

# **Briefing paper for EU-Tajikistan Human Rights Dialogue: Key concerns regarding torture and ill-treatment**

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International Partnership for Human Rights and Civil Society Coalition Against Torture and Impunity in Tajikistan

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## LEGISLATION

Legislative amendments to the Criminal Code in 2016, 2020, and 2021 significantly strengthened fundamental legal guarantees for preventing torture and cruel treatment in places of detention. Amendments include improving procedures for registering detentions and the right to immediate notification of family members and lawyers; commencement of the detention period from the moment of actual deprivation of liberty; mandatory registration of the identity of all officials involved in the detention; mandatory medical examination before placing a suspect in a temporary detention facility; improved guarantees for the detention of minors, including a ban on placing minors in disciplinary isolation cells; provisions excluding "severity of punishment" as a reason for detention; and provisions allowing lawyers access to detainees based on a valid licence.

In 2023, a new Civil Code of Tajikistan was adopted, containing provisions on compensation for moral harm. According to the new amendments, torture serves as a basis for claiming compensation for moral harm, with the state authorities (rather than individual officials) as the respondents in cases of compensation for moral and material harm in cases of human rights violations. Thus, as of today, Tajikistan's legislation largely complies with international standards for protection against torture.

## STATISTICAL INFORMATION

Despite repeated recommendations from UN bodies, Tajikistan still fails to comply comprehensive statistical information on torture-related complaints, criminal cases which are initiated, and verdicts on torture. Although information may be sporadically available from official press conferences, Tajikistan's periodic reports to UN bodies, and the Human Rights Ombudsman's annual reports, statistical information is not consistently provided in a comprehensive and transparent manner.

According to the Civil Society Coalition against Torture and Impunity (further Coalition), the rate of reported cases of torture has decreased in recent years with 52 cases reported in 2019, 37 in 2020, 24 in 2021, 19 in 2022, and 18 in the first 10 months of 2023.

However, underreporting of torture cases is a significant issue, as victims and their relatives often abstain from reporting due to fear of reprisals and pressure from law enforcement agencies. In addition, criminal cases are very often classified as confidential and secret by the authorities, and lawyers are compelled to sign non-disclosure agreements regarding the cases they work on which prevent them from seeking consultation or outside advice. Furthermore, non-disclosure agreements also prevent lawyers from providing the Coalition, relatives and the media with updates about their clients' cases, which are important in order to track developments within the human rights sphere.

## INVESTIGATION OF ACTS OF TORTURE

Suspects tortured during criminal investigation fear that lodging complaints may worsen their situation and negatively impact the severity of their criminal sentences. Even when a defendant speaks out in court about torture and ill-treatment by law enforcement agencies, courts routinely dismiss these reports and fail to order thorough investigations into the allegations. The experience of the Coalition demonstrates that criminal proceedings on torture charges are initiated only in isolated cases, and such investigations can last for up to five years. While in some cases the Coalition has succeeded in bringing perpetrators of torture to justice, it is virtually impossible to file effective complaints of torture when individuals face politically-motivated criminal charges, including charges related to extremism and terrorism.

The cumulative effect of the problems described above results in ineffective investigations and impunity for perpetrators of torture, as well as the lack of sufficient compensation for victims of torture and ill-treatment. Between 2021 and 2022, compensation for moral damages to victims of torture significantly declined as courts increasingly dismissed claims, arguing that individual officials, defendants, rather than the state, should be held responsible for torture. However, if effectively implemented, legislative amendments introduced in 2023 on compensation for moral harm may improve the situation for victims of torture seeking redress.

## ACCESS TO LEGAL REPRESENTATION

Following the suppression of mass protests in Gorno Badakhshan Autonomous Oblast (GBAO) in 2021 and 2022, dozens of residents of the region were arrested by law enforcement agencies. In those legal proceedings conducted in GBAO, detainees were often denied access to lawyers, and trials took place without defence attorneys present. This led to the imposition of lengthy sentences ranging from 10 to 25 years, and life sentences were handed down in three cases. The events in GBAO also underscored the severe shortage of lawyers in the region, where only [four attorneys serve a population of 250,000](#). Lawyers from Dushanbe and other regions refused to participate in legal proceedings in GBAO due to safety concerns. Relatives of the detainees repeatedly reported beatings and forced confessions, which were broadcast on local television even before the legal proceedings began, thus clearly violating the principle of the presumption of innocence.

According to local news reports, in total 205 GBAO residents were sentenced to various prison terms in connection with the November 2021 and May 2022 events. Eleven people were sentenced to life imprisonment, 85 to from 10 to 29 years' imprisonment and 53 to from 1.5 to 9 years' imprisonment.<sup>1</sup> In the vast majority of cases, the defendants were denied basic rights, including access to lawyers, pressure on relatives and forced

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<sup>1</sup> <https://pamirdaily.com/pamiris-prisoner-list-2022/>

confessions. In many cases involving GBAO residents, court verdicts were classified, which obstructed convicted persons' rights to appeal against their sentences.

