



Submission by the NGO Coalition against Torture to the EU-Tajikistan Human Rights Dialogue, June 2014

On Freedom from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Tajikistan

The NGO Coalition against Torture in Tajikistan is an independent structure that combines 13 organizations working on combating torture and impunity in Tajikistan.¹

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INTRODUCTION

This briefing -- prepared by the Public Fund “Nota Bene” in cooperation with the NGO Coalition against Torture in Tajikistan -- briefly reviews the situation in the area of freedom from torture, other cruel, inhuman or degrading treatment or punishment and provides recommendations to the authorities of Tajikistan. We hope that the information provided in the report will be useful for the Human Rights Dialogue.

On 15 August 2013, Matlubkhon Davlatov, Deputy Prime Minister of Tajikistan and Chairman of the Commission for the Implementation of International Human Rights Obligations, approved a government Action Plan for implementation of the recommendations issued by the Committee against Torture after its review of Tajikistan in November 2012 and the recommendations made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (hereafter the Special Rapporteur on Torture) during his visit to Tajikistan in May 2012 (A/HRC/22/53.Add.1). The Action Plan foresees a series of actions purportedly intended to ensure the implementation of these recommendations and provides details of timelines and the authorities responsible for implementation.

While noting this positive development, the Coalition against Torture regrets that Tajikistani civil society organizations were not involved in drawing up the Action Plan and that the comments and recommendations the Coalition against Torture sent to the authorities were not reflected in the final document.

Regrettably, the Action plan does not provide clear indicators, which would allow for implementation to be measured or assessed. For example, the plan proposes measures such as “studying the possibility of” and “analysis of the necessity of developing and implementing” and does not refer to concrete activities to implement the recommendations made by the Committee against Torture. During the meeting with the UN Special Rapporteur Mr Juan Mendez in the frame of his visit to Tajikistan in February 2014, the state representatives report that working groups have been set up for the implementation of the recommendations, but civil society in Tajikistan has not been informed about the composition and focus of these working groups.

Introducing the standards of the Istanbul Protocol into the activities of medical workers

In 2013, with the initiative of the Minister of Health and Social Protection a Working Group was established for introducing the standards of the Istanbul Protocol into internal documents of forensic experts. The group included a representative from the NGO Coalition against Torture (NGO Human Rights Centre).

In 2013, the Working Group revised the existing forms of “judicial inspection certificate” and “the forensic medical examination”, in accordance with the principles of the Istanbul Protocol. A draft standard form was developed for psychological examination and for a medical examination for doctors in urban hospitals. All these documents have passed international expertise.

At the moment, the Working Group is developing a document on how to assess and deal with cases of torture cases and other ill-treatment. The document will be part of the Regulation “On some procedural grounds of the forensics in Tajikistan”. The Regulation will provide guidelines for forensic experts on how to

conduct examinations when the alleged victim turns to them and when injuries are found during the examination.²

Main subjects of concern

Lack of fundamental legal safeguards

The NGO Coalition against Torture continues to receive reports stating that the risk of torture and other ill-treatment remains highest during the first few hours following apprehension, before the detention protocol is completed.

Despite the fact the term “*de facto* apprehension/detention” was included in a Decision of the Plenum of the Supreme Court, it was principally directed at judges rather than law enforcement officials and as such was not reflected in the provisions of the Criminal Procedural Code (CPC). One of the main shortcomings of the CPC remains its failure to define the precise moment when a person is considered to be detained. Human rights defenders and lawyers report that law enforcement officers often consider that detention begins only once it is officially registered, which happens after the detainee is delivered to a place of temporary custody. Until a person who has been apprehended on suspicion of having committed a crime is officially registered with the procedural status of suspect, he or she is not entitled to any procedural rights such as access to medical or legal assistance, to notify family members or have them notified, to be informed of these and other rights.

An additional concern is that the CPC fails to specify a time frame within which law enforcement officers must take a person to a detention facility, thus allowing for routine arbitrary detention for periods at the discretion of the detaining authorities. In practice, this period of unacknowledged custody may last from several hours up to three days.

Ensuring and strengthening access to lawyers for persons detained

Despite legislative changes there are still serious problems with timely access to legal counsel for detainees in temporary detention facilities (IVS) and pre-trial detention facilities (SIZO) in Tajikistan, and also in some cases in other detention facilities. By law detainees are entitled to consult with a lawyer of their choice as soon as they are detained. In practice, however, police investigators can deny lawyers' access to their clients for days. Sometimes lawyers report first seeing their clients at remand hearings.

