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REGIONAL WORKSHOP ON IMPLEMENTING HUMAN DIMENSION COMMITMENTS AND ENHANCING THE ROLE OF CIVIL SOCIETY IN THE WORK OF THE OSCE DUSHANBE, TAJIKISTAN, 20-21 MAY 2014

JOINT RECOMMENDATIONS ON IMPROVING EFFORTS TO ERADICATE TORTURE IN CENTRAL ASIA*

This document is presented by the following organizations: the NGO Coalitions Against Torture in Kazakhstan, Kyrgyzstan and Tajikistan, the Turkmen Initiative for Human Rights, the International Human Rights Association "The Fiery Hearts Club" of Uzbekistan, the Helsinki Foundation for Human Rights (Poland) and International Partnership for Human Rights (Belgium)

Torture: An overview of concerns in Central Asia

Many problems and similarities of today's criminal justice systems in Central Asia stem from the legacy of the USSR, when the rights of detainees were systematically violated.

Since the break-up of the Soviet Union the five Central Asian countries have taken some steps to strengthen legal safeguards against torture. They have all become parties to important international human rights treaties, such as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2008, **Kyrgyzstan** and **Kazakhstan** were the first Central Asian countries that became parties to the Optional Protocol to the Convention against Torture and have since adopted legislation setting up National Preventive Mechanisms (NPM).

However, all Central Asian states have yet to implement many of their international human rights obligations in the area of torture prevention as well as crucial recommendations issued in this area by UN human rights bodies such as the Committee against Torture, the UN Human Rights Committee, under the Universal Periodic Review, as well as by the Special Rapporteur on torture.

While the Special Rapporteur on torture has visited **Kyrgyzstan**, **Kazakhstan** and **Tajikistan** in recent years, **Turkmenistan** has never granted him access to the country and a request for a visit to **Uzbekistan** has been pending since 2006.

Torture is widely used across the region and impunity for torture is widespread. In all five countries torture mainly takes place during the first hours of detention when detainees are in many cases held incommunicado, without access to legal counsel and medical personnel, but torture cases are also reported from later stages of detention and imprisonment. Those detained or imprisoned on charges

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related to national security or “religious extremism” are at particular risk. In **Uzbekistan**, for example, the health of many prisoners serving lengthy sentences on such charges is known to have deteriorated badly due to ill-treatment and deplorable prison conditions and cases of deaths in prison have been reported regularly. In **Turkmenistan** the authorities continue to withhold information about the whereabouts of dozens of people arrested and convicted in connection with the alleged 2002 assassination attempt on former President Saparmurad Niyazov. Many of them were believed to have been subjected to torture and some reportedly died in custody.

To different degrees, all Central Asian countries continue to use the criminal justice system as a means to control and curtail opposition. For many within the criminal justice systems of these countries the incentives to apply torture are greater than the disincentives. For example, while the risk of punishment for abuse is very small, torture or other ill-treatment open up avenues for additional income as law enforcement officers and prison personnel frequently apply torture to extract money from detainees and prisoners. In addition, Central Asian law enforcement officers continue to be assessed – albeit unofficially – by the number of crimes they solve, a system that exacerbates the risk that police resort to torture to obtain a confession to a hitherto unsolved crime.

Human rights defenders and lawyers defending torture victims are at risk of repercussions, particularly when the detainees are held on charges involving “religious extremism“, terrorism or undermining national security. In many cases activists are closely monitored by the authorities; they are subjected to excessive checks and in some cases NGOs have been threatened with liquidation of their organizations as a result of their human rights work. In **Turkmenistan** no independent human rights group is able to operate openly at all.

We are also concerned that in the name of national security, security services of CIS countries, particularly of **Kazakhstan, Russia** and **Ukraine**, have forcibly returned numerous suspected members of banned Islamic groups or parties to **Tajikistan** and **Uzbekistan**. Many of them were subjected to torture. Under international human rights law, in particular the Convention against Torture, states are prohibited from sending anybody against their will to another country where there is a real risk that they will be subjected to torture or other ill-treatment.

Recommendations

Below we outline what we see as the most pressing steps that Central Asian OSCE participating States, all other OSCE participating States and OSCE institutions should take in order to make significant progress towards the eradication of torture in Central Asia, and to ensure better coordination of efforts in this regard.

Recommendations to the governments of the Central Asian OSCE participating States:

The authorities of all Central Asian states should:

- Promptly act on all complaints involving allegations of torture and ill-treatment by initiating thorough, impartial and independent investigations, punishing those found responsible, providing adequate and full compensation to torture victims, and reporting on the measures taken in mass media.
- Provide the main safeguards of detainees against torture: a) Ensure that the right to access to a lawyer of the detainee’s choice from the moment of deprivation of liberty is fully implemented; b) introduce and strictly enforce police registration of a person’s detention without delay after the actual moment of detention; c) ensure that routine medical examinations of anyone arriving at a detention facility are carried out; and d) ensure that the remand hearing takes place no later than 48 hours after the moment of detention and that judges inquire into the legality and grounds of detention and the detainee’s treatment in custody.
- Elaborate and introduce in the legislation the institution of independent forensic medical examinations and increase the number of qualified medical personnel in police detention and pre-trial facilities. Ensure that medical personnel working inside detention facilities are truly independent of law enforcement agencies and are trained on the provisions of the Istanbul Protocol.

