



FREEDOM NOW

**DUTY TO REHABILITATE
ASSESSING REPARATIONS
OF FORMER POLITICAL PRISONERS
IN KAZAKHSTAN**



Politically motivated imprisonment is a widespread practice across Central Asia, and as the practice continues, the number of people who were once prisoners of conscience but have since been released from detention is growing. This growth is particularly evident in countries that have undergone recent political transitions, such as Kazakhstan. In our report, “Duty to Rehabilitate: Assessing Reparations of Former Political Prisoners in Kazakhstan and Uzbekistan,” Freedom Now assesses whether Kazakhstan and Uzbekistan are currently meeting their international obligations to provide rehabilitation (also called “reparations” under international law) to former prisoners of conscience, and if they are not, in what ways these two countries are failing, and how can domestic rehabilitation frameworks be adapted to ensure these governments bring their practices in line with their international obligations. This summary provides an overview of the report’s findings and recommendations concerning Kazakhstan.

PRISONERS OF CONSCIENCE

A prisoner of conscience is a person detained for their political, religious, or other beliefs or because of their ethnic origin, sex, sexual orientation, color, language, national or social origin, economic status, birth, or other status—who have not used or advocated violence.

In this report, the term “former prisoner of conscience” is used to describe a person who was a prisoner of conscience during their detention but has since been released from detention.

The report finds that the current rehabilitation framework in Kazakhstan fails to meet the state’s international obligations. Our analysis of Kazakhstan’s domestic legal framework combined with interviews of former prisoners of conscience in Kazakhstan reveals deficiencies in law and practice that directly violate the right to reparations for former prisoners of conscience.



KAZAKHSTAN'S INTERNATIONAL

OBLIGATION TO PROVIDE REPARATIONS

Kazakhstan is party to international human rights treaties that impose an obligation to provide full reparations for violations of international human rights law. The main source of Kazakhstan's international human rights obligations is the state's treaty commitments, among them the International Covenant on Civil and Political Rights ("ICCPR"), which requires Kazakhstan to protect the rights to freedom of movement, freedom of religion, freedom of expression, freedom of assembly, freedom of association, and political participation. Within the ICCPR the principle that imprisoning individuals on the basis of the exercise of their civil or political rights is a violation of human rights is clearly articulated. The ICCPR also prohibits discriminatory application of laws, arbitrary arrest and detention, and torture, all human rights issues that often arise in prisoner of conscience cases.

The right to reparation for violations of international law is a longstanding norm of international law, and this right is protected under international human rights law. The right derives from numerous sources of international law, including treaties and general principles of international law.

Both states and international human rights bodies have recognized that the obligation to provide full reparations includes the requirement to issue compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition. Accordingly, in the event of politically motivated detention that amounts to a violation of international human rights law, the government of Kazakhstan maintains an obligation to repair the injury to the victim by providing, where appropriate, compensation to repair monetary injuries, restitution of any deprived rights, rehabilitation through the provision of medical or social services, satisfaction by way of symbolic acknowledgments of wrongdoing on behalf of the government, and guarantees that similar violations will not occur.



THE CURRENT LEGAL FRAMEWORK FOR PROVIDING REHABILITATION AND REPARATIONS IN KAZAKHSTAN

Kazakhstan law provides for the state to make reparations to former detainees when certain aspects of their detention are determined to be unlawful. Current Kazakhstan law establishes a right to rehabilitation under five separate areas of law. The different legal bases vary in scope of application and type of rehabilitation. The grounds for rehabilitation are divided into three different categories below based on the area of law that gives rise to the grounds for rehabilitation:

Criminal Code Rehabilitation

This category, created under Criminal Procedure Code Articles 37 and 38, primarily applies to people who have been wronged in relation to a criminal prosecution. This category specifically covers people who are acquitted or who are suspected, accused, or tried, but determined to be innocent of the charges on the following grounds: (1) the absence of a crime, (2) an element of the crime cannot be proven, (3) there is no complaint from the victim in crimes requiring such, (4) a law has abolished the crime, (5) the Constitutional Council has found the crime is unconstitutional, or (6) the matter has previously been conclusively decided.

