NGO COALITION AGAINST TORTURE AND IMPUNITY

NGO REPORT ON TAJIKISTAN'S IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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Abbreviations

SC RT	Supreme Court of the Republic of Tajikistan
HEI	High Education Institution
SCNS	State Committee on National Security
CC	Civil Code
MDCA	Main Department of Correctional Affairs
ECHR	European Convention on Human Rights
TDC	Temporary Detention Center
CEC	Criminal Executive Code
CAV	Code of Administrative Violations
CAT	Convention Against Torture
LGBT	Lesbian, Gay, Bisexual and Transgender Community
MIA RT	Ministry of Internal Affairs of the Republic of Tajikistan
ICRC	International Committee of Red Cross
ICCPR	International Covenant on Civil and Political Rights
MJ RT	Ministry of justice of the Republic of Tajikistan
NGO	non-governmental organization
DIA	Department of Internal Affairs
UN	United Nations
OIA	Operative Investigation Activity
LI	Life imprisonment
PTC	Professional technical college
RT	Republic of Tajikistan
PDC	Pre-trial Detention Center
Mass Media	Mass Media
AIDS	Acquired Immunodeficiency Syndrome
SPTC	Special Professional technical college
DCOC	Department on Combating Organized Crime
CC	Criminal Code
CPC	Criminal Procedure Code
CHR	The Commissioner for Human Rights (Ombudsman)

INTRODUCTION

In 2010, the Republic of Tajikistan submitted its second periodic report on the country's implementation of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT/C/TJK/2). The report is to be presented in the 49th Session of the Committee against Torture in November of 2012. The national report covers the main legislative provisions adopted in implementation of the convention. The report openly discusses several problems and difficulties that the country has encountered in the course of implementing its obligations. At the same time, many issues and problems are not covered by the national report.

The present report was prepared by the NGO Coalition against Torture and Impunity[1] and is based on information gathered by members of the Coalition in the course of practical work protecting victims of torture, and carrying out monitoring and research projects on this issue. In the report data and information from other NGOs have been used, in these cases there are references to the sources of information.

NGO «Notabene» coordinates activities of the Coalition and has compiled this report.

The report presents information about the implementation of Tajikistan's obligations under articles 1, 4, 11, 12, 13 and 14 of the convention and answers to the questions of the list of issues (CAT/C/TJK/Q/2).

Working on the report, we set for ourselves the goal of presenting to the members of the UN Committee against Torture and all other interested parties information about the implementation of CAT in Tajikistan that would complement the information presented in the National report. Our position on many issues differs from the official position.

[1] The Coalition was created in 2010 and consist of 15 organizations: Avesto, Amparo, Apeiron, Association of Pamir Lawyers, Bureau of Human Rights and Rule of Law, Bar Association of SIPAR, Bar Association of Sughd Oblast, League of Women Lawyers, Independent Center for Human Rights Protection, Independent school of Journalism "Tajikistan – XXI Century", Nota Bene, Equal Opportunities, Child Rights Center, Human Rights Center, Dignity. The Coalition has its Strategy and web site www.notorture.tj

Over the last few years, the Government of Tajikistan and state institutions took particular steps to combat torture and impunity:

- In June 2012, the Supreme Court of Tajikistan adopted Plenary Resolution “On use of provisions of criminal and criminal procedural legislation in combating torture”;

- In April 2012, amendments were made to the Criminal Code of Tajikistan that introduced article 143, stipulating criminal liability for use of torture;

- In June 2012, the development of the draft “State Program on Human Rights Education” was completed and the draft was submitted for comment to ministries and other state agencies. The Program provides for a system of professional training for the law-enforcement, military and civil servants on human rights issues;

- On December 29, 2011, a working group was created by the decree of the President of Tajikistan to carry out educational trainings and awareness raising activities related to torture prevention; the working group is chaired by the Chair of the Constitutional Court of the Republic of Tajikistan, Mr. M. Makhmudov.

- In June 2011, the law “Law on the Order and Conditions of Pre-Trial Detention of Suspects, Accused, and Defendants” was adopted and entered into force. The law regulates procedures and conditions of detention of the suspects, accused persons and defendants, and guarantees their rights and legal interests;

- In April 2010, the new Criminal Procedure Code of the Republic of Tajikistan (CPC) entered into force. The new code, generally, complies with international standards of criminal justice. The Code contains many positive elements, such as judicial sanctioning of arrest, sanctioning, access to legal representation from the moment of factual arrest, among others.

