



**International
Partnership**
for Human Rights

OMCT
SOS-Torture Network

HR HELSINKI FOUNDATION
for HUMAN RIGHTS



Tajikistan needs to do more to end torture An overview of current concerns

Publication date:
10 February 2015

This briefing 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 **Amnesty International** and the **World Organisation Against Torture** (OMCT). The initiators of this briefing have received financial assistance for its production from the European Union. The document's contents are the sole responsibility of the organizations issuing it and can under no circumstances be regarded as reflecting the position of the European Union.



TABLE OF CONTENTS

INTRODUCTION	3
LEGAL SAFEGUARDS NEED TO BE STRENGTHENED AND FULLY IMPLEMENTED	5
ENDING IMPUNITY	8
TORTURE AND OTHER ILL-TREATMENT IN THE ARMED FORCES	10
RECOMMENDATIONS	11

Tajikistan needs to do more to end torture

An overview of current concerns

INTRODUCTION

In recent years the Tajikistani government has made some progress in terms of taking steps needed to prevent and eradicate torture. Continued international attention and political will of the Tajikistani authorities are needed to achieve lasting results.

Torture has been a longstanding issue in Tajikistan, which led international organizations and human rights mechanisms to focus their attention on this issue. Torture continues to be widely used throughout Tajikistan, despite several recommendations that have been issued aimed at eradicating the practice.

In May 2012, the United Nations (UN) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture) visited Tajikistan, published his findings and recommendations in January 2013 and conducted a follow-up visit in February 2014.¹ In November 2012, the UN Committee against Torture reviewed Tajikistan's second periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and published its concluding observations in January 2013.² In July 2013, the UN Human Rights Committee considered Tajikistan's second periodic report on the implementation of obligations as a party to the International Covenant on Civil and Political Rights (ICCPR) and, in August 2013, it issued concluding observations, several of which addressed ongoing torture.³ In recent years other organizations such as the European Union also prioritized the issue of torture in their interactions on human rights issues with the Tajikistani authorities.

In July 2012, Amnesty International issued a report entitled "Shattered lives. Torture and other ill-treatment in Tajikistan"⁴, based on a fact-finding visit to different parts of Tajikistan, which found that torture and other forms of ill-treatment were widespread in the country and that those detained on charges relating to national security and religious extremism were at particular risk.

The NGO Coalition against Torture in Tajikistan has closely monitored and analyzed domestic legislation pertaining to the issue of torture for many years and has documented numerous cases involving allegations of torture or other ill-treatment from across Tajikistan. It has provided the above-mentioned mechanisms and organizations with up-to-date and in-depth information on legislation and practice regarding torture.⁵

In order to address the recommendations issued by the UN Committee against Torture and the Special Rapporteur on torture, the government approved an Action Plan on torture in August 2013. Regrettably, local human rights organisations were not involved in drawing up the Action Plan and the

¹ Refer to: http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-22-53-Add1_en.pdf

² Refer to: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fJK%2fCO%2f2&Lang=en

³ Refer to: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJK%2fCO%2f2&Lang=en

⁴ Refer to: <http://www.amnesty.org/en/library/info/EUR60/004/2012/en>

⁵ For example: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fJK%2f13028&Lang=en and http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fJK%2f14620&Lang=en

comments and recommendations the NGO Coalition against Torture in Tajikistan sent to the authorities were not reflected in the final document.

The Action Plan foresees a series of steps intended to address the recommendations by the UN mechanisms and provides details of timelines and the authorities responsible for its implementation. However, it does not provide clear indicators, which would allow for implementation to be measured or assessed. There is therefore a risk that although crucial issues are being discussed and studied there may be no practical steps that fundamentally improve the situation regarding torture or other ill-treatment in Tajikistan.

