



Torture in Central Asia

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This document has been prepared by the following Central Asian NGOs: the NGO Coalitions Against Torture in Kazakhstan, Kyrgyzstan and Tajikistan, Turkmenistan's Independent Lawyers Association (TILA, based in exile in the Netherlands), Turkmen Initiative for Human Rights (TIHR, based in exile in Austria) and the Association for Human Rights in Central Asia (AHRCA, based in exile in France), together with Helsinki Foundation for Human Rights (Poland) and International Partnership for Human Rights (Belgium).

Torture and other forms of ill-treatment continue to be of serious concern in all Central Asian countries and impunity of perpetrators of torture is the norm.¹ Not one of the Central Asian governments publishes comprehensive statistics on complaints, investigations and convictions of perpetrators and many victims refrain from lodging complaints for fear of reprisals or because they do not trust that the existing system will give them access to justice.

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 ill-treatment. In the same period, the NGO Coalition against Torture in **Kyrgyzstan** registered around 100 new cases and the NGO Coalition in **Tajikistan** registered over 35 new cases. After visiting **Uzbekistan** in 2003 the UN Special Rapporteur on torture concluded that the use of torture and ill-treatment was “systematic” in that country. Although the absence of any level of effective public monitoring does not allow for a comprehensive assessment of the human rights situation, credible reports received by AHRCA indicate that torture and ill-treatment have become an integral part of the criminal justice system in Uzbekistan, and are central to how the authorities deal with critics and dissent. From 2011 to date, AHRCA received over 165 allegations of torture and ill-treatment during investigation and detention from Uzbekistan, 27 of which were received from January to October 2015. Due to the repressive nature of the regime, no independent human rights groups are able to operate in **Turkmenistan** and it is impossible to comprehensively study the situation of torture, but activists in exile have received credible

allegations of torture and ill-treatment on a regular basis. The authorities persistently deny that torture exists and, to our knowledge, no one has yet been charged under the Article of “torture” that was added to the Criminal Code of Turkmenistan in 2012.

For many law enforcement officials within the criminal justice systems of the Central Asian countries the incentives to apply 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, Central Asian law enforcement officers continue to be assessed 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.

In all five countries torture mainly takes place during the first hours or sometimes days of detention when detainees are in many cases held without access to legal counsel and medical personnel, but 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. In **Uzbekistan**, for example, the health of many prisoners serving lengthy sentences on such charges is known to have deteriorated badly due to ill-treatment and deplorable prison conditions and cases of deaths in prison have been reported regularly. In **Turkmenistan** the authorities continue to withhold information about the whereabouts of dozens of people arrested and convicted in connection with the alleged 2002 assassination attempt on former President Saparmurad Niyazov. Many of them were believed to have been subjected to torture and some reportedly died in custody.

The NGOs jointly issuing this statement note that the authorities of **Kazakhstan, Kyrgyzstan and Tajikistan** have recently pioneered several positive legislative, institutional and other steps (some of which are detailed below)² that are aimed at combating torture and urge all Central Asian governments to follow their neighbours’ positive examples. In addition, we urge **Kazakhstan, Kyrgyzstan and Tajikistan** to ensure that all legislative steps aimed at ending torture are fully implemented in practice and that our recommendations (that can be found at the end of this document) to make newly established institutions function more effectively are implemented as a matter of priority.

We believe that all Central Asian states should urgently address persistent concerns and recommendations by UN human rights bodies and procedures and local and international NGOs on the following four topics: Access to legal safeguards in detention, the conduct of medical examinations, investigations into allegations of torture, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and national preventive mechanisms. In addition, as a way to demonstrate their stated commitment to combat torture, we urge the authorities of **Turkmenistan** and **Uzbekistan** to issue an invitation to the UN Special Rapporteur on torture.

Legal safeguards in detention

When **Kazakhstan's** new Criminal Procedure Code came into force in January 2015 Kazakhstan became the first country in Central Asia to have clarified in its domestic legislation that key safeguards including access to a lawyer and notification of family must be in place upon or promptly after apprehension. **Kyrgyzstan, Tajikistan, Uzbekistan** and **Turkmenistan** are yet to implement recommendations to this effect issued by UN procedures and/or bodies in recent years.

While we commend **Kazakhstan** for this significant step we are concerned that the monitoring of the legislation's implementation conducted by the NGO Coalition against Torture in Kazakhstan in recent months has demonstrated that detainees are often not informed of their rights promptly after the arrest and are usually not given access to legal safeguards before being entered into the police detention facility. Even after that they not infrequently continue to be held without access to a lawyer and/or medical personnel and are denied notification of their family.

