



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

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COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD OF THE 729th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday 8 November 2006 at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Tajikistan (continued) (CAT/C/TJK/1; HRI/CORE/1/Add.128)

1. At the invitation of the Chairperson, the members of the delegation of Tajikistan resumed their places at the Committee table.
2. Mr. KHAMIDOV (Tajikistan) said that his delegation would endeavour to respond to the Committee's questions, which could be divided into eight main groups. The first group of questions concerned general issues relating to the preparation of the initial report, the settlement of the armed conflict in Tajikistan, the role of the United Nations in that process and the application of amnesty legislation, particularly with regard to perpetrators of torture. The second group related to procedures for the ratification of and accession to international treaties, the application of international law by national judicial and law enforcement authorities, including in the event of conflict between international and domestic law, and whether the definition of torture in Tajik legislation was in conformity with that contained in article 1 of the Convention.
3. The third group of questions covered the responsibility of State bodies in ensuring human rights and freedoms and the prohibition of torture, and the role of the Ministry of Security in that connection. The fourth group focused on the length of and grounds for detention, related investigative procedures, and the legal and human rights guarantees provided for detainees. The fifth group related to extradition and deportation, including relevant legal assistance agreements with other States, efforts to combat human trafficking and national legislation relating to refugees. The subject of the sixth group was legal and judicial reform, appointments to the judiciary, different types of courts - including military and special courts, and the powers of judges and procurators. The seventh group concerned detention facilities, the need to separate different groups of detainees, access to detention facilities - including for medical staff, and statistics on deaths during detention. The last group of questions concerned ratification of the Optional Protocol to the Convention, the role and jurisprudence of the Constitutional Court, and expert assessments of cases of torture.
4. Mr. KHUDOËROV (Tajikistan), providing information on the preparation of his country's initial report (CAT/C/TJK/1), said that a working group had been set up by the Government Commission to oversee implementation of human rights commitments. The working group had comprised representatives of State bodies and NGOs, and also international organizations - including the United Nations Office of Peacebuilding in Tajikistan (UNTOP), and the Swiss Cooperation and Development Agency.
5. In 2004, while the initial report had been under preparation, a number of seminars had been held on the Convention against Torture; they had been attended by international experts, and representatives of NGOs and national legal associations. The preparation of the initial report had also been given coverage in the national press, including in Asia-Plus.

6. Mr. KHAMIDOV (Tajikistan), referring to the settlement of the armed conflict and amnesty legislation, said it was important to bear in mind that Tajikistan had undergone more than six years of civil and armed conflict. Following the signing of the General Agreement on the Establishment of Peace and National Accord, peace negotiations had been launched and a Commission on National Reconciliation had been set up. Further to its activities, by 1999 four amnesty acts had been passed. They had ensured the release of all persons involved in the armed and political conflict. Their ultimate objective had been to achieve peace and national unity, and certain concessions had had to be made. All persons concerned by the amnesty acts, including those guilty of torture, had been absolved from criminal responsibility and prosecution. Tajikistan was now reaping the benefits of peace and stability, as borne out by its recent presidential election.

7. The most recent amnesty act passed to mark the fifteenth anniversary of national independence did not absolve perpetrators of torture from criminal responsibility and prosecution. The various amnesty acts had therefore been based on national interests and the circumstances prevailing during the period when they had been adopted.

8. Mr. DJONONOV (Tajikistan) said that the procedures for acceding to and ratifying international treaties were laid down in the Constitution and the International Treaties Act. Pursuant to the Constitution, the ratification of international treaties was the responsibility of the lower chamber of parliament, whereas decisions relating to accession were within the exclusive domain of the President. The International Treaties Act divided international treaties into three main categories.

9. In accordance with the procedure prescribed for ratifying international treaties, the Ministry of Foreign Affairs sent copies of treaties proposed for ratification to all national ministries and departments concerned with a view to eliciting their comments. It also submitted information to the President on the purposes of the treaties and their political, economic and financial implications for Tajikistan. Subject to the President's approval, the treaties were subsequently discussed and ratified by the lower chamber of parliament. No reservations had been entered with respect to the Convention against Torture.