In recent years, the authorities of Tajikistan have taken concrete measures to address the persistence of torture and other ill-treatment. In March 2012, Tajikistan's Parliament approved amendments to the country's Criminal Code introducing a separate article defining torture (Article 143). The definition of torture contained in this article is in line with international human rights law, as highlighted in the 2013 concluding observations of the Human Rights Committee. But there continues to be concern that penalties are not commensurate with the severity of the crimes committed and that amnesty laws can be applied to torturers, which is strictly forbidden under international law.

Between 2012 and 2014, four criminal cases were opened under the new definition of torture. However, one of the cases was requalified as a different crime under the Criminal Code and there were concerns about whether the sentences were commensurate with the crimes committed. Two police officers were sentenced to seven years' and one year of imprisonment respectively, while a third convicted police officer is serving a suspended sentence of two years. A fourth officer was only ordered to pay a fine.

In June 2012, the Plenum of the Supreme Court issued a decision on "The implementation of norms included in criminal and criminal-procedural legislation regarding torture prevention" that, among others, clarified that a person is considered a detainee as soon as he or she is deprived of his or her liberty and entitled to all relevant legal safeguards. However, this decision was principally directed at judges rather than law enforcement officials and is regarded as a recommendation rather than binding law. It did not result in noticeable improvements in practice and police usually still consider a person detained only after the detention record is drawn up. As a result, after apprehension detainees are frequently held incommunicado for hours, putting them at risk of torture or other forms of ill-treatment.

In 2013, the Prosecutor General adopted a textbook for prosecutors, entitled "Legal foundations and organization of activities of the organs of the procuracy on prevention, detection and investigation of torture". However, this document is for internal use only, so its content is not accessible to the public.

In 2014, in the first known cases in Tajikistan where courts ordered compensation for torture, the families of Safarali Sangov and Bahromiddin Shodiev, who died in custody as a result of torture in two separate incidents in 2011, received compensation from the authorities. However, to our knowledge, no further measures of reparation were granted to the victims.

In December 2012, a Working Group that included NGO representatives was established on the initiative of the Minister of Health and Social Welfare to introduce the standards of the UN Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, into internal documents of forensic experts. Subsequently, the NGO Human Rights Centre, a member of the Coalition against Torture in Tajikistan, conducted trainings on standards of the Istanbul Protocol for 85 professionals, including forensic experts, medical and other personnel of closed institutions, judges, prosecutors and lawyers. It is necessary to provide further trainings on the standards of the Istanbul Protocol in order to significantly raise the quality of medical examination of torture victims across Tajikistan.

Despite these welcome steps, torture continues to be widespread in Tajikistan. It mostly takes place during the first hours of detention in police custody and in pre-trial facilities, particularly those run by the State Committee of National Security. From 2011 to 2014, members of the NGO Coalition against Torture in Tajikistan documented more than 100 cases of men, women and children who were allegedly subjected to torture or other ill-treatment. Only in a small number of these cases, official investigations were opened, and in many cases -- whilst the incidence of torture or other ill-treatment would appear to have been confirmed, at least partly -- only disciplinary proceedings have been imposed. It is believed that many victims of torture did not file complaints for fear of reprisals.

The Tajikistani authorities must consistently implement further measures aimed at preventing, investigating and eradicating all incidents of torture and ill-treatment in Tajikistan.

This briefing summarizes our main concerns and recommendations that we urge the authorities to prioritize and implement as a matter of urgency.

LEGAL SAFEGUARDS NEED TO BE STRENGTHENED AND FULLY IMPLEMENTED

Torture in Tajikistan ordinarily takes place during the first hours of detention when detainees are in many cases de facto held incommunicado. We believe that by strengthening and fully implementing fundamental safeguards protecting detainees in police custody and pre-trial detention the authorities can significantly reduce incidents of torture and other ill-treatment.

Defining in law in accordance with international human rights standards the moment when a person becomes a detainee

International human rights law clearly states that a person is considered a detainee as soon as he or she is “depriv(ed) of liberty (...) in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority” (e.g. Art. 4(2) of the Optional Protocol to the Convention against Torture). Safeguards must then be in place to provide protection from torture and other ill-treatment under any kind of detention.

