



AMNESTY INTERNATIONAL: RECOMMENDATIONS TO THE AUTHORITIES OF TAJIKISTAN ON TORTURE AND ILL-TREATMENT

Amnesty International is aware of the measures that Tajikistan has taken in recent years such as the adoption of a new Criminal Procedural Code (CPC) in 2010, amending the Criminal Code to include a definition of torture in line with international standards in 2012, and, in March 2012, of Tajikistan's stated willingness to implement recommendations of the Universal Periodic Review, but it believes that there are a number of specific additional measures which are needed to ensure that torture and ill-treatment in pre-trial detention in Tajikistan are brought to an end in practice.

Accordingly, Amnesty International makes the following recommendations to Tajikistan which it believes are necessary if Tajikistan is to comply with its obligations under international and human rights law. Their timely implementation would be a positive indication of Tajikistan's commitment to end torture and other ill-treatment..

RECOMMENDATIONS

GENERAL

- Publicly and unreservedly condemn any use of torture and other ill-treatment. In particular make clear to all law enforcement officers that these practices are unlawful and will not be tolerated and that those who use them will be subject to disciplinary and criminal sanctions. This must be reflected in the training of law enforcement officials.
- Compile and publish clear annual information and statistics regarding complaints of torture and ill-treatment, the investigations conducted, and the outcome in terms of disciplinary proceedings, prosecutions, convictions and sentences and compensation and other reparations for victims.

STRENGTHEN PROCEDURAL SAFEGUARDS FOR DETAINEES:

The following procedural rights should apply to all detainees, including those charged with administrative offences:

- Ensure that detainees are transported to a place of detention as soon as possible after arrest and not kept in other locations apart from official places of custody; and that the CPC is amended to require the registration of detention in an official place of custody within three hours of the moment of deprivation of liberty.
- Amend the CPC to ensure that the definition of deprivation of liberty is in line with international human rights law and that the time that this occurs is treated as the outset of detention and recorded as such in the detention record.
- Amend the CPC to ensure that it explicitly provides, from the moment of deprivation of liberty, for the right to notify a third person, of access to a lawyer of their choice, of the right to remain silent, and ensure detainees are informed of these rights at the moment of the deprivation of liberty.

- The detention record should be opened as soon as possible after arrest of each detainee which should state, at a minimum, the time of arrest; the reasons for arrest; the identity of the arresting officer(s); the location where they are detained and any subsequent transfers; and the identifies of the officers responsible for them in custody.
- Ensure that detainees have access to the lawyer of their choice and that consultations between the detainee and their lawyer take place confidentially and in private.
- Ensure that anyone arriving at a detention facility undergoes a routine medical examination and ensure independent medical examinations are provided when requested by the detainee and not solely when permitted or requested by officials. Ensure that such examinations are carried out in private and free of charge for detainees, and that detainees who in addition wish to have a medical examination in private by a doctor of their choice at their own expense can do so and that detainees have access to their medical records.
- Legislate that remand hearings must take place much earlier than currently prescribed by the CPC (72 hours), and at the latest within 48 hours of the outset of detention; and strengthen the presumption in favour of liberty.
- Amend the CPC so that it no longer allows judges to indefinitely extend periods of pre-trial detention when the prosecution has failed to present well-founded grounds for the person to remain in custody.
- Legislate that no statement or confession made by a person deprived of their liberty, other than one made in the presence of a judge or a lawyer, should have a probative value in court.

OTHER REFORMS

- Ensure assessment procedures for law enforcement officials are not purely quantitative as such a system exacerbates the risk of torture or other ill-treatment.
- Ensure that in practice detainees are not held in SCNS or IVS or other facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention. Then they should be transferred to SIZOs and no further unsupervised contact with the interrogators or investigators should be permitted.
- Implement as a matter of priority the introduction of name tags or visible identification numbers for all law enforcement officers.
- Ensure that detainees are entitled to have their lawyer present at all interrogation sessions.
- Ensure that formal and complete records are kept of all interrogation sessions, by means of transcripts or, preferably, by means of audio and video recordings. The records should include a record of the identity of all persons present. The records should be made available to the detainee and their lawyer.
- In addition, establish audio and video surveillance of all areas of custody facilities where detainees may be present, except where this would violate detainees' right to privacy or to confidential communication with their lawyer or with a doctor. Recordings should be kept in secure facilities for a reasonable period and in the event of a complaint be made available for investigators, individuals who have made a complaint and their representatives.
- Ensure internal directives regulating communication between defence lawyers and detainees are made public and that these comply fully with the norms of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to which Tajikistan is a party.
- Take steps as a matter of priority to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and establish an effective National Preventative Mechanism which is resourced and permitted to conduct regular, independent, unannounced and unrestricted visits of inspection to all places of detention, with the opportunity for the inspectors to speak privately with individual detainees.
- Ensure that appropriate disciplinary, and where necessary criminal, measures are taken against law enforcement officials who harass or intimidate individuals making a complaint about alleged criminal offences by police.

