

## **TAJIKISTAN**

### **Second joint follow-up submission to the Concluding Observations of the United Nations Committee against Torture**

In advance of the review of the follow-up information to the Concluding Observations (CAT/C/TJK/CO/2<sup>1</sup>) provided by the Government on 5 February 2014, the Coalition against Torture in Tajikistan,<sup>2</sup> Amnesty International, International Partnership for Human Rights (Belgium) and the Helsinki Foundation for Human Rights (Poland) jointly submit the following information in relation to paragraphs 8(a) (b), 9(a), 11(c) and 14(c) as identified in the Concluding Observations to the United Nations (UN) Committee against Torture. In addition, we include information in relation to paragraphs 7, 8(c) (d) (e) (g) (f), 9(c), 11(c), 21 and 22.

This document supplements the information submitted by Amnesty International and by the Coalition against Torture in Tajikistan prior to the 49th session of the Committee against Torture in November 2012<sup>3</sup> and in April 2014<sup>4</sup>, and should be read in conjunction with it. It also takes account of two documents distributed to human rights groups by the Presidential Administration of Tajikistan in March 2015 that provide information about the implementation of the Government Action Plan on Torture and of recommendations on torture and other human rights issues made under the Universal Periodic Review (UPR) respectively.

#### **MAIN SUBJECTS OF CONCERN**

##### **1. LACK OF FUNDAMENTAL LEGAL SAFEGUARDS (Paragraph 8 of CAT/C/TJK/CO/2)**

###### **1.1. Amend the Criminal Procedure Code to ensure that arrest starts from the moment of de facto apprehension (Paragraph 8(a))**

In its Concluding Observations adopted in November 2012 the Committee against Torture recommended Tajikistan to “(a) amend the CPC to ensure that arrest starts from the moment of de-facto apprehension” (Paragraph 8(a)).

<sup>1</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTJK%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTJK%2fCO%2f2&Lang=en)

<sup>2</sup> The coalition unites 13 human rights groups and three independent experts across Tajikistan.

<sup>3</sup> Amnesty International: Shattered Lives. Torture and other ill-treatment in Tajikistan, July 2012:

<https://www.amnesty.org/en/documents/eur60/004/2012/tg/>

Amnesty International: Tajikistan. Briefing to the United Nations (UN) Committee against Torture, 49<sup>th</sup> session, November 2012:

[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TJK/INT\\_CAT\\_NGO\\_TJK\\_13025\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TJK/INT_CAT_NGO_TJK_13025_E.pdf)

NGO Coalition against Torture: NGO report on Tajikistan’s implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, October 2012:

[http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TJK/INT\\_CAT\\_NGO\\_TJK\\_13028\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TJK/INT_CAT_NGO_TJK_13028_E.pdf)

<sup>4</sup> Tajikistan: Joint follow-up submission to the Concluding Observations of the United Nations Committee against Torture, April 2014:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fTJK%2f17095&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fTJK%2f17095&Lang=en)

However, to date the Criminal Procedure Code (CPC) of Tajikistan has not been amended to reflect this recommendation.

According to cases recorded by member organizations of the Coalition against Torture in Tajikistan in the period under review, the risk of torture and other ill-treatment remains highest during the first few hours following apprehension. During this period detainees are often held incommunicado and are effectively deprived of fundamental legal safeguards, until they are officially arrested at some later point. In practice, this can be hours or even days after detainees were deprived of liberty.

The practice of using arrest for a purported administrative offence as an excuse to remand someone for the purpose of a criminal investigation until they are officially arrested as a criminal suspect, continues in Tajikistan and there have been no legislative or other changes to address this issue.

### **1.2. Detention record and informing detainees of their rights (Paragraph 8 (b) and (c))**

The Committee against Torture recommended Tajikistan to “(e)stablish an official, central register in which the arrest is scrupulously and immediately recorded, including at the minimum: (i) the time of arrest; (ii) the reason for arrest; (iii) the names of the arresting officer(s); (iv) the location where they are detained and any subsequent transfers; and (v) the names of the officers responsible for them in custody. Responsible officers who fail to record such information should be held accountable” (Paragraph 8 (b)).

Article 94, part 1 of the CPC of Tajikistan requires officers to draw up a detention record within three hours of the detainee’s arrival at the police station. It stipulates that the record must include information about the time and place of arrest, the grounds for arrest and the time when the detention record was completed. However, domestic legislation does not require police to include the names of the arresting officers. The lack of such a requirement provides the authorities investigating torture or other ill-treatment complaints with an excuse for claiming it was not possible to establish the identity of the arresting officer/s.

To our knowledge, despite the above-mentioned recommendations by the Committee against Torture, no central register has been introduced in Tajikistan to record crucial information about each detainee, the detaining officers and the officers responsible for him or her in custody.

