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STATEMENT BY THE NGO COALITIONS AGAINST TORTURE IN KAZAKHSTAN, KYRGYZSTAN AND TAJIKISTAN*

Working Session 1: Taking stock of developments in the OSCE region since the 2003 Supplementary Human Dimension Meeting (SDHM) on the Prevention of Torture

Positive developments since the 2003 SDHM

Since the OSCE's SDHM on prevention of torture in November 2003, the authorities of Kazakhstan, Kyrgyzstan and Tajikistan have taken some noteworthy positive steps to combat torture.

All three countries have introduced articles in their Criminal Codes specifically punishing "torture", although penalties carried by these articles are still not commensurate with the crime committed. They have also introduced further legal amendments aimed at strengthening safeguards against torture.

In 2012 Tajikistan amended the definition of torture in its Criminal Code and brought it in line with the definition as contained in the Convention against Torture. The Criminal Codes of Kazakhstan and Kyrgyzstan, however, still contain definitions that fall short of international law.

In 2008 Kazakhstan and Kyrgyzstan became parties to the Optional Protocol to the Convention against Torture, but Tajikistan is yet to follow.

Torture continues unabated with virtual impunity

Despite these measures, domestic legislation and its implementation fall far short of the international human rights obligations the three countries have committed themselves to uphold.

There remains to be a lack of effective legal safeguards and scores of torture allegations continue to be reported every year. In all three countries torture mainly takes place in 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. Those detained in closed detention facilities run by National Security Services on charges related to national security or "religious extremism" are at particular risk.

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Judges at remand hearings do not provide supervision over the treatment of detainees and during trials judges still typically fail to exclude evidence extracted under torture.

Although perpetrators have been punished in individual cases, there is still a climate of impunity and victims usually do not have access to adequate redress. All three countries lack an independent and effective mechanism for receiving complaints and conducting impartial and full investigations into allegations of torture.

In Kazakhstan, Kyrgyzstan and Tajikistan, the existing statutes of limitations applicable to the offence of torture under domestic legislation may prevent investigation, prosecution and punishment. The current draft of the new Criminal Code of Kazakhstan, however, would abolish the statute of limitations as well as the possibility of applying amnesty laws to perpetrators of torture.

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

We urge the authorities of **Kazakhstan, Kyrgyzstan and Tajikistan** to fully implement all recommendations issued 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, who visited Kazakhstan in 2009, Kyrgyzstan in 2011, and Tajikistan in 2012 and 2014.

We believe that as a matter of urgency **the authorities of all three countries should:**

- Provide for the main safeguards of detainees against torture: a) the right to access to a lawyer of their choice from the moment of deprivation of liberty should be effective in practice; b) police should register the detention without delay after a person is deprived of his or her liberty and this procedure should be strictly controlled; c) anyone arriving at a detention facility should undergo a routine medical examination; and d) the remand hearing should take place no later than 48 hours after the moment of detention and judges must inquire into the legality of detention and into how the detainee has been treated in custody.
- Introduce legislation for 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.

In addition, **the authorities of Tajikistan should:**

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

And the **authorities of all CIS member states** should:

- Ensure that no one within their jurisdiction is returned to any country where they would be at risk of torture or other ill-treatment.