



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

TAJIKISTAN

1. The Committee considered the initial report of Tajikistan (CAT/C/TJK/1) at its 726th and 729th meetings (CAT/C/SR.726 and 729), held on 7 and 8 November 2006, and adopted, at its 744th meeting, held on 20 November 2006 (CAT/C/SR.744), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the initial report of Tajikistan and the valuable information presented therein, although observing that the report is submitted 10 years late. Also, the report should have covered the entire period from 1995 to 2004, instead of only 2000 to 2004.

3. The Committee welcomes the additional information provided by the high-level delegation in its introductory remarks and its readiness to answer the questions raised. The Committee notes, however, that, due to lack of time, many of the questions asked by the Committee in the review of the initial report remained unanswered.

B. Positive aspects

4. The Committee notes the following positive measures:

(a) The ratification by the State Party of the major international human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the

International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(b) The ratification of other important instruments that contribute to the protection of human rights, such as the Rome Statute of the International Criminal Court and the United Nations Convention against Corruption;

(c) The establishment of the Government Commission on Ensuring Compliance with International Human Rights Obligations and the Office for Constitutional Guarantees of Citizens' Rights;

(d) The transfer of authority over the prison system from the Ministry of Internal Affairs to the Ministry of Justice;

(e) The opening to international scrutiny as seen in its authorizing the visit by the Special Rapporteur on the independence of judges and lawyers in 2005;

(f) The assurance by the representative of the State party that due consideration will be given to introducing arrest warrants in the draft Criminal Code;

(g) The current policy of commuting of all existing death sentences in the State party;

(h) The adoption of article 130 of the Criminal Code, establishing that human trafficking is a criminal offence.

C. Principal subjects of concern and recommendations

Definition

5. The definition of torture provided in domestic law (arts. 117, 316 and 354 of the 1998 Criminal Code) is not fully in conformity with the definition in article 1 of the Convention, particularly regarding purposes of torture and its applicability to all public officials and others acting in an official capacity.

The State party should adopt domestic legislation in line with article 1 of the Convention to address all the purposes therein, and it should ensure that acts of torture by State agents, including the acts of attempting to torture or complicity in it, ordering or participating in torture, are criminal offences punishable in a manner proportionate to the gravity of the crimes committed.

Torture

6. There are numerous allegations concerning the widespread routine use of torture and ill-treatment by law enforcement and investigative personnel, particularly to extract confessions to be used in criminal proceedings. Further, there is an absence of preventive measures to ensure effective protection of all members of society from torture and ill treatment.

The State party should publicly condemn the practice of torture and take immediate and effective measures to prevent all acts of torture throughout the country, with particular attention to preventing any such acts by law enforcement and criminal justice personnel.

Detention

7. The Committee is also concerned at:

(a) The lack of a legal obligation to register detainees immediately upon loss of liberty, including before their formal arrest and arraignment on charges, the absence of adequate records regarding the arrest and detention of persons, and the lack of regular independent medical examinations;

(b) Numerous and continuing reports of hampered access to legal counsel, independent medical expertise and contacts with relatives in the period immediately following arrest, due to current legislation and actual practice allowing a delay before registration of an arrest and conditioning access on the permission or request of officials;

(c) Reports that unlawful restrictions of access to lawyers, doctors and family by State agents are not investigated or perpetrators duly punished;

(d) The lack of fundamental guarantees to ensure judicial supervision of detentions, as the Procuracy is also empowered to exercise such oversight;

(e) The extensive resort to pretrial detention that may last up to 15 months; and

(f) The high number of deaths in custody.

