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**HR** HELSINKI FOUNDATION  
for HUMAN RIGHTS

# Joint NGO submission to the Committee against Torture ahead of the consideration of Tajikistan's Third Periodic Report at the 63<sup>rd</sup> session in April/May 2018

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# 1. Introduction

This document presents information about the implementation of Tajikistan's obligations under articles **1, 2, 3, 4, 11, 12, 13, 14, 15 and 16** of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). It provides information about the **legislative framework** pertaining to torture and other forms of ill-treatment **and its implementation**. It highlights civil society concerns about **torture and other ill-treatment in detention** (including in police stations and temporary detention facilities, corrective labour facilities and prisons) as well as in **other closed or semi-closed facilities and the armed forces**. The document pays special attention to **vulnerable groups**, such as **women, children, LGBT people, refugees and asylum seekers** and highlights concerns pertaining to **investigations** into allegations of torture and other ill-treatment, **prosecutions** of perpetrators, and victims' access to **reparation**. The document also includes a chapter about the **shrinking space for civil society organizations and activists** in Tajikistan including those working against torture and impunity.

This Joint NGO submission to the Committee against Torture (CAT) ahead of the consideration of Tajikistan's Third Periodic Report at the 63rd session in April/May 2018 provides additional and updated information on the topics covered in the June 2017 joint NGO submission to the Committee which provided input for the Committee's preparation of the List of Issues.

The thematic chapters in this document relate to specific articles of the Convention. The document concludes with a list of suggested recommendations to the Tajikistani authorities that are based on the issues and concerns raised in the thematic chapters. The main text contains short summaries of individual cases illustrating specific violations. The annex contains detailed descriptions of selected cases which lawyers of the Coalition against Torture and Impunity worked on in the period under review.

## 1.1. Positive steps

Since the CAT considered Tajikistan's Second Periodic Report and issued concluding observations in November 2012, the Tajikistani authorities have taken several significant steps to address concerns about torture and ill-treatment and implement some of the Committee's recommendations. For example:

- In November 2014 the Ministry of Health adopted a form reflecting the principles contained in the Istanbul Protocol for use by its medical personnel when examining detainees and recording signs of torture and ill-treatment. (For further information refer to the section "Medical examinations" in the chapter on "Access to legal safeguards in places of deprivation of liberty").
- In 2014 the families of two men, who died in custody, were the first known cases involving allegations of torture to have been awarded compensation for moral damages by courts in Tajikistan. Further cases followed, where the courts awarded compensation, but there are concerns that the amounts granted were neither fair nor adequate. (Refer to the chapter "Redress").
- In February 2014 a Monitoring Group established as part of the Office of the Ombudsman for Human Rights consisting of Ombudsman Office staff and civil society activists began visiting detention facilities. (Refer to the section "Monitoring closed and semi-closed facilities" in the chapter "Monitoring of and conditions in closed and semi-closed facilities").
- In November 2014 the Criminal Procedure Code (CPC) of Tajikistan was amended to the effect that extradition must be denied when there is a risk of torture in the receiving country. (Refer to the chapter "Refugees and asylum seekers").
- In December 2015 amendments were adopted to the legislation on the Ombudsman for Human Rights of the Republic of Tajikistan that introduced the position of the Ombudsman for the Rights of the Child

as the Ombudsman's Deputy. In May 2016 President Emomali Rahmon appointed the country's first Ombudsman for the Rights of the Child.

- In May 2016 President Emomali Rahmon signed legal amendments, which significantly improved domestic legislation on safeguards in detention. (Refer to the chapter "Access to legal safeguards in places of deprivation of liberty").
- On 29 June 2017 the Programme to Reform the Juvenile Justice System (2017-2021) was approved by Government Decree 322. Civil society activists participate in the Ministry of Justice working group tasked with implementing the programme and the action plan.
- The National Action Plan on the Implementation of Recommendations by United Nations Member States under the Universal Periodic Review (Second Cycle) for 2017-2020 (further National Action Plan on the Implementation of UPR Recommendations, 2017-2020), adopted by Presidential Order on 7 June 2017, envisages the adoption of a National Human Rights Protection Strategy valid until 2025. At the time of writing, a working group was established and tasked with drafting the strategy. Civil society organizations are well-represented in the working group.

## **1.2. Why do torture and ill-treatment continue to be widely used? A summary of key reasons**

Despite these improvements, torture and other forms of ill-treatment continue to be widely used in Tajikistan. Since the country was last reviewed by the CAT, members of the Coalition against Torture and Impunity registered 25 (2013), 26 (2014), 45 (2015), 57 (2016) and 66 (2017) new cases of men, women and children who were allegedly subjected to torture or other forms of ill-treatment. The majority of these cases relate to physical abuse in the first hours of detention with the aim of extracting a confession. These figures represent merely a fraction of the whole picture, as fear of reprisals, lack of access to civil society activists or lack of trust in the criminal justice system as a mechanism to obtain justice prevent many victims or their relatives from lodging complaints.

### **FAILURE TO PUNISH PERPETRATORS APPROPRIATELY**

Penalties under Article 143-1 ("torture") of the Criminal Code of Tajikistan are not commensurate with the gravity of the crimes committed. Many perpetrators of torture and other forms of ill-treatment benefitted from amnesties in the period under review. Domestic legislation allows for perpetrators of torture and ill-treatment who are convicted of crimes categorized as being of lower or medium gravity to be exempted from criminal responsibility due to reconciliation, expiration of the statute of limitation, or repentance. (For further information, refer to the chapter "Prohibition and punishment of torture and ill-treatment").

### **FAILURE TO PROVIDE RELIABLE ACCESS TO LEGAL SAFEGUARDS IN DETENTION**

The legal amendments introduced in May 2016 significantly improved basic legal safeguards in detention, but further amendments are necessary and they have yet to be consistently implemented. The risk of torture and ill-treatment continues to be particularly high in the early stages of detention and in many cases law enforcement agents continue to subject detainees to abuse in order to extract confessions. (For further information, refer to the chapter "Access to legal safeguards in places of deprivation of liberty").

### **THE LACK OF INDEPENDENT AND COMPREHENSIVE MONITORING OF CLOSED AND SEMI-CLOSED FACILITIES**

A positive development in the period under review was the establishment of the Monitoring Group under the Ombudsman's Office, which started functioning in February 2014. However, the Group's remit as well as its

human and financial resources are limited, which prevents it from functioning as a reliable safeguard against torture. In addition, some NGOs have memorandums for joint monitoring with the Ombudsman's Office. The International Committee of the Red Cross (ICRC) has not had access to detention facilities for the purpose of monitoring since 2004. Other than joint monitoring with the Ombudsman's Office, local NGOs have no access to closed and semi-closed facilities for the purpose of monitoring. (For further information, refer to the chapter "Monitoring of and conditions in closed and semi-closed facilities").

## **FAILURE TO ENSURE AN INDEPENDENT AND EFFECTIVE SYSTEM OF INVESTIGATING AND PROSECUTING CASES OF TORTURE**

Investigations into allegations of torture and ill-treatment are rarely conducted effectively. There are no mechanisms in place to ensure prompt, thorough, impartial and fully independent investigations. (For further information, refer to the chapters "Reacting and conducting effective investigations into allegations of torture and other forms of ill-treatment" and "Deaths in custody and the armed forces").

## **FAILURE TO CONSISTENTLY EXCLUDE EVIDENCE EXTRACTED UNDER DURESS**

Domestic legislation considers evidence to be inadmissible when it is obtained by way of torture or other forms of ill-treatment. However, there is no mechanism in place to ensure the implementation of this legislation and the Coalition against Torture and Impunity is not aware of any case where evidence has been ruled inadmissible due to torture. (For further information, refer to the chapter "Excluding evidence extracted under torture").

## **FAILURE TO PROVIDE FULL REDRESS**

The amounts of compensation awarded for moral damages sustained through torture in the period under review have been neither fair nor adequate. Domestic legislation does not provide victims of torture with other forms of reparation such as rehabilitation, satisfaction or guarantees of non-repetition. (For further information, refer to the chapter "Redress").

## **SOLDIERS, CONSCRIPTS, WOMEN, CHILDREN, LGBT PEOPLE, REFUGEES AND ASYLUM SEEKERS ARE AT PARTICULAR RISK**

Hazing continues to be used routinely in the armed forces of Tajikistan and filing complaints is usually strongly discouraged by peers and commanding officers.

The adoption of the Law on the Prevention of Violence in the Family in 2013 and other positive steps taken by the government since then to combat domestic violence are being undermined by remaining protection gaps in legislation, weaknesses in the criminal justice system and the failure of the authorities to systematically address the widespread problem.

In March 2015 the first unified law on the rights of the child came into force, but it does not contain a prohibition of corporal punishment and has further shortcomings. Domestic legislation continues to allow for the joint detention of adults and minors and for solitary confinement of minors. Cases of torture and ill-treatment of minors including corporal punishment continue to be reported.

The organizations issuing this report are aware of dozens of credible cases in recent years of police intimidating, arbitrarily detaining, physically or sexually abusing or threatening to abuse LGBT people. Police abuse and extort money from LGBT people with almost complete impunity.

Domestic legislation does not provide refugees and asylum seekers with sufficient safeguards against torture following extradition or expulsion from Tajikistan. Refugees have been expelled based on administrative violations.

(For further information, refer to the chapters "Conscripts and soldiers: torture and ill-treatment in the armed

forces”, “Women: domestic violence”, “Children: juvenile justice and torture and ill-treatment”, “LGBT people: abuse by police and non-state actors” and “Refugees and asylum seekers”).

## **SILENCING HUMAN RIGHTS DEFENDERS**

The organizations issuing this report are seriously concerned about the increasingly limited space for human rights and other civil society organizations and activists to operate. The situation has worsened in Tajikistan since the last CAT review in 2012 and this trend has intensified since 2015. As a result the abilities of human rights groups to provide support to victims of torture and other human rights violations has also been shrinking. (For further information, refer to the chapter “The situation of human rights NGOs and activists”).

# **2. Prohibition and punishment of torture and ill-treatment (Articles 1 and 4 of the Convention)**

**2012 Concluding Observations of the CAT:** Paragraphs 6, 7 and 11 (CAT/C/TJK/CO/2)

**2017 List of Issues:** Paragraphs 3, 4, 5 and 9 (CAT/C/TJK/Q/3)

*Tajikistan’s legislation unequivocally prohibits torture, and in 2012 Article 143-1 (“torture”) was introduced to the Criminal Code with a definition of torture that is in line with that contained in the Convention against Torture. However, penalties under this article are not commensurate with the gravity of the crimes committed. Many perpetrators of torture are not charged under Article 143-1 but under other articles of the Criminal Code. While amnesty acts issued in recent years have excluded perpetrators of torture and ill-treatment charged under certain articles of the Criminal Code, those charged under other articles have been eligible and 24 perpetrators benefited from the amnesty issued in 2016. Domestic legislation allows for perpetrators of torture and ill-treatment convicted of crimes categorized as being of lower or medium gravity to be exempted from criminal responsibility due to reconciliation, expiration of the statute of limitation, or repentance.*

## **2.1. Prohibition of torture and ill-treatment, and commensurability of punishment to the gravity of the crime**

Article 18 of the Constitution of Tajikistan unequivocally prohibits torture and ill-treatment. The Criminal Procedural Code (CPC) includes a prohibition on subjecting detainees and all other parties to the criminal process to such treatment. The Criminal Executive Code (CEC) prohibits such treatment in relation to prisoners and specifies that it is also categorically prohibited to subject them to medical or other scientific experiments that might pose a risk to their life or health.

On 29 February 2012, the Lower House of Parliament of Tajikistan introduced Article 143-1 (“torture”) in the country’s Criminal Code with a definition of torture that is in line with that contained in the Convention against Torture.

However, the organizations jointly issuing this document are concerned that, in violation of Article 4 of the Convention against Torture, penalties under Article 143-1 are not commensurate with the severity of the crimes committed. Article 143-1, part 1 (“premeditated administration of physical (or) psychological suffering”), for example, is punishable by a fine, suspension from duty or imprisonment of up to five years.

In practice, cases involving torture or other ill-treatment are frequently opened under other articles of the Criminal Code such as “incitement to suicide” (Article 109), “abuse of authority” (Article 314), “exceeding official authority” (Article 316), “negligence” (Article 322), or, in cases from the armed forces, “violating the code of military conduct” (Article 373) or “abuse of authority or duty” (Article 391).

Since Article 143-1 (“torture”) was introduced to the Criminal Code in 2012, eleven criminal cases have been opened under the Article, according to Tajikistan’s Third Periodic Report to the CAT and additional information provided by the Prosecutor General’s Office at a press conference on 25 January 2018. At the time of writing sentences had been handed down in five of these cases, while the others were terminated for various reasons including reclassification of the crime and suspension of pre-trial investigations; and the investigation into one case is still ongoing.

One of the five convicted perpetrators was given a suspended sentence, three were sentenced to between one and seven years’ imprisonment, and the verdict against the fifth perpetrator is not known. Here is a list of the five cases in chronological order based on media reports and additional information obtained by the Coalition against Torture and Impunity:

*In September 2012 Mashraf Aliyev, a policeman from the town of Yavan in the southern Khatlon Region of Tajikistan was sentenced to seven years’ imprisonment under Article 143-1, part 3 for torturing 17-year old Khushvakht Kayumov. The officer had summoned Khushvakht to the district police station in April 2012, where he beat and kicked the young man and threatened to torture him with electric shock unless he confessed to a theft. Mashraf Aliyev let him go home in the evening, but demanded that he return the next day. The next day the beatings continued and Khushvakht eventually signed a “confession” in order to avoid further abuse. Mashraf Aliyev threatened that Khushvakht Kayumov would be beaten by 200 policemen if he later retracted his confession. Devastated by the experience of abuse, Khushvakht Kayumov attempted to commit suicide. On 29 April, his relatives found him hanging from the ceiling of the family’s barn in an unconscious state. They were able to save his life by quickly arranging for him to be taken to the local hospital.*

*In December 2012 Khujand City Court sentenced Khusrav Niyezkulov, an officer of the department of criminal investigation of Sughd region, to one year of deprivation of liberty. He was found guilty of detaining a suspect in his office all day and beating him. The forensic medical examination confirmed that the detainee sustained injuries to his ear and kidneys.*

*In August 2013 Nursat Yodgorov, a former criminal investigator of Sarband District in the southern Khatlon Region, was handed down a suspended sentence of two years by Kurgan-Tyube City Court, under Article 143-1, part 1. He was found guilty of unlawfully detaining a suspect in a police station in January 2013 and beating him.*

*On 23 November 2015 Rogun City Court sentenced police officer Emomali Odinayev to three and a half years’ imprisonment. He was found guilty of subjecting Olimjon Sharifov to arbitrary detention at Rogun District Police Station in August 2015, torturing him with electric shocks and beating him.*

*At a press conference on 25 January 2018 Yusuf Rakhmon, Prosecutor General of Tajikistan, stated that an officer of Sino District Police Station in Dushanbe had been convicted under Article 143-1 after a complaint had been received about his actions in 2017. He gave no further details about the case.*

## **2.2. Amnesties, statutes of limitation and other exemptions from criminal liability for torturers**

Article 82 of the Criminal Code of Tajikistan does not exclude any specific group of people from benefitting from amnesties. It stipulates that amnesty laws can be adopted which can specify groups of people covered by the respective amnesty.



In the period from 2012 to 2018 two acts of amnesty were issued, in 2014 (Amnesty Law 1130 of 29 October 2014) and in 2016 (Amnesty Law 1355 of 24 August 2016).

In line with the 2014 Amnesty Law, this amnesty was not applied to those charged with or convicted under Article 110, parts 2 and 3 (intentionally inflicting serious bodily harm, e.g. by causing the death of a person or carried out by an organized group) and Article 391, part 4 (abuse of authority or duty, exceeding authority or inaction in a war-like situation or during war). The 2016 Amnesty Law, issued in connection with the 25th anniversary of Tajikistan's independence, additionally excluded those charged or convicted under Article 110, part 3 and Article 391, part 4 and it was the first amnesty to state that those convicted of "torture" (Article 143-1 of the Criminal Code) were not eligible.

