

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE AGAINST TORTURE 37TH SESSION, 6 - 24 NOVEMBER 2006 REPUBLIC OF TAJIKISTAN (INITIAL REPORT)

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Information submitted to the Committee

On 14 February 2006 the Republic of Tajikistan submitted its initial report¹ as well as an accompanying core report to the Committee Against Torture (the Committee). The concluding observations of the Committee were published on 20 November 2006.²

The initial report covered events that took place from 2000-2004, i.e. after the civil war. The delegation explained the period while Tajikistan was experiencing civil war (1995-2000) was not covered because the situation has since changed. It preferred to cover events within the period 2000-2004 and focused on recent judicial reform. Several Committee members described the report as “unique”- they welcomed its structure and content yet repeatedly enquired into who had assisted in its preparation. In addition, the Committee wondered why the report only covered 2000-2004 and stated that it would ask questions regarding pre 2000. The delegation of Tajikistan was led by the Minister of Justice, Mr Khamidov H.H, and comprised of five high-level representatives. The Committee commented that this demonstrated that the Republic of Tajikistan had a strong commitment to work with the Committee.³

¹ CAT/C/TJK/1. 14 February 2006. The initial report is available at:
<http://daccessdds.un.org/doc/UNDOC/GEN/G06/404/40/PDF/G0640440.pdf?OpenElement>.

² CAT/C/TJK/CO/1. The Concluding Observations are available at:
<http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.TJK.CO.1-new.pdf>

³ The other four members of the delegation included Mr Khodjaev I.H., Chairman of the Supreme Court of Republic Tajikistan, Mr Khudoerov B.T., Head of the department constitutional guaranties of the citizens rights, the Executive apparatus of the President of Republic Tajikistan, Mr Sharipov M.S., Assistant to the General Public Prosecutor of Republic Tajikistan, Mr Djononov S.S., Chief of the contracts and legal management department, the Ministry of Foreign Affairs of Republic Tajikistan.

The World Organization Against Torture (OMCT) in partnership with five Tajik NGOs⁴ submitted a parallel report. Central issues covered in the report include, the fallibility of the definition of torture in the Tajik Criminal Code, criticism of arrests and detention procedures, timing of investigations, the complaints procedure and protection of the witness, as well as two full sections on domestic violence and trafficking.⁵ The Committee commended the collaborative nature of the OMCT report. Dialogue in the NGO briefing session with specialised agencies and NGOs was interactive, and due to the constructiveness of the session, the Chair extended the allotted scheduled time. The dialogue centered on issues of NGO access to prisons, treatment of those individuals working for NGOs by the government, the involvement of medical staff in reporting cases of torture, the application of the Criminal Code, compensation, and independence of the judiciary.

The Republic of Tajikistan acceded to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) on 21 July 1994, and it entered into force in Tajikistan on 10 February 1995.

Themes and issues⁶

Legal framework for implementation of the Convention

The Committee enquired into the legal framework for implementation of the Convention, and particularly stressed its concern about the definition of torture in the criminal code, which does not fully conform to the definition set out in Article 1 of the Convention. The delegation explained that in Tajikistan, any international legal instruments that had been ratified or acceded to by the country have primacy over national law; as a result, international law is directly applicable by Courts. However, it conceded that due to a lack of training of judges, judicial decisions had rarely applied international law in practice. The national definition of torture therefore assumed secondary status.⁷ Tajikistan recognised a number of international instruments that defined torture and claimed that they underpinned their definition of torture. Additionally, the delegation referred to the amendment of the criminal code made in May 2004, which provided a broader definition of torture than in the Convention. The delegation underlined that the purpose of the reforms of the criminal code was to humanise the criminal justice system, improve the conditions of places of detention, in particular through the training of staff. In its Concluding Observations, the Committee recommended to the State Party that the national definition of torture in domestic law includes all of the purposes behind an act of torture, and should ensure that acts of torture by State agents, including attempted torture, complicity, giving orders to torture, and participation in torture are criminal offences punishable in a manner proportionate to the gravity of the crimes committed.

The delegation explained that the Procurator's Office was responsible for supervising the implementation of the Convention through its investigation of correctional facilities. The Committee expressed concern over the extension of power given to the Procurator's Office. The Committee noted that its practises resonated with

⁴ 'Human Rights Violations in Tajikistan. Alternative Report to the United Nations Committee Against Torture', Bureau on Human Rights and Rule of Law, Centre for Human Rights, Collegiums of Advocates of Soghd Region, 'Health' Organization, Analytical consulting centre of Human Rights.

⁵ Published in Geneva-Dushanbe; the report was distributed in the NGO briefing in an unedited version but may be provided on the World Organisation Against Torture (OMCT) website at a later date: www.omct.org.

