



## Tajikistan

### Amnesty International submission to the UN Universal Periodic Review 12<sup>th</sup> session of the UPR Working Group, October 2011

#### **B. Normative and institutional framework of the State**

##### *Torture and other ill-treatment: shortcomings of domestic law*

The Criminal Code contains several provisions applicable in cases involving torture or other ill-treatment, including “torture” (Article 117), “abuse of official authority” (Article 314) and “exceeding official authority” (Article 316). However, the definition of torture provided in domestic law is not in full conformity with the definition in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This was pointed out by the Committee against Torture in the Conclusions and Recommendations adopted following its consideration of Tajikistan in November 2006.<sup>1</sup> The Committee specified that the definition of torture in domestic law falls short of the Convention “particularly regarding purposes of torture and its applicability to all public officials and others acting in an official capacity”.

The Criminal Procedure Code stipulates that law enforcement officers must register the detention of a person within three hours of that person being taken to an “agency of criminal prosecution“, such as a police station or the building of the Department for the Fight against Organized Crime (also known as the 6<sup>th</sup> Department) of the Ministry of Internal Affairs.<sup>2</sup> The detention record has to include the time and place of the detention. Contrary to international standards, domestic legislation does not require law enforcement officers to include information in the detention record about the identity of the officers involved in detaining a person, a practice that facilitates impunity.<sup>3</sup>

#### **C. Promotion and protection of human rights on the ground**

##### **Freedom of expression**

In recent years independent media outlets and journalists have faced criminal and civil law suits for criticizing the government. Pressure on media outlets that voiced criticism of the authorities increased prior to the parliamentary elections in February 2010, and following the September 2010 ambush in Rasht district by alleged Islamist militants and former opposition commanders in which 28 government troops were killed. For example, in September and October 2010 websites of local news agencies and an opposition blog were allegedly blocked by the authorities, and tax inspections allegedly targeted media outlets that had criticized the authorities in connection with the events in Rasht.

<sup>1</sup> Conclusions and recommendations of the Committee Against Torture, 37<sup>th</sup> Session, November 2006, UN Document CAT/C/TJK/CO/1

<sup>2</sup> Article 94, part 1 of the Criminal Procedure Code.

<sup>3</sup> Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Thus, in November 2010 Makhmadyusuf Ismoilov, a journalist for the weekly *Nuri Zindagi* (Ray of Life) newspaper, was charged with defamation and insult, incitement of regional hatred, and extortion. Some of the charges related to a newspaper article he had written about public expenditure, in which he had alleged some officials had committed crimes, including corruption, and that other senior officials had covered these up. Amnesty International believes that these charges may be politically motivated. Similarly, in January 2011 the head of the 6<sup>th</sup> Department lodged a civil suit against the news agency Asia Plus, accusing it of insulting and tarnishing the 6<sup>th</sup> Department's reputation in a December 2010 article about torture and ill-treatment allegedly carried out by 6<sup>th</sup> Department officers.

Defamation and insult are acts punishable under Articles 135 and 136 of the Criminal Code of the Republic of Tajikistan respectively. Defamation through mass media or the internet is punishable by penalties including fines of up to 1,000 times the minimum monthly wage and imprisonment of up to two years. Insults through mass media or the internet are punishable by a fine of up to 500 times the minimum monthly wage or correctional labour of up to two years.<sup>4</sup> Under Article 137 publicly insulting or slandering the President is punishable by a fine of up to 500 times the minimum monthly wage, or correctional labour of up to one year. The same actions committed using mass media or the internet are punishable by correctional labour of up to two years or imprisonment of up to five years.

Amnesty International does not believe the criminal justice system is the appropriate mechanism for resolving defamation or insult cases, which are better settled under civil law. However, when damages in civil law cases are severe, such cases can also result in grave violations of the right to freedom of expression.

### **Torture, other ill-treatment and impunity**

Torture and other ill-treatment by law enforcement officers are believed to be widespread across Tajikistan. Victims include those accused of Islamic extremism, but also those accused of ordinary crimes. Often torture is used to extract confessions or other information incriminating the victim or others, and confessions extracted under duress are used as evidence in courts.