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). Legal safeguards must then be in place to provide protection from torture and ill-treatment under any kind of detention.

Conducting medical examinations in line with the Istanbul Protocol

The strict adherence of forensic experts and other medical, psychological and psychiatric professionals, who are tasked with examining detainees, to the principles of the UN Istanbul Protocol can serve as an important tool to combat impunity.

At the end of 2014 the respective Ministry of Health in **Kyrgyzstan** and **Tajikistan** were the first in Central Asia to have obliged medical personnel – when conducting examinations of detainees -- to document torture and ill-treatment in line with principles contained in the Istanbul Protocol.³ While these steps are welcome the human rights groups jointly issuing this statement are concerned that many detainees in both countries do not have access to medical personnel of the Ministry of Health. Instead, they are examined by medical personnel who are not independent of the detention facility where the detainee is held.

The need for an independent investigative mechanism

The five Central Asian countries lack independent mechanisms to conduct prompt, thorough, impartial and effective investigations into allegations of torture and ill-treatment, leading to virtual impunity.⁴ When **Kazakhstan (in 2014), Kyrgyzstan (2013), Tajikistan (2012), Turkmenistan (2011), Uzbekistan (2013)** were last reviewed by the UN Committee against Torture, the Committee recommended each of them that they establish such independent investigatory mechanisms.

Victims of torture or other ill-treatment often do not lodge complaints for fear of their own or their family's safety. Judges at remand hearings typically do not ask detainees how they were treated in custody. Even when injuries are clearly visible or when detainees make allegations of torture or ill-treatment during remand hearings, judges do not usually request an investigation into the allegations in most Central Asian countries. Prosecutors rarely open investigations into torture or other ill-treatment as part of their supervisory function over the criminal investigation process. The coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan observed that investigations are usually only instigated when victims, lawyers, local and international human rights organizations or media exert pressure on the authorities.

According to the coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan and AHRCA, the examination of torture allegations is in many cases conducted by the internal security services of the respective Ministry of Internal Affairs or other law enforcement agencies whose employees are themselves implicated in the complaint. These internal security services usually dismiss the allegations as unfounded and, as a result, criminal cases are opened only in a small number of cases.

In those cases where investigations have been opened they have not been conducted effectively in the large majority of cases. 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.

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.

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.

In all Central Asian countries, lack of transparency about prosecutions of law enforcement officials for torture or other ill-treatment exacerbates the problem of impunity.

The OPCAT and national preventive mechanisms (NPMs)

Kazakhstan and **Kyrgyzstan** are the only Central Asian countries to have ratified the OPCAT. In recent years UN bodies and procedures have repeatedly recommended **Tajikistan, Turkmenistan and Uzbekistan** to also ratify the OPCAT.

Tajikistan took a noteworthy step regarding the monitoring of detention facilities when the Monitoring Group, consisting of Ombudsman Office staff and civil society, was established as part of the Ombudsman's Office and started visiting facilities in February 2014. However, the Group does not have access to all relevant information and records and in some cases the administration of the detention facility appeared to have been informed of the Group's visits in advance. Independent monitoring of detention facilities is not regulated in domestic legislation and, besides their participation in the framework of the Monitoring Group, human rights defenders are not permitted to enter detention facilities to conduct independent monitoring.

In **Kyrgyzstan** a fully independent NPM was set up under the National Center of the Kyrgyz Republic for the Prevention of Torture and started visiting detention facilities in 2014. The same year **Kazakhstan's** NPM, set up under the Ombudsman's office, also started its work. However, in order for Kazakhstan's "Ombudsman+" model to work adequately, the NPM needs to be able to operate with more independence from the Ombudsman. NPM members should have the powers to decide by themselves and with full independence on all visits they wish to carry out and be able to publish reports immediately after their visits. Kazakhstan should also adopt a clear legal framework for the NPM in order to replace the current inadequate provisions that are scattered in various parts of the legislation.

