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Tajikistan: Torture, ill-treatment and ongoing impunity

Briefing paper for government delegations ahead of the Universal Periodic Review of Tajikistan (25th session of the UPR Working Group, May 2016), finalized on 29 March 2016

The chart below provides an overview of priority concerns relating to torture, ill-treatment and impunity in Tajikistan. It also cites key recommendations made by the United Nations (UN) Committee against Torture (CAT), the Human Rights Committee (HRC) and the Special Rapporteur on torture (SR) since Tajikistan was considered in the first cycle of the Universal Periodic Review (UPR) in 2011.¹ In addition, it identifies a number of questions that we kindly ask government delegations to raise during the interactive dialogue and a list of suggested recommendations aimed at addressing the most pressing concerns. The document was jointly issued by the NGO Coalition against Torture in Tajikistan, International Partnership for Human Rights (IPHR, Belgium), Helsinki Foundation for Human Rights (HFHR, Poland) and the World Organisation against Torture (OMCT). For more detailed information, refer to the document *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>).

¹ In the chart below you find references to the following UN documents containing recommendations to Tajikistan: - Concluding observations of the Committee against Torture on the second periodic report of Tajikistan, adopted on 20 November 2012 and published on 21 January 2013. CAT/C/TJK/CO/2. (Abbreviation in this document: **CAT**)
- Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum. Mission to Tajikistan, published on 28 January 2013. A/HRC/22/53/Add.1. (**SR 2013**)
- Concluding observations on the second periodic report of Tajikistan, adopted on 23 July 2013 and published on 22 August 2013. CCPR/C/TJK/CO/2. (**HRC 2013**)
- Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum. Follow up report: Missions to the Republic of Tajikistan and Tunisia, published on 27 February 2015. A/HRC/28/68/Add.2. (**SR 2015**)
- Report on follow-up to the concluding observations of the Human Rights Committee. Report of the Special Rapporteur for follow-up to concluding observations, 21 December 2015. CCPR/C/115/2. (**HRC 2015**)



Overview of key concerns, questions and recommendations aimed at ending torture in Tajikistan

Issues of concern	UN bodies/procedures: key concerns+recommendations	Suggested questions	Suggested recommendations
<p>General concerns about torture: In 2015 the NGO Coalition against Torture in Tajikistan registered 45 new cases of men, women and children who were allegedly subjected to torture or ill-treatment. Since January 2014 the Coalition recorded 14 cases of men who became victims of torture/ill-treatment in the armed forces; seven of them died. These data are not comprehensive as many victims do not file complaints for fear of reprisals and/or because they are disillusioned by the ongoing impunity of the perpetrators.</p> <p>Investigations are opened only in a small number of cases and – whilst the incidence of torture/ill-treatment would appear to have been confirmed, at least partly – usually no adequate penalties were imposed. In cases originating from the armed forces commanding officers have been brought to justice in only three cases since early 2014, although there was compelling evidence to suggest that senior officers carried responsibility for not preventing abuse in further cases.</p> <p>In 2013 the government approved an Action Plan against Torture. Local NGOs were not involved in drawing it up and the Coalition against Torture’s comments and recommendations were not reflected. The Plan lacks 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 of torture/ill-treatment.</p>	<p>The SR on torture raised concern about ongoing torture and ill-treatment and persistent impunity in the follow-up report to his visit to Tajikistan (SR 2015).</p> <p>The CAT recommended Tajikistan to “reaffirm the absolute prohibition of torture and publicly warn that anyone committing such acts or otherwise complicit or acquiescent in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties” (CAT Para. 9(d)).</p> <p>The SR also urged Tajikistan to “incorporate concrete measures (into the Action Plan against Torture) and to designate timelines, authorities responsible for oversight, as well as measurable standards for implementation and accountability” (SR 2015 Para. 8).</p>	<ul style="list-style-type: none"> - Can the Government provide comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases of alleged torture/ill-treatment? - How many perpetrators of torture and other forms of ill-treatment benefited from amnesty legislation since the 1st cycle of the UPR? - Is the Government committed to ensuring greater consultations with civil society and expert NGOs in the development and implementation of future measures designed to combat and prevent torture and ill-treatment and what steps have been made in this regard? 	<ul style="list-style-type: none"> - The President of Tajikistan and/or other senior officials should publicly state that torture and ill-treatment are strictly prohibited during apprehension, in the course of criminal investigations, in detention, in the army and in all other contexts and that the perpetrators will be brought to justice. - Set up a system and publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases of alleged torture and all other forms of ill-treatment, including in the army. - Update the Action Plan against Torture to include all recommendations issued to Tajikistan by UN human rights bodies and procedures in recent years as well as under the UPR. Designate timelines, authorities responsible for oversight, as well as measurable indicators for implementation and accountability. - Include representatives of independent expert NGOs as full-fledged members of the Commission on the Implementation of International Obligations in the Field of Human Rights, which should play an active role in coordinating and monitoring the progress of implementing recommendations issued to Tajikistan by UN human rights mechanisms.

