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STATEMENT BY THE NGO COALITIONS AGAINST TORTURE IN KAZAKHSTAN, KYRGYZSTAN AND TAJIKISTAN*

Working Session 2: National level responses and the role of the National Preventive Mechanisms

Kyrgyzstan and **Kazakhstan** became parties to the Optional Protocol to the Convention against Torture (Optional Protocol) in 2008. We are calling on **Tajikistan** to follow their example, establish the relevant procedures and ratify the Optional Protocol as a matter of urgency.

Kazakhstan

Kazakhstan adopted legislation to set up the NPM in 2013. In January 2014, a Coordination Council was established under the chairmanship of the Ombudsman to coordinate the activities of all NPM members. On 19 February, at its first session, the Council elected all members of the NPM to work in all regions across the country.

However, we are concerned that the legislation regulating the NPM is not in full compliance with the Optional Protocol.

The NPM was formed as an add-on to the Ombudsman's office ("Ombudsman+") and is expected to execute his strategies. This poses potential threats to the independence of the NPM. The Ombudsman is a civil servant and a state employee, appointed by the President of Kazakhstan, and required to abide, among others, by the Ethics Code for Civil Servants and/or State Employees. This Code instructs civil servants and/or state employees to refrain from undertaking "any discrediting actions against the institutes of the State."

In addition, the NPM has no financial autonomy as the government decides its budget. Thus the executive branch of power may exercise undue influence on the number of monitoring visits and the ability of NPM members to travel across the country for monitoring visits.

We are also concerned that the current monitoring mandate of the NPM does not cover all places of deprivation of liberty. The NPM has no access to nursing homes for the elderly and disabled and it is not permitted to inspect offices of police departments.

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The law is vague about the circumstances that may cause removal of an NPM member from the monitoring group. As grounds for such a dismissal the law refers to “causing a threat to the functioning safety of the facility”, “interference with the activities of the facility”, or “circumstances raising doubts about the impartiality of the NPM participant”.

Kyrgyzstan

The functioning of the NPM in Kyrgyzstan is seriously hampered by lack of funding.

In June 2012, the Parliament of Kyrgyzstan set up the National Centre of the Kyrgyz Republic for the Prevention of Torture and endowed it with powers to carry out the functions of the NPM. The law authorized the NPM to select its own members, to visit detention facilities without prior notification, to make recommendations to other government agencies and obliged these agencies to consider the NPM's recommendations and conduct a dialogue about recommended improvements with the NPM.

On 2 August 2013, the Director of the NPM was selected and is currently engaged in setting up the institutional framework of the new NPM. However, no funds were earmarked for the NPM for 2013 and 2014. The NPM's Director does not receive a salary and the NPM does not even have a legal address as it was not provided with a building as a base of its functioning.

Tajikistan

In order to strengthen safeguards against torture, the Coalition against Torture in Tajikistan has also advocated for independent monitoring of detention facilities and ratification of the Optional Protocol.

In December 2012, the Tajikistani Human Rights Ombudsman proposed establishing a working group on monitoring places of detention. The Monitoring Group was intended to become a basis for the establishment of an NPM under the Optional Protocol in the future.

In the first half of 2013, discussions took place between the NGO Coalition against Torture in Tajikistan and the Ombudsman over the composition of the Monitoring Group. The Coalition maintained that the Monitoring Group's activities should comply with the Paris Principles and the Optional Protocol, and that the composition of the Monitoring Group should ensure independence and impartiality. The Coalition argued against including representatives of government authorities, and lobbied for an agreed protocol for the Monitoring Group, which set out the scope of its activities. This document was approved by the Ombudsman on 30 December 2013. The Monitoring Group started its work in February 2014. However, in some instances the administration of detention facilities denied access to NGO representatives belonging to the Monitoring Group even though the relevant government agencies had been informed of the Group's establishment and its powers.

Recommendations

In order to bring the functioning of the NPM in **Kazakhstan** in line with the country's international obligations, we believe that the authorities of Kazakhstan should:

- Authorize the NPM to monitor all places of detention, in line Article 4 of the Optional Protocol to the UN Convention against Torture.
- Ensure that the NPM is fully independent from the executive branch of power, including that it is financially autonomous. Consider making Parliament responsible for deciding the NPM's budget.
- Issue legislation clarifying that the NGO/civil society members of the NPM are not understood to be state employees and are not bound by the ethics rules of state employees or state servants.
- Introduce legislation that precisely defines all and any grounds for dismissal of NPM members.

The authorities of **Kyrgyzstan** should promptly implement the following concluding observations that the UN Committee against Torture issued with regard to Kyrgyzstan in December 2013:

- The National Centre for the Prevention of Torture must be provided with the necessary financial, human and material resources to fulfil its mandate independently and effectively.

- All persons involved in the administration of places of detention must be made aware of the rights of members of the National Centre for the Prevention of Torture.

With regard to **Tajikistan** we believe that the following recommendations are currently the most pressing. The authorities should:

- Grant prompt access of the Monitoring Group established under the Ombudsman to all temporary detention facilities (IVS), pre-trial detention facilities (SIZO) and other places of deprivation of liberty to civil society activists, in order to conduct independent monitoring.
- Put in place the relevant procedures and ratify the Optional Protocol to the Convention against Torture as a matter of urgency.