



Briefing paper ahead of the EU-Tajikistan Cooperation Council meeting

Torture, ill-treatment and ongoing impunity in Tajikistan¹

As recently as in February 2015 the United Nations (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. In 2015 the NGO Coalition against Torture in Tajikistan registered 43 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 against Torture recorded a total of 14 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 14 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.

Independent monitoring of detention and army facilities crucial

Tajikistan lacks an independent body to conduct effective monitoring of detention and army facilities. The country has not ratified the Optional Protocol to the Convention against Torture (OPCAT) and has thus not committed itself to setting up a National Preventive Mechanism (NPM), citing financial limitations. The International Committee of the Red Cross (ICRC) has not had access to detention facilities for the purpose of monitoring since 2004. In February 2014, a Monitoring Group established as part of the Ombudsman's Office and consisting of Ombudsman Office staff and civil society activists began visiting detention facilities. The Group does not have access to all relevant information and records and some of its members reported that, in some instances, the administration of the detention facility appeared to have been informed of their visit in advance, although, since the beginning of 2015, no advance notification is required. When the Monitoring Group receives allegations of torture in a specific case and wants to urgently conduct a visit, the administration of the detention facility typically only admits staff of the Ombudsman Office and denies access to the Group's civil society members. Other than in

¹ This paper was finalized on 29 January 2016. For further information, see: 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>

the framework of the Monitoring Group, human rights defenders are not permitted to enter detention facilities to conduct independent monitoring.

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

In its 2012 Concluding Observations the UN 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. Impunity continues to be the norm. Tajikistan lacks an independent body to conduct effective investigations into allegations of torture and ill-treatment although several international human rights bodies and procedures such as the UN Special Rapporteur on torture, the Committee against Torture and the Human Rights Committee recommended Tajikistan to set up such a body.

There are structural problems in Tajikistan's criminal justice system that stand in the way of prompt, thorough, impartial and independent investigations. The examination of torture allegations is in many cases conducted by law enforcement agencies whose employees are themselves implicated in the complaint. 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 also have a conflict of interest originating from their roles both within the criminal prosecution and regarding the supervision over the legality of the investigative process.

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 the payments granted in these and three subsequent cases were neither fair nor adequate. The families of three deceased men were awarded the equivalent of 710 EUR, 2,015 EUR and 6,600 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.

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.
- Ratify OPCAT and establish an effective NPM. In the meantime, grant unimpeded access to the ICRC and expert independent NGOs working to prevent torture in Tajikistan, to all places of detention as well as to conscription commissions and military units.
- Ensure that all allegations of torture and other forms of ill-treatment are effectively investigated by an independent investigative mechanism and bring to justice those responsible.
- Provide fair and adequate compensation for moral damages and as full rehabilitation as possible to victims of torture.