However, Tajikistani legislation does not follow the above definition and is ambiguous as to **when a person is considered a detainee**. In practice, law enforcement agencies and courts typically consider a person a detainee when the detention record is drawn up. This may be several hours, or even several days, after the de facto arrest. As a result, during this time detainees typically have no access to any of the legal safeguards enshrined in Tajikistani legislation, including access to their family, a lawyer and medical attention.

Police also often apprehend people for administrative offences as a pretext for keeping them in custody for five to 15 days. In Tajikistani legislation the legal safeguards pertaining to those detained on criminal charges are stronger, and do not apply fully to those detained on administrative charges. Another way of detaining people without granting them the protection of legal safeguards is the frequent police practice of summoning people as “witnesses” or simply calling them in for “a conversation”. Often police officers reportedly torture them in order to obtain “information” or “confessions” that subsequently form the basis for opening criminal cases against these individuals.

In November 2012, the UN Committee against Torture recommended Tajikistan to “ensure that arrest starts from the moment of de-facto apprehension” (Recommendation 8 (a)). In January 2013, the Special Rapporteur on torture also called on Tajikistan to “(a)mend the Code of Criminal Procedure to ensure that the time of arrest starts from de facto apprehension and delivery to a police station”. (Recommendation 99e).

Implement safeguards

Domestic legislation already contains a number of relevant safeguards that are fully in line with requirements under international human rights law, but they are frequently not implemented.

For example, the Constitution of Tajikistan stipulates that “a person is entitled to services of a lawyer from the moment of detention” and the Criminal Procedure Code of Tajikistan (CPC) includes similar guarantees. However, in practice police investigators often deny **lawyers access to their clients** for days and lawyers in many cases see their clients for the first time at the remand hearing. Lawyers continue to experience obstacles visiting their clients in investigation-isolation facilities (SIZO), the detention facilities under the jurisdiction of the Ministry of Justice. In some cases lawyers have been prevented from seeing clients until the police investigator sent confirmation to the SIZO administration certifying that the lawyer is involved in the specific criminal case. The Committee against Torture recommended Tajikistan to “(g)uarantee the right to access lawyers of their choice from the moment of apprehension and to hold consultations in private, including through the adoption of legal provisions in this respect” (Recommendation 8 (d)).

The CPC stipulates that “evidence obtained during the inquiry and preliminary investigation by way of force, pressure, causing suffering, inhuman treatment or other illegal methods, is invalid and cannot

form the basis of an accusation.” However, in practice **evidence extracted under torture** is routinely **used in court**, and when defendants complain about torture, judges often dismiss the allegations without further checking. According to local human rights groups, judges sometimes summon the police officers accused of torture to testify. If they deny the allegations, the judge’s review of the torture allegations is reportedly closed and no further inquiries are made into the allegations. Local NGOs are not aware of any case where a court excluded from the case materials evidence because it was established that it was obtained through torture.

International law requires that evidence obtained through torture or other ill-treatment is not used in any proceedings, except against a person accused of torture or other ill-treatment. The Committee against Torture recommended Tajikistan to “guarantee, in practice, that statements obtained by torture are not invoked as evidence in any proceedings” and that “in any case in which a person alleges that a confession was obtained through torture, the proceedings are suspended until the claim has been thoroughly investigated” (Recommendation 13).

Legal amendments needed to strengthen existing safeguards

Some of the legal safeguards provided for in domestic legislation need to be further strengthened in order to ensure effective protection from torture or other ill-treatment.

For example, the CPC stipulates that detainees should be **informed of their rights** after the detention record is drawn up (Article 94). Under Article 94.1 of the CPC the detention record should be drawn up within three hours of the detainee’s arrival at the police station. Domestic legislation does not specify the time frame within which detainees have to be admitted to a police station after being apprehended. In practice the arrival of a detainee at the police station can be hours or even days after the detainee was apprehended, according to local human rights groups.

