Despite its mandate to conduct an independent investigation, the SPU involved failed to launch an impartial investigation into the torture allegations, and instead passed the case back to the same body whose officers were accused of torture.

SPU FAILED TO SCRUTINIZE ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT FOLLOWING THE PROTESTS IN ZHANAOZEN

Many of those arrested and subsequently charged for organizing or participating in the violent protests in Zhanaozen in 2011 claimed in court that they had been tortured and otherwise ill-treated while in detention. In response to this, the Aktau City Court ordered the Prosecutor General's Office to investigate these complaints. The Prosecutor General's Office instructed its SPU to investigate, which passed the case onto the Internal Investigations Department of the Ministry of Internal Affairs for investigation, a branch of the very same body whose officers had been accused of the torture and mistreatment of the defendants. The Internal Investigations Department carried out an initial review and dismissed the case as unfounded.

No details of their review were made public. Lawyers for the victims of torture and other ill-treatment requested that the police share information about the screening review, but the Internal Investigations Department only provided them with general replies about the lack of evidence against the alleged perpetrators. At a subsequent hearing in May 2012, the court did not question the objectivity and impartiality of the screening review carried out by the Internal Investigations Department and the trial of the defendants continued on the assumption that no torture or ill-treatment had occurred. Seven of the defendants were sentenced to prison terms of up to seven years.

All of these complaints of torture and ill-treatment were corroborated by accounts from other people who had been detained for participating in the protests, but subsequently released without charge. Despite this, the checks into the complaints ordered by the court of first instance did not result in finding compelling evidence for launching a fully-fledged criminal investigation and were dismissed as unsubstantiated by the Prosecutor General's Office and the presiding judge. No investigations were carried out into the allegations that witnesses had been tortured into giving false evidence, which raised questions as to how thorough the investigation ordered by the court of first instance really was.

There are some cases involving torture and ill-treatment where the SPUs have been involved right from the beginning, and carried out thorough investigations, in accordance with their mandate. One example is the case of Ruslan Baimagambetov.

RUSLAN BAIMAGAMBETOV

21-year-old **Ruslan Baimagambetov** was tortured at the hands of the police after he was arrested on suspicion of stealing some money in Uzunkolsky District, Kostanai Region, in October 2013. He was beaten and kicked for 20 minutes and threatened with sexual violence. For reasons unknown to his defence lawyer, the case was passed immediately to the SPU for investigation, who swiftly investigated and passed the case to court. The court found the perpetrators guilty of torture, sentencing them to between two and two and a half years of deprivation of liberty.

In another case, Serik Baimaganbetov,[95] ex-Head of the Committee for Customs Control in the Ministry of Finance (who had been imprisoned on bribery charges and made a complaint on his release that he had been forced to clean toilets while naked, and had been subjected to psychological pressure), made a complaint of torture after his release. The case was investigated by a Special Prosecutor and, in September 2015, a prison official was sentenced to two and a half years imprisonment for torture.[96]

Conversations with lawyers in September 2015 revealed similarly "straightforward" cases where the SPU had got involved early on in the case, or of cases involving high-profile victims which were swiftly investigated by a Special Prosecutor, resulting in the conviction of the perpetrators. By contrast, in other cases, there had been no involvement from the SPUs until the lawyer had demanded this, and once involved, the SPU's investigation had been unsatisfactory. While the SPUs may be mandated to investigate all torture cases, they are currently not doing so, and instead are getting involved on an ad hoc, inconsistent basis; as one lawyer noted, it is often not clear why a Special Prosecutor has become involved in a particular case.[97]

Significantly, pressure from NGO caseworkers and lawyers has led to SPUs conducting effective investigations into allegations of torture and other ill-treatment in certain cases. This illustrates the potential of the SPUs to play an important role in achieving justice for victims in Kazakhstan, as well as the importance of civil society in ensuring public oversight and scrutinizing the work of these agencies.

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[95] Ruslan Baimagambetov and Serik Baimaganbetov are not related to each other.

