



OSCE Human Dimension Implementation Meeting

Torture and ill-treatment in Central Asia (Working Session 12, Rule of Law I, 19 September 2017)

The Coalitions against Torture in Kazakhstan, Kyrgyzstan and Tajikistan, the Association for Human Rights in Central Asia (AHRCA, Uzbekistan, established by political emigres in France), the Turkmen Initiative for Human Rights (TIHR, Turkmenistan, based in exile in Austria) and International Partnership for Human Rights (IPHR) deplore the fact that law enforcement officers in Central Asia continue to use torture and other ill-treatment including electric shocks, suffocation, rape and beatings. The organizations are calling on the relevant authorities to take immediate action to prevent torture, punish the perpetrators and provide reparation including fair and adequate compensation to the victims.

Positive measures

The authorities of the Central Asian countries have taken some positive steps in recent years and pledged to make further progress on combatting torture and ill-treatment. For example, improved legislation on safeguards against torture in detention was adopted in **Kazakhstan and Tajikistan** in January 2015 and May 2016 respectively, and in February 2017 the Prosecutor General's Office of Kazakhstan presented its strategy entitled "Towards a Society without Torture" with comprehensive measures including independent investigation of all cases of torture. In **Kyrgyzstan** the Coordinating Council for Human Rights under the Government developed a draft Action Plan for the implementation of the principles of the Istanbul Protocol for 2017-2020, which aims to improve investigations into allegations of torture and ill-treatment. In 2012 **Turkmenistan** included an Article on "torture" in its Criminal Code with a definition that is in line with that contained in the Convention against Torture, and legal provisions were introduced for independent medical examinations of prisoners. In the last year amendments to the Law on the Ministry of Internal Affairs of **Uzbekistan** unequivocally forbid law enforcement officials to use torture or ill-treatment, and legislation was adopted to introduce video and audio recording of interrogations of criminal suspects by 2018.

However, some of these measures have yet to be implemented in practice and other major challenges remain.



Torture and ill-treatment continue to be widely used

Torture and other forms of ill-treatment still constitute a serious problem in Central Asia. In 2016 and the first half of 2017 the NGO coalitions against torture registered 163 / 111¹ new cases of torture or ill-treatment in **Kazakhstan**, 112 / 75 cases in **Kyrgyzstan**, and 57 / 33 cases in **Tajikistan**. These figures only represent the tip of the iceberg as many victims of torture refrain from lodging complaints for fear of reprisals or because they have lost hope of attaining justice. Given the closed nature of **Turkmenistan** and Uzbekistan it is difficult to establish estimates of incidents of torture and ill-treatment, but results from a survey conducted by the NGO Turkmen International Lawyers' Association in 2016 indicate that 90 percent of people detained by law enforcement bodies are subjected to psychological or physical pressure. In **Uzbekistan** torture continues to be routinely used in places of deprivation of liberty run by the National Security Service, as evidenced by the numerous statements of victims and former prisoners received by AHRCA over the past year.

CASE EXAMPLES:

On 19 June 2015 Yusuf Mamed-ogly Pirigam was arrested on drug-related charges and alleges that in Chuy district police station in **Kyrgyzstan's** capital Bishkek, police officers beat him and put a plastic bag over his head to force him to "confess". He lost consciousness and during the night he was taken to hospital by ambulance. The doctor on duty reportedly found that Pirigam had two fractured ribs. On 2 July 2015 he lodged a complaint with the prosecutor's office of Chuy district, but prosecutors decided that no investigation was needed. Since then the case has been opened and closed several times, but investigations have not been conducted effectively; in 2017 the case was transferred for investigation to the State Committee for National Security.

