



**European Instrument for Democracy and Human Rights**

**European Union – Tajikistan  
Civil Society Human Rights Seminar**

**on**

**"Freedom from Torture or Cruel, Inhuman or  
Degrading Treatment or Punishment"**

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## INTRODUCTION

In 2007 the European Union adopted a "Strategy for a New Partnership" whose aim is to further develop co-operation with the countries of Central Asia. A major objective of this initiative is the development of human rights, the rule of law, good governance and democratization in Central Asia through the increase of contacts with civil society. To this end, the European Commission organizes a series of annual seminars on human rights issues which bring together officials and civil society institutions. These seminars are a platform for the discussion of international standards and best practices in the field of human rights, and provide an opportunity for civil society representatives to share their vision of the current situation of human rights in their countries and existing difficulties, as well as to formulate recommendations for relevant government agencies.

The European Commission (EC) in Dushanbe organized a seminar on "Freedom from torture and other cruel, inhuman or degrading treatment or punishment" on the 12<sup>th</sup> and 13<sup>th</sup> of June 2012 with the support of the Ministry of Foreign Affairs and the Presidential Administration of the Republic of Tajikistan. The Seminar was attended by more than sixty participants—representatives of public organizations, academia and professional lawyers' associations of the Republic of Tajikistan; experts from Europe, Russia and the United States; members of diplomatic missions and international organizations with offices in Dushanbe; and representatives of various government authorities of the Republic of Tajikistan (*see the list of participants in the appendix*).

The Seminar's participants discussed various aspects of the political, social and legal environment which are conducive to the use of torture as well as various problems in Tajikistan's criminal justice system, which affect the regular practice of torture in the country—including the way in which the criminal justice system considers vulnerable populations such as women and children. Special attention was also paid to allegations of torture during extradition proceedings, violations of the principle of *non-refoulement* and the fight against terrorism, as well as to aspects of closed detention facilities conducive to the use of torture.

During lively and constructive discussions, the Seminar's participants considered various international standards, European best practices and national legislations as well as their practical application. The opening speeches of European and Tajik experts led to intensive discussions and numerous presentations among the Seminar's participants.

Following a plenary discussion, the Seminar's participants were divided into small groups, in which they discussed key elements of Tajikistan's national strategy to combat torture and impunity, as well as the role of civil society, governments and international organizations in the co-ordination of the drafting and implementation of this strategy (*see the seminar programme in the appendix*).

Detailed recommendations for legislative, institutional and practical reform were formulated during the Seminar for the Government of the Republic of Tajikistan, with a view to ensuring the country's full compliance with relevant international and national standards. These recommendations were passed on to

representatives of the European Union and the Republic of Tajikistan for further consideration during their forthcoming official dialogue on human rights which is to be held in the autumn of 2012.

In May 2012, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Juan Mendez, visited Tajikistan. The hearing before the Office of the United Nations High Commissioner for Human Rights' Committee against Torture (CAT) of Tajikistan's second periodic report on the implementation of the UN Convention against Torture has been planned for November 2012. These recommendations can also be helpful to the Special Rapporteur and the Committee against Torture for the formulation of their recommendations for the Government of the Republic of Tajikistan.

In general, the Seminar's participants recognized the importance of human rights in the strategic partnership between the European Union and Tajikistan, as well as that of the role of NGOs in this partnership—especially in dialogues on human rights. The Seminar facilitated communication between national and international experts, and enabled participants to make useful contacts which will hopefully lead to fruitful co-operation in the future.

This report has been developed as a policy paper which includes a review and analysis of various issues concerning the right to freedom from torture and other ill-treatment, a review of international best practices in the fight against torture and impunity, and recommendations for the fight against torture and impunity in Tajikistan.

Appendices consist of the Seminar's programme and the list of its participants. All the Seminar's participants received hardback and paperback copies of a variety of documents dealing with international and European human rights standards; official UN documents relating to Tajikistan; general documents; OSCE reports and commitments; analytical documents of public organizations and initial reports; and scientific articles related to the workshop discussions. Simultaneous interpretation in Russian, Tajik and English was provided for the workshops.

## I. SUMMARY OF CIVIL SOCIETY RECOMMENDATIONS

For it to be effective, the Seminar's participants agreed that the fight against torture in the Republic of Tajikistan requires comprehensive and consistent work covering all aspects of the problem of torture in the country.

First of all, the government should **publicly acknowledge the existence of torture** and ill-treatment in the country, should make a clear **statement on "zero tolerance"**, the inadmissibility of torture and ill-treatment, and the **fight against torture and impunity in the country**. The government also needs to introduce a number of urgent measures and to develop a long-term strategy in order to rise to the challenge of eradicating torture and ill-treatment in the country.

As an immediate goal, the Government of the Republic of Tajikistan was advised to take the following urgent measures:

- Give independent monitors from the office of the Ombudsman and representatives of civil society immediate access to temporary and pre-trial detention centres;
- Give representatives of the International Red Cross Committee immediate access to the country's penitentiary system, to enable them to assess the situation regarding the rights of prisoners to freedom from torture;
- Authorize the specially established Committee under the Office of the Prosecutor-General of the Republic of Tajikistan—working with the Human Rights Commissioner and civil society representatives—to record and monitor all complaints against torture and ill-treatment lodged with the Prosecutor-General of Tajikistan, so as to enable the Committee to take effective measures to investigate cases of torture and to provide compensation to victims of torture, and to encourage wide-ranging media coverage of the Committee's work;
- Charge a working group with the development of a long-term and appropriately funded **national programme for the prevention of and protection against torture and ill-treatment** working under a clear accountability and control mechanism; the programme should identify long-term measures for eradicating torture from the activities of public bodies—including mechanisms to control the implementation of international commitments on freedom from torture as well as recommendations at the national level of the UN treaty bodies, Universal Periodic Reviews and Special Procedures of the Human Rights Council;
- Ensure that the articles of the Criminal Code of the Republic of Tajikistan which deal with responsibility for the use of torture (Part 1 of Article 143, note 1) contain provisions for appropriate punishment proportional to the gravity of offence (to prevent cases of impunity in connection with the closing of cases by conciliation among parties or amnesty) in accordance with Articles 1 and 4 of the Convention against Torture;

- Entrench the prohibition of the expulsion of persons to countries where there is serious cause to believe that the persons expelled will be subject to torture, and to develop mechanisms for the implementation of this right in accordance with the requirements of Article 3 of the Convention against Torture;
- In the Code of Criminal Procedure (CCP), stipulate a procedure for the prompt, thorough and impartial investigation of torture or ill-treatment by an independent body, in accordance with Articles 12-13 of the Convention against Torture and the requirements of the Istanbul Protocol;
- Strengthen guarantees for persons in official custody to be able to access legal aid and procedures for filing legal appeals, regardless of the administration of institutions;
- In the CCP, stipulate a procedure for the immediate medical examination by interrogation and preliminary investigation bodies of all persons arrested during the first hours of their detention;
- Develop and legally recognize an institute for independent medical examinations;
- Remove the following from the CCP: a) from the number of grounds for remand in custody: 1) the gravity of the offence, 2) criminal charges for "medium-gravity" crimes;
- Ensure that the Law of the Republic of Tajikistan "On Internal Forces of the Ministry of Interior of the Republic of Tajikistan" provides for the exceptional nature and proportionality of the use of force and weapons; and, finally,
- By law, provide for the regular monitoring of penitentiary facilities and pre-trial detention centres by civil society organizations so as to assess the compliance of these facilities with the rights of detainees—including the right to freedom from torture and ill-treatment.

In the field of law enforcement, the Seminar's participants made the following recommendations:

- The Government of the Republic of Tajikistan should guarantee lawyers immediate and unimpeded access to suspects from the moment of their actual detention, should prohibit any investigations from being carried out without a lawyer, and should prohibit the practice of lawyers having to obtain permission to access a suspect or a person accused from law enforcement bodies or the courts;
- Introduce technical measures to improve control over respect for the rights of detainees, namely: a) the installation of surveillance cameras in the buildings of the internal affairs agencies as well as the development of a legal act to regulate the storage of video records, responsibility for the maintenance of these cameras, and surveillance of data storage; b) the provision of special transparent spaces for interrogations in the premises of internal affairs agencies; c) the compelling of law enforcement officers to use audio and video devices during arrests; d) the installation of audio and video devices in convoy vehicles;

- Develop and establish a mechanism for the regular and independent medical and psychiatric examination of persons in custody and in prison without the intervention of law enforcement officers and prison staff;
- Introduce the systematic monitoring of all closed institutions by civil society organizations; and, finally,
- Provide judges and law enforcement, medical and other personnel who are in contact with persons in custody or deprived of liberty with professional training on the prohibition of torture, and ensure that the re-certification of such personnel includes an assessment of their knowledge of standards for freedom from torture.

## II. REFORMS FOR THE PREVENTION OF AND THE EFFECTIVE FIGHT AGAINST TORTURE IN TAJIKISTAN

The Republic of Tajikistan has been a member of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1995, and a signatory of the International Covenant on Civil and Political Rights since 1999.

In 2010, Tajikistan submitted its second periodic report on the implementation of the Convention against Torture and the International Covenant on Civil and Political Rights, which reflects measures taken to guarantee the protection of victims from torture.

In 2011 and more recently in March 2012, Tajikistan went through the first cycle of the Universal Periodic Review and accepted most of the recommendations on freedom from torture. At the same time, Tajikistan did not agree with the recommendations on the ratification of the Optional Protocol to the Convention against Torture.

In May 2012, the UN's Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Juan Mendez<sup>1</sup>, and its Special Rapporteur on the Right to Health, Mr Anand Grover<sup>2</sup>, visited the country at the invitation of the Government of the Republic of Tajikistan.

In recent years, the Government and public authorities of Tajikistan have undertaken the following measures:

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<sup>1</sup> Press release on the results of the visit of the Special Rapporteur on Torture, Mr Juan Mendez:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12166&LangID=E>

<sup>2</sup> Press release on the results of the visit of the Special Rapporteur on the Right to Health, Mr Anand Grover:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12200&LangID=E>

- In June 2012, the Plenum of the Supreme Court of the Republic of Tajikistan adopted a Resolution "On the Application of Norms of Criminal Law and Criminal Procedure Legislation in the Fight Against Torture";
- In April 2012, the Criminal Code of the Republic of Tajikistan was amended to include a special provision in Article 143 which stipulates responsibility for the application of torture;
- In June 2012, a draft version of the "Government Programme on Education in the Field of Human Rights" was finalized and submitted to all ministries and departments for co-ordination; the Programme notably envisages a system of professional training in the field of human rights for law enforcement and military personnel and civil servants;
- On the 29<sup>th</sup> of December 2011, pursuant to the Decree of the President of RT, a working group was set up to provide educational seminars and outreach activities to prevent the torture of detainees; the group is headed by the Chairman of the Constitutional Court of the Republic of Tajikistan, Mr M. Mahmudov;
- In June 2011, a law "On the Procedure of Detention of Suspects, Accused and Defendants" was enacted; this law regulates the procedure by and the conditions under which suspects, persons accused and defendants are detained, and defines guarantees for their rights and legal interests;
- The new Code of Criminal Procedure (CCP) of the Republic of Tajikistan was enacted in April 2010; overall, the latter complies with international standards for criminal procedures, and it includes many positive aspects such as judiciary sanction, access to protection from the moment of actual detention, etc.;
- In 2010, a law "On State Protection for Participants in Criminal Proceedings" was enacted, which includes mechanisms for the protection of victims and witnesses of torture;
- The Office of the Prosecutor-General of the Republic of Tajikistan and the Institute for Advanced Training of Prosecutors are currently developing guidelines for the effective investigation of cases of torture; these will be presented for approval to the Prosecutor-General of the Republic of Tajikistan during the second half of 2012;
- A draft law "On the Prevention of Domestic Violence" is currently being considered by the Parliament of Tajikistan; and, finally,
- Working groups have been set up to work on the need to render criminal legislation more humane, to reform the legal profession system and to draft a law on the provision of free legal aid.

## 1. Activities undertaken by the Office of the Human Rights Commissioner for preventing torture and protecting the victims of torture in Tajikistan

The Office of the Human Rights Commissioner (Ombudsman) of the Republic of Tajikistan was established in March 2008 by the Law of the Republic of Tajikistan "On the Human Rights Commissioner of the Republic of Tajikistan", and Mr Zarif Alizoda was appointed as the country's first Human Rights Commissioner in May 2009. In 2011, the Human Rights Commissioner approved the Office's strategy for 2011-2015<sup>3</sup>.

