

Committee Against Torture
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14 avenue de la Paix,
1211 Geneva 10
SUISSE

Paris / St. Petersburg, 21 December 2012

RE: Comments on the State Party's follow-up submission in *Abdussamatov and Others v. Kazakhstan (444/2010)*

ACAT-France received on December 5th, 2012 the follow-up reply of Kazakhstan regarding the Committee Against Torture's decision in case No. 444/2010. On behalf of the complainants, we would like to bring the following comments to the Committee.

1. It is regrettable that the information submitted by the State Party under the cover of the letter dated 8 November 2012 contains no details about the implementation of the 1 June 2012 Committee's decision on the merits of the case, in particular, steps taken, if any, to ensure prompt and full redress as ordered by the Committee in para. 15 of the above-mentioned decision.
2. In particular, no mention is made of compensation to the complainants or any meaningful attempt to return them from Uzbekistan to Kazakhstan. We can confirm that no compensation was paid or offered to the complainants by the State Party, and that none of the complainants returned to Kazakhstan.
3. It should be emphasized that the State Party attempts to rebut the conclusions reached by the Committee in its 1 June 2012 decision disposing of the present case. In this respect the counsel to the complainants would like to observe that the follow-up procedure may not undermine the decision on the merits of the complaint already reached by the Committee and which is final. The purpose of the follow-up procedure is not to appeal against the decision of the Committee but rather to ascertain the measures taken to give effect to the Committee's findings (rule 120 (1) of the

Committee's rules of procedure), the veracity of those findings not being subject to any further discussion.

4. Kazakhstan should not discuss the complainants' present situation in Uzbekistan but rather explain which measures of redress were implemented in the complainants' case.
5. Nevertheless, the complainants' counsel are concerned by several points of the State party's submission regarding the visit of the Kazakh diplomats to some of the complainants and would like to bring some comments. In the follow-up submission, it is stated that diplomatic representatives visited 18 complainants in detention from 3 to 14 August 2012 to assess the respect of their rights, their conditions of detention and the existence of complaints regarding torture, ill-treatments or any unlawful act.
6. The complainant's counsel note that the information submitted by the General Prosecutor's Office indicates that the visits were held by representatives of the Kazakh diplomatic service. We observe that neither an independent organization nor an independent expert was present to assess the monitoring conditions. We therefore take with the utmost caution the information delivered by the State party and believe that such visit can't be considered as an effective monitoring.
7. The State party does not precise the conditions of visit. It does not provide any detail regarding the number, the composition and the qualification of the delegation of the Kazakh diplomatic service. It does not specify for instance whether a doctor was part of the delegation. It does not elaborate on the condition of the meetings with the complainants, whether interviews were held confidentially and in the absence of any Uzbek officer (representatives from the SNB, the penitentiary administration...). ACAT received a testimony from relatives of one of the complainants alleging that Uzbek officers were present during the interviews (see attachment). Such presence prevents any confidential discussion.
8. The State party provides 9 pre-typed and 10 handwritten statements from the complainants addressed to the Committee against torture saying they have no complaint. The counsel fear that these documents were prepared in advance by Kazakh diplomats. They suspect that they were drafted without having even assessed the situation of the complainants. They assume that the letters were brought for the only purpose to collect the complainants' signatures and refute any violation of their rights before the UN Committee against Torture without a real and effective monitoring of their conditions. In the pre-typed letters, only names and signatures are written. Moreover letters are mostly written in Russian, language which the complainants are not fluent in, and two letters are written in another language with no translation into the UN official language provided by the State Party. Handwritten letters have similar content as the pre-typed letters. We believe that these letters are likely to have been signed or written under pressure and are not voluntarily produced by the complainants. Statements were signed in custody, where in any case, complainants are especially vulnerable to any coercion or reprisal. Therefore the

counsel consider that these statements are unreliable. They furthermore believe that the State party tries to refute the merits of their complaint (i.e risk of torture upon extradition) by coercing the complainants to produce such statements and therefore attempting to interfere with the complainant's right of petition in violation of Article 22 (UNCAT, *Gerasimov v. Kazakhstan*, May 2012).

9. The State party submits that upon request of the Kazakh diplomatic service, medical examinations of the 18 were carried out and no sign of beatings or torture was disclosed.

The counsel note that there is no indication about who conducted the medical examinations, whether an independent doctor was present, whether the person who held the examinations had any qualification or training regarding the specific examination of torture or ill-treatments, how the examinations were held (protocol, confidentiality...) and what were the detailed results (see the *Istanbul Protocol*). The counsel note that no medical certificate was provided with the State party's submission.

10. The State party states that none of the 18 interviewed complainants complained about torture, pressure or violation of their rights. Uzbek human rights defenders informed ACAT that at least 4 of the 18 complainants who were visited by Kazakhstan were tortured without any further precision. They have no information available regarding the other complainants.