However, many perpetrators of torture or ill-treatment who had not been charged with "torture" under Article 143-1, but other articles of the Criminal Code were released or had their sentences reduced under these amnesties. The NGO Coalition against Torture and Impunity is aware of 24 perpetrators or their superiors, who benefitted from the amnesty in 2016.

*For example, 21-year-old conscript Faruhjon Haytaliyev died in January 2016 after he was repeatedly subjected to hazing by Alikhon Tuychiyev, a fellow soldier. Sufi Sufiyev, the Captain of his military unit, and his deputy Baburdjon Ortukov noticed that Faruhjon Haytaliyev was injured and unable to stand up after the beating, but they kept him in the military unit and failed to seek medical attention for several days. In May 2016 Dushanbe Military Court sentenced Alikhon Tuychiyev to 14 years' imprisonment for "violating the code of military conduct" and "intentionally inflicting serious bodily harm" and the two officers were handed down prison sentences of four years for "abuse of authority or duty". Three months later the prison sentences of Sufi Sufiyev and Boburjon Ortukov were reduced by one third under the prisoner amnesty act in connection with the 25th anniversary of Tajikistan's independence. (For further information on this case, refer to the Case Annex).*

The Criminal Code stipulates that perpetrators convicted of crimes of lesser or medium gravity can be exempted from criminal responsibility on the grounds of reconciliation with the victim, expiration of the statute of limitations, or active repentance (Articles 72 to 75). In line with Article 18 of the Criminal Code of Tajikistan, parts 1 and 2 of Article 143-1 relate to crimes of medium gravity.

## 2.3. Suggested recommendations to the authorities of Tajikistan

- Introduce a reference to Article 143-1 of the Criminal Code in all other articles brought to punish ill-treatment, such as articles 109, 314, 316, 322, 373 and 391, to ensure that Article 143-1 is applied in all cases grave enough to be qualified as torture.
- Amend Article 143-1 of the Criminal Code to ensure that punishments are commensurate to the gravity of the crimes of torture and other ill-treatment committed.
- Ensure that the absolute prohibition of torture is included in all regulatory and legal acts including the Code on Public Health.
- Legislate that perpetrators of torture or ill-treatment are excluded from all amnesties.
- Revoke provisions in the CPC which allow for the termination of criminal proceedings and exemption of the defendant from criminal liability whenever the case concerns allegations of torture and ill-treatment. Abolish the statute of limitation with regard to torture and ill-treatment.
- Take all necessary measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated, that perpetrators are duly prosecuted and, if found guilty, convicted with penalties that are commensurate with the grave nature of their crimes.

# 3. Access to legal safeguards in places of deprivation of liberty (Articles 2 and 11)

**Concluding Observations of the CAT:** Paragraphs 8 and 9

**List of Issues:** Paragraphs 7, 10, 11, 12, 13, 14, 15, 16, 17 and 27

*Legal amendments introduced in May 2016 significantly improved basic legal safeguards in detention such as access to a lawyer and notification of family promptly after the actual arrest, as well as access to a doctor. However, domestic legislation still does not provide for a medical examination immediately after arrest and in practice access to a lawyer continues to be subject to permission by the investigator. The time limits set out in domestic legislation before the detainee is brought before a judge are still too long. Judges typically continue to remand persons in custody based only on the gravity of the crime and the law provides that detainees can be held in pre-trial detention and detention during the trial for excessive lengths of time. The May 2016 amendments need to be consistently implemented and further legislative improvements are necessary. Some progress has been made in implementing the standards of the Istanbul Protocol and a series of trainings have been conducted, but most detainees still do not have access to effective medical and psychiatric examinations. Tajikistan has not passed legislation regulating the work of independent forensic experts. During the period under review, video cameras have been installed in most detention facilities, but many interrogation rooms and other spaces where detainees are held are not covered by video surveillance. The risk of torture and ill-treatment continues to be particularly high in the early stages of detention and in many cases law enforcement agents continue to subject detainees to abuse in order to extract confessions.*

## 3.1. May 2016 legal amendments: progress and remaining concerns

On 14 May 2016, President Emomali Rahmon signed legislation introducing amendments to the Law on Detention Procedures and Conditions for Suspects, Accused Persons and Defendants (further Law on Detention Procedures and Conditions) and to the CPC, which significantly improved legal safeguards in detention.

The Criminal Code provides sanctions for unlawfully holding a person in custody and Article 36 of the Law on the Police stipulates that “a police officer can be subjected to disciplinary, material, administrative and criminal responsibility for violating the law, abuse of power, exceeding official duties, failure to carry out or inappropriately carrying out duties, in line with the legislation of the Republic of Tajikistan”. Article 3, part 2 of the Law on Detention Procedures and Conditions stipulates that “detention of a suspect, accused or defendant in order to cause suffering, torture and physical and moral harm is not permitted.”

The May 2016 amendments to the Law on Detention Procedures and Conditions provide for improved detention registration procedures and the rights to promptly inform family members and legal counsel. However, the CEC has been left unchanged and stipulates that close family members have to be notified within ten days of placing a prisoner into a facility in the penitentiary system and of any transfers.

The amendments to the CPC stipulate that detention begins from the moment of de-facto deprivation of liberty (Article 6), which is an important improvement. Arresting officers are now obliged to verbally inform detainees of the reason for the arrest and about their rights (Article 94, part 1) at the moment of de-facto deprivation of liberty. These rights include immediate communication with a close relative, prompt access to legal counsel, and the right to refuse to testify.

Within three hours of placing the detainee into a criminal prosecution facility, a law enforcement officer is required to complete the detention record. Thanks to the May 2016 amendments, Article 94, part 2 now stipulates that the identity of all detaining officers should be recorded, as well as that of other officers involved in the process

leading to the suspect's detention, such as interpreters. The detention record should also contain information about notification of family members, including the exact time, who notified them and how, as well as information about the officer who drew up the record.

The May 2016 legal amendments introduced an obligatory medical examination prior to placing a suspect in a temporary police detention facility (Article 94, part 4). Domestic legislation states that suspects have to be placed into this facility within three hours after the actual arrest.

Domestic legislation does not provide for a medical examination to be carried out when a detainee is moved from the temporary police detention facility to be placed into the investigation-isolation facilities (SIZO). The next medical examination takes place inside the SIZO.

The 2016 legal amendments (Article 94, part 4 of the CPC) additionally stipulate that the detainee or the lawyer can request that the medical examination be conducted by an independent medical doctor or a forensic medical expert. (Refer to the section "Medical examinations" for further information).

Article 94, part 6 significantly reduced the time within which the prosecutor has to be notified in writing of a suspect's detention to a maximum of 12 hours after the moment of de-facto deprivation of liberty.

While these are significant improvements, further legislative amendments should be made to strengthen safeguards in detention and bring Tajikistan's legislation fully in line with its international obligations. For example, in Tajikistan only traffic police officers are obliged to wear visible identity tags. Other police officers are instructed to present their official ID card and introduce themselves, but in practice they do not often do this, making it difficult for victims of torture or ill-treatment to identify perpetrators.

Article 92, part 3 of the CPC, which applies to adults and minors alike, provides that a maximum of 72 hours may elapse from the moment of apprehension until the person is brought before a judge. The UN Human Rights Committee and the Special Rapporteur on torture recommended to Tajikistan that this period should be limited to a maximum of 48 hours. In paragraph 83 of its General Comment No. 10, issued in 2007, the UN Committee on the Rights of the Child recommended that this time period should not exceed 24 hours for minors.

Domestic legislation does not oblige judges, when conducting remand hearings, to inquire about the detainee's treatment in custody and to initiate investigations should there be any signs or allegations of torture or other ill-treatment. Monitoring of the Coalition against Torture and Impunity shows that in the majority of cases judges continue to base their decisions as to whether or not to remand a detainee in custody solely on the basis of the gravity of the crime, in reference to Article 111, part 1 of the CPC.

The authors of this submission are also concerned that Article 111, part 5 of the CPC still authorizes judges to remand suspects in custody for an additional 72 hours before issuing a decision about measures of restraint.

Article 112, part 1 of the CPC stipulates that a suspect/ accused should usually not be remanded in custody for longer than two months at the first remand hearing. In practice, when issuing the first remand decision judges usually do not specify the length of time for which a person should be held in custody. The detainee is thus automatically detained for two months, i.e. the maximum period of time for the initial remand period provided for under Article 112, part 1 of the CPC.

The overall time limit for holding a person in custody is usually 12 months, although in exceptional cases this time can be extended to up to 18 months (parts 3 and 4). These time limits allow the person to be held in custody during the preliminary investigation and until the case is referred to the court. In line with Article 112, part 1 and Article 427, part 3 of the CPC, minors can be remanded in custody up to six months.

The CPC also regulates the time limits of detention during the criminal trial. As set out in Article 289 of the CPC, from the time the case is admitted by the court until the verdict is pronounced, the defendant can be held in custody for up to six months (in exceptional cases 12 months).

As a result, domestic legislation provides for a person to be detained for up to 30 months until a verdict is reached

(18 months during the preliminary investigation and 12 months while the case is being reviewed in court). While these time limits may be reasonable for certain complex cases the authors of this document are concerned that in practice detainees are often held in custody longer than strictly necessary.

A major weakness in domestic legislation is that it does not regulate the time limits of custody in the period from when the criminal case is referred to the court until the admission by the court (presumption of release pending trial). This period of unregulated detention – after the pre-trial remand ruling has expired but no new measure has been taken – can last several days or sometimes even weeks.

The authors of this document are further concerned that the legal amendments introduced in May 2016 are not consistently implemented in practice. Most allegations of torture and other ill-treatment concern the time between the arrest and the placing of the suspect in a temporary police detention facility. Detainees continue to be held incommunicado during this period in many cases. Often they are held in facilities that are not intended for detention, such as police duty stations or short-term confinement cells (the so-called catacombs). Tajikistani legislation provides for the following detention facilities: temporary police detention facilities, army detention cells (gauptvakhta) and the facilities of the penitentiary system.

*For example, Mukhabbat Davlatova told the Coalition against Torture and Impunity that her son Djovijon Khakimov was arrested in their home on 3 January 2017 and taken to the Department tasked with counteracting organized crime of the Ministry of Internal Affairs in Dushanbe. Reportedly, he was held incommunicado and without charge until he was taken to the temporary police detention facility of the Ministry of Internal Affairs in Dushanbe on 9 January, where his detention was officially registered. The remand hearing took place on 11 December, over a week after he was reportedly taken into custody. Djovijon was reportedly tortured while in incommunicado detention, but his lawyer's request of 12 January for a prompt medical examination has not been satisfied. (For further information, refer to the Case Annex).*

Given that individuals charged with administrative offences or those held by police as “witnesses” are also often subjected to torture and ill-treatment, the NGOs jointly issuing this document are also concerned that the above amendments only apply to those detained on criminal charges.

## **3.2. Access to a lawyer of the detainee's choice**

Thanks to the May 2016 legal amendments, the CPC now unequivocally stipulates that detainees are entitled to access to a lawyer as of the moment of their actual detention, which is a significant positive development. However, access to this right is not consistently ensured in practice.

Upon the first meeting with the detainee, suspect or accused person the investigator is required to provide information on his or her rights, including the right to legal defence (Chapter 6 of the CPC). In line with Article 51 of the CPC the investigator is required to provide the detainee with a lawyer or replace an existing lawyer upon the detainee's request. If a person is not represented by a lawyer in a case where the lawyer's participation is obligatory by law, this is considered a grave violation of criminal procedural legislation and the verdict has to be annulled (Article 375 of the CPC).

In practice there are cases where investigators put pressure on detainees to turn down legal assistance (by filing a statement under Article 52 of the CPC) in order to avoid having to arrange for the services of a lawyer or in order to interrogate the person without the presence of a lawyer. There are also cases where law enforcement officers force detainees to reject a certain lawyer and put them in touch with a hand-picked lawyer who does not provide actual legal advice, but simply signs the procedural police documents.

*Djovijon Khakimov was reportedly held incommunicado for several days after his arrest on 3 January 2017. After his transfer to the SIZO a lawyer from the Coalition against Torture and Impunity started working on his case, met with Djovijon Khakimov and filed complaints about allegations of torture demanding that a forensic medical examination be conducted. However, subsequently agents of the State Committee for National Security (SCNS) reportedly urged*

*Djovijon Khakimov's family to end the contract with the Coalition lawyer if they wanted "his situation to improve" and to stop writing complaints about torture. The SCNS officers reportedly claimed that Djovijon Khakimov, who had a lawyer representing him in the criminal case brought against him, did not need a second lawyer. The other lawyer reportedly did not pursue the allegations about torture. (For further information, refer to the Case Annex).*

Although domestic legislation does not stipulate that access to a lawyer is conditional on the permission of an investigator, such permission is frequently required in practice when lawyers want to visit detainees in temporary police detention facilities, run by the Ministry of Internal Affairs, or in SIZOs, where detainees are transferred after the remand hearing and which are run by the Ministry of Justice. The Coalition against Torture and Impunity is aware of many cases in recent years, where police investigators delayed granting permission on various pretexts, limited the number of visits or obstructed access to a lawyer in other ways. Effectively, this means that the investigator determines whether or not a lawyer is able to see their client and in practice lawyers often see their clients for the first time during the remand hearings or the trial. Unfortunately, many lawyers do not lodge complaints against such unlawful state actions.

SIZO staff often refer to internal regulations preventing them from granting access to lawyers. In recent years, members of the Coalition against Torture and Impunity in Tajikistan have repeatedly filed requests for information about internal SIZO regulations, but the requests were turned down on the grounds that these documents are with limited access and "for internal use only".

*Khudoydod Gaffarov was detained on 4 July 2017 and when his wife saw him briefly at the SCNS building the next day he was reportedly shaking with fear, hardly able to talk and there was blood under one of his finger nails. When a lawyer of the Coalition against Torture and Impunity started working on the case, the lawyer filed a petition stressing his right to meet the client confidentially, for as long and as frequently as necessary. The SCNS investigator responded only ten days later, on 17 July, and gave him permission for only one meeting. Only after the lawyers' persistent complaints did the investigator issue a permission for frequent visits.*

*Ashurali Kholov was detained by police in plainclothes on suspicion of theft on 19 February 2015. He was reportedly held at Khamadoni District Police Station in Khatlon region for three days and beaten by two officers to extract a confession. Ashurali Kholov's lawyer sent a request to the SIZO in the city of Kulyab for a confidential meeting with his client. The SIZO official replied that the lawyer should provide written permission from the investigator. When the lawyer asked to clarify the legal basis for this request, he received no reply. The lawyer was eventually able to meet his client in March after receiving a written permission by the investigator.*

In those cases where a detainee is held in a pre-trial detention facility under the jurisdiction of the SCNS independent lawyers are typically not given access to their clients at all.

When entering a temporary police detention facility, SIZO or post-trial facility lawyers are requested to hand over all technical equipment such as dictaphones and mobile phones, which could help them record evidence of torture.

Lawyers rarely meet their clients confidentially since law enforcement officers or guards are usually present in the meeting room, despite the fact that domestic legislation provides for confidential meetings (Article 9 of the Law on the Advokatura and Lawyers' Activities, Article 18 of the Law on the Order and Conditions in Custody of Suspects, Accused Persons and Defendants, Articles 46, 47 and 53 of the CPC and Article 24 of the Instruction on Detention). Typically the guards also limit the time of the conversation.

In line with Article 91, part 5 of the CEC of Tajikistan, inmates of labour colonies and prisons are entitled to a legal consultation with a lawyer after lodging a request. The inmate is required to send a letter to the director of the penitentiary facility requesting a meeting with the lawyer. However, in cases of torture and other ill-treatment it is unlikely that a meeting will be granted. When the inmates' relatives hear that the inmate was tortured there is no procedure which allows them to arrange a meeting between the inmate and the lawyer.