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<p>Legislative framework: Punishing perpetrators adequately: In 2012 Tajikistan introduced Article 143-1 (“torture”) to its Criminal Code. While the definition of torture is in line with that contained in the Convention against Torture, the penalties are not commensurate with the gravity of the crimes committed. In addition, many cases involving torture are not opened under this Article, but under other articles of the Criminal Code (such as for “negligence”, “abuse of authority or duty” or “violating the code of military conduct”) that also contain inadequate penalties).</p> <p>Domestic law does not exclude perpetrators of torture/ill-treatment from benefitting from prisoners amnesties. NGOs recorded 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/ill-treatment.</p>	<p>The CAT recommended Tajikistan to “amend article 143-1 of the Criminal Code to ensure that sanctions for the offence of torture reflect its grave nature, as required by article 4 of the Convention” (CAT Para. 6).</p> <p>The SR on torture recommended Tajikistan to include “in the Law on Amnesty that no person convicted for the crime of torture may benefit from an act of amnesty.” He also urged to revoke the statute of limitations for acts of torture and ill-treatment (SR 2013 Paras. 99(a), (d)).</p>	<p>- What measures has the Government taken to ensure that perpetrators of torture and ill-treatment do not benefit from amnesty legislation?</p> <p>- What steps have been taken to ensure that torture and ill-treatment are subject to penalties to the gravity of the crimes committed?</p>	<p>- Amend the Criminal Code to ensure that the penalties provided under Article 143-1 and all other articles used to punish torture and other forms of ill-treatment are commensurate with the gravity of the crimes committed.</p> <p>- Legislate that perpetrators of torture and ill-treatment are excluded from prisoners amnesties.</p> <p>- Abolish the statute of limitations with regard to torture and ill-treatment.</p>
<p>Access to legal safeguards: Torture in Tajikistan ordinarily takes place at the onset of detention, before the person’s detention is formally registered. During this period, that can last for hours or even days, detainees are typically <i>de facto</i> held incommunicado, without access to lawyers, doctors or their family. The practice of summoning people as “witnesses” or using arrest for a purported administrative offence as an excuse to remand someone for the purpose of a criminal investigation until they are officially arrested as criminal suspects, continues. In Tajikistani legislation the safeguards pertaining to those detained on criminal charges are stronger than those afforded to people held on administrative charges or to witnesses.</p>	<p>The CAT urged Tajikistan to “(c)larify the status of suspects, accused persons and witnesses in the law on detention procedures and conditions of suspects, accused persons and defendants by providing them with the same procedural safeguards at the time of apprehension (CAT 2012 Para. 100 (b)).</p> <p>The SR recommended that</p>	<p>- Can the Government clarify when a person is considered to be a detainee and from what moment he/she is entitled to legal safeguards? Clarify, in particular, the access to legal safeguards of witnesses and those detained on administrative charges. (These questions are in</p>	<p>Amend the Criminal Procedure Code to:</p> <p>- clarify that a person is considered a detainee as soon as he/she is deprived of liberty, no matter whether he/she is detained on criminal or administrative charges or summoned as a witness;</p> <p>- ensure that all detainees are entitled to prompt access to procedural safeguards, such as unhindered access to a lawyer of choice at all stages of detention and in all detention facilities, to independent medical examination and to notification of family;</p>