Principle 13 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that “any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided (...) with information on and an explanation of his rights and how to avail himself of such rights.” In its concluding observations issued in 2012 the Committee against Torture recommended Tajikistan to “(e)nsure that suspects are informed of their rights at the very moment of apprehension as well as reasons for their detention” (Recommendation 8 (c)).

The CPC does not require police to include the identity of the arresting officers in the **detention record**, thus facilitating impunity. Both the Committee against Torture and the Special Rapporteur on torture called on Tajikistan to ensure that detention is recorded from the very moment when a person is deprived of liberty and that, among other issues, the identity of the arresting officer/s is recorded.

The CPC stipulates that **family** members should be notified of the detention and the detainee’s whereabouts within 12 hours of apprehension, either by police or the detainee (Article 100, part 1). The Committee against Torture called on Tajikistan to “repeal the 12-hour period for notification of arrest by law enforcement officers to family members” (Recommendation 8 (g)). The Human Rights Committee has recommended that detainees must be permitted to contact their families from the moment of apprehension.⁶ In the current context in Tajikistan notification of family is a particularly important safeguard as family members in many cases try to contract an independent lawyer for the detainee and prevent them being issues with an ex officio (state-appointed) lawyer who, as is often the case, may be a lawyer hand-picked by investigators in the knowledge that this particular lawyer will put up a weak defence and may be inclined to overlook ill-treatment.

Domestic legislation stipulates that **remand hearings** should take place no later than 72 hours after a person is taken into custody. In practice detainees are often brought before a judge later than the 72-hour limit because the time is counted as of the moment when the detention record is drawn up rather than the actual moment of deprivation of liberty. In addition, Article 111, part 5 of the CPC allows

⁶ Refer to: United Nations, Report of the Human Rights Committee, vol.1, 26 October 2001, A/56/40, para. 86(18), p. 102 (referring to the Democratic People’s Republic of Korea), at: [http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a91dea9af2c00fa7c1256ace0055cab5/\\$FILE/G0144476.pdf](http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a91dea9af2c00fa7c1256ace0055cab5/$FILE/G0144476.pdf) and United Nations, Report of the Human Rights Committee, vol.1, 21 September 1997, A/52/40, para. 438, p. 70-71 (referring to India), at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/247/64/IMG/N9724764.pdf?OpenElement>

courts to extend the 72-hour limit for an unlimited number of times in order to give police additional time to provide further grounds justifying remand.

In 2013, the UN Human Rights Committee recommended Tajikistan to “ensure that persons in police custody are brought before a judge within a maximum period of 48 hours.” In addition, it called on Tajikistan to ensure “that periods of pretrial detention cannot be extended when the prosecution has failed to present well-founded grounds for the person to remain in custody” (Recommendation 8 (h)).

We are concerned that domestic legislation does not require judges at remand hearings to inquire into the allegations made by detainees of torture or ill-treatment, even when there are signs that a detainee was subjected to physical violence or other ill-treatment. In practice, judges typically disregard such allegations and simply refer alleged victims and their lawyers to the prosecutor to lodge a complaint instead of ordering a prompt and exhaustive investigation, including a medical examination, into the allegations themselves.

In line with Article 111, part 1 of the CPC, judges can order **pre-trial detention** based on the gravity of their alleged crime only (for any crime punishable by more than two years of imprisonment). The law does not require them to take into account any other factors as well, such as whether the accused might cause harm to public safety, whether there is a risk of absconding or interference with the course of justice. In his 2013 annual report the Ombudsman of Tajikistan reported that judges approved 99 per cent of all requests for pre-trial detention. In 2012, the Committee against Torture recommended Tajikistan to “amend the CPC to ensure that pretrial detention is not authorized by courts based only on the gravity of the alleged crime.”