In the period under review changes were introduced with regard to free legal aid. On 2 July 2015 the Concept of Free Legal Aid in the Republic of Tajikistan was approved by Government Decree. In line with the concept, free legal aid can either be provided by lawyers who are members of the Lawyers' Union of Tajikistan and who are included in a special register kept by the Coordination Centre of the Ministry of Justice or by law firms or legal aid clinics belonging to the Lawyers' Union. In the latter case the lawyers participating in this scheme are registered in a special register of the Lawyers' Union. In all cases payment is regulated by the Ministry of Justice.

Two call centres have been set up to facilitate access to free legal aid. One is run by the Ministry of Justice and serves the Northern Sughd region. The other is run by the Lawyers' Union and covers the Southern Khatlon region. In the city of Dushanbe and the surrounding region requests made by courts and law enforcement agents are directed to the Lawyers' Union of Tajikistan.

### **3.3. Medical examinations**

On December 2012 the Working Group on Implementing the Standards of the Istanbul Protocol, that includes NGO representatives, was established by Decree 719 of the Ministry of Health to develop internal regulations, manuals and forms for forensic medical and psychiatric examinations and appropriate documentation, in line with the standards of the UN Istanbul Protocol. On 1 November 2014 the Ministry of Health adopted the "Compilation of Normative-Legal Acts on Forensic Medical Examinations and the Methodological Procedure of Organizing and Carrying out Forensic Medical Examinations" and an annex containing a form for a forensic medical examination report, a form for the expert's conclusion and a check-list for the medical examination of detainees by doctors and other medical professionals (Decree 918). When an examining doctor is informed by a detainee that he or she was tortured or ill-treated, the doctor or the forensic medical expert is required to record the allegation and request an interdisciplinary examination (forensic medical and/or psychiatric).

The above-mentioned working group has ensured that information about the standards of the Istanbul Protocol is included in the curriculum of relevant educational facilities and has conducted an extensive series of trainings for forensic medical experts, psychiatrists, general practitioners, staff of the penitentiary system, judges and lawyers.

On 30 October 2017, the Minister of Health replaced the working group with a newly-established one which will take forward the parts of the National Action Plan on the Implementation of UPR recommendations (2017-2020) that are aimed at integrating the standards of the Istanbul Protocol into the activities of medical institutions. Civil society activists participate in this new working group.

A number of obstacles remain to detainees' access to effective medical and psychiatric examinations.

Firstly, according to information obtained by the Coalition against Torture and Impunity, in practice doctors rarely fill in the above-mentioned forms of the Ministry of Health for a variety of reasons: the Ministry has not made available a sufficient number of forms; many doctors are not aware of their existence; and some are worried that they might face reprisals by law enforcement officers if they record evidence of torture.

Secondly, not all medical personnel tasked with examining detainees and prisoners are employees of the Ministry of Health. When detainees are admitted to detention facilities that have their own medical personnel, these are not bound by regulations of the Ministry of Health and their work is affected by conflicts of interest. Medical professionals who work in Dushanbe's temporary police detention facility and its Anti-Corruption Agency are employed by the Interior Ministry and the Anti-Corruption Agency respectively. Medical personnel who work in SIZOs and post-trial facilities (hospitals or specialized psychiatric or tuberculosis clinics, see Article 28 of the Law on the Penitentiary System) are employees of the penitentiary administration of the Justice Ministry, which runs the SIZOs. As set out in Article 195, part 3 of the CEC, the Ministry of Defence regulates the administration of medical treatment to inmates held in disciplinary facilities of the armed forces and their access to other medical personnel.

Thirdly, the authors of this document are concerned that the existing forensic centres in Tajikistan lack sufficient financial resources and, in many cases, the necessary equipment to conduct reliable forensic examinations. In some centres there are no functioning laboratories. The regional forensic centres in the Northern Sughd region, the Southern Khatlon region and the Eastern Autonomous region of Gorno-Badakhshan have not been modernized since the 1950s. Many district forensic facilities are not accommodated in separate buildings, but often function next to the local morgue, and lack basic hygienic conditions.

Another problem is that in Tajikistan only psychiatrists are authorized to examine and diagnose posttraumatic stress disorder resulting from torture. The forms that are used to record the results of psychiatric examinations have not been updated since 2001 and they do not reflect the standards of the Istanbul Protocol. The large majority of psychiatrists have not received training on the Istanbul Protocol.

Accessing forensic or psychiatric examinations is further complicated by the fact that, in practice, such examinations are only conducted when the investigator orders an examination, (in line with Chapter 24 of the CPC). Article 21, part 4 of the Law on state forensic examinations stipulates that forensic examinations can be opened not only on the basis of an order by the investigator, but also an order by the court, the judge, the police inquirer, the prosecutor or a petition by a physical or legal individual such as a detainee or his or her legal representative. However, no mechanism has been put in place to implement this provision in practice.

The May 2016 legal amendments stipulate that detainees should undergo a medical examination prior to being placed in a temporary detention facility. Article 94, part 4 also states that the suspect or the lawyer can request that the examination be conducted by an independent doctor or an independent forensic expert. However, to date, Tajikistan has not regulated the activity of independent forensic experts and there are no independent forensic medical institutions in Tajikistan.

The Programme of Judicial-Legal Reform in the Republic of Tajikistan (2015-2017), adopted by Presidential Decree on 5 January 2015, envisaged a study into all existing (state-run) forensic institutions and exploring the possibility of carrying out forensic examinations outside the state system. The Ministry of Justice and its agency, the Republican Centre for Forensic and Criminalistic Examinations, were tasked to carry out the study. In 2016 the Ministry submitted a draft law ("On Forensic Examinations") to the Republican Centre for Forensic and Criminalistic Examinations, which provided comments. The draft is yet to be finalized.

The authors of this submission are concerned that, although by law (Article 210 of the CPC), forensic examinations of victims and witnesses are conducted subject to voluntary and written consent, suspects, accused persons and defendants can be forced to undergo forensic examinations.

### **3.4. Video recording in detention facilities**

According to the 2015 Government Information on the Implementation of UPR Recommendations, the Interior Ministry equipped all temporary detention facilities in Dushanbe and the corridors of buildings belonging to Interior Ministry agencies with video cameras and this initiative is being extended to other parts of Tajikistan. On 28 April 2015, in the framework of national consultations about the implementation of recommendations issued to Tajikistan under the UPR, government representatives reported that video cameras had been installed in four facilities of the Interior Ministry in Dushanbe, including the capital's temporary police detention facility. The SCNS, the Drug Control Agency and the Anti-Corruption Agency also reported that they had installed cameras, but gave no details.

According to members of the Monitoring Group under the Ombudsman's Office, most detention facilities had been equipped with video cameras by the time of writing, but the NGOs issuing this document are concerned that they do not cover all the necessary areas. For example, no cameras have been installed in exercise yards and only two to three police detention facilities have cameras in the interrogation rooms. Video cameras are usually not set up in psychiatric facilities.

In 2016 and 2017 several lawyers who cooperate with the Coalition against Torture and Impunity petitioned for video recordings relevant to their clients' cases to be made available to them. They were told that the footage had not been saved or that due to a power cut at the time no recordings had been made.

*For example, on 25 April 2015 the Prosecutor General's Office opened criminal proceedings under Article 143-1 of the Criminal Code, entitled "torture", in relation to Shamsiddin Zaydulloyev's death earlier that month. Lawyers of the Coalition against Torture and Impunity, who represent Shamsiddin's family, petitioned to view footage from a video camera installed in the detention facility of the Drug Control Agency where Shamsiddin was held, but a technical examination carried out in May 2015 claimed that the camera was not functioning from 8 to 13 April. However, the lawyer pointed out that a short recording from the same camera dated 12 April was included in the case file. (For further information on this case, refer to the Case Annex).*

## 3.5. Suggested recommendations to the authorities of Tajikistan

- Compile and publish comprehensive statistics on cases of law enforcement agents and other officials accused of, charged with and punished for failing to implement the legal safeguards for detainees contained in the Criminal Code of Tajikistan. Detail the types of punishments handed down.
- Amend legislation to ensure that medical examinations are carried out immediately after the actual arrest.
- Amend legislation to ensure that detainees unfailingly undergo a medical examination after being taken out of the temporary police detention facility and before being admitted to the investigation-isolation facility (SIZO).
- Amend the Criminal Executive Code to ensure that close family members of prisoners are promptly informed of her or his whereabouts upon admission to a penitentiary facility and of any transfers.
- Oblige detaining officers to wear visible identity tags at all times.
- Reduce the 72-hour limit for a detainee to be brought before a judge to 48 hours (as recommended to Tajikistan by the UN Human Rights Committee and the Special Rapporteur on torture), and to 24 hours with regard to minors (as recommended by the UN Committee on the Rights of the Child).
- Amend the CPC to ensure that courts do not base their decisions to authorize remand in pre-trial detention only on the gravity of the alleged crime.
- Strengthen legislation obliging courts to verify that there are sufficient grounds to remand a person in custody and to check that there are valid and legal grounds to detain a person in custody.
- Ensure that nobody is held in custody for longer than strictly necessary and consider reducing the maximum period detainees can be held in custody, both before and during the trial.
- Regulate in law the time limits of custody from the time that the criminal case is referred to the court and until the court admits it.
- Establish a functioning mechanism enabling detainees to meet with a lawyer of their choice immediately after the arrest.
- Ensure in practice that lawyers can freely, without having to seek further permission, meet with their clients in all types of detention facilities, before and after the trial, and including facilities run by the State Committee for National Security, without interference, for adequate periods of time and in a confidential setting.
- Ensure that all medical personnel responsible for examining detainees are truly independent of law enforcement



agencies and the agency running the respective detention facility, and that they follow the standards of the Istanbul Protocol during examination and documentation.

- Modernize the infrastructure of state forensic services across Tajikistan to ensure that forensic experts can conduct high-quality examinations.
- Update the forms used for recording the results of forensic psychiatric examinations and bring them into line with the standards of the Istanbul Protocol.
- Put in place a mechanism to ensure that forensic examinations are carried out upon request of the detainee or the lawyer, in line with Chapter 24 of the CPC.
- Provide the necessary legislative framework to allow for the establishment of independent forensic medical and psychiatric institutions.
- Legislate that suspects, accused persons and defendants must not be forced to undergo a forensic examination.
- Maintain video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or a doctor may be violated. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers. Punish those responsible if relevant recordings are not made available to detainees and their lawyers upon request.

## 4. Deaths in custody and the armed forces (Articles 1, 2, 11, 12 and 13)

**Concluding Observations of the CAT:** Paragraph 10

**List of Issues:** Paragraph 28

*Cases of deaths in custody and in the armed forces continued to be reported. The Coalition against Torture and Impunity documented several cases where the investigation into allegations of has not been conducted effectively.*

From 2014 to 2017 the Coalition against Torture and Impunity recorded eight cases of death in custody<sup>1</sup> and 15 cases of death in the armed forces (two of them were driven to suicide)<sup>2</sup>. (For further information about torture in the army, refer to the chapter "Conscripts and soldiers: torture and ill-treatment in the armed forces").

In some of these cases investigations into allegations of torture were not conducted effectively. The Coalition against Torture and Impunity is aware of cases where the investigation into such allegations was terminated without grounds and lawyers were prevented from accessing the case materials.

1 2014: Umedjon Todjiyev, Nizomiddin Khomidov and Saymurod Orzuyev.

2015: Shamsiddin Zaydulloyev and Umar Bobojonov.

2016: Uktamdjon Igamov.

2017: Tolibjon Dustov and Komil Khodjinazarov.

2 2014: A. Davlatov and M. Nosirov.

2015: F. Rakhmatov and A. Kayumov.

2016: F. Khayitov, M. Saburov, B. Kurbonmarov, Z. Ramazon, A. Kurbonov, M. Dusmatov, Ch. Kurbonov and Sh. Tavalloyev. Ch. Kurbonov and I. Tavalloyev were driven to suicide.

2017: I. Khonov.

*For example, 25-year-old Shamsiddin Zaydulloyev died in police detention in April 2015, less than a week after he was arrested at his home in Dushanbe. When his mother visited him in detention she saw he was injured and he indicated to her that he had been beaten. After his death, an investigation was conducted, but the Prosecutor General's Office closed it in December 2015 on the grounds of "lack of evidence of a crime", although the circumstances of his death remain unclear and the origin of injuries and bruises on his body has not been established. At the time of writing, the lawyer's petitions to reopen the investigation have not been successful. (For further information on this case, refer to the Case Annex).*

*In another case, 23-year-old Umar Bobojonov died in September 2015, a few days after he was taken into custody by police in the city of Vahdat, some 20 kilometers east of Dushanbe. Two eye-witnesses confirmed that police officers abused him. In 2015 an investigation was opened into the circumstances of his death, but the prosecutor's office in Vahdat has suspended it twice stating that they were unable to identify the perpetrator, and the Prosecutor General's Office subsequently referred the case back to Vahdat to resume investigating. The Vahdat prosecutor's office closed the case in December 2016, but the investigator only informed the lawyer acting on behalf of Umar Bobojonov's family in June 2017. Further concerns include that the lawyer was denied access to the case materials for many months and there have been significant delays in the investigators' replies to the lawyers' petitions. At the time of writing, the case had been returned for a third additional investigation. (For further information on this case, refer to the Case Annex).*

## 4.1. Suggested recommendations to the authorities of Tajikistan

- Compile and publish comprehensive statistics on all cases of death in custody in recent years and indicate the location and the cause of death in all cases. Include information on what measures have been taken to investigate the circumstances of death; list all officials who have been punished in connection with these cases for committing crimes of torture, other forms of ill-treatment or negligence; and provide information of any sanctions handed down on these officials.
- Conduct prompt, thorough, impartial and independent investigations into all deaths in custody and the armed forces; bring to justice the perpetrators; assess any liability of their superiors and other officials; and provide reparation including fair and adequate compensation to the victims' families.

## 5. Monitoring of and conditions in closed and semi-closed facilities (Articles 11 and 16)

**Concluding Observations of the CAT:** Paragraphs 14 and 23

**List of Issues:** Paragraphs 26 and 27

*The ICRC has not had access to detention facilities for the purpose of monitoring since 2004. A positive development in the period under review was the establishment of the Monitoring Group under the Ombudsman's Office, which started to pay up to 15 visits per year to closed and semi-closed facilities in February 2014. Civil society groups are not permitted to monitor facilities other than jointly with the Ombudsman Office. Although significant improvements have been made, conditions in closed and semi-closed facilities often do not meet international minimum standards.*

### 5.1. Monitoring closed and semi-closed facilities

The Monitoring Group, which consists of staff of the Ombudsman Office for Human Rights and civil society activists, was established within the Ombudsman Office and began visiting pre- and post-trial facilities as well

as other closed and semi-closed facilities in February 2014. The Monitoring Group is part of the Working Group on Moving towards Ratification of the OPCAT.<sup>3</sup> The Ombudsman is in charge of coordinating the monitoring mechanism.

To date, the Group has visited over 45 facilities (up to 15 visits per year). It has permission to visit almost all places of deprivation of liberty, including temporary detention facilities of the Ministry of Internal Affairs, SIZOs, correctional facilities, homes for the elderly, homes for persons with disabilities, psychiatric clinics, drug clinics and juvenile justice facilities. Up until the end of 2014 the Monitoring Group had to give prior notice of its visits and was not allowed to speak to detainees confidentially. Subsequently the Monitoring Group was able to visit without giving advance notice and its members have been able to conduct all interviews confidentially.

A number of problems remain. The low number of Ombudsman Office staff in the Monitoring Group significantly limits the number of facilities that can be visited because civil society members of the Group are not authorized to carry out visits without Ombudsman Office staff; the Monitoring Group has not been given access to specific detainees to follow-up on complaints about torture or ill-treatment submitted to the Group by these detainees or their relatives; the Monitoring Group does not in all facilities have access to internal documents that are labelled “for official use only”, such as internal regulations; the type of facilities the Monitoring Group has permission to visit continues to be limited and SIZOs run by the SCNS, by the Agency on State Financial Control and the Fight against Organized Crime and by the Presidential Drug Control Agency remain off-limits.