According to this strategy, one of the Office's priority areas is the protection of the rights to life, freedom from torture, liberty and personal integrity. The Office analyzes national legislation on criminal justice and freedom from torture; reviews mass media reports, studies and official statistical data; and monitors compliance with human rights in detention facilities. It also arranges trainings on international standards on freedom from torture for law enforcement personnel.

In order to effectively prevent and investigate cases of torture, the Human Rights Commissioner's Office—together with the prosecution—conducts joint investigations of all the claims of torture it receives from citizens. In 2011, the Office recorded the complaints of five citizens, but was unable to confirm the veracity of their claims of torture due to a lack of medical evidence confirming physical injury. In 2012, a further five complaints were received—three of which are currently being investigated. The Office has received nineteen complaints since it was established in 2009, of which two are under criminal investigation. Human rights activists and practicing lawyers are also noting the Human Rights Commissioner's lack of response to their appeals on the use of torture.

In order to increase the protection of human rights in closed facilities, the Ombudsman's Office and the Constitutional Guarantees Division of the Executive Office of the President of the Republic of Tajikistan visited most of the country's closed facilities (pre-trial detention centres and penitentiary facilities). The Office—independently or in association with civil society organizations—also regularly monitors the protection of the rights of persons detained in closed and semi-closed facilities.

Civil society organizations have been highly critical of the performance of the Office of the Human Rights Commissioner. According to them, the measures the Office has taken in response to allegations of torture have been inadequate. Since the Office was set up, the Ombudsman has not publicly reacted to any of the cases it has received—regardless of the concerns raised by civil society organizations and international organizations on the use of torture (including death in a number of cases, e.g. Shodiev, Boboyev, Bachajonov, Murodov).

The Ombudsman has never used his powers to conduct independent investigations of serious violations of human rights.<sup>4</sup> Several human rights NGOs have memorandums of co-operation with his Office to conduct joint monitoring of detention facilities, but in 2011 and 2012, the Ombudsman refused to undertake joint

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<sup>3</sup> See the text of the Strategy (in Russian): <http://www.ombudsman.tj/bitrix/file%20PDF/Strategia-ru.pdf>

<sup>4</sup> See also para. 4 of the Summary Report (1) of NGOs on the Procedure of the Universal Periodical Review. 2011. <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TJ/JS1-JointSubmission1-rus.pdf>

monitoring of detention facilities and of the execution of criminal penalties together with NGOs, blaming his refusal upon the 'absence of permission from authorized government bodies [i.e. the Ministry of Justice] for the NGOs to visit closed institutions'.

The Ombudsman's Office, individually or together with Tajikistan's public authorities, monitors penitentiary facilities, but no information is available on the results of these visits.

## 2. Civil society strategies to combat torture in Tajikistan

For the past few years, a number of human rights organizations, bar associations and practicing lawyers, media representatives and some media organizations in Tajikistan have been quite active in the fight for freedom from torture. In 2011, for example, various civil society representatives decided to combine their efforts in the fight against torture and impunity in the country, and set up a coalition of several organizations involved—in one way or another—in the fight against torture. The members of this coalition developed a strategy to combat torture in Tajikistan and adopted a work plan for the next two years. To date, the Coalition comprises 16 organizations involved in the implementation of this Strategy. The "Notabene" public fund co-ordinates the Coalition's work.

The main objective of the Coalition's strategy is to encourage the **uniformity of state requirements in the fight against torture and impunity**. The Strategy is based upon international standards relevant to the right to freedom from torture, and its aim is to improve legislation and law enforcement practices. The Strategy will be implemented through actions to strengthen all forms of civil society co-operation based upon solidarity.

The Strategy provides for measures to build the capacity of civil society organizations (NGOs, mass media), professional associations (lawyers, psychologists, physicians) and public bodies (judges, law enforcement and investigative agency personnel, prosecution agencies, healthcare staff, staff of closed institutions, etc.) to combat torture and impunity.

Civil society representatives systematically monitor the implementation of recommendations made by UN agencies. Legislative amendments achieved through strategic litigation and lobbying will improve legal safeguards for victims of torture. The Strategy will provide a basis for the further, more active promotion of the ratification of OPCAT and of the establishment of a National Preventive Mechanism (NPM). These activities will also promote the creation of an agency for the public (independent) monitoring of closed facilities.

The Coalition has set up a legal support group, media centre and analytical-monitoring centre to assist victims of torture.

### 3. Activities of the Coalition in 2011 and 2012

Coalition members have systematically documented over fifty instances of torture between 2011 and 2012, and provide legal and practical assistance to victims of torture and their families. Strategic litigations on legislative amendments and mechanisms for protection from torture—including compensation mechanisms—have been developed and implemented. Calls, actions and statements are made in individual cases of torture—both at the national level and in association with international human rights organizations. Members of the Coalition are currently running five programmes for monitoring freedom from torture in various institutions (correction facilities, psychiatric facilities, children's facilities, health institutions, military facilities) and have completed a comprehensive analysis of legislation on freedom from torture. Freedom from torture is promoted (advocacy) at both national and international levels. The Coalition played an active part in providing information and organizing meetings with victims of torture during the UN Special Rapporteur on torture's visit to Tajikistan, and is also actively involved in the preparation of an alternative report on the Government of the Republic of Tajikistan's implementation of the Convention against Torture. Instances of torture are widely covered in mass media, and various educational events are held in this field.

### 4. The role of mass media in preventing and combating torture in Tajikistan

In recent years, media in Tajikistan have increasingly focused their coverage upon the right to freedom from torture, and mass media and independent journalists often initiate public discussions of this problem. Investigations of individual cases of torture begin after media publications. The victims of actions of law enforcement personnel or other government agencies—as well as their lawyers and relatives—often approach mass media and independent journalists as a "last resort" to protect their rights and freedoms. Media coverage of cases of torture, investigations and litigation help to attract the attention of the general public, government agencies and national and international human rights organizations to the need for criminal sanctions for officials found guilty of torture and for measures to protect and compensate the victims of torture.

The issue of torture is regularly covered by independent (i.e. private) print and electronic media (e.g. the "Asia Plus" media group, "Ozodagon", "TojNews", "Radio Imruz", etc.) as well as by foreign media organizations accredited in Tajikistan ("Liberty", the BBC, etc.). Most information is published or broadcasted as news. Although radio stations sometimes broadcast individual programmes and interviews, analytical articles and case investigation reports are rarely published.

State-owned media (e.g. the "Khovar" National Information Agency of Tajikistan) publish information on meetings, seminars and other thematic events. Information on cases of torture used by law enforcement officials during investigations is not published in state-owned print and electronic media.

Mass media often serve as the primary source of information on the use of torture against individuals. Mr Bahromiddin Shodiev, for example, died on the 30<sup>th</sup> of October 2011 in the intensive care unit of the

National Health Centre after having been moved there from the police department of the Shohmansur district of Tajikistan's capital, Dushanbe. Information on Shodiev's death was first published on the "Asia Plus" web site by the correspondents of the Independent School of Journalism's "Tajikistan—XXIst Century" project.<sup>5</sup> This information (which was accompanied by a photograph of the victim in the intensive care unit) led to a high-profile case and was taken up and republished by various mass media and social networks.

The discussion which ensued under the aegis of the NGO Coalition Against Torture in Tajikistan and the Coalition's publication of an official statement also influenced both the development of events and the subsequent reaction of the authorities. A similar situation occurred in the case of Mr Safarali Sangov, who also died in the intensive care unit of the National Health Centre on the 5<sup>th</sup> of March 2011. According to his relatives, he was severely beaten by police officers of the Sino-1 district of Dushanbe; the police, however, claimed that Mr Safarov attempted to commit suicide. The incident also became a high-profile case after being published by various mass media.<sup>6</sup>

## 5. Journalistic investigations

In Tajikistan, meaningful journalistic investigations into the use of torture and the publication of their results are very rare. Most journalists are unfamiliar with the specifics of investigative reporting, lack legal knowledge and subject themselves to self-censorship. Many media lack the resources needed, and their work is sometimes impeded by law enforcement and government agencies. Journalists are often persecuted for their publications: Ms Ramziya Mirzobekova's article "Investigation or Inquisition?", for example, was published in the 21<sup>st</sup> of December 2010 issues of the *Asia Plus* newspaper following her visit to Tajikistan's Sogd *Oblast* for an independent investigation into reports of torture. The article, which refers to witness statements and to the results of a forensic examination, reported on the use of torture against people in detention by local representatives of the Ministry of Internal Affairs of the Republic of Tajikistan's Department for Organized Crime Control. On the 20<sup>th</sup> of January 2011, Mr Anvar Tagoimurodov—then the head of the Department for Organized Crime Control—filed a complaint against *Asia Plus* in the court of Tajikistan's Firdavsi district, accusing the newspaper of having damaged his department's dignity and reputation and requesting TJS (Tajik Somoni) 1 million (about USD 225,000) in compensation. Following several months of litigation, the parties entered into an amicable agreement.

Several mass media organizations are currently also active members of the NGO Coalition Against Torture in Tajikistan. As part of its strategy, the Coalition is establishing a specialized media centre which is to provide wide-ranging high-quality coverage of the fight against torture in national, regional and international media (print, radio, television, information and analytical web resources) as well as through blogs and social networks. The media centre will also be tasked with organizing public debates and responses to cases of torture, with thematic investigative reporting, and with promoting systemic changes

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<sup>5</sup> See "Resident of Dushanbe delivered from the Police Department dies in intensive care" (in Russian):

<http://news.tj/ru/news/zhitel-dushanbe-dostavlenniy-iz-otdela-militsii-skonchalsya-v-reanimatsii>

<sup>6</sup> Relatives of the maimed suspect accuse police officers: <http://news.tj/ru/news/rodstvenniki-pokalechennogo-podozrevaemogo-obvinyayut-stolichnykh-militsionerov>

in the fight against torture in Tajikistan. A specialized web resource called "Combating Torture in Tajikistan" with thematic materials in Tajik, Russian and English is under development. The web site will include a complete database of information on torture in Tajikistan, coverage of the Strategy implementation, and will serve as a resource for journalists preparing other publications. Coalition pages will also be opened in social networks (e.g. Facebook, Twitter, Google+, etc.).

The Coalition's media activities will ensure regular publications in mass media and on the Internet, which will in turn contribute to the development of public debate and the gradual formation of a culture of "zero tolerance" towards the use of torture and ill-treatment in Tajikistan.

### **III. GENERAL FACTORS CONDUCTIVE TO THE USE OF TORTURE IN TAJIKISTAN**

In 2010, the Government of the Republic of Tajikistan submitted its second periodic report on its implementation of the Convention against Torture. Many of the recommendations the UN Committee against Torture made back in 2006 have, however, not yet been implemented. In particular, the Optional Protocol to the Convention against Torture has not been ratified; immediate and unimpeded access of lawyers to detainees from the moment of detention is not provided for; immediate medical examination of persons at the time of their arrest is not ensured; a mechanism for the effective and prompt investigation of complaints of torture and for the prosecution of persons found guilty of having practices torture is still lacking; international and domestic monitors still have no access to detention centres and prisons; and victims of torture are not guaranteed adequate compensation or effective legal safeguards.

In 2012, the Committee on Human Rights issued opinions on 22 individual reports in respect of the Republic of Tajikistan in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights. The Committee recognized virtually all cases as violations of the right to freedom from torture, but none of its opinions have been implemented.

Tajikistan has neither a national action plan to combat torture and impunity nor a comprehensive approach to criminal justice reform.

On the 16<sup>th</sup> of April 2012, a separate article (Article 143.1 "On Torture") was added to the Criminal Code of the Republic of Tajikistan to stipulate criminal responsibility for torture. However, the deprivation of freedom for up to five years stipulated in the first part of this article does not meet the requirements of Article 4 of the Convention against Torture on the gravity of offences.

Torture in Tajikistan remains a systemic problem. Human rights activists and lawyers note that the most common methods of torture include being beaten with plastic bottles, subjected to electric shocks, scalded with boiling water, burnt with cigarettes, raped, having plastic bottles filled with sand or water tied to one's genitals, being beaten with "blackjacks" or sticks, being kicked and punched, being humiliated, and having one's relatives threatened with bodily harm.