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<p>The Criminal Procedure Code (CPC) does not require police to record the identity of the detaining officers. The lack of this requirement continues to provide the authorities investigating torture allegations with an excuse for claiming it was not possible to establish the officers' identity.</p> <p>Domestic legislation does not oblige judges at remand hearings to ask how the detainees were treated in custody. When detainees themselves raise allegations of torture/ill-treatment, judges usually do not order an investigation.</p> <p>Concerns about lack of access to basic safeguards against torture continue also at later stages of detention. For example, domestic law does not grant detainees the right to notify their lawyers or relatives of transfers between pre-trial detention facilities or of their removal from detention facilities for the purpose of investigative activities, nor are police under an obligation to inform the relatives/lawyer. During such transfers or removals detainees are at particular risk of torture. Lawyers continued to experience obstacles to visit and communicate with their clients in investigation-isolation facilities (SIZOs), the detention facilities under the jurisdiction of the Justice Ministry, as SIZO staff often conditioned access on permission by the investigator.</p>	<p>“(p)roper registration should include details regarding the names of all the officers involved in the detention” (SR 2015 Para. 14).</p> <p>Recommendations about safeguards against torture at the remand hearing can, for example, be found in Principle 37 of the UN Body of Principles on Detention as well as recommendations made by the SR on torture with regard to Kenya (E/CN.4/2000/9/Add.4), para. 93(k), p27) and the Committee against Torture with regard to Peru (A/56/44), para. 160, p62).</p> <p>The SR urged Tajikistan to “remove all legal and practical obstacles to detainees’ unimpeded access to independent and adequate legal representation” (SR 2015 Para. 19).</p>	<p>line with the HRC’s evaluation under its follow-up procedure, HRC 2015).</p> <p>- What steps are taken when law enforcement officers do not provide detainees access to basic safeguards as stipulated by law? Can the Government provide comprehensive statistics on all cases where sanctions have been imposed on such officials, disaggregated by the type of penalty (disciplinary/criminal) and the government agency involved (e.g. Interior Ministry, State Committee of National Security, Drug Control Agency)?</p>	<p>- oblige police to include the names of the apprehending officers in the detention record;</p> <p>- oblige judges at remand hearings to inquire into the detainee’s treatment in custody and to order an effective investigation if the detainee complains about torture or ill-treatment or if there is any other indication that he or she may have been subjected to such treatment.</p>

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<p>Monitoring detention and army facilities: Tajikistan lacks an independent body to conduct effective monitoring of detention and army facilities. The International Committee of the Red Cross (ICRC) has not had access to Tajikistani detention facilities to conduct monitoring since 2004.</p> <p>In 2014, a Monitoring Group established under the Ombudsman's Office and consisting of Ombudsman Office staff and civil society activists began visiting detention facilities, but there are concerns that the Group does not have access to any of the facilities' internal documents and about the Group's ability to conduct unannounced and unlimited monitoring (e.g. the Group is only allowed to conduct a maximum of 15 visits per year). Other than in the framework of the Monitoring Group, human rights defenders are not able to enter detention facilities to conduct independent monitoring since domestic legislation does not grant them such a right and the heads of detention facilities do not grant them access at their own discretion.</p>	<p>The CAT and the SR on torture recommended Tajikistan to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and establish a National Preventive Mechanism (NPM), to grant access to the ICRC and human rights groups. (CAT Para. 14(c), SR 2013 Para. 100 (h, i) and SR 2015 Para. 53, 55).</p>	<p>- What steps has the Government taken to establish an independent mechanism facilitating the inspection of detention facilities by international and local NGOs and by the ICRC? (This question is in line with the HRC's evaluation under its follow-up procedure, HRC 2015).</p>	<p>- Ratify the OPCAT and establish an effective NPM.</p> <p>- In the meantime, grant unimpeded access, in law and in practice, to expert independent NGOs working to prevent torture in Tajikistan, to all places of detention as well as to conscription commissions and military units. Also, provide the ICRC with unimpeded access to detention facilities.</p>
<p>Lack of effective complaints mechanisms, investigations and victims/witness protection: We are aware of many cases in recent years where perpetrators of torture or other law enforcement officers threatened victims or their families and other supporters with reprisals when they wanted to lodge complaints about torture or ill-treatment or after lodging such complaints. Although the Law on protecting participants in criminal proceedings grants complainants and witnesses of torture access to protective measures, these measures are only applied after a criminal case has been opened, which, in practice, can be up to 30 days after the authorities received the</p>	<p>The CAT recommended Tajikistan to "(e)stablish an effective, accessible and confidential system for receiving and processing complaints regarding torture or ill-treatment in all places of detention" and to "promptly, impartially and effectively" investigate all complaints (CAT Para. 14(d)). See also Paras. 9(a) and 11(b).</p>	<p>- After lodging a complaint or report about torture, how long does it take until complainants and witnesses have access to government measures protecting them from reprisals and how many complainants/witnesses have benefited from</p>	<p>- Establish an effective, accessible and confidential system for receiving and processing complaints about torture and other ill-treatment in all places of detention and army facilities.</p> <p>- Ensure that complainants and witnesses are protected against reprisals as soon as the authorities receive the complaint/witness report and that appropriate disciplinary or, where relevant, criminal measures are imposed against perpetrators for such actions.</p>