Other than in the framework of the Monitoring Group some civil society organizations have separate memorandums with the Ombudsman for Human Rights on conducting joint monitoring. For example, since 2014 the NGO Office of Civil Freedoms, a member organization of the Coalition against Torture and Impunity, has conducted joint human rights monitoring in army facilities. To date, they have carried out monitoring in 16 facilities across the country. The monitoring is conducted in all army barracks, canteens, medical units, bathrooms and laundry rooms, leisure and living rooms, conference rooms and libraries. The monitors evaluate the relationships amongst the soldiers, and that of the soldiers and officers, the summer and winter living conditions, the quality and amount of food and the quality of and access to medical services.

Tajikistan has not ratified the Optional Protocol to the Convention against Torture (OPCAT), often citing financial limitations. The ICRC has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004. Civil society organizations do not have access to closed and semi-closed facilities other than together with the Ombudsman Office.

## 5.2. Conditions in detention and other closed and semi-closed facilities

Although significant improvements have been made, conditions in detention and other closed and semi-closed facilities do not correspond to international minimum standards in many cases. Information obtained by the Monitoring Group indicates that some facilities, particularly psychiatric institutions, lack basic furniture such as sufficient numbers of chairs, places to hang clothes, shelves for personal items and toiletries, and radios. The yards of many psychiatric and other facilities, which are used for exercise, have no benches; some have no toilets and provide no shelter from rain and snow. While the lighting in prison cells is usually good during the day there is usually only one weak lamp available that can be turned on at night. Some psychiatric facilities, e.g. the Regional Psychiatric Centre in the City of Kulyab<sup>4</sup>, have no library. Some psychiatric facilities have metal bunk

3 The Working Group was set up on 6 August 2013. It consists of 12 representatives of government agencies and civil society: the Office of the Ombudsman for Human Rights, the Office of the Prosecutor General, the Main Directorate for the Execution of Punishments, the Supreme Court, the Parliament, the President’s Office, Professor T. Sharipov and the NGOs Notabene, Bureau on Human Rights and Rule of Law, Human Rights Center and Avesto.

4 The Monitoring Group visited this psychiatric centre on 14 and 15 March 2017. Further information about the visit can be found on: <http://notorturetj.org/rehab/gruppa-po-monitoringu-mest-ogranicheniya-i-lisheniya-svobody-posetila-oblastnoy>

beds and bars on the doors and windows. Many psychiatric facilities lack qualified doctors and the necessary medication. Some detention facilities are insufficiently heated in winter. Although efforts have been made to increase financial resources for food in places of deprivation of liberty, the quality of the food remains poor. In psychiatric facilities, for example, TJS 10 to TJS 12 is budgeted per patient per day (approx. EUR 1), which is clearly insufficient to meet patients' nutritional requirements.

According to the Monitoring Group, some institutions, particularly psychiatric ones like the Regional Psychiatric Centre in the City of Kulyab, do not give patients access to pen and paper and do not provide boxes for letters and complaints. Staff explained that there is no need for correspondence with relatives because relatives can visit and the patients are given mobile phones upon request when they want to communicate with people outside.

Discipline in places of deprivation of liberty is regulated by legislation and internal rules. When being admitted to corrective labour facilities or prisons inmates are usually verbally informed of these rules, but the rules are not displayed in accessible places in all facilities.

Article 105, part 5 of the CEC stipulates that "the forcible administration of food or prescribed medicines is permitted when a prisoner refuses to eat and to take medicine prescribed by a doctor, and if his life is at risk."

### **5.3. Suggested recommendations to the authorities of Tajikistan**

- Allow the International Committee of the Red Cross to conduct monitoring of detention facilities in Tajikistan.
- Ratify the Optional Protocol to the Convention against Torture and set up a National Preventive Mechanism.
- Set up a mechanism of public control over all places of deprivation of liberty and other closed and semi-closed facilities.
- Publish details about all places of deprivation of liberty, their location and inmate capacity, as well as the actual number of inmates in each facility, dissegregated by age and sex.
- Allocate sufficient budgetary resources to improve conditions in all places of detention and other closed and semi-closed facilities and bring them in line with basic international standards.
- Ensure that the food provided in places of deprivation of liberty is of sufficient nutritional value and takes into account specific needs based on age, health, weight and religious dietary requirements.
- Ensure that the legislation and internal rules governing corrective labour facilities, prisons and all other closed and semi-closed facilities are displayed clearly in places that are accessible to the inmates.
- Publish all internal rules and regulations governing all places of deprivation of liberty.
- Cease the holding of prisoners serving life imprisonment in complete isolation, take steps to improve their living conditions, and repeal legislation limiting their contacts with lawyers and family members.

# 6. Reacting and conducting effective investigations into allegations of torture and other forms of ill-treatment (Articles 1, 2, 11, 12, 13, 14)

**Concluding Observations of the CAT:** Paragraphs 9, 10, 11, 14, 15 and 22

**List of Issues:** Paragraphs 2, 8 and 31

The authorities do not publish statistics on all cases involving torture and other forms of ill-treatment, but only on those opened under Article 143-1 (“torture”). Monitoring conducted by the Coalition against Torture and Impunity reveals that torture and ill-treatment continue to be widely used and impunity persists. Many victims and their families refrain from lodging complaints for fear of reprisals or because they are convinced that the perpetrators will not be brought to justice. There is no independent body tasked with investigating complaints about torture and ill-treatment and the agencies involved in examining and investigating such allegations lack independence.

Torture and ill-treatment continue to be widely used and impunity persists.

The authorities do not publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to all cases involving allegations of torture and other forms of ill-treatment. They also fail to disclose statistics about deaths in custody or in the armed forces and the causes of death. (Refer to the section “Data collection” below).

Since Tajikistan was last reviewed by the CAT, members of the Coalition against Torture and Impunity registered 25 (2013), 26 (2014), 45 (2015), 57 (2016) and 66 (2017) new cases of men, women and children who were allegedly subjected to torture or other forms of ill-treatment. The majority of these cases relate to physical abuse in the first hours of detention with the aim of extracting a confession. These figures represent merely a fraction of the whole picture, as fear of reprisals prevents many victims and their relatives from lodging complaints. In addition, individuals held in closed or semi-closed facilities are often unable to pass complaints to civil society activists since NGO activists have no access to these facilities other than as part of the Monitoring Group led by the Ombudsman for Human Rights. (For further information, refer to the section “Monitoring detention facilities and other closed and semi-closed facilities”).

Methods of torture recorded by the Coalition against Torture and Impunity in the period under review include pushing needles or nails under the victim’s finger nails, twisting a person’s arms behind their back and attaching them to the feet, applying electric shock to fingers, the mouth, the back or male genitals, attaching heavy bottles to male genitals, slipping a gas mask over the victim’s head squeezing tight the air supply, covering the victim’s mouth with tape; rape and threats of rape including with regard to close family members, particularly wives; cigarette burns; forcing the victim into cold water on a cold day; keeping the victim’s feet in cold water for one or two days; forcing detainees to brutalize each other; beatings with fists, truncheons and other objects; intimidation and threats of violence directed at the victim’s relatives.

## 6.1. Data collection

The authorities compile and publish statistics on criminal cases opened under Article 143-1 of the Criminal Code (“torture”). As mentioned above, according to official sources, eleven criminal cases have been opened since the Article was introduced to the Criminal Code in 2012. However, most cases involving allegations of torture or other forms of ill-treatment continue to be opened under other articles of the Criminal Code, such as “incitement

to suicide" (Article 109), "abuse of authority" (Article 314), "exceeding official authority" (Article 316), "negligence" (Article 322), or, in cases from the armed forces, "violating the code of military conduct" (Article 373) or "abuse of authority or duty" (Article 391). All these articles are also applied to criminal cases that do not involve torture or other forms of ill-treatment, so official statistics on cases opened under these articles do not exclusively relate to crimes involving torture/ill-treatment.

In early 2017 the Coalition against Torture and Impunity sent letters to several government agencies and the Supreme Court asking them to provide statistics of cases involving torture and other forms of ill-treatment in recent years, including, where applicable, cases involving compensation for moral harm. At the time of writing no replies had been received from the Ministry of Internal Affairs and the Border Guards of the SCNS. The Drug Control Agency responded on 27 April 2017 that it had not received any complaints between 2012 and 2016. It added that the Prosecutor General's Office had received a complaint in April 2015 accusing an officer of the Drug Control Agency of torturing a detainee, and that the Prosecutor General's Office had reviewed the case. In a letter dated 19 May 2017 the Anti-Corruption Agency also replied that it had not received any complaints about torture and ill-treatment between 2012 and 2016. The Supreme Court replied on 24 April 2017 that "according to statistical information and reports that were approved by the Statistics Agency at the Office of the President, the Supreme Court of the Republic of Tajikistan is unable to provide information on legal acts which came into force under articles 143-1, 314, 316 and 322 of the Criminal Code of the Republic of Tajikistan and about payments of compensation on the types of cases mentioned above, due to their absence." The Ministry of Justice replied on 3 May 2017 that it does not keep statistics on individual cases. The Prosecutor General's Office wrote on 27 April 2017 that "in line with Article 14, part 3, para. b of the Law "On the Right to Access to Information", the Prosecutor General's Office of the Republic of Tajikistan refrains from providing such information." The Military Prosecutor's Office replied on 12 May 2017 that it was unable to submit the requested information as it is considered a state secret. The Ministry of Defence responded on 15 May 2017 that for the period of 2012 to 2016 it registered one case of compensation for moral harm. This was the case of the deceased Firdavs Rakhmatov whose family was awarded TJS 5000 by the Military Court of Dushanbe in October 2016.

## **6.2. Confidential complaint mechanisms and protecting victims, their families, human rights defenders and lawyers from reprisals**

Article 12, part 3 of the CPC states that if there is sufficient information suggesting that victims, witnesses, other participants in the criminal procedure and their families may be at risk, the court, judge, prosecutor, investigator and interrogator are obliged to take adequate legal measures to protect the life, health, dignity and property of such persons.

In line with the CPC, the Law on Detention Procedures and Conditions and the CEC, the administration of a detention facility is tasked with receiving and forwarding complaints of suspects, accused persons, detainees and prisoners to the relevant addressee.

In practice, victims of torture or their relatives sometimes face or are threatened with reprisals after lodging a complaint with the authorities about torture or other forms of ill-treatment. Law enforcement officers often urge them to withdraw the complaint or to refrain from being represented by an independent lawyer.

Lawyers have also been subjected to threats and reprisals in many cases and often threats have involved warnings that lawyers' family members would be targeted unless the lawyer withdraws from the case or pursues it less vigorously. Lawyers defending clients charged with "terrorism" or "extremism" are systematically threatened with reprisals by security service agents when they lodge complaints about torture on behalf of their client.

## 6.3. Responding to allegations of torture or ill-treatment: domestic legislation

By law, criminal investigations may be opened upon the submission of a verbal or written complaint by the victim, or based on information provided by an official, information available in the media or information obtained by an interrogator, investigator, or prosecutor (Article 140, part 1 of the CPC). The applicant is warned that criminal liability can be incurred for knowingly providing false information which is noted in the protocol, and certified by signature. The complaint shall be considered within three days, and in exceptional cases with approval from the prosecutor – within seven days. If the prosecutor refuses to open a criminal investigation, a copy of a document with information about the appeal procedures shall be provided to the applicant in accordance with Article 149, parts 2 and 3 of the Criminal Code. The applicant may appeal the decision to a higher prosecutorial body or the court within 14 days upon receipt of the prosecutor's decision. The law does not provide for procedures informing the detainee as to whether his/her complaint was received by the relevant official body.

A complaint about torture provides the grounds for initiating a criminal investigation in accordance with Article 146, part 1 of the CPC. The applicant is given a document certifying that the application was accepted, registered and considered in accordance with Article 145, part 1 of the CPC). The confirmation document should include information on the appeals procedure (Article 145, part 7 of the CPC). Next the prosecutor or investigator conducts a preliminary investigation into the complaint which should be completed within two months from the time of initiation of the criminal case (Article 164 of the CPC).

The law establishes a two stage procedure for the investigation of complaints: a pre-investigation check of existing evidence and the investigation. The pre-investigation check is conducted in order to establish the basis and grounds for initiating a criminal case and beginning the investigation process. It should be noted that the pre-investigation check stage (before the institution of the criminal case) allows only for the inspection of the scene of the alleged crime, the medical examination of the alleged victims of torture, and the questioning of the applicants, eyewitnesses and alleged perpetrators. A criminal case is initiated if it becomes clear that it is necessary to conduct forensic examinations, cross-question suspects and witnesses or carry out identification and other investigative actions. Investigation is the process of collection of evidence of the crime and identification of the perpetrator. The investigation concludes with the indictment (provided that the investigation concludes that a crime was committed and sufficient evidence is collected against the alleged perpetrators) or by a decision to close the investigation. The initial pre-investigation check stage is not necessary should there be credible evidence that the crime was committed, meaning that the investigation stage can start immediately.

Legislation provides a list of the state institutions responsible for considering citizens' complaints. These include the courts, prosecutors' offices and the internal security services of the Ministry of Internal Affairs and the SCNS. Investigations of cases opened under 143-1 ("torture") are conducted by prosecutors (Article 161, part 2 of the CPC).

## 6.4. The need for effective and independent investigations

Several international human rights bodies and procedures including the CAT, the Human Rights Committee and the UN Special Rapporteur on torture have recommended that Tajikistan establish an independent investigatory body, but the authorities have repeatedly stated that what they claim to be a low number of torture cases does not warrant this. However, they only refer to the number of cases opened under Article 143-1 ("torture") of the Criminal Code, whereas as mentioned above, most cases involving torture and ill-treatment are opened under other articles of the Criminal Code, such as those punishing "negligence", "abuse of authority or duty" or "violating the code of military conduct". (For further information, refer to the chapter "Prohibition and punishment of torture and ill-treatment" and the section "Data collection").

In practice complaints about torture and ill-treatment by law enforcement agents are often not investigated effectively in Tajikistan because the investigating institutions are not sufficiently independent.

Complaints about torture and other forms of ill-treatment can be submitted not only to the Office of the Prosecutor General or other prosecutors' offices, but also to the Ministry of Internal Affairs, the SCNS, the Drug Control Agency and other law enforcement agencies whose personnel are implicated in the complaint. The security service of the respective agency will subsequently proceed to review the complaint, but there is an inevitable conflict of interests as this service lacks independence. If the agency decides that there are no sufficient grounds for opening a criminal case domestic legislation does not require it to forward information about the case to the Prosecutor's Office.

When complaints are lodged with prosecutors offices the investigation also often lacks effectiveness and independence.

Domestic legislation invests prosecutors' offices with two functions: one with regard to criminal prosecution and the other for the supervision of the legality of activities relating to searches, pre-investigation checks and investigations. In relation to criminal prosecution prosecutors' offices carry out investigations into various crimes. They also represent the state prosecution in court, including in cases where the actual investigation was carried out by other law enforcement agencies, such as the police. When representing the prosecution in court, the prosecutor bases his/her statement on evidence obtained in the course of the searches and the investigation. If the prosecutor provides information which highlights violations regarding the conduct of the law enforcement officials who carried out the investigative work in relation to the criminal case, (for instance torture), the prosecution would cast doubt on the evidence against the defendant and thus jeopardize its own position in court. In practice the conflict between the two functions represented by the Prosecutor's Office is usually weighted in favour of a strengthening of the position of the prosecution rather than the examination of allegations pertaining to torture, ill-treatment or other violations with regard to suspects and defendants.

When prosecutors initiate torture investigations, they lead the investigation, but domestic legislation permits them to order police to undertake investigative activities and gather evidence. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links. This clearly hinders the possibilities for impartial and independent investigations to be conducted. It is not unusual that a policeman implicated in the complaint about torture or his colleagues are engaged in collecting evidence in relation to the case.

