

Committee against Torture**Concluding observations on the second periodic report of Tajikistan, adopted by the Committee at its forty-nine session (29 October - 23 November 2012)****ADVANCE UNEDITED VERSION**

1. The Committee against Torture considered the second periodic report of Tajikistan (CAT/C/TJK/2), at its 1108th and 1111th meetings (CAT/C/SR.1108 and 1111), held on 7 and 8 November 2012. At its 1126 and 1127 meetings (CAT/C/SR. 1126 and 1127), held on 20 November 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report by the State party, which follows the general guidelines regarding the form and contents of periodic reports. Nonetheless, it regrets the lack of response to the questions identified under the follow-up procedure.

3. The Committee also appreciates the frank and open dialogue it had with the high-level delegation of the State party, the submission of written replies to the list of issues (CAT/C/TJK/Q/2 and Add.1), and the additional information provided orally by the delegation.

B. Positive aspects

4. The Committee welcomes the legislative measures taken during the period under review, including:

- (a) Code of Administrative Procedure adopted, in March 2007;
- (b) Code of Criminal Procedure adopted in March 2008 to introduce remand hearing and to transfer the power to authorize pre-trial detention from Prosecutors to judges;
- (c) Human Rights Commissioner Act adopted in March 2008 and the appointment of the first Human Rights Commissioner (Ombudsman), in May 2009;
- (d) Code of Administrative Offences adopted in December 2008; and
- (e) Amendments to the Constitutional Act on the Constitutional Court adopted in July 2009 to expand the power and jurisdiction of the Constitutional Court.

5. The Committee further welcomes:

- (a) The moratorium on the death penalty declared in 2004 and the establishment of a Working Group in April 2010 to consider the removal of the death penalty from the Criminal Code and the possibility of ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights; and

(b) The visit undertaken by the Special Rapporteur on Torture and Other cruel, Inhuman or Degrading Treatment or Punishment in May 2012.

C. Principal subjects of concern and recommendations

Definition of and sanctions for torture

6. While the Committee welcomes the incorporation of article 143-1 into the Criminal Code to bring the definition of torture fully in line with article 1 the Convention, it expresses concern that the sanctions envisaged of five years imprisonment or less for first-time offenders of torture are not commensurate with the gravity of the crime (arts. 1 and 4).

The Committee recommends that the State party 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.

Amnesty Law

7. The Committee is deeply concerned that the 2011 Law on Amnesty grants a rather wide discretion to prosecutorial bodies to commute, reduce or suspend sentences of persons convicted of torture, including the case of three police officers convicted for their involvement in death in custody of Mr. Ismoil Bachajonov (art. 2).

The State party should 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.

Fundamental legal safeguards

8. The Committee takes note of the procedural safeguards introduced in the 2010 Code of Criminal Procedure (CPC), including the registration of detainees within three hours of arrival at the police station (art.94.1), the right to have a lawyer (art.22.1 and art.49.2), and the right not to be detained for more than 72 hours from the moment of arrest (art.92.3). However, the Committee expresses concern that the lack of clarity on when the person is considered to be detained under this law (article 91.1) leaves detainees without basic legal safeguards for the period between arrest and official acknowledgement of detention. It has been reported that, in practice and in the majority of cases, detainees are not afforded the rights of timely access to a lawyer and an independent doctor, notification of family members, and other legal guarantees to ensure their protection from torture. In particular, the Committee is concerned by numerous allegations regarding the failure of police officials to keep accurate records of all periods of deprivation of liberty; to register suspects within three hours of arrival at the police station; to adhere to the 72-hour time limit for releasing or transferring suspects from a police station to pre-trial detention facilities; and to notify family members of transfers of detainees from one place of deprivation of liberty to another. Furthermore, it is concerned that article 111-1 of the CPC allows judges to authorize pre-trial detention solely based on the gravity of the alleged crime committed, and that it can be extended up to 18 months (art. 2).