In its Concluding Observations the Committee against Torture recommended Tajikistan to “(e)nsure that suspects are informed of their rights at the very moment of apprehension as well as reasons for their detention” (Paragraph 8 (c)). International standards clearly state that any person should, at the moment of their arrest and at the commencement of detention or promptly thereafter, be given information on and an explanation of their rights and how to exercise them. However, domestic legislation requires police to inform detainees of their rights only when the detention record is presented to them.

According to the Preliminary Report on the Implementation of the Government Action Plan on Torture distributed to human rights groups and other interested parties by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015, the Ministry of Justice set up a working group to discuss the introduction of draft amendments to the CPC and the Law “On Detention Procedures and Conditions of Suspects, Accused Persons and Defendants” pertaining to data to be included in detention records. The Coalition against Torture in Tajikistan learnt of the existence of this working group through the March 2015 report and it has no further information about its composition and activities. We believe that the working group should include broad consultations with civil society organizations with relevant expertise in order to provide recommendations and comments on relevant draft legislation.

### **1.3. Ensuring prompt access to a lawyer of the detainee’s choice (Paragraph 8 (d))**

The situation remains largely unchanged since Amnesty International and the Coalition against Torture in Tajikistan submitted follow-up information to the Committee against Torture in April 2014, and the practice of involvement of an ex officio lawyer has widely persisted.

In those cases where detainees or their families do not appoint their own lawyer, but the detainee requests legal counsel or the participation of a lawyer is obligatory by law (cases of especially serious crimes), the detainee is entitled to the services of a lawyer whose services are paid by the state. In

such cases, the investigator should submit a written request for a lawyer to be involved to a local representation of a collegium of advocates (law firm), and it is the lawyer on duty at the time who should take up the case. On average it takes 24 hours until a lawyer starts working on a case. However, it is a common practice in Tajikistan that the investigator directly contacts a specific lawyer to act as an ex officio (state-appointed) lawyer, effectively hand-picking someone who will not provide effective defence and may be inclined to overlook torture or other ill-treatment.

In the period under review police investigators often denied independently hired lawyers access to their clients for days and lawyers in many cases see their clients for the first time at the remand hearing or even later.

In some cases involving state-appointed lawyers detainees are unaware that they have a lawyer until their relatives hire an independent lawyer who informs them of the existence of another lawyer in the case.

Lawyers continue to experience obstacles to visit and communicate with their clients in investigation-isolation facilities (SIZOs), the detention facilities under the jurisdiction of the Ministry of Justice. In some cases, lawyers have been prevented from seeing their clients until the police investigator sent confirmation to the SIZO administration certifying that the lawyer is involved in the specific criminal case. Effectively, this practice means that the investigator determines whether or not a lawyer has a permission to see their client. SIZO staff have often referred to internal regulations preventing them from granting access to lawyers. In recent years, members of the Coalition against Torture in Tajikistan have repeatedly made requests for information about internal SIZO regulations but have received no response.

Members of a Monitoring Group consisting of Ombudsman's Office staff and civil society activists that began visiting detention facilities in February 2014 also requested to be given a copy of internal SIZO regulations. However, the SIZO administration stated that this information could not be shared. (For further information on the work of the Monitoring Group, refer to chapter 3.1.)

The independence of lawyers continues to be an issue of concern. The law "Ob advokature" (On Lawyers), which was mentioned in the April 2014 joint follow-up submission, entered into force in March 2015 after being developed by the working group "On developing draft legislation 'Ob advokature'", set up by the Presidential Administration and the Ministry of Justice. The law authorizes the Ministry of Justice in charge of the Qualification Commission to issue and withdraw lawyers' licences, which might undermine the independence of lawyers. This and other provisions in the draft law requiring practising lawyers to re-qualify under the terms of the new law risks rendering lawyers more vulnerable to administrative controls by the authorities and facilitating the revoking of licences for political or other arbitrary reasons.

#### **1.4. Notifying family (Paragraph 8 (g))**

The Committee against Torture called on Tajikistan to "(a)mend the CPC to repeal the 12-hour period for notification of arrest by law enforcement officers to family members" (Paragraph 8 (g)).

To date, the CPC has not been amended and Article 100, part 1 still stipulates that family members should be notified of the detention and the detainee's whereabouts within 12 hours of apprehension, either by police or the detainee.

In the current context in Tajikistan, notification of family is a particularly important safeguard as family members in many cases try to appoint a lawyer of their choice for the detainee and prevent them being appointed to an ex officio (state-appointed) lawyer who, as described above, often fails to ensure a proper defence.