- Introduce legislation to create an independent body that is endowed with sufficient authority and competence to conduct prompt, thorough and independent investigations into allegations of torture or other ill-treatment.
- Ensure that human rights defenders are protected from ill-treatment, threats and repressions resulting from their anti-torture work and that law enforcement officers are punished for carrying out such measures under relevant administrative or criminal legislation.
- Conduct regular and genuine consultations with civil society organizations, journalists and lawyers on necessary reforms of the criminal justice system as well as on policies regarding torture prevention and their implementation.

The following recommendations are addressed to specific Central Asian OSCE participating States:

- The authorities of **Kazakhstan** should ensure that the National Preventive Mechanism (NPM) is fully independent of the executive branch of power, including that it is financially autonomous.
- The authorities of **Kyrgyzstan** should ensure that the National Centre for the Prevention of Torture, the country's NPM, is provided with the necessary financial, human and material resources to fulfil its mandate independently and effectively.
- The authorities of **Tajikistan** should grant prompt, independent and full access to the Monitoring Group established under the Ombudsman to all temporary detention facilities (IVS), pre-trial detention facilities (SIZO) and other places of deprivation of liberty to civil society activists, in order to conduct independent monitoring. The authorities should also promptly ratify the Optional Protocol to the Convention against Torture.
- The authorities of **Turkmenistan** should publish comprehensive statistics on how many investigations and criminal cases have been instigated under the crime of "torture", which was introduced to the Criminal Code of Turkmenistan in August 2012 (as Article 182-1).
- The authorities of **Turkmenistan** and **Uzbekistan** should promptly accept pending invitations from the Special Rapporteur against torture.

Recommendations to other OSCE participating States:

In accordance with the principle that issues relating to human dimension commitments are matters of direct and legitimate concern to all OSCE participating States, participating States from outside Central Asia should:

- Urge the governments of the Central Asian states to promptly implement all recommendations included in the section "Recommendations to the governments of the Central Asian OSCE participating States" and make the topic of torture prevention a priority in bi-lateral meetings and human rights dialogues.
- Provide comprehensive support to Central Asian human rights defenders working on torture, including by urging the authorities to put in place legal safeguards regarding freedom of association and by encouraging programmes that provide psychosocial support to lawyers and activists.
- Make all programmes, where foreign governments provide training, support or cooperate in other ways with Central Asian government agencies, in particular those directly engaged with law enforcement agencies and the military, conditional on the observance of international human rights standards, particularly those regarding torture.
- Ensure that no one within their jurisdiction is returned to any country where they would be at risk of torture or other ill-treatment.

Recommendations to the whole OSCE community and OSCE institutions:

- The **Office for Democratic Institutions and Human Rights (ODIHR)** should significantly step up its support of governments and civil society organizations in their work relating to the eradication of torture. It should increase its efforts to support governments in implementing international standards and obligations as well as recommendations of international human rights mechanisms and procedures.
- **OSCE institutions** should pay special attention to the creation of favorable conditions for human rights defenders in OSCE member states, so that they can freely carry out their work on torture prevention. They should focus on enhancing the safety of human rights defenders and support programmes that provide psychosocial support to lawyers and activists. **ODIHR** should collect and promote examples of best practice and recommendations in this area.

- **OSCE offices in Central Asia** should provide comprehensive support to all civil society organizations, lawyers and journalists working on torture prevention, including through engaging in regular consultations, providing financial and other support, and facilitating dialogue with relevant state institutions.
- **OSCE offices in Central Asia** should ensure that torture prevention measures and civil society control are included in all relevant OSCE projects, such as those dealing with police reform and the fight against corruption.
- The **OSCE Centre in Kazakhstan** should monitor the effectiveness of the new NPM and support the efforts of the NGO Coalition Against Torture in Kazakhstan to establish an independent torture complaints mechanism. It should also engage in monitoring trials to determine how the courts deal with torture complaints submitted during pre-trial proceedings.
- The **OSCE Centre in Kyrgyzstan** should continue to support the independent monitoring of detention facilities. It should support NGOs to cooperate with the NPM and it should help NGOs clarify to the authorities and the general public the difference between the work of the Ombudsman on the one hand and the NPM on the other, and how these two institutions can complement the work of one another.

The **OSCE Office in Tajikistan** should increase its efforts to facilitate dialogue between the NGO Coalition Against Torture, other civil society organizations and government agencies on the topic of independent monitoring of detention facilities. In particular, the OSCE Office should support discussions between NGOs and the Interior Ministry aimed at initiating monitoring of pre-trial detention facilities. The OSCE Office should routinely raise individual torture cases with the authorities and engage in improving legislation on torture prevention.