According to the legislation, only licensed lawyers are allowed access to SIZOs run by the Main Directorate for executing punishment (GUIUN) of the Ministry of Justice. Lawyers are also requested to provide a document testifying that the lawyer is a representative in the criminal case, but often the detention centres' administration creates obstacles by requesting additional permits. They often refer to a directive issued by the Head of GUIUN that requires lawyers to obtain an additional permission from the GUIUN. The NGO Coalition against Torture has not received any reply to its numerous requests to the authorities for information about the internal regulations of the SIZO.

Access to lawyers is a particular problem in facilities run by the State Committee for National Security (SCNS). For example, in response to a survey carried out by the NGO Human Rights Centre in 2013 lawyers from Khujand, Kanibadam, Bobojan Gafurovsky, Spitamensky and Matchinsky districts of Soghd

² This information was provided by the NGO Human Rights Center.

region and from Dushanbe reported that criminal case investigators continue to try to avoid granting lawyers permission to see detainees held in SCNS detention facilities. They instead issue one-time permits for visits meaning that each time lawyers wish to see their clients, they have to wait outside the main SCNS building to obtain a permit.

Excessive use of pre-trial detention

Excessive use of pre-trial detention in Tajikistan is an ongoing concern. The current legislation allows for alternative pre-trial measures to detention, such as bail or house arrest, but these are not often used in practice. Article 112 of the CPC stipulates that pre-trial detention during investigations should not exceed 18 months; thereafter, once a case is sent to court the period of detention can last for a maximum of 12 months (CPC, Article 289). However, a problem arises if the court sends the case back for further investigation, as in such cases the time taken for further investigations falls outside either of these stipulated maximum periods, with the result that the total period spent in pre-trial detention can exceed the maximum stipulated under the CPC.

Torture and other ill-treatment in connection with national security concerns

There are serious violations of the rights of persons accused of terrorism during arrest and pre-trial investigation. Practices of *incommunicado* detention and lack of safeguards against torture and other ill-treatment continue to be reported in cases which the Tajikistani authorities claim are related to national security concerns. In the vast majority of national security related cases the organizations note lack of impartial investigations into complaints about torture and other ill-treatment and impunity for the officials concerned.

Failure to conduct prompt, impartial and effective investigations into torture cases

In December 2013, the Prosecutor General's Office issued a handbook entitled "The Legal Framework and Organization of Prosecutor's Offices for the Prevention, Detection and Investigation of Torture". However, despite these positive developments, individual victims of torture or other ill-treatment or their families continue to report that Prosecutors' Offices fail to act on complaints or do not disclose information about how complaints are examined or how they reach conclusions of lack of evidence of wrongdoing by officials.

In practice, concerned state agencies regularly fail to conduct prompt, thorough and impartial investigations into allegations of torture and other ill-treatment. In the majority of documented cases where credible allegations of the use of torture and other ill-treatment exist, Prosecutors' Offices ignore complaints from victims of human rights violations or refuse to launch criminal investigations after conducting "initial examinations".

In addition, delays by prosecutors in ordering medical examinations following allegations of torture and other ill-treatment are commonly reported, with the result that physical traces have sometimes disappeared by the time examinations are carried out.

Victims and their families are sometimes not given regular updates or access to case materials. In May 2012, the Constitutional Court ruled a provision of the CPC (point 8; part 2 Article 42) constitutional, thereby upholding the Prosecutor General's practice of limiting the access of the victims of human rights violations to evidence against the alleged perpetrators.

NGOs and lawyers in Tajikistan registered 137 complaints about torture and other ill-treatment between 2011 and 2013, but fewer than ten of these allegations of torture or other ill-treatment appear to have been properly investigated. In most cases where investigations took place disciplinary proceedings have been used against the perpetrators.