Administrative Code Rehabilitation

This category, created under the Administrative Code Articles 677 and 678, includes people who were wrongfully subjected to administrative proceedings or who in the course of unlawful administrative proceedings were wrongfully detained, arrested, or subjected to coercive medical measures. This category also includes people who were detained in dangerous conditions or ill-treated in relation to administrative detention.

Soviet-Era Rehabilitation

This category, created by the Law on Rehabilitation of Victims of Massive Political Repression, includes Kazakhstan citizens who can demonstrate that they were victims of political repression in the territory of the former USSR. To qualify for this category, a court must make a finding that the initial criminal conviction was unfounded and acquit the individual of all charges in the same procedure as an ordinary wrongful trial.

Crime-Victim Fund

This category, created under Criminal Code Article 146, includes individuals who were victims of certain crimes. With respect to prisoners of conscience, the victim compensation fund provides compensation to individuals who were subjected to torture or ill-treatment.

Prisoners of conscience that fall within the scope of these provisions have a claim to reparations from the government under Kazakhstan law. Other possible grounds for rehabilitation that are not identified under the above categories—such as being granted amnesty, pardon, or a mitigation of punishment—do not qualify individuals to seek rehabilitation.

THE RIGHT TO REHABILITATION

IN PRACTICE IN KAZAKHSTAN

Kazakhstan's current rehabilitation program is not structured in a way that fully ensures rehabilitation for victims of wrongful detention, and as a result, the framework does not meet international standards on reparations.

Because many former prisoners of conscience are released after serving the term of their sentence, and they continue to be considered, from a domestic legal perspective, guilty of committing a crime under Kazakhstan law, Kazakhstan legislation categorically excludes them from rehabilitation. Acquittal or reversal of one's conviction is necessary in order to be eligible for the primary forms of rehabilitation for wrongful criminal and administrative prosecution under current law. However, if a prisoner has already exhausted their domestic remedies by appealing their conviction to the highest domestic court available, they are no longer entitled to have courts reopen and reexamine their case unless they can show that there is newly discovered exculpatory evidence. Although there are other ways that cases can be re-examined, such as the Prosecutor General petitioning to reopen a case, these avenues are discretionary and do not grant victims an absolute right to reopen their case. Indeed, many former prisoners of conscience, despite petitioning the Prosecutor General, fail to have their cases revisited.

Even if former political prisoners were able to reopen their cases, the Kazakhstan criminal justice system imposes additional procedural barriers that prevent prisoners from having their convictions overturned. For example, the government's practice of coercing confessions prior to releasing someone on parole or amnesty is used to deny rehabilitation to former prisoners of conscience. Under Kazakhstan law, those who "voluntarily self-incriminated themselves" are not entitled to rehabilitation for wrongful prosecution under both the Criminal Procedure Code and the Administrative Code rehabilitation provisions. Because these confessions are left intact, the government considers former prisoners that were pressured into signing confessions—even were the defendant only agreed to confess in exchange for a more lenient sentence—to have "voluntarily self-incriminated themselves," which precludes the possibility of obtaining rehabilitation.

In the rare event that one qualifies for rehabilitation, the amount that the government pays in compensation is often far less than the amount of the damage done. For example, in one notable case of rehabilitation for torture, Rasim Bairamov, who was a victim of severe torture by the Kostanay Regional Police Department, was awarded less than 0.1% of the monetary damages that he requested as compensation for his injuries after his long and protracted legal battle seeking reparations under the Kazakhstan Civil Procedure Code.

Given the limited scope of the rehabilitation categories and the immense procedural barriers to initiating the legal process, many prisoners of conscience are categorically excluded from eligibility for rehabilitation under current Kazakhstan law.

Even though Kazakhstan maintains post-release prisoner support services that are meant to provide medical, housing, and other forms of social support to all newly released prisoners, former prisoners of conscience report that these state services can be difficult, if not impossible, to obtain. Interviews of eleven former Kazakhstan prisoners of conscience conducted in the course of research for the report reveal that former prisoners of conscience have many rehabilitation-related needs that are not currently met by Kazakhstan's existing rehabilitation framework. Interviewees report that their imprisonment has caused significant monetary damages from lost employment, lost businesses, seized property, damaged property, torture and ill-treatment, medical costs, the cost of legal and court fees, and the costs of prison visits. Moreover, access to re-employment was an



issue for all but one of the interviewees at the time of their release, and 10 of the interviewees report continuing issues securing employment. The overwhelming majority of Kazakhstan interviewees also report needing ongoing medical or psychological treatment due to their imprisonment. However, no interviewee, including the one who was legally entitled to receive reparations, reported being able to access any government medical or psychological support after release. Several interviewees noted that they sought medical services under the state provided post-sentence reintegration program, but none reported being able to access medical care from these programs.

