

THE CIVIL SOCIETY COALITION AGAINST TORTURE IN TAJIKISTAN

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FREEDOM FROM TORTURE IN THE REPUBLIC OF TAJIKISTAN

Over the last two years the Government of Tajikistan has initiated a number of measures aimed at eradication of torture and inhumane treatment. These measures include changes to the Criminal Code and classifying torture as a criminal offence; developing a manual for judges and prosecution officials on investigating cases related to torture or alleged inhumane treatment. In 2013, the Government of the Republic of Tajikistan passed a National Action Plan for implementing the recommendations of the Committee Against Torture (November 2012) and UN Special Rapporteur on Torture Mr. Juan Mendez based on the results of his visit to Tajikistan in May 2012. Moreover, the Ministry of Healthcare recently approved the establishment of a workgroup to implement the Istanbul Protocol standards in the domestic legislation regulating standards for medical workers.

Regardless of these advances, the Coalition against Torture continues to receive reports on torture and other forms of inhumane treatment in all institutions of the penitentiary system, particularly in pre-trial detention facilities, which indicates the situation with torture in Tajikistan has not changed.

Absence of independent monitoring in detention facilities. From 2004 till present day, Tajik authorities have not allowed the International Red Cross Committee employees to monitor detention facilities; the civil society institutions also do not have access for conducting independent monitoring. Despite this lack of access to detention facilities, human rights advocates and lawyers have registered numerous cases of torture and inhumane treatment of detainees in detention facilities.

Absence of an independent and efficient investigation and prosecution system for torture cases. The country lacks an independent mechanism for investigating facts of torture, investigations are performed by internal security employees of the departments for internal affairs, which is part of the same agency that victims of torture complain of.

Inadequate punishment for torture, considering its serious nature. On April 6, 2012, the Criminal Code of the Republic of Tajikistan was amended with a separate article 143.1 “Torture”, which stipulates criminal responsibility for torture. However, the punishment stipulated by Article 143 Part 1 (Note 1) in the form of up to five years in prison does not meet the requirements to punishment for torture in accordance with Article 4 of the Convention against Torture. NGO Coalition has registered numerous cases of people found guilty of torture were subjected to amnesties or punishment not connected to imprisonment.

Absence of mechanisms for ensuring legitimacy and reasonability of arrest and detention. The new Criminal Proceedings Code has delegated the authority to warrant an arrest from prosecution authorities to judges. However, there is still no clear mechanism for the courts to consider the legitimacy and reasonability of arrest. In nearly 100% cases, judges simply grant the petitions submitted by investigation officials about choosing arrest as a measure of pre-trial restriction, based solely on the gravity of the crime committed¹, which contradicts international standards of the right for freedom and personal immunity. When considering cases related to choosing pre-trial restriction measures, the judges often do not evaluate reports of torture, saying their job is limited to considering the issue of warrant.

¹Monitoring of arrest warrants. Human Rights Center, 2010.

Absence of immediate and unobstructed lawyers' access to their clients. The Criminal Proceedings Code has been amended to guarantee unobstructed lawyers' access to their clients. However, in practice the absence of such access is a serious issue and one of the reasons facilitating usage of torture in the course of criminal investigation.

Extradition and non-refoulement. The situation with extradition practice in Tajikistan is rather contradictory. The legislation does not directly regulate the issues of prohibiting extradition to a country where the person would be threatened with torture. The issues of extradition are mostly regulated by bilateral agreements between the State Prosecution offices of the two countries, Minsk and Kishinev Conventions on legal assistance and legal relations on civil, family and criminal law, as well as Shanghai Convention on fighting terrorism, separatism and extremism (2001), which stipulate only procedural issues and do not contain standards for freedom from torture. There are no statistics on the number of persons extradited from Tajikistan. At the same time, there are frequent cases of kidnapping Tajik citizens on whom the European Court decided on prohibiting extradition (under Article 3 of ECHR) from the Russian Federation to Tajikistan.

In the context of **fighting terrorism and extremism**, there are increasingly common cases of illegal arrests and usage of torture on persons suspected/accused of committing these crimes. The problem is aggravated by lack of lawyers' access to their clients and closed court proceedings on these cases.

Refusal of torture victims to testify about torture. There is no centralized system in Tajikistan for collecting official statistics on complaints of using torture and other forms of inhumane treatment. Since every government agency collects its own statistics, this information is often contradictory, making it hard to obtain precise data on the issue. There is information that the General Prosecution office is developing a plan to build a centralized system for collecting statistics on the usage of torture and inhumane treatment; however, official statistics are not likely to reflect precise picture of the problems in this area. Failure to apply norms regulating protection of witnesses and victims of torture results in torture victims being reluctant to testify against their offenders.

KEY RECOMMENDATIONS

To OSCE:

1. In the spirit of Athens Declaration of 2009, by the 25th anniversary of the Convention against Torture, support and facilitate the operation of civil society on torture prevention, paying special attention to protecting and ensuring safety of human rights advocates taking part in fight against torture.
2. Office for Democratic Institutions and Human Rights (ODIHR) to strengthen support of the states and civil society institutions at the political and practical level in translating international standards, obligations and recommendations of inter-governmental bodies to a practical level.

To the Republic of Tajikistan:

1. The state must openly admit existence of torture and inhumane treatment in the country and make an unequivocal statement about "zero tolerance" and inadmissibility of torture and inhumane treatment, as well as fighting torture and impunity in the country.
2. Ensure unobstructed access to temporary holding facilities, pre-trial detention centers, and correctional institutions for independent monitoring by civil society representatives.
3. Ensure reporting and control of all complaints related to torture and inhumane treatment by a special-purpose committee under the General Prosecution Office of the Republic of

- Tajikistan, with the involvement of the Ombudsman's office and civil society representatives, to take efficient action for investigating cases of torture and providing compensations to victims, with a wide media coverage of the committee's operation.
4. Strengthen the guarantees for persons in official detention facilities, concerning access to legal support and procedures for submitting complaints independently from the administration of the institutions.
 5. In terms of priorities in the area of legislative reform to ensure the necessary conditions for an efficient fight against torture, the following is needed:
 - In the Criminal Code of the Republic of Tajikistan, in the article stipulating responsibility for using torture (Article 143 Part 1 Note 1), stipulate the punishment adequate to the gravity of the crime (with the aim of avoiding impunity as a result of dismissal of a case due to amnesty or reconciliation of the parties) in accordance with Articles 1 and 4 of the Convention Against Torture;
 - Ensure inevitability of punishment for torture, by making respective changes to the criminal legislation, and exclude the possibility of using amnesty on persons responsible for committing acts of torture;
 - In the Criminal Proceedings Code, stipulate a procedure for prompt, thorough and unbiased investigation of the facts of torture or inhumane treatment by an independent authority in accordance with Articles 12-13 of the Convention against Torture and requirements of Istanbul Protocol;
 - Stipulate in the Criminal Proceedings Code a procedure for immediate medical examination of all persons detained by the inquest and preliminary investigation authorities in the first hours of detention.
 6. Develop and include in the legislation an institution for independent medical examination.

FORREFERENCE: TheCoalitionofCivilSocietyof Tajikistan against Torture was established in 2011 with the aim of joining efforts and demands for the state authorities to establish a “zero tolerance” policy on torture in Tajikistan. You can obtain detailed information on the activity of the Coalition, its reports and research on the Coalition Web site: www.notorture.tj.