



Addendum to TIGO IOR 40/2012.156

TAJIKISTAN: BRIEFING TO THE UNITED NATIONS (UN) COMMITTEE AGAINST TORTURE

49TH SESSION, NOVEMBER 2012

I. DEFINITION OF TORTURE; APPROPRIATE PENALTIES FOR TORTURE; AMNESTY LAWS (articles 1, 2 and 4)

In April 2012 the Criminal Code of Tajikistan was amended to include Article 143.1 criminalising torture, with a definition of torture in line with Article 1 of the Convention, making torture a punishable offence with a possible sanction of up to fifteen years in prison.

In September 2012, a police official was found guilty of the crime of torture according to this provision and he was sentenced to seven years' imprisonment. This was the first time an official has been charged with the crime of torture since the article criminalising torture was introduced into the Criminal Code of Tajikistan earlier this year. It is reportedly the first case of adequate compensation being awarded in a case involving torture or ill-treatment; the victim was awarded material damages to cover the cost of his medical treatment.

In 2012, there have been frequent press reports of senior government officials stating their commitment to human rights and to the rule of law, and their intentions to take steps to crack down on security officials who use unlawful investigation methods and ill-treatment. However, despite these stated intentions, Amnesty International is concerned about impunity and the ongoing practice of applying amnesties to those accused of or convicted of torture. [See further *Shattered Lives: Torture and Other Ill-treatment in Tajikistan*¹ (hereafter *Shattered Lives*), page 49.]

For example, recent reports indicate that in the case of the death in custody of Safarali Sangov in March 2011, two policemen convicted for "exceeding official authority" and "negligence" were given an amnesty in summer 2012, and the case was closed. According to reports, the Prosecutor's Office ruled to grant an amnesty in July or August 2012, but the lawyer working on the case was not informed despite the fact that she contacted the Prosecutor's Office regularly in connection with appeals relating to ongoing investigations into the case. There were allegations that one of the two police officers convicted was granted amnesty due to being a relative of President Rahmon. Commentators fear that the prosecutor's decision to grant amnesty was kept quiet in an attempt to make it difficult to appeal, as the Criminal Procedural Code (CPC) specifies that appeals should be lodged within seven days. However, at

¹ AI Index (EUR 60/004/2012), available at: <http://www.amnesty.org/fr/library/info/EUR60/004/2012/en> (hereafter referred to as *Shattered lives*)

the time of writing, the defence lawyer is currently preparing to appeal the decision in any case in the hope it will be considered.[See further *Shattered Lives*, p 48.]

II. DEATHS IN CUSTODY

Amnesty International is concerned that the Tajikistani authorities are failing to protect the lives of people in custody and that there has been little progress in investigating cases where deaths have occurred.

Bahromiddin Shodiev: In June 2012, the criminal case against the alleged perpetrators was sent for further investigation which continues to date.

Safarali Sangov: A court ruling of 14 September 2011 returned the case against the alleged perpetrators for further investigations which are ongoing.

Ismonboy Boboev: Investigations were opened and closed repeatedly since 2009. Following registration of the case at the UN Human Rights Committee in August 2012, the General Prosecutor's Office reopened investigations which are ongoing.

Khurshed Bobokalonov: The criminal investigations are ongoing to date.

[see further *Shattered Lives* respectively pages 19, 48, 32-23 and 35]

III. BASIC LEGAL SAFEGUARDS; REGISTRATION OF DETAINEES; PROLONGED DETENTION PENDING REMAND HEARING; AND IRREGULAR PLACES OF DETENTION; UNDUE DELAY IN ACCESS TO A LAWYER; DELAYED ACCESS TO MEDICAL SERVICES; (article 2)

Registration of detainees in pre-trial detention

Amnesty International's research indicates that most instances of torture and other ill-treatment in Tajikistan occur before a suspect is formally detained, i.e. before the person's detention is registered at a police station. The CPC introduced in April 2010 is imperfect in this respect, requiring registration to take place within three hours of detention but failing to define the precise moment when a person is considered to be detained, indicating that it is from the moment of a person being taken to a police station, (Article 91.1). This leaves detainees effectively without basic legal guarantees for the period between arrest and official acknowledgement of detention (such as the right to notify family members, to be informed of their rights, the right to a lawyer, the right to remain silent during questioning and the right not to be compelled to confess).

It is understood that at the time of writing a new detention protocol is being drafted, specifying that detainees should be informed of their legal rights upon deprivation of liberty. However, steps will need to be taken swiftly once this is adopted to bring existing legislation (CPC) in line with this.