The Committee urges the State party to take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their apprehension. In particular, the State party should:

(a) **Amend the CPC to ensure that arrest starts from the moment of de-facto apprehension;**

(b) **Establish an official, central register in which the arrest is scrupulously and immediately recorded, including at the minimum: (i) the time of arrest; (ii) the**

reason for arrest; (iii) the names of the arresting officer(s); (iv) the location where they are detained and any subsequent transfers; and (v) the names of the officers responsible for them in custody. Responsible officers who fail to record such information should be held accountable;

(c) Ensure that suspects are informed of their rights at the very moment of apprehension as well as reasons for their detention;

(d) Guarantee 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;

(e) Ensure 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;

(f) Mandate that a detainee be brought promptly before a judge, in line with international standards, and reduce the 72-hour period of police custody;

(g) Amend the CPC to repeal the 12-hour period for notification of arrest by law enforcement officers to family members; and

(h) Amend the CPC to ensure that pre-trial detention is not authorized by courts based only on the gravity of the alleged crime, and that periods of pre-trial detention cannot be extended when the prosecution has failed to present well-founded grounds for the person to remain in custody.

Allegations of torture and ill-treatment

9. The Committee is seriously concerned by numerous and consistent allegations, corroborated by various sources, of routine use of torture and ill-treatment of suspects, principally to extract confessions to be used in criminal proceedings, primarily during the first hours of interrogation in police custody as well as in temporary and pre-trial detention facilities run by the State Committee of National Security and the Department for the Fight against Organized Crime (arts. 2, 10, 11, 12, 13, 15 and 16).

As a matter of urgency, the State party should take immediate and effective steps to eradicate and prevent acts of torture and ill-treatment throughout the country, particularly in police custody and in temporary and pre-trial detention facilities run by the State Committee of National Security and the Department for the Fight Against Organized Crime. The Committee further urges the State party to:

(a) Promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment;

(b) Prosecute those who are found to be responsible, and report publicly on the outcomes of such prosecutions;

(c) Maintain video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or a doctor may be violated. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers; and

(d) Unambiguously 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.

Deaths in custody

10. The Committee is concerned at reports from the State party and non-governmental organizations on several instances of deaths in custody, including the deaths of Messrs. Ismonboy Boboev, Usman Boboev, Khurshed Bobokalonov, Alovuddin Davlatov, Murodov Dilshodbek, Hamza Ikromzoda, Khamzali Ikromzoda, Safarali Sangov, Bahromiddin Shodiev and at the lack of effective and impartial investigations into these cases (arts. 2, 12 and 16).

The Committee urges the State party to promptly, impartially and effectively investigate all deaths of detainees, assess any liability of public officials, ensure punishment of perpetrators, and provide compensation to victims' families. The Committee requests that the State party provide comprehensive updated information on all reported cases of deaths in custody, including location, cause of death and results of any investigations conducted into such deaths, including punishment of perpetrators and compensation provided to relatives of victims.

Investigations and impunity

11. The Committee is deeply concerned that allegations of torture and ill-treatment are not promptly, impartially or effectively investigated and prosecuted, thus creating a climate of impunity. The Committee is further concerned that under article 28(1) of the Criminal Procedural Code (CPC), a court, judge, prosecutor, or an investigator may terminate criminal proceedings and exempt the person in question from criminal liability. Such actions can be taken on the basis of repentance, conciliation with the victim, change of circumstances, or expiration of the period of statute of limitation for criminal prosecution (arts. 2, 12, 13 and 16).

The State party should:

(a) **Take concrete steps to establish an effective and independent criminal investigation mechanism with no connection to the body prosecuting the case against the alleged victim;**

(b) **Expedite prompt, impartial and thorough investigation into all allegations of torture and ill-treatment and bring the alleged perpetrator to justice; and**

(c) **Revoke provisions in the CPC allowing termination of criminal proceedings and exemption of the defendant from criminal liability whenever the case concerns allegations of torture and ill-treatment.**

Torture and ill-treatment in the armed forces

12. While noting the establishment of hotlines and mobile monitoring units to address the problem of hazing and ill-treatment of conscripts by officers and fellow soldiers in the military, the Committee is concerned that such practices continue to be prevalent in the State party (arts. 2 and 16).

The State party should reinforce measures to prohibit and eliminate hazing and ill-treatment in the armed forces and 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.