[96] See: Today News, "Обвинение просит три года для сотрудника колонии за применение пыток к Баймаганбетову" ["The prosecution ask for three years for prison employee for using torture against Baimaganbetov"], 24 August 2015, http://todaynews.kz/obvinenie-prosit-tri-goda-dlya-sotrudnika-kolonii-za-primenenie-pytok-k-bajmaganbetovu/ (accessed 24 September 2015) and Radio Azattyk, "Обвиняемый в пытках в отношении Баймаганбетова осужден" ["Defendant accused of torture of Baimaganbetov sentenced"], 15 September 2015, http://rus.azattyq.org/archive/news-azattyq/20150915/360/360.html?id=27249329 (accessed 24 September 2015).

[97] Interview with Khamida Aitkaliyeva, lawyer, Astana, 2 September 2015

IVAN ROZHNOV

In a case successfully investigated by an SPU with the cooperation of civil society, the Petropavlovsk City Court found two police officers of the Yesil District Police Department in Northern Kazakhstan guilty of torture and sentenced each to more than five years in prison on 26 November 2012.

The two police officers were found guilty of torturing 20 year-old Ivan Rozhnov to make him confess to stealing a laptop from a high school where he worked as a laboratory assistant. Fearing more torture, Ivan jumped out of the police car when he was being taken to town from his village. He ran into the woods, where he got lost and suffered severe frostbite in temperatures of minus 30ºC. As a result of the frostbite, both his feet had to be amputated.

The details of Ivan Rozhnov's arrest and torture were initially uncovered by the local Public Monitoring Commission (PMC). The case attracted considerable media attention, making it difficult for the authorities to ignore what had taken place. As a result, the SPU and the Financial Police who were investigating the case were keen to bring the police officers accused of torturing Ivan Rozhnov to justice, and closely cooperated with NGOs who provided lawyers to the victim in this case (victims of crimes do not qualify for free legal aid). Members of the PMC were also called as witnesses during the trial. The Coalition of NGOs of Kazakhstan against Torture hired an additional lawyer from Almaty to travel to the area where the incident was being investigated, and to support the lawyers involved in the case to resist intimidation from law enforcement officials.

Ivan Rozhnov was never charged with theft of the computer. The convicted police officers appealed the Petropavlosk City Court's decision and had their sentences reduced by the Northern Kazakhstan Regional Court to four and a half and three years in prison, respectively. Ivan Rozhnov was awarded 700,000 Kazakhstani Tenge (US$3,800) for "moral damages".

PUBLIC MONITORING COMMISSIONS

The Kazakhstani authorities have recognized the value that external scrutiny can add in the monitoring and investigation of complaints of torture and other ill-treatment, and the recognition of the role of Public Monitoring Commissions (PMCs) in monitoring conditions within prisons and other closed institutions is a reflection of this.

On 3 February 2010, shortly after Kazakhstan assumed the OSCE chairmanship for that year and days before Kazakhstan's first UPR hearing before the UN Human Rights Council, the Prosecutor General, the Minister of Justice, the Minister of Interior, the Chair of the National Security Committee, and the Chair of the Agency on Fighting Economic and Corruption Crimes (Financial Police) of Kazakhstan signed a Joint decree "On Cooperation of Law Enforcement Bodies with Civil Society Members During the Conduct of [Pre-Investigation] Screening of Complaints of Torture and Other Unlawful Methods of Conduct of Criminal Procedure Inquiry and Investigation as well as of Investigation of Such Complaints".[98] The mechanism for this cooperation are the PMCs, self-governing bodies in each region of the country that were first established in 2004.[99] PMCs are made up of between three and 11

[98] См. Совместный приказ от 3 февраля 2010 года [Joint Decree of 3 February 2010].

