



Briefing paper for Federica Mogherini, High Representative of the European Union for Foreign Affairs and Security Policy

Torture and ill-treatment in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan - December 2015

KAZAKHSTAN

The authorities of Kazakhstan have implemented some significant positive steps in recent years in the area of torture prevention and eradication, but we are concerned that torture and other forms of ill-treatment are continuing and impunity is still the norm. Since January 2015, the NGO Coalition against Torture in Kazakhstan has registered over 70 new cases of men, women and children who allege to have been subjected to torture and other ill-treatment. In its November 2014 Concluding Observations the Committee against Torture pointed out that less than two per cent of torture complaints led to prosecutions and we believe that the situation remains largely unchanged.

Failure to effectively investigate allegations of torture and other ill-treatment

In those cases where investigations have been opened in recent years they have not been conducted effectively in the large majority of cases, thus perpetuating a vicious circle of torture and impunity. Typically, investigators failed to engage in gathering evidence to study the circumstances of the alleged torture from all perspectives, such as interviewing witnesses and medical personnel or ordering a forensic medical examination; they did not interview the victims and they did not carry out confrontations of police and victims. Instead, investigators often relied on statements obtained from the alleged perpetrators and their colleagues.

There are structural problems in the criminal justice system of Kazakhstan that stand in the way of prompt, thorough, impartial and independent investigations as required by international human rights law.

The examination of torture allegations is in many cases conducted by the internal security service of the Ministry of Internal Affairs or other law enforcement agencies whose employees are themselves implicated in the complaint. In those cases where complaints are submitted to prosecutors' offices they are often forwarded to the internal security services of law enforcement agencies for them to conduct the investigation. The internal security services usually dismiss the allegations as unfounded and, as a result, criminal cases are opened only in a small number of cases.

When investigations are led by prosecutors they are also often not conducted effectively. Prosecutors, like the police, have a vested interest in achieving a high crime solution rate. In order to achieve this goal, prosecutors may be inclined to overlook human rights violations committed by police, such as torture. Prosecutors and policemen from the same regions frequently have close professional and sometimes even personal links, which often poses an obstacle to thorough and impartial investigations into violations committed by



police. In addition, domestic legislation permits prosecutors to order police to undertake investigative activities and gather evidence for them.

In those cases where torture or other ill-treatment are revealed during court hearings prosecutors have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

National Preventive Mechanism

The establishment within the Ombudsman's Office of the National Preventive Mechanism (NPM), which started visiting detention facilities in March 2014, is a step in the right direction. However, we are concerned that the Ombudsman's Office does not fulfil the requirement of independence as outlined in the Paris Principles and that there has been undue interference in the NPM's work. NPM members should have the powers to decide on the visits they wish to carry out and to publish reports immediately after the visits. We were concerned that the authorities of the penal system recently claimed that an NPM member "knowingly disseminated false information on the internet", after she had reported about her visits to a prison, where prisoners told her they had been tortured. The case was subsequently terminated by the investigator, but we are concerned at the chilling message this incident sent to NPM members and civil society in general.

Implementation of UN treaty body decisions on individual cases

Kazakhstan accepted the individual complaints procedures provided under Article 22 of the Convention against Torture and the Optional Protocol to the International Covenant on Civil and Political Rights, in 2008 and 2009 respectively. In recent years the Committee against Torture and the Human Rights Committee found Kazakhstan guilty of breaching its international obligation to prevent or not to permit torture in seven cases of torture victims. So far, Kazakhstan has partly implemented the treaty bodies' recommendations in only two of these cases. The victims were awarded compensation for moral harm suffered through torture, but the payments were not adequate and the perpetrators have not been brought to justice. There is no mechanism in place, neither in domestic law nor in practice, that would allow for their effective implementation.

Recommendations

- Establish an effective, fully resourced, independent and accountable body that is able to carry out prompt, impartial, thorough and effective investigations, including preliminary investigations, into all allegations of torture and ill-treatment, ensuring that such investigations are never undertaken by personnel employed by the same ministry as the accused persons.
- Ensure that the Ombudsman's Office functions in full adherence to the Paris Principles and authorize the National Preventive Mechanism to publicize its findings and recommendations shortly after undertaking visits rather than only on an annual basis.
- Promptly and fully implement all decisions by United Nations treaty bodies on individual cases.

For further information, refer to: Briefing paper on torture and ill-treatment in Kazakhstan for EU-Kazakhstan Human Rights Dialogue, November 2015: <http://iphronline.org/wp-content/uploads/2015/11/Briefing-on-torture-for-EU-Kazakhstan-Human-Rights-Dialogue-November-2015.pdf>

KYRGYZSTAN

Torture and ill-treatment including electric shock, suffocation, rape and beatings continue to be widely used in Kyrgyzstan and impunity is the norm. Since January 2015 the NGO Coalition against Torture in Kyrgyzstan has registered over 100 new cases of torture and ill-treatment.

Detainees particularly vulnerable at the onset of detention

We are concerned that the Criminal Procedure Code of Kyrgyzstan does not provide detainees with basic safeguards from the moment of de facto apprehension, such as access to a lawyer of their choice, access to independent medical examination and notification of family. The Code considers a person to be detained when he/she is admitted to a detention facility run by the Interior Ministry and it provides no information on how much time may elapse between the actual arrest and arrival of the detainee at the detention facility. Police often hold detainees in basements, police cars or offices of police stations in the first hours, sometimes even days, of detention. There, police frequently subject them to torture or ill-treatment and force them to sign a confession, before placing them into a temporary detention facility and recording their detention.

