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Key concerns and recommendations on torture and ill-treatment in Tajikistan, May 2016

In February 2015 the United Nations (UN) Special Rapporteur on torture raised concerns about ongoing torture/ill-treatment and impunity in the follow-up report to his February 2014 mission to Tajikistan. In 2015 the NGO Coalition against Torture in Tajikistan registered 45 new cases of torture/ill-treatment and, in the first three months of 2016, it registered 14 new cases. Many victims refrain from lodging complaints about torture or ill-treatment for fear of reprisals and/or because they do not believe it is possible to obtain justice.

Torture and ill-treatment in the armed forces

Since the beginning of 2014 the NGO Coalition against Torture recorded 17 cases of men who became victims of torture/ill-treatment in the armed forces; eight of them died. In total 19 perpetrators were sentenced to prison terms in relation to nine of these cases. Among them were three commanding officers, although there was compelling evidence in other cases that senior officers carried responsibility for not preventing the abuse of soldiers. We are also concerned that in 2014 at least three perpetrators of torture in the army benefitted from amnesties and had their sentences reduced.

Independent monitoring of detention and army facilities crucial

Tajikistan has not ratified the Optional Protocol to the Convention against Torture (OPCAT) and has thus not committed itself to setting up a National Preventive Mechanism (NPM), citing financial limitations. The International Committee of the Red Cross (ICRC) has not had access to detention facilities to conduct monitoring since 2004. In February 2014, the Monitoring Group, which was established as part of the Ombudsman's Office and consisting of Ombudsman Office staff and civil society activists, began visiting detention facilities. While the establishment of this Group is a step in the right direction, it is not able to function as an effective safeguard against torture/ill-treatment. The Ombudsman Office only has capacity to conduct up to 15 visits per year and the civil society members of the Group do not have permission to conduct visits without Ombudsman Office staff. There are concerns that the Group does not have access to any of the detention facilities' internal documents. In addition, in many cases detainees do not freely share information about their treatment in detention with the Monitoring Group because they regard the staff of the Ombudsman's Office, who are always present during interviews, as not sufficiently independent since they are government employees; and sometimes detention facility personnel insist on being present during interviews, claiming this is necessary for security reasons. Other than in the framework of the Monitoring Group human rights defenders are not able to visit detention facilities for monitoring since domestic legislation does not grant them this right and the heads of detention facilities do not grant them access at their own discretion.

Failure to effectively investigate allegations of torture and other forms of ill-treatment

In its 2012 Concluding Observations the UN Committee against Torture expressed concern about the small number of



convictions for violations of the Convention against Torture in Tajikistan, despite the numerous allegations and reports of torture/ill-treatment. Impunity continues to be the norm. In recent years several international human rights bodies and procedures such as the UN Special Rapporteur on torture, the Committee against Torture and the Human Rights Committee have recommended that Tajikistan establish an independent investigatory body, but the authorities have repeatedly stated that what they claim to be a low number of torture cases does not warrant the establishment of such a body. However the statistics cited by officials only included cases instigated under Article 143-1 of the Criminal Code (“torture”), and most cases involving torture and ill-treatment are opened under the articles of the Criminal Code which punish “negligence“, “abuse of authority or duty“ or ”violating the code of military conduct” in what appears to be a conscious attempt to keep torture statistics low.

In those cases where investigations are opened, they are frequently ineffective. While cases of torture instigated under Article 143-1 of the Criminal Code are usually investigated by prosecutors, cases under other articles are often investigated by law enforcement agencies whose employees are themselves implicated in the complaint. Prosecutors have an inherent conflict of interest originating from their roles of both taking forward the criminal prosecution and supervising the legality of the investigative process. In many cases known to the Coalition against Torture investigators fail to gather sufficient evidence to properly examine the circumstances of the alleged torture from all perspectives and often fail to interview witnesses and medical personnel or order a forensic medical examination; in many cases they do not interview the victims and they do not carry out cross-questioning of police and victims. Instead, investigators rely primarily on statements obtained from the alleged perpetrators and their colleagues.

Failure to provide comprehensive reparation to victims of torture

In 2014 and 2015 civil courts awarded compensation for moral harm in five cases involving torture. However, the compensation payments were low and neither fair nor adequate. The families of three deceased men were awarded the equivalents of 710 EUR, 2,015 EUR and 6,600 EUR. Shakhbol Mirzoev, an army recruit who was tortured so severely that he was left paralyzed, was granted the equivalent of 2,900 EUR by a court in 2015 for moral damages. The decision was later overturned and the case is now pending review by a military court. Although the authorities promised to cover all of Shakhbol’s medical expenses, they only covered some and Shakhbol’s family had to sell their house to cover the remaining expenses.

Recommendations

The Tajikistani authorities should be requested to take the following steps:

- With regard to the army, establish the liability of direct perpetrators and those in the chain of command and bring to justice all those found responsible.
- Ratify the Optional Protocol to the Convention against Torture and establish an effective National Preventive Mechanism. In the meantime, grant unimpeded access to the International Committee of the Red Cross and expert independent NGOs working to prevent torture in Tajikistan, to all places of detention as well as to conscription commissions and military units.
- Ensure that all allegations of torture and other ill-treatment are investigated promptly, thoroughly and impartially by a mechanism that is fully independent of law enforcement agencies or other structures whose employees are implicated in the allegations and bring to justice those found to be responsible.
- Provide fair and adequate compensation for moral damages and ensure the provision of adequate rehabilitation support to victims of torture.

For further information, refer to the September 2015 document: *Tajikistan: Human Rights Situation on the Ground. Torture and other Ill-treatment. Submission to the UN Universal Periodic Review 25th Session of the Working Group, April/May 2016*: <http://iphronline.org/wp-content/uploads/2015/10/ENG-Tajikistan-UPR-Submission-on-torture-September-2015.pdf>