[99] Interview with Azamat Shambilov, Regional Director Penal Reform International, 31 August 2015, Astana.

experts,[100] and include representatives from NGOs. PMCs are mandated to visit and monitor detention facilities run by the Ministry of Internal Affairs, including prisons, pre-trial detention centres and police detention facilities.[101] Members of PMCs were the only civil society representatives allowed to visit detention facilities run by the Ministry of Internal Affairs until the National Preventative Mechanism was established in Kazakhstan in July 2013. As of 2015, there were 15 PMCs operating across the country, one in each region and one in the capital city, Astana.[102]

The 2010 Joint Decree instructs regional and local law enforcement bodies to immediately inform prosecutors of their cities or towns whenever a complaint of torture or other ill-treatment is brought to their attention. The Joint Decree stipulates that PMCs, if they so wish, can participate in pre-investigation screening of complaints of torture and other ill-treatment. For instance, law enforcement agencies can authorize members of the PMC to interview victims in detention, and these testimonies can then be submitted as evidence to the authority responsible for screening the complaint and deciding whether or not to initiate an investigation. The Decree also stipulates that attention should be paid to ensuring the right of victims to adequate reparations, including compensation, and to keep the media informed of the outcomes of investigations into complaints of torture and other ill-treatment. With the provisions in the new Criminal Procedure Code stipulating that all reports of torture and other ill-treatment should automatically be registered as criminal cases and removing the need for pre-investigation screening, this decree should now be updated in a way that ensures that PMCs are still able to gain access to victims of torture and other ill-treatment who are in detention, and to talk to them in confidence.

In some cases, the PMCs have been effective in pushing for the effective investigation of allegations of torture and other ill-treatment, as the case of Zhandos Sagatov illustrates.

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[100] Об утверждении Правил образования общественных наблюдательных комиссий областей, городов республиканского значения и столицы для осуществления общественного контроля в специальных учреждениях, Постановление Правительства Республики Казахстан от 24 июня 2011 года № 702 [On strengthening the rules for the formation of Public Monitoring Commissions of oblasts, cities of republican status and the capital for the fulfilment of public monitoring of special facilities, Order of the Government of the Republic of Kazakhstan of 24 June 2011 #702 http://tengrinews.kz/zakon/docs?ngr=P1100000702#z5 (accessed 7 July 2015).

[101] For more on the PMCs, see Penal Reform International, "*МЕТОДИЧЕСКОЕ ПОСОБИЕ по проведению мониторинга в исправительных и специальных учреждениях общественным и наблюдательными комиссиями* [*Manual on monitoring of places of detention by Public Monitoring Commissions*], Penal Reform International / OSI / British Embassy Astana, 2012.

[102] Coalition of NGOs of Kazakhstan against Torture, *Борьба с пытками в Казахстане*, p.1.

ZHANDOS SAGATOV

Following an intervention by the Almaty Public Monitoring Commission (PMC), on 31 March 2010 police opened a criminal case into a complaint of torture made by Zhandos Sagatov, a then 27 year-old prisoner in the LA 155/8 prison in Almaty Region. The perpetrators included five high-ranking prison officials (including a prison doctor) and four inmates. On 15 June 2010, the Prosecutor General's Office ordered the establishment of an investigative group composed of a regional police investigator and three regional financial police officers supervised by a Special Prosecutor. In the course of the investigation, the Special Prosecutor re-qualified the charges initially brought against the officials – exceeding authority and abuse of power – to torture. On 18 March 2011, in an unprecedented decision, the Kapchagai City Court sentenced the prison officials to terms of imprisonment from between five years and two months to seven years.

The success of this investigation, according to the head of the Almaty PMC Ardak Zhanabilova, was attained through "a common effort by the public and the prosecution service". The PMC was indeed responsible for first identifying the case during a visit to the prison, helping Zhandos Sagatov lodge a complaint. The PMC then provided him with a lawyer and assisted with medical rehabilitation, while the Kazakhstan International Bureau for Human Rights liaised with the media about the case, mounting a public campaign to draw attention to the torture of Zhandos Sagatov. The PMC cooperated closely with the SPU in its investigation, and members of the PMC testified in court as independent external witnesses. This close cooperation, alongside the high profile media campaign, ensured that the complaint of torture was thoroughly investigated and the perpetrators brought to justice.