There are no statistics in Tajikistan on the scale of the use of torture and ill-treatment. Public authorities claim that this problem will be solved with the introduction of a separate article on torture in the Criminal Code.

The lack of immediate and unimpeded access of lawyers to detainees is one of the reasons behind the use of torture during criminal proceedings.

There is no independent mechanism for the investigation of cases of torture in Tajikistan. Investigations are the responsibility of employees of the country's internal security units—i.e. people from the same departments whose actions are denounced by victims of torture.

The country's new Code of Criminal Procedure transferred the power to sanction arrests from prosecutors to judges. So far, however, there is no clear mechanism for the courts to consider the legality or validity of arrests. In almost all cases, judges grant investigative authorities the right to detain arrested persons as a form of restraint based solely upon the gravity of the accusation,<sup>7</sup> which is in contradiction with international standards regulating the right to freedom and personal integrity. In considering preventive measures, judges do not evaluate reports on torture, pointing out instead that their responsibility is restricted to sanctioning only.

Part 3 of Article 88 of the Code of Criminal Procedure of the Republic of Tajikistan states that 'evidence obtained in the course of interrogations or preliminary investigations as a result of force, pressure, suffering or inhuman treatment or in other illegal ways, shall be deemed invalid and cannot be the basis for prosecution...' To date, however, this provision has never been used by the courts of the Republic of Tajikistan. When defendants on trial claim that law enforcement agencies have resorted to the use of torture or other illegal methods of investigation, the courts ignore such statements and only summon and question investigators and employees of the country's internal affairs agencies.

A law "On State Protection of Victims and Witnesses of Crime" was enacted in December 2010; relevant programmes to implement this mechanism were, however, only adopted eighteen months later.

Persons in custody awaiting trial or sentenced to imprisonment are the most vulnerable to ill-treatment. According to lawyers, torture and ill-treatment are most common in the facilities of the State National Security Committee.

Since 2004, the Tajik authorities have not allowed the International Red Cross Committee to monitor prisons, and civil society institutions do not have access to prisons for independent monitoring.

Tajikistan's system of education and vocational training for young specialists in law schools is a serious problem. Forensic laboratories in universities are not properly equipped, and young specialists do not acquire practical skills for effective crime investigation. No training programmes are provided for forensic experts or forensic analysts.

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<sup>7</sup> Arrest sanctioning monitoring. Human Rights Centre. 2010.

Members of the lesbian, gay, bisexual, and transgender (LGBT) community are in the most latent risk group. There have been cases of torture and ill-treatment of the latter by law enforcement officials, as well as ill-treatment by medical staff.

## 1. Impunity

On the 19<sup>th</sup> of April 2012, the Criminal Code of the Republic of Tajikistan was amended to add a separate article which stipulates criminal responsibility for torture. While the concept of torture provided in Article 143.1 corresponds to the definition given by Article 1 of the UN Convention against Torture, the sentence of imprisonment of up to five years provided in the first part of Article 143.1 does not match the gravity of the offence, which is contradictory to the provisions of Article 4 of the Convention.

Torture and ill-treatment are systematic, with both detainees and their close relatives being subjected to such violence. Thus, in May 2012, 52 relatives of convicted members of the "Hizb ut-Tahrir" organization sent an open letter to the President of Tajikistan, in which they claimed that law enforcement agencies use torture to obtain confessions: 'Our relatives in custody were forced to testify through torture and pressure. We saw injuries caused by beatings, marks of baton, and electric shock. [...] Moreover, [our relatives] were threatened that if they did not testify, their wives and sisters would be raped.' The authors of the open letter also reported that relatives of persons in custody were subjected to ill-treatment in order to pressure suspects.

### a) The effective investigation of cases of torture

Article 12 of the Convention against Torture sets out the obligation of signatory states to ensure the fast, effective and impartial investigation of claims of torture. Grounds for instituting criminal proceedings are a statement on offences (verbal and recorded in the minutes or written and signed by the applicant), information from an official, media reports, information with the signs of crime revealed directly by the interrogator, investigator, or prosecutor (Part 1, Article 140, Code of Criminal Procedure of the Republic of Tajikistan). Applications shall be processed within three days, and, in exceptional cases, within ten days. In the event of the authorities refusing to launch a criminal investigation, a copy of their decision with an explanation of the appeals procedure shall be sent to the applicant in accordance with Parts 2 and 3 of Article 149 of the Code of Criminal Procedure of the Republic of Tajikistan. Such a decision may be appealed against within 14 days of the date of submission to the prosecutor, and further to the higher level prosecutor or the court.

According to Part 2 of Article 122 of the Code of Criminal Procedure, 'when considering a complaint, the prosecutor or the judge must thoroughly check the arguments contained therein, and request, *if necessary* [emphasis of the authors of this report], additional materials, and, at the request of the applicant, obtain clarification on actions and decisions appealed against'; this wording allows investigators to restrict their

consideration to a single item of a complaint and to ignore additional grounds for complaint which may be mentioned therein.

The appeals process is clearly not consistent with the state's obligation to provide effective safeguards. Practice shows the serious difficulties applicants face when appealing: prosecutors do not provide answers sometimes, and the courts see no reason to accept a complaint for consideration, pointing to a limited number of issues for consideration under the procedure set in the Article 124 of the Code of Criminal Procedure.

The list of rights stipulated in Article 42 (in particular) of the Code of Criminal Procedure of the Republic of Tajikistan and the impossibility of familiarizing oneself with criminal case materials until the completion of the investigation (which is contradictory to the requirements of the Articles 12 and 13 of the Convention against Torture and to the provisions of Articles 6 and 7 of the International Covenant on Civil and Political Rights) cause difficulties to supposed victims of torture. The issue of Article 42 of the Code of Criminal Procedure being in contradiction with the Convention against Torture was raised in Tajikistan's Constitutional Court during an appeal to protect the interests of the representative of Mr Juraboy Boboev, whose son Ismonboy was murdered by police officers as a result of torture. The criminal case has been suspended for two years, but Mr Boboev's requests to be told the reason for this suspension with reference to the requirements of the Article 42 of the Code of Criminal Procedure have been turned down. Regretfully, Tajikistan's Constitutional Court did not find any inconsistency between the Constitution of the Republic of Tajikistan and the International Covenant on Civil and Political Rights and the UN Convention against Torture. At present, the case is under consideration by the Human Rights Committee.

## **b) The practice of judicial control over the actions of law enforcement agencies**

The courts do not react properly to reports of torture and do not exclude such testimonies from the criminal case materials—as required by Article 88 of the Code of Criminal Procedure and Article 15 of the Convention against Torture. During his visit to Tajikistan, the UN Special Rapporteur on torture, Mr Juan Mendez, pointed out that Article 88 of the Code of Criminal Procedure has never been applied in practice. Having received reports of torture, the courts restrict themselves to issuing special rulings on officials accused of using torture, with no further monitoring of their implementation.

## **c) Lenient punishment or a lack of criminal responsibility for torture which create a culture of impunity**

Law enforcement officers who resort to torture are often punished through disciplinary measures or minor criminal sanctions. For instance, regarding the instances of torture which resulted in the deaths of Mr Safarali Sangov, Mr Bahromiddin Shodiev, and Mr Ismoil Bachajonov, criminal cases were initiated or court sentences were issued pursuant to Article 322 of the Code of Criminal Procedure, which stipulates punishment for negligence. Heads of departments whose employees are accused of torture are practically never held to account.

#### **d) Amnesty for persons accused of torture**

In Tajikistan, the negative practice of granting amnesty to persons accused of using torture or other ill-treatment has led to the development of a culture of impunity. Due to the lack of a separate article on torture in the Code of Criminal Procedure prior to April 2012,<sup>8</sup> instances of torture or other ill-treatment were qualified under various articles of the Criminal Code such as "abuse of power" (Article 314 of the Criminal Code), "exceeding official authority" (Article 316 of the Criminal Code), "neglect of duty" (Article 322 of the Criminal Code), or "abuse of power or office" (Article 391 of the Criminal Code). Offenders are often held accountable for the use of torture pursuant to articles 314, 316 and 322, and are sentenced to terms of imprisonment, to conditional punishment (i.e. without imprisonment), or to minor terms of imprisonment. In exceptional cases, punishment may stretch to a term of imprisonment of 10 to 12 years.

Between 2007 and 2012, three amnesties were granted (in 2007<sup>9</sup>, 2009<sup>10</sup> and in 2011<sup>11</sup>). In virtually every case, amnesty was granted to persons who used torture and other forms of ill-treatment. In the case of Mr Karimov, for example—use of torture to obtain confession of guilt of a criminal offense—police officers were fully exempted from punishment as a result of the 2009 amnesty. In 2011, the court released a person who had been charged with the crime of negligence in the case of Mr. Bachajonov (who died in a correctional facility), and the terms of imprisonment of other members of staff of the pre-trial detention facility were reduced to two years.

#### **e) A lack of compensation to victims of torture**

Victims of torture often refuse to file claims for compensation for fear of further reprisals. In Tajikistan's legislation, torture is not included in the list of possible grounds for which victims can claim damages or compensation. One of the courts in Dushanbe is currently considering Mr Bachajonov's widow's claim for damages from the state budget. The General Penal Correction Department and the Ministry of Finance acting as defendants and filing a counter-claim require that such compensation be recovered from persons serving sentences for torture.

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<sup>8</sup> The concept of "torture" was introduced into the Code of Criminal Procedure of the Republic of Tajikistan by amendment No. 698 of the 1<sup>st</sup> of April 2012.

<sup>9</sup> The Law of RT "On Amnesty" No. 633 of the 20<sup>th</sup> of June 2007.

<sup>10</sup> The Law of RT "On Amnesty" No. 560 of the 3<sup>rd</sup> of November 2009.

<sup>11</sup> The Law of RT "On Amnesty" No. 505 of the 19<sup>th</sup> of August 2011.

## **2. The right to freedom from torture in the criminal justice system: the role of lawyers in the prevention of torture, access to the accused, trial, and provision of evidence**

### **a) Access to a lawyer from the moment of detention**

According to Tajikistan's Code of Criminal Procedure, 'a defence counsel is allowed to participate in a criminal case from the moment of a suspect's actual arrest', but existing legislation gives no definition of the notion of "actual arrest". A detained person is still considered a suspect from the moment a detention protocol is issued (such protocols are actually drawn up following the decision to initiate a criminal case), and it may require from several hours to several days from the time of actual arrest for the suspect's legal counsel to be given access.

The law does not require detention protocols to indicate the names of the arresting police officers. Instead, the registration log is filled in and signed by the investigation officer assigned to conduct the case. Typically, this employee is not involved in the arrest. In practice, this legislative omission allows law enforcement officers to use torture with impunity during the period between the actual arrest and formal custody, as their involvement is not officially registered and is difficult to prove. Many defendants do not know the difference between operational police officers and the investigator or the difference between their respective roles during arrest and investigation. Normally, operational police officers do not give their names and positions to detainees, so there are no mechanisms to enable one to establish their identity.

Current legislation does not define the concepts of "detention" and "detainee". A person arrested at a crime scene but not yet transferred into the charge of a law enforcement agency must be considered detained and enjoy the rights of an "arrested" person. The introduction of the concept of "detainee" will enable one to distinguish between the legal status of a person arrested in connection with his or her involvement in a crime and the legal status of persons suspected or accused of having committed a crime.

### **b) Lawyers' lack of access to clients**

The lack of access of lawyers to their clients is a serious problem in the law enforcement practice of the country. Although legally prohibited, provisions according to which a lawyer must obtain a permit to see a client remain widely used. Whilst lawyers have the opportunity to see clients during ordinary criminal cases, when a criminal case is being investigated by national security agencies such access is almost impossible. Lawyers cannot see their clients privately, either, as representatives of law enforcement agencies are almost always present during their meetings.

The practice of using so-called "pocket lawyers"—who are involved by the investigating authorities and whose role is restricted to signing all the investigation documents without actually providing any practical legal assistance—is still common, which makes it impossible for many to enjoy real and effective legal assistance.