Recommendations to the government of the Federal Republic of Germany, as well as its diplomatic representations in Central Asia

- Raise concerns about the ongoing torture and ill-treatment in a prominent and consistent way with the Central Asian governments; and use the leverage of Germany as a major European partner of the Central Asian countries, a leading EU member state, and the holder of the 2016 OSCE chairmanship to insist on the implementation of concrete and effective measures to address these concerns. In particular, request the authorities of the region to implement the following recommendations:

Legal safeguards in detention:

- **Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan** should clarify in their respective domestic legislation that a person is considered a detainee as soon as he or she is deprived of liberty and amend the countries' criminal procedure codes to ensure that they explicitly provide, from the moment of deprivation of liberty, for all basic legal safeguards such as access to a lawyer of the detainee's choice, access to independent medical personnel and the right to notify a third person. **All Central Asian countries** should ensure that these provisions are implemented in practice.

Conducting medical examinations in line with the Istanbul Protocol:

- The respective Ministry of Health of **Kazakhstan, Turkmenistan and Uzbekistan** should oblige medical personnel, when conducting examinations of detainees, to document torture and other ill-treatment in line with principles contained in the UN Istanbul Protocol.

- **All Central Asian countries** should ensure that all other medical personnel also conducting examinations of detainees should also be obliged to follow the standards of the Istanbul Protocol.
- **All Central Asian countries** should ensure that personnel carrying out medical examinations in temporary police detention facilities (IVS) and investigation isolation facilities (SIZO) are truly independent from the agencies running the detention facilities.

The need for an independent investigative mechanism:

- Oblige judges at remand hearings to routinely ask detainees arriving from police custody how they were treated and to order an investigation should there be any reason to suspect that they may have been subjected to torture or other ill-treatment.
- Create and fund an independent mechanism endowed with sufficient authority and competence to conduct prompt, thorough, impartial and independent investigations into all allegations of torture and other forms of ill-treatment. This mechanism should be transparent and accountable to an independent oversight body.
- Ensure that complainants, their families and civil society activists are protected against any reprisals as a consequence of their complaint, and that law enforcement officers are subjected to appropriate disciplinary or, where relevant, criminal measures for such actions.
- Suspend any law enforcement officer who is under investigation for having committed acts of torture or ill-treatment, for the duration of the investigation.

Setting up effective national preventive mechanisms (NPMs):

- **Tajikistan, Turkmenistan and Uzbekistan** should swiftly ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and establish an effective NPM.
- In the meantime, **Tajikistan, Turkmenistan and Uzbekistan** should grant **unimpeded access to the International Committee of the Red Cross (ICRC) and expert independent NGOs** working to prevent torture, to **all places of detention as well as to conscription commissions and military units**.
- **Kazakhstan** should ensure that the NPM can function with greater independence from the Ombudsman. The NPM should be granted powers to decide by itself and with full independence on all visits NPM members wish to carry out and be able to publish reports immediately after the Mechanism's visits. Kazakhstan should also adopt a unified law that covers all aspects of the NPM's functioning.

Recommendations relating in particular to Germany's 2016 OSCE Chairmanship

- Make the anti-torture message a core element of all programmes (including those to combat terrorism, radicalization, drug trafficking and the abuse of cyberspace), where foreign governments provide training, support or cooperate in other ways with **Central Asian** government agencies, in particular law enforcement agencies and the military.

¹ For further information on torture and ill-treatment in Central Asia refer to: www.bureau.kz/en/news/kibhr_information/briefing_paper_on_torture_and_other_ill-treatment (**Kazakhstan**), http://iphronline.org/wp-content/uploads/2015/09/torture_in_kyrgyzstan_may_2015.pdf (**Kyrgyzstan**), <http://iphronline.org/tajikistan-submissions-to-the-un-upr-20150930.html> (**Tajikistan**), http://iphronline.org/wp-content/uploads/2012/01/rev_submission_to_the_united_nations_human_rights_committee_jan_2012.pdf (**Turkmenistan**), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fUZB%2f20803&Lang=en (**Uzbekistan**).

² For further information on positive steps also refer to: <http://iphronline.org/wp-content/uploads/2015/09/Kazakhstan-Kyrgyzstan-and-Tajikistan-need-to-do-more-to-end-torture.pdf>

³ For further information about positive steps towards the implementation of the standards of the Istanbul Protocol and remaining concerns in Kazakhstan, Kyrgyzstan and Tajikistan, refer to: <http://iphronline.org/wp-content/uploads/2015/09/Implementation-of-the-Istanbul-Protocol-in-Kazakhstan-Kyrgyzstan-and-Tajikistan.pdf>

⁴ For further information about the need for independent investigative mechanisms in Kazakhstan, Kyrgyzstan and Tajikistan, refer to: <http://iphronline.org/wp-content/uploads/2015/09/Mechanisms-to-investigate-torture-allegations.pdf>