10. Mr. KHAMIDOV (Tajikistan) said that different countries adopted different approaches to ensuring the primacy of international law and the proper application of international legal standards. Under article 10 of the Constitution of Tajikistan, international treaties formed an integral part of domestic legislation. The national legal and judicial systems had undergone radical reform to guarantee the direct and proper application of international laws and standards by the judiciary and law enforcement authorities. Nevertheless, there were still problems requiring appropriate training so as to ensure that the officials concerned upheld such standards in practice.

11. Mr. KHODJAEV (Tajikistan) said an example of where international law had prevailed over domestic legislation in the event of conflict between them was the case involving an application from a United States citizen to adopt a Tajik child. Under the Family Code, foreigners enjoyed the same rights as Tajik citizens, and there were no restrictions on the adoption of Tajik children by foreigners. In accordance with the Convention on the Rights of the

Child, however, a child should not be adopted by a foreigner when it could be looked after or adopted in its country of origin. On those grounds, the Tajik court had rejected the application by the United States citizen.

12. A noteworthy example of how equality before the law was upheld for Tajik citizens and foreigners alike was a case involving a Russian citizen considered in Dushanbe in January 2006. The Russian citizen had performed military service for the Tajik army. Upon completion of his service he had been detained in the cells of the Ministry of Justice and subjected to physical violence. The Tajik officials concerned had been charged with acts of violence against a foreign national.

13. Turning to the question whether the definition of torture under domestic legislation was in conformity with that given in article 1 of the Convention, he drew attention to the comment added to article 117 of the Criminal Code under the Criminal Code (Amendment and Additions) Act of 2004. The definition of torture contained in the amended Criminal Code was broader than that in article 1 of the Convention: it applied not only to persons who exercised public authority and perpetrated torture in the performance of their duties, but also to other persons whose actions were not connected with the performance of public duties, but who acted together with persons exercising public authority or investigating crimes. Such persons were also criminally responsible. Part 3 of article 117 provided for even greater criminal liability if the crimes in question had been committed with use of force. Thus, under that article, all persons, including State officials, were held criminally liable for acts exceeding the bounds of their authority, including torture.

14. Public officials in the area of administration of justice who exercised their duties in a manner at variance with the Convention were held criminally liable under article 354 of the Criminal Code, relating to statements made under coercion in the course of interrogations, preliminary investigations or the administration of justice. Part 2 of that article provided for criminal liability when such coercion involved violence, especially when it had serious consequences, including suicide. Judges who had administered justice in an unlawful manner were criminally liable under article 256 of the Code.

15. The Criminal Code also provided for criminal liability for crimes committed by military personnel involving the use of violence amounting to torture, and improper exercise of authority by law enforcement officials. The interests, freedoms and rights of persons who had suffered torture at the hands of State officials were thus protected. Tajik legislation also contained a number of other provisions protecting the interests of victims of moral or psychological injury inflicted by State officials, which in some cases had led to suicide. Citizens' rights and freedoms were protected in accordance with international standards, fully encompassing all crimes related to torture committed not only by State officials but also by other individuals.

16. Criminal liability for moral suffering caused to women or sexual aggression was covered under article 140 of the Criminal Code.

17. Criminal liability for acts of torture was covered by different provisions of the Criminal Code. Coercion involving torture, with the aim of obtaining testimony, by a person conducting an initial inquiry or pretrial investigation, or by a person administering justice, was

an offence under article 354. Improper exercise of authority involving torture was an offence under article 316. Abuse of official position was an offence under article 314, and all other related acts of cruelty committed by persons other than State officials, such as domestic violence, were covered under article 117. The definition of torture contained in the Convention was therefore fully covered by the Tajik Criminal Code.

18. The Criminal Code classified as crimes not only acts of torture already committed, but also attempts to commit torture and the planning of torture. Similarly, persons who, while not directly participating in the commission of torture, otherwise assisted in its commission were also criminally liable.

19. His country was currently in a period of transition, and its legislation was undergoing sweeping changes, which included efforts to ensure the implementation of the Convention.

20. Cases involving crimes committed by State officials improperly exercising their authority were considered by the courts of general jurisdiction and the military courts. Between 2004 and 2006 the general courts had considered cases in that category relating to 28 persons, while the military courts had considered cases relating to 132. In many cases, general courts hearing military criminal cases had established the liability of lower-level staff of the Ministry of Internal Affairs for improper exercise of authority involving the torture or ill-treatment of persons detained at the Ministry itself.