PROPOSALS FOR REFORM

The Kazakhstan government's failure to address the rehabilitation needs of former prisoners of conscience is evidence that, even after releasing prisoners of conscience, the government is not fulfilling its international obligations to provide full reparations for the violation of their human rights. However, there are several improvements Kazakhstan can make to their law and practice to ensure that former prisoners of conscience are able to access the reparations that are required under the government's international obligations.

In terms of substantive legal reforms, we recommend that Kazakhstan adopt the reforms listed below into law.

Incorporate “Prisoner of Conscience” into Legal Framework and into Political Dialogue

Kazakhstan does not use “prisoner of conscience” to guide legislation and policy, further contributing to the neglect of the rehabilitation rights of prisoners of conscience. Kazakhstan should adopt the practice of employing the term in relation to the provision of rehabilitation to people detained for the exercise of their civil and political rights.

Guarantee a General “Right to Rehabilitation”

Kazakhstan should add provisions guaranteeing a general, legally enforceable right to rehabilitation for prisoners of conscience that is not conditioned on the acquittal of a victim's criminal sentence. Ensure that the right to rehabilitation is enforceable by victims in multiple fora, including in criminal, civil, and administrative proceedings.

End the Use of Discretionary and Inherently Discriminatory Criminal Code Provisions

Kazakhstan should repeal criminal and administrative code provisions that are too vague and over-broad, such that they may be discriminatory applied to prisoners of conscience, such as certain fake news laws or anti-extremism provisions.

Improve Safeguards Against Coerced Confessions

The issue of coerced confessions has been present in Kazakhstan. Preventing coerced confessions will remove an additional barrier that prisoners of conscience face in obtaining rehabilitation. Kazakhstan should adopt practices protecting against coerced confessions, such as prohibiting interrogating suspects without an independent attorney present, ensuring that all confessions are provided in the signee's language, and investigating and prosecuting all reports of torture and ill-treatment while suspects are in pre-trial custody.

End Admissions of Guilt for Parole, Amnesty, or Pardons

Kazakhstan should end the practice of requiring an admission of guilt to obtain early release. Instead, condition release on factors related to likelihood of recidivism and behavior while in detention.

End the Practice of Financial Blacklisting

Kazakhstan should end the practice of financial blacklisting for individuals convicted of extremism related offences. Moreover, Kazakhstan should guarantee a right to financial services for former prisoners, including prisoners of conscience, to ensure that burdensome administrative regimes do not functionally exclude individuals from financial services.

In terms of procedural reforms, we recommend that that Kazakhstan make the following changes to the procedural implementation of rehabilitation:

Permit a Civil Rehabilitation Claim Without Prior Acquittal

Amend Civil Procedure Code Article 76(3), which prevents civil courts from considering matters upon which there is a criminal court judgment, to permit civil courts to review rehabilitation cases regardless of the status of criminal proceedings. Ensure that the criminal proceedings do not prejudice civil rehabilitation proceedings.

Create Processes for Reversing Admissions of Guilt

Kazakhstan should establish procedures that allow individuals to legally invalidate an admission of guilt that was signed as a condition of early release or under duress. Alternatively, create evidentiary rules that explicitly exclude such admissions from any future legal proceedings, particularly those concerning rehabilitation.

Expand the Right to Reopen Criminal Cases

Grant former prisoners the right to reopen criminal cases on grounds other than new evidence, such as in cases where the former prisoner can show politically motivated prosecution, prosecution under inherently discriminatory charges, and the existence of a decision from an international human rights tribunal finding that the individual's detention violated human rights law.



Ensure the Preservation of Records Concerning Former Prisoners of Conscience

Copies of all records of criminal proceedings should be made readily available to suspects, defendants, convicts, and their families. In addition, all records concerning a person in detention should be preserved for the duration of their detention and made available to that person at their request. Permanently preserve records concerning individuals who have been found to be wrongfully detained by international human rights bodies.