Evidence obtained under torture and lack of ex-officio investigations

13. While welcoming the inclusion of article 88(3) to the Criminal Procedural Code in March 2008, which provides that evidence obtained through “physical force, pressure, cruelty, inhumanity and by other illegal methods” may not be used as evidence in a criminal case, as well as the June 2012 decree of the Supreme Court clarifying the concept of inadmissibility of evidence obtained under illegal methods, the Committee expresses concern at the lack of effective enforcement mechanisms and implementation in practice. It is also concerned by reports that judges frequently dismiss allegations of torture when raised by defendants, and that unless a formal complaint is submitted, the prosecutor will not launch an investigation (art. 15).

The Committee urges the State party to guarantee, in practice, that statements obtained by torture are not invoked as evidence in any proceedings. The State party should ensure 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. The Committee urges the State party to review cases of convictions based solely on confessions.

Conditions of detention

14. While welcoming current efforts by the State party to improve conditions of detention in prisons and pre-trial detention facilities, the Committee is concerned by:

(a) Reports of lack of hot water supply; inadequate sanitary conditions; poor ventilation; lack of means to dry clothes, which leads to respiratory infections and sickness; lack of personal hygiene products; and inadequate food and health care;

(b) Unnecessarily strict regimes for inmates serving life imprisonment, who are reportedly confined in virtual isolation in their cells for up to 23 hours a day in small, airless cells; do not have access to lawyers; are only permitted visits by family members once a year; and are denied various activities in prison;

(c) Continued lack of systematic and independent review of all places of detention by national or international monitors, including the International Committee of the Red Cross (ICRC). While noting that the Ombudsman may undertake visits to places of detention, the Committee is concerned that the findings are not made public;

(d) The lack of a complaints mechanism for detainees. Despite the information provided by the State party that complaints of torture or ill-treatment can be submitted in sealed envelopes, they reportedly do not reach the relevant authorities and prisoners often do not have access to pens and paper; and

(e) The fact that the number, location, capacity, and the number of detainees in penitentiary institutions in Tajikistan are considered as “state secrets”.

The State party should:

(a) Allocate sufficient budgetary resources to improve conditions in all places of detention;

(b) Eliminate the complete isolation of prisoners serving life imprisonment, improve their living conditions, and repeal legislation limiting their contacts with lawyers and family members;

(c) Take concrete steps, as a matter of priority, to ratify the Optional Protocol to the Convention and establish an effective National Preventative 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. In the meantime, 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;

(d) Establish an effective, accessible and confidential system for receiving and processing complaints regarding torture or ill-treatment in all places of detention, and ensure that: (i) every detainee has unimpeded and unsupervised access to the prosecutor upon request; (ii) all complaints are promptly, impartially and effectively investigated; (iii) perpetrators are punished with appropriate penalties; and (iv) complainants do not suffer any reprisals; and

(e) Make the number, location, capacity, and the number of detainees in detention facilities available publicly, taking note of the statement made by the delegation to consider doing so in the future.

Complaints, reprisals and protection of victims, witnesses and human rights defenders

15. The Committee is concerned by reports that victims of and witnesses to torture and ill-treatment do not file complaints with the authorities for fear of reprisals and lack of adequate follow-up. Additionally, while noting the removal of libel and insult from the Criminal Code in July 2012, the Committee remains concerned by reports of harassment and intimidation of journalists and human rights defenders who report on torture and ill-treatment. In particular, the Committee is concerned by the information received that families and victims of alleged torture, journalists, lawyers, medical experts and human rights defenders who raised concerns with the United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment during his visit to Tajikistan in May 2012 have subsequently faced harassment and intimidation from authorities. Furthermore, while the Committee takes note of the information provided by the delegation, it is nevertheless concerned by the recent closure of the Association of Young Lawyers of Tajikistan (Amparo), a member of the Coalition Against Torture that engaged with the Special Rapporteur during his visit, pursuant to a motion filed by the Ministry of Justice to dissolve the organization on administrative grounds and a decision taken by the Khujand City Court on 24 October 2012 to this effect (arts. 12 and 13).

The Committee urges the State party to establish a fully resourced, effective, independent and accessible mechanism to investigate and facilitate the submission of complaints by victims and witnesses of torture and ill-treatment to public authorities, as pledged by the State party following the Universal Periodic Review in March 2012. It should also ensure in practice that complainants and civil society organizations are protected against any ill-treatment, intimidation or reprisals as a consequence of their complaint, and that appropriate disciplinary, or where relevant, criminal measures, are taken against law enforcement officials for such actions.