21. However, convictions had also been secured at higher levels for improper exercise of authority during interrogations, the use of violence amounting to torture in order to obtain confessions, and illegal detention - for example, in the case of the senior inspector of the Dushanbe criminal investigation department and the senior inspector of the Dushanbe crime squad. Senior officials from other departments, including the criminal investigation department of the Ministry of Internal Affairs, had also been convicted for similar crimes. The crime of abuse of authority involving violence was unfortunately widespread in the armed forces, particularly at the sergeant level.

22. Mr. KHUDOËROV (Tajikistan) said that harm caused to citizens as a result of, inter alia, unlawful conviction, unlawful remand in custody or travel restraints, and imposition of unlawful administrative penalties was compensated in full, regardless of whether the fault lay with officials of bodies conducting initial inquiries, pretrial investigators, the procurator's office or the courts. The legal basis for such compensation, which was of a financial nature, was article 32 of the Tajik Constitution, and the procedure for awarding it was covered by article 1,086 of the Civil Code. He gave an example of compensation awarded by the Dushanbe military court.

23. In response to the question concerning the outcome of the criminal proceedings against militia officers in the three cases considered by the Human Rights Committee during its examination of the report by Tajikistan, he outlined the details relating to one of the cases, which had been dismissed as the facts relating to the alleged violence had not been established. The issue of compensation was being given further consideration.

24. Turning to the responsibilities of specific State bodies, in particular the Ministry of Internal Affairs, he said that the body responsible for coordinating ministerial activities in the field was the Government Commission to oversee implementation of international human rights commitments. The supervisory body for the specific implementation of the Convention was the Office of the Procurator-General, whose powers were set out in the Constitution. The Procurator-General had the right to order the application of international human rights instruments for the benefit of suspects, accused persons and convicted persons. He also had the right to release people who had been illegally detained and was responsible for the lawfulness of actions in places of detention, including pretrial detention. He illustrated how those powers were being used in practice, taking as an example proceedings brought against police officers which had resulted in a conviction for abuse.

25. The Ministry of Security had been set up with a view to protecting the security not only of the nation but also of society and its individual members. The Ministry and its subsidiary bodies were guided in their action by the Constitution, domestic law and the international legal instruments ratified by Tajikistan. Legislation on the security forces, adopted in 1998, covered the Ministry's activities, which included the investigation of criminal cases, in accordance with the Criminal Code. All such activities were, of course, overseen by the Procurator-General, whose office could take the necessary measures to ensure compliance with the law.

26. Mr. SHARIPOV (Tajikistan) explained that, pursuant to article 412 of the Code of Criminal Procedure, suspects could be detained in police cells for up to 72 hours. Under article 92 of the Code, with the Procurator-General's authorization remand in custody for the purpose of investigating a criminal case could be extended for not more than two months. An extension of up to three months could be granted by a district or city procurator if the investigation had not been completed. A further extension of up to six months was possible if the case was especially complicated, but required authorization by a provincial or regional procurator or procurator of equivalent rank. The Deputy Procurator-General and the Chief Military Procurator could extend custody by up to 9 months from the date of remand in custody. Extensions of remand in custody for up to 15 months were permissible in the case of serious crimes, with the approval of the Procurator-General.

27. Mr. KHAMIDOV (Tajikistan) assured the Committee that, by the time the next periodic report was submitted, the whole judicial system would have been overhauled. The reforms being considered included a fully independent judiciary, lifelong appointments for judges and the transfer of responsibility for arrest warrants to the courts. Once the reforms were completed his Government would report on them to the Committee.

28. He admitted that prison conditions in Tajikistan were not ideal, but much progress had been made. Approaches and mindsets had already changed, and the relevant legislation was more humane. Food and living conditions in prisons had been improved, the protection of rights and freedoms had been strengthened, and prison buildings had been upgraded. A reform process had begun recently and many problems needed to be addressed. The Government openly admitted that, owing to the large numbers of prisoners, there were difficulties in supervising and moving them and ensuring that all their rights were respected. Educational and occupational activities posed problems, as did tuberculosis and other medical conditions common in prisons.

