

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2011/06/07/kazakhstan-joint-letter-prosecutor-general-regarding-32-asylum-seekers>

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June9 Update - A June7 letter to Kazakhstan's prosecutor general and June 7 press release urging respect for the principle of *non refoulement* contained errors in the listing of individuals previously returned by Kazakh authorities to Uzbekistan. The letter below has been corrected.

To the Prosecutor General of the Republic of Kazakhstan

Mr. Ashat Daulbayev

The Prosecutor General of the Republic of Kazakhstan
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Republic of Kazakhstan

Via facsimile: +7 7172 50-25-34

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Dear Ashat Kaizullayevich:

We, the undersigned international human rights organizations, are writing to express our grave concern about the possible extradition to Uzbekistan of 32 Uzbeks-two of whom are Tajik nationals-currently in custody in Almaty, Kazakhstan where they had sought asylum. We are of the firm belief that these men are at a real risk of torture if returned to Uzbekistan and therefore, according to Kazakhstan's obligations under international law, may not be returned to Uzbekistan.

Kazakhstan is bound by international law, including by the 1951 Convention Relating to the Status of Refugees and its 1967 protocol, and the Convention against Torture, to respect the principle of *non-refoulement*. Thus, Kazakhstan is prohibited from extraditing or otherwise forcibly returning individuals to places where their lives or freedoms may be threatened or where they face a risk of torture.

In December 2010, ACAT France submitted a complaint to the United Nations Committee against Torture on behalf of 29 Uzbeks to prevent their extradition to Uzbekistan. Three other asylum seekers were subsequently detained. On December 24, 2010 the Committee against Torture imposed interim measures to stay extradition pending review of merits of the complaint. The government of Kazakhstan subsequently challenged the admissibility of the complaint. On May 6, 2011 the Committee reaffirmed the interim measures, prohibiting Kazakhstan from extraditing these individuals, pending the Committee's review.

As stated above, Kazakhstan has an absolute obligation not to return anyone to a country where he or she faces a real risk of torture. Thus, under no circumstances may Kazakhstan extradite or otherwise return the 32 men to Uzbekistan. A violation of this obligation or of the interim measures imposed by the Committee against Torture would constitute a serious breach of Kazakhstan's obligations under international law and call into question Kazakhstan's willingness to respect its international commitments.

According to interviews conducted by FIDH with some of the men prior to their arrest, and information received from relatives and other asylum-seekers, the individuals facing extradition are Muslims who fled Uzbekistan fearing persecution based on their religious affiliation, beliefs, and practices, and membership or suspected membership in unregistered Islamist organizations. Kazakh authorities detained the men on the basis of extradition requests issued by the Uzbekistan government for alleged anti-state and religion-related offenses, such as attempt to undermine the constitutional order and membership in banned or unregistered organizations.

For well over a decade, authorities in Uzbekistan have waged an unrelenting campaign of persecution against Muslims who practice their faith outside strict state controls or who belong to unregistered religious organizations with thousands incarcerated for non-violent offenses. Human rights organizations have documented numerous, widespread cases of torture and other ill-treatment, arbitrary detention, and deaths in custody of individuals accused of anti-state and religion-related crimes in Uzbekistan. Methods of torture and other ill-treatment have included electric shock, beatings with truncheons, rape and other sexual abuse, asphyxiation, and psychological abuse, including threats to harm a detainee's relatives.

Uzbekistan's record on torture and ill-treatment of pre-trial detainees and prisoners has also been documented by UN bodies, including the then UN special rapporteur on Torture, Theo van Boven, who in 2003 found torture in Uzbekistan to be "systematic," and the UN Committee against Torture, which after its periodic review of Uzbekistan in 2007, found that torture in places of detention in Uzbekistan is "routine" and occurs "with impunity." In addition, the European Court of Human Rights has issued multiple rulings prohibiting states from returning persons to Uzbekistan on the basis of a risk of torture. Most recently, on November 4, 2010, in *Sultanov v Russia* (No. 15303/09), the court held that "forcible return to Uzbekistan would give rise to a violation of Article 3" [of the European Convention on Human Rights and Fundamental Freedoms] as there would be a "a serious risk of being subjected to torture or inhuman and degrading treatment."

In the past, Kazakhstan has blatantly violated its absolute obligation not to return to torture. On May 30, 2011, Kazakh authorities extradited Ershidin Israil, an Uighur refugee, to China, where he faces a real risk of torture. In September 2009, Israil fled to Kazakhstan seeking asylum after the July 2009 Urumqi riots in the Xinjiang Uighur Autonomous Region of China, in which over 200 people were killed. Hundreds of Uighurs were detained after the violence in Urumqi, and several people have been executed for involvement in the rioting.

In March 2010, UNHCR granted Israil refugee status, but Kazakh authorities prevented him being resettled to Sweden by denying him necessary exit documents. UNHCR later revoked his status. Then, in June 2010, Kazakh authorities took Israil into custody. Israil was denied refugee status under Kazakhstan's new law on refugees, and on May 30, 2011, he was handed over to Chinese authorities, who had reportedly accused Israil of involvement in "terrorism." His whereabouts are currently unknown.