Failure to effectively investigate allegations of torture and other ill-treatment

When Kyrgyzstan was last reviewed by the Committee against Torture in 2013 the Committee recommended to establish an independent body to conduct investigations into allegations of torture and other ill-treatment. Our concerns relating to ineffective investigations are similar in all Central Asian countries included in this briefing.

Recommendations

- Bring the definition of deprivation of liberty in domestic legislation in line with international human rights law, in particular ensure that the moment of apprehension is treated as the outset of detention.
- Ensure that everybody who is deprived of his or her liberty has access to basic safeguards such as access to a lawyer of the detainee's choice, information about the detainee's rights, notification of family, and access to an independent medical doctor.
- Ensure that all allegations of torture and ill-treatment are effectively investigated by an independent investigative mechanism and bring to justice those responsible.

For further information, refer to: Torture in Kyrgyzstan: Current concerns and recommendations, May 2015: http://iphronline.org/wp-content/uploads/2015/09/torture_in_kyrgyzstan_may_2015.pdf

TAJIKISTAN

As recently as in February 2015 the UN Special Rapporteur on torture raised concern about ongoing torture and ill-treatment and impunity in the follow-up report to his mission to Tajikistan. Since January 2015 the NGO Coalition against Torture in Tajikistan has registered over 35 new cases of torture and ill-treatment. Many victims refrain from complaining for fear of reprisals.

Torture and ill-treatment in the armed forces

The NGO Coalition recorded a total of 13 cases of torture and ill-treatment in the armed forces since January 2014; seven of them died.

Commanding officers have been brought to justice in only three of the 13 cases, although there was compelling evidence to suggest that senior officers carried responsibility for not preventing abuse of soldiers in further cases. We are also concerned that in 2014 at least three perpetrators of torture in the army benefitted from amnesties and had their sentences reduced.

Failure to provide comprehensive reparation to victims of torture

In 2014, the families of two men, who had died in custody, were the first known cases whom civil courts awarded compensation for moral damages sustained through torture. These were positive steps but we are concerned that payments granted in these and three subsequent cases were neither fair nor adequate. The families of two deceased men were awarded the equivalent of 6,600 EUR and 2,015 EUR, respectively. Shakhbol Mirzoev, who was tortured so severely that he was left paralyzed, was granted an equivalent of 2,900 EUR by a court in 2015 for moral damages. The decision was later cancelled and the case is now pending with a military court for a review. Although the authorities promised to cover all medical expenses, they only covered some. To pay for all other medical expenses, Shakhbol's family had to sell their house.

Failure effectively investigate allegations of torture and other ill-treatment

In its 2012 Concluding Observations the Committee against Torture expressed concern about the small number of convictions for violations of the Convention against Torture in Tajikistan, despite numerous allegations of torture. Our concerns relating to ineffective investigations are similar in all Central Asian countries covered in this briefing.

Recommendations

- With regard to the army, establish the liability of direct perpetrators and those in the chain of command and bring to justice all those responsible.
- Provide fair and adequate compensation for moral damages and as full rehabilitation as possible to victims of torture.
- Ensure that all allegations of torture and ill-treatment are effectively investigated by an independent investigative mechanism and bring to justice those responsible.

For further information, refer to: Tajikistan: Human Rights Situation on the Ground. Torture and Other Ill-Treatment. Submission to the UN Universal Periodic Review. 25th Session of the UPR Working Group (April-May 2016): <http://iphronline.org/wp-content/uploads/2015/10/ENG-Tajikistan-UPR-Submission-on-torture-September-2015.pdf>

UZBEKISTAN

Torture in prisons and prison conditions

Prison conditions in Uzbekistan are reported to be so substandard that they amount to torture and other cruel, inhuman and degrading treatment or punishment. Cells in prisons and pre-trial detention centres (SIZOs) are reported to be severely overcrowded, with inadequate drinking water, food, medication, sanitation and ventilation. Former political prisoners have reported that sick prisoners are not exempt from heavy manual work.

From January 2011 to October 2015 Association for Human Rights in Central Asia (AHRCA) received over 27 letters from prisoners and 154 other sources of allegations of torture and ill-treatment during investigation and detention. The most common reports concern sexual violence, including rape with objects such as truncheons. Reportedly, prisoners are often deprived of food and water, and some reports indicate that prison officials deprive prisoners of access to toilets as a punishment, and that those prisoners who are imprisoned on political or religious grounds are particularly targeted.

Lack of independent detention monitoring

Uzbekistan has no effective, independent monitoring mechanisms in place to inspect places of detention. Due to government-imposed restrictions, no independent NGO or other monitoring body - domestic or international - carries out any form of regular, unannounced and unsupervised prison monitoring. In April 2013, the International Committee of the Red Cross (ICRC) terminated all visits to detainees in Uzbekistan due to restrictions on their standard working procedures and as a result, according to the ICRC, those visits were “pointless”. Foreign diplomats, while granted access to some detention facilities, are usually accompanied by prison or law enforcement officials during their visits. The Uzbekistani authorities have not yet ratified the Optional Protocol to CAT (OPCAT), which requires states to accept a system of regular visits to all places of detention by independent “national preventive mechanisms” and by an international expert body. It is imperative that the Uzbekistani authorities agree to establish systems of effective and independent monitoring as a priority.

Recommendations

- Issue a standing invitation to the Special Procedures of the UN Human Rights Council, and facilitate a country visit in particular by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
- Invite international experts to advise on the concrete steps to be taken in order to establish an effective system of independent, unannounced inspection and supervision of all places of detention by competent, independent and impartial bodies.

For further information, refer to: the IPHR and AHRCA joint briefing paper prepared ahead of the EU-Uzbekistan Human Rights Dialogue on 23-24 November 2015: <http://iphronline.org/wp-content/uploads/2015/11/EU-Uzbekistan-HRD-briefing-November-2015.pdf>