On 29 August 2015 law enforcement officials of the town of Vakhdat, near **Tajikistan's** capital Dushanbe, arrested 35-year-old Umar Babazhanov. At the police station they beat him repeatedly as he was lying on the floor of a corridor and as a result he lost consciousness and was taken to hospital. Umar Babazhanov never regained consciousness and died on 9 September 2015. A forensic examination concluded that he had died from a traumatic brain injury. Since 2015 the procurator's office in Vakhdat has closed the investigation into the case several times and the Prosecutor General's Office has repeatedly referred it back to Vakhdat to resume investigating. Most recently, the Vakhdat prosecutor's office closed the case in June 2017. The lawyer acting for Umar Babazhanov has repeatedly lodged complaints with the Prosecutor General's office, the human rights Ombudsman and the President complaining about the lack of effectiveness of the investigation; obstruction of access to case materials; and failure to question witnesses.

After the failed July 2016 coup attempt in Turkey, the **Turkmenistani** authorities began a severe crackdown on individuals accused of being associated with the Hizmet movement and its leader, Fethullah Gülen, who has been accused of masterminding the coup attempt in Turkey. To our knowledge, over 150 people were detained in Turkmenistan in September/October 2016 and April/May 2017, as part of the anti-Gülen

¹ This figure reflects the period from January to August 2017.

crackdown. Eighteen of them, detained in September/October last year, were handed down prison sentences ranging from 12 to 25 years after a closed, two-hour trial in February 2017, which did not meet international fair trial standards. There are credible allegations that they were held incommunicado during pre-trial detention and that they were being held naked in darkened rooms for long periods and beaten. Unconfirmed reports claim that another man, arrested at the same time, died in custody as a result of torture.

In **Uzbekistan**, a former prisoner who was released from detention in July 2016, told AHRCA on condition of anonymity that his former cell-mates reported that “even the guards in prison colonies beat prisoners. Prisoners are tortured in order to force them to cooperate with the National Security Services, to get them to testify against people that they don’t even know [...] they are just shown a photo and told a name and told to write out a text dictated to them. This practice is particularly used in relation to detainees who have returned to Uzbekistan from abroad”.

In all five countries, victims of torture and ill-treatment face serious disincentives to **lodging complaints**. Kazakhstani law enforcement and prison officials attempt to obstruct the registration of torture complaints by warning victims that they will be held criminally responsible if they provide false information. In Kyrgyzstan, officials of the Prosecutor General’s office have stated their intent to initiate criminal proceedings against victims of torture who withdraw their complaints or refuse to press charges against alleged perpetrators. Across Central Asia protection programmes for those who complain about torture and for witnesses do not function effectively and many refrain from reporting such crimes for fear of reprisals or withdraw complaints after law enforcement officers subject them to or threaten them with further abuse.

Another obstacle for victims in their struggle for justice is the authorities’ failure to ensure that **investigations** are conducted promptly, thoroughly, impartially and independently. None of the five countries has yet put in place independent mechanisms to receive and investigate complaints, despite recommendations to this effect issued to each of them by the United Nations (UN) Committee against Torture in recent years. While steps have been taken particularly in Kazakhstan and Tajikistan to make investigations of torture more effective by strengthening the role of prosecutors, police officers still carry out the actual investigative activities in many cases. In Kyrgyzstan investigative activities into allegations of torture and other ill-treatment are carried out by agents of the State Committee for National Security, an agency that lacks transparency, has close ties with law enforcement agencies, and is itself often implicated in torturing and ill-treating detainees. Even when investigations are conducted exclusively by prosecutors, this does not ensure the effectiveness of the investigation. Prosecutors in Central Asia have an inherent conflict of interest originating from their roles of both taking forward the criminal prosecution and supervising the legality of the investigative process.

Kazakhstan, Tajikistan and Turkmenistan have introduced articles on “torture” into their criminal codes with definitions of this crime that are in line with the UN Convention against Torture. We call on Kyrgyzstan and Uzbekistan to follow their example. However, **impunity** for torture and ill-treatment remains a challenge across the region. Central Asian human rights organizations’ monitoring work reveals that most perpetrators are not brought to justice. The authorities of all Central Asian states fail to publish comprehensive **statistics** on complaints, criminal cases, convictions and means of redress relating to torture and other ill-treatment

covering all relevant articles of the respective criminal codes. In those countries where some official figures are publicly available they reveal large discrepancies between the number of complaints lodged and the investigations subsequently opened; and the number of guilty verdicts handed down is typically very low. For example, according to the Prosecutor General's Office in Kyrgyzstan, 435 complaints were received in 2016; only 35 criminal cases were opened, and only 20 cases reached the courts. Tajikistan has published statistics of all the cases opened for "torture" under Article 143-1 since its introduction into the Criminal Code in April 2012. Only nine criminal cases were initiated; one perpetrator was given a suspended sentence and three were sentenced to between one and seven years' imprisonment. According to the authorities of Turkmenistan, not a single criminal case has been brought in this country since Article 182 on "torture" was introduced in August 2012.