### **c) The interference of law enforcement agencies in the work of lawyers**

Such interference is very common. The most common examples of obstruction of lawyers' work are denying a lawyer access to his or her client in custody and forbidding lawyers from disclosing information on judicial investigations or trial proceedings. Courts issue decisions on closed trials and investigators require attorneys to sign non-disclosure agreements, both of which are violations of human rights in the criminal justice system. Only some materials—and not the criminal case as a whole or the course of trial—can be closed and classified.

Investigators often do not allow lawyers to take down minutes of an investigation or other procedural documents or to temporarily remove case files from the premises for the purpose of making copies. (Making copies on the premises is often impossible for various reasons, such as a lack of photocopying machines, paper, etc.)

All electronic devices such as audio recorders or mobile 'phones are taken from lawyers, thus depriving them of the means to record evidence. In violation of the procedural legislation provisions, lawyers are also forbidden to record trial proceedings on computers, the excuse being that the law only permits written notes or audio recordings.

The low quality of legal services remains a problem in major criminal cases (and particularly in cases of torture). This problem is due to the low professional level of lawyers and to their unwillingness to communicate with law enforcement bodies (as this may affect their work on other criminal cases).

### **3. The role of medical personnel in the documentation and prevention of torture: compliance with the Istanbul Protocol standards**

Untimely forensic examinations and a lack of independent judicial reviews are serious issues that create a culture of impunity. The Code of Criminal Procedure of the Republic of Tajikistan does not clearly define the procedure by which lawyers may petition a forensic examination to be carried out. Pre-trial detention centres employ no full-time equivalent of a doctor, and no medical examination is carried out from the moment of detention. As a result, interrogation and investigation officers—after inflicting beatings and torture—arrange for doctors from the traumatology departments of local city hospitals to certify the absence of bodily injuries.

The opinions of forensic medical examinations are often identical, and all victims of torture are given standard opinions with inaccurate descriptions of bodily injuries or opinions confirming their satisfactory health condition.

The activities of forensic experts are regulated by the Law of the Republic of Tajikistan "On State Forensics", by the Code of Criminal Procedure and by internal regulations of the Ministry of Health of the

Republic of Tajikistan. The forensic medical examiner is a health professional. Forensic procedures during preliminary investigations and trials are stipulated by the Regulations "On some Procedural Grounds for Forensic Medical Examinations in the Republic of Tajikistan" approved by Order of the Minister of Health on the 20<sup>th</sup> of December 2008. The Regulations call for the mandatory interview of a detainee prior to a complete medical examination. Such interviews establish whether there were acts of violence, the presence of injuries, where these were received, etc., according to the detainee.

Current legislation calls for forensic medical examinations to be carried out and for an opinion to be reached within three days; in some cases, where additional examinations are needed, this period is extended. In practice, the interview of detainees (accused or defendants) generally lasts between 30 and 60 minutes, whereas the Istanbul Principles state that even interviews lasting two to four hours are not always enough for physical and mental proof of torture to be assessed.

International standards stipulate the obligation of doctors to obtain the voluntary and informed consent of the person they examine. Where the main goal of the examination is not the provision of medical support, it is important to exercise caution and to make sure that the patient is aware of and agrees to such an examination, as well as to ensure that it would in no way be contrary to his best interests.

In practice, there are cases when forensic medical examinations are not always carried out with the consent of the detainee. Experts explain this by pointing out that they are not required to obtain the prior consent of the detainee to a medical examination when it is carried out based upon the decision of a law enforcement agency. As a result, the form for the examination opinion does not include a requirement to indicate the detainee's consent to the examination.

In practice, experts are often tolerant towards torture. The results of monitoring carried out by human rights organizations thus show that most experts acknowledge having discovered evidence of physical violence on detainees' bodies, but that the detainees themselves claimed that they had not been the victims of violence. Experts point out that determining the causes of injuries is not within their competency and they are only obliged to carry out an examination and issue an opinion. Law enforcement personnel are almost always present during forensic medical examinations, and their presence is justified by the need to guarantee the security of the medical experts. As a result, potential victims have no opportunity to inform experts of the circumstances in which their injuries were inflicted.

#### **4. Violence against women**

Women are a vulnerable group, and are most often subjected to torture and ill-treatment in the form of psychological pressure, beatings, rape and the threat of rape. Moreover, violent scenes are often documented with camera 'phones and the victims are threatened with the further dissemination of the images. In such cases, women rarely choose to report the rape as it may lead to their family falling apart e.g. husbands may kick their wives out of their house and women often cannot count upon the support of their relatives.

Domestic violence and the access of its victims to justice remain a problem. Despite the fact that NGO legal assistance centres register a large number of appeals from women subjected to violence (e.g. at the hands of their husbands or mothers-in-law), victims of domestic violence practically never appeal to the country's law enforcement agencies. There is no trained staff to work with domestic violence victims. Even when law enforcement agencies receive complaints about instances of domestic violence, they rarely take immediate and adequate measures to suppress such crimes, believing that such cases "even happen in the best regulated families". Victims, in order to obtain justice, have to overcome a number of obstacles, such as the reluctance of police officers to accept appeals, the incorrect processing of appeals, multiple exhausting and pointless interviews, untimely referrals to forensic medical examinations, painful face-to-face interrogations, a lack of adequate protection and security for victims, etc.

Tajikistan has no legislation on the need to prevent violence against women. Criminal legislation does not provide for adequate evaluations of public danger, and psychological violence is not defined in the criminal legislation either.

Cases of domestic violence subject to private prosecution and considered according to the provisions of Articles 112 (Intentional Infliction of Bodily Harm) and 116 (Assault) of the Criminal Code are instituted at the request of the victim, and proceedings in such cases are subject to termination in the event of a reconciliation between the victim and the accused. The courts, in turn, cannot carry out operational activities to investigate alleged crimes; they must instead contact the police, which requires time during which the signs of physical abuse fade or disappear. There is no practice of assessing the psychological condition of victims of domestic violence.

Representatives of law enforcement agencies often subject women who have been the victims of violence to repeated violence. In 2011, a woman approached the police and accused her husband of having caused her bodily injuries. When she later came to enquire for information about the investigation, she was raped by a police officer in his office. When the woman and her elderly grandmother later returned to the police station, the chief police officer warned her not to tell anyone about the incident as she would never be able to prove it and that the police officer would put her in jail for slander.<sup>12</sup>

## **5. Freedom from torture in pre-trial detention centres and penal correction institutions**

Access to prisons for civil society representatives and members of the general public is restricted in Tajikistan, which increases the risk of torture and ill-treatment in these institutions.

Tajikistan's Criminal Punishment Execution Code was amended to include provisions on the powers of the Human Rights Commissioner (Ombudsman) to visit correction facilities and to see convicts in private, and a law "On the Procedure and Conditions of Detention of Suspects, Accused Persons, and Defendants" was adopted.

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<sup>12</sup> Ibid.

The criminal punishment execution system, pre-trial detention centres and correction facilities are under the jurisdiction of the Head Department of Penitentiaries (except for the pre-trial detention facility of the State National Security Committee).

To date, civil society organizations and the ICRC do not have access to correction facilities. Only a strictly limited number of NGOs—engaged mainly in humanitarian and charitable activities—have been granted access to correction facilities. A number of international organizations and NGOs have—unsuccessfully—been negotiating with the state since 2005 for permission to access and monitor pre-trial detention centres and prisons.

Information on the number of persons sentenced, on the number and location of prisons and pre-trial detention centres, statistics on morbidity and mortality in prisons, the results of visits of supervisory authorities (in particular the prosecution agencies, etc. to pre-trial detention centres and correction facilities) is limited.

Human rights organizations are receiving an increasing number of complaints on violations of the rights of detainees and convicts in pre-trial detention centres and correction facilities.

In 2011, the government established a working group to visit pre-trial detention centres and penitentiary facilities, which comprised representatives of the Executive Office of the President, of various government agencies and of the Office of the Human Rights Commissioner (Ombudsman). Civil society representatives are not included in government working groups, and there is no information on the results of these visits.

#### **a) Access to lawyers for persons serving criminal sentences in prisons**

Part 4 of Article 91 of the Criminal Punishment Execution Code stipulates that 'in order to provide legal aid, convicts, based upon their application, are authorized to hold meetings with lawyers or other persons entitled to provide legal support. At the request of the convict and indicated persons, meetings are arranged in private.' Referring to this article, punishment execution authorities decline the requests of lawyers to access convicted persons; if a prisoner is tortured, therefore, relatives cannot involve lawyers to defend the prisoner's interests without the express written request of the victim.

#### **b) Changing sentence serving regimes**

In accordance with the provisions of the Criminal Punishment Execution Code, if a convict commits a crime or otherwise violates his sentence serving regime, the prison's warden has the right to request the courts to tighten the prisoner's regime. Judicial proceedings are held in the premises of the prison; in most cases, lawyers are not in attendance, and the courts grant almost everyone of the wardens' petitions. Following changes to a prisoner's regime, prison staff carry out "prevention work with new prisoners", which takes the form of "blackjacking" i.e. being beaten with truncheons or sticks etc. Mr Ismoil Bachajonov, for instance, whose regime was changed from "high security" to "penitentiary" on the 21<sup>st</sup> of January 2011, was beaten to death in the pre-trial detention centre.

### **c) The investigation of deaths in pre-trial detention centres and correction facilities**

Human rights activists increasingly receive more information on deaths resulting from torture. Between 2010 and 2012 alone, lawyers working for human rights organizations registered and provided legal assistance in several such cases (Ismonboy Boboev, Bahromiddin Shodiev, Safarali Sangov, D. Murodov, Ismoil Bachajonov). In almost every case, the duration of the investigation into these men's deaths has been restricted and the guilty have remained unpunished. The criminal investigation into Boboev's death, for instance, has already been suspended for a year and a half, and the criminal investigation into Murodov's death is still incomplete despite having been launched in 2009.

### **d) Persons serving terms of life imprisonment**

Human rights activists are concerned about the situation with regard to the rights of persons sentenced to life imprisonment, who serve their sentences in Kurgan-Tube prison and in the life imprisonment block of the pre-trial detention centre in Dushanbe. In line with amendments to the Criminal Punishment Execution Code, the visits of relatives are limited, and these prisoners may no longer receive parcels since 2012.

## **6. Custodial facilities for children in Tajikistan**

There are different kinds of custodial institutions for children in Tajikistan:

The *National Special School for Intractable Children* (which operates under the aegis of the Ministry of Education of the Republic of Tajikistan) receives children from 11 to 14 years old (16 in exceptional cases) for a term of up to three years based upon the decision of the Commission on the Rights of the Child (which operates under the aegis of the country's executive authorities). This school currently has 32 pupils.

The *Special Vocational Technical School* (a closed institution which operates under the aegis of the Ministry of Education of the Republic of Tajikistan) receives children from 14 to 18 years old for a term of up to three years based upon the decision of the Commission on the Rights of the Child. This school currently has 2 pupils.

The *Juvenile Correctional Facility for Underage Boys* (a custodial facility which operates under the aegis of the Ministry of Justice of the Republic of Tajikistan) receives children from 14 to 18 years old (20 in exceptional cases) based upon a court sentence for having committed a crime. 33 teenagers are currently serving sentences in the institution.

Children being punished in the Correctional Facility are placed in disciplinary confinement in a cell measuring 2m x 2m; a folding bed, chained to the wall, is folded up during the day so that the child is not

able to lie down. Children are taken to the toilet when necessary, and are only very rarely given the opportunity to exercise. Such punishment may last up to two weeks.

Children in the Correctional Facility and the Special Vocational Technical School are subjected to the following types of punishment: a) their access to their families is restricted; b) they are forbidden from taking part in various activities (games, contests, etc.); c) they are involved in different kinds of work (e.g. digging, painting walls, cleaning floors, cleaning rooms, etc.).

There is no well-designed mechanism to protect children from torture, violence and ill-treatment, nor are there effective methods and conditions for working with children victims of violence. Negative attitudes and poor detention conditions are observed in all custodial facilities.

The current criminal justice system (law, policy and practice) for young offenders does not comply with international standards. For instance, although each child has the right to a lawyer, few children receive appropriate legal support in the police station, where they may become victims of blackmail, violence, torture or ill-treatment.