The Coalition against Torture and Impunity has documented many cases where prosecutors did not promptly react to allegations or complaints of torture. Investigations are usually only instigated after the victim or the lawyer have filed a complaint. When prosecutors decide that there are insufficient grounds to open an investigation, they typically do not provide sufficient detail to explain their decision.

In cases where investigations are opened, they are often not conducted effectively. In many cases known to the Coalition against Torture and Impunity investigators do not gather sufficient evidence to properly examine the circumstances of the alleged torture; they often fail to interview witnesses and medical personnel or to order a forensic medical examination. Often they do not interview the victims themselves and do not carry out cross-questioning of police and victims. Instead, prosecutors frequently rely on statements obtained from the alleged perpetrators and their colleagues. By law, torture victims and their lawyers are only entitled to access the case materials upon completion of the pre-trial investigation, which makes it difficult or impossible to put up a strong defence.

When a complaint is lodged with the Prosecutor General's Office against the decision of a local prosecutor's office not to open a criminal case into allegations of torture/ill-treatment or to suspend the investigation, the Prosecutor General's Office typically refers the case back to the same local prosecutor's office when it decides that the case needs further checking. In this way cases can be bounced back and forth between prosecutors' offices for months or even years.



*For example, the prosecutor's office in Vahdat was tasked with investigating the circumstances of Umar Bobojonov's death in custody in September 2015. Since that time the prosecutor's office in Vahdat has suspended the investigation twice stating that they could not identify the perpetrator, and the Prosecutor General's Office has referred the case back to Vahdat to resume investigating. In December 2016 the Vahdat Prosecutor's Office closed the case again, but the investigator only informed the lawyer acting on behalf of Umar Bobojonov's family in June 2017. (For further information on this case, refer to the Case Annex).*

*Saymurod Orzuyev, aged 30, was found dead near a river in Nurobod district in central Tajikistan on 29 April 2014, four days after he had been apprehended by traffic police and officers of Nurobod District Police. His family reported that he briefly called his sister in the evening of 25 April, but was only able to tell her -- through tears -- that he was being held at Nurobod Police station, before the phone went dead. The family were unable to gain access to him. On 21 May 2014 Nurek District Prosecutor's Office started examining the circumstances of Saymurod Orzuyev's death. Since then and up to the time of writing the Prosecutor General's Office of Tajikistan has annulled decisions by Nurabad Prosecutor's Office to close the case on nine occasions and has returned it to Nurabad prosecutor's office for further checking. In 2018 lawyers of the Coalition against Torture and Impunity lodged a complaint with the court about the lack of action by the Nurabad Prosecutor.*

*Bakhriniso Narzulloyeva was reportedly beaten by officers of the Shakhmansur District Police Station in Dushanbe on 2 October 2016 and taken to the local police station. She was released the same day and went to the Central Republican Hospital for a forensic medical examination, which concluded that she had injuries on her head and hands. She turned to the Coalition against Torture and Impunity and on 14 October her lawyer lodged a complaint about the ill-treatment with the Dushanbe City Procurator's Office. The case was transferred to the district prosecutor's office, which ruled that there were no grounds for opening a criminal case. Since then Bakhriniso Narzulloyeva's lawyer has repeatedly lodged complaints and the Prosecutor General's Office has sent the case for additional checking to Dushanbe City Prosecutor's Office on two occasions. However, Dushanbe City prosecutors ruled again not to open a criminal case. On both occasions the same investigator of Dushanbe City Procurator's Office was tasked with the additional checking.*

In recent years judges have more often ordered prosecutors to investigate allegations of torture/ill-treatment, which is a positive development. At the same time the Coalition against Torture and Impunity is not aware of a single case, in which prosecutors subsequently confirmed that torture had taken place, although the evidence appeared to have been compelling in several of the cases. Sometimes judges summoned the police officers accused of torture to testify. When they denied the allegations, the judge's review of the torture allegations was usually closed and no further inquiries were made.

The Coalition against Torture and Impunity also continues to document cases where judges ignore allegations of torture raised during the trial and refuse to order investigations.

*For example, 16-year-old Sherkhon Obidov, detained by police on 2 June 2017, was reportedly beaten on the head and face, and kicked and threatened with rape as he was forced to confess to robbery. Reportedly, he lost consciousness for some 20 minutes and his father reports that Sherkhon suffers from severe headaches and frequent nightmares since his detention. He was subsequently charged with robbery and when Farkhor District Court heard the case against him later in July the judge refused to satisfy the repeated requests of the defence lawyer from the Coalition against Torture and Impunity to instruct the prosecutor's office to open a full investigation into the allegations of torture and other ill-treatment, and to conduct psychiatric and psychological assessments of the child. Instead, the judge found Sherkhon guilty of robbery and sentenced him to two years in an educational colony for minors. (For further information on this case, see the Case Annex).*

## 6.5. Suggested recommendations to the authorities of Tajikistan

- Put in place a unified registration system for cases involving torture or other forms of ill-treatment and compile comprehensive statistics disaggregated by sex, age and, where applicable, detail charges brought, complaints, investigations, prosecutions, convictions and means of redress. Ensure that not only cases under Article 143-1 of the Criminal Code are included, but all cases involving allegations of torture or other forms of ill-treatment including those opened under charges such as “incitement to suicide” (Article 109), “abuse of authority” (Article 314), “exceeding official authority” (Article 316), “negligence” (Article 322), or, in cases from the armed forces, “violating the code of military conduct” (Article 373) or “abuse of authority or duty” (Article 391).
- Establish an effective, accessible and confidential system for receiving and processing complaints about torture and other ill-treatment in all places of detention and army facilities.
- Ensure that complainants and witnesses are protected against reprisals as soon as the authorities receive the complaint/witness report and that appropriate disciplinary or, where relevant, criminal measures are imposed against perpetrators for such actions.
- Establish an effective and independent investigation mechanism with no connection to the state body prosecuting the case against the alleged victim.
- In the meantime, strengthen the role of the Prosecutor General’s Office with regard to the investigation of torture and ill-treatment, in both law and practice. In particular, legislate that the Prosecutor General’s Office should conduct all investigations involving allegations of torture and other forms of ill-treatment including those opened under Articles 143-1, 314, 316, 322, 373, 391 or other relevant articles of the Criminal Code; also ensure that the investigative activities are not conducted by law enforcement officers, but by specialized investigators of the Prosecutor General’s Office.
- Ensure that lawyers have prompt and full access to materials relating to the investigation into torture allegations, so that they can prepare a meaningful defence.

## 7. Excluding evidence extracted under torture (Article 15)

**Concluding Observations of the CAT:** Paragraph 13

**List of Issues:** Paragraph 34

*Under domestic legislation evidence is considered inadmissible when it is obtained by way of torture or other forms of ill-treatment. However, there is no mechanism in place to guarantee the implementation of the relevant legislative provisions and the Coalition against Torture and Impunity is not aware of any case where Article 88-1 (“inadmissible evidence”) has been applied in practice.*

In line with the May 2016 amendments to the CPC, evidence is considered inadmissible if it is obtained by way of torture, ill-treatment, violence, threats, deception or other unlawful activities (Article 88-1, “inadmissible evidence”). Questions of inadmissibility of evidence and limitations on their use in the criminal procedure are decided by the police inquirer, the investigator, the prosecutor, the court, the judge, either on their own initiative or following a petition by the parties. Evidence of torture or ill-treatment of a suspect, accused or defendant have

to be checked and evaluated regarding the admissibility of their statements as evidence, no matter whether a complaint or a petition have been filed by the victim or the lawyer. The inquirer, investigator, prosecutor, court or judge who decide about the question of admissibility are obliged to clarify in each case which specific violation took place and issue a decision with a justification. When evidence is ruled to be inadmissible due to torture or ill-treatment, the police inquirer, investigator, prosecutor, court or judge take measures within their respective remits pertaining to the responsibility of those individuals who allowed the abuse. All evidence ruled to be inadmissible is considered invalid.

However, there is no reliable enforcement mechanism in place to guarantee the implementation of this legislation in practice. Often, judges dismiss torture allegations by defendants or close the inquiry following an interview with the alleged perpetrators. Or, when lawyers petition during the trial that Article 88-1 be applied, judges often delay their decision until the verdict is pronounced, which violates Article 175 of the CPC (“obligatory consideration of petitions”). The Coalition against Torture and Impunity is not aware of any case where Article 88-1 has been applied in practice.

## 7.1. Suggested recommendations to the authorities of Tajikistan

- Ensure in practice that any statement or confession elicited as a result of torture or ill-treatment is not used as evidence in any proceedings except those brought against the alleged perpetrators.
- Publish detailed statistics on all cases where judges excluded evidence extracted under torture.

## 8. Redress (Article 14)

**Concluding Observations of the CAT:** Paragraphs 10, 12 and 21

**List of Issues:** Paragraphs 33 and 35

*Domestic legislation does not list torture and ill-treatment as grounds for compensation, but in practice it has been possible to file suits in such cases. In 2014 the families of two deceased men were the first known cases to receive compensation for moral harm sustained through torture and to date there are eight such cases. These are important precedents, but the amounts granted were neither fair nor adequate. Domestic legislation does not provide victims of torture with other forms of reparation such as rehabilitation, satisfaction or guarantees of non-repetition.*

### 8.1. Compensation

Both the CPC and the Civil Code of Tajikistan regulate the issue of compensation payments. Neither of these codes explicitly lists torture and other forms of ill-treatment as grounds for compensation, but in practice it has been possible to file suits with Tajikistani courts for compensation of moral and material harm sustained through torture and ill-treatment. An obligatory pre-condition for lodging such a suit is a guilty verdict against the perpetrator. Due to protracted investigations into allegations of torture and ill-treatment it often takes years before a guilty verdict is pronounced.

In 2014, the families of two men who died in custody in 2011 (Safarali Sangov and Bakhromiddin Shodiyev) were the first known cases involving allegations of torture to have been awarded compensation for moral damages by courts in Tajikistan. To date the courts have awarded compensation for moral damages in relation to eight victims of torture (deaths: Nazomiddin Khomidov, Murod Nosirov, Firdavs Rakhmatov, Safarali Sangov and Bakhromiddin

Shodiev; severely disabled: Shakhbol Mirzoyev; sustained serious bodily harm: Farkhod Goyibov; attempted to commit suicide after torture: Khushvakht Kayumov).

While these are important precedents the amounts the victims or their families received were neither fair nor adequate. Domestic legislation does not explicitly instruct courts to grant fair and adequate compensation. In practice the courts' rulings do not appear to be guided by the principles of fairness and adequateness, but by an assessment of available resources in the state budget.

The amounts granted have ranged from the equivalents of approx. EUR 400 to EUR 5300. In 2014 the families of the deceased Safarali Sangov and Bakhromiddin Shodiyev were awarded 46 500 Tajik Somoni (TJS, approx. EUR 5300 at the time) and TJS 14 579 (approx. EUR 1650 at the time) for moral damages respectively. In July 2015 the court awarded TJS 16 000 (approx. EUR 1800 at the time) in moral damages for the torture of 17-year old Khushvakht Kayumov.

Subsequently, the amount of compensation granted by the courts has noticeable decreased. For example, the families of two deceased men were awarded TJS 5000 (approx. EUR 560 at the time; cases of Nizomiddin Khomidov and Firdavs Rakhmatov) respectively. Farkhod Goyibov, whose kidney had to be removed after police officers subjected him to ill-treatment, was awarded TJS 9000 (approx. EUR 1000) for moral damages. Shakhbol Mirzoyev, an army recruit, who was tortured so severely that he was left paralyzed, was granted only TJS 4000 (approx. EUR 400 at the time).

The authors of this document are concerned that judges dealing with compensation cases do not seriously consider evidence and opinions submitted by international experts. In those cases where international expert conclusions were submitted, the courts subsequently ordered local experts to examine the same case.

## 8.2. Other forms of redress

Domestic legislation does not provide for measures of rehabilitation to victims of torture and/or their relatives. Rehabilitation programmes are instead offered by NGOs, using their own financial resources. In 2016, for example, the Coalition against Torture and Impunity provided rehabilitation to 27 victims of torture and ill-treatment or their relatives. In 2017, the Coalition provided rehabilitation services to 46 people (24 men and 22 women). Twenty-one of them were victims of torture and ill-treatment and 25 were relatives of victims.

To our knowledge, other forms of reparation such as measures of satisfaction and guarantees of non-repetition are not provided to victims in Tajikistan and domestic legislation does not provide for such measures.

## 8.3. Suggested recommendations to the authorities of Tajikistan

- Amend domestic legislation to explicitly stipulate that victims of torture or ill-treatment and/or members of their families are entitled to fair and adequate compensation for moral damages.
- Ensure that guidelines for judges are elaborated to ensure that the sums of compensation payments for moral harm are fair and adequate.
- Legislate that victims of torture and/or members of their families are entitled to free medical, psychological and psychosocial support.
- Set up a state-run Rehabilitation Centre offering comprehensive and free services to victims of torture and members of their families. Alternatively, provide funding for rehabilitation programmes to civil society organizations with the relevant expertise.

- Ensure that victims of torture are also granted other forms of reparation by the state such as measures of satisfaction, guarantees of non-repetition and as full rehabilitation as possible.

## 9. Conscripts and soldiers: torture and ill-treatment in the armed forces (Articles 1, 2, 12, 13, 16)

**Concluding Observations of the CAT:** Paragraph 12

**List of Issues:** Paragraph 35

*Hazing continues to be used routinely in the armed forces of Tajikistan and filing complaints is usually strongly discouraged by peers and commanding officers. Complaints are typically only lodged in cases with a fatal outcome or other serious consequences. In the period under review, several perpetrators of torture and ill-treatment in the armed forces benefitted from amnesties. But there have also been positive developments. Since 2015 the authorities have increasingly acted to bring soldiers and also senior officers to justice for their actions or failure to act. Compensation has been granted for moral damages in four cases. Manuals and handbooks have been issued and trainings conducted to prevent and counteract abuse in the army.*

Hazing of new recruits by fellow soldiers is routine in the Tajikistani armed forces, despite being prohibited in domestic legislation. Such abuse frequently takes place with the consent, acquiescence or approval of officers or other military personnel. In some cases officers themselves engage in abusing soldiers. Complaining about abuse is usually strongly discouraged by peers and commanding officers in military units and anybody who complains risks being labelled as a “traitor” and subjected to further abuse. Complaints that do come to light usually relate to particularly severe torture and ill-treatment, such as abuse leading to the death of the victim.

The Military Prosecutor’s Office informed NGOs in 2012 that it did not publish statistics on complaints, investigations, prosecutions and convictions relating to abuse in the army because such information was considered a state secret. This lack of transparency persists.

In 2014 the Coalition against Torture and Impunity started registering cases of torture and ill-treatment in the armed forces -- those under the authority of the Ministry of Defence, the Border Guards of the SCNS as well as the National Guard. From 2014 to 2017 the Coalition recorded a total of 20 cases, 15 of which resulted in death (two of those who died were driven to suicide).<sup>5</sup>

In a positive development, since 2015, the Military Prosecutor’s Office has increasingly opened investigations not only against soldiers who carried out torture and ill-treatment, but also against duty officers and senior officers for their actions or failure to act. The Coalition is aware of five cases, which resulted in the victims’ death or in serious harm where commanding officers have been brought to criminal responsibility. In most other cases where the injuries caused were less serious military prosecutors and courts ruled that commanding officers be subjected to disciplinary sanctions which were applied by military authorities.

To the Coalition against Torture and Impunity’s knowledge, in 2016 the Military Court of Dushanbe awarded the first ever compensation payments for moral and material damages sustained through torture in the army to a victim (Shakhbol Mirzoyev) and the family of a deceased victim (Firdavz Rakhmatov). (For further information, refer to the chapter “Redress”).

5 2014: A. Davlatov and M. Nosirov died. Sh. Mirzoyev sustained serious injuries and was left disabled.