Domestic law in Tajikistan does not grant detainees the right to notify their lawyers and relatives of transfers between pre-trial detention facilities or of their removal from detention facilities for the purpose of investigative activities, such as taking them to the crime scene, nor are law enforcement officers under an obligation to inform the relatives. Amnesty International and the Coalition against Torture in Tajikistan have documented many cases in recent years where detainees were subjected to torture or other ill-treatment in the context of such transfers or removals.

According to the March 2015 Preliminary Report on the Implementation of the Government Action Plan on Torture by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan, the Prosecutor General's Office set up a working group to discuss the introduction of draft amendments to domestic legislation pertaining to prompt notification of the detainee's close relatives. The Coalition against Torture in Tajikistan learnt of the existence of this working group through the March 2015 report and it has no further information about its composition and activities. We believe that the working group should include broad consultations with civil society organizations with relevant expertise in order to provide recommendations and comments on relevant draft legislation.

#### **1.5. Lack of access to qualified and independent medical personnel (Paragraph 8 (e))**

The Committee against Torture recommended Tajikistan to "(e)nsure that anyone arriving at a detention facility undergoes a routine medical examination, and that access to independent doctors is provided when requested by the detainee without conditioning such access on the permission or request of officials" (Recommendation 8 (e)).

In June 2011, the Law "On Detention Procedures and Conditions of Suspects, Accused Persons and Defendants" was adopted providing for medical examinations upon admission to a place of detention. However, the law states that medical examinations should be conducted in line with internal regulations, which are not public. As a result, the procedure and purpose of the examination remains unclear.

On 24 January 2014 the NGO Independent Center for the Protection of Human Rights submitted a letter to the Ministry of Health and Social Protection of the Population of the Republic of Tajikistan (Ministry of Health and Social Protection) inquiring about the role of medical professionals employed by the Ministry in carrying out medical examinations of those detained in temporary detention facilities (IVS) in Tajikistan and about the procedure pertaining to such examinations. In response the Ministry provided the following information on 15 February 2014:

"We believe it is necessary to note that following an instruction of the Head of the Executive Office of the President of the Republic of Tajikistan, the Ministry of Internal Affairs and the Ministry of Health and Social Protection of the Population of the Republic of Tajikistan have jointly elaborated a draft Instruction of the Government of the Republic of Tajikistan 'On Conditions of Detention, Food and Medical Treatment' and passed it to the Government of the Republic of Tajikistan for adoption."

On 11 April 2014, the Independent Center for the Protection of Human Rights wrote to the Government of Tajikistan asking for information about the status of the draft Instruction. On 12 May, it submitted a written complaint to the Government about the lack of a reply. However, the NGO has received no response to date. Also, in April 2014 the NGO approached the Working Group on the Implementation of the Istanbul Protocol, which includes representatives of different government agencies and civil society. Representatives of the Ministry of Health and Social Protection, who are members of the Working Group, informed the NGO that their Ministry had not yet received the final version of the draft from the Ministry of Internal Affairs. Since then, human rights groups have not received any further information pertaining to the content and status of the above-mentioned Instruction.

In practice, detainees do not undergo an independent routine medical examination upon admission to police stations and temporary detention facilities (IVS). Medical professionals, who work in the IVS of the city of Dushanbe and in the Anti-Corruption Agency in Dushanbe and who are employees of the Ministry of Internal Affairs and the Anti-Corruption Agency respectively, examine detainees after they are entered into these facilities. To our knowledge, other law enforcement agencies and IVS in Tajikistan do not have their own medical personnel. Instead, police usually take detainees to public health clinics where they are examined by doctors or medical attendants before transferring them to an IVS.

Doctors from public health clinics told members of the NGO Coalition against Torture during training sessions on the implementation of the Istanbul Protocol that police often bring too many detainees at a time and rush medical staff to conduct examinations quickly. According to the doctors, they do not routinely explain to the detainees the purpose of the examination; detainees are not asked for their consent; and they are not given a copy of the examination's results. Sometimes, examinations are

conducted in the presence of police officers. The Coalition against Torture in Tajikistan is aware of cases where medical personnel certified that no injuries were found during the examination even when the detainee complained of torture or other ill-treatment and injuries were visible on his body. Medical personnel have told members of the Coalition against Torture that they are afraid of police reprisals as the examinations are sometimes conducted in the presence of police officers. Victims often refrain from reporting torture and other ill-treatment to the doctor while in the presence of police. Upon admission, temporary detention facilities usually accept these certificates as proof that the detainee has no injuries.

Medical personnel in pre-trial detention facilities (SIZO), which are under the jurisdiction of the Ministry of Justice, are supervised by the Ministry of Health and Social Protection but are employees of the penitentiary administration of the Ministry of Justice. There are cases in which medical personnel have come under pressure from the penitentiary administration as well as investigators, which undermines the required independence and impartiality of medical personnel.