Introduce additional safeguards

In June 2011, the Law “On Detention Procedures and Conditions of Suspects, Accused Persons and Defendants” was adopted providing for medical examinations upon admission to a place of detention. However, the law states that **medical examinations** should be conducted in line with internal regulations, which are not public. As a result, the procedure and purpose of the examination remains unclear and in practice detainees still do not routinely undergo a medical examination upon admission to police stations and temporary detention facilities (IVS). There remains to be a serious lack of qualified medical personnel in police custody and pre-trial detention facilities.

When detainees request access to a doctor for a forensic medical examination this is only done with the investigator’s permission (Article 208 of the CPC). In those cases where the investigator grants permission, the investigation is often conducted with such a delay that injuries sustained through torture or other ill-treatment are not visible anymore.

Medical personnel are supervised by the Ministry of Health, but are employees of the penitentiary administration under the Ministry of Justice, the agency that runs SIZOs. There are cases in which medical personnel have come under pressure from the penitentiary administration as well as investigators, which undermines the required independence and impartiality of medical personnel.

The Committee against Torture recommended Tajikistan to “(e)nsure that anyone arriving at a detention facility undergoes a routine medical examination, and that access to independent doctors is provided when requested by the detainee without conditioning such access on the permission or request of officials” (Recommendation 8 (e)). The Special Rapporteur on torture called on the authorities to “allow access to independent medical examination without interference or the presence of law enforcement agents or prosecutors” (Recommendation 100 (d)).

Domestic law in Tajikistan does not allow detainees the **right to notify their lawyers and families of transfers** between pre-trial detention facilities or of their removal from detention facilities for the purpose of investigative activities, such as taking them to the crime scene. Nor are law enforcement officers under an obligation to inform the relatives. Local human rights groups have documented many cases where detainees were subjected to torture or other ill-treatment in the context of such transfers or removals.

Principle 16(1) of the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment stipulates that “after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authorities to notify members of his family or other appropriate persons of his choice of [...] the transfer and of the place where he is kept in custody”.

Thus, the NGOs jointly issuing this document urge the authorities of Tajikistan to amend the CPC to ensure that families and lawyers are notified in advance of any transfers of detainees.

Independent inspections of detention facilities are another effective safeguard against torture and other ill-treatment. The International Committee of the Red Cross (ICRC) has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004. Tajikistan has not ratified the Optional Protocol to the Convention against Torture and has thus not obligated itself to set up a National Preventive Mechanism.

In February 2014, a Monitoring Group established as part of the Ombudsman's office and consisting of Ombudsman staff and civil society activists began visiting detention facilities. However, the Monitoring Group has to announce its visits and when it 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 in Tajikistan are not permitted to enter detention facilities in order to conduct independent monitoring.

The Committee against Torture recommended Tajikistan to "(t)ake concrete steps, as a matter of priority, to ratify the Optional Protocol to the Convention and establish an effective National Preventive Mechanism which is resourced and permitted to conduct regular, independent, unannounced and unrestricted visits of inspection to all places of deprivation of liberty, with opportunity for inspectors to speak privately with individual detainees (Recommendation 14(c)). In the meantime, the UN Committee recommended that the Tajikistani authorities should "grant unimpeded access to the ICRC and independent non-governmental organizations to all places of detention, and ensure that the Ombudsman undertakes regular, unannounced visits to all places of deprivation of liberty, accompanied by medical professionals, including to places of police custody, and that the findings are made available publicly" (Recommendation 14(c)).

ENDING IMPUNITY

The authorities do not publish comprehensive statistics on complaints, investigations, prosecutions and convictions relating to torture or other ill-treatment. At the Human Dimension Implementation Meeting of the Organization for Security and Co-operation in Europe (OSCE) that took place in Warsaw in September 2014, a representative of the General Prosecutor's Office of Tajikistan reported that his office had received 26 complaints regarding torture or other ill-treatment in 2011, 22 in 2012, 16 in 2013 and so far seven in 2014. The Ministry of Internal Affairs reported receiving 61 complaints of torture or other ill-treatment in 2012. It has not provided more up-to-date figures.