2015: F. Rakhmatov and A. Kayumov died. The other victims were the soldiers B. Nasriddinov, I. Kholov and R. Sharipov.

2016: F. Khayitov, M. Saburov, B. Kurbonmarov, Z. Ramazon, A. Kurbonov, M. Dusmatov, Ch. Kurbonov and Sh. Tavalloyev died. Ch. Kurbonov and I. Tavalloyev were driven to suicide.

2017: I. Khonov died. The soldier A. Bokiyev sustained injuries.

The NGOs issuing this document are concerned that several perpetrators of torture and ill-treatment in the army have benefitted from amnesties in recent years and had their sentences reduced. (For further information on this topic, refer to the section “Amnesties, statute of limitation and other exemptions from criminal liability for torturers”).

On 20 February 2015 the President adopted by decree the Concept of Political Education in the Armed Forces of the Republic of Tajikistan. Based on this concept, the Ministry of Defence drafted a Manual on the Prevention of Unlawful Relations, Cases of Suicide and Military Crimes in the Armed Forces of the Republic of Tajikistan and a Handbook on Strengthening Military Discipline and Law and Order in the Armed Forces of the Republic of Tajikistan. The Manual examines the causes behind ill-treatment in the army; it elaborates on legitimate measures to strengthen military discipline; and it outlines mechanisms, tasks and steps to prevent torture, and to investigate and document abuse.

In 2016 and 2017 the Military Prosecutor’s Office, the Office of the Ombudsman for Human Rights and the NGO Office of Civil Freedoms jointly conducted a series of trainings and seminars for staff of the Military Prosecutor’s Office on the right to freedom from torture. Together with the Ministry of Defence and the Ombudsman’s Office the NGO Office of Civil Freedoms ran 15 seminars for over 200 officers on prevention of abuse in the army. In addition, the NGO prepared two manuals on the same issue, with the Military Prosecutor’s Office and the Ministry of Defence respectively.

## 9.1. Suggested recommendations to the authorities of Tajikistan

- State publicly that hazing is a crime and that the perpetrators and any senior officers carrying direct or indirect responsibility for abusing an army conscript will be brought to justice.
- Publish comprehensive statistics on complaints, investigations, prosecutions and convictions relating to abuse in the army, indicating the position and/or rank of the victim and the perpetrator and, if applicable, superior officers implicated in the case. Abolish any legislation preventing the authorities from doing so.
- Set up confidential complaint mechanisms in all military units.
- Conduct effective investigations into all allegations of torture or other ill-treatment in the armed forces, bring to justice the perpetrators and, if applicable, superior officers implicated in the case.

## 10. Women: domestic violence (Articles 2, 12, 13, 16)

**Concluding Observations of the CAT:** Paragraph 16

**List of Issues:** Paragraph 18

*The adoption of the Law on the Prevention of Violence in the Family in 2013 and the State Domestic Violence Prevention Programme for the period 2014-2023 and other positive steps taken by the government since then to combat domestic violence are being undermined by remaining protection gaps in legislation, weaknesses in the criminal justice system and the failure of the authorities to systematically address the widespread problem. Obstacles to justice for victims include the fact that domestic violence is not criminalized as a separate offense in the Criminal Code. Perpetrators of domestic violence frequently avoid prosecution, or benefit from amnesties, resulting in ongoing impunity. The requirement for victims of certain types of crimes which are classified as less serious to pursue complaints against their abusers through*

*the criminal justice system themselves discourages them from fighting for justice. The state has not prioritized funding of support services and shelters for victims of domestic violence from the central budget and service provision remains inadequate leaving many victims particularly in rural areas with no where to turn.*

Assessing the scale of domestic violence against women in Tajikistan is hampered by the lack of comprehensive, disaggregated statistics. Data collection is inconsistent and uncoordinated, and under-reporting is a problem. Although NGO service providers use a common database, the State Commission on implementation of international human rights obligations provides statistics in its progress reports, and the Committee for Women's and Family Affairs publishes annual statistics there is no central governmental database providing up to date statistics in enough detail to allow for meaningful analysis. However, recent studies by UN bodies, academics and NGOs indicate that domestic violence continues to be prevalent and estimate that as many as one in five or even one in two women in Tajikistan have been subjected to domestic violence (physical, psychological or economic abuse) at some time in their lives by their husbands, mother-in-laws or other family members.

The adoption of the Law on the Prevention of Violence in the Family in 2013, the Government Action Plan for implementation of the Law on Prevention of Violence in the Family (2014 – 2023), and other positive steps to combat domestic violence have been undermined by the failure to criminalize all forms of domestic violence (physical, psychological and economic). Legislation does not provide a clear definition of the term “family violence” and thus does not cover those in polygamous marriages; it also fails to establish clear implementation and referral mechanisms and attribute clear responsibilities to different government bodies. Co-ordination between state bodies on service provision to victims of domestic violence therefore remains weak. Legislation on domestic violence also fails to attribute funds from the central budget for domestic violence prevention and protection, leaving costs to be covered from local authority budgets.

The Law on Militia was amended in early 2016 to require police to act to prevent family violence. The amended law punishes violations of the Law on Prevention of Violence in the Family and violation of restraining orders. However, NGO representatives and lawyers told IPHR in November 2016 that only those police officers who have received specialized training on domestic violence actively issue restraining orders.

At least ten posts of specialized police inspectors working primarily on issues related to domestic violence were established and are funded by the MIA. NGOs report improved police responses to domestic violence cases in the areas where specialized police officers work, but the number of posts is insufficient given the scale of the problem. In areas without specialized police inspectors, victims report being met with dismissive attitudes by police officers when trying to register complaints about domestic violence.

By law, victims of domestic violence who sustain medium or minor injuries (usually under Criminal Code Articles 112 and 116) and who wish to pursue complaints against their aggressors are required to do so in a private capacity without support. This discourages reporting and leaves victims vulnerable to pressure not to press charges. Other obstacles to justice include evidentiary requirements meaning that victims of domestic violence need to swiftly obtain documentation of their injuries which can be difficult for women living in remote rural areas. In addition the requirement that medical certificates used in criminal prosecutions for domestic violence should contain evidence of physical abuse makes it impossible for victims of economic and psychological abuse to pursue complaints.

Support is inadequate for victims who try to pursue private prosecutions through the courts and judges sometimes prioritize the protection of the family unit over protection of the victim. Prosecutions for domestic violence are often dropped when the victim reconciles with the perpetrator. The practice of allowing perpetrators to benefit from amnesties contributes to impunity and undermines efforts to put a stop to domestic violence. Amnesties are regularly applied to perpetrators of domestic violence both who are under investigation and who have been convicted.

For further information on domestic violence, refer to the March 2017 report “Domestic violence in Tajikistan: Time to right the wrongs”, based on field research and jointly produced by Nota Bene, a member of the Coalition against Torture, IPHR and HFHR. The report is available on: <http://iphronline.org/domestic-violence-tajikistan-time-right-wrongs-20170308.html>.

## 10.1. Suggested recommendations to the authorities of Tajikistan

- Centrally collect and publish comprehensive statistics and data on domestic violence, disaggregated by sex and age and details of the perpetrator-victim relationship as well as the number of convictions for domestic violence offences and the penalties imposed.
- Include in the Criminal Code a specific article criminalizing all forms of domestic violence (expressly including a reference to psychological violence).
- Amend legislation to provide that a victim of domestic violence is no longer responsible for initiating criminal proceedings against the perpetrator in crimes which are classified as “less serious”. Take steps to ensure that the victim of domestic violence is never pressurized by judges or law enforcement officials to reconcile with the abuser;
- Provide statistics showing how many people under investigation for domestic violence and convicted perpetrators of domestic violence have benefitted from amnesties in the last five years.

## 11. Children: juvenile justice and torture and ill-treatment (Articles 2, 11, 12, 13 and 16)

**Concluding Observations of the CAT:** Paragraphs 16 and 20

**List of Issues:** Paragraph 37

*The authorities drew up a number of action plans and programmes which included measures to reform juvenile justice and provide protection to minors from torture and other ill-treatment and established the position of the Ombudsman for the Rights of the Child. In March 2015 the first unified law on the rights of the child came into force, but amongst its serious shortcomings it fails to prohibit corporal punishment. Legislation continues to allow adults and minors to be detained together and for minors to be held in solitary confinement. Cases of torture and ill-treatment, including corporal punishment, continue to be reported and there are no effective complaint mechanisms or other systems of protection from abuse available to children.*

In 2016 a group of Tajikistani NGOs that work on children’s rights submitted a shadow report to the UN Committee on the Rights of the Child, entitled “Alternative Report of the NGOs on the Implementation of the Convention on the Rights of the Child by the Republic of Tajikistan”. This chapter summarizes key developments and concerns relating to the remit of the CAT. For further information, refer to the full report: <http://notorturetj.org/en/reports/alternative-report-ngos-implementation-convention-rights-child-republic-tajikistan-0>.

### 11.1. Government initiatives, programmes and action plans

In October 2009 the Tajikistani Government Commission on the Rights of the Child adopted a National Action Plan on Reforming the Juvenile Justice System (2010-2015). The Plan draws on internationally recognized principles and the NGOs issuing this report consider most of the objectives to be appropriate. However, implementation was weak. It was unclear what financial resources were available to implement the Plan, no deadlines were set for the implementation of objectives, and the coordinating mechanisms were ineffective. The Plan’s implementation was not evaluated.



On 3 April 2013 the National Action Plan on the Implementation of UPR Recommendations (2013-2015) was approved by Presidential order. Paragraph 38 was dedicated to juvenile justice.

The Plan of Measures to Counteract Torture based on Recommendations of the UN Committee against Torture and the Special rapporteur on torture and other cruel, inhuman or degrading treatment and punishment, adopted on 15 August 2013, also contains provisions about juvenile justice.

The Programme of Judicial-Legal Reform of the Republic of Tajikistan (2015-2017), adopted on 5 January 2015, envisages the possibility of setting up juvenile courts.

The Programme on Police Reform (2014-2020), adopted by Government Decree on 3 May 2014, envisages the transfer of reception centres for minors away from the responsibility of the Ministry of Internal Affairs.<sup>6</sup>

In June 2017 the Programme on Reforming the Juvenile Justice System (2017-2021) was approved by Government Decree 322.

On 18 March 2015 the President of Tajikistan signed into force the Law on Protecting the Rights of the Child, the first unified law on the rights of the child in Tajikistan. The Law sets out the child's right to life, liberty, honour and dignity (Article 11), but it fails to address the right to protection from violence and exploitation. Neither does it prohibit corporal punishment, nor provide for legal, psychological, medical or other measures of support to children who were subjected to violence and exploitation. The Law does not sufficiently regulate the rights of the child in the criminal justice system and it fails to address the rights of children who witnessed or became victims of crime.

In December 2015 amendments were made to legislation on the Ombudsman for Human Rights of the Republic of Tajikistan that introduced the position of the Ombudsman for the Rights of the Child as the Ombudsman's Deputy. In May 2016 the President appointed the country's first Ombudsman for the Rights of the Child.

## 11.2. Separation of adult and juvenile offenders

While international standards hold that minors and adults must be held in separate detention facilities both before and after the trial, national legislation contains contradictory provisions on this subject. Article 31 of the 2015 Law on Protecting the Rights of the Child and Article 78 of the CEC prohibit minors and adults being held in the same cell. The CPC does not prohibit them being held together and Article 34 of the Law on Detention Procedures and Conditions allows for joint detention in exceptional cases. Exceptions can be made subject to approval by a prosecutor, and in cases where the adults are first-time offenders, not accused of grave or especially grave crimes, and who are determined to be "of good character". No further details or guidelines are available which stipulate when exceptions can be made.

During its monitoring visits the Monitoring Group under the Ombudsman's Office detected one case where a female juvenile offender, convicted of murder, was held in a cell together with adult women in Tajikistan's Women's Colony. The visit took place in May 2015.

## 11.3. Solitary confinement

Tajikistan's legislation provides that minors can be held in solitary confinement, in violation of international law and standards.

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<sup>6</sup> Reception centres are used to hold minors who committed certain public order offences as well as those who are left without parental care, before they are transferred to special educational facilities.

Article 38 of the Law on Detention Procedures and Conditions stipulates that minors (suspects, accused persons and convicts) can be placed in solitary confinement as a disciplinary measure for up to seven days.

In the same way as an adult, a minor can be placed in solitary confinement based on a decree issued by the head of the detention or prison facility and a conclusion by a medical employee of the facility (Article 40, part 3). In certain cases the decision has to be approved by the prosecutor (Article 33, part 2). Appeals against decisions about disciplinary measures can be lodged with a more senior official, a court or a prosecutor, but this does not halt the execution of the disciplinary measure (Article 39, part 5).

While in solitary confinement the young person is entitled to a bed and bedding during specific sleeping hours. He/she is not permitted any contact with other detainees or inmates (Article 33, part 3) or with the outside world (such as meetings with family, correspondence or receiving packages from family), except for meetings with his/her lawyer. While in solitary confinement the individual is entitled to exercise for up to 30 minutes per day (Article 40, part 4), as opposed to a minimum of two hours for those held in ordinary cells (Article 32, part 2).

There are no available statistics about the application of solitary confinement in relation to minors. The Monitoring Group under the Ombudsman's Office has not encountered any such cases during its visits to detention facilities and prisons.

## **11.4. Torture, ill-treatment, corporal punishment and domestic violence**

The Coalition against Torture and Impunity recorded several cases of minors who were reportedly tortured or ill-treated by law enforcement officers, involving beating, kicking and threats of rape in recent years. (For example, refer to the case of Khushvakht Kayumov in the chapter "Prohibition and punishment of torture and ill-treatment".)

The authors of this document are also concerned that when individuals are placed in reception centres for minors they undergo a medical examination during which their bodies are checked for lice. Medical personnel are not required to look for signs of torture or ill-treatment. Reception centres come under the jurisdiction of the Ministry of Internal Affairs' Service for the Prevention of Violations of the Law among Minors and Young People. Students considered too dangerous to study with others are placed into semi-closed special schools or technical education facilities. Domestic legislation does not require a medical examination to look for signs of physical abuse when the children are admitted to these facilities.

The Coalition against Torture and Impunity received several reports of ill-treatment in state-run boarding schools and children's homes in the period under review. For example, in an institution in central Tajikistan the teachers themselves confirmed that they beat children when they try to escape from the institution.

Violence against children in Tajikistan in families or schools is often overlooked or considered as normal and there are no effective complaint mechanisms or other systems of protection for children from such abuse.

As mentioned above, the May 2015 Law on Protecting the Rights of the Child fails to enshrine the right to protection from violence and exploitation and the rights of children who witness or become victims of crime, nor does it prohibit corporal punishment.

Other domestic laws also fail to unequivocally prohibit corporal punishment of children. While the Law on Parental Responsibilities Regarding the Education and Upbringing of Children (Law on Parental Responsibilities) stipulates that parents must respect the honour and dignity of the child and not allow ill-treatment, it does not clearly prohibit corporal punishment. And while the Law on Parental Responsibilities stipulates that every person is responsible for alerting the relevant government agencies when he or she becomes aware of illegal activities directed against a child and about other circumstances that threaten a child's life or health (Article 13), Article 12 of the Law that specifically deals with obligations of teachers, government agents, institutions and other

organizations involved in the education and upbringing of children does not include the obligation to report instances of corporal punishment or other ill-treatment of children

## 11.5. Suggested recommendations to the authorities of Tajikistan

- Amend domestic legislation, in particular the Law on Detention Procedures and Conditions, to unequivocally prohibit the detention or imprisonment of juveniles together with adults.
- Abolish solitary confinement of juveniles.
- Include an unequivocal prohibition of corporal punishment and other forms of ill-treatment in all relevant domestic legislation, such as the Law on Protecting the Rights of the Child and the Law on Parental Responsibilities Regarding the Education and Upbringing of Children.
- Introduce sanctions for parents who subject their children to corporal punishment.
- Raise public awareness about the absolute prohibition of corporal punishment and other ill-treatment in relation to minors, including at home and in educational institutions.
- Amend domestic legislation to ensure that children who witnessed or were subjected to violence and exploitation have access to free legal, psychological, medical or other measures of support..

