



**International
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HR HELSINKI FOUNDATION
for HUMAN RIGHTS

Tajikistan: Briefing paper on torture and other ill-treatment European Union Advocacy Meetings, May 2015¹

In recent years the government of Tajikistan has taken some positive steps to prevent and eradicate torture. However, as recently as in his February 2015 report the United Nations Special Rapporteur on torture raised concern about continuing torture and ill-treatment and about impunity for the perpetrators. Continued international attention and political will of the Tajikistani authorities are needed to achieve lasting results.

Noteworthy positive steps taken by Tajikistan in recent years include introducing an article on torture in the Criminal Code (Article 143) with a definition of torture that is in line with that contained in the Convention against Torture. As a result, a total of four criminal cases were opened under this article. In 2014, the families of two men who died in custody were the first known cases to have been awarded compensation for torture or other forms of ill-treatment by the courts.

From 2011 to the end of 2014, members of the NGO Coalition against Torture in Tajikistan documented more than two dozen cases each year of men, women and children who were allegedly subjected to torture or other ill-treatment. In the first three months of 2015 the Coalition registered ten cases.

Only in a small number of these cases, official investigations were opened, and in many cases -- whilst the incidence of torture or other ill-treatment would appear to have been confirmed, at least partly -- only disciplinary proceedings have been imposed. It is believed that many victims of torture did not file complaints for fear of reprisals.

This briefing highlights three key areas of concern that perpetuate torture in Tajikistan: the persistent practice of incommunicado detention at the onset of detention, the lack of an independent investigation mechanism, and lenience towards tortures in domestic legislation. In this briefing we make three recommendations on how to tackle these key concerns that, if implemented, would significantly reduce incidents of torture and other forms of ill-treatment in the country.

End incommunicado detention

Torture in Tajikistan ordinarily takes place during the first hours of detention, before the person's detention is formally registered. During this period detainees are in many cases de facto held incommunicado. Police also often apprehend people for administrative offences as a pretext for keeping them in custody for five to 15 days. In Tajikistani legislation the legal safeguards pertaining to those detained on criminal charges are stronger, and do not apply fully to those detained on administrative charges.

International human rights law clearly states that a person is considered a detainee as soon as he or she is "depriv(ed) of liberty (...) in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority" (e.g. Art. 4(2) of the Optional Protocol to the Convention against Torture). Safeguards such as prompt access to legal

¹ This document has been produced with the financial assistance of the European Union within the project "Action for Freedom from Torture in Kazakhstan and Tajikistan". The contents of this document are the sole responsibility of the NGOs issuing it and can under no circumstances be regarded as reflecting the position of the European Union.



counsel of the detainee's choice, to independent medical personnel, and to notify family must then be in place to provide protection from torture and other ill-treatment.

However, Tajikistani legislation does not follow the above definition and is ambiguous as to when a person is considered a detainee. In practice, law enforcement agencies and courts typically consider a person a detainee when the detention record is drawn up. This may be several hours, or even several days, after the de facto arrest. As a result, during this time detainees typically have no access to any of the legal safeguards enshrined in Tajikistani legislation, including access to their family, a lawyer and medical attention.

In November 2012, the UN Committee against Torture recommended Tajikistan to "ensure that arrest starts from the moment of de-facto apprehension" (Recommendation 8 (a)). In January 2013, the Special Rapporteur on torture also called on Tajikistan to "(a)mend the Code of Criminal Procedure to ensure that the time of arrest starts from de facto apprehension and delivery to a police station". (Recommendation 99e).

The Committee against Torture additionally urged Tajikistan "to take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their apprehension" (Recommendation 8). In addition, the Special Rapporteur on torture recommended Tajikistan in February 2015 to "ensure that the failure to comply with and implement existing legal provisions is considered a severe fault and accompanied by appropriate sanction, and not mere disciplinary measures" (Paragraph 12).

Establish an independent investigation mechanism to end impunity

In its concluding observations issued to Tajikistan in 2012, the Committee against Torture expressed concern about the small number of convictions under domestic law for violations of the Convention against Torture, despite numerous allegations of torture.

Torture complaints are examined by the internal security services of the Ministry of Internal Affairs, the State Committee for National Security, the Drug Control Agency or other law enforcement agencies – if they are submitted to these very agencies that are implicated in the torture complaint – or by prosecutors. If the preliminary investigation carried out by the internal security services does not find evidence of torture or other ill-treatment that they consider requires the opening of a criminal case, domestic legislation does not oblige them to pass on the case information to the Prosecutor's Office.