⁶ An unofficial press release on the session is available at: [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/BF4C951C6E5E7C15C125721300423369?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/BF4C951C6E5E7C15C125721300423369?OpenDocument).

⁷ The delegation brought up the case of an American citizen who had been refused permission to adopt a Tajik child. Although national legislation permitted the adoption, the court refused this as the Convention on the Rights of the Child states that a child should be adopted or brought up by a national in the first instance.

those of the legal procedure in the former Soviet Union, particularly the way in which the provision of a fair trial is compromised. In its Concluding Observations, the Committee recommended to the State Party to establish outside the procurator office a fully independent complaints mechanism for persons who are held in official custody; and to amend its current and planned legislation so that all persons who report acts of torture or ill-treatment are adequately protected. It further required the State Party to take all necessary measures to improve conditions of detention and to provide additional statistical data regarding such conditions.

The Committee enquired whether amnesty was granted to those convicted of crimes of torture. The delegation stated that amnesty has been granted in order to facilitate national reconciliation following the civil war that took place in Tajikistan from May 1992 to June 1997. However, it informed that the most recent Amnesty Act of 2006 did not provide amnesty for those convicted for acts of torture. In its Concluding Observations, the delegation recommended to the State Party to 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. This includes for acts of torture and ill treatment that occurred between the years 1995 to 1999. In relation to prima facie cases of torture, the Committee noted that suspects should be subject to suspension or reassignment during the investigation.

The Committee also asked if Tajikistan had further considered ratification of the Optional Protocol to the Convention to which the delegation did not respond directly. In its Concluding Observations to the State Party, the Committee recommended the delegation for Tajikistan to consider becoming party to the Optional Protocol to the Convention.

Independence of the judiciary

The Committee requested clarifications on the independence and effectiveness of the judiciary. This is because the Committee pointed out that judges are both appointed and dismissed by the President, and that the Procurator has responsibility for both prosecution and oversight of investigations into complaints, and the prevention and implementation of court decisions. In response, the delegation pointed to the July 2002 presidential reform decree that transferred responsibility of reform of the judiciary from the Home Office to the Ministry of Justice. The State Party specifically referred to plans to extend the length of term of judges to become life long members of the judiciary or through an extension of a number of years. The Chairman of the Committee, Andreas Mavrommatis, pointed out that security of tenure was one of the best guarantees for judicial independence. In its Concluding Observations, the Committee recommended to the State Party to make every effort to guarantee the independence of the judiciary by way of being consistent with the Basic Principles on the Independence of the Judiciary. Additionally, the Committee urged Tajikistan to establish a fully independent body outside the Procurator Office in order to provide oversight on the proper conduct of investigations, and to receive and investigate individual complaints.

Pre-trial detention

The Committee required information about the conditions of people in pre-trial detention, including length of time, solitary confinement, and access to lawyers and relatives; in addition, the Committee also asked for information in those cases when a State Officer has restricted this access, whether he may be accountable to sanctions. The delegation informed the Committee that pre-trial detention could be extended to one year and three months and that the chief prosecutor can only decide this. Regarding one case in which parties claim that access to defence counsel and relatives had been denied, the delegation stated that it would answer this allegation in writing by 24 November 2006. It nevertheless did highlight the case of a State Officer who was convicted for illegally detaining individuals and forcing them to confess crimes they had not committed. In its Concluding Observations, the Committee recommended to the State Party to shorten the current pre-trial detention period (*doznanie*), and ensure independent judicial oversight of the procurator who decides the period and conditions of pre-trial detention, including *doznanie* imposed by the Ministry of Security. It

encouraged Tajikistan to adopt measures to ensure detainees have prompt access to a lawyer, doctor and family members from the time they are taken into custody. The Committee encouraged Tajikistan to ensure that legal assistance and independent medical expertise is provided at the request of detained persons rather than solely when permitted or requested by officials. Additionally, it urged Tajikistan to carry out prompt, impartial and full investigations into all complaints and all instances of deaths in custody, making results available to relatives of the deceased.

The delegation also explained that it was aware of problems of tuberculosis and overcrowding in pre-trial detention centres as well as in prisons, but a lack of funds meant it was difficult to reach international standards. The Committee recommended Tajikistan improve conditions of pre-trial detention.