Furthermore, ACAT received a testimony (see attachment) alleging that torture has been used against complainants, using for instance electrocution or suffocation with plastic bag on the head. The testimony also raised that complainants were warned and threatened with reprisals before the visit of the Kazakh diplomat(s). It alleged that they were compelled to say that they were not tortured.

11. Considering the above elements, the counsel consider that the monitoring of the conditions of the complainants held by the State party is neither independent nor effective. The statements signed by the complainants cannot be considered as reliable material. Furthermore, the counsel are particularly concerned by allegations of torture against the complainants.

12. In conclusion, the counsel for the complainants are of the opinion that the State Party attempts to avoid international responsibility and did nothing to provide appropriate redress for the complainants, including adequate compensation and prompt investigation from Uzbekistan (as directly indicated by the Committee in para. 15 of its 1 June 2012 decision on the case), as well as other measures of redress in line with article 14 of the Convention as interpreted by the Committee in its recent General Comment no. 3 of 2012.

Christine Laroque and Sergei Golubok,
Counsel for the complainants

Attachment- testimony received by ACAT

In October 2012, ACAT received from a reliable source the following information and allegation. Regarding security and protection reasons, ACAT was requested not to disclose identification of the source. The latter was required not to reveal the name of the prisoner who provided this testimony as he fears reprisals and a great risk for him. Letters are undated. The full content of the letter received by ACAT is provided below:

“Information on group of people extradited from Kazakhstan.

As you know 29 people (some say 28) who were arrested in Kazakhstan were extradited to Uzbekistan. It was said that UN is pressuring Kazakhstan, saying: "You have extradited refugees to the country where torture is practiced. So, go and learn how they are kept."

Because of such pressures, some representatives from Kazakhstan came to Tashkent these days. The 29 extradited refugees were brought to Tashturma prison [note by ACAT: remand center in Tashkent] for interview. Representatives asked whether they were tortured or not. The prisoners had been previously warned and threatened, saying: "If you complain, we will deal with you afterwards." Then the prisoners said that they were not tortured. The representatives left, saying that they will visit again.

We got this information from relatives of the person named XXX, who visited him recently. On that meeting, XXX said: "How could we say that we were tortured, while we are on their hands? Therefore we were compelled to say that we were not tortured and that we are not under pressure now." But you must deliver to UN by any possible ways and make it publicly available that in reality we were subjected to unbearable tortures during the investigation. There were all types of tortures. They used electric chair (tortured with electrocution). Therefore we were sentenced with fabricated charges (we were forced to confess those charges). Oppression is still continuing in colonies."

Uzbek police officers said about 29 refugees that they “bought from Kazakh authorities for such and such thousand dollars". It seems to be true and that Uzbekistan made a deal for quite large sum of money, when they requested refugees.

In the colony where XXX is kept, every food brought by relatives is cut to small pieces to check the content.”

Our source asked for more information and was replied with another letter:

XXX was brought to Tashturma from colony on May of this year. He was kept there from end of May till beginning of the September.

When relatives of XXX learned that he was brought to Tashturma they began to worry. Was there additional charges brought up against him? Why was he brought to Tashturma? They hired a lawyer. When they requested a visit to him, they were rejected. The head of the Tashturma prison replied: "I cannot give permission. Only those who brought him here could do it."

XXX's relatives couldn't find who requested his transfer to Tashturma. No MIA [Ministry of Internal Affairs], neither SNB [Uzbek National Security Service] admitted the request was made by them. When the relatives approached the Main Department of the Correctional Facilities and asked whether a lawyer could visit XXX in Tashturma, they were replied: "He is going to be transferred back to his colony soon. Then his lawyer can visit him there." But they kept refusing to say who made a request for transfer. It was kept confidential.

When XXX was transferred back to the colony, his relatives visited him and learned all from him and what happened after for 4 months.

During these 4 months, XXX and some others from the 29 were kept in Tashturma. On August one representative came from Kazakhstan. Number of other Uzbek officers joined to him. Maybe some were from SNB.

Only those who had refugee status were brought to interview. The representative spoke only with them. It is unknown how many of 29 had a refugee status.

The representative asked about conditions of detention; whether they were tortured, they were free to do prayers. Prisoners answered that everything was fine and that they were not tortured. After taking some notes the representative left saying "we will visit you again."

XXX couldn't complain but said to relatives to make this information public. He said: "there were all kind of torture, electric chair, plastic bag and other unbearable tortures... When plastic bag is put on head and closed, it will suffocate a person. It will be hold some time and released, to keep the person alive. And it repeated. It is also very painful."

XXX is not able to speak out from imprisonment and asking to deliver his message to UN. Maybe something could be done for them."