



Attachment 3_4_4-2

2014 OSCE Human Dimension Implementation Meeting, Working Session 4, Wednesday 24 September 2014: Rule of Law 1

An overview of positive developments and ongoing concerns regarding torture and other ill-treatment in Kazakhstan, Kyrgyzstan and Tajikistan

In the last few years the authorities of **Kazakhstan, Kyrgyzstan** and **Tajikistan** have taken some noteworthy positive steps to combat torture. For example, in 2012, **Tajikistan** amended the definition of torture in its Criminal Code and brought it in line with the definition contained in the Convention against Torture. In 2008, **Kyrgyzstan** and **Kazakhstan** were the first Central Asian countries that became parties to the Optional Protocol to the Convention against Torture. We are urging the other Central Asian countries to follow suite.

In the new Criminal Code that was signed by President Nursultan Nazarbaev in July 2014, and is expected to come into force in January 2015, **Kazakhstan** took a positive step by abolishing the statute of limitations applicable to the offence of torture. The new Criminal Code also excludes those convicted of “torture“ from benefitting from amnesties. In **Kyrgyzstan** and **Tajikistan**, however, the law provides for statutes of limitations applicable to torture and this may prevent the investigation, prosecution and punishment of perpetrators of torture. In addition, amnesty laws can be applied to torturers.

However, despite some steps in the right direction, all three countries have failed to fully adhere to the OSCE Human Dimension Commitments relating to the eradication of torture that they undertook to uphold as OSCE participating States. They have also failed to fully implement crucial recommendations issued in this area by UN human rights bodies such as the UN Committee against Torture, the UN Human Rights Committee, under the Universal Periodic Review, as well as by the UN Special Rapporteur on torture.

Torture continues to be widely used across **Kazakhstan, Kyrgyzstan** and **Tajikistan** and existing legal safeguards are routinely not implemented. In all three countries torture mainly takes place during the first hours of detention when detainees are in many cases held incommunicado, without access to legal counsel and medical personnel, although torture cases are also reported from later stages of detention and imprisonment. Those detained or imprisoned on charges related to national security or “religious extremism” are at particular risk of torture or other ill-treatment.

A recent example of police violence is the case of **Alexander Albrandt**, who was detained by police in the town of Kushmurun in Kostanay region in Northern **Kazakhstan** on 23 August 2014. When he was later released he turned to the Kostanay regional branch of the NGO Kazakhstan International Bureau

This statement is submitted by the **coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan**, the **Helsinki Foundation for Human Rights** (Poland) and **International Partnership for Human Rights** (Belgium) – the initiators – together with the following NGOs: **Amnesty International**, **Armenian Helsinki Committee**, **Belarusian Helsinki Committee**, **Bir Duino – Kyrgyzstan Human Rights Movement**, **Center for Civil Liberties** (Ukraine), **Center for National and International Studies** (Azerbaijan), **Helsinki Citizens' Assembly – Vanadzor** (Armenia), **Kharkiv Regional Foundation Public Alternative** (Ukraine), **Legal Transformation Center** (Belarus), **Moscow Helsinki Group** (Russia) and the **Norwegian Helsinki Committee**. The initiators of this statement have received financial assistance for its production from the European Union, Open Society Foundations and National Endowment for Democracy. The contents of this document are the sole responsibility of the organizations issuing it and can under no circumstances be regarded as reflecting the positions of the European Union, Open Society Foundations and National Endowment for Democracy.



for Human Rights and Rule of Law and reported that police had taken him to the local police station and beaten him while he was handcuffed. Then police took him to the local hospital to have his level of alcohol intake determined and he reportedly told medical staff about the beatings. The officers reportedly said he was lying and had sustained the injuries when falling off a scooter. He maintained that police later threatened to kill him for complaining about the beatings. Alexander Albrandt tried to escape, but police stopped him and he recalled: “They dragged me on the floor, skinned my elbows, kicked me in the face, in my belly, chest and on my back. They kicked me as hard as they could. I don’t know how long it lasted because I lost consciousness.”