The NGO Coalition against Torture registered more than 100 complaints between 2011 and 2014. Effective investigations were conducted in only very few cases. To our knowledge, in 2014, no criminal case was opened under Article 143 (torture).

Local human rights groups believe that in many cases victims of torture or other forms of ill-treatment refrain from lodging complaints with the authorities or from seeking assistance from human rights groups as many victims and their families do not believe it is possible to obtain justice and/or because they fear reprisals.

In 2012, the Committee against Torture expressed concern about the small number of convictions under domestic law for violations of the Convention against Torture, despite numerous allegations of torture.

In Tajikistan, torture complaints are examined by the internal security services of the Ministry of Internal Affairs, the State Committee for National Security, the Drug Control Agency or other law enforcement agencies – if they are submitted to these very agencies that are implicated in the torture complaint – or by prosecutors. If the internal security services do not find evidence of torture or other ill-treatment that they consider requires the opening of a criminal case, domestic legislation does not oblige them to pass on the case information to the Prosecutor's Office.

When prosecutors initiate torture investigations, they lead the investigation, but domestic legislation permits them to order police to undertake investigative activities and gather evidence. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links. This clearly hinders the possibilities for impartial and independent investigations to be conducted.

In addition, prosecutors have an inherent conflict of interest when investigating torture complaints. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process, which creates a conflict of interest. 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.

The authorities should focus their efforts on ensuring that investigations are instigated promptly after receiving any credible information about torture or other ill-treatment, even if presented by a witness, a lawyer, a doctor, a relative or a civil society organization. In addition, investigations on allegations of torture or ill-treatment must be conducted thoroughly and impartially by an independent body with no hierarchical or institutional link to the alleged perpetrator. In this regard, an independent body should be established and endowed with sufficient authority and competence to conduct prompt, thorough and effective investigations into all allegations of torture or other ill-treatment. Both the Committee against Torture and the Special Rapporteur on torture recommended Tajikistan to “establish an effective and independent (investigation mechanism) with no connection to the body prosecuting the case against the alleged victim” (Recommendation 11(a) of the Committee against Torture and Recommendation 100 (g) of the Special Rapporteur on torture).

In addition, the Committee against Torture urged the Tajikistani authorities to “(p)rosecute those who are found to be responsible, and report publicly on the outcomes of such prosecutions” (Recommendations 9(a)).

No lenience for torturers

We are concerned that domestic legislation does not exclude perpetrators of torture or other ill-treatment from benefitting from prisoners amnesties and we are aware of several cases in recent years where torturers were released from prison following such amnesties or had their sentences reduced. We are also concerned that Tajikistani legislation contains a statute of limitations applicable to the crimes of torture or other ill-treatment.

The Committee against Torture recommended Tajikistan to “ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice” (Recommendation 7). The Special Rapporteur on torture called on the authorities to “(r)evolve the legal provisions of the Code of Criminal Procedure allowing the termination of criminal proceedings and exempting defendants from criminal liability by reason of (...) expiration of the statute of limitations for criminal prosecution, whenever the case concerns allegations of torture and ill-treatment. (Recommendation 99(d))

Provide victims with redress

Fair and adequate compensation and rehabilitation for damages caused by torture are important elements of providing comprehensive reparation to torture victims. We are aware of only two incidents where compensation has been granted by the courts in two separate torture cases. But to our knowledge, other forms of reparation such as measures of satisfaction and guarantees of non-repetition have not been made available to torture victims in Tajikistan and legislation does not provide for such measures.

Domestic legislation limits the payment of compensation to torture victims to those cases where perpetrators have been brought to justice. As long as investigations are not conducted promptly, thoroughly, impartially and independently, torture victims must not be put at a disadvantage when investigators fail to establish the identity of the perpetrator/s. The Committee against Torture recommended Tajikistan to “ensure that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture. It should, in practice, provide all victims of torture or ill-treatment with redress (...) and as full rehabilitation as possible regardless of whether perpetrators of such acts have been brought to justice” (Recommendation 21).