## 12. LGBT people: abuse by police and non-state actors (Articles 2, 12, 13 and 16)

**List of Issues:** Paragraph 36

*The human rights of lesbian, gay, bisexual and transgender (LGBT) people in Tajikistan are often egregiously abused, although consensual homosexual relations between adults were decriminalized in Tajikistan in 1998. In recent years law enforcement agencies have repeatedly stated that it was necessary to counteract homosexuality and they appear to have increasingly targeted LGBT people. The authors of this report are aware of dozens of credible cases in recent years of police intimidating, arbitrarily detaining, physically or sexually abusing or threatening to abuse LGBT people. Police abuse and extort money from LGBT people with almost complete impunity. Societal homophobia and transphobia make NGOs working with LGBT clients particularly vulnerable to government pressure and several have been forced to discontinue their work in recent years.*

For further information, refer to the February 2018 report “LGBT people in Tajikistan: beaten, raped and exploited by police” that is based on field research and was jointly produced by IPHR and HFHR. The report is available on: <http://iphronline.org/tajikistan-reports-abuse-lgbt-people-domestic-violence-submitted-un-committee-torture.html>.

### 12.1. Suggested recommendations to the authorities of Tajikistan

- Refrain from targeting LGBT people because of their sexual orientation or gender identity and erase government registers on members of sexual minorities.

- Devise and implement specific procedures to ensure that LGBT people who lodge complaints or provide witness reports about extortion or physical abuse by police or non-state actors are protected against reprisals as soon as the authorities receive the complaint/witness report and that appropriate disciplinary or, where relevant, criminal measures are imposed against perpetrators for such actions.
- Ensure that all credible allegations of arbitrary detention, extortion, torture or other ill-treatment of LGBT people by government agents or of their abuse by non-state actors are promptly, thoroughly, impartially and independently investigated, and that the perpetrators are brought to justice in fair proceedings.
- Engage with human rights and LGBT rights groups in Tajikistan to develop training programmes for law enforcement agents, prosecutor's offices and the Ombudsman's Office on human rights and sexual minorities and measures to prevent and remedy police abuse against LGBT people.

## 13. Refugees and asylum seekers (Article 3)

**Concluding Observations of the CAT:** Paragraph 18

**List of Issues:** Paragraphs 20 and 21

*Refugees and asylum seekers who commit administrative violations risk being deported/ expelled in violation of national law and the provisions of the 1951 Geneva Convention. Discriminatory Government Decrees restrict the regions where asylum seekers and refugees are permitted to live. Refugees and asylum seekers who live in regions which are "out of bounds" risk being detained and deported. There is no fair and effective procedure by which refugees, asylum seekers and stateless persons can appeal against court rulings on deportations for administrative violations, nor do appeals procedures have suspensive effect. This leads to refugees and asylum seekers being returned to countries where they are at real risk of torture or other ill-treatment.*

Tajikistan hosts the largest number of refugees of all Central Asian countries. The refugees and asylum seekers are primarily from neighbouring Afghanistan as well as a small number from other countries such as Iran, Iraq, Pakistan, Ukraine and Uzbekistan. In 2017 there was an increase in the number of asylum-seekers registered in Tajikistan with 1462 asylum-seekers compared to 1142 in 2016.

In November 2014, Tajikistan's CPC was amended to state that extradition must be denied when there is a risk of torture in the receiving country (Article 479). However, in practice it is not clear whether the authorities assess the risk of torture, which criteria they use and whether any extraditions have been denied based on concerns about torture.

The NGOs issuing this document are concerned that the Code of Administrative Violations (CAV) punishes administrative violations by deportation/expulsion. When applied in relation to asylum seekers and/or refugees, this clearly violates the provisions of the 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol which state that no refugee or asylum seeker should be returned to a country where there is a real risk of torture or ill-treatment. Moreover, such administrative punishments violate the national Law on Refugees, which states in Article 14, part 1 that "Asylum-seekers, persons applying for refugee status, recognized refugees, and those whose refugee status has ceased or has been cancelled cannot be returned or deported against their will to the territory of a state where their life and freedom would be threatened on account of their race, religion, citizenship, membership of a particular social group or political opinion".

However, the CAV states in Article 499, part 3 that certain violations of residence rules are punishable by expulsion from Tajikistan and courts treat violations of Government Decree 325 of 2000 (amended by Decree 328 of 2004), entitled "List of settlements in the Republic of Tajikistan where temporary residence of asylum seekers and refugees is prohibited" as such.

Decree 325 prohibits refugees and asylum seekers from living in certain areas of Tajikistan including the capital city of Dushanbe, the city of Khujand and most of the border regions. However, foreign citizens who are not refugees do not have to comply with these restrictions in place of residence, and therefore the discriminatory nature of this decree contradicts Article 26 of the 1951 Convention. .

*The NGOs issuing this document have information about two cases where refugees were expelled for violating the residence rules under Decree 325. The families from Afghanistan settled in Dushanbe and were granted refugee status in 1998, i.e. before Decree 325, which prohibited refugees from living in Dushanbe, came into force. On 17 February 2017 the Commission on Determining Refugee Status withdrew the refugee status of the male heads of the two families for violating Decree 325. In one case Shohmansur District Court in Dushanbe subsequently ordered the man to be deported, while in the other case the court ordered the deportation of the entire family. The second instance court confirmed the rulings and the expulsions were carried out.*

This restriction on choice of place of residence complicates refugees and asylum seekers' access to the labour market, health care, education and other social services. Some regions of Tajikistan have poorly developed infrastructure, social service provision is imperfect and public services are not always adequate and transparent. In addition, factors such as the low standard of living, high unemployment, widespread poverty and limited possibilities to earn a livelihood affect both local residents and refugees alike. In the cities of Dushanbe and Khujand there are more employment opportunities and access to better health services, etc.

The authorities frequently carry out raids to verify the legal address and the actual place of residence of refugees and asylum seekers. Sometimes refugees who have merely been in Dushanbe for a few hours to work or seek medical attention are also detained, and accused of violating Decree 325. Administrative charges are initiated against those who violate the registration rules, and used as grounds to rescind refugee status and for subsequent deportation. Courts treat the requirement for refugees to have "temporary residence" as meaning residence registration in a place permitted under Decree 325.

Article 136 of the Procedural Code of Administrative Violations<sup>7</sup> stipulates that courts review administrative cases that can lead to arrest or expulsion from Tajikistan on the same day when the record of the administrative violation is received. The authors of this submission are concerned that this does not allow enough time to accurately assess whether the person poses a risk to state security and public order that might justify his or her expulsion and/or whether the person would be at risk of torture or ill-treatment in the receiving country.

There are also serious concerns about the lack of a fair and effective appeal procedure against expulsions of refugees, asylum seekers and stateless people. Article 150, part 3 of the CAV stipulates that protests and complaints against administrative expulsion should be lodged within one day of the announcement of the decision.<sup>8</sup> There are reports about many cases where courts failed to provide lawyers with the written decision in time, thus making it impossible for the lawyer to lodge an appeal within the legal deadline.

There is no suspensive effect for expulsions, deportations, forcible returns or transfers while appeals against decisions on the asylum applications are being considered, despite the Law on Refugees stipulating in Article 14, part 6 that "*Until a decision is taken on an appeal, the person and his family members who submitted it enjoy the rights and comply with the obligations stipulated in this Law and other normative legal acts of the Republic of Tajikistan. In such cases the validity of the asylum seeker or refugee's temporary certificate shall be extended by the department of internal affairs for the period necessary for a government body or court to examine the appeal and take a decision. At the same time, the department of internal affairs will extend the registration period of the asylum-seeker or the validity of the refugee certificate and permission for their stay.*"

7 Article 136.4 of the CAV "Cases of administrative violations are punishable by administrative arrest or administrative expulsion outside the borders of Tajikistan, should be examined within one day of receipt of the protocol about the administrative offence".

8 CAV Article 150, part 3 "Appeals and protests against court decisions on administrative punishment of expulsion of a foreign citizen or stateless person from the territory of Tajikistan can be submitted within 24 hours of the moment the decision is issued".

## 13.1. Suggested recommendations to the authorities of Tajikistan

- Ensure in practice that when an appeal is lodged against an expulsion, return or transfer of a person to another country, procedures are suspended pending a decision about the appeal.
- Enshrine in law the absolute prohibition of extradition or deportation where an individual would be at risk of torture if returned and repeal legislation which leads to risk of this by:
  - Repeal Decrees 325 and 328, which prohibit asylum-seekers and refugees from residing in designated urban areas, including the two main cities of Dushanbe and Khujand;
  - Remove the penalties for violations of residence restrictions (under Decrees 325 and 328), which may lead to deportation and refoulement;
  - Repealing Article 499, part 3 of the Administrative Code to ensure full respect in practice for the principle of non-refoulement and ensure that it is in line with the newly amended Law on Refugees;
  - Amend Article 335, part 1 of the Criminal Code so as to extend the exemption of criminal responsibility for “illegal border crossing” to all asylum-seekers, not only those who present an asylum claim based on political grounds;
- Ensure that the authorities and the judiciary implement Article 6, part 4 of the Law on Refugees correctly and consistently, exempting asylum-seekers from detention and criminal responsibility for irregular border crossing.
- Ensure that all detained asylum-seekers have effective and prompt access to the relevant information in a language they understand as well as access to the relevant authorities and UNHCR in order to allow them to submit an asylum application.

## 14. The situation of human rights NGOs and activists

*The situation of civil society organizations and activists, in particular those working on human rights related issues has seriously worsened in Tajikistan since the last CAT review in 2012. This trend has intensified since 2015. NGOs, activists and lawyers have been subjected to pressure by the authorities to drop or refrain from addressing politically sensitive issues or cases, and it has become increasingly difficult for them to work in certain areas of activities. Many groups have been subjected to intrusive inspections of their activities by the Tax Committee, national security services and other state bodies.*

While there were dozens of NGOs working on promoting democratic reforms and free elections a decade ago, currently not a single NGO addresses such issues or carries out election monitoring. NGOs also generally refrain from working on violations of religious freedoms since the government has linked this issue to the promotion of “terrorism” and “extremism”. Similarly, organizations, activists or lawyers working on cases related to individuals associated with the political opposition, including cases involving torture allegations are labelled “extremists” and face serious pressure. NGOs and activists who defend the rights and interests of sexual minorities or sex workers are also at particular risk. They are frequently attacked by state bodies, which accuse them of “spreading Western values” and “undermining traditional values and morals”.<sup>9</sup>

9 For further information refer to the February 2018 report “LGBT people in Tajikistan: beaten, raped and exploited by police” (<http://iphronline.org/tajikistan-reports-abuse-lgbt-people-domestic-violence-submitted-un-committee-torture.html>).

In the last few years, a growing number of NGOs have been subjected to inspections of their activities by the Tax Committee, national security services and other state bodies. Such inspections are time-consuming and stressful for the NGOs targeted and create uncertainty for them since they do not know what the outcome will be. In some cases, the inspections have also resulted in warnings and sanctions because of alleged violations of the law, and some NGOs have been forced to close down.

These are only a few examples of NGOs that have been subjected to intrusive checks and punitive measures by state bodies:

*In June 2015, the Tax Committee filed a lawsuit against the Public Foundation "Nota Bene" – a well-known Dushanbe-based human rights NGO that is a member of the Coalition against Torture and Impunity, requesting that the organization be closed down for allegedly taking advantage of gaps in the law when registering in 2009. As many other NGOs in Tajikistan, Nota Bene is registered as a "public foundation" with the Tax Committee rather than as a "public association" with the Ministry of Justice. Both types of organizations are foreseen by national law. The registration process for "public foundations" is simpler and new organizations established in recent years have often registered as "public foundations" given the difficulties associated with the process of registering "public associations". The court with which the lawsuit was filed eventually left it without consideration on the grounds that the parties "did not appear". However, the lawsuit established a problematic precedent for NGOs registered as "public foundations" and it is not excluded that the Tax Committee may re-initiate the lawsuit.*

*In August 2015, following an inspection carried out by the Tax Committee, the Bureau for Human Rights and Rule of Law – another well-known Dushanbe-based human rights NGO that is a member of the Coalition against Torture and Impunity – was ordered to pay a large fine corresponding to some 6000 EUR for alleged violations of the Tax Code. This was a heavy financial burden for the organization.*

*In November 2017, Rohi Zindaghi ("Life Path"), an NGO working on LGBT rights in the Sughd region of northern Tajikistan, announced that it had been forced to close down following a series of inspections by the local administration, fire safety officials, the prosecutor's office and other official bodies. The chair of the organization said that they made this decision since they were tired of all inspections, although these had only found minor violations. She also said that the organization had been under pressure from the authorities since it started addressing the rights of sexual minorities and "advised" to drop this issue if it wanted to continue its work.*

*In early February 2018, representatives of several organizations that work with and provide assistance to Men who have Sex with Men (MSM) in the cities of Kulyab, Kurgantyube and Dushanbe were summoned for interrogation by law enforcement authorities. During the interrogations, the NGO representatives were requested to provide a list of MSM with whom they work and pressured to write statements saying that they would stop addressing MSM issues.*

*Another NGO activist was detained by a group of law enforcement officials and taken to a local police station. After being interrogated for several hours about the nature of the work of the NGO and its clients, the activist was released. However, law enforcement officials also visited the NGO's office and confiscated project financial documents, as well as office equipment and several boxes of hygiene packages (which are used for HIV testing of clients). The NGOs' printer and financial documents were returned three days later.*

*In connection with the detention of the NGO activist and the raid of the NGO office, police detained eight young MSM who were held and interrogated for several hours at the local police station. The young people reported being subjected to ill-treatment and pressured to disclose information about other MSM, especially high-ranking ones. They said that they were severely beaten, including with the use of a truncheon; subjected to electrical shocks; and insulted and humiliated. The detainees were eventually released. However, it was a traumatic experience for them and they subsequently experienced psychological distress.*

There are many other cases in which NGOs have been subjected to inspections and punitive measures. However, those targeted often prefer not to report their experiences publicly, fearing further pressure and sanctions. For this reason, the names of the NGOs and individuals concerned in the last example, as well as other details that could reveal their identity are also withheld.

There are further concerns about legislative amendments relating to NGOs. Amendments to the Law on Public Associations adopted in 2015 require all such NGOs to report the receipt of grants and other funding from foreign sources to the Ministry of Justice. The reporting is implemented as a notification procedure, using a government-approved reporting form and so far, no NGOs are known to have faced sanctions for failing to comply with this requirement. However, it places an additional administrative burden on NGOs and the threat remains that it may potentially be used to obstruct the access to funding and the work of NGOs. Among others, the UN Special Rapporteur on freedom of opinion and expression has criticized this requirement.<sup>10</sup>

A new Law on Non-Commercial Organizations drafted by the Ministry of Justice is currently under consideration by the government and is expected to soon be submitted to the parliament. Although this law will directly affect NGOs, civil society has not been invited to participate in the drafting process or been consulted in the course of it. In the context of the recently deteriorating operating environment for NGOs, there are concerns that the draft law may introduce new restrictions on the work of NGOs, including with respect to registration.<sup>11</sup>

## 14.1. Suggested recommendations to the authorities of Tajikistan

- Ensure that human rights NGOs, defenders and lawyers are not subjected to pressure by state bodies or officials because of their work and that they can carry out their work without fear of reprisals.
- Ensure that inspections of NGOs carried out by state bodies do not result in undue interference into the activities of the organizations targeted and that NGOs do not face unfounded, disproportionate and excessive penalties, such as harsh fines or suspension or closure because of alleged violations of a technical nature.
- Promptly, thoroughly and impartially investigate all allegations of intimidation, harassment and other violations of the rights of NGO representatives and individuals with whom they work and hold those responsible accountable.
- Bring existing legislation relating to NGOs into line with international standards and ensure that NGOs are consulted and granted the opportunity to influence draft legislation affecting them prior to its adoption.