Judges rarely consider evidence of torture and other ill-treatment at remand hearings and during trials judges still typically fail to exclude evidence extracted under torture. Although perpetrators of torture or other ill-treatment have been punished in individual cases, a climate of impunity persists 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.

Case example 1: Impunity

An example of impunity for torture is the case of **Ismonboy Boboev**, who died shortly after being taken into police custody in the Sughd region of **Tajikistan** in February 2010. There were allegations that police had targeted the 30-year old migrant worker shortly after his return from the Russian Federation to extort money from him. Despite a forensic examination confirming that Ismonboy Boboev had been tortured prior to his death, and a May 2012 ruling by Tajikistan’s Constitutional Court that investigations should be carried out into the circumstances, investigations into the actions of two officers of the Sughd Regional Department for the Fight against Organized Crime have been closed and re-opened several times, ostensibly due to the poor health of one of the suspects. In April 2014, Sughd Regional Prosecutor’s office suspended the case again. The lawyer acting for Ismonboy Boboev’s family has not been allowed access to the investigation documents. As a result, after four years little progress has been made and the officers allegedly responsible are still free.

Case example 2: Impunity

In **June 2010**, four days of **violence between ethnic Kyrgyz and ethnic Uzbeks in the cities of Osh and Jalal-Abad in southern Kyrgyzstan** left hundreds dead, thousands injured and hundreds of thousands forced to flee their homes. There were scores of reports of torture and other ill-treatment by security forces during the violence and its aftermath. However, to date the authorities appear to have done little to carry out effective investigations into these allegations and to bring the suspected perpetrators from among civilians as well as security forces to justice. Relatives of ethnic Uzbek detainees are still reluctant to submit complaints to police and prosecutors about their torture and other ill-treatment for fear of reprisals.

For many within the criminal justice systems of **Kazakhstan, Kyrgyzstan and Tajikistan** the incentives to torture are greater than the disincentives. For example, while the risk of punishment for abuse is very small, torture or other ill-treatment open up avenues for additional income as law enforcement officers and prison personnel frequently apply torture to extract money from detainees and prisoners. In addition, law enforcement officers continue to be assessed – albeit unofficially – by the number of crimes they solve, a system that exacerbates the risk that police resort to torture to obtain a confession to a hitherto unsolved crime.

Human rights defenders and lawyers defending torture victims are at risk of reprisals, particularly when the detainees are held on charges involving “religious extremism”, terrorism or undermining national security. In many cases activists are closely monitored by the authorities; they are subjected to excessive checks and in some cases NGOs have been threatened with liquidation of their organizations as a result of their human rights work.

We are also concerned that in the name of national security, security services of countries in the Commonwealth of Independent States (CIS), particularly of **Kazakhstan, Russia and Ukraine**, have forcibly returned numerous suspected members of banned Islamic groups or parties to **Tajikistan and Uzbekistan**. Many of these people were subjected to torture upon return. 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.

Independent inspection of detention facilities

The UN Special Rapporteur on Torture has stated that regular inspection of places of detention is one of the most effective preventive measures against torture. In 2008, **Kazakhstan** ratified the Optional Protocol to the Convention against Torture and in 2013 it adopted the necessary legislation to set up a National Preventive Mechanism (NPM). In January 2014, a Coordination Council was established under the chairmanship of the Ombudsman to coordinate the activities of all NPM members and on 19 February, at its first session, the Council elected all members of the NPM to work in all regions across the country. Subsequently, the Ombudsman's Office and civil society activists started to jointly monitor detention facilities across Kazakhstan. While acknowledging that the creation of the NPM has been a positive development, we are concerned that the current monitoring mandate does not cover all places of deprivation of liberty. The monitoring group has no access to orphanages, nursing homes for the elderly and disabled and is not permitted to inspect offices of police departments.