TORTURE AND OTHER ILL-TREATMENT IN THE ARMED FORCES

There are reports of arbitrary detentions committed during the mandatory two-month period of conscription, on which members of the armed forces have detained young men on the street, at their work place or place of study, or after forcing their way into the young men's homes. In 2014, human rights groups learnt of three cases where young men were subjected to ill-treatment in the context of conscription and two cases where parents of conscripts were subjected to abuse.

Local human rights groups believe that hazing of new recruits by fellow soldiers is routine in the army of Tajikistan, although it is prohibited in domestic legislation. In some cases officers also engage in abusing young soldiers. Recruits serving their first year in the army are often used as personal assistants by fellow soldiers, forced to engage in initiation rites "to become a fighter", deprived of food and clothes, humiliated, and subjected to beatings. For example, during their first days at the military unit, longer serving soldiers often subject young recruits to an initiation rite called "General's title" whereby they hit young recruits on their naked shoulder with the metal part of a belt. The injuries are called "shoulder straps". Reportedly, this and similar abuse frequently takes place with the consent, acquiescence or approval of officers or other military personnel. Often senior military personnel reportedly justify such behaviour with a perceived necessity to teach the new recruits discipline. Since the beginning of 2014, human rights groups have documented five cases of torture in the armed forces. In two of these cases soldiers died and in one case a soldier was injured so severely that he was left paralyzed.

During research for a study on the protection of human rights in the army conducted jointly by several local human rights groups in 2011 and 2012, numerous soldiers reported that complaining about hazing and other torture or ill-treatment was strongly discouraged by peers and commanding officers in military units and that anybody who complains would be labelled as a "traitor" and risked further abuse.⁷ Complaints submitted to senior officers usually were not investigated. Most soldiers questioned by the NGOs saw beatings, kicking and other abuse as a normal feature of army life.

There are a few cases where hazing victims or their families decided not to keep silent, in particular when their cases were covered extensively by the media or when they were taken up by the NGO Young Lawyers Association Amparo. In some particularly severe cases the Military Prosecutor's Office usually instigated an investigation and perpetrators were brought to justice. However, the total number of soldiers' complaints about hazing received by the Military Prosecutor's Office, and of investigations into such cases, prosecutions and convictions is not known. When asked by the human rights groups who jointly conducted the study, the Military Prosecutor's Office responded in 2012 that statistics on how many people were brought to justice for hazing are a state secret. The lack of transparency persists, and so does impunity.

We are concerned that prisoner amnesties have been applied to perpetrators of hazing. For example, all those convicted for beating to death **Maksud Nosirov**, a young conscript, on 27 January 2014, had their prison sentences reduced significantly under a major Presidential prisoner amnesty issued on 29 October 2014.

In addition, we are concerned that victims of hazing are often not granted fair and adequate compensation and rehabilitation for damages caused. For example, in March 2014, 22-year old **Shakhbol Mirzoev** was severely injured as a result of hazing and became paralyzed. Although the administration of the Border Guards of Tajikistan promised to cover all medical expenses, it only covered expenses incurred during his hospitalization at the National Medical Center in Tajikistan. His parents had to sell their house in order to cover all additional medical costs.

In order to counteract widespread hazing in the army, military authorities should allow independent and unlimited public monitoring of conscription commissions and military units. Currently, civil society groups have no access to military facilities except as part of the Monitoring Group led by the Ombudsman of Tajikistan. Since the Monitoring Group started functioning in February 2014, it has visited three military units. In two cases the visits had been agreed with the Ministry of Defence in advance.