#### **1.6. Video cameras in temporary detention facilities (Paragraph 9(c))**

According to the March 2015 Preliminary Report of the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan on the Implementation of the Government Action Plan on Torture, the Ministry of Internal Affairs equipped temporary detention facilities (IVS) and the facilities' duty rooms with video cameras. On 28 April 2015, in the framework of national consultations about the implementation of UPR recommendations in Tajikistan organized by the Department on Human Rights Guarantees of the Presidential Administration, the Ombudsman and the regional office of the UN High Commissioner for Human Rights (OHCHR), government representatives reported that video cameras had been set up in four facilities of the Ministry of Internal Affairs in Dushanbe, including the capital's IVS. The State Committee on National Security, the Drug Control Agency and the Anti-Corruption Agency also reported to have installed video cameras, but they have not provided any details about how many and where they have been set up. In recent months several lawyers petitioned that videorecordings relevant to cases they were working on be made available to them. Reportedly, they were either told that the recordings had not been saved or that no recordings had been made because the light was not working at the time.

#### **1.7. Remand hearings (Paragraphs 8 (f))**

In its Concluding Observations, the Committee against Torture recommended Tajikistan to "(m)andate that a detainee be brought promptly before a judge, in line with international standards, and reduce the 72-hour period of police custody" (Paragraph 8 (f)). Other UN human rights bodies issued similar recommendations. For example, in its 2013 Concluding Observations on the second periodic report of Tajikistan, the UN Human Rights Committee recommended to "ensure that persons in police custody are brought before a judge within a maximum period of 48 hours" (Paragraph 17). In the follow-up report on his mission to Tajikistan, published in February 2015, the UN Special Rapporteur on torture "urge(d) the Government to reduce the period of lawful pre-charge detention to 48 hours in line with acceptable international standards" (Paragraph 16).

The CPC of Tajikistan has not been amended to reflect these recommendations. It currently stipulates that remand hearings should take place no later than 72 hours after a person is taken into custody. In practice, detainees are often brought before a judge later than the 72-hour limit. (For example, refer to the case of Tolib Shodiev in the annex below).

According to the Preliminary Report on the Implementation of the Government Action Plan on Torture distributed by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015, the State Committee on National Security stated that, in line with the CPC, detainees are brought before a judge within 72 hours of the moment of de facto apprehension and stressed that it regarded this practice as "acceptable".

Domestic legislation does not require judges at remand hearings in Tajikistan to ask detainees how they were treated in custody or if they suffered from torture or other ill-treatment. In those cases where detainees make allegations of torture or other ill-treatment at remand hearings, judges typically ignore them and do not request an investigation into the allegations.

## **2. PROMPT, IMPARTIAL AND EFFECTIVE INVESTIGATIONS (Paragraph 9) AND IMPUNITY (Paragraph 11)**

The situation regarding investigations of torture and other forms of ill-treatment has remained largely unchanged in the period under review. Criminal proceedings against the officials accused of torture or other ill-treatment often appear to be perfunctory, which perpetuates the cycle of impunity for these violations.

### **2.1. Lack of comprehensive statistics regarding complaints, investigations, prosecutions and convictions (Paragraph 22)**

In its November 2012 Concluding Observations the Committee against Torture recommended Tajikistan to “compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking and domestic and sexual violence, as well as of means of redress, including compensation and rehabilitation provided to the victims” (Paragraph 22).

However, the authorities of Tajikistan do not publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture and other ill-treatment. Human rights groups are sometimes able to obtain statistical data on some of these issues, for example, from statements delivered by government agencies at press conferences, round tables or at international conferences on human rights issues or from reports or submissions relating to Tajikistan’s international human rights obligations.

In March 2015, the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan disseminated a document to human rights groups and other interested parties listing activities conducted by the end of 2014 under the National Action Plan on the Implementation of Recommendations made under the Universal Periodic Review (UPR). According to the document, a series of activities carried out to address UPR recommendations on torture led to “improved protection of human rights and interests of citizens”. As evidence, the document refers to decreasing numbers of complaints received by the Prosecutor General’s Office about torture or other ill-treatment in recent years. According to the document, the Office of the Prosecutor General received 48 complaints in 2010, 26 in 2011, 22 in 2012, 16 in 2013 and 10 in the first eleven months of 2014.

In Tajikistan, complaints about torture and other ill-treatment can also be submitted to the Ministry of Internal Affairs, the State Committee on National Security, the Drug Control Agency or other law enforcement agencies. The Ministry of Internal Affairs reported receiving 61 complaints of torture or other ill-treatment in 2012. It has not provided more up-to-date figures. On 28 April 2015, in the framework of national consultations about the implementation of UPR recommendations in Tajikistan, a representative of the State Committee on National Security reported it had not received any complaints of torture or ill-treatment in 2014. The other law enforcement agencies have not published any figures in recent years.