Torture or other ill-treatment mostly takes place in detention facilities run by the Ministry of Internal Affairs. The State Committee of National Security, which runs temporary detention facilities and a pre-trial detention facility, is also reported to torture and ill-treat detainees.

Torture practices reported in Tajikistan include the use of electric shocks; attaching plastic bottles filled with water or sand to the detainee's genitals; burning with cigarettes; and beating with batons, truncheons and sticks, in addition to kicking and punching.

In domestic legislation, crucial safeguards against torture only apply to "detainees". However, law enforcement officers often summon a person as a "witness" or a "victim of crime" for questioning or simply "for a conversation". If the person is subsequently formally detained their detention record is drawn up much later than at the time when they were effectively deprived of their liberty.

The Criminal Procedure Code stipulates that detainees have a right to access to a lawyer from the moment of detention and that lawyers are entitled to have unlimited and confidential meetings with

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<sup>4</sup> Article 52, part 1 of the Criminal Code stipulates that a person sentenced to correctional labour is not deprived of his/her liberty but must carry out work for less than the normal remuneration.

their client and to be present during interrogations.<sup>5</sup> However, domestic legislation provides no mechanism whereby a detainee could contact a lawyer immediately after he or she is deprived of their liberty. In addition, there are numerous obstacles preventing access to lawyers. Throughout pre-trial detention investigators and personnel of detention facilities often find pretexts to prevent lawyers from seeing their clients. Lawyers risk reprisals when insisting on adhering to basic safeguards against torture.

Domestic legislation obliges law enforcement officers to notify family members within 12 hours after a person is detained.<sup>6</sup> However, this time frame is often not adhered to in practice.

The Criminal Procedure Code further states that after a maximum of 72 hours' detention, a detainee has to be released or brought before a court, which can authorize their continued detention.<sup>7</sup> Judges at these hearings do not routinely inquire into the treatment in police detention and usually ignore torture allegations.

There are no routine medical examinations when detainees are admitted to police stations and temporary detention facilities. When detainees are transferred to the pre-trial detention facility under the jurisdiction of the Ministry of Justice they undergo a medical examination. However, the medical personnel of pre-trial detention facilities rarely take appropriate steps when there is reason to suspect that a detainee underwent torture or other ill-treatment and often they are simply returned to the temporary detention facility until the injuries are not visible anymore.

Lawyers, human rights activists and journalists risk repercussions when raising torture allegations. Victims rarely lodge complaints about abuse by law enforcement officers for fear of repercussions, and impunity for such abuse is the norm. Often relatives and lawyers also refrain from filing complaints so as not to worsen the situation for the detainee. Judges in most cases either do not act on torture allegations or invite the alleged perpetrators to testify in court and then fully rely on their denial of any wrongdoings.

In Tajikistan the Prosecutor's offices are tasked with investigating allegations of torture. However, prosecutors often rely on "evidence" extracted under duress in court. Close personal and structural links between Prosecutor's offices and police further undermine the impartiality of prosecutors.

NGO access to detention facilities is extremely limited and the International Committee of the Red Cross has not had access since 2004. Tajikistan has not ratified Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which would provide a national preventative mechanism.

### **Violence against women**

Violence against women remains a serious problem; between one third and half of all women have suffered physical, psychological or sexual violence at the hands of their husbands or other family members at some time during their lives.<sup>8</sup> There are insufficient services to protect survivors of domestic violence, such as temporary shelters, and adequate and safe alternative housing in the longer

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<sup>5</sup> Article 22, part 1 and Article 53, part 2 of the Criminal Procedure Code.

<sup>6</sup> Article 100, part 1 of the Criminal Procedure Code.

<sup>7</sup> Article 104, part 2 of the Criminal Procedure Code.