In addition, documented cases reveal instances where Tajikistani citizens living abroad were apprehended by the Tajikistani security services and, forcibly returned to Tajikistan where they were kept for prolonged periods in incommunicado detention, raising concerns about the real risk of torture and ill-treatment. Their families and legal representatives were unable to find out about their whereabouts and state of health. There are indications that the detainees were subjected to torture in order to extract confessions of guilt. The lack of external oversight and communication further increases the risks of possible human rights violations in these cases.

## **TORTURE AND ILL-TREATMENT IN CUSTODY AND PRISON CONDITIONS**

Tajikistan lacks independent monitoring mechanisms to effectively prevent and detect torture and ill-treatment in detention. The authorities have not ratified the Optional Protocol on the Convention Against Torture (OPCAT), citing financial limitations. The International Committee of the Red Cross has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004. A Monitoring Group was established under the Ombudsperson's Office in 2014, and conducted approximately 15 visits per year, but this is not sufficient to count as an effective safeguard against torture.

In response to a series of incidents of significant unrest in correctional facilities in 2018 and 2019, the government instigated personnel changes in the penitentiary system and expedited the adoption of the Penitentiary System Reform Strategy. Over the past three years, noteworthy progress has been achieved in improving the penitentiary system. On 25 May 2020, the Strategy for Reforming the Penitentiary System for the period up to 2030 was officially adopted. On 25 February 2021, the Action Plan for its implementation (2021-2025) was approved. The Main Department for the Implementation of Criminal Sanctions (GUIN - Penitentiary Service) of the Ministry of Justice is responsible for implementation. Notably, both the Strategy and the Action Plan were developed with the active participation of civil society which played a key role in shaping these strategic documents and also actively contributing to their practical implementation.

At present, GUIN has taken some concrete steps to revise the normative legal acts regarding disciplinary measures, and the prohibition of forced treatment and feeding in accordance with international human rights standards. This process is supervised by a special working group with the active participation of the NGO "Human Rights Center" (HRC), a member of the expert group of the Coalition against Torture. HRC has also

established a civil society monitoring group for independent oversight of places of deprivation of liberty.

The Strategy foresees the introduction of a probation system and alternative, non-custodial criminal penalties which, when implemented, could potentially alleviate problems of overcrowding in detention facilities and reduce the financial burden on the state budget.

At present, there is no fixed training system for prison staff. Individual training is conducted with the assistance of international and national NGOs. The Strategy envisages the establishment of a Training Centre, responsible for developing an effective system of continuous education and training for prison staff.

In a positive example of state cooperation with civil society, HRC has worked with GUIN to develop a draft rehabilitation programme for prisoners, criteria for a risk assessment and prisoner classification system, as well as assisted in improving medical care in the women's colony and providing specialised rehabilitation services to women prisoners as well as encouraging the integration of the Istanbul Protocol standards into the internal documentation of both public and prison healthcare institutions.

However, despite the positive steps described above, prisoners and detainees remain the most vulnerable group and reports indicate that torture and ill-treatment continue to be used systematically in detention facilities. Despite recommendations from international bodies, including United Nations treaty bodies, special procedures, the Universal Periodic Review (UPR), the ICRC, and civil society organizations, at the current time there is no access to places of detention for independent monitoring, which increases the risk of torture and ill-treatment as well as a troubling culture of impunity.

Official statistics on the number of convicted persons are difficult to find. However, international sources put the number of prisoners at 14,000 people as of 1 July 2022<sup>2</sup>.

Prisons are reported as highly overcrowded, lacking in basic sanitary and hygiene facilities, and poorly ventilated. Specialised and quality medical assistance is unavailable for detainees, and relatives of inmates are often required to cover the expenses for any essential medical care. Inmates reportedly suffer from insufficient food and rely on additional food brought in by their relatives.

The living conditions for prisoners serving life sentences are worse than those of other inmates. Lifers are held in cells in the basement of the Ministry of Justice Pre-trial detention centre, which lacks adequate heating, ventilation, and sanitation. They are permitted to receive only one parcel containing food and letters every three months, and

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<sup>2</sup>[https://www.google.com/url?q=https://www.prisonstudies.org/country/tajikistan&sa=D&source=docs&ust=1701699458248037&usg=AOvVaw0eiWd\\_eV1szMO0G57Q9eJY](https://www.google.com/url?q=https://www.prisonstudies.org/country/tajikistan&sa=D&source=docs&ust=1701699458248037&usg=AOvVaw0eiWd_eV1szMO0G57Q9eJY)

their interaction with relatives is limited to two brief phone meetings per year, conducted through a glass panel.