In the above-mentioned March 2015 document, the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan claims the number of torture cases dealt with by the UN Human Rights Committee in recent years indicates that the number of torture cases in Tajikistan was diminishing. It points out that while from 2003 to 2010 the UN Human Rights Committee ruled that 28 individuals had been subjected to torture or other ill-treatment, since then only one complaint involving allegations of torture and other ill-treatment has been reviewed under the Committee’s individual complaints procedure. However, in the NGO Coalition’s view, among the main reasons why fewer cases were submitted to the Human Rights Committee after 2010 are the lack of a mechanism in Tajikistan to implement the Committee’s decisions and the long time it takes the Committee to rule on a case. In the last three years, three cases have been submitted under the Committee’s individual complaint procedure, all of which involve allegations of torture or other ill-treatment.

From 2011 to the end of 2014, members of the NGO Coalition against Torture in Tajikistan documented more than two dozen cases each year of men, women and children who were allegedly subjected to torture or other ill-treatment. In the first three months of 2015 the Coalition registered ten new cases. Given the strength of evidence in support of the allegations in many cases, a notably small number of law enforcement officials has been prosecuted and brought to trial for torture or other ill-treatment, and disciplinary proceedings continue to be used to the exclusion of criminal prosecutions

in many cases. In many cases, victims of torture do not file complaints for fear of reprisals or because they do not believe this could help them achieve justice.

To our knowledge, no criminal case was opened under Article 143.1 (torture) in 2014, and in 2015 one case has so far been opened. In Tajikistan, criminal cases involving allegations of torture or other ill-treatment are frequently opened under other charges, such as “abuse of authority” or “exceeding official powers”. No statistics have been published relating to those crimes.

## **2.2. The need to set up an independent criminal investigation mechanism (Paragraphs 15 and 11(a))**

The Committee against Torture called on Tajikistan to “establish a fully resourced, effective, independent and accessible mechanism to investigate and facilitate the submission of complaints by victims and witnesses of torture and ill-treatment to public authorities, as pledged by the State party following the universal periodic review in March 2012” (Paragraph 15) and to “(t)ake concrete steps to establish an effective and independent criminal investigation mechanism with no connection to the body prosecuting the case against the alleged victim” (Paragraph 11(a)).

To date, no such mechanism has been established. The internal security services of the Ministry of Internal Affairs, the State Committee on National Security, the Drug Control Agency or other law enforcement agencies conduct a preliminary inquiry into allegations of torture or other ill-treatment if victims submit their complaint to these agencies that are implicated in the complaint. However, the agencies usually conclude that the allegations have not been substantiated raising serious concerns about the impartiality of the investigations. Domestic legislation does not oblige these agencies to refer such allegations for investigation to the Prosecutor’s Office or another agency which could ensure at least some degree of independence and impartiality of the investigation. During the preliminary inquiry, complainants are not awarded the procedural status of “victims”. As a result, they are neither entitled to contribute evidence for consideration by those conducting the preliminary investigation nor are they permitted to see the report of the preliminary inquiry.

When prosecutors initiate the investigation into allegations of torture and other ill-treatment, they lead the investigation, but domestic legislation permits them to order police to undertake investigative activities and gather evidence. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links. This clearly hinders the possibilities for impartial and independent investigations to be conducted.

In those cases where the use of torture or other ill-treatment is revealed or alleged during the court hearing, prosecutors have an inherent conflict of interest. The law envisages that prosecutors carry out both the function of criminal prosecution and that of supervision over the legality of the investigative process, which creates a further conflict of interest. Within the function of criminal prosecution, the prosecutor presents indictments in courts that are frequently based on information provided by police or other law enforcement agencies. By revealing violations (including torture and other ill-treatment) that took place during their investigative activities, the prosecutor undermines the legitimacy of the collected evidence and weakens the arguments presented in the indictment.

In order to address the lack of impartiality and independence of preliminary inquiries and investigations into allegations of torture or other ill-treatment in Tajikistan, local and international human rights groups have for many years called on the authorities to establish an independent mechanism to promptly conduct thorough and impartial investigations into all credible allegations of torture or other ill-treatment. It is crucial that such a mechanism has no hierarchical or institutional links to the alleged perpetrator or the agency they belong to, and is endowed with sufficient authority, competence and resources.

According to the Preliminary Report on the Implementation of the Government Action Plan on Torture distributed by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015, the Prosecutor General’s Office set up a working group to examine “the possibility of setting up a new organ to review complaints and statements of torture victims or to designate an existing structure and endow it with the authority to deal with this question”. At the same time, according to the report, the Prosecutor General’s Office believes no separate mechanism is currently needed considering the “very insignificant” number of torture complaints. The Coalition against Torture in Tajikistan learnt of the existence of this working group through the March 2015

report and it has no further information about its composition and activities. We believe that the working group should include broad consultations with civil society organizations with relevant expertise in order to provide recommendations and comments on relevant draft legislation.

