



2015 OSCE Human Dimension Implementation Meeting Working Session 8 Rule of Law: Prevention of torture (25 September 2015)¹

Kazakhstan, Kyrgyzstan and Tajikistan need to do more to end torture

The NGO coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan, Helsinki Foundation for Human Rights (Poland) and International Partnership for Human Rights (Belgium) would like to commend the authorities of **Kazakhstan, Kyrgyzstan and Tajikistan** for recently having pioneered several positive steps and urge them to follow each other's examples. In addition, they should implement all recommendations issued to them by United Nations (UN) human rights bodies and procedures in recent years as a matter of priority.

Kazakhstan's new Criminal Code that came into force in January 2015 excluded those charged or convicted of "torture" from amnesties and abolished the statute of limitations applicable to this crime. Legal safeguards pertaining to detainees in pre-trial detention were significantly strengthened in the new Criminal Procedure Code that came into force the same month. For example, it clarified that key safeguards including access to a lawyer must be in place upon or promptly after apprehension.

In **Kyrgyzstan** and **Tajikistan** the Ministry of Health obliged medical personnel – when conducting examinations of detainees -- to document torture and other ill-treatment in line with principles contained in the UN's Istanbul Protocol.

Torture victims or their families have received compensation payments for moral damages based on rulings of civil courts in **Kazakhstan** and **Tajikistan**. In Kazakhstan the civil courts acted after United Nations treaty bodies had urged Kazakhstan to provide compensation to torture victims who had applied to the UN bodies under their individual complaints procedure.

In **Kyrgyzstan** a fully independent National Preventative Mechanism (NPM), set up under the National Center of the Kyrgyz Republic for the Prevention of Torture, started visiting detention facilities in 2014. The same year **Kazakhstan's** NPM, set up under the Ombudsman's office, also started its work and has already discussed its first Consolidated Report, issued in May 2015.

In November 2014, the Criminal Procedure Code of **Tajikistan** was amended to the effect that extradition must be denied when there is a risk of torture in the receiving country. **Kazakhstan** has similar legislation in place.

Despite these steps, torture and ill-treatment continue in all Central Asian countries and impunity is the norm. The authorities do not publish comprehensive statistics on cases of torture and ill-treatment.

Since January 2015, the NGO Coalition against Torture in **Kazakhstan** has registered 67 new cases of men, women and children who allege to have been subjected to torture and other ill-treatment. In the same period, the NGO Coalition against Torture in **Kyrgyzstan** registered over 98 new cases and the NGO Coalition in **Tajikistan** registered 32 new cases.

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RECOMMENDATIONS

We urge the authorities of Kazakhstan, Kyrgyzstan and Tajikistan to:

- follow each other's recent positive steps in order to combat torture and other ill-treatment more effectively:
 - **Kyrgyzstan** and **Tajikistan** should abolish the statute of limitations for torture and other forms of ill-treatment.
 - **Kyrgyzstan** and **Tajikistan** should exclude perpetrators of torture and other forms of ill-treatment from amnesties.
 - **Kyrgyzstan** and **Tajikistan** should clarify in domestic legislation that a person is considered a detainee as soon as he or she is deprived of liberty and amend the countries' criminal procedure codes to ensure that they explicitly provide, from the moment of deprivation of liberty, for the right to notify a third person, for access to a lawyer of their choice and ensure that detainees are informed of these rights at the moment of de facto apprehension.
 - In order to further strengthen the legal safeguards of detainees in **Kazakhstan** the authorities should build on the current practice whereby traffic police video-record all interactions with citizens about traffic rules and oblige all police carrying out arrests to video-record the arrest and transfer to the detention facility.
 - The Ministry of Health of **Kazakhstan** should oblige medical personnel, when conducting examinations of detainees, to document torture and other ill-treatment in line with principles contained in the UN Istanbul Protocol. Other medical personnel also conducting examinations of detainees in **Kazakhstan, Kyrgyzstan** and **Tajikistan** should also be obliged to follow the same standards.
 - **Kyrgyzstan** should ensure that victims of torture and other ill-treatment or their families are compensated for moral damages by the State. **All three countries** should ensure that torture victims have access to redress, including fair and adequate compensation and rehabilitation for damages caused by torture.
 - **Tajikistan** should swiftly ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and establish an effective National Preventive Mechanism.
 - **Kyrgyzstan** should amend its legislation to the effect that extradition must be denied when there is a risk of torture in the receiving country.
- Publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture and other ill-treatment.
- Publicly state that torture and ill-treatment are strictly prohibited in all contexts and that law enforcement agents and military personnel responsible for such crimes will be brought to justice.
- Instigate prompt, thorough, impartial and independent investigations into all allegations of torture/ill-treatment and bring anyone reasonably suspected of being responsible to justice.
- Implement the recommendations of UN human rights bodies and procedures as a matter of priority.

In accordance with the principle that issues relating to human dimension commitments are matters of direct and legitimate concern to all OSCE participating States, all other participating States should:

- Urge the governments of **Kazakhstan, Kyrgyzstan** and **Tajikistan** to promptly implement all recommendations mentioned above and make torture prevention a priority in bi-lateral meetings and human rights dialogues.
- Make the anti-torture message a core element of all programmes, where foreign governments provide training, support or cooperate in other ways with **Kazakhstani, Kyrgyzstani** and **Tajikistani** government agencies, in particular law enforcement agencies and the armed forces.