The State party should:

(a) **Adopt measures to ensure detainees prompt access to a lawyer, doctor and family members from the time they are taken into custody and ensure that legal assistance and independent medical expertise be provided at the request of detained persons rather than solely when permitted or requested by officials;**

(b) **Take measures to establish registers of detainees at each place of custody with the names of each person detained, the time and date at which notifications of lawyers, doctors and family members took place and the results of independent medical examinations. These registers should be accessible to the detainee and his/her lawyers;**

(c) **Consider the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct examinations of detainees upon arrest and release, routinely and at their request, alone or together with an appropriate independent body with forensic expertise;**

(d) **Take steps to shorten the current pretrial detention period (*doznanie*);**

(e) **Ensure independent judicial oversight separate from the Procuracy of the period and conditions of pretrial detention, including that imposed by the Ministry of Security; and**

(f) **Ensure prompt, impartial and full investigations into all complaints and into all instances of deaths in custody, making results available to relatives of the deceased.**

Trafficking and violence against women and children

8. There are persistent reports of trafficking in women and children, the alleged involvement of officials in acts of trafficking and a notable absence of information on sentences handed down to State agents under articles 130 and 132 of the Criminal Code. The Committee is concerned about continuing allegations of violence and abuse of women and children, including sexual violence.

The State party should take effective measures to prosecute and punish violence against women and children and trafficking in persons, including developing, monitoring, adopting appropriate legislation and raising awareness of the problem, and including the issue in training of law enforcement personnel and other relevant groups.

Juvenile justice system

9. The State party lacks a well-functioning juvenile justice system in the country, with children often being subjected to the same procedures, laws and violations as adults.

The State party should take the necessary steps to protect juveniles from breaches of the Convention, and ensure the proper functioning of a juvenile justice system in compliance with international standards.

Independence of the judiciary

10. In the State party, there is inadequate independence and effectiveness of the judiciary, as judges are both appointed and dismissed by the President and the Procuracy has the double responsibility for prosecution and oversight of investigations into complaints, and it is empowered to prevent implementation of court decisions.

The State party should:

(a) **Make every effort to guarantee the independence of the judiciary fully in line with the Basic Principles on the Independence of the Judiciary;**

(b) **Establish 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.**

11. There is a limited practice of the Constitutional Court in reviewing the conformity of domestic legislation with the Constitution and international human rights norms.

The State party should expand the scope of the Constitutional Court to ensure that domestic legislation is in line with the Constitution and international human rights instruments.

Applicability of the Convention

12. There is a failure by courts to invoke directly the Convention in proceedings as well as a failure to train judges on its direct applicability.

The State party should take all appropriate measures, including legislation and training, to ensure that domestic courts of general jurisdiction actively apply international human rights norms, and in particular the Convention, in proceedings, as provided in article 10 of the Constitution of the State party.

Non-refoulement and extraditions

13. There is a failure by the State party to provide access to lawyers and to appeal bodies for the purpose of challenging a deportation decision for persons at risk of deportation to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture.

The State party should fully implement its obligations under article 3 of the Convention, and cooperate with representatives of the Office of the United Nations High Commissioner for Refugees, including granting effective access to files pertaining to asylum-seekers.

Training

14. There is a lack of training by officials on the prohibition against torture. In particular, the Committee is concerned about the lack of practical training for (a) doctors, in the detection of signs of torture or ill-treatment of persons who have been or are in custody; and (b) law enforcement personnel and judges, in initiating prompt and impartial investigations.

The State party should ensure that law enforcement, judicial, medical and other personnel who are involved in custody, interrogation or treatment or who otherwise come into contact with detainees, are provided with the necessary training with regard to the prohibition of torture. It should also ensure that the requalification procedure (“re-attestation”) of those personnel include both verification and an awareness of the Convention’s requirements and a review of their records in treating detainees.

Interrogation

15. There are continuing and reliable allegations concerning the frequent use of interrogation methods that are prohibited by the Convention by both law enforcement officials and investigative bodies.

The State party should ensure that no recourse is made by law enforcement personnel, under any circumstance, to interrogation methods that constitute torture or ill-treatment. Further, the State party should ensure that interrogation guidelines and methods are in full conformity with the Convention.

Systematic review of all places of detention

16. There are reports that there is no systematic review of all places of detention, by national or international monitors, and that regular and unannounced access to such places is not permitted.