## 7. Protecting human rights in psychiatric facilities

Tajikistan has seventeen working psychiatric and neuropsychological institutions and mental disease centres. According to government statistics, 47,167 people made use of their services in 2010. The country's main types of mental health service are: primary psychiatric examination; outpatient psychiatric care; inpatient psychiatric care; and medical and social care in the neuropsychological departments of social protection institutions. No policy of deinstitutionalization of psychiatric services is planned.

The Law of the Republic of Tajikistan "On Psychiatric Care" does not envisage safeguards for the rights of the mentally ill to freedom from torture or ill-treatment. The prohibition of torture or of cruel or inhuman treatment is not stipulated in the legislation, and this right has not been integrated within the responsibilities of psychiatric medical staff or within the rights of mentally ill persons. Neither the Law of the Republic of Tajikistan "On Psychiatric Care" nor current instructions and regulations include a list of and procedures to apply measures for the physical detention of persons in psychiatric facilities. Tajikistan's mental health legislation does not define the concept of discrimination and its explicit prohibition; does not require the mandatory presence during hearings of persons whose incapacity is being considered; and does not include provisions to ensure that mentally ill persons have access to a lawyer or requiring the mandatory presence of a lawyer in court in the absence of the mentally ill person.

The main problems pertaining to the protection of the rights of the mentally ill are a lack of contact with the outside world (no letters, no telephone conversations, etc.) and a lack of access to information on the rights of patients (no information boards, their rights are not explained at reception, etc.). Compulsory hospitalization is not always carried out based upon a court decision, and the right to legal representation

is only secured by patients who can afford it or by those sentenced to be placed in a psychiatric facility by court ruling.

Psychiatric patients are deprived of food as punishment, and there have been reports of beatings, ill-treatment and sexual abuse on the part of some of the medical staff.

## 8. Freedom from torture and other forms of ill-treatment in the army

In Tajikistan, citizens are drafted into the army twice a year. According to official figures, every year between 15,000 and 16,000 young men between the ages of 18 and 27 join the armed forces of the Republic of Tajikistan. Due to the poor living conditions, hygiene and regional discrepancies as well as frequent cases of ill-treatment and the "hazing" or initiation of newly-drafted recruits by senior conscripts, young people prefer to try to escape from the draft and enlistment officers and avoid military service altogether.

Recruitment into the armed forces of the Republic of Tajikistan is carried out through universal draft, and the process is accompanied by mass violations of the conscripts' rights—including illegal arrests and "raids".

"Hazing" (*dedovshina* in Russian) is a serious problem in the armed force of Tajikistan. The practice is based upon the term of service (senior conscripts practice dedication ceremonies and beating recruits) and regional differences.

This brutal initiation of new recruits can take different forms, such as forcing someone to hold their fingertips together and beating the latter with a hard, blunt instrument ("the flower in blossom"), forcing new recruits to pedal a bicycle with lit matches between their toes ("the bicycle"), beating a person's shoulders or buttocks with a belt buckle ("general rank" or *shashak*, respectively).

Soldiers are also subjected to different kinds of punishment by officer, such as having to do excessive numbers of sit-ups or push-ups or being slapped in the face.

Complaints about "hazing" and about living conditions during military service are strongly condemned: even if a soldier complains to his commanding officer, his complaint will be ignored and the perpetrators will not be held to account. All manner of complaint—be it about "hazing", living conditions, food or hygiene, etc.—is equated to "snitching".<sup>13</sup>

Military personnel do not have the right to undergo civil (i.e. independent) forensic or medical examinations; all medical examinations are carried out in special military hospitals to which the general public and representatives of civil society organizations do not have access.

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<sup>13</sup> "Snitching": whistle-blowing e.g. divulging compromising information, betraying facts to the authorities, etc.

## 9. Prohibiting extradition and guaranteeing the right to freedom from torture in the context of combating terrorism and extremism

Extradition in Tajikistan is a somewhat ambiguous practice, as the country's legislation does not explicitly forbid the extradition of persons to countries where they may be at risk of torture. Extradition issues are often regulated through bilateral agreements between general prosecutor's offices; by the Minsk and Kishinev Conventions on legal support and legal relations in civil, family and criminal cases; as well as by the 2001 Shanghai Convention on Combating Terrorism, Separatism, and Extremism. All these envisage only procedural matters, and do not contain freedom of torture standards. There is no statistical data on persons extradited from Tajikistan.

The situation in both Russia and Tajikistan is inadequate in terms of guaranteeing freedom from torture: both countries display more than enough cases of torture, sentences based upon confessions obtained by prohibited methods, extrajudicial executions, etc., as documented by international organizations. Conditions of detention in prisons leave much to be desired, both in Tajikistan and Russia.<sup>14</sup>

Consequently, extraditions both to Russia and Tajikistan require special attention. Such cases are especially serious if charges relate to terrorism and extremism. In both countries, such accusations are often used to justify the anti-terrorism and anti-extremism activities of law enforcement agencies, and are also used to suppress the political and religious activities of citizens. Persons extradited on such charges are more at risk of torture, as they are considered to be a threat to national security.

Recently, the number of cases of citizens of Tajikistan being extradited from Russia has increased. At the same time, citizens without proper protection approach the European Court of Human Rights (ECHR) and request it to prohibit their extradition. Human rights activists are, however, aware of cases when—despite a ban on extradition—persons under the protection of the ECHR disappear in Russia and are later found in pre-trial detention or detention facilities in Tajikistan.

When ruling over the extradition of persons from Russia (including citizens of Tajikistan), the grounds for which extradition may be declined are formally confirmed. In the case of extrajudicial decisions on the extradition of persons without legal representation, the possibility of these persons being at risk of torture is not even raised. Also, the documents provided by the party requesting the extradition of the person—documents whose often visibly contradictory nature could easily be proven with a minimum of analysis, and which give good reason to doubt the reliability of the information contained therein—are not investigated properly. In many cases, such an investigation would reveal the politicized and even fabricated

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<sup>14</sup> Due to the systemic nature of this problem in the Russian Federation, the European Court of Human Rights recently issued a pilot decree on the case of *Ananyev and Others vs. Russia*, obliging the authorities of the Russian Federation to develop a mandatory time-bound schedule for the implementation of effective legal safeguards, as it is hoped this will ensure normal conditions in pre-trial detention facilities.

nature of the accusations and criminal prosecution, and therefore the high risk of the accused being subjected to illegal treatment.

The person is informed of his or her right to appeal against the decision in one sentence of the notification of the decision issued by the Prosecutor-General's Office—with reference to the relevant article in the Code of Criminal Procedure of the Russian Federation but without any indication of the court to which the appeal should be submitted. The notification is written in Russian. The laws of the Russian Federation do not provide for any free legal support to persons wishing to familiarize themselves with the content of the notification. Naturally, in most cases persons formally notified of their right to appeal are unable to exercise this right—especially if they are not fluent in Russian. As for the complaints procedure, should a lawyer appeal the decision by raising the possibility of the applicant being at risk of torture in the country of destination, the validity of these arguments is almost always denied—the courts arguing that the diplomatic guarantees provided by the party requesting the extradition take precedence.

An appeal to the European Court of Human Rights in Strasbourg is the last resort for those whom the Russian authorities have decided to extradite despite the risk of their being tortured. However, even the protection of Strasbourg (if one can get it) does not always protect a person accused of offences against the state—e.g. accused of terrorism or extremism—from the risk of being illegally and forcibly moved to the state requesting their extradition. Such action calls for illegal methods of co-operation between requesting and requested states,<sup>15</sup> with both usually showing extraordinary interest in the person's extradition due to the nature of the accusation viz. offences against the state related to terrorism or extremism. As a result, the person disappears from Russia and is soon found in the state which had requested his or her extradition—a return to which he or she was desperate to avoid for fear of being subjected to torture or ill-treatment.

## **IV. INTERNATIONAL LEGAL EXPERIENCE IN COMBATING TORTURE**

### **1. Public investigation as a universal method for combating torture**

The "Committee against Torture" was founded in Nizhny Novgorod in 2000, and now has the official status of "inter-regional public organization". Its main objectives are public scrutiny over issues stemming from the problem of the spread of torture and ill-treatment in Russia and the provision of professional legal and medical support to victims of torture.

Since it was founded, the Committee has gained extensive experience in the protection of the rights of victims of torture and ill-treatment. To date, it has reviewed 1,402 reports of violations of human rights; judicial proceedings are underway for a total of 221 complaints of torture, in 105 cases of which acts of torture have been established. Ninety-three persons have been convicted, and RUB 23,022,248 (Russian

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<sup>15</sup> "Requesting state": a state whose courts 'transmit a request for the arrest and surrender of a person' to the courts of another state. "Requested state": a state 'which receives a request from the [courts of another state] for the surrender of a person'.

Source: Rome Statute of the International Criminal Court, retrieved at <http://untreaty.un.org/cod/icc/statute/romefra.htm> on 24/10/12

rubles; around EUR 566,000) has been paid in compensation (of which RUB 18,349,489 have actually been received). Three hundred and ninety-nine illegal decisions were declined. As a result of the Committee's activities, only 67 complaints were submitted to the European Court of Human Rights.

Such results were achieved thanks to the expedient organization of public investigations—a technique developed by the Committee, which has proven to be effective in Russia's legal and socio-economic context.

A public investigation is the cumulative action of citizens or groups of citizens whom the state has neither granted the specific rights and powers to ensure the effective investigation of a complaint of gross violations of human rights, nor—given sufficient proof—to establish the fact of such a violation through an authorized government body i.e. the courts. The primary goal of a public investigation is to obtain evidence of a human rights violation that is *acceptable as well as necessary and sufficient* to establish in the course of judicial proceedings that the violation did indeed take place.

Public investigations are carried out based upon the principles of legality and voluntary participation. The special principles which determine the unique nature of this method comprise:

- The principle of **protecting the public interest** holds that an organization which investigates a matter does not primarily protect the interests of a particular person (e.g. a victim of torture or of another serious human rights violation) but rather protects the public interest—that is, by protecting the rights of a particular individual, a human rights organization protects the rights of an indefinite number of persons. According to this principle, the applicant is not the customer, the guarantor or a "client" of the public organization, but rather its ally—an equal participant in the struggle for the rights and dignity not only of him or herself, but also of others.
- The principle of **continuing commitment** involves the allocation of commitments between the applicant and the human rights organization. Thus, the applicant is required to ensure consistency in the protection of their rights, even in the face of possible threats and attempts at bribery. The human rights organization undertakes to do everything possible to protect the applicant from unlawful pressure, to restore the applicant's rights and to hold the perpetrators to account. The Committee against Torture adopted the following rule: where an organization has gathered necessary evidence, and, in accordance with its internal procedures, has concluded that the applicant was the victim of torture (or of another violation), the organization undertakes not to suspend the proceedings as long as the organization exists and until all its goals in this particular case have been achieved—in other words, the continuing commitment of the organization to the applicant.
- The principle of **professionalism** means that the public investigation is a professional legal activity which requires special training, knowledge and skills. Very high professional standards are set for each employee. This implies selection criteria for recruitment and the annual evaluation of staff. The aim of such evaluations is to appraise both the general level of legal culture of employees as well as their knowledge of the specific skills the running of a public investigation may require.

- The principle of **appealing against all illegal acts** arises out of both the principle of professionalism and that of continuing commitment. This principle holds that all illegal or negative acts committed or permitted by the state while considering the appeals of applicants must be appealed against in turn within an established term. All effective instances must be passed and all effective legal mechanisms used—first at the national level, and, in the absence of required results, at the international level. Current legislation provides for a wide range of opportunities for the implementation of this principle; citizens may choose to appeal against illegal decisions to a higher instance or through judiciary procedures. (The selection of tactics in each case depends upon the peculiarities of a specific situation.) It should be emphasized that appeals are submitted not only against the illegal actions of investigative bodies, but also more generally against any illegal acts committed in connection with the alleged case of torture or investigation thereof.
- The principle of the **preferred orientation of domestic security mechanisms** holds that the efforts of a public investigation should be aimed at improving the effectiveness and legality of domestic human rights mechanisms. According to this principle, the use of international mechanisms is considered, firstly, as a serious means of "coercing" national law enforcement agencies and judicial authorities to work effectively, and, secondly, as a "last resort" to only be used when all possible ways of achieving justice in the country within a reasonable period have been exhausted.
- The principle of the **confidentiality of investigations** of complaints holds that no information shall be made public until a) an ongoing investigation of an applicant's complaint of a gross violation of his or her rights is completed, and b) until the organization gathers reliable evidence of a violation having taken place. The Committee against Torture adopted a system of preparing summary reports on investigations of complaints. In these reports, the inspector of the investigative unit involved in the investigation answers questions on whether there has been a violation of any of the applicant's rights, referring in detail to the evidence gathered. Each report is subject to mandatory approval by the head of the organization. Only following the approval of a final report (i.e. one in which the fact of a violation has been recognized and proven) does the organization publicly release information by holding a press-conference and by initiating media publications, etc. This principle serves to maintain the organization's reputation and to protect it from accusations of libel or abuse of goodwill.
- The principle of an **integrated approach to the protection of applicants' rights** calls for certain measures to be carried out during public investigations which are not in themselves part of these investigations but may enhance their effect, ensure the safety of applicants and significantly help to restore the rights. Examples of such measures include organizing public campaigns on individual cases, introducing safeguards to protect victims and witnesses, supporting the medical and psychological rehabilitation of victims, etc.

