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Delegation of Tajikistan

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human rights and fighting terrorism**

Combating torture

The Republic of Tajikistan acceded to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 July 1994 and in doing so undertook to contribute to the universal respect for and observance of human rights and freedoms. At present there is no separate law in the country's legislation against torture and other cruel treatment or punishment containing the concept of "torture" (the word used in the Convention), but there are a number of legal and regulatory instruments, including the Constitution of the Republic of Tajikistan, the constitutional laws on courts of the Republic of Tajikistan, on the offices of the public prosecutor of the Republic of Tajikistan and on the state of emergency, the laws on the police, on police investigation activities, on the penal correction system of the Republic of Tajikistan, and on psychiatric assistance, and the Criminal Code, Code of Criminal Procedure, Penal Enforcement Code and Code of Administrative Offences, which are designed to ensure strict observance of human rights and freedoms and the elimination of all forms of discrimination and to regulate matters concerned with torture and cruel treatment.

In particular, the laws adopted since ratification of the Convention have been drafted and adopted in accordance with it and contain provisions prohibiting torture and other forms of cruel treatment or punishment.

Articles 116 and 117 of the Criminal Code of the Republic of Tajikistan deal with "assault" and "torture". The former is defined as "assault or other acts of violence that cause physical pain but do not entail impairment to health" and the latter as "causing physical or mental suffering through systematic assault or other forcible means if it does not lead to serious or moderate damage to health, the death of the victim, complete inability to work, psychological damage, or addiction to drugs or narcotics".

In accordance with the criminal legislation of the Republic of Tajikistan, public officials and private individuals can both be prosecuted for offences threatening the life and health of citizens (assault, intentional bodily injury of varying degrees, etc.). If these crimes are committed by public officials abusing or exceeding their authority, however, they are prosecuted for the offences against the individual and for malfeasance in office. The responsibility of public officials for the use of violence or substantial violations of the rights and legal interests of citizens is provided for in Articles 314 (Abuse of official position), 315 (Failure to exercise authority), 316 (Excessive use of authority), 317 (Misappropriation of authority), 322 (Negligence), 348 (Prosecution of persons known to be innocent), 349 (Pronouncement of a verdict, decision or other judicial acts known to be illegal), 353 (Bribery or coercion to give false evidence, a false conclusion or an incorrect interpretation), 354 (Bribery or coercion to give evidence by persons conducting initial inquiries and pre-trial investigations or administering justice), 358 (Unlawful detention or taking into custody), 391 (Abuse of power or official position, excessive use of authority or failure to use power) and 392 (Negligent attitude to service) of the Criminal Code of the Republic of Tajikistan.

It should be pointed out that prosecution under Article 117 of the Criminal Code applies to all persons, including all public officials and other persons acting in an official capacity.

Apart from the above-mentioned instruments, the provisions of the Code of Criminal Procedure, which was adopted as part of the programme of judicial and legal reform, should not be forgotten.

According to Article 88.3 of the Code of Criminal Procedure, "Evidence obtained in an initial inquiry or pre-trial investigation through the use of force, pressure, intentional suffering, inhuman treatment or other illegal means is invalid and may not form the basis for prosecution or be used to demonstrate circumstances under Article 85 (Circumstances to support the demonstration of a criminal act)."

According to Article 11 of the Code of Criminal Procedure (Inviolability of the person), "No one may be detained and taken into custody without a legal basis. The arrest or forcible detention of a person in a medical or educational establishment is allowed only by court or judicial order. The decision by a court or judge to release a person from detention must be carried out immediately." Article 22 (Guarantee of the right to defence of a suspect, accused, criminal defendant and convicted person) states "Every person may benefit from the services of a defence counsel from the moment of detention." Article 21 (Detailed, full and objective investigation of the circumstances of the case) states "All circumstances of the case requiring demonstration must be investigated fully, objectively and in detail." Under Articles 61 to 71 of the Code of Criminal Procedure, judges, public prosecutors and other participants in a case are to be removed if they have a direct or indirect personal interest in it. Judicial activities are to be supervised by higher courts.

From what has been said above, it is evident that the Republic of Tajikistan has carried out considerable work to meet its commitments under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It is important to mention the positive achievements within the penal correction system of the Republic of Tajikistan that are taking place as part of the State programme for

the improving humanitarian aspects of the country's criminal policy. A political decision was adopted by the Head of State to transfer the penal correction system from the Ministry of Internal Affairs to the Ministry of Justice with effect from December 2002. At the same time steps have been taken to separate criminal investigation authorities from the correctional authorities.

The penal correction system is being further developed through amendments to the existing legislation in order to improve the conditions under which punishment is administered and to elaborate and adopt new legal instruments in line with international norms and standards with respect to the administration of criminal sanctions.

Under the provisions of the Penal Enforcement Code of the Republic of Tajikistan male and female, minor and adult prisoners in correctional facilities are kept apart. Pregnant women are detained in a women's correctional colony. To assist them during pregnancy they are provided additionally with milk, curd cheese, sour cream, butter, etc.

As there are no separate facilities for children up to the age of three years, there is a kindergarten in the women's correctional colony, to which mothers have free access. The kindergarten was built with the assistance of the Open Society Institute Assistance Foundation in Tajikistan.

In view of the special working conditions and the permanent psychological strain, a medical rehabilitation service is being established to prevent professional deformation on the part of the staff and to provide psychological support in special centres. During the transfer of the penal correction system from the Ministry of Internal Affairs to the Ministry of Justice we resolved the problem of medical care for the staff and in a short time a staff medical department was established, although it is not yet fully operational.

Under Article 105 of the Penal Enforcement Code detainees in prison are provided with medical and sanitary facilities, and medical prophylaxis is organized and made available in accordance with the internal correctional facility regulations and the legislation of the Republic of Tajikistan.

Apart from the progress that has been made, there are still a number of questions demanding urgent attention. The medical and sanitary facilities for detainees need to be improved in the future. There are still serious problems today not only in the correctional facilities within the Tajik penal correction system but also in many penitentiary systems in various countries: tuberculosis, HIV-AIDS, drug addiction and alcoholism. Our establishments need to be adapted to resolve these problems. The material and technical facilities in the hospitals will have to be improved, in particular to accommodate and provide out-patient treatment for prisoners suffering from the active form of tuberculosis, and a system of measures will have to be elaborated for the strict isolation of persons with infectious diseases from the healthy prison population.

In the last five years the Department of Correctional Facilities within the Ministry of Justice has signed a number of agreements and memoranda with various international and non-governmental organizations to provide assistance in bringing prison conditions up to the minimum international standards, including training for prison staff in legal matters and combating AIDS, tuberculosis and malaria. These organizations also provide direct assistance

to improve the legal basis in this area with a view to further reforming Tajikistan's prison system.

Together with international non-governmental human rights organizations, the OSCE and the International Centre for Prison Studies, the Ministry of Justice has been carrying out a lot of work to teach prison staff about international human rights norms and standards. Since 1999, numerous regional and local seminars have been held. Six have taken place together with the Tajik International Bureau for Human Rights and the Rule of Law directly in the correctional colonies, which has had a positive influence on the moral and psychological climate and co-operation between staff and inmates.