Prolonged detention pending remand hearing

By law, a detained person is not required to be brought before the court until 72 hours after they have been formally detained (as noted above, under the law, formal detention should occur within three hours of the time a person is taken to a police station). Amnesty International is concerned that a delay of 72 hours is too long to be an effective safeguard against torture, which can commence quickly upon apprehension. Amnesty International is

aware of several cases where suspects are not brought before a judge for several days or longer. [See further *Shattered Lives*, p. 37- 38]

For example, 77-year-old Zayovuddin Juraev (see below) was reportedly held in a temporary isolation facility (IVS) for at least 10 days from 21 July 2012 before being transferred to a pre-investigation facility (SIZO), after his defence lawyer intervened with the Prosecutor's Office.

Amnesty International is also concerned that, in contravention of international standards, the CPC in Tajikistan authorises judges to rule on pre-trial detention based purely on the gravity of the crime committed, but with provisions² for exceptional cases which effectively allow anyone to be held in pre-trial detention. In 2011 nearly 97 percent³ of requests for pre-trial detention were approved. The CPC requires amending in this respect.

Undue delay in access to a lawyer

Amnesty International is concerned about continued reports of the lack of routine access to a lawyer while in pre-trial detention. By law, detainees are entitled to a lawyer as soon as they are detained, but, in practice lawyers are at the mercy of police investigators who can deny them access for many days. During periods of incommunicado detention, the risk of torture and other ill-treatment is particularly high. Amnesty International is concerned that new cases have come to light since April 2012 which indicate that detained children and other vulnerable persons are also denied their basic legal rights and therefore continue to be at risk of torture and other ill-treatment in custody in Tajikistan.

On 27 April 2012 a 17 year-old boy was detained on suspicion of theft by a police officer in Yavan, Khatlon region and questioned without a lawyer in the police duty office in Yavan. The child was beaten in order to make him confess. On 28 April, he was recalled to the police station where the beatings allegedly continued. On 29 April, the boy attempted suicide. He survived and was taken to hospital. A medical examination was carried out on 30 April and a forensic examination was carried out on 28 May which found evidence that serious bodily injuries had been inflicted on him. A police inspector from Yavan was found guilty of torture (Article 143) and sentenced to seven years in prison and banned from working in the Ministry of Internal Affairs for a period of five years.

A 15 year-old girl, whose name is known to Amnesty International, was allegedly detained on suspicion of theft on 4 April 2012 in Firdavsi police station in Dushanbe. The child was questioned until 6 April without a lawyer being present. Her mother was told to wait outside the interrogation room and not allowed to remain with her daughter. During this time the girl reported being beaten, kicked and insulted by four police as well as threatened with rape to force her to confess to the crimes. Before being released, the girl and also her mother were forced to sign blank pieces of paper. The girl committed suicide over the weekend of 12-13 May, reportedly after hearing a phone call from the police investigator to the family home calling her back for further questioning. The family's complaint into the allegations of torture

² Article 111.1 of provides that those who are accused of crimes punishable by over 2 years in prison may be detained in prison pending trial. Those who are accused of crimes punishable by less than 2 years in prison can be detained pending trial if they have no permanent place of residence in Tajikistan, if their identity has not been established, if they hid from prosecution officials or the court.

³ According to the Human Rights Ombudsman of Tajikistan.

and ill-treatment is currently being reviewed by the Dushanbe Procurator's Office.

Although the CPC states that lawyers are entitled to be present at interrogations at the request of the detainee or the lawyer, in practice Amnesty International is aware of many cases where lawyers are not permitted timely access to their clients and so initial interrogations take place without them. Lawyers continue to report that they are required to obtain prior permission from police investigators in order to see their clients, due to internal regulations governing lawyers' access to clients in detention.

Such restrictions on access of lawyers are particularly prevalent in the State Committee for National Security (SCNS) run detention facilities. Amnesty International is concerned that people detained in institutions run by specialised Minister of Internal Affairs (MIA) departments and ones run by the SCNS find it very difficult to see their defence lawyers and therefore are at particular risk of torture and other ill-treatment. They are also at risk of being compelled to confess guilt, including falsely, or to make statements against their interest.

For example, a 45 year old man (whose name is known to Amnesty International but has not been formally disclosed in Tajikistan) was arrested on suspicion of murdering President Rahmon's brother in law was reportedly not given access to a lawyer from 16 to 21 July. There are reports that he was subjected to physical and psychological torture by officers of the Ministry of Internal Affairs Department of Criminal Investigation.⁴

Reports indicate that Sherik Karamhudoev, head of the Islamic Renaissance Party in Khorog has been subjected to torture and other ill-treatment whilst in the temporary detention centre (SIZO) run by the State Committee for National Security in Dushanbe. He went missing on 24 July 2012 during clashes between government and opposition forces in Khorog, Gorno-Badakhshan Autonomous region (GBAO⁵). His whereabouts was discovered only on 8 August. He is believed to be charged with organisation of a criminal group and illegal possession of firearms and ammunition (article 195). Staff of the SCNS SIZO reportedly repeatedly denied permission to Sherik Karamhudoev's three defence lawyers to see him in detention for several weeks, despite the lawyers having received the consent of the investigator and the General Prosecutor's office.