JUDICIAL AUTHORITIES AND THEIR ROLE IN COMBATING TORTURE AND OTHER ILL-TREATMENT:

AT REMAND HEARINGS:

- Ensure that judges inquire into the legality of police detention and into how the detainee has been treated in custody, and if the detainee makes any complaint, or, even in the absence of an explicit complaint, if there is any reason to believe that they have been tortured or ill-treated, initiate a prompt, effective, and impartial investigation.
- Oblige judges to routinely verify whether all procedural safeguards in the CPC have been adhered to, including the timely and correct completion of the detention record; notification to the detainee of his/her rights; prompt notification of their family or other third party; prompt, unrestricted and confidential access to a lawyer; prompt and confidential access to a doctor; and compliance with the time limits stipulated in law.
- As a preventative measure against torture and ill-treatment, ensure that people are only remanded in pre-trial detention in exceptional cases for as short a time as possible and abolish the provision in the CPC that entitles judges to authorise pre-trial detention based only on the gravity of the alleged crime as contradictory to the principle of the presumption of innocence.

AT TRIAL:

- Ensure that any statement or confession elicited as a result of torture or other ill-treatment is not used as evidence in any proceedings except those brought against the alleged perpetrators.
- Legislate that when allegations of torture or other forms of ill-treatment are raised by a defendant during trial or at any other time, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that such treatment did not take place and that any statement or confession made by them was not obtained by unlawful means.

INVESTIGATIONS INTO ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT AND ENSURING THE RIGHT TO A REMEDY AND REPARATION

- Establish a fully resourced, effective, independent agency to investigate all allegations of human rights violations committed by officers of all law enforcement agencies or by persons acting on orders of such agencies or with the knowledge or complicity of such agencies.
- When a complaint or allegation is made about torture or other ill-treatment, or if there is reason to believe that torture or other ill-treatment has taken place, there should be a prompt, thorough and impartial investigation by a body independent of the alleged perpetrators, including a medical examination of the individual concerned. Ensure that complainants, witnesses and others at risk are protected from intimidation and reprisals.
- Suspend any law enforcement officer who is under investigation for having committed acts of torture or other ill-treatment, for the duration of the investigation.
- A person in respect of whom there is credible evidence of responsibility for an act or acts of torture or other ill-treatment should be prosecuted in a fair trial and, if found guilty, given a punishment commensurate with the gravity of the offence.
- Amend the law so as to ensure that victims of torture or other ill-treatment are entitled to prompt reparation from the state, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation regardless of whether perpetrators of such torture have been brought to justice.

TRAINING OF POLICE AND JUDICIARY

- Ensure that it is made clear during the training of all officials involved in the custody, interrogation or medical care of detainees that acts of torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry

out other ill-treatment and to report any instance of it that they know about, and that those in command of arresting officers or in charge of places of detention at the time abuses are perpetrated and who did not take steps to prevent or punish the abuses will also be held responsible.

- Ensure that law enforcement officers receive training in the investigation of crimes by means of skilful interviewing of witnesses and suspects and obtaining forensic evidence, rather than relying on confessions as a means of solving crimes.
- Ensure that judges conducting trials and remand hearings are trained in how to identify indications of torture or other ill-treatment.

COOPERATION WITH INTERNATIONAL HUMAN RIGHTS BODIES

- Grant access to detention facilities to the International Committee of the Red Cross.
- Issue a standing invitation to all thematic Special Procedures mandate holders.
- Ensure prompt compliance with Tajikistan's specific obligations arising from decisions of the UN HRC on individual cases, including ensuring effective remedy, initiation of criminal proceedings to establish responsibility, appropriate reparations to victims including compensation, as well as the obligation to prevent further violations in the future.
- Establish a focal point within the government responsible for communicating with the UN Human Rights Committee, to ensure timely responses to UN Human Rights Committee's requests for information or observations from the authorities of Tajikistan on ongoing cases and ensure implementation of UN Human Rights Committee's recommendations.