Reprisals against those who speak out about torture and other ill-treatment

During 2013, lawyers and human rights organizations noted continuing cases where alleged victims of torture or other ill-treatment refuse to lodge official complaints. For example, from December 2013 until April 2014 some ten cases of allegations of torture or other ill-treatment from Dushanbe, Khatlon and Sughd regions were made to lawyers of the Human Rights Centre, a member of the Coalition against Torture. In over half of these cases relatives and victims of the alleged torture refused to pursue complaints against the actions of law enforcement officials. The reasons behind this include: the victims' fear of further persecution or harassment from the authorities; a fear of making their current situation in the context of ongoing criminal proceedings worse; and also the frequent use of state appointed lawyers by police investigators. State appointed lawyers are known to police for not being proactive in either lodging complaints about torture or other ill-treatment or defending their clients' best interests in the face of pressure from investigators, and thereby effectively colluding with the investigation. The fact that there are routine delays in investigating complaints of torture or other ill-treatment also mean that victims lose faith in the justice system.

Those who do lodge complaints with the Prosecutor's Office frequently report reprisals and harassment from law enforcement officials to force them to withdraw their allegations. This continues to occur despite the 2010 Law "On State Protection of Participants in Criminal Proceedings" and the State Programme for Protection of the Participants of Criminal Proceedings, which was approved by government decision No. 604 on 2 November 2012 and should protect complainants.

Since July 2013, there have been at least four cases where detainees, including one child, complained to their lawyers or relatives or the authorities about torture and other ill-treatment only to be subjected to further ill-treatment by law enforcement officials in an apparent attempt to silence them. As a result, they decided against seeking redress. These instances of torture or other ill-treatment took place in detention facilities under the jurisdiction of the Ministry of Internal Affairs, the State Committee of National Security (SCNS) and the Ministry of Justice.

Prosecution of suspected perpetrators of torture or other ill-treatment

Criminal proceedings against the officials accused of torture or other ill-treatment often appear to be perfunctory, and perpetuate impunity for these violations. Given the number of reports of torture and other ill-treatment recorded by both official and non-official bodies, and the strength of evidence in support of the allegations in many cases, a notably small number of law enforcement officials have been prosecuted and brought to trial for the crime of torture, and disciplinary proceedings continue to be used to the exclusion of criminal prosecutions.

In January 2013, the Chairman of the Supreme Court, Nusratullo Abdulloev, stated that in 2012 the Supreme Court reviewed 23 prosecutions for torture, however some of these were reviewed before the Criminal Code was amended in April 2012 to include torture as a separate crime. He stated that two cases

were reviewed in 2012 under Article 143.1 on torture in Yavan and Khujand and that the accused had been found guilty and sentenced. In addition, the Prosecutor General's Office stated that 17 criminal investigations were undertaken under Criminal Code Articles 314 (abuse of official authority), 316 (exceeding official responsibility) and 354 (coercion to testify during preliminary investigation by means of threats, blackmail or other unlawful acts) in the first half of 2012, in seven cases criminal proceedings were opened, three cases were referred to court, and in four cases the investigations were ongoing. The General Prosecutor's Office has not yet published statistics for 2013.

On 14 February 2013, the MIA inspector for Dushanbe was convicted by a court of "negligence" leading to the death of Bakhromiddin Shodiev in October 2011, and sentenced to two years imprisonment. This was despite evidence from Bakhromiddin Shodiev's mother that she had seen signs of torture on her son's body when she visited him in hospital shortly before his death, and that he had regained consciousness briefly to tell her that he had been tortured with electric shocks and beaten. Three other police officers allegedly involved in the torture and other ill-treatment of Bakhromiddin Shodiev have not yet been prosecuted.

In May 2013, an officer of the Correctional Facility No. 3/1 Ya/C in Dushanbe was found guilty of abuse of office (Article 316.3) and sentenced to five and a half years imprisonment in relation to the death of Hamza Ikhromzoda in September 2012. Investigations are ongoing in relation to the actions of three other officials in this case.

In other cases, investigations against alleged perpetrators of torture and other ill-treatment are protracted and drawn out, or closed for apparently spurious reasons which seem to be designed to protect the interests of the security officials concerned.

Most of the criminal prosecutions that do take place are for "exceeding official authority" rather than under Article 143 of the Criminal Code that prohibits torture. Criminal prosecutions of any kind against law enforcement officials remain rare and often are terminated or suspended before they are completed. In several cases law enforcement officials who were convicted for "exceeding official authority" were released early under the 2011 Law "On Amnesties".

To date, there have been four cases of individuals prosecuted for the crime of torture (Article 143.1) in Tajikistan.