[On access to lawyer, please see *Shattered Lives*, p.20 – 29]

Insufficient and delayed access to medical assistance in pre-trial detention

Amnesty International is concerned at reports of insufficient medical examinations upon admission to police stations and IVS (temporary detention facility) detention centres and in some cases denial of medical care, despite these being provided for by law. The organisation is also concerned at cases where medical care is denied in violation of international standards, for example:

⁴ Please see "Murder suspect tortured to confess" UA: 220/12 Index: EUR 60/006/2012 Tajikistan Date: 24 July 2012.

⁵ Some 70 people were killed in GBAO during a government military operation launched against forces loyal to the deputy commander of the Ishkashim border unit Tolib Ayombekov following his alleged involvement in the killing of top regional security official and former opposition leader from the 1990s Tajik Civil War on 21 July. Tolib Ayombekov denied being involved in the killing.

A 77-year-old man, Zayovuddin Juraev reportedly assaulted the judge Abduhamid Davronov on 21 July 2012, pouring acid on him outside the court room after a hearing in Zayovuddin's Juraev's civil suit. Both men were burned and the judge was hospitalised and is currently in a stable condition. Following the assault, Zayovuddin Juraev and his son were reportedly beaten by the employees of the Isfara district Prosecutors' Office and judges inside the building of Isfara District Court. Zayovuddin Juraev was held in detention and reportedly denied treatment for his burns and injuries that included broken ribs. His lawyer reported that she was denied access to him for the first 10 days when he was held in temporary isolation facility (IVS). Eventually he was transferred to pre-trial investigation facility (SIZO) where he is currently held. When he last saw the lawyer on 10 August, he complained about pain in his body and difficulty breathing and it was evident to his lawyer that he needed urgent medical help, including necessary examination with X-ray and appropriate care. However, his lawyer reported that permission from officials was needed in order to conduct necessary medical examination such as X-ray. At the time of writing, the case against Zayovuddin Juraev is being heard at Shakristan District Court in Soghd region.

Amnesty International is concerned that access to necessary medical examinations and treatment for those charged with crimes against public security is further obstructed by the need to seek permission from the security agencies which often deny or delay such access.

IV. EXTRADITIONS (article 3)

Amnesty International is extremely concerned at the increasing number of cases in recent years where people who were extradited to or forcibly returned to Tajikistan by the authorities of other countries have been tortured or ill-treated by law enforcement officials in Tajikistan [See further, *Shattered Lives* p. 55-56]. In a series of recent cases the Tajikistani authorities have made extradition requests based on unreliable information for people alleged to be members of banned Islamic groups. The Organization is particularly concerned at several recent incidents where applicants to the European Court of Human Rights (ECtHR) were reportedly abducted by Tajikistani security forces operating in the Russian Federation and forcibly returned to Tajikistan. There are concerns that some of these people were subjected to torture and other ill-treatment upon return to Tajikistan. [See the case of Savriddin Juraev, *Shattered Lives*: p. 46-47]

V. LACK OF PROMPT, INDEPENDENT, IMPARTIAL AND THOROUGH INVESTIGATIONS INTO ALLEGATIONS OF TORTURE OR OTHER ILL-TREATMENT RESULTING IN IMPUNITY AND FAILURE TO ENSURE ADEQUATE REPARATION (ARTICLES 1, 12, 13 AND 14)

Lack of prompt, thorough, independent and impartial investigations

Amnesty International remains seriously concerned about the failure to initiating prompt, thorough, independent and impartial investigations into allegations of torture or other ill-treatment. Access to justice and redress remains elusive for scores of people throughout the country who allege that they, or their relatives, have been arbitrarily detained and tortured or otherwise treated in custody in order to extract a "confession". Comparatively few law enforcement officers have been brought to trial and held accountable for crimes they are suspected of, although in September 2012, as mentioned in Chapter I of this briefing, one police officer was successfully prosecuted for the crime of torture and sentenced to seven years in prison. The victim was also awarded some compensation for material damage. [See further *Shattered Lives*, chapter 6]

Torture survivor **Mirzokhon Karimov**, continues to demand just reparation and compensation for his illegal detention and ill treatment in June 2009. He wrote to the General Prosecutor in May 2011 asking for compensation and due reparation. However, to date he has not received

any compensation. [See further, *Shattered Lives*, p. 22-23]