## **LGBTIQ PERSONS SUBJECTED TO ARBITRARY DETENTION, ILL-TREATMENT, AND EXTORTION**

The human rights of lesbian, gay, bisexual, transgender, intersex and queer people (LGBTIQ) continue to be egregiously abused in Tajikistan and homophobia and transphobia run deep. On a fact-finding visit at the end of November 2023, IPHR learnt of numerous cases in recent years when police subjected gay and trans people to ill-treatment, sexual abuse, verbal intimidation and extortion and threatened them with reprisals unless they handed over contact details of wealthy members of the LGBTIQ community for further extortion.<sup>3</sup>

In the context of the government's heavy-handed fight against HIV/AIDS numerous LGBTIQ persons were arrested during 2023 and forced to undergo HIV tests.<sup>4</sup> Many of those who were tested positive were charged with "Knowingly putting another person at risk of infection with human immunodeficiency virus" (125, part 1 of the Criminal Code of Tajikistan) although in many cases the virus count was very low due to regular ARV treatment and police presented no complaints from anyone who had allegedly been infected. Numerous HIV positive LGBTIQ were subsequently imprisoned, others were forced to pay bribes and released. Article 125, part 1 is punishable by up to two years' imprisonment or up to three years' restrictions of liberty.

Human rights defenders reported that there are moves by the government, legislators and the judiciary to protect HIV positive people from arbitrary punishment. According to civil society activists, the current draft of the new Criminal Code does not contain an equivalent to Article 125, part 1, and the Plenum of the Supreme Court has produced guidance for judges when considering cases opened under Article 125 stipulating, for example, the need to establish whether the accused underwent regular ARV treatment, whether the virus count was below the risk threshold and whether protective measures were used such as male or female condoms. However, this document has yet to be adopted by the Supreme Court.

Many gay men and trans people were charged with "Illegal production and circulation of pornographic materials or objects" (Article 241 of the Criminal Code) in recent years after police detained them and found photos and videos on their phones that the officers deemed to be pornographic. Typically, police extracted the phones by force, without a court sanction, after threatening the detainees with reprisals.

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<sup>3</sup> Refer to IPHR's 2018 report ["We just want to be who we are!" LGBT people in Tajikistan: beaten, raped and exploited by police](#), which details patterns of human rights violations affecting LGBTIQ individuals.

<sup>4</sup> <https://rus.ozodi.org/a/32272964.html>

## **RECOMMENDATIONS**

Based on the information provided in this briefing paper, we have identified the following recommendations as particularly pressing and timely:

The EU should call on the Tajikistani authorities to:

### **TORTURE AND ILL-TREATMENT**

- The President and other senior government officials should publicly state that torture and ill-treatment are strictly prohibited in all circumstances and that those responsible for such crimes will be brought to justice.
- Publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture (Article 143-1) and ill-treatment.
- Bring to justice anyone found responsible for torture and ill-treatment and hand down sentences commensurate to the severity of the crimes committed.

Ensure that detainees can access legal safeguards in detention by:

- Ensuring consistent implementation of legislation stipulating that lawyers must be given unhindered access to their clients at all stages of detention and in all detention facilities, including immediately after deprivation of liberty and solely based on presenting their lawyers' certificate.
- Ensuring that, shortly after apprehension, all detainees undergo a medical examination by independent medical personnel in line with the standards of the Istanbul Protocol.

We also recommend the EU to raise the individual cases mentioned in Annex 1. and ask that torture investigations are re-initiated in these cases in an impartial and effective manner.

### **INDEPENDENT MONITORING OF DETENTION FACILITIES**

- Ratify OPCAT and establish an effective National Preventive Mechanism.
- In the meantime, grant unimpeded access to the ICRC and expert independent NGOs working to prevent torture in Tajikistan, to all places of detention.

### **EFFECTIVE INVESTIGATIONS:**

- Set up and fund an independent mechanism endowed with sufficient authority and competence to conduct effective investigations into allegations of torture and ill-treatment.
- In the meantime, broaden the remit of existing dedicated units of prosecutors at the Prosecutor General's Office to ensure that they lead and carry out investigations



into allegations of torture and all other forms of ill-treatment, irrespective of whether they are opened under Article 143-1 or other articles of the Criminal Code, and amend legislation accordingly.

## **COMPENSATION FOR MORAL DAMAGES TO VICTIMS OF TORTURE**

- Ensure that there are clear legislative provisions on torture victims' right to redress, including fair and adequate compensation and rehabilitation for damages caused by torture regardless of whether the perpetrators of such acts have been brought to justice.

## **LGBTIQ**

- Welcome that the current draft of the Criminal Code does not contain an equivalent to the offence covered under Article 125, part 1 of the current Criminal Code and acknowledge current efforts by the Plenum of the Supreme Court to give guidance to judges on how to consider cases of HIV positive people charged with Article 125 and how to ensure that no one is arbitrarily detained and imprisoned.
- Swiftly end the practice of charging people under Article 125, part 1 in cases where there is no evidence to suggest that they have infected anybody.
- Introduce a policy of zero tolerance for torture, ill-treatment and extortion with regard to all detainees regardless of their sexual orientation or gender identity and punish the perpetrators in fair proceedings.
- End the widespread police practice of extracting mobile phones from LGBTIQ detainees and searching their private correspondence and visual material without a court sanction, and of forcing detainees to undergo HIV tests, a practice that contradicts the International Guidelines on HIV/ AIDS and Human Rights as well as domestic legislation.