Food and living conditions were still below par, but the Government was well aware of the problems and sincerely wished to effect improvements. However, the economic situation made it difficult to meet international standards in all prisons. He had visited a model prison in Canada where three inmates were being looked after by more than 200 staff. Apparently over US\$ 20 million had been spent on prison facilities in that country. He hoped that, at a future meeting of the Committee, a delegation of Tajikistan would be able to report that similar prisons existed there. In the meantime, the Committee's recommendations and other assistance would help his Government to improve the situation.

29. In accordance with national legislation, certain categories of persons required special permission to gain access to prisons, while others did not. The Ministry of Justice cooperated closely with NGOs and an alternative report had been submitted to the Committee by a national NGO. It objectively reflected the situation in the prison system in Tajikistan and its conclusions would be useful for the Government when it came to take measures in the future.

30. Tajikistan's record on the ratification of international human rights instruments was relatively good, even in comparison with many developed nations. His Government recognized that it had to meet its international obligations and he was certain that it would ratify the Optional Protocol to the Convention against Torture when the time was right.

31. Ms. GAER, Country Rapporteur, recalled that, in accordance with the Optional Protocol to the Convention, which Mr. Khamidov had said his Government would ratify, national mechanisms must be granted powers to examine the treatment of persons deprived of their liberty in places of detention. She asked whether the Government of Tajikistan had already considered setting up a national institution for that purpose, if it did not already exist. Who was currently authorized to inspect prisons, who authorized them and according to what criteria? She also sought clarification of the exact procedure for access to a doctor, lawyer and family member by persons taken into custody.

32. The Committee had received useful information from the delegation about one of the compensation cases concerning Tajikistan, but in the seven other cases being examined it had been informed that the complainants had not applied to the courts for compensation. In the case of Mustafakul Boimurodov (communication No. 1,042/2001 before the Human Rights Committee), the Committee against Torture had been told that the complainant's father had applied for compensation on the complainant's behalf to the Supreme Court and the Procurator-General but had so far received no response from the authorities. She asked for clarification and wished to know whether Mr. Boimurodov might expect a response. She also sought additional information on the important case of Mahmudi Iskandarov, since it might help the Committee to understand how the extradition process worked in Tajikistan.

33. She wished to know whether the 2006 Amnesty Act superseded all previous amnesty legislation and would therefore allow all persons accused of committing acts of torture since the country's independence to be prosecuted. Was it true that the Criminal Code contained no provision that prohibited confessions obtained by means of torture from being taken into account by the courts?

34. Mr. KHAMIDOV (Tajikistan) said that he had been a member of the Commission on National Reconciliation, which had been active from July 1997 to March 2000; its principal aim had been to bring about peace in Tajikistan. The 1997 Amnesty Act had been drafted in Moscow but all subsequent legislation had been adopted in Dushanbe, once the opposition had returned to power. Under legislation passed in the late 1990s, all individuals, regardless of their rank in the armed forces, who had been involved in resistance activities during the uprising and the civil war had been amnestied, even if they stood accused of torture. Whereas the 2006 Amnesty Act did not apply to anyone accused of acts of torture, most of those accused of committing or being involved in acts of torture since independence had already been released under the earlier legislation.

35. There had been considerable cooperation between civil society and the Ministry of Justice, and prison visits by NGOs were officially authorized. The authorization of visits was based on trust, but totally free access to prisons could obviously not be permitted. NGOs and international bodies could not be allowed to visit all prisons whenever they wanted. Representatives of ICRC had visited practically all prison facilities in Tajikistan in 2004 and 2005, but security issues and the safety of visitors were now at stake. High-level talks had taken place between the Ministry of Justice and ICRC to draw up a new timetable for unannounced visits to all facilities, and he believed that an agreement could soon be reached.

36. There were currently over 14,000 prisoners in Tajikistan suffering from tuberculosis, and 128 from HIV/AIDS - up from 13 in 2001. In 2005, 62 deaths in custody had been recorded and, in 2006, another 68 had been recorded to date. Following the latest amnesty legislation, over 10,000 prisoners had been released. He could furnish a number of other statistics to the Committee in writing if it so wished.

37. Mr. KHODJAEV (Tajikistan), after outlining the facts of the Boimuradov case, said that following an additional investigation Mr. Boimuradov's conviction and sentence had been upheld.

38. Ms. GAER recalled that the Committee had not examined the facts of the case but rather had examined allegations that Mr. Boimuradov had been tortured and held incommunicado for 40 days. Finding the evidence for those allegations to be compelling, it had requested that compensation should be provided to the victim.

