

# TAJKISTAN

**Torture and other ill-treatment, impunity, violations of freedom of expression, violence against women and retention of the death penalty**

*Amnesty International  
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**AMNESTY  
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# INTRODUCTION

In this submission, prepared for the Universal Periodic Review of Tajikistan in October 2011, Amnesty International raises concerns about shortcomings of domestic law in relation to the prohibition of torture and other ill-treatment. Amnesty International also expresses concern at restrictions on freedom of expression - independent media outlets and journalists have faced criminal and civil law suits for criticizing the government in recent years. Torture and other ill-treatment by law enforcement officers are believed to be widespread across Tajikistan. Violence against women remains a serious problem. Both the Constitution and the Criminal Code retain provisions for the death penalty, although the authorities are currently considering abolishing the death penalty, according to official information.

## NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

### TORTURE AND OTHER ILL-TREATMENT: SHORTCOMINGS OF DOMESTIC LAW

The Criminal Code of Tajikistan 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 of Tajikistan 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 6th 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>

Amnesty International also considers it to be problematic that Article 94, part 2 of the Criminal Procedure Code only requires law enforcement officers to inform detainees of their rights once the detention record has been drawn up. Principle 13 of the Body of Principles on Detention states that “[a]ny person shall, at the moment of arrest and at the commencement of detention or imprisonment, or

promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.”

## 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 and exercising their right to freedom of expression. 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.

#### Case examples

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 his journalistic work and Amnesty International believes they were brought to punish him for peacefully exercising his right to freedom of expression. There are also allegations that the charge of extortion was brought to punish him for his work as a journalist.

In another case, BBC journalist **Urunboy Usmonov** was arrested and charged with Article 307.3, part 2 of the Criminal Code of Tajikistan, “Participation in a banned extremist organization” in June 2011. Amnesty International believes that he is innocent and that he has been targeted for his legitimate work as a journalist, peacefully exercising his right to freedom of expression. Urunboy Usmonov had no access to a lawyer for a week after his arrest and there were allegations that he was tortured or ill-treated. Following an international outcry Urunboy Usmonov was released on bail on 14 July, but criminal proceedings against him were not stopped.

Similarly, in January 2011 the head of the 6th Department lodged a civil suit against the **news agency Asia Plus**, accusing it of insulting and tarnishing the 6th Department’s reputation in a December 2010 article about torture and ill-treatment allegedly carried out by 6th 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

In November 2006 the UN Committee against Torture expressed concern at “numerous allegations concerning the widespread routine use of torture and ill-treatment by law enforcement and investigative personnel”.<sup>5</sup>

The authorities have since taken some measures in the right direction. For example, the adoption of the new Criminal Procedure Code that came into force in April 2010 strengthened some safeguards against torture. Government officials have on several occasions reiterated their commitment to human rights. For example, in his speech in Parliament on 20 April 2011, President Emomali Rahmon stressed the government’s commitment to “protect human rights, the rule of law and order.” However, much remains to be done as evidenced by the fact that in 2010 the European Court of Human Rights ruled in several cases of Tajik citizens that they must not be extradited to Tajikistan citing the “widespread” nature of torture in the country. In 2011 the Court issued emergency measures to prevent the extradition of another man to 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. This abuse has mostly taken place in the early stages of detention; in many cases victims are initially detained without contact with the outside world. Lawyers and human rights defenders in Tajikistan who have worked on cases of detainees held in facilities run by the State Committee for National Security reported that detainees in these facilities were at particular risk of torture or other ill-treatment. Lawyers and human rights activists also reported about torture and ill-treatment in pre-trial detention facilities under the jurisdiction of the Ministry of Justice, as well as in Ministry facilities for prisoners serving sentences in the penitentiary system.

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.

Torture practices reported in Tajikistan include the use of electric shocks; attaching plastic bottles filled with water or sand to the detainee’s genitals; rape; and burning

with cigarettes. Beating with batons, truncheons and sticks, kicking and punching are also believed to be common.

Amnesty International is concerned that safeguards against torture enshrined in domestic law are not always adhered to. For example, while the new Criminal Procedure Code stipulates that detainees are entitled to a lawyer from the moment of their arrest and that lawyers are entitled to have unlimited and confidential meetings with their client and to be present during interrogations<sup>6</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. In practice lawyers are at the mercy of investigators who can deny them access for many days. During this period of incommunicado detention, the risk of torture or other ill-treatment is particularly high. The new Criminal Procedure Code also introduced remand hearings within 72 hours of a suspect's arrest.<sup>7</sup> However, they often take place with a delay and judges in many cases ignore torture allegations and the injuries presented to them in the court room. Usually they rely on the version of events given by the people accused of the torture.

Domestic legislation obliges law enforcement officers to notify family members within 12 hours after a person is detained.<sup>8</sup> However, this time frame is often not adhered to in practice.

There are no routine medical examinations when detainees are admitted to police stations and temporary detention facilities. Upon transfer to pre-trial detention facilities under the jurisdiction of the Ministry of Justice they undergo a medical examination. However, when medical personnel suspect that a detainee underwent torture or other ill-treatment they usually return them to the temporary detention facility until the signs of injury have faded.

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.