⁷ Refer to (in Russian only): <http://notorture.tj/library/soblyudeniya-prav-cheloveka-v-hode-voennoy-sluzhby-v-respublike-tadzhikistan>

The Committee against Torture recommended Tajikistan in its concluding observations issued in 2013 to “ensure prompt, impartial and thorough investigation of all allegations of such acts. Where evidence of hazing is found, it should establish the liability of direct perpetrators and those in the chain of command, prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed, make the results of such investigations public, and provide compensation and full rehabilitation to victims, including through appropriate medical and psychological assistance.”

RECOMMENDATIONS

As a party to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Tajikistan has committed itself to prevent acts of torture and other ill-treatment under its jurisdiction. It should implement all concluding observations made by the UN Human Rights Committee and the UN Committee against Torture as well as recommendations by the Special Rapporteur on torture and those issued under the Universal Periodic Review process in 2011.⁸

Below is a list of recommendations that we believe should be implemented by the authorities as a matter of urgency in order to make significant progress towards ending torture in the country.

Strengthening fundamental safeguards against torture

- Ensure that legislation provides that the definition of deprivation of liberty is in line with international human rights law, and in particular that the moment of apprehension is treated as the outset of detention and recorded as such in the detention record.
- Amend the Criminal Procedure Code of Tajikistan (CPC) to ensure that it explicitly provides, from the moment of apprehension, for the right to notify a third person, of access to a lawyer of their choice, and ensure detainees are informed of these rights at the moment of detention.
- Amend the CPC to ensure that families and lawyers are notified in advance of any transfers of detainees from any form of detention or imprisonment to another, in line with Principle 16(1) of the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment.
- Establish in law the full information that must be included in the registration, including the identity of the arresting officer/s, as well as time, reasons and location of the arrest.
- Mandate that all detainees are brought before a judge within 48 hours after apprehension; strengthen the presumption in favour of liberty; and ensure that judges inquire into the treatment in custody.
- Ensure that anyone arriving at a detention facility undergoes a routine medical examination. Ensure that medical personnel working inside detention facilities are truly independent from law enforcement agencies and are trained in accordance to the provisions of the Istanbul Protocol. Ensure independent medical examinations are provided when requested by the detainee and not solely when permitted or requested by officials and that such examinations are carried out in private, without the presence of law enforcement officials, and free of charge for detainees.
- 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.
- Ratify the Optional Protocol to the Convention and establish an effective National Preventative Mechanism. In the meantime, unimpeded access should be granted to the International Committee of the Red Cross and expert independent NGOs working to prevent torture in Tajikistan, such as members of the NGO Coalition against Torture in Tajikistan, to all places of detention.

Ending impunity

- Legislate that perpetrators of torture or other ill-treatment (including hazing in the army) are excluded from prisoner amnesties and abolish the statute of limitations with regard to such crimes.
- Promptly act on all complaints involving allegations of torture and ill-treatment by initiating thorough, impartial and independent investigations, bringing to justice in a fair trial those found

⁸ Refer to: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TJSession12.aspx>

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.
- Ensure that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture and provide all victims of torture or ill-treatment with redress and as full rehabilitation as possible regardless of whether perpetrators of such acts have been brought to justice, in line with Recommendation No. 21 made by the Committee against Torture as part of its concluding observations issued in 2012.

Ending torture and ill-treatment in the army

- Publish comprehensive statistics on complaints, investigations, prosecutions and convictions relating to hazing or other ill-treatment in the army.
- Ensure prompt, thorough and impartial investigations into all allegations of hazing and other ill-treatment in the army. Establish the liability of direct perpetrators and those in the chain of command (where evidence of hazing is found and) prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed, make the results of such investigations public, and provide compensation and full rehabilitation to victims, including through appropriate medical and psychological assistance, in line with Recommendation No. 12 made by the Committee against Torture as part of its concluding observations issued in 2012.
- Allow independent and unlimited public monitoring of conscription commissions and military units.
- Train soldiers and officers on human rights standards, in particular those prohibiting hazing and other forms of torture or other ill-treatment.