Corruption in law enforcement and the judiciary is believed to contribute largely to a pervasive climate of impunity, which undermines public confidence in the criminal justice system. The lack, or paucity, of prompt, thorough and impartial investigations and prosecutions of law enforcement officers in connection with allegations of torture or other ill treatment also contributes to this impunity. Amnesty International's research shows that alleged victims of torture or other ill-treatment frequently lodge complaints with the Prosecutor's Office, but receive no answer to these complaints, or, when they do receive a reply, are simply informed that the allegations were not confirmed, without being given any information on the grounds for the decision. [See further, *Shattered Lives*, p. 47-49]

Ilhom Ismonov: Amnesty International has concerns about the credible allegations of torture in the case of Ilhom Ismonov and his 52 co-defendants accused of involvement in the Islamic Movement of Uzbekistan and extremism. Ilhom Ismonov is currently serving an eight year prison term after being sentenced in a closed trial in December 2011 for allegedly participating in organised crime. The sentence was subsequently reduced by a third under the Law "On Amnesty".

Amnesty International is concerned that Ilhom Ismonov's wife was not allowed to testify during the court hearing of Ilhom Ismonov's case, without a clear explanation being given by the judge as to why her testimony could not be heard. Ilhom Ismonov appealed against the sentence and the Supreme Court is hearing the case at the time of writing (9 October 2012). [See further *Shattered Lives*, p. 21, 27, 31-2, 37-8 and 46]

In November 2006 the Committee against Torture recommended that Tajikistan "[e]stablish a fully independent body outside the procuracy to provide oversight on the proper conduct of investigations, which is empowered to receive and investigate individual complaints". Tajikistan stated its intentions to establish an independent complaints mechanism for torture allegations in March 2012 at the Universal Periodic Review. To date, however, there is no independent mechanism or structure to investigate complaints of torture promptly, thoroughly independently and impartially.

Forensic investigations into cases of alleged ill-treatment

The Criminal Procedure Code in Tajikistan requires lawyers and detainees to request permission from the investigator for a medical examination, and does not specify how quickly the medical examination must be conducted once the request is made. An investigator has five days to respond, and a refusal can be appealed to the prosecutor who must reply within three days, or seven in exceptional circumstances. There are concerns that these time delays mean in practice that by the time the medical examination is carried out physical traces of ill-treatment and torture may have disappeared. [See further *Shattered Lives*, p. 31-32]

There are several reports of medical experts being pressurized by the authorities to present their conclusions ambiguously so as not to indicate findings of torture and other ill-treatment. For example, the case of Ismonboy Boboev. [See further *Shattered Lives*, p. 32-33].

Reprisals against victims of torture and their relatives (article 13)

Amnesty International has received information about several cases of detainees refraining from lodging complaints with Prosecutor's Offices about their treatment in custody for fear of reprisals. In addition, families and victims of alleged torture who raised concerns with the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment during his visit in May 2012, and with other international human rights organisations have also subsequently reported harassment and intimidation from the authorities. In some cases they refuted their complaints, gave up pursuing them or refused to speak publicly about them. Similar pressure and intimidation is also reported by journalists who reported on cases of alleged torture and ill-treatment, lawyers, medical experts and NGO activists. Amnesty International is concerned that such cases are coming to its attention more frequently, indicating that the victims of torture and their families are coming under increased pressure to keep quiet from the authorities.[See further *Shattered Lives*, p 46-47]

VI. FAILURE TO EXCLUDE EVIDENCE ELICITED AS A RESULT OF TORTURE OR OTHER ILL-TREATMENT (ARTICLE 15)

Article 88.3⁶ of the CPC excludes evidence obtained through torture or other ill-treatment in a case against a defendant. However, to date, Amnesty International is not aware of any cases where evidence has been excluded from the court under Article 88.3. Several sources from Tajikistan report that evidence extracted under torture is often used in court, and that judges frequently dismiss allegations of torture when raised by defendants. At remand hearings, judges are reported to examine only the issue of the legality of detention and not order investigations if there are signs or allegations of torture and other ill-treatment. Following his visit to Tajikistan in May 2012, the Special Rapporteur on Torture reported hearing “many cases in which defendants recanted their confessions as soon as they were in front of a prosecutor or a judge, and their allegations were dismissed as without merit, even when traces of mistreatment were visible. We have heard of no instance of investigation ex officio of torture in those cases, despite the clear international law standard to that effect.”

In June 2012 the Supreme Court issued guidelines for judges with instructions of how to act if torture or other ill-treatment is alleged or suspected.

⁶ “[e]vidence 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 the accusation” Article 88.3 CPC Tajikistan