

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/TJK/CO/2)

TAJIKISTAN

(...)

C. Principal subjects of concern and recommendations

(...)

Fundamental legal safeguards

8. The Committee takes note of the procedural safeguards introduced in the 2010 Code of Criminal Procedure (CPC), including the registration of detainees within three hours of arrival at the police station (art.94.1), the right to have a lawyer (arts.22.1 and.49.2), and the right not to be detained for more than 72 hours from the moment of arrest (art.92.3). However, the Committee expresses concern that the lack of clarity as to when the person is considered to be detained under this law (art. 91.1), leaves detainees without basic legal safeguards for the period between arrest and official acknowledgement of detention. It has been reported that, in practice and in the majority of cases, detainees are not afforded the rights of timely access to a lawyer and an independent doctor, notification of family members, and other legal guarantees to ensure their protection from torture. In particular, the Committee is concerned by numerous allegations regarding the failure of police officials to keep accurate records of all periods of deprivation of liberty; to register suspects within three hours of arrival at the police station; to adhere to the 72-hour time limit for releasing or transferring suspects from a police station to pretrial detention facilities; and to notify family members of transfers of detainees from one place of deprivation of liberty to another. Furthermore, it is concerned that article 111-1 of the CPC allows judges to authorize pretrial detention solely based on the gravity of the alleged crime committed, and that it can be extended up to 18 months (art. 2).

The Committee urges the State party to take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their apprehension. In particular, the State party should:

(a) Amend the CPC to ensure that arrest starts from the moment of de-facto apprehension;

(b) Establish an official, central register in which the arrest is scrupulously and immediately recorded, including at the minimum: (i) the

time of arrest; (ii) the reason for arrest; (iii) the names of the arresting officer(s); (iv) the location where they are detained and any subsequent transfers; and (v) the names of the officers responsible for them in custody. Responsible officers who fail to record such information should be held accountable;

(...)

Allegations of torture and ill-treatment

9. The Committee is seriously concerned about numerous and consistent allegations, corroborated by various sources, of routine use of torture and ill-treatment of suspects, principally to extract confessions to be used in criminal proceedings, primarily during the first hours of interrogation in police custody as well as in temporary and pretrial detention facilities run by the State Committee of National Security and the Department for the Fight against Organized Crime (arts. 2, 10, 11, 12, 13, 15 and 16).

As a matter of urgency, the State party should take immediate and effective steps to eradicate and prevent acts of torture and ill-treatment throughout the country, particularly in police custody and in temporary and pretrial detention facilities run by the State Committee of National Security and the Department for the Fight Against Organized Crime. The Committee further urges the State party to:

(a) Promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment;

(...)

Investigations and impunity

11. The Committee is deeply concerned that allegations of torture and ill-treatment are not promptly, impartially or effectively investigated and prosecuted, thus creating a climate of impunity. The Committee is further concerned that under article 28(1) of the CPC, a court, judge, prosecutor, or an investigator may terminate criminal proceedings and exempt the person in question from criminal liability. Such actions can be taken on the basis of repentance, conciliation with the victim, change of circumstances, or expiration of the period of statute of limitation for criminal prosecution (arts. 2, 12, 13 and 16).

The State party should:

(...)

(c) Revoke provisions in the CPC allowing termination of criminal proceedings and exemption of the defendant from criminal liability whenever the case concerns allegations of torture and ill-treatment.

(...)

Conditions of detention

14. While welcoming current efforts by the State party to improve conditions of detention in prisons and pretrial detention facilities, the Committee is concerned at:

(a) Reports of lack of hot water supply; inadequate sanitary conditions; poor ventilation; lack of means to dry clothes, which leads to respiratory infections and sickness; lack of personal hygiene products; and inadequate food and health care;

(b) Unnecessarily strict regimes for inmates serving life imprisonment, who are reportedly confined in virtual isolation in their cells for up to 23 hours a day in small, airless cells; do not have access to lawyers; are only permitted visits by family members once a year; and are denied various activities in prison;

(c) Continued lack of systematic and independent review of all places of detention by national or international monitors, including the International Committee of the Red Cross (ICRC). While noting that the Ombudsman may undertake visits to places of detention, the Committee is concerned that the findings are not made public;

(d) The lack of a complaints mechanism for detainees. Despite the information provided by the State party that complaints of torture or ill-treatment can be submitted in sealed envelopes, they reportedly do not reach the relevant authorities and prisoners often do not have access to pens and paper;

(e) The fact that the number, location, capacity, and the number of detainees in penitentiary institutions in Tajikistan are considered as “state secrets”.

The State party should:

(a) Allocate sufficient budgetary resources to improve conditions in all places of detention;

(b) Eliminate the complete isolation of prisoners serving life imprisonment, improve their living conditions, and repeal legislation limiting their contacts with lawyers and family members;

(c) Take concrete steps, as a matter of priority, to ratify the Optional Protocol to the Convention and establish an effective National Preventative Mechanism which is resourced and permitted to conduct regular, independent, unannounced and unrestricted visits of inspection to all places of deprivation of liberty, with opportunity for inspectors to speak privately with individual detainees. In the meantime, grant unimpeded access to the ICRC and independent non-governmental organizations to all places of detention, and ensure that the Ombudsman undertakes regular, unannounced visits to all places of deprivation of liberty, accompanied by medical professionals, including to places of police custody, and that the findings are made available publicly;

(d) Establish an effective, accessible and confidential system for receiving and processing complaints regarding torture or ill-treatment in

all places of detention, and ensure that: (i) every detainee has unimpeded and unsupervised access to the prosecutor upon request; (ii) all complaints are promptly, impartially and effectively investigated; (iii) perpetrators are punished with appropriate penalties; and (iv) complainants do not suffer any reprisals;

(...)

26. The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations relating to: (a) conducting prompt, impartial and effective investigations; (b) ensuring or strengthening legal safeguards for persons detained; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8(a) and (b), 9(a), 11(c), and 14(a), (b), (c), and (d) of the present document.