### **2.3. No lenience for torturers (Paragraphs 7 and 11(c))**

In its November 2012 Concluding Observations, the Committee against Torture recommended Tajikistan to “ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice” (Paragraph 7) and to “(r)evoked provisions in the CPC allowing termination of criminal proceedings and exemption of the defendant from criminal liability whenever the case concerns allegations of torture and ill-treatment” (Paragraph 11(c)).

Tajikistan’s domestic legislation does not exclude perpetrators of torture or other ill-treatment from benefitting from prisoners amnesties. There have been several cases in recent years where torturers were released from prison following such amnesties or had their sentences reduced. Furthermore, Tajikistani legislation contains a statute of limitations applicable to the crimes of torture or other ill-treatment.

According to the March 2015 Preliminary Report on the Implementation of the Government Action Plan on Torture, the Ministry of Justice set up a working group on the application of prisoners amnesties to people convicted under Article 143.1 (torture) of the Criminal Code. The Coalition against Torture learnt of the existence of this working group through the March 2015 report and it has no further information about its composition and activities. We believe that the working group should include broad consultations with civil society organizations with relevant expertise in order to provide recommendations and comments on relevant draft legislation.

### **2.4. Reparation for victims of torture (Paragraph 21)**

The Committee against Torture recommended Tajikistan to “ensure that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture. It should, in practice, provide all victims of torture or ill-treatment with redress (...) and as full rehabilitation as possible regardless of whether perpetrators of such acts have been brought to justice” (Paragraph 21).

According to the March 2015 Preliminary Report on the Implementation of the Government Action Plan on Torture prepared by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan, the Supreme Court of Tajikistan submitted draft amendments to the Government on 3 November 2014 regarding compensation for harm suffered as a result of torture. If adopted, the amendments to Article 1086, part 2 of the Civil Code of Tajikistan would specify that torture is one of the grounds for claiming compensation.

We are aware of only two incidents in Tajikistan where compensation has been granted by the courts in two separate cases. In both cases, the victims died in custody in 2011, allegedly as a result of torture. Safarali Sangov’s family received the compensation payment in February 2014 and Bakhromiddin Shodiev’s family received compensation in May 2014 (further information on the two cases is in the annex below). Two further compensation cases relating to torture or other ill-treatment are currently being considered by courts in Tajikistan.

To our knowledge, other forms of reparation such as measures of satisfaction and guarantees of non-repetition have not been made available to torture victims in Tajikistan and legislation does not provide for such measures.

## **3. CONDITIONS IN DETENTION (Paragraph 14(c))**

### **3.1. Systematic and independent review of all places of detention by national and international monitors (Paragraph 14(c))**

The Committee against Torture recommended Tajikistan in November 2012 to “(t)ake concrete steps, as a matter of priority, to ratify the Optional Protocol to the Convention and establish an effective National Preventative Mechanism which is resourced and permitted to conduct regular, independent,



unannounced and unrestricted visits of inspection to all places of deprivation of liberty, with opportunity for inspectors to speak privately with individual detainees (Paragraph 14(c)).

In the meantime, the UN Committee recommended the Tajikistani authorities to “grant unimpeded access to the ICRC and independent non-governmental organizations to all places of detention, and ensure that the Ombudsman undertakes regular, unannounced visits to all places of deprivation of liberty, accompanied by medical professionals, including to places of police custody, and that the findings are made available publicly” (Paragraph 14(c)).

Tajikistan has not yet ratified the Optional Protocol to the Convention against Torture (OPCAT) and has thus not committed itself to setting up a National Preventative Mechanism.

In the March 2015 document on the Implementation of the National Action Plan on Recommendations made under the Universal Periodic Review, the authorities stated that the Ministry of Justice looked into the question of ratifying OPCAT and setting up a National Preventative Mechanism. It concluded that “the current system and legislation would have to be amended” in order to ratify OPCAT and that “further analysis of all aspects” is needed and that the experience of other state parties to OPCAT should be studied.

The International Committee of the Red Cross (ICRC) has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004.

In February 2014, a Monitoring Group established as part of the Ombudsman’s Office and consisting of Ombudsman’s Office staff and civil society activists began visiting detention facilities. However, the Monitoring Group has to announce its visits and when it receives allegations of torture or other ill-treatment in a specific case and wants to urgently conduct a visit, the administration of the detention facility typically only admits staff of the Ombudsman’s Office and denies access to the civil society members of the Monitoring Group. In these circumstances, in 2014, the Monitoring Group was not able to document a single case of torture or other ill-treatment in pre-trial detention facilities even though its members received a number of apparently credible allegations of torture and other ill-treatment in penitentiary institutions.