In **Kyrgyzstan**, since 2011 human rights defenders have been able to monitor detention facilities based on a joint memorandum of the Ombudsman, the Prosecutor General's Office, other government agencies, the OSCE, and civil society groups. In 2008, Kyrgyzstan acceded to the Optional Protocol to the Convention against Torture and committed itself to set up an NPM to strengthen the state party's safeguards against torture. In June 2012, the Kyrgyzstani Parliament set up the National Centre of the Kyrgyz Republic for the Prevention of Torture and endowed it with powers to carry out the functions of the NPM. On 2 August 2013, a Director was appointed to set up the institutional framework of the new mechanism. Although the NPM has started functioning, it lacks funding; no funds were allocated to it in 2013 and 2014. The Director does not receive a salary and the NPM does not yet have a legal address as it was not provided with an office.

In December 2012, the **Tajikistani** Ombudsman proposed establishing a joint working group together with civil society activists on monitoring places of detention. The Monitoring Group was intended to become a basis for the establishment of an NPM under the Optional Protocol in the future. The group began visits to detention facilities in February 2014. However, the Monitoring Group has to announce its visits in advance and when the group receives allegations of torture in a specific case and wants to visit, the administration of the detention facility typically only admits staff of the Ombudsman's Office and denies access to the civil society members of the Monitoring Group. Other than in the framework of the Monitoring Group, human rights defenders are not permitted to enter detention facilities at all in order to conduct independent monitoring.

Recommendations

We have prioritized a number of recommendations that we see as the most pressing steps that the authorities of **Kazakhstan**, **Kyrgyzstan** and **Tajikistan** and all other OSCE participating States should take in order to make significant progress towards the eradication of torture in these Central Asian countries.

The governments of Kazakhstan, Kyrgyzstan and Tajikistan should:

- ensure that the main safeguards against torture are guaranteed to anyone in detention: a) Ensure that the right to access to a lawyer of the detainee's choice from the moment of deprivation of liberty is fully implemented; b) introduce and strictly enforce police registration of a person's detention at the actual moment of detention; c) ensure that routine medical examinations are carried out at the moment of admission to a detention facility; and d) ensure that remand hearings take place no later than 48 hours after the moment of detention and that judges inquire into the legality and grounds of detention and the detainee's treatment in custody.
- Promptly act on all complaints involving allegations of torture and ill-treatment by initiating thorough, impartial and independent investigations, punishing those found responsible, providing adequate and full compensation to torture victims, and reporting on the measures taken in the mass media.

- Introduce legislation to create and fund an independent body endowed with sufficient authority and competence to conduct prompt, thorough and independent investigations into allegations of torture or other ill-treatment.
- Amend legislation to provide for the institution of independent forensic medical examinations and increase the number of qualified medical personnel in police detention and pre-trial facilities. Ensure that medical personnel working inside detention facilities are truly independent of law enforcement agencies and are trained on the provisions of the Istanbul Protocol.
- Ensure that human rights defenders are protected from ill-treatment, threats and harassment resulting from their anti-torture work and that any law enforcement officers found responsible for such acts are punished under relevant administrative or criminal legislation.

In addition,

- **Kazakhstan** should authorize the NPM to monitor all places of detention, in line with Article 4 of the Optional Protocol to the UN Convention against Torture.
- The authorities of **Kyrgyzstan** should provide the country's NPM with the necessary financial, human and material resources to fulfil its mandate independently and effectively.
- The authorities of **Tajikistan** should put in place the relevant procedures and ratify the Optional Protocol to the Convention against Torture as a matter of urgency. Tajikistan should also allow the creation of public monitoring commissions and enable them to access detention facilities to carry out further independent inspections.

In accordance with the principle that issues relating to human dimension commitments are matters of direct and legitimate concern to all OSCE participating States, all other participating States should:

- Urge the governments of **Kazakhstan, Kyrgyzstan** and **Tajikistan** to promptly implement all recommendations mentioned above and make torture prevention a priority in bi-lateral meetings and human rights dialogues.
- Provide comprehensive support to human rights defenders working on torture and devise and implement emergency programmes supporting activists at risk.
- Make the anti-torture message a core element of all programmes, where foreign governments provide training, support or cooperate in other ways with **Kazakhstani, Kyrgyzstani** and **Tajikistani** government agencies, in particular law enforcement agencies and the military.
- Ensure that no one within their jurisdiction is returned to any country where they would be at risk of torture or other ill-treatment.