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10 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan (A/HRC/35/22/Add.2), June 2017.

11 For more information on this draft legislation and other recent developments affecting NGOs, see regular updates on Tajikistan prepared by IPHR, Nota Bene and the Lawyers' Association of Pamir for the CIVICUS Monitor, at <https://monitor.civicus.org/country/tajikistan/>



# CASE ANNEX

The case examples are listed in chronological order based on the date of the reported incident/s of torture/ill-treatment.

## **Shakhbol Mirzoyev, physically disabled after being tortured at a Border Guard unit in March 2014, has not yet received fair or adequate compensation**

Shakhbol Mirzoyev, who voluntarily enrolled for service in the Border Guards of Tajikistan in October 2013 after finishing his Commercial Law studies, was subjected to torture by medical and military personnel serving at a border guards unit, on 6 March 2014. Usmon Gayratov, a serviceman and medical attendant, harassed and attempted to humiliate the 22-year old Shakhbol. When the young man ignored the provocation, the medical attendant grabbed and threw him on his back on the floor. As a result of the fall, he lost all sensation in his limbs. When others noticed that Shakhbol Mirzoyev was not moving they lifted him up three times, tried to stand him up on his feet, but the young man fell down and hit his head on the floor. Then soldiers reportedly cut the soles of his feet with razor blades, pricked different parts of his body with needles, and poured boiling water over his back. When they understood that Shakhbol Mirzoyev had lost feeling in his legs, they left him alone in the clinic.

Doctors of the National Medical Centre later diagnosed him with a fracture to the fifth spinal disk, damage to various organs, and the loss of sensitivity in his arms and legs. Shakhbol Mirzoyev had to be flown to Moscow because there are no specialist surgeons in Tajikistan trained to carry out the operation he required. Shakhbol's family sold their house to cover the cost of this. At the time the administration of the Border Guards of Tajikistan promised to cover all medical expenses, although it only covered expenses incurred during his hospitalization at the National Medical Center in Tajikistan. Shakhbol Mirzoyev is now seriously disabled. He is severely limited in his movement and has to spend most of his time in bed or in a wheel chair. In 2015 and 2017 the authorities determined that he was unable to work due to his disability and needed special assistance, thus categorizing his status as "severely disabled" ("disability of the first category"). Based on this, he receives a pension of TJS 250 every month (approx. EUR 23 at the time of writing).

On 19 June 2014, the Military Court of Dushanbe sentenced Usmon Gayratov to nine years' imprisonment for "violating the code of military conduct" (Art. 373, part 2 of the Criminal Code) and "leaving somebody in a dangerous situation" (Art. 127, part 1) and ordered him to pay TJS 570 000 (approx. EUR 83 000) to cover expenses incurred by the Administration of Border Guards for Shakhbol Mirzoyev's medical treatment. A servicewoman and medical attendant was also sentenced to 18 months' corrective labour for "negligent attitude to service" (Art. 392) and "violating the code of military conduct" (Art. 373). She was scheduled to be on duty in the medical unit the day Shakhbol Mirzoyev was tortured, but left the premises and put Usmon Gayratov in charge of the unit although she was aware that Shakhbol Mirzoyev was not safe. The authorities failed to conduct a thorough, impartial and independent investigation into whether the commanding officer of the Border Guards unit committed the crime of "negligence" by not preventing the torture of Shakhbol Mirzoyev.

In November 2014, Shakhbol Mirzoyev applied to Dushanbe Military Court seeking compensation for material and moral damages. On 25 May 2015, the Court decided to award him TJS 97 265 (approx. EUR 14 200) for material damages and TJS 20 000 (approx. EUR 2 900) for moral damages. However, on 6 August 2015 the Military Collegium of the Supreme Court of Tajikistan overturned the decision and referred the case back to the court of first instance. On 26 October 2015 Dushanbe Military Court heard the case again. According to the lawyers, the respondent party presented false information to the court regarding Shakhbol's health and claimed that he had undergone unnecessary medical treatment in Moscow. Shakhbol's lawyer refuted these claims, pointing out that his health significantly improved after surgery and rehabilitation treatment. The court requested further information about the costs of the medical treatment Shakhbol had received in Russia and representatives of the Border guard forces undertook further investigations into evidence presented in court relating to the expenditures incurred by Shakhbol's family for his medical treatment in Moscow; including the fact

that they had to sell their home and their two cars.

Eventually, on 22 November 2016 the court ruled that Shakhbol was entitled to compensation, but significantly reduced the amounts to TJS 36 621 for material and TJS 4000 for moral damages, which, according to the Coalition against Torture and Impunity, is neither fair nor adequate. Shakhbol had to wait until the end of 2017 to receive the funds because the SCNS initially refused to implement the court order.

## **The circumstances of Shamsiddin Zaydulloyev's death in custody in April 2015 remain unclear**

Shamsiddin Zaydulloyev, age 25, was detained in his home in the capital city of Dushanbe by officers of Tajikistan's Drug Control Agency on 8 April 2015, and later charged with "selling small quantities of drugs" (Article 200, part 1 of the Criminal Code of Tajikistan). The next day his mother visited him in the building of the Drug Control Agency. She recalled: "When I stroked his head he said I shouldn't touch the back of his head because it was swollen and painful. I asked him in a low voice whether he was beaten and he nodded." When she wanted to visit her son again on 10, 11 and 12 April she was not given access under various pretexts. On 13 April Shamsiddin's parents were informed that their son was dead. When they saw his body in the morgue it was covered in bruises. They gave the NGO Coalition against Torture and Impunity several photographs to support their claims.

On 25 April the Prosecutor General's Office opened criminal proceedings under Article 143-1 of the Criminal Code ("torture"). Lawyers of the Coalition against Torture and Impunity, who represent Shamsiddin's family, petitioned to view the recordings of a video camera installed in the detention facility of the Drug Control Agency where Shamsiddin was held, but a technical examination carried out in May 2015 concluded that the camera was not working from 8 to 13 April. The family's lawyer refuted this, however, pointing out that footage from the same camera dated 12 April was included in the case file.

Three forensic medical examinations conducted by experts of the Republican Center of Forensic Medical Examinations of Tajikistan (RCFME) in order to establish the cause of Shamsiddin's death yielded contradictory results. The first examination was carried out after the autopsy and the experts concluded that Shamsiddin had died of pneumonia. Shamsiddin's mother has maintained that her son was not sick when he was detained and following a petition by the family's lawyers, the Prosecutor General's Office ordered the RCFME to carry out an exhumation and an interdisciplinary forensic medical examination. The examination, conducted on 3 August 2015, concluded that Shamsiddin's death may have been caused by serious bodily injuries including four to five broken ribs and a fracture in his skull. In addition, the experts pointed out that he may have been administered First Aid too late. On 18 August the Prosecutor General's Office commissioned a third forensic examination. Like the first forensic examination, this examination concluded that he died of pneumonia.

On 23 December the Prosecutor General's Office closed the criminal investigation on the grounds of "lack of evidence of a crime". Four days later the family's lawyer lodged a complaint against the decision. On 11 March 2016 the lawyer lodged a complaint with Sino District Court about the decision to close the investigation. Since then there has only been one court hearing on the case. The lawyers were able to get access to the case materials only in December 2017, after persistently lodging complaints, including a complaint to the Supreme Court about the inactivity of the judge.

## **No effective investigation into Umar Bobojonov's death in custody in September 2015**

According to Umar Bobojonov's brother Abdullo, police in plainclothes approached Umar in the centre of Vahdat on 29 August 2015, criticized him for having a beard and forced him and his friend Zoir into a car. At the local police station police officers beat and kicked them and one officer kicked Umar's head so severely that he hit the wall with the back of his head and fell to the ground unconscious. Zoir and another detainee witnessed the incident. Abdullo came to the police station later that evening in search of Umar. The duty officer reportedly told him that Umar was not there, but shortly afterwards Abdullo saw that an ambulance picked up his brother

from the police station and he was allowed to join the severely injured Umar on the way to the hospital. Medical personnel at Vahdat City Hospital assessed Umar's situation as "very serious" and tried to resuscitate him, but he remained in a coma until he died on 4 September.

On 1 September the Vahdat Prosecutor's Office opened a criminal case for "intentionally inflicting serious bodily harm" (Art. 110, part 1 of the Criminal Code). On 4 September the forensic medical examination conducted by experts of the Vahdat branch of the State Forensic Medical Institute concluded that Umar Bobojonov died of head injuries. On 5 September the charge was changed to "inflicting serious bodily harm resulting in death" (Art. 110, part 3 of the Criminal Code).

Since 2015 the prosecutor's office in Vahdat has suspended the investigation into the case twice – in February and in December 2016 -- stating that they could not identify the perpetrator, and the Prosecutor General's Office subsequently referred it back to Vahdat to resume investigating. The investigator only provided the lawyer acting on behalf of Umar Bobojonov's family with a copy of the December 2016 decision on 16 June 2017.

In recent years, the lawyer has lodged several complaints with the Prosecutor General's office, the human rights Ombudsman and the President complaining about the lack of effectiveness of the investigation; obstruction of access to case materials; the failure to grant victim status to Umar's father; frequent and significant delays in the investigators' replies to the lawyers' petitions, or lack of a response.

On 13 November 2017 the Prosecutor General's Office annulled the Vahdat prosecutors decision to close the case for the third time and sent it for further investigation back to Vahdat Prosecutor's Office. On 2 December 2017 Sino District Court turned down the lawyer's suit for compensation of moral damages sustained through the ineffectiveness of the investigation, referring to the November 2017 decision.

### **Conscript Faruhjon Haytaliyev died in January 2016 as a result of hazing**

Faruhjon Haytaliyev, aged 21, joined the armed forces in October 2014 and served in Unit No. 1/2847 of the Border Guards under the SCNS. According to the family's lawyer, Alikhon Tuychiyev, a fellow soldier, beat Faruhjon Haytaliyev with fists and a machine gun butt on 4 November 2015. On 8 and 11 January 2016 the soldier again beat, kicked and punched him and hit him with a machine gun butt all over his body. Sufi Sufiyev, Captain of Military Unit No. 2847, and his Deputy Boburdjon Ortukov noticed that Faruhjon Haytaliyev was injured and unable to stand up after the beating, but they kept him in the military unit and failed to seek medical attention for several days. While conscripts at the early stages of their service are often subjected to hazing by fellow-conscripts, those serving their second year – like Faruhjon Haytaliyev – are rarely subjected to abuse by fellow-soldiers unless officers have ordered them to ill-treat another soldier.

On 20 January 2016 Faruhjon Haytaliyev died as he was being taken to the military hospital. A forensic medical examination carried out from 20 January until 15 February concluded that Faruhjon's body was bruised and his left shoulder severely injured. Witness statements and photographs taken by Faruhjon Haytaliyev's family also provide evidence of the extent of the injuries.

On 20 January 2016 the Military Prosecutor's Office brought charges against senior military officers Sufi Sufiyev and Boburdjon Ortukov, and the soldier Alikhon Tuychiyev. On 25 May 2016 Dushanbe Military Court sentenced the two officers to four years' imprisonment for "abuse of authority or duty" (Art. 391, part 3a of the Criminal Code). Alikhon Tuychiyev was sentenced to 14 years' imprisonment for "violating the code of military conduct" (Art. 373, part 2a,b,g,d) and "intentionally inflicting serious bodily harm" (Art. 110, part 3a).

In August 2016, just three months after they were convicted, the prison sentences of Sufi Sufiyev and Boburdjon Ortukov were reduced by one third under the prisoner amnesty in connection with the 25th anniversary of Tajikistan's independence.

## **Djovijon Khakimov was reportedly tortured while in incommunicado police detention in January 2017**

Mukhabbat Davlatova told the Coalition against Torture and Impunity that her son Djovijon Khakimov was arrested in their home on 3 January 2017 and taken to the Department tasked with counteracting organized crime of the Ministry of Internal Affairs in Dushanbe. Reportedly, he was held incommunicado and without being charged until he was taken to the temporary police detention facility of the Ministry of Internal Affairs in Dushanbe on 9 January, where his detention was officially registered. The remand hearing took place on 11 December, over a week after he was reportedly taken into custody. Djovijon was reportedly tortured while in incommunicado detention, but his lawyer's request of 12 January for a prompt medical examination was not satisfied. In a letter dated 8 February Mukhabbat Davlatova was informed that the Joint Task Force to Counteract Extremism and Terrorism, which comprises representatives of the Prosecutor General's Office, the Ministry of Internal Affairs and the SCNS, came to the conclusion that Djovijon had not been subjected to physical abuse.

## **Sherkhon Obidov, aged 16, and his lawyer had to fight for an investigation into allegations of torture/ill-treatment to be opened**

On 2 June 2017 at 8:00 am two police officers detained 16-year-old Sherkhon Obidov and, without showing proof of identity, forced him into a car with a government licence plate and took him to Farkhor police station. There, without a responsible adult or a lawyer present, the police officers allegedly beat him on the head and face, and kicked and threatening him with rape as they questioned him as a suspect of robbery. That same evening two other people were brought to the police station who were also both suspected of robbery. A police inspector allegedly then told Sherkhon to take off the other suspect's trousers, and when he refused, the police officer hit him round the head and Sherkhon lost consciousness for some 20 minutes. Another suspect and Sherkhon Obidov were subsequently both charged with robbery. At about 10:00 pm that evening Sherkhon was driven to a car wash where his older brother Sorbon works and instructed to stay there until the next morning. At 6:00 am the next day Sherkhon was taken by car back to the police station where he was held until 10:00 pm that night, before being sent home and warned against lodging a complaint. A state appointed lawyer was tasked to act for Sherkhon Obidov during the initial stages of the investigation.

Sherkhon was charged with robbery (Article 248.2). Pending the court hearing, Sherkhon was released on bail under travel restrictions. Sherkhon's father reports that his son suffers from severe headaches and frequent nightmares since his detention.

From 10 to 27 July 2017, Farkhor District Court heard the case against Sherkhon Obidov. The judge refused repeated requests of the defence lawyer from the Coalition against Torture and Impunity to order the prosecutor's office to examine the allegations of torture and other ill-treatment, and conduct psychiatric and psychological assessments of the child. The judge found Sherkhon guilty of robbery and sentenced him to two years in an educational colony for minors. On 17 August Sherkhon's defence lawyer lodged a complaint with the Supreme Court about the judge's refusal to order an examination into the allegations of torture and ill-treatment and other violations of the right to a fair trial. On 20 September Kulyab Regional Court heard the cassation appeal and instructed Farkhor prosecutor's office to investigate the allegations that Sherkhon Obidov was subjected to torture and ill-treatment by Farkhor police officers. Once the conclusions of the investigation are known the cassation court will rule on the appeal.

## **The case of Tolibjon Dustov's death in custody in July 2017 is pending with the courts**

On 25 July 2017 Tolibjon Dustov was detained in Shaartuz district in the Southern Khatlon region by a group of police officers including a senior officer of Dusti district police station. Eye witnesses reported that the officers drove off in the direction of Dusti district, but later they they took him to the hospital in Kubodiyon district, which is not on the way to Dusti police station. Later that day his relatives were informed of his death and they saw his

body in Kubodiyon morgue. According to them, the left side of his head was heavily bruised and the left ear-drum had burst. In violation of the law, Tolibjon Dustov's relatives were not informed of the autopsy and were given the results much later. According to the preliminary conclusion of the autopsy, Tolibjon Dustov died of suffocation. The report stated that he was still alive when he arrived at the hospital. However, doctors of Kabodiyon district hospital told the lawyers of the Coalition against Torture and Impunity that he was dead when he arrived at the hospital.

On 25 August the Prosecutor General's Office opened a criminal case against officers of Dusti District Police for "exceeding official authority" (Article 316 of the Criminal Code). The lawyers unsuccessfully petitioned the investigator to requalify the case under Article 143-1 ("torture"). The case is currently pending with Khatlon regional court.