39. Mr. KHODJAEV (Tajikistan) said that, although there were grounds for overturning Mr. Boimuradov's sentence, the latter nevertheless remained in effect. According to domestic legislation, Mr. Boimuradov was therefore not eligible to receive compensation.

40. Regarding the admissibility of evidence obtained through coercion, existing legislation and judicial practice attested to the fact that evidence obtained solely on the basis of a confession was not sufficient to secure a conviction. Although there had been a number of cases in which lower courts had handed down a conviction solely on the basis of an accused person's confession, several such convictions had subsequently been overturned or remitted for further investigation or cases had been dismissed for lack of corroborating evidence. It should be noted that the judicial system consisted of courts of cassation, which supervised the work of the lower

courts, and courts of supervisory instance, which verified the legality and validity of judgements, rulings and decisions, and corrected any errors of substantive or procedural law committed by the trial courts.

41. Mr. SHARIPOV (Tajikistan) said article 49 of the Code of Criminal Procedure provided that individuals accused of a crime or taken into custody should be granted prompt access to doctors, lawyers and relatives.
42. Ms. GAER said that the Committee had received reports of persons being held incommunicado for longer than a month, and others being held in solitary confinement and denied access to a lawyer. Those were situations that left detainees vulnerable to torture. Thus, although it certainly welcomed the enactment of article 49 of the Code of Criminal Procedure, the Committee was more concerned with knowing whether steps were being taken to ensure that such legislation was being fully implemented. She asked whether, for example, prisons were inspected to ensure that detainees were granted access to doctors, lawyers and relatives.
43. Mr. KHAMIDOV (Tajikistan) said that such matters fell primarily under the purview of the Procurator-General. A full explanation as to why access was not allowed in certain cases would be sent to the Committee in writing.
44. Mr. KOVALEV said that since Tajikistan had not entered any reservations to the Convention, it was difficult to understand why no complaints had been addressed to the Committee by individuals from the State party.
45. Mr. KHAMIDOV (Tajikistan) said that there was little public awareness of international law in his country; however, he expected such awareness to increase in the coming years. Tajikistan had every intention of complying with its obligations under the Convention.
46. Ms. BELMIR said that the legislation in force granted broad powers to procurators, such as the ability to extend detentions without a judicial order, and thus limited the rights of detainees at precisely the most delicate stage of proceedings, i.e. at the beginning of an investigation when individuals were taken into custody. She asked whether the State party would consider reviewing its legislation to ensure that it granted detainees the minimum rights prescribed by the Convention.
47. Mr. KHAMIDOV (Tajikistan) said that the lack of checks on the powers exercised by the Procurator-General was a problem that would be resolved before Tajikistan submitted its second periodic report. His Government planned to undertake major judicial reforms, including the lifetime appointment of judges, and representatives of relevant institutions were currently deliberating the issues involved.
48. Mr. KHUDOËROV (Tajikistan) said that the current Code of Criminal Procedure dated from 1961. In May 2000, the President had established a commission to prepare a revised draft code of criminal procedure and thereby address the very questions being raised by the Committee, including detainees' rights, guarantees of a fair trial and the equality of the parties in a criminal action. The issues of torture and the admissibility of evidence extracted through coercion were also being studied.

49. Mr. GROSSMAN asked whether the domestic legislation of Tajikistan granted amnesty to persons convicted of international crimes. He requested additional information on the Iskandarov case.

50. Mr. SHARIPOV (Tajikistan) said that a criminal action had been brought against Mr. Iskandarov pursuant to article 4 of the Criminal Code; he had been detained in the premises of the Ministry of Internal Affairs. From the time of his detention until the end of the preliminary investigation, he had been granted access to a lawyer and had enjoyed all the rights prescribed by the Code of Criminal Procedure. During the preliminary investigation, he had not been subjected to torture. Following the investigation, he had been tried in court and convicted on the basis of the relevant legal provisions.

51. Mr. KHAMIDOV (Tajikistan) thanked the Committee for its efforts in support of his country. He looked forward to receiving the Committee's recommendations and to continued dialogue with it.

52. The CHAIRPERSON wished the Government success in its efforts to improve the enjoyment of human rights in Tajikistan.

The meeting rose at 5.15 p.m.