Violence against women and children

16. The Committee is deeply concerned by the lack of any domestic legislation criminalizing acts of violence against women, despite the existence since 2009 of a draft law on “social and legal protection against domestic violence”; reports of high prevalence of domestic violence; difficulties in filing complaints; and the reluctance of law enforcement officials to intervene in such cases. It is further concerned by the lack of domestic legislation prohibiting corporal punishment of children, despite allegations of its widespread use in the family, schools and other educational establishments (arts. 2, 12, 13 and 16).

The State party should strengthen its efforts to prevent, combat and punish violence against women and children, inter alia, by:

- (a) Swiftly adopting the draft law on “social and legal protection against domestic violence” and criminalizing such acts;**
- (b) Taking effective measures to ensure that victims of violence against women and children, including domestic violence, can exercise their right to make complaints, and that such complaints are thoroughly investigated and perpetrators prosecuted and punished with appropriate penalties;**
- (c) Adopting legislation to explicitly prohibit corporal punishment in all settings;**
- (d) Providing victims of domestic and sexual violence with immediate protection and redress, including separation from perpetrators, provision of shelters, and rehabilitation;**
- (e) Training law-enforcement officials, judges and prosecutors on how to receive, monitor and investigate complaints of domestic and sexual violence, trafficking and violence against children in a sensitive manner that respects confidentiality; and**
- (f) Organizing awareness-raising campaigns on the negative impact of corporal punishment of children, as well on domestic and sexual violence.**

Independence of the judiciary

17. While welcoming the two-phase programme of judicial-legal reform aimed at strengthening the judiciary, including through measures such as increasing the salary of judges, the Committee is concerned that the judiciary remains weak, inefficient, and influenced by the Council of Justice, an institution that is reportedly subordinate to the President and the executive branch, and that the President is responsible for appointing and dismissing judges (arts. 2, 12 and 13).

The State party should take measures to ensure the full independence and impartiality of the judiciary in the performance of its functions, and review the regime of appointment, promotion and dismissal of judges in line with the relevant international standards, including the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).

Non-refoulement and extradition

18. The Committee is concerned that the Criminal Procedure Code does not contain any provision on the absolute prohibition of extradition or deportation in cases where the subject would be at risk of torture, and that there are no clear procedures in legislation for challenging the legality before a court in extradition and deportation proceedings. It is also concerned by reports of extradition requests made by the State party of persons alleged to be members of banned Islamic groups, who, upon return to Tajikistan, are reportedly held in incommunicado detention and in solitary confinement, and subjected to torture and/or ill-treatment by law enforcement officials. It is further concerned by allegations that persons facing risk of torture upon their return and have applied for interim measures at the European Court of Human Rights have been abducted by Tajikistani security forces in a neighbouring country and forcibly returned to Tajikistan, and subsequently subjected to torture and/or ill-treatment. Additionally, the Committee is concerned by reports that Abdulvosi Latipov, former member of the United Tajik Opposition, has allegedly been

abducted from the Russian Federation to Tajikistan in October 2012 and is being held incommunicado (art. 3).

The State party should:

(a) **Clearly establish in law and respect its non-refoulement obligations under article 3 of the Convention, including the right to appeal the issuance of an extradition warrant, and refrain from seeking and accepting diplomatic assurances from a State where there are substantial grounds for believing that a person would be at risk of being subjected to torture. It should provide detailed information to the Committee on all cases where such assurances have been provided;**

(b) **Cease the practice of abducting and forcibly returning individuals to Tajikistan from other States and subsequently holding them in incommunicado detention, and ensure that they are not subjected to acts of torture and ill-treatment; and**

(c) **Disclose the whereabouts of Mr. Abdulvosi Latipov and ensure that he is not subjected to torture or ill-treatment and that his fundamental rights are fully guaranteed, including timely access to an independent lawyer.**

Training

19. The Committee welcomes the organization of human rights training programmes for law enforcement officials, judges, prosecutorial staff and Ministry of Interior personnel during the period under consideration, as well as the establishment of a Working Group headed by the Chair of the Constitutional Court to raise awareness and build capacity of law enforcement officials on the prohibition of torture. However, it remains concerned by the lack of adequate training of law enforcement officials and medical professionals in assessing and responding to cases of domestic violence against women, including rape, violence against children, and trafficking. The Committee is further concerned that forensic services are reportedly not staffed with medical personnel trained in documenting and investigating torture in accordance with the provisions of the Manual on Effective Investigation and Documentation of Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (art. 10).