However, in practice the 2010 Decree is not being widely implemented. In some areas of Kazakhstan, PMCs are not aware of the full extent of their mandate and the Kazakhstani authorities have failed to promote this type of cooperation with civil society. In addition, there are many restrictions on PMCs and what they can do. For instance, PMC monitoring is restricted to facilities under the Ministry of Internal Affairs, which excludes state-run residential homes, for instance, and PMCs cannot make unannounced visits, nor can they undertake cross-regional visits.[103]

The limitations of the PMCs as a mechanism for monitoring torture and other forms of ill-treatment were apparent following the violence in Zhanaozen in December 2011 (see page 16). Without access, independent monitors from the PMCs found it difficult to verify the allegations of torture and other ill-treatment made by people who were detained. Even in instances where the authorities allowed public monitors to join an official commission of investigation, visits were planned in advance and access to places of detention was strictly controlled by the authorities, with no private interviews of detainees allowed.

PMCs have the potential to provide independent, civil-society led scrutiny of complaints and investigations of torture and other ill-treatment in Kazakhstan, but they need to be adequately resourced and their capacity to act independently needs to be strengthened, in a way that builds public trust in them as an institution.

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[103] Interview with Azamat Shambilov, Regional Director, Penal Reform International, 31 August 2015.

NATIONAL PREVENTATIVE MECHANISM

In 2013, Kazakhstan adopted the necessary legislation to set up a National Preventive Mechanism (NPM) in line with the country's obligations under the Optional Protocol to the Convention Against Torture (ratified by Kazakhstan in 2008).[104] In January 2014, a Coordination Council was established under the chairmanship of the Human Rights Ombudsman to coordinate the activities of all NPM members and on 19 February 2014, at its first session, the Council elected members of the NPM from civil society groups, which then began monitoring detention facilities across Kazakhstan.

While acknowledging that the creation of the NPM has been a positive development, Amnesty International is concerned that the current mandate does not cover monitoring of all places of detention and all state-run residential institutions. For example, the NPM monitoring group is not permitted to inspect offices of police departments (which are on occasion used to question suspects). In addition, the fact that the NPM Coordination Council sits under the supervision of the Ombudsman's Office compromises its independence, as in Kazakhstan, the Ombudsman is directly appointed by the President, and his/her activities are governed by Presidential decree.[105]

Furthermore, the NPM is not allowed to publish the results of its findings until its annual report is approved by the Ombudsman. In an interview with Amnesty International, the Head of the National Centre for Human Rights (under the Ombudsman) also acknowledged budgetary constraints as another obstacle that severely limits the capacity and effectiveness of the NPM, and that the Coordination Council had faced difficulties in recruiting high calibre members for the NPM regional groups.[106]

Like the PMCs, the NPM faces bureaucratic obstacles: in order to undertake an urgent and unplanned visit, NPM members have to obtain written permission from the Ombudsman and this can only be obtained during working hours, restricting the NPM's ability to respond rapidly to incoming reports of torture and other ill-treatment.

The NPM's primary role is to prevent torture and other ill-treatment from occurring in secure facilities (including prisons and pre-trial detention centres). It is not mandated to take up individual complaints of torture and other ill-treatment, and is competent only to pass these on (if received) to the Ombudsman's Office. In 2014, the NPM received 42 complaints of torture and other ill-treatment, and in the first eight months of 2015, 23 complaints. Since

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[104] OHCHR, "Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", CAT/OP/12/5, Article 3.

[105] This means that currently, the Ombudsman does not meet the criteria laid out in the "Principles relating to the Status of National Institutions (The Paris Principles)", Adopted by General Assembly resolution 48/134 of 20 December 1993.

[106] Interview with Vyacheslav Kalyuzhnii, Head of the National Centre for Human Rights (Ombudsman's Office), 2 September 2015, Astana. This was echoed in the interview with Azamat Shambilov, Regional Director, Penal Reform International, Astana, 31 August 2015.

the NPM began functioning in January 2014, just six of these complaints have resulted in criminal investigations, of which two have reached trial.[107] Respondents interviewed by Amnesty International in September 2015 (including a former member of the NPM) noted that complaints of torture and other ill-treatment made to the NPM are sometimes not being acted upon.[108] This presents the danger that the NPM will lose public trust as an effective mechanism for reporting torture and other ill-treatment (and ultimately preventing it). The Ombudsman's Office, which oversees the NPM, could also do more to better communicate the role of the NPM.