<sup>8</sup> Tajikistan: Violence is not just a family affair: Women face abuse in Tajikistan; AI Index EUR 60/001/2009; <http://www.amnesty.org/en/library/info/EUR60/001/2009/en>

term. There is no nationwide cross-referral system between health workers, crisis and legal aid centres and law enforcement agencies. Women's access to the criminal justice system is very restricted with inadequate police and judicial response, resulting in massive under-reporting. No comprehensive statistics exist on cases of domestic violence, disaggregated by sex and indicating the relationship between survivor and perpetrator. The draft law "Social and legal protection from domestic violence" – in preparation for several years – has still not been presented to parliament. There is a lack of mandatory training programmes for police, judges and medical staff.

A major factor contributing to the high rate of domestic violence is the failure of the state to take adequate measures to prevent illegal early marriages.<sup>9</sup> Moreover, women and girls are exposed to various forms of discrimination through the state's failure to ensure that all marriages are registered and that the law banning polygamy is enforced. Unregistered marriages are not recognised in law, leaving women in such marriages without any of the legal protection a spouse is entitled to.

### **Death penalty**

Tajikistan has not sentenced to death or executed anyone since the country's moratorium took effect in April 2004. However, both the Constitution and the Criminal Code retain provisions for the death penalty. According to official information, the authorities are currently considering abolishing the death penalty.

## **D. Recommendations for action for the State under review**

### **Amnesty International calls on the government of Tajikistan:**

#### *Torture and other ill-treatment: shortcomings of domestic law*

- To bring the definition of torture in domestic law in line with the definition under Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- To amend the Criminal Procedure Code to the effect that detention records have to record the identity of the officers involved in detaining a person, in line with Principle 12 of the Body of Principles on Detention or Imprisonment.

### **Freedom of expression**

- To abolish laws criminalizing defamation and insult.
- To ensure that no criminal charges are brought against journalists solely as a result of the lawful exercise of their right to freedom of expression.
- To ensure that penalties in civil cases for tarnishing the reputation of public officials are not disproportionate and do not result in violations of the right to freedom of expression.

### **Torture, other ill-treatment and impunity**

- To ensure that the detainee's right to a lawyer of choice and to unlimited and confidential access is adhered to in all cases.
- To ensure that judges ruling on authorizing pre-trial detention also inquire into the treatment of detainees while in custody, in line with Principle 37 of the Body of Principles on Detention or

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<sup>9</sup> In domestic law the minimum marriageable age is 17 years. Under exceptional circumstances courts can lower the minimum age to 16.

Imprisonment. If the inquiry, or the detainee's own statement, gives reason to believe that torture or ill-treatment was committed, the judge should issue instructions that an effective investigation be carried out.

- To ensure that suspects are examined by an independent doctor shortly after their detention and when they are admitted to a temporary detention facility.
- To adopt legislation to the effect that no statement or confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means.
- To ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

### **Violence against women**

- To compile and publish accurate statistics disaggregated by sex, age, disability and ethnicity and indicating the family relationship between survivor and perpetrator on reports, investigations and prosecutions of violence against women across Tajikistan.
- To treat violence against women as a criminal offence and prosecute it ex-officio so that the burden to initiate prosecutions in cases of domestic violence does not lie with the survivor.
- To amend the Criminal Procedure Code to ensure that women's complaints of violence by husbands or other intimate partners or family members are investigated promptly, impartially and thoroughly.
- To draft, adopt and implement civil law establishing an accessible and effective system of protection and non-molestation orders.
- To promptly allocate secure, long-term government funding, or actively seek donor funding, to set up appropriate shelters across the country in sufficient numbers, in collaboration with NGOs experienced in working to protect women from violence.
- To raise public awareness across Tajikistan that gender-based violence is a human rights violation and a crime which will be effectively sanctioned, whether committed by a state agent or a private individual. Government officials should publicly condemn violence against women.
- To enforce the instructions to mullahs to carry out religious marriages only after a certificate of civil marriage has been presented.

### **Death penalty**

- To fully abolish the death penalty as a matter of urgency and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.