1. In September 2012, a police inspector, the head of the Yavan Department of Internal Affairs, was found guilty of torture in the case of a 17-year-old boy in Khatlon region and sentenced to seven years in prison and has begun serving his sentence. The court also ruled that the state should pay TJS 1,650 (USD 340) in material compensation.
2. In August 2013, the court of Kurgan-Tube found a former investigator of the Sarband Police Department guilty of torture (Article 143.1) and unlawful detention (Article 358.1) of Juarbek Sattorov, a resident of Sarband. The court sentenced the former investigator to 2.5 years imprisonment in a penal colony, but took the young age and marital status of the defendant into consideration and on the basis of Article 71 of the Criminal Procedure Code gave him a two-year suspended sentence instead. The prosecutor agreed with the court verdict and decided not to appeal it.
3. On 26 December 2012, Khujand City Court found a police officer of the Sughd Regional Police Criminal Investigation Unit guilty of torture (Article 143.1 of the Criminal Code) and sentenced him to one year imprisonment. The officer was found guilty of holding a suspect in his office for a whole day and inflicting ear and kidney injuries on him through beatings. A forensic examination confirmed the source of the injuries.

4. On 16 November 2012, the Head of Criminal Investigations Unit of the MIA Department No. 1 in Isfara reportedly held detainee A. Nabiev in his office and beat him. On 17 January 2013, the same officer reportedly detained Akmal Muzaffarov, hitting him several times and breaking his leg. He then took him to the MIA Department No.1 where he beat him and illegally detained him. A criminal case was opened into the actions of the Head of the Isfara Criminal Investigations Unit on several accounts, including exceeding official authority, illegal detention, torture and extortion. On 11 March 2014, Sharistan Court ruled that it did not find any evidence of the crime of «torture» and sent the case for further investigation.

Compensation claims in relation to deaths in custody

Assisted by a lawyer from the Bureau of Human Rights and Rule of Law, Safarali Sangov's wife filed a claim for compensation for moral and material damage at the Sino District Court. On 5 March 2013, the court ruled that she should receive TJS 46,500 (about USD 10,000). The Ministry of Internal Affairs appealed this ruling but on 30 May 2013, the Judicial Board of the Dushanbe City Court upheld the decision by Sino District Court and dismissed the appeal. On 1 July 2013, the Sino District Court issued a writ for the sum of compensation to be paid by the Ministry of Internal Affairs. However, for over six months Safarali Sangov's widow did not receive the compensation. The lawyer has lodged a complaint. Safarali Sangov's widow received the payment in March 2014.

Establishment of a monitoring group for penitentiary institutions (or detention facilities) under the Human Rights Ombudsman

In December 2012, the Tajikistani Human Rights Ombudsman proposed establishing a working group on monitoring places of detention. The Monitoring Group was a preliminary step towards setting up a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture (Optional Protocol).

From February to May 2013 discussions took place between the Coalition against Torture and the Human Rights Ombudsman over the composition of the Monitoring Group. The Coalition on Torture maintained that the Monitoring Group's activities should comply with the Principles relating to the status of national human rights institutions for the promotion and protection of human rights (Paris Principles) and the Optional Protocol, and that the composition of the Monitoring Group should ensure independence and impartiality. The Coalition argued against including representatives of government authorities, and lobbied for an agreed protocol for the Monitoring Group, which set out the scope of its activities. This document was developed with the Human Rights Ombudsman in July and August 2013, and approved by the Human Rights Ombudsman on 30 December 2013. The Monitoring Group started its work in February 2014. However, in some instances the administration of detention facilities denied access to NGO representatives belonging to the Monitoring Group even though the relevant government agencies had been informed of the Group's establishment and its powers.

RECOMMENDATIONS:

As a party to a number of international human rights treaties relevant to the eradication of torture, Tajikistan committed itself to adhere to human rights principles contained in these treaties and it is obliged to fully implement all recommendations issued by UN human rights bodies such as the UN Committee against Torture, the UN Human Rights Committee, as well as by the Special Rapporteur on torture, who visited the country in 2012 and 2014.

We believe that the authorities of Tajikistan should implement the following recommendations as a matter of urgency:

- 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.
- 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.
- 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.
- Promptly ratify the Optional Protocol to the Convention against Torture.