[107] Interview with Vyacheslav Kalyuzhnyi, Head of the National Centre for Human Rights (Ombudsman's Office), 2 September 2015, Astana.

[108] Interviews with Azamat Shambilov, Regional Director, Penal Reform International, Astana, 31 August 2015 and Anara Ibraeva, lawyer, 1 September 2015, Astana.

CONCLUSIONS

For all the difficulties in documenting and assessing the scale of a widely underreported phenomenon, there is little doubt that torture and ill-treatment remains a pervasive problem in Kazakhstan that is sustained be a prevailing culture of impunity. Piecemeal reforms over the last decade have failed to significantly chip away at this egregious human rights violation. Sweeping cultural and organisational change is difficult to achieve; radical institutional reform likewise. And yet, there are concrete steps, and easily deliverable changes, that Kazakhstan could introduce, within the current institutional framework, to tackle torture and ill-treatment far more effectively than it has done to date.

The authorities in Kazakhstan must, first, do more to ensure that the mechanisms already in place for the monitoring of complaints of torture and their investigation are able to function effectively. For a start, prosecutors need to begin reclassifying all complaints of procedural "wrongdoing" that they receive as criminal complaints, to close the loophole that currently exists allowing torture complaints to be dismissed before they reach the stage of criminal investigation. Pending the establishment of a fully independent police complaints mechanisms, the role of the SPUs in investigating allegations of torture should be strengthened. They have already shown their effectiveness in a small number of cases. They should be mandated to assume responsibility for investigating *all* complaints of torture automatically, and be required to be personally involved in investigative work, rather than relying entirely on investigations that they supervise in name only, but which are carried out by law enforcement agencies.

Second, the positive role of NGOs in documenting abuses and assisting victims and investigative agencies alike, should be recognized and built on. In the face of the considerable barriers to justice and reparations faced by victims of torture and other ill-treatment in Kazakhstan, and in the absence of fully independent investigative processes, it is, indeed, a small number of NGOs that have stepped in to support victims and their families, providing legal counsel and representation, collecting and documenting evidence and offering psychological and moral support. NGOs are playing a vital role in supporting torture victims' efforts to overcome the significant, entrenched barriers to access to justice, in the context of the failure of state agencies to exercise full impartiality and avoid inherent conflict of interest. The authorities should be sensitive to NGOs' activities in this arena, and should ensure that they are able to continue this vital work unhindered.

The PMCs need to have unhindered access to places of detention, and the right and the capacity to talk to prisoners who have alleged torture in confidence; these rights need to be recognised in law and respected by prison officials and law enforcement officers. The capacity of the NPM needs to improved, and it needs to be given sufficient resources to be able to carry out its role effectively, in accordance with OPCAT.

To oversee these changes and to improve the quality of the investigation of cases involving torture and other ill-treatment (a task that neither the PMCs or the NPM are mandated to perform), the Prosecutor General should establish an advisory council, drawing on the

expertise of members of the National Coalition of NGOs of Kazakhstan against Torture, as well as on the coordinating council of the PMCs and the Ombudsman's office. Meeting regularly, perhaps twice yearly, and with a mandate to identify and address systemic shortcomings in the investigation of complaints of torture and to review some individual cases, this would be an important step towards realising justice for victims of torture in Kazakhstan.

RECOMMENDATIONS TO THE KAZAKHSTANI AUTHORITIES

Amnesty International calls on Kazakhstan to ensure that all reports and allegations of torture and other ill-treatment are swiftly, promptly and effectively investigated, those responsible brought to justice and victims granted adequate reparations.