Since Article 143 (torture) was introduced to the Criminal Code of Tajikistan in 2012 prosecutors have led the investigations in all four cases that have since been opened under this Article. However, domestic legislation has not yet been amended to reflect this practice of prosecutorial investigations into the crime of torture under Article 143. Most cases involving allegations of torture or other ill-treatment continue to be opened under other articles of the Criminal Code such as "abuse of authority" or "negligence". In all these cases investigations are carried out by the agency that conducted the preliminary investigation, i.e. by law enforcement agencies or prosecutors.

When prosecutors initiate torture investigations, they lead the investigation, but domestic legislation permits them to order police to undertake investigative activities and gather evidence. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links. This clearly hinders the possibilities for impartial and independent investigations to be conducted.

In those cases where torture violations are revealed during the court hearing prosecutors have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process, which creates a conflict of interest. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

Both the Committee against Torture and the Special Rapporteur on torture recommended Tajikistan to "establish an effective and independent (investigation mechanism) with no connection to the body prosecuting the case against the alleged victim" (Recommendation 11(a) of the Committee against Torture and Recommendation 100 (g) of the Special Rapporteur on torture).

According to the preliminary report on the implementation of the Government Action Plan on torture distributed by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015, the General Prosecutor's Office set up a working group to examine these recommendations. However, it believed no separate mechanism was currently needed considering the "very insignificant" number of torture complaints. We are concerned that the Coalition against Torture in Tajikistan has not been invited to participate in the working group.

No lenience for torturers

We are concerned that domestic legislation does not exclude perpetrators of torture or other ill-treatment from benefitting from prisoners amnesties and we are aware of several cases in recent years where torturers were released from prison following such amnesties or had their sentences reduced.

We are also concerned that Tajikistani legislation contains a statute of limitations applicable to the crimes of torture or other ill-treatment, which is strictly forbidden under international law.

The Committee against Torture recommended Tajikistan to "ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice" (Recommendation 7). The Special Rapporteur on torture called on the authorities to "(r)evolve the legal provisions of the Code of Criminal Procedure allowing the termination of criminal proceedings and exempting defendants from criminal liability by reason of (...) expiration of the statute of limitations for criminal prosecution, whenever the case concerns allegations of torture and ill-treatment" (Recommendation 99(d)).

According to the March 2015 preliminary report on the implementation of the Government Action Plan on torture, the Ministry of Justice set up a working group regarding the application of prisoners amnesties to people convicted under Article 143 (torture) of the Criminal Code. The Coalition against Torture has not been invited to participate in the working group.

Recommendations:

Local and international organizations including United Nations human rights bodies and procedures have issued recommendations to the authorities of Tajikistan in recent years in order to address ongoing torture and other ill-treatment in the country. We call on the authorities to implement all recommendations made by UN human rights institutions in order to end torture and other forms of ill-treatment in the country.

We urge representatives of the European Union to place particular emphasis on the following three recommendations in their interactions with the authorities and parliamentarians of Tajikistan. We believe that by implementing these recommendations as a matter of priority the country would make significant progress toward eradication of torture.

- **Ensure that individuals have access to fundamental legal safeguards such as access to a lawyer of the detainee's choice, information about the detainee's rights, notification of family, and access to independent and qualified medical personnel from the moment he or she is deprived of liberty and amend the Criminal Procedure Code of Tajikistan (CPC) accordingly.** This would be in line with recommendations issued to Tajikistan by the Committee against Torture in November 2012 (Paragraph 8) and the Special Rapporteur on torture in January 2013 (Paragraph 99(e)) and in February 2015 respectively (Paragraph 12).
- **Introduce legislation to create and fund an independent body endowed with sufficient authority and competence to conduct prompt, thorough and independent investigations into allegations of torture or other ill-treatment.** This would be in line with recommendations issued to Tajikistan by the Committee against Torture in November 2012 (Paragraph 11(a)) and the Special Rapporteur on torture in January 2013 (Paragraph 100(g)). **In the meantime, establish dedicated units of prosecutors responsible for carrying out all investigations into allegations of torture and other ill-treatment and amend domestic legislation accordingly.**
- **Legislate that perpetrators of torture or other ill-treatment are excluded from prisoners amnesties and abolish the statute of limitations with regard to such crimes.** This would be in line with recommendations issued to Tajikistan by the Committee against Torture (Recommendation 7) and the Special Rapporteur on torture in January 2013 (Recommendation 99(d)).