Conviction based on confession

Mrs Gaer, who acted as the Special Rapporteur to Tajikistan, referred to reports that persons had been convicted for crimes solely on the grounds of a confession. She questioned how distinctions were made on how confessions had been obtained as well as whether sanctions were placed on the judiciary who relied too heavily on confessions in their decisions. In response, the delegation assured that a conviction based solely on confession was prohibited under the Criminal Code and that there had been cases dismissed because charges were indeed based solely on confession. In its Concluding Observations, the Committee recommended to the State Party to review such instances in the period since Tajikistan became a party to the Convention, recognising 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 adequate remedial measures. It requested Tajikistan to provide information on any jurisprudence that excludes statements obtained as a result of torture being admitted as evidence and to revise its legislation to prohibit the use of evidence obtained as a result of torture in court proceedings.

Compensation for victims

The Committee asked whether the delegation could provide examples of when courts had responded to requests for compensation. In particular it asked for examples of compensation that had been provided for in the form of medical and psychiatric counselling. The delegation assured the Committee that the right to compensatory measures was included in the Criminal Code but could not support this with examples.

The Committee also requested information on prompt investigation, rapid prosecution and conviction, as well as provision of compensation for three cases of torture and ill treatment by militia officers. This information was requested in the concluding observations of the Human Rights Committee.⁸ In response, the delegation informed the Committee that out of the files charged against the officers, a State official had been charged, the complaint of trauma was still pending and that there had been no appeal for compensation. The Committee later questioned this lack of appeal, and the delegation accepted there was a need to ensure easier access for civil society to appeal for compensation. In its Concluding Observations, the Committee recommended the State Party to enable victims of all forms of torture to file complaints and receive fair and adequate compensation in a timely manner, including those cases from 1995-1999.

Access to places of detention

The Committee enquired into reports that the Republic of Tajikistan had refused to give the International Committee of the Red Cross and the Red Crescent (ICRC) access to their detention facilities. In response, the delegation informed that they were open to discussion to re-establish their relationship with the ICRC and suggested that this might be facilitated if they were given a timetable of scheduled visits.

⁸ CCPR/CO/84/TJK, 18 July 2005 and CCPR/C/TJK/CO/4/Add.1, 17 July 2006. For the Concluding observations (see P. 2, 10) and Follow-up responses (see P.3, 10) to the Human Rights Committee session on Tajikistan in 2005 refer to: <http://www.ohchr.org/english/bodies/hrc/hracs84.htm>.

The Committee enquired into NGO access into prisons. In response, the delegation said that the Minister of Justice and the Chairperson of the Supreme Court selected which organisations are given access to prisons in Tajikistan, but gave no further detail. The Committee also raised concerns that the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr Bacre Waly Ndiaye, in 1996 had been refused access to Tajikistan, to which the delegation did not have time to respond.⁹ In its Concluding Observations, the Committee recommended to the State Party to consider setting up a national system to review all places of detention and cases of alleged abuses while in custody, as well as to ensure 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 was encouraged to establish transparent administrative guidelines and criteria for access, and facilitate visits by independent national monitors and other bodies such as the ICRC, Office of the High Commissioner for Human Rights, and independent NGOs.

The principle of non-refoulement¹⁰

Ms Gaer asked about how the State Party ensured that a person would not be subjected to torture when returned to a country. In this regard, Ms Gaer also enquired into the relationship of the State with the United Nations High Commission for Refugees (UNHCR) specifically raising UNHCR complaints from April 2005 of the forced deportation of refugees to Afghanistan. In the case of an Afghani family who had been made to return to their country despite living in Tajikistan for a long period, the Committee asked if the family had been given the opportunity to challenge the sentence in a second hearing. For all of these inquiries the delegation did not find time in the session to respond. The Committee recommended to the State Party to fully implements its obligations under Article 3 of the Convention, and cooperate with representatives of the UNHCR, including granting effective access to files pertaining to asylum seekers.

Conclusion and next steps

The Committee welcomed the initial report of Tajikistan and the valuable information presented therein, although observing that the report was submitted 10 years late and covered only the period 2000-2004, instead of 1995-2004.

The delegation welcomed the fruitful and helpful dialogue with the Committee and understands the amount of work that remains to be done to achieve a good level of compliance with the Convention.

In its Concluding Observations, the Committee welcomed the assurance given by the delegation that written information will be submitted regarding those questions that remained unanswered, including information on the period 1995-2000 and on the arrest of Mahmadrusi Iskandarov. The Committee requested 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 of the Concluding Observations.

⁹ E/CN.4/1997/60. The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions is available at: <http://www.hri.ca/fortherecord1997/documentation/commission/e-cn4-1997-60.htm>.

¹⁰ 'The principle of non-refoulement constitutes an essential component of asylum and international refugee protection. The essence of the principle is that a State may not oblige a person to return to a territory where he may be exposed to persecution.' UNHCR definition, 20 November 2006. For more information refer to their website: <http://www.unhcr.org/publ/RSDLEGAL/437b6db64.html>.

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