In addition, Amnesty International calls on the authorities to take the following measures:

- Clarify the mandate of the Special Prosecutor's Units (SPUs) to specify that they should:
  - take charge of the investigation of **all** cases involving allegations of torture and other ill-treatment; and
  - be actively involved in the investigation of torture allegations themselves, rather than delegating all investigative work to law enforcement agencies acting under their supervision.
- Establish an advisory committee under the auspices of the Prosecutor General, to meet twice a year to oversee the investigation of complaints of torture and other ill-treatment. This committee could identify and make recommendations to address systemic shortcomings in the investigation of torture cases, and review individual cases. The committee should include experts from civil society, including the Coalition of NGOs of Kazakhstan against Torture, as well as representatives from the coordinating council of the Public Monitoring Commissions (PMCs) and the Ombudsman's office.
- Amend and update the Joint Decree on "Cooperation of Law Enforcement Bodies with Civil Society Members During the Conduct of [Pre-Investigation] Screening of Complaints of Torture and Other Unlawful Methods of Conduct of Criminal Procedure Inquiry and Investigation as well as of Investigation of Such Complaints" to:
  - formalize the right of officially recognized public monitoring mechanisms to have unhindered access to victims of torture and other ill-treatment in prisons and detention facilities; and
  - stipulate that all complaints of torture submitted via official recognized public monitoring mechanisms are subject to a full, criminal investigation.
- Ensure that the PMCs and the National Preventative Mechanism (NPM) have the resources that they need to be able to carry out their roles effectively, including provision of adequate training for members to improve the quality of monitoring.
- Work towards the establishment of a separate, fully independent police complaints mechanism with the sole responsibility of investigating allegations of torture and other ill-treatment, in consultation with the advisory committee mentioned above and with wider civil society.

- Ensure that prosecutors reclassify all complaints of procedural "wrongdoing" involving allegations of torture and other ill-treatment as criminal complaints.
- Introduce into domestic practice the criteria and recommendations set forth in the Istanbul Protocol for the effective documentation and investigation of torture and other ill-treatment.
- Ensure that all alleged victims of torture and other ill-treatment have immediate access to an independent medical examination on request and that copies of the resulting medical records and supporting evidence are provided without delay to victims and their lawyers.
- Ensure that lawyers representing victims of torture and other ill-treatment are able to perform their professional duties without intimidation or improper interference, in accordance with the UN Basic Principles on the Role of Lawyers.[109]

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[109] United Nations, "Basic Principles on the Role of Lawyers".

DEAD END JUSTICE

IMPUNITY FOR TORTURE IN KAZAKHSTAN

Impunity for torture and other ill-treatment by law enforcement officials remains commonplace in Kazakhstan's criminal justice system. Of the hundreds of reports of torture that human rights organizations receive each year in Kazakhstan, just a handful ever lead to a conviction. Despite positive revisions to legislation and policy, remedies available to victims remain ineffective. The official complaints process is complex, riddled with loopholes that allow perpetrators to evade justice, and leaves victims open to intimidation and retaliation. Many victims do not even attempt to register a complaint, and those who do often end up feeling helpless, intimidated, and overwhelmed.

In this report, Amnesty International tells the stories of some of those who have been subject to torture or other ill-treatment within the criminal justice system in Kazakhstan. Many of them have been battling the system for years and years, supported only by families, and a small number of dedicated lawyers and NGOs.

The failure to investigate effectively their reports of torture and other forms of ill-treatment and bring those responsible to justice flouts Kazakhstan's obligations under international human rights law. Crucially, it also undermines public confidence in the criminal justice system and people's trust in law enforcement services. It is time for the government of Kazakhstan to honour its stated commitment to eradicating the use of torture and other ill-treatment in the criminal justice system, and to ensuring that all reports of torture are investigated promptly and effectively.

Practical steps that the Government of Kazakhstan could take now include ensuring that Special Prosecutor's Unit take charge of the investigation of all cases involving allegations of torture, and the establishment of an advisory committee to oversee the investigation of complaints of torture and ill-treatment, under the auspices of the Prosecutor General and to include experts from civil society. In the long run, Kazakhstan needs a separate, fully independent police complaints mechanism with the sole responsibility of investigating allegations of torture and other ill-treatment.

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