In the most general terms, public investigations consist of three interrelated elements: internal activities to clarify legally relevant facts and circumstances; monitoring the effectiveness of official investigations; and representing the interests of victims in court.

## 2. Recommendations for the effective investigation and documentation of torture and ill-treatment

"Physicians for Human Rights" (PHR) is a non-governmental organization based in the United States which uses the medical knowledge and skills of its members to effectively document the consequences of human rights violations in dozens of countries. In particular, PHR is the global leader in the medical documentation and medical research of the consequences of torture and ill-treatment. Fifteen years ago, PHR led international efforts to develop international standards and consolidate best practices for the effective investigation and documentation of torture and ill-treatment—more commonly known as the Istanbul Protocol. This process took three years and involved more than 75 people from 40 organizations in 15 countries.

The Istanbul Protocol includes relevant legal standards and guidelines for the effective investigation of torture and ill-treatment, as well as detailed rules for comprehensive forensic examinations. The Istanbul Protocol principles call for:

- quick, efficient and independent investigations;
- empowering investigators;
- ensuring the safety of alleged victims and witnesses;
- unrestricted access to proceedings and to all necessary information;
- impartial investigation by an independent commission; and
- publishing timely written reports to the public.

The Istanbul Protocol also contains the following provisions for medical examinations and the preparation of written reports:

- the procedure of examinations must comply with the specific standards set out in the Istanbul Protocol;
- the examination itself should be carried out under the supervision of medical professionals, and not police officers; and
- investigations should be carried out promptly and written reports must be accurate.

Written reports must include: 1) details of the identity of the alleged victim and the conditions of his or her examination; 2) detailed information on the charges—including the methods of torture and physical and psychological symptoms; 3) records of physical and psychological symptoms; 4) the interpretation of results, opinions and recommendations; and 5) the identity and signature of the medical expert(s) involved.

Medical examinations in cases of torture or ill-treatment must include a detailed evaluation and documentation of physical and psychological evidence by one or more qualified experts. Law enforcement agencies and the courts often do not realize the critical importance and legality of psychological evidence.

During examinations, medical experts must correlate the degree of conformity of the accusations of ill-treatment with the physical and psychological evidence their examination reveals. They also must provide their opinion on the possibility of torture or ill-treatment having been resorted, based upon their interpretation of physical and psychological data. A lack of medical evidence does not mean that torture was not resorted to. In some cases, however, the Istanbul Protocol has unfortunately been used for purposes other than originally intended e.g. to exculpate police officers accused of abuse based upon a lack of medical evidence. Such abuse of the Istanbul Protocol should not be allowed.

Physicians for Human Rights focus their work upon the comprehensive implementation of the Istanbul Protocol standards; participation in legal reform; training programmes to increase the professional abilities of forensic experts, prosecutors and judges; and the establishment of mechanisms to monitor medical examinations and criminal investigations of torture and ill-treatment.

As part of PHR's efforts to implement the Istanbul Protocol standards among state and non-state actors, it has identified the following effective capacity building activities:

- Drafting a memorandum of understanding with government officials to identify goals and specific activities; it is very important to set conditions for PHR's independence in terms of access to information, as well as mechanisms to ensure transparency and control over the content of the project;
- Carrying out an initial assessment of current investigative practices, procedures for the documentation of torture and methods for the analysis of problems;
- Co-operation with various partners to develop training materials and conducting country-specific training activities for medical, legal and judicial professionals;
- Holding separate workshops for the benefit of instructors in order to further expand training activities; and
- Evaluating the performance and effectiveness of interventions, identifying and analyzing opportunities, etc.

The effectiveness of capacity-building efforts is dependent upon many factors—such as the suitability of relevant laws and procedures as well as the availability of resources. As a minimum:

- persons should have the right to an independent medical examination at the time of their arrest;
- measures should be taken to ensure a compulsory medical examination is carried out by a qualified medical expert at the time of detention and release;
- standard Istanbul Protocol medical forms should be used during examinations; and
- the participation or presence of law enforcement officers during medical examinations and their access to medical reports should be prohibited.

In addition, forensic examinations should be independent, should be carried out under the supervision of judicial or other independent bodies, and should have access to professional staff and sufficient financial and technical resources.

The effective investigation and documentation of instances of torture or ill-treatment cannot be achieved in the absence of an effective monitoring mechanism.

During PHR's work with the Office of the Federal Attorney-General of Mexico, a quasi-independent monitoring committee was set up to ensure the quality and accuracy of medical examinations and criminal investigations of torture and the documentation of cases of torture and ill-treatment. This committee was also responsible for managing the development and implementation of all training programmes. A health advisory board was also set up to evaluate the quality and accuracy of all medical examinations and provide opinions and guidance. A legal advisory board was also set up to review and evaluate the quality of investigations and prosecutions of cases of torture and to make recommendations.

When developing measures to promote respect for the provisions of the Istanbul Protocol, PHR and other partners concluded that there is a need to develop an action plan and schedule for the smooth and fully-fledged implementation of standards for the effective investigation and documentation of cases of torture and ill-treatment in each country.

For the development of a model action plan, Physicians for Human Rights collaborated with three partner organizations—the International Rehabilitation Council for Torture Victims (IRCT), the Human Rights Foundation of Turkey (TIHV/HRFT), and "Redress" (working in collaboration with the Office of the UN High Commissioner for Human Rights—OHCHR). The first draft of the Istanbul Action Plan covers the following sections:

- official state recognition of the Istanbul Protocol standards;
- the amendment or adoption of legislation in order to implement these standards;
- measures to regulate health-related issues such as institutional development and the provision of methodologies and technical equipment for health services;
- the creation of a mechanism to monitor criminal investigations and medical documentation; and
- the establishment of mechanisms to ensure the accountability of investigations and documentations of cases of torture and ill-treatment.

### **3. Compensation for Victims of Torture**

The right of the victims of torture to compensation is set out in Article 14 of the Convention against Torture, which holds that every signatory state 'shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation'.

Article 14 provides victims of torture with legal (civil procedural) safeguards; in addition, it envisages the redress, compensation and rehabilitation of victims, and guarantees that similar violations will not be repeated and that offenders will be punished.

The Committee against Torture indicated that appropriate compensation for the purposes of Article 14

should include financial compensation for the damage incurred, rehabilitation, and medical and psychological treatment. States should also consider the idea of developing a special compensation fund.

The Committee requires that victims of torture face no restrictions in terms of their access to civil legal protection measures—examples of such restrictions include maximum terms for bringing a civil action for compensation or prior demonstration of physical damage.

The right to compensation is detailed in the Basic Principles and Guidelines pertaining to the right to legal protection and compensation for victims of gross violations of international human rights legislation and serious violations of international humanitarian law (the United Nations' General Assembly adopted a resolution in December 2005).

Pursuant to this document, international law recognizes the following types of redress for victims of human rights violations, including torture and ill-treatment:

- **Restitution:** measures should be taken to ensure victims are restored to the situation they were in before the violence took place—including the restoration of legal rights, social status, family life, place of residence, ownership status and work.
- **Compensation:** measures should be taken to compensate any economically measurable damage caused by violence—including physical and moral harm, emotional suffering, lost education opportunities, loss of salary, medical or legal costs, and social services.
- **Rehabilitation:** measures should be taken to provide medical and psychological assistance and to involve legal and social services as required.
- **Satisfaction and guarantees of non-recurrence of such crimes:** measures should be taken to ensure that violations are eliminated, that the truth is publicly disclosed, that official statements of responsibility or public apologies are made, that the violations are publicly acknowledged, that judicial or administrative sanctions are applied, and that preventive measures are taken e.g. human rights education.

#### a) Compensating victims of torture

Compensation is provided in connection with any economically measurable damage resulting from violations of human rights, such as:

- physical and moral damage;
- pain, suffering and emotional distress;
- lost opportunities, including education;
- loss of income and the ability to generate income;
- reasonable medical and other expenses for rehabilitation;
- damage to property or business, including loss of profit;
- undermining reputation and dignity; and
- reasonable costs for legal and expert assistance to ensure compensation.

Major problems in claiming compensation are related to the need to prove physical damage. In cases of damage to health as a result of torture or ill-treatment, victims and their lawyers have no access to independent experts, and the difficulties they thus face when trying to collect evidence for the registration of rights violations puts them at a disadvantage when faced with the public prosecution.

Victims of human rights violations often continue to be denied compensation because legislation does not provide for such payments from the budget; the practice of providing meagre compensation at the expense of perpetrators is widespread, whereas compensation to victims of torture must be paid by the public authorities responsible for the acquiescence of torture.

Victims of human rights violations and those who represent their interests rarely or never raise the question of compensation because they deem the need to ensure the conviction of perpetrators to be more important.

Another problem associated with the inefficient practice of compensation is the difficulty of assessing damages. Damage is varied and is often impossible to see e.g. the psychological consequences of torture. In general, countries have no method of "calculating" harm.

Solving these problems requires the development of a legislative framework to regulate issues pertaining to compensation for victims of torture and overall violations of human rights through the adoption of a separate law as well as through amendments to the Civil Code and to the Code of Civil Procedure. In addition, a centralized mechanism needs be established with all the required characteristics the law stipulates (e.g. trained, responsible staff; effective communication; inter-agency coordination) as well as administrative procedures and routines and a financial plan (including, for example, a special fund to compensate victims of crimes or torture).

There are two possible approaches to compensation:

- a legally determined amount of compensation in the event of mental disorders and a decision as a result of extra-judicial procedures, such as the compensation commission; or
- a judicial procedure whereby parties are entitled to claim compensation at their discretion and justify their demands.

A comparative analysis of the experience of two different countries shows the following:

- United Kingdom: in the event of physical or psychological damage (from 6 weeks, above 90 weeks) – extra-judiciary procedure, from GBP 1,000 to GBP 250,000.
- Argentina: in the event of death caused by maltreatment—five annual salaries, calculated on the basis of the maximum salary of the highest rank of civil servant. In the event of illegal detention—1/30<sup>th</sup> of the monthly salary for every day, calculated on the basis of the maximum salary of the highest rank of civil servant. In the event of a serious injury in custody due to torture or ill-treatment—70 per cent of the estimated amount of compensation for death as a result of torture (i.e. 70 per cent of five annual salaries, calculated on the basis of the maximum salary of the highest rank of civil servant).

The rulings of different international courts demonstrate different approaches to calculating compensation. The European Court of Human Rights, for instance, considers a wide range of individual circumstances: in the case of *Aleksakhin vs. Ukraine*—USD 10,000 in compensation for moral damages caused by ill-treatment in police custody and personal harm (damage to health, impaired social functions and damage to moral well-being); in the case of *Vysochinenko & Oleynikov vs. Ukraine*—USD 200,000 in compensation for moral damages caused by the consequences of an unlawful conviction and detention for 6 years and 6 months.

## b) The rehabilitation of victims of torture

Prior to the early 1980s and to the adoption of the UN Convention against Torture, the rehabilitation of victims of torture was not stipulated in international law as a separate kind of compensation.

The rehabilitation of victims of torture calls for a comprehensive approach and involves doctors, psychologists, teachers, social workers and lawyers, as only effective co-operation between the latter can guarantee the full rehabilitation of victims. There are different forms of rehabilitation—including medical-psychological, social and professional. The International Rehabilitation Council for Torture Victims (IRCT) in Denmark considers medical and psychological rehabilitation to be the most important way in which human dignity can be restored.