Independent monitoring of detention facilities is not regulated in domestic legislation and, besides their participation in the framework of the Monitoring Group, human rights defenders in Tajikistan are not permitted to enter detention facilities in order to conduct independent monitoring.

**Further details to the information provided can be found in the following publications, issued since submitting the joint follow-up report in April 2014:**

Joint document by the coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan, Amnesty International (AI), the Helsinki Foundation for Human Rights (HFHR, Poland), International Partnership for Human Rights (IPHR, Belgium) and the World Organisation against Torture (OMCT):

- Tajikistan needs to do more to end torture. An overview of current concerns, February 2015. See <http://notorture.tj/en/reports/tajikistan-needs-do-more-end-torture-overview-current-concerns>

Joint document by the Coalition against Torture in Tajikistan, the Helsinki Foundation for Human Rights (HFHR, Poland) and International Partnership for Human Rights (IPHR, Belgium):

- Tajikistan: Briefing on the implementation of recommendations issued by the UN Human Rights Committee in paragraphs 16 and 23 of its 2013 Concluding Observations, February 2015. See [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/TJK/INT\\_CCPR\\_NGS\\_TJK\\_19634\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/TJK/INT_CCPR_NGS_TJK_19634_E.pdf)

## ANNEX: CASE EXAMPLES

This section of the document updates some of the case examples included in the April 2014 document entitled “Tajikistan: Joint follow-up submission to the Concluding Observations of the United Nations Committee against Torture”, that was jointly submitted to the Committee by Amnesty International and the Coalition against Torture in Tajikistan. All update information is highlighted in bold and italics, for ease of reference.

In addition, this annex includes the cases of three men – Tolib Shodiev, Djamshed Narzullaev and Djuma Rozikov – whose cases came to the attention of the organizations issuing this document since April 2014, when the joint NGO document was submitted to the Committee.

The case examples in this section are listed in chronological order.

### **THE CASE OF ILHOM ISMONOV<sup>1</sup>: TORTURE AND OTHER ILL-TREATMENT IN CONNECTION WITH NATIONAL SECURITY CONCERNS**

On 3 November 2010 Ilhom Ismonov was apprehended on suspicion of participation in a criminal group, and kept in unacknowledged detention for seven days in the building of the MIA Sixth Department of Sughd region. He alleges he was tortured during this time including with electric shocks and boiling water in order to force him to confess. Ilhom Ismonov was tried in a case which grouped together 48 other men on charges of extremism in a trial which fell short of international standards of fairness. At the trial in September 2011, Ilhom Ismonov told the judge at Sughd Regional Court that security officials had tortured him to get him to confess but the judge did not take any action to investigate the claims. On 23 December 2011, Ilhom Ismonov was convicted for “organization of a criminal group” (CC, Article 187) and sentenced to eight years in prison. In November 2012 the Supreme Court upheld his conviction but reduced the sentence to six and a half years.

In June 2013, the UN Working Group on Arbitrary detention ruled Ilhom Ismonov’s detention to be arbitrary and recommended that he be released immediately. However, despite this ruling Ilhom Ismonov remains in detention.

***He was released on 2 May 2015 after having served his sentence.***

In March 2014, the Human Rights Committee registered an individual complaint from Ilhom Ismonov and his wife under the Optional protocol of the ICCPR.

### **THE CASE OF SAFARALI SANGOV: COMPENSATION**

Safarali Sangov, 37 years old, died on 5 March 2011 in the Karabolo medical centre, four days after he was taken there unconscious from the Department of Internal Affairs of Sino District in Dushanbe. His body had signs of numerous injuries sustained shortly before his death.

Assisted by a lawyer from the Bureau of Human Rights and Rule of Law, Safarali Sangov’s wife filed a claim for compensation for moral and material damage at the Sino District Court. On 5 March 2013, the court ruled that she should receive TJS 46,500 (about USD 10,000). The Ministry of Internal Affairs appealed this ruling but on 30 May 2013, the Judicial Board of the Dushanbe City Court upheld the decision by Sino District Court and dismissed the appeal. On 1 July 2013, the Sino District Court issued a writ for the sum of compensation to be paid by the Ministry of Internal Affairs. However, for over six months Safarali Sangov’s widow did not receive the compensation. The lawyer has lodged a complaint. Safarali Sangov’s widow received the payment in March 2014. ***No other means of reparation such as satisfaction or guarantees of non-repetition have been granted.***

### **THE CASE OF BAKHROMIDDIN SHODIEV: COMPENSATION**

Bakhromiddin Shodiev died on 30 October 2011 in Dushanbe National Medical Centre, where he was taken unconscious on 20 October from the Department of Internal Affairs (DIA) of Shomansur District in Dushanbe, following his arrest for theft the previous day. The Shohmansur District Prosecutor opened a criminal case on 4 November 2011 against the police investigator and others under Article 322.2 (negligence) of the Criminal Code. On 4 November 2011, three employees of Shohmansur District DIA were dismissed after an internal investigation in connection with the death. The deputy head of the police was also dismissed. The Head of the Shomansur District DIA and the head of the Central District MIA were severely reprimanded.