Access of victims of torture or their bereaved families to **reparation** is very limited in Central Asia: in Kazakhstan and Tajikistan NGOs are aware of six cases in each of the two countries where compensation has been awarded for moral damages sustained through torture. These are positive steps and the other countries should make progress in this direction too. At the same time, more has to be done to ensure that the amounts awarded are fair and adequate. Domestic law in all five countries does not provide for the right to rehabilitation services for victims of torture or their bereaved families, and NGOs in Kyrgyzstan and Tajikistan have used their own funds to try to ensure that these needs are met. Other forms of reparation such as measures of satisfaction and guarantees of non-repetition are not available in any of the Central Asian countries.

Kazakhstan and Kyrgyzstan ratified the **Optional Protocol to the Convention Against Torture** (OPCAT) and set up **national preventive mechanisms** (NPMs), which began visiting places of deprivation of liberty in 2014. Both NPMs have proved themselves to be important safeguards against torture, although Kazakhstan's NPM requires further improvements including being able to function with full independence. Tajikistan should build on the experience of the Monitoring Group established under the Ombudsman's Office, which has conducted limited monitoring of places of deprivation of liberty since February 2014, ratify OPCAT and set up its own NPM. There is no independent oversight of detention facilities and prisons in Uzbekistan or Turkmenistan, and independent international human rights monitors continue to be denied access to Turkmenistan.

Recommendations to the authorities of Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and Turkmenistan:

The human rights groups jointly issuing this statement are calling on the authorities of the five Central Asian states to implement the following recommendations as a matter of urgency:

- Legislate that detainees under any form of detention are given access to all fundamental legal safeguards in detention and at the time of arrest, consistently implement these provisions in practice and bring to justice anybody who fails to provide or obstructs access to these safeguards.

- Compile and publish comprehensive statistics on cases of law enforcement agents and other officials accused of, charged with and punished for failing to implement these legal safeguards. Detail the types of punishments handed down.
- Ensure that complainants and witnesses are protected against reprisals as soon as the authorities receive the complaint/witness report and that appropriate disciplinary or criminal measures are imposed against perpetrators for such actions.
- Put in place accountable mechanisms tasked with receiving complaints and conducting prompt, thorough, impartial and independent investigations into allegations of torture and other ill-treatment.
- Bring to justice all perpetrators of torture and other forms of ill-treatment.
- **Kyrgyzstan and Uzbekistan:** Bring the definition of torture contained in the countries' criminal codes in line with the definition included in the Convention against Torture.
- Put in place a unified system to register cases involving torture and other forms of ill-treatment and compile comprehensive statistics disaggregated by sex, age and, where applicable, charges brought, on complaints, investigations, prosecutions, convictions and means of redress. Ensure that not only cases under the article entitled "torture" of the criminal code are included, but all cases involving allegations of torture or other forms of ill-treatment such as those opened under charges of "abuse of authority" and "exceeding official authority".
- Ensure that victims of torture or their bereaved families have access to all forms of reparation, including fair and adequate compensation from the state budget, free rehabilitation, measures of satisfaction and guarantees of non-repetition.
- **Kazakhstan:** Ensure the full independence of the country's National Preventive Mechanism.
- **Tajikistan, Uzbekistan, Turkmenistan:** Ratify the Optional Protocol to the Convention Against Torture and set up an independent, competent and fully resourced National Preventive Mechanism.
- Fully implement all recommendations issued to Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan by relevant UN treaty bodies and procedures.