The right of victims of torture to rehabilitation imposes an obligation upon states to provide effective opportunities for such rehabilitation, including:

- support for medical, psychological and social rehabilitation centres;
- establishing a national fund to support victims of torture and allocate funds to the UN Voluntary Fund to Support Victims of Torture; and
- support for centres providing legal protection to victims.

While making decisions on the rehabilitation of victims of torture, states should consider various ways in which to support centres for victims of torture (e.g. providing a legal framework, financial support and guaranteeing the independence of their decision-making). States should also recommend observance of the provisions of the Istanbul Protocol for the effective investigation and documentation of torture and other forms of unlawful treatment.

## V. RECOMMENDATIONS FOR THE PREVENTION OF AND THE EFFECTIVE FIGHT AGAINST TORTURE IN TAJIKISTAN

The effective fight against torture in the Republic of Tajikistan will currently require comprehensive and consistent work covering all aspects of the problem of torture in the country. The optimal format for such work is the development of a long-term **national programme for the prevention of and protection against torture and ill-treatment** with appropriate budgetary resources and a clear accountability framework and control over the execution. The programme should identify immediate and long-term measures to

eliminate the practice of torture in government agencies. Workshop participants made specific suggestions on the content and areas of such a comprehensive national programme for the fight against torture:

### **1. Co-operation with international mechanisms**

1. Ensure full compliance with obligations contracted under ratified international documents on human rights in the field of freedom from torture, in accordance with the *pacta sunt servanda* principle of fair execution of contractual obligations.
2. Develop mechanisms for the continuous monitoring of the implementation of international obligations in the field of freedom from torture through the adoption of a state action plan to combat torture and impunity in Tajikistan.
3. Develop an effective mechanism for the national implementation of the ideas and recommendations of the UN treaty bodies. To this end, an expert working group (including civil society representatives among its members) should be set up under the aegis of the Commission to ensure the Government of the Republic of Tajikistan's implementation of international commitments on human rights.
4. The Optional Protocol to the Convention against Torture should be ratified, and a national preventive mechanism established to monitor detention facilities.
5. Statements should be made on the recognition of the competence of the Committee against Torture to accept and consider individual reports pursuant to Article 22 of the Convention against Torture.

### **2. Legal provisions of freedom from torture and ill-treatment**

6. In the Criminal Code of the Republic of Tajikistan, envisaging responsibility for the use of torture (part 1, Article 143, prim. 1), an appropriate punishment should be stipulated proportional to the gravity of the offence (excluding the possibility of impunity resulting from the possible closing of a case through reconciliation between the parties or amnesty) pursuant to Articles 1 and 4 of the Convention against Torture.
7. The prohibition of torture and cruel, inhuman or degrading treatment or punishment should be provided in profile laws such as the laws "On the Status of Military Servicemen", "On Public Health Protection", "On Mental Health Services", etc.
8. The Law of the Republic of Tajikistan "On Interior Forces of the Ministry of Internal Affairs of the Republic of Tajikistan" should envisage the exclusive nature and ensure the adequacy of implementation of the use of force and weapons.
9. Introduce legislation to prohibit the extradition of persons to a country when there are substantial

grounds to believe that he or she may be subjected to torture, and develop mechanisms for the implementation of this right in accordance with the requirements of Article 3 of the Convention against Torture.

10. The Supreme Court of the Republic of Tajikistan should adopt a normative act, the Prosecutor-General's Office of the Republic of Tajikistan should issue an instruction, and law enforcement bodies and the Ministry of Health of the Republic of Tajikistan should issue joint decrees defining all prohibited terms and procedures related to freedom from torture (e.g. compulsory use and implementation of required expertise to determine the existence of physical and mental distress, explanation of terms, establishment of missing procedures, the mandatory involvement of independent forensic experts to examine persons with bodily injuries, for instance, at the moment of detention, placing in temporary detention facilities, or other restrictions of personal freedom, etc.).

11. Include "torture" in the list of grounds for compensation to victims. In addition, envisage legal provisions on fair and adequate compensation of damage incurred "for maximum possible rehabilitation" as per part 1 of Article 14 of the Convention Against Torture.

### **3. Ensuring procedural guarantees of freedom from torture in the criminal justice system**

#### **a) The right to freedom and personal integrity**

12. Bring national legislation in compliance with international standards on the right to liberty and personal integrity (for example, in terms of the objectives of administrative detention, promptly informing detainees of their rights, of the reason(s) for their arrest and of the charges levelled against them), as this would enable the elimination of inconsistencies in determining the status of detainees, suspects and defendants. To this end, new forms of detention protocols should be put into practice to specify the exact time of detention, additions to the list of rights explained to a person at the moment of detention, etc.

13. Ensure immediate and unimpeded access to a lawyer from the time of actual arrest.

14. Ensure that detainees have the right to an immediate telephone call at the time of their arrest, and open a special register of calls made by detainees in internal affairs agencies.

15. Oblige the management of internal affairs agencies to publish lists of detainees, and envisage responsibility for falsifying such information.

16. Provide technical means to improve control over the protection of detainees' rights, such as:

- a) Install video cameras in the premises of the internal affairs agencies, develop procedure for storing video records, envisage responsibility for the improper use of video cameras, and control storage of video data.
- b) Install special transparent rooms for interrogations in the premises of internal affairs agencies.
- c) Internal affairs agency staff should use audio and video devices at the moment of arrest.

d) Install audio and video devices in convoy vehicles.

17. Provide lawyers with access to all criminal case materials prior to the opening of court proceedings to consider restriction measures.

18. The following shall be excluded from the Code of Criminal Procedure of the Republic of Tajikistan:

- a) from the grounds for remand in custody: 1) gravity of the offence, 2) charges of "medium-gravity" offences;
- b) direct violations of Article 9 of the ICCPR regarding informing the detainee at the moment of actual arrest, and not upon delivery to the prosecuting agency, as is stated in the law.

19. Amend the Code of Criminal Procedure of the Republic of Tajikistan to add the following:

- a) requirement for the court to confirm the sufficiency of grounds for remand in custody and the lawfulness of arrests;
- b) definition of the terms "detained person" and "actual detention";
- c) provisions on the rules and procedures for arrest and delivery to the prosecutor's office;
- d) the provision of a specific term of detention without court sanction based upon the practice of international treaty bodies;
- e) a clear list of the rights of detainees which will ensure minimal guarantees;
- f) a clear procedure for the courts to consider the issue of sanctioning restriction measures in order to guarantee all the rights of detainees (including the right to be heard in court, to present evidence in their defence, etc.) and other parties, and a procedure to formalize the process;
- g) obligation of the court to thoroughly verify the existence or retention of grounds for extension of restraint measures, thus ensuring the validity of the latter;
- h) definition of a reasonable period for remand in custody with grounds for duration and presumption of innocence at the same time;
- i) requirement of mandatory court records of decisions on sanctioning preventive measures, time taken for their preparation, and providing access to these records for review by the parties;
- j) it is important to reduce the term of arrest during pre-trial proceedings and to clearly indicate this in criminal proceedings legislation i.e. in what time period an issue will be reviewed by the courts.

#### **b) Strengthening the right to legal representation during criminal prosecutions.**

20. Prohibit any investigative actions in the absence of a lawyer.

21. Introduce criminal responsibility for obstructing the activities of lawyers; introduce responsibility for improper response to the enquiries of lawyers.

22. Develop a government programme to design a free legal aid system.

### c) Access to independent health services

23. Provide procedures with immediate medical examination of all persons arrested by preliminary investigation bodies in the first hours of detention, and develop a mechanism for regular medical and psychological examination of persons in custody and in prison without the intervention of law enforcement officers or prison staff.

24. Medical examination of detainees only in the presence of a lawyer.

25. Establish and legally formalize an independent medical examination institute.

26. The court must attribute equal importance to forensic reports produced by the government and independent experts when their professional qualifications are the same. In other words, the value of evidence must be based upon the professional qualifications (education and experience) and independence of experts rather than upon the fact that a particular person holds public office.

27. The right to demand expert forensic examinations should be given to persons during and after custody, including in detention facilities where such examinations require the authorization of the security services; ensure that such examinations are accepted in court and that they are given due consideration.

28. The forensic examination of detainees complaining of torture or ill-treatment must include the use of standardized medical report forms.

29. Establish uniform rules for medical examinations and inspection in accordance with the Istanbul Protocol, including, but not limited to the following: a) informed consent must be obtained from the alleged victim and must state the purpose of the inspection, an explanation of the process, how the information will be used, the right to refuse inspection, the ability of persons to request the participation of forensic medical experts of their choice, and any limitations on the confidentiality of information contained in the medical report. Where a person subject to inspection is under 16 years of age or unable to give consent (e.g. due to a mental disability), forensic experts must obtain the consent of a person who has legal custody or of the court concerned. Guardians must attend the examination.

30. When forensic experts find evidence of torture or of ill-treatment, they must immediately report data to the prosecutor's office to protect the alleged victim.

31. Copies of the completed template for the evaluation or the report or opinion of doctors must be given to the victim or his or her legal representative, to the general director of forensic services and to relevant defence lawyers, in accordance with the law. Under no circumstances should law enforcement officers have access to such records.

#### **d) The right to a fair trial**

32. The Code of Criminal Procedure of the Republic of Tajikistan should be amended to add the following provisions:

- a) direct prohibition of compulsion of evidence;
- b) explanation of rights to the defendant from the moment of actual arrest;
- c) giving suspects the opportunity to meet a lawyer before their first interrogation;
- d) delete the concept of "acknowledgment of guilt" from the Code of Criminal Procedure; and
- e) allow defence lawyers access during pre-trial investigations (part 2, Article 49, Code of Criminal Procedure).

33. Exclude the following provision from the Code of Criminal Procedure:

Relegate the power of courts to unlimited extensions of detention for 72 hours as a violation of legality and the adversarial principle (part 5, Article 111, Code of Criminal Procedure of the Republic of Tajikistan).

#### **e) Establishing an independent mechanism for the investigation of torture and ill-treatment**

34. Develop a response mechanism and ensure the prompt, thorough and impartial investigation of torture or ill-treatment through the establishment of an independent body to investigate all allegations of torture and ill-treatment in accordance with Articles 12 and 13 of the Convention against Torture and the requirements of the Istanbul Protocol.

35. Ensure the inevitability of punishment for torture through appropriate amendments to criminal law and exclude amnesty for perpetrators of acts of torture.

36. In accordance with the final recommendations of the Committee against Torture, set up a complaints mechanism fully independent from the prosecution to consider the complaints of persons in custody, and ensure that all persons reporting acts of torture or ill-treatment are adequately protected.

#### **f) Protecting the rights of suspects and the accused in certain categories of criminal cases**

37. In order to ensure the principle of presumption of innocence, public authorities should refrain from direct accusations of terrorism against detainees before issuing a judgment on these issues.

38. Based upon the absolute nature of freedom from torture, authorities should guarantee all the human rights of persons detained on charges of terrorism and extremism during inquiry and investigation.

39. Develop mechanisms for the practical application of legislative provisions for the protection of victims and witnesses of torture.

40. It is important to ensure the right to compensation for damages caused as a result of torture through civil proceedings and the establishment of a state fund for the redress of victims of torture.

41. The Commissioner for Human Rights of the Republic of Tajikistan—along with other competent authorities—should ensure the systematic control of the cases of persons accused of crimes against the state to prevent torture and human rights violations in the process of investigation and trial.

#### **4. Guaranteeing the right to freedom from torture of persons in closed detention facilities**

##### **a) Detention areas and pre-trial detention facilities**

42. Correctional custodial facilities and pre-trial detention centres must ensure maximal access for civil society organizations to monitor respect for human rights.

43. Draft and adopt a specific law on public scrutiny of respect for human rights in detention areas.

44. The Ministry of Justice of the Republic of Tajikistan should take over all remaining pre-trial detention centres (e.g. temporary detention facilities and pre-trial detention centres of the State National Security Committee).