The State party should strengthen training programmes for law enforcement officials, judges, medical professionals, prosecutorial staff and prison staff on the requirements of the Convention and undertake a comprehensive assessment of the impact of such programmes. The State party should ensure that relevant officials, in particular medical professionals, receive training on the use of the Istanbul Protocol to identify and document signs of torture and ill-treatment. The State party should further ensure adequate training of law enforcement officials and medical professionals in assessing and responding to cases of domestic violence against women, including rape, violence against children, and trafficking.

Juvenile Justice

20. While noting the adoption of the National Action Plan on Juvenile Justice Reform 2010 – 2015, the Committee is concerned that the criminal juvenile system lacks juvenile courts and judges specialized in juvenile justice. It is further concerned by reports that children are frequently placed in pre-trial detention and isolation cells in the Juvenile Colony as a disciplinary measure; subjected to extended deprivation of liberty for minor offences; denied their basic legal rights, including access to lawyers; and often mistreated by police inquiry officers to confess, and, as a result, in some cases leading to attempted or actual suicides (arts. 11, 12 and 16).

The Committee urges the State party to:

(a) **Establish an effective and well-functioning juvenile justice system in compliance with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);**

(b) **Review all cases of children sentenced to imprisonment to ensure that deprivation of liberty is only used for serious criminal offences, and ensure that solitary confinement of juveniles should be limited as a measure of last resort, for as short a time as possible under strict supervision and with a possibility of judicial review, and limited to very exceptional cases;**

(c) **Guarantee that the rights of children are respected in all places of detention, including the right to appropriate legal assistance and defence by assigning a sufficient number of lawyers with relevant training and competence; and**

(d) **Take effective measures to prevent police inquiry officers from mistreating children, including by investigating such acts and ensuring that appropriate disciplinary or penal measures are taken.**

Redress, including compensation and rehabilitation

21. The Committee is concerned that there is no explicit provision in domestic legislation that provides for the right of victims of torture to fair and adequate compensation, including the means for as full rehabilitation as possible, as required by article 14 of the Convention. The Committee also regrets the lack of data provided by the State party regarding the amount of any compensation awards made by the courts to victims of violations of the Convention, including those who were subjected to torture and/or ill-treatment during the period of 1995 to 1999 and 35 victims of trafficking who were returned to Tajikistan in 2007 from other countries. The Committee also notes the lack of information on any treatment and social rehabilitation services provided to victims, including medical and psychosocial rehabilitation (art. 14).

The State party should 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, including fair and adequate compensation, and as full rehabilitation as possible regardless of whether perpetrators of such acts have been brought to justice, including victims of trafficking, victims of torture and/or ill-treatment during the period of 1995 to 1999, and family members in cases of deaths in custody.

The Committee draws the attention of the State party to the recently adopted General Comment (CAT/C/GC/3) on article 14 of the Convention which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

Data collection

22. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on trafficking and domestic and sexual violence, and on redress provided to the victims.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints,

investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as of means of redress, including compensation and rehabilitation provided to the victims.

23. The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights as soon as possible. It also invites the State party to consider ratifying the other core United Nations human rights treaties to which it is not yet party, namely the the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, Optional Protocol to the Convention on the Elimination of Discrimination against Women, and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

24. The Committee also recommends that the State party consider making the declarations under articles 21 and 22 of the Convention, in order to recognize the competence of the Committee to receive and consider communications.

25. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

26. The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations relating to: (a) conducting prompt, impartial and effective investigations; (b) ensuring or strengthening legal safeguards for persons detained; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8(a) and (b), 9(a), 11(c), and 14(a), (b), (c), and (d) of the present document.

27. The State party is invited to submit its next report, which will be the third periodic report, by 23 November 2016. To that purpose, the Committee invites the State party to accept, by 23 November 2013, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the periodic report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.