The State party should consider setting up a national system to review all places of detention and cases of alleged abuses while in custody, ensuring that national and international monitors are granted permission to carry out regular, independent, unannounced and unrestricted visits to all places of detention. To that end, the State party should establish transparent administrative guidelines and criteria for access, and facilitate visits by independent national monitors and others such as the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and independent non-governmental organizations. The State party should consider becoming party to the Optional Protocol to the Convention.

Impunity

17. There is an apparent lack of convictions under article 117 of the Criminal Code of public officials or others acting in an official capacity for acts of torture and ill-treatment and a very small number of convictions under domestic law for violations of the Convention, despite numerous allegations of torture and ill-treatment. Further, the Committee is concerned about the fact that acts of torture and ill-treatment in the years 1995 to 1999 were immunized from punishment by amnesty laws, thereby entrenching impunity of those responsible for torture, and a lack of reparation for the victims.

The State party should take effective legislative, administrative and judicial measures, such as the establishment of an independent body, to ensure that all allegations of acts of torture and ill-treatment by State agents are investigated, prosecuted and the perpetrators punished, including for acts of torture and ill-treatment that occurred during the years 1995 to 1999. In connection with prima facie cases of torture, the suspects should be subject to suspension or reassignment during the investigation.

Right to complain and obtain redress

18. The Committee is concerned at:

(a) The lack of appropriate legislation and any effective, independent mechanism to permit victims of acts of torture and ill-treatment to complain and have their case examined promptly and impartially; and

(b) The lack of witness protection legislation and mechanisms, and of compensation for victims.

The State party should establish a fully independent complaints mechanism, outside the Procuracy, for persons who are held in official custody; amend its current and planned legislation so that there is no statute of limitation for registering complaints against acts of torture; and ensure that all persons who report acts of torture or ill-treatment are adequately protected. The State party should consider establishing a national human rights institution in accordance with the Paris Principles. Further, the State party should enable victims of all forms of torture to file complaints and receive fair and adequate compensation in a timely manner, including cases from 1995 to 1999.

Statements made as a result of torture

19. There is a reported failure of judges to dismiss or return cases for further investigation in instances where confessions were obtained as a result of torture, and numerous allegations of statements obtained as a result of torture being used as evidence in legal proceedings. This is facilitated by the absence of legislation expressly prohibiting the use of evidence obtained as a result of torture in legal proceedings.

The State party should review cases of convictions based solely on confessions in the period since Tajikistan became a party to the Convention, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures. The State party should provide to the Committee information on any jurisprudence that excludes statements obtained as a result of torture being admitted as evidence. In addition, the State party should revise its legislation to prohibit the use of evidence obtained as a result of torture in court proceedings.

Prison conditions

20. There are allegations of poor conditions of detention, in particular, overcrowding, poor sanitation, staffing shortages and a lack of medical attention for detainees.

The State party should take all necessary measures to improve conditions of detention.

21. The Committee further recommends that the State party consider making the declaration under articles 21 and 22 of the Convention.

22. The Committee requests the State party to provide in its next periodic report detailed statistical data regarding cases of torture and other forms of cruel, inhuman or degrading treatment or punishment reported to administrative authorities and the related investigations, prosecutions and penal and disciplinary sentences, including details of applied articles of the

Criminal Code, disaggregated by, inter alia, gender, ethnic group, geographical region, and type and location of place of deprivation of liberty, where it occurred. In addition, information is also requested on any compensation and rehabilitation provided to victims, including cases from 1995 to 2000.

23. The State party is encouraged to disseminate widely its initial periodic report, summary records and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

24. The Committee welcomes the assurances given by the delegation that written information will be submitted regarding the questions that remained unanswered, including information on the period from 1995 to 1999 and on the arrest of Mahmadrusi Iskandarov.

25. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 16, 17 and 19 above.

26. The State party is invited to submit its next periodic report, which will be considered as the second periodic report, by 31 December 2008.