Create Procedures to Challenge Blacklisting

In the event that blacklisting continues, Kazakhstan should provide direct legal means to challenge blacklisting. The government should create and publish clear standards for the practice of blacklisting, ensuring the existence of carve-outs for wrongfully detained individuals. Ensure that any standards for admitting individuals to blacklists relates to particularized facts about the threat that the individual blacklisted poses to the public order if permitted access to such services. Ensure that any entry on the blacklist is challengeable via a clear legal process, and ensure that blacklisted persons maintain the right to re challenge their status as blacklisted in the event of a change in the particularized circumstances leading to the original blacklisting or in the circumstances of the extremism threat facing the country.

In addition to legal and procedural reforms, more systemic change is necessary to ensure that Kazakhstan recognizes the harm caused to prisoners of conscience by its violation of their rights, and compensates them in accordance with its international obligations. We recommend that Kazakhstan implement an independent rehabilitation procedure to review the eligibility of political prisoners for rehabilitation and to ensure that former prisoners of conscience receive full rehabilitation. The structure of such a procedure could be easily adapted from the model currently in use to compensate for Soviet-era repression. Such a model need only be expanded in scope of application and in scope of reparations awards to address rehabilitation needs of modern-day political prisoners.

Any such procedure should have the responsibility to evaluate cases of former political prisoners and determine their individual reparation and rehabilitation needs; to receive information about an alleged case of a prisoner of conscience from former prisoners or their legal representatives; to have the authority to petition the court to reopen a criminal case for reevaluation of the criminal allegations and for evaluation of the victim's eligibility for rehabilitation; and to review and recommend for implementation UN Treaty Body opinions with respect to prisoners of conscience.

Adopting and effectively implementing the above reform recommendations will begin the process of bringing Kazakhstan more closely in line with its international commitments to provide full reparations for the violation of the human rights of former prisoners of conscience. Until more action is taken, the human rights violations committed against prisoners of conscience, and the negative impact on them and their families, will linger long past their release from government detention. Without full rehabilitation, the job of righting past wrongs against former prisoners of conscience is incomplete.

Our analysis of the domestic legal framework combined with interviews of former prisoners of conscience in Kazakhstan reveals that the government is exhibiting deficiencies in law and practice that have directly contributed to the violation of the right to reparations for former prisoners of conscience. We conclude that the current rehabilitation framework and practice in Kazakhstan fails to meet the government's international obligations.

¹ See, e.g., UN Human Rights Commission, Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, Prin. 34 (adopted in 1997, updated in 2005), available at www.undocs.org/E/CN.4/2005/102/Add.1; UN Human Rights Commission, 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, Resolution 2005/35, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>; UN Human Rights Committee, General Comment No. 31, The Nature of General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 2004, para. 16 (stating that the right to an “effective remedy” provides for a right to reparation, including “restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.”); The CERD Committee adopts this framework in the case *S.A. v. Denmark*, UN Committee on the Elimination of All Forms of Racial Discrimination, UN Doc. CERD/C/97/D/58/2016, para. 7.8 (Feb. 6, 2019), available at www.undocs.org/CERD/C/97/D/58/2016; UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, para. 40 (July 2, 2009), available at www.undocs.org/E/C.12/GC/20; UN Committee on the Elimination of Discrimination Against Women, General Comment No. 38: On Trafficking in Women and Girls in the Context of Global Migration, UN Doc. CEDAW/C/GC/38, para. 43 (Nov. 5, 2020), available at www.undocs.org/CEDAW/C/GC/38; UN Committee Against Torture, General Comment No. 4: On the Implementation of Article 3 of the Convention in the Context of Article 22, UN Doc. CAT/C/GC/4, para. 21 (Sep. 4, 2018), available at www.undocs.org/CAT/C/GC/4; UN Committee on the Rights of the Child, General Comment No. 25: On Children's Rights in Relation to the Digital Environment, UN Doc. CRC/C/GC/25, paras. 46 (March 2, 2021), available at www.undocs.org/CRC/C/GC/25; However, two treaty bodies have not yet adopted this framework in their legal publications, namely the treaty bodies for the Convention on Migrant Workers and the Convention on Persons with Disabilities.

ⁱⁱ U.S. Department of State, 2021 Country Reports on Human Rights Practices: Kazakhstan, available at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/kazakhstan/>.