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<p>complaint/report. In those cases where investigations are opened they are frequently conducted effectively. While cases of torture instigated under Article 143-1 of the Criminal Code are usually investigated by prosecutors, other cases are often investigated by law enforcement agencies whose employees are themselves implicated in the complaint. In many cases investigators fail 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 do not interview the victims and they do not carry out confrontations of police and victims. Instead, investigators often rely on statements obtained from the alleged perpetrators and their colleagues.</p> <p>The authorities have repeatedly stated that there is no need to set up an independent investigation mechanism referring to what they claimed to be a low number of torture cases. However, the statistics the officials have referred to only included cases instigated under Article 143-1 of the Criminal Code. We believe that opening most cases involving torture and ill-treatment under other articles of the Criminal Code is a conscious attempt to keep torture statistics low.</p>	<p>The CAT also recommended to ensure that “complainants do not suffer any reprisals” (CAT, Para. 14 (d)(iv). See also CAT, Para. 15 and SR, Para. 38).</p> <p>The CAT, the HRC and the SR on torture recommended Tajikistan to set up an independent mechanism to investigate allegations of torture (CAT Para. 11(a), 15 , HRC 2013 Para. 14, SR 2013 Para. 100 (g)).</p>	<p>protective measures included in the Law on protecting participants in criminal proceedings?</p> <p>- What steps have the authorities taken – in law and in practice – to ensure that those investigating torture allegations operate with full independence of law enforcement agencies and/or other agencies implicated in the complaint and who oversees their work?</p>	<p>- Ensure that all complaints about torture and other forms of ill-treatment are investigated promptly, thoroughly and impartially by a mechanism that is independent of law enforcement agencies or other structures whose employees are implicated in the complaints.</p> <p>- Suspend any law enforcement officer who is under investigation for having committed acts of torture or ill-treatment, for the duration of the investigation.</p>
<p>Evidence extracted under duress: The CPC prohibits the use of evidence extracted under duress. However, the exclusion of such information from court proceedings is not ensured in practice. In recent years judges have more frequently ordered prosecutors to investigate allegations of torture/ill-treatment, but the investigations have lacked effectiveness and the lawyers representing the alleged victim did not have access to documents relating to the investigation.</p>	<p>The HRC urged Tajikistan to “guarantee the exclusion by the judiciary of evidence obtained under torture as provided by law” (HRC 2013 Para. 14). The SR on torture additionally urged Tajikistan to exclude any evidence obtained in</p>	<p>- Can the Government provide comprehensive statistics on how many court cases were opened for “excluding evidence extracted by way of torture” (Article 88, part 3</p>	<p>- Ensure in practice that any statement or confession elicited as a result of torture or ill-treatment is not used as evidence in any proceedings except those brought against the alleged perpetrators.</p>

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<p>In other cases, judges simply dismissed the defendants' allegations without further checking or they summoned the police officers accused of torture to testify. When they denied the allegations, the judges' review of the torture allegations was closed and no further inquiries were made.</p>	<p>violation of due process guarantees and that confessions should only be admissible when given in the presence of a lawyer and ratified before a judge (SR 2015 Para. 25).</p>	<p>of the Criminal Code of Tajikistan)?</p>	
<p>Reparation including compensation: In 2014 and 2015 civil courts awarded compensation for moral harm in five cases involving torture. However, the compensation payments were low and neither fair nor adequate. The families of three deceased men were awarded the equivalents 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.</p>	<p>The CAT, the HRC and the SR on torture called on Tajikistan to ensure access of victims of torture to redress/reparation, including adequate compensation (CAT Para. 10, 21, HRC 2013 Para. 9, 14, SR 2013 Para. 99(f), SR 2015 Para. 43).</p>	<p>- How do courts establish the size of moral damages sustained through torture?</p>	<p>- Provide guidelines to judges to ensure that the amounts of compensation payments for moral harm are fair and adequate. - Ensure that victims of torture are also granted other forms of reparation by the state such as measures of satisfaction, guarantees of non-repetition and as full rehabilitation as possible.</p>