Prosecutor's offices are tasked with investigating allegations of torture. Sometimes close personal and structural links between prosecutor's offices and police undermine the impartiality of prosecutors. The authorities have not published comprehensive statistics on prosecutions of law enforcement officers relating specifically to torture or other ill-treatment rather than broader charges such as "abuse of power" or "exceeding official authority".

Judges recurrently base verdicts on evidence allegedly extracted under duress. Tajikistan has not given the International Committee of the Red Cross access to detention facilities to carry out monitoring since 2004. It has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or

Degrading Treatment or Punishment, which provides for a system of regular visits to places of detention carried out by independent international and national bodies.

### Case examples

When **Abdumuqit Vohidov** and **Ruhniddin Sharopov** returned to Tajikistan from US detention at Guantanamo Bay in March 2007, they were arrested and reportedly held without access to a lawyer until their trial in August that year. Their families say they were notified only at the end of April 2007. Reportedly, both men were tortured and beaten by law enforcement officers in Tajikistan to extract confessions and incriminating evidence. Abdumuqit Vohidov's fingers were allegedly either electrocuted or burnt with a flame. On 17 August the Supreme Court of Tajikistan sentenced both men to 17 years' imprisonment for illegal border crossing into Afghanistan in 2001 and fighting for the Islamic Movement of Uzbekistan (IMU) as mercenaries. Their lawyer stated in the appeal document that the men were not aware that they were being hired by the IMU and that no evidence was presented in court to prove that they actually participated in combat. The appeal was turned down at the end of October 2007 and no independent and impartial investigation is known to have been opened into the allegations of torture or ill-treatment.

**Ilhom Ismonov** was reportedly tortured by police at the Department for the Fight against Organized Crime (UBOP) of the Ministry of Internal Affairs in Khujand in Soghd region, including by having electric shocks and hot and cold water poured over his body, in November 2010. His lawyer was able to see him for the first time at the remand hearing on 12 November, nine days after he had been arrested. Although the young man told the judge that he was tortured and offered to show him evidence of torture on his body, the judge did not address the allegations and told his lawyer to take them up with the police investigator. Starting on 6 November Ilhom Ismonov's wife submitted complaints to a wide range of officials and urged them to conduct a forensic medical examination. His lawyer sent similar requests starting on 9 or 10 November. On 15 November Amnesty International issued an Urgent Action on his case calling on the authorities to conduct a prompt, thorough and independent investigation.<sup>9</sup> However, the medical examination was conducted with a significant delay and the forensic expert concluded on 27 November that "no physical injury was found on Ismonov's body". In letters sent to Ilhom Ismonov's wife and lawyer in December the Prosecutor of Soghd Region said no torture had taken place but did not explain how his office had reached that conclusion. The trial against Ilhom Ismonov and 52 co-defendants commenced on 11 July 2011 at Soghd Regional Court in Northern Tajikistan. All have been accused of alleged membership of the Islamic Movement of Uzbekistan (IMU). On 19 July he and several others told the judge that they were tortured in pre-trial detention. Amnesty International is concerned that evidence extracted under torture may be used in his trial.

### 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>10</sup> There are insufficient services to protect survivors of domestic violence, such as a sufficient number of temporary shelters, and adequate and safe alternative housing in the

longer 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 many years -- has not been approved by parliament yet. 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>11</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.



# RECOMMENDATIONS FOR ACTION BY 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.
- To amend the Criminal Procedure Code to the effect that any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

### *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 detainees in all cases have the right to a lawyer of choice and to unlimited and confidential access starting immediately after the arrest.
- 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 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 immediately after their detention and when they are admitted to a temporary detention facility.
- To promptly open thorough, independent and impartial investigations into all allegations of torture or other ill-treatment and bring those responsible to justice.
- To legislate 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.
- To grant access to detention facilities to the International Committee of the Red Cross.

*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.

## ENDNOTES

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<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.

<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.

<sup>5</sup> Conclusions and recommendations of the Committee Against Torture, 37<sup>th</sup> Session, November 2006, UN Document CAT/C/TJK/CO/1.

<sup>6</sup> Article 22, part 1 and Article 53, part 2 of the Criminal Procedure Code.

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

<sup>8</sup> Article 100, part 1 of the Criminal Procedure Code.

<sup>9</sup> UA: 238/10, Index: EUR 60/002/2010. A follow-up was issued on 25 November, AI Index: EUR 60/003/2010).

<sup>10</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>

<sup>11</sup> In domestic law the minimum marriageable age is 17 years. Under exceptional circumstances courts can lower the minimum age to 16.

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>1</sup>

*Tajikistan: Women and girls in Tajikistan: Facing violence, discrimination and poverty*, 24 November 2009, EUR 60/002/2009

*Tajikistan: Violence is not just a family affair. Women face abuse in Tajikistan*, 24 November 2009, EUR 60/001/2009

*Open letter about the death penalty: Tajikistan: Open letter from a coalition of non-governmental organizations to Emomali Rahmon, President of the Republic of Tajikistan*, 30 November 2010, EUR 60/004/2010

*Tajikistan urged to release journalist amid torture allegations* (Press Release), 7 July 2011, AI Index: PRE01/339/2011

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<sup>1</sup> All of these documents are available on Amnesty International's website:  
<http://www.amnesty.org/en/region/Tajikistan>



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