45. The procedure of qualified legal aid and access to lawyers should be stipulated in relevant legislation.

46. Judiciary proceedings considering changes to sentence serving regimes should be placed under special control.

47. Improve mechanisms for receiving and handling complaints from correctional facilities and temporary detention centres, which are to be referred to the Prosecutor's Office, to the Commissioner for Human Rights and to UN agencies (Special Procedures, the Committee for Human Rights), excluding censorship. Even in the absence of a formal complaint, authorized agencies and officials must be legally obliged to investigate all cases where they receive reliable information from any source on the alleged cruel treatment of persons deprived of liberty.

48. Civil society organizations must develop a strategy to promote the ratification of the Optional Protocol to the Convention against Torture (OPCAT) and to analyze and develop analytical materials on possible national prevention mechanisms.

49. Intensify the activities of mass media focusing upon closed institutions and the preparation of analytical materials in this regard.

##### **b) Closed medical facilities**

50. Develop a clear mechanism for the regular and independent monitoring of all cases of forced admission

and treatment, as well as cases of voluntary admission and treatment, the duration of which exceeds a certain period of time.

51. Develop and adopt an Instruction on measures for the physical confinement and restraint of patients in psychiatric facilities.

## **5. Protecting especially vulnerable groups from torture and ill-treatment**

### **a) The rights of children**

52. Create a child-friendly juvenile justice system.

53. All institutions under whose authority underage children are detained should implement the provisions of the Policy on the Protection of Children's Rights adopted by the National Commission on Children's Rights in 2008.

54. Develop services for social protection and rehabilitation in closed institutions to provide effective support to persons under the age of 18.

55. Reform special schools and special vocational schools; open alternative centres instead; design special services to work with children aimed at development; support families.

56. The use of disciplinary isolation facilities should be banned in juvenile detention facilities.

### **b) Women's Rights**

57. Immediately approve the draft Law "On Social and Legal Protection from Domestic Violence". Such legislation should ensure that violence against women and girls constitutes a criminal offense; ensure direct access for women and girls who are victims of violence to redress and protection, including protection orders and a sufficient number of shelters; prosecution and adequate punishment of offenders.

58. Prior to the adoption of the Law "On Social and Legal Protection from Domestic Violence", develop preventive measures to preclude domestic violence against women.

59. Provide professional training to public servants and judiciary staff, in particular law enforcement agency personnel and medical professionals, in order to increase their awareness of all forms of violence against women—particularly domestic violence—and to ensure that they are able to provide adequate support to victims.

60. Strengthen co-operation between the police and crisis centres through, for instance, signing a memorandum of understanding and creating information systems at the regional and national level.

### **c) The rights of sexual minorities**

61. Legally prohibit discrimination based upon sexual orientation and gender identity.

62. Draft and approve a national programme for the instruction of law enforcement agency personnel, medical professionals and the general public in the field of lesbian, gay, bisexual, and transgender issues with a view to eliminating stigma and discrimination.

## **6. Measures to guarantee freedom from torture and ill-treatment in the army**

63. Effective control of abuse in the armed forces requires the authorities to recognize the existence of this problem and officially state their position in respect of bullying and their strong intention to eliminate this phenomenon. Provide extensive coverage of the state's commitment to the inadmissibility of such treatment and of its willingness and preparedness to investigate cases, punish offenders and compensate victims.

64. Reform the armed forces with the involvement of civil society organizations, strengthen parliamentary and civilian control over military forces (including that of national organizations for the protection of human rights); the latter's activities must, inter alia, consider a reduction of the duration of military service, the development of a system for the exemption of persons from compulsory military service, and the introduction of an alternative civil service.

65. Effectively investigate cases of desertion and absence-without-leave from military units to identify cases of forced abandonment of military premises due to "hazing".

66. In the event of "hazing" perpetrated by senior officers, disciplinary responsibility should rest with personnel in charge of preventing violations in the armed forces.

## **7. Developing the capacity of government agencies to guarantee the right to freedom from torture and ill-treatment**

67. The Human Rights Commissioner (Ombudsman) needs to make full use of his Office's powers under the laws of the Republic of Tajikistan, and not limit its activities to receiving and handling complaints. It is important to strengthen and make more effective use of monitoring and inspection mechanisms—in particular the monitoring of closed institutions—and to begin handling complaints at the Commissioner's initiative.

68. Provide professional trainings on the prohibition of torture to judges, law enforcement agencies, medical personnel and others, who are in contact with persons in custody or confinement. It is also

necessary to ensure that the process of re-certification of staff involves an assessment of their knowledge of standards for freedom from torture.



## Civil Society Seminar on the Prevention of torture and ill-treatment

DUSHANBE, 12-13 June 2012

### *List of Participants*

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**European Union - Tajikistan  
Civil Society Seminar**

**FREEDOM FROM TORTURE AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT**

**12-13 June 2012**

**Hyatt Regency Hotel, Dushanbe**

**A G E N D A**

**DAY 1: TUESDAY, 12 JUNE 2012**

08.45 - 09.30 **Registration**

09.30 - 10.00 **Opening of the seminar and welcoming remarks**

- H.E. Ambassador Mr. Eduard Auer, Head of the EU Delegation to Tajikistan
- Mr. Abdullo Soliev, Department on the Constitutional Guarantee of Human Rights of the Executive Office of the President of the Republic of Tajikistan

**SESSION 1**

**THE GENERAL CONTEXT CONDUCTIVE TO INSTANCES  
OF TORTURE IN TAJIKISTAN**

**Moderator**

Ms. Nazgul Yergaliyeva, Executive Director of the Legal Policy Research Center (Kazakhstan)

10.00 - 10.15 **Activities of the Ombudsman's Office to prevent torture and provide assistance to its victims in Tajikistan**  
*Ms Rajabmo Badridinova, Ombudsman Office*

10.15 - 10.30 **General overview of reasons for the occurrence of torture and its scope**  
*Ms. Mohira Usmanova, Member of the Sogdy regional bar association*

10.30 - 10.45 **Amnesty International's concerns about torture and ill-treatment in Tajikistan**  
*Ms. Rachel Bugler, Amnesty International*

- 10.45 - 11.15      **Coffee break**
- 11.15 - 11.30      **Review of Tajikistan's international obligations concerning the right to freedom from torture**  
*Ms. Nigina Bakhrieva, the "Notabene" NGO (Tajikistan)*
- 11.30 - 12.30      **Discussion and wrap-up of recommendations**
- 12.30 - 13.30      **Lunch**

## SESSION 2

### LEGAL AND PRACTICAL PROBLEMS LEADING TO TORTURE IN THE CRIMINAL JUSTICE SYSTEM

#### **Moderator**

Ms. Nigina Bakhrieva, Director of the NGO "Notabene"

- 13.30 - 13.45      **Impunity in practice: the ineffective investigation and punishment of perpetrators of torture and the insufficient reparation of their victims**  
*Mr. Abdurakhmon Sharipon, independent lawyer*
- 13.45 - 14.00      **The right to freedom from torture in the criminal justice system: the role of lawyers in preventing torture, access to defendants, trial litigation and the admissibility of evidence**  
*Ms. Tatiana Khatukhina, defense attorney, Human Rights Center*
- 14.00 - 14.15      **The role of medical personnel in documenting and preventing torture: the implementation of the Istanbul Protocol standards**  
*Ms. Partvina Navruzova, Human Rights Center*
- 14.15 - 14.30      **The torture of vulnerable groups: women and children**  
*Ms. Zebo Sharifova, League of Female Lawyers*
- 14.30 - 14.45      ***Non-refoulement* and freedom from torture in the context of government policies against terrorism and extremism**  
*Ms. Elena Ryabinina, Human Rights Institute (Russia)*
- 14.45 - 15.30      **Discussion and wrap-up of recommendations**
- 15.30- 16.00      **Coffee break**

### SESSION 3

#### TORTURE AND OTHER FORMS OF ILL-TREATMENT IN CLOSED INSTITUTIONS

##### **Moderator**

Ms. Nazgul Yergaliyeva, Executive Director of the Legal Policy Research Center (Kazakhstan)

- 16.00- 16.15      **Freedom from torture in prisons**  
*Mr. Sergey Romanov, Independent Center for Human Rights Protection*
- 16.15 - 16.30      **The treatment of patients in psychiatric institutions**  
*Ms. Tahmina Zhuraeva, Tajik Bureau for Human Rights and the Rule of Law*
- 16.30 – 16.45      **Freedom from torture and other forms of ill-treatment in the military**  
*Ms. Dilrabo Samadova, NGO “Amparo”*
- 16.45 - 17.00      **Protecting children from torture in child-care institutions**  
*Ms. Gulchehra Rakhmanova, Children’s Rights Center*
- 17.00 – 17.15      **Civilian oversight and access to closed institutions**  
*Ms. Saule Mektepbayeva, PRI*
- 17.15 - 18.00      **Discussion and wrap-up of recommendations**
- 18.30                **Dinner**

#### DAY 2: WEDNESDAY, 13 JUNE 2012

### SESSION 4

#### A REVIEW OF INTERNATIONAL BEST PRACTICES FOR COMBATING TORTURE

##### **Moderator**

Ms. Nigina Bakhrieva, the “Notabene” NGO

- 9.30 - 9.45              **The effects of strategic litigation programmes on the eradication of torture**  
*Mr. Dmitry Laptev, Committee Against Torture*
- 9.45 - 10.00            **Building coalitions of civil society organizations to promote comprehensive anti-torture advocacy**  
*Ms. Maria Lisitsyna, Open Society Justice Initiative*
- 10.00 - 10.15           **Best practices for promoting the documentation of torture**  
*Mr. Vincent Lacopino, Physicians for Human Rights*

- 10.15 - 10.30      **Compensating the victims of torture as an effective mechanism for fighting against the impunity of perpetrators**  
*Ms. Nazgul Yergaliyeva, Legal Policy Research Center)*
- 10.30 - 11.00      **Discussion and wrap-up of recommendations**
- 11.00 - 11.30      **Coffee break**

## **SESSION 5**

### **GROUP WORK**

**(11:30 – 12:30)**

- Working group 1      **Freedom from torture in the criminal justice system**  
Moderator/Rapporteur: Mr. Dmitryi Laptev, Committee Against Torture
- Working group 2      **Torture in closed institutions**  
Moderator/Rapporteur: Ms. Saule Mektepbayeva, PRI
- Working group 3      **Compensation and rehabilitation of victims of torture**  
Moderator/Rapporteur: Ms. Maria Lisitsyna, OSJI
- 12.30 – 13.30      **Lunch**

## **SESSION 6**

### **REPORTS FROM WORKING GROUPS**

#### **Moderator**

Ms. Nazgul Yergaliyeva, Legal Policy Research Center (Kazakhstan)

- 13.30 - 13.40      **Rapporteur 1**
- 13.40 - 13.50      **Rapporteur 2**
- 13.50 - 14.00      **Rapporteur 3**
- 14.00 - 14.30      **Discussion and wrap-up of recommendations**

## **SESSION 7**

### **THE DEVELOPMENT OF AN ANTI-TORTURE STRATEGY FOR TAJIKISTAN**

#### **Moderator**

Ms. Nazgul Yergaliyeva, Legal Policy Research Center (Kazakhstan)

- 14.30 - 14.45      **Promoting the ratification and implementation of OPCAT**  
*Mr. Matthew Pringle, APT*
- 14.45 - 15.00      **A comprehensive government Action Plan to eradicate torture: justification and components**  
*Ms. Nigina Bakhrieva, the "Notabene" NGO*
- 15.00 - 15.15      **NGO strategies to combat torture in Tajikistan**  
*Ms. Nargiz Zokirova, Tajik Bureau for Human Rights and the Rule of Law*
- 15.15 - 15.30      **The role of international organizations in supporting anti-torture advocacy and activities**  
*Ms Anna Crowley, OSCE*
- 15.30-16.00      **Coffee break**
- 16.00 - 16.15      **The mass media's role in preventing and fighting against torture**  
*Mr. Safo Safarov, the "Tajikistan 21<sup>st</sup> Century" independent school of journalism*
- 16.15 - 16.30      **Monitoring the implementation of recommendations by international bodies in Tajikistan: a review of the preliminary recommendations of Mr. Juan Mendez, Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment**  
*Ms. Lilia Zaharieva, Human rights officer, OHCHR*
- 16.30 – 17.15      **Discussion and wrap-up of recommendations.**
- 17.15- 18.30      **Conclusions and closing remarks.**  
*Ms. Audrone Perkauskiene, Human Rights Advisor for the European External Action Service (EEAS)*