Despite the well-documented evidence that the use of torture in Uzbekistan is widespread and systematic, since September 2010, Kazakhstan has also forcibly returned to Uzbekistan at least four individuals, two of whom are not citizens of Uzbekistan, associated with the group of 32 detainees. On September 8, 2010, Kazakh authorities extradited Khurshid Kamilov, a citizen of Kyrgyzstan and ethnic Uzbek, to Uzbekistan. On September 27, Kazakhstan extradited Saidakhmad Kholmatov (b. 1974), an Uzbek citizen whose asylum claim was still under review, to Uzbekistan. On October 30, 2010, before he could contest in court the decision denying him asylum, authorities extradited to Uzbekistan Umarali Abdurakhmanov (b. 1975), an ethnic Uzbek from Tajikistan who was detained in early 2010 in Taraz, Kazakhstan. On November 10, 2010, Rasul Rakhmonov (b. 1987), an Uzbek citizen, was also extradited to Uzbekistan. His asylum claim was under review at the time of his extradition. An Uzbek court sentenced Abdurakhmonov to 10 years' imprisonment on January 27, 2011. According to the verdict, Abdurakhmonov categorically denied the charges against him and said that the investigator made him sign several papers, saying "you committed these acts, sign the papers." None of the signatories to this letter have been able to confirm the whereabouts of the other three.

In late November 2005 Kazakh authorities forcibly returned at least nine Uzbeks who had fled persecution in Uzbekistan, four of whom were registered with the office of the United Nations High Commissioner for Refugees (UNHCR).

In light of the fact that the 32 Uzbek and Tajik nationals in detention and in extradition proceedings face a real risk of torture if returned to Uzbekistan, we urge the authorities of Kazakhstan, in the strongest possible terms, to uphold its non-derogable, international obligation not to forcibly return any of these men to Uzbekistan, and to cease or reverse extradition proceedings or rulings in relation to them.

We also wish to convey our concern about the fairness of appellate hearings contesting the extradition orders and refusals of asylum with respect to the 32 Uzbeks currently in detention.

All 32 had requested asylum from Kazakh authorities under Kazakhstan's new Law on Refugees, which entered into force in January 2010. Many of the provisions of this law fail to comply with international law, such as the provision allowing for the refusal of asylum on the basis that the applicant is a member of a banned religious organization in his or her country of origin.

While Kazakh authorities have allowed the detained asylum seekers access to lawyers to represent them in judicial proceedings, the appellate process has been marred by serious due process violations.

Independent observers, including representatives of the OSCE and Human Rights Watch, attended appellate hearings contesting the denials of asylum status in December 2010. In some cases, judges rejected detainees' motions to attend their own hearings, effectively preventing them from presenting any evidence on their own behalf. Judges also refused to admit into evidence reports by the UN and human rights organizations about the widespread practice of torture in Uzbekistan, in particular, against individuals charged with religion-related offenses. In at least one hearing, the presiding judge dismissed the testimony of one of the detainee's wives, who described harassment and torture she and her husband had experienced at the hands of Uzbek authorities, saying that there was no way to confirm her allegations.

Appellate hearings have occurred in quick succession, with judges issuing rulings in writing after only brief consideration, in some cases lasting as few as 15 minutes. At the close of one hearing, the judge began to read aloud a decision affirming the denial of refugee status for another asylum-seeker whose appellate hearing had not yet taken place, giving rise to the legitimate apprehension that the outcome of each of the hearings for all detained asylum seekers was predetermined.

Kazakh authorities have also created barriers for the wives of the detained asylum-seekers to apply separately for refugee status, impeding their right to an individualized, thorough and careful refugee status determination. To date, it is unclear whether Kazakh authorities will treat the family members of the detained asylum-seekers as separate cases or whether the wives and children of the detainees could be forcibly returned together with their husbands.

ACAT-France , Amnesty International, the Association "Human Rights in Central Asia," Human Rights Watch, and the International Federation for Human Rights (FIDH), urgently call on the Kazakh government to respect the interim measures issued by the UN Committee against Torture and prevent any further forced returns of any asylum-seekers to Uzbekistan. Furthermore, Kazakh authorities should ensure that each detained asylum-seeker and his immediate family members are given prompt access to careful, thorough, and individualized refugee status determination in which their due process rights are protected.

We thank you for your attention to the concerns raised in this letter and look forward to receiving your response.

Sincerely,

ACAT-France

Amnesty International

The Association "Human Rights in Central Asia"

Human Rights Watch

International Federation for Human Rights (FIDH)

Uzbek Detainees Currently under Threat of Extradition to Uzbekistan

CC:

Mr. Juan Mendez, United Nations Special Rapporteur on Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment

Committee Members, United Nations Committee Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment

United Nations High Commissioner for Refugees

Charg d'Affaires of the United States a.i. John Ordway

Ambassador David Moran, Embassy of the United Kingdom

Ambassador Jean-Charles Berthonnet, Embassy of France

Ambassador Rainer Schlageter, Embassy of Germany

Mr. Yerzhan Kazykhanov, Ministry of Foreign Affairs, Republic of Kazakhstan

Mr. Askar Shakirov, National Ombudsman of the Republic of Kazakhstan

Filtration and the Crime of Forcibly Transferring Ukrainian Civilians to Russia

Belarus and Poland's Shared Responsibility for Border Abuses

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