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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

TAJIKISTAN*

Addendum

Comments by the Government of Tajikistan on the concluding observations of the Human Rights Committee

[12 July 2006]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Information concerning implementation of the recommendations of the United Nations Human Rights Committee

The Republic of Tajikistan presented an initial national report on the implementation of the International Covenant on Civil and Political Rights in the Republic of Tajikistan to the United Nations Human Rights Committee.

The United Nations Human Rights Committee considered this report at its 2285th, 2286th and 2287th meetings on 13 and 14 July 2005 (CCPR/C/SR.2285-2287). The Committee adopted its concluding observations at its 2299th meeting on 22 July 2005 (CCPR/C/SR.2299) and it requested the provision of information in respect of paragraphs 10, 12, 14 and 21 of those concluding observations.

The Committee's recommendations and the State party's replies

10. The Committee is concerned about the widespread use of ill-treatment and torture by investigation and other officials to obtain information, testimony or self-incriminating evidence from suspects, witnesses or arrested persons (arts. 7 and 14, para. 3 (g)).

The State party should take all necessary measures to stop this practice, to investigate promptly all complaints of the use of such practices by officials and to proceed to the rapid prosecution, conviction and punishment of those responsible, and to provide adequate compensation to the victims.

In accordance with the International Covenant on Civil and Political Rights, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

The Republic of Tajikistan does take all the necessary measures to prevent the use of ill-treatment and torture by investigators and other officials in order to obtain information, testimony or self-incriminating evidence from suspects, witnesses or arrested persons.

Several articles of the Criminal Code of the Republic of Tajikistan provide for the criminal responsibility of the staff of law enforcement agencies.

For example, under article 316 of the Criminal Code, it is a criminal offence for officials to perpetrate acts which clearly exceed the bounds of their authority and which entail a material breach of citizens' rights or lawful interests.

Under article 354 of the Criminal Code, it is an offence for those conducting inquiries or preliminary investigations or administering justice to coerce persons into giving evidence by means of threats or blackmail.

Under article 359 of the Criminal Code, the falsification of evidence in civil and criminal cases is an offence.

In the event of an offence being committed by persons conducting an inquiry or preliminary investigation, the court, as a rule, in such cases, imposes a custodial sentence. Measures are also taken to ensure that there are no further recurrences of the offence.

Notwithstanding the measures being taken, isolated incidents do occur, but there is no widespread use of unlawful methods by investigators in order to obtain information or confessions from suspects. In 2005, the procuratorial authorities were notified of three cases in which militia officers had used force in an attempt to obtain self-incriminating evidence (two in Dushanbe and one in Kurgan-Tyube). Criminal charges were filed against all these militia officers.

The Office of the Procurator-General of the Republic of Tajikistan constantly monitors the detention in police cells of persons who have been detained or remanded in custody on suspicion of having committed a crime, in order to ensure that their detention is justified and lawful.

12. The Committee is concerned that a procurator, rather than a judge, remains responsible for authorizing arrests. This creates an imbalance in the equality of arms between the accused and the prosecution, as the procurator may have an interest in the detention of those who are to be prosecuted. Further, detainees are not brought before the procurator following their arrest. An appeal to a court to review the lawfulness and grounds of arrest is possible, but it does not guarantee the participation of the detainee (art. 9).

The State party should revise its criminal procedure legislation and introduce a system that ensures that all detainees are as a matter of course brought promptly before a judge who will decide without delay on the lawfulness of the detention.

Under the Code of Criminal Procedure of the Republic of Tajikistan, remand in custody may be imposed as a measure of restraint for accused persons, defendants and suspects when the offence in question may be punished by deprivation of liberty for over one year.

Remand in custody may be imposed by a decision of the investigator or the person carrying out the initial inquiry that has been approved by a procurator, or by a court decision, ordering remand in custody as a measure of restraint (Code of Criminal Procedures, arts. 90, 413 and 415). Persons remanded in custody have the right under article 221, paragraphs 1 and 2, of the Code to appeal to the court against their detention or the extension of its duration either directly or through defence counsel.

A new draft code of criminal procedure of the Republic of Tajikistan is, however, now being drawn up, in which efforts are made to bring the code into line with the Tajik Constitution and with international legal instruments accepted by Tajikistan, including the International Covenant on Civil and Political Rights.

14. The Committee is concerned about persistent information attesting to poor conditions and overcrowding in the State party's prisons and other places of detention, and notes the relatively high rate of incarceration. It is also concerned about reports of civil society and international bodies having limited access to penitentiary institutions (art. 10).

The State party should consider alternative forms of punishment, particularly in relation to minor offences, such as community work and home detention. It is invited to take all necessary measures to allow independent visits to prisons and detention facilities by representatives of both national and international organizations.

The poor conditions and overcrowding in prisons and other places of detention may be attributed to the entry into force in 1998 of the new Criminal Code, which provided for a maximum single sentence of up to 20 years and for cumulative sentences of up to 25 years and the fact that many offences, including those committed by negligence, were placed in the category of serious and particularly serious crimes.

Given that such severe penalties were proscribed, the courts imposed custodial sentences and thereby increased the number of persons serving their sentence in correctional facilities.

In view of this situation, the Criminal Code was revised to make it more humane. The Criminal Code (Amendments and Additions) Act was adopted by Parliament and signed by the President on 17 May 2004. It entered into force on 22 May 2004.

At present, this Act is being implemented in respect of more than 7,000 persons on remand, convicts and offenders. This number includes more than 1,100 persons on remand and convicts who have been released because their sentences have been commuted, altered or shortened.

Statistics show that the number of non-custodial sentences handed down has risen from 37 per cent in 2002 to 50 per cent in 2004-2005, an increase of 13 per cent[1] over that period.

It should also be noted that, in recent years, with the Government's financial backing, much has been done to improve the conditions in which convicts are held. Monitoring operations and a series of projects to improve the conditions in which convicts are held have likewise been conducted with the direct involvement of the Swiss Cooperation Office in Tajikistan, the AIDS Foundation East-West and the Analytical and Advisory Centre on Human Rights.

21. The Committee is concerned about persistent reports that journalists have been harassed by State officials in the exercise of their profession and that newspapers have been seized (art. 19).

The State party should avoid any harassment or intimidation of journalists and ensure that its legislation and practice give full effect to the requirements of article 19 of the Covenant.

[1] "Alternatives to imprisonment in the Republic of Tajikistan: joint efforts" (in Russian), Compilation of material of the Round Table, 14 September 2005, Dushanbe.

The Office of the Procurator-General is not in possession of any information that journalists have been harassed by State officials in the exercise of their profession.

As a result of checks on the activity of the national newspapers *Nerui sukhan*, *Ruzi nav* and *Odamu olam* by the Office of the Procurator-General, orders have been issued for the immediate suppression of offences occurring in their operations, i.e. abuses of freedom of speech, which does not mean that their operation has been halted.

No notification regarding the closure of any newspapers has been lodged with the judicial authorities by the Ministry of Culture, which has competence for such matters.

One edition of the weekly newspaper *Ruzi nav*, which had been printed in Bishkek, Kyrgyzstan, was seized at Dushanbe airport for having infringed Tajikistan's customs legislation.

The Office of the Procurator-General has instituted criminal proceedings against Mr. R.N. Miraimov, editor-in-chief of the weekly newspaper, under article 135, paragraph 2 (defamation), and article 334, paragraph 1 (Usurpation of power) of the Criminal Code of the Republic of Tajikistan.