Before the trial began, on 17 February 2012 a claim for TJS 180,000 (USD 37,200) in damages was made

against the Ministry of Internal Affairs. In a court judgement of 11 February 2013, the former investigator of the Shomansur District DIA, was found guilty of violating article 322.2 of the Criminal Code and was sentenced to two years imprisonment in a penal colony. The appeal filed by the lawyer for Bakhromiddin Shodiev's family against this sentence was dismissed by the court of appeal and the original sentence upheld. On 18 November 2013, the District Court of Ismoili Somoni of Dushanbe ruled to partially satisfy the compensation claim filed by Bakhromiddin Shodiev's mother, and awarded her TJS 14,579 (about 3,000 US dollars). However, in January 2014, the Ismoili Somoni District Prosecutor's Office appealed against this ruling. The Judicial Collegiate of Dushanbe Court rejected the appeal. **Eventually, the family received compensation in May 2014. No other means of reparation such as satisfaction or guarantees of non-repetition have been granted.**

**THE CASE OF TOLIB SHODIEV: LACK OF ACCESS TO LEGAL SAFEGUARDS AND FAILURE TO CONDUCT A PROMPT, THOROUGH AND INDEPENDENT INVESTIGATION**

On 25 March 2014, officers of the Department for the Fight against Organized Crime (commonly known as UBOP by its Russian acronym) detained **Tolib Shodiev** in his home and held him until the afternoon of 26 March 2014 in UBOP's temporary detention facility (IVS) in Tursunzade District in the west of Tajikistan. On 27 March, he was transferred to the IVS in Dushanbe. Tolib Shodiev's relatives told the Coalition against Torture that they were not informed of his whereabouts and the grounds for his arrest. The remand hearing took place on 1 April, seven days after his arrest. Following permission of the investigator, a lawyer of a law firm in the city of Dushanbe was present when charges were brought against Tolib Shodiev on 7 April. When the lawyer was briefly able to speak to him in confidential circumstances, he reportedly told the lawyer that he had been subjected to torture. He later told a lawyer belonging to the Coalition against Torture that he had shown the lawyer bruises on the left side of his back and the left forearm. However, the lawyer reportedly took no steps to address the detainee's complaint. Subsequently, Tolib Shodiev's relatives turned to a member organization of the NGO Coalition against Torture in Tajikistan for help and engaged the NGO's lawyer. This lawyer was only able to gain access to his client ten days after he started working on the case. The lawyer submitted complaints during pre-trial detention and at the court hearing highlighting procedural violations and allegations of torture or other forms of ill-treatment. However, the competent authorities and the court took no action to investigate the allegations.

On 24 November 2014, when Tolib Shodiev's criminal case reached the Collegium on Criminal Cases of the Supreme Court, the Collegium directed an order to the Prosecutor's Office to examine the allegations of torture. At the same time the Collegium turned down a request by Tolib Shodiev's lawyer to examine his late transfer to the IVS two days after he had been deprived of liberty and the late completion of the detention record stating that police had made a "technical error" when registering the date of when Tolib Shodiev was detained.

On 15 December 2014, the Prosecutor's Office concluded that no criminal case had to be opened for lack of evidence of a crime. On 14 January 2015, Tolib Shodiev's lawyer submitted a complaint against the decision to the Chair of Sino District Court in Dushanbe. However, the court has not responded to the complaint although the lawyer subsequently complained to Sino District Court and the Council of Justice about the lack of a response.

**THE CASE OF DJAMSHED NARZULLAEV: COMPLAINTS ABOUT LACK OF ACCESS TO LAWYER**

On 1 May 2014, Djamshed Narzullaev was detained by police officers in the town of Vakhdat some 30 kilometres east of Dushanbe, on accusations of extortion. Reportedly, after taking him to a local police building, officers applied electric shocks to his genitals, lips and hands; they put a plastic bag over his head and beat him in different parts of his body in order to force him to confess to having extorted 3,000 US dollars. Reportedly, he had no access to a lawyer for a whole month, when he was provided with an ex officio lawyer.

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<sup>i</sup> For further background on this case, refer to Amnesty International's July 2012 report "Tajikistan: Shattered lives. Torture and other ill-treatment in Tajikistan."