- In 2010, the law “On state protection of the participants of the criminal justice process” was adopted; it includes mechanisms for protecting victims and witnesses of torture;

- Currently, the Office of the General Prosecutor of the Republic of Tajikistan and the Prosecutors Training Institute are developing the

methodological recommendations for prosecutors on effective investigation of torture cases. These recommendations will be provided to the General Prosecutor for approval in the second half of 2012;

- The draft law “On prevention of domestic violence” is currently under consideration by Parliament;

- Working groups have been created on humanization of criminal legislation, reform of the defense bar and drafting of new law on free legal aid.

Positive developments notwithstanding, torture in Tajikistan remains a systemic problem, and many of the recommendation of the UN Committee against Torture made in 2006 still have not been implemented:

- The Optional Protocol to the Convention against Torture has not yet been ratified;
- Prompt and unhindered access of defense lawyers to detainees from the actual moment of arrest is not provided;
- There is a lack of prompt medical examination at the moment of arrest;
- Mechanisms for prompt and effective investigation into complaints of torture and criminal of perpetrators do not exist;
- International and national monitors Places of detention and deprivation of liberty International and national monitoring organizations do not have access to the penitentiary institutions;
- Victims of torture are not provided with adequate compensation and effective legal remedies.

In addition, there are many other unaddressed problems that result in widespread use of torture.

Lack of a State Strategy to Prevent Torture

First of all, the country does not have an action plan for combating torture and impunity. There is not a complex approach to reform of the criminal justice system.

Failure to ensure independent monitoring of conditions of detention

From 2004 to the present time, the authorities of Tajikistan do not allow personnel of the International Committee of Red Cross to carry

out monitoring of places of detention; there is also no access for civil society to conduct independent monitoring of places of detention.

The Human Rights Ombudsman in the Republic of Tajikistan does not take sufficient measures to react to incidences of torture. The Ombudsman did not once exercise his power to conduct independent investigation into cases of severe human rights violations[2]. Several NGOs concluded memorandums of cooperation with the Ombudsman on joint monitoring of places of detention. In 2011 – 2012, Ombudsman refused to carry out joint monitoring of pre-trial detention and penitentiary institutions together with NGOs, explaining it with "the absence of permission from relevant state authorities (Ministry of Justice) for the NGOs to visit closed institutions".

Despite lack of access to detention facilities, human rights defenders and advocates documented more than 96 cases of torture and ill-treatment in detention between 2010 and 2012. Some of the more widespread methods of torture used in Tajikistan include incommunicado detention, beating with plastic bottles, electric shock, dousing with hot water, cigarette burns, rape, lashing of the plastic bottles with sand and water to the genitals, beating with police batons, sticks, legs and fists, humiliation, threats of physical violence against close relatives.

Failure to ensure an independent and effective system of investigating and prosecuting cases of torture

There is mechanism for independent investigation mechanism for cases of torture. Investigators are conducted by officers of the internal security services of the agencies of internal affairs; thus the investigators are often integral parts of the agencies against which the victim of torture is complaining.

Inadequate punishment for torture considering the severity of the offense

[2] See also, point 4 of the joined Report (1) NGO on Universal Period Review. 2011 http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TJ/JS1-JointSubmission1-rus.pdf

On 16 April 2010, the Criminal Code of Tajikistan was amended with a new article 143.1 "Torture" that provides for criminal liability for use of torture. However, the punishment specified in article 143.1 of five years of imprisonment does not correspond with the gravity of crime as envisaged in the article 4 of the Convention against Torture.

Lack of mechanisms for determining legality and justifiability of arrest and pre-trial detention

The Criminal Procedure Co transferred responsibility for sanctioning arrest from the prosecutors to the judges. Despite the transfer, there are still not a clear mechanism by which the court considers the legality and justifiability of arrest. In almost 100 per cent of cases, judges satisfy requests of investigative agencies to place the arrested person in pre-trial detention, referring only to the gravity of the crime[3], in contradiction with international standards on right to liberty and personal inviolability. When selecting particular restraint measures (pre-trial measures – arrest, house arrest, release into relatives custody, etc), judges do not consider complaints about torture, stating that their activities at that stage are limited to sanctioning pre-trial measures.

Absence of judicial practice on excluding evidenced obtained through torture

Article 88 part 3 of the CPC provides that "evidence obtained during the interrogation or pre-trial investigation through use of force, pressure, torture, inhuman treatment or other illegal methods, shall be considered invalid and may not be used as the grounds for the accusation…" However, to date this provision has not been utilized by the courts of Tajikistan. During court proceedings, when defendants allege use of torture or other illegal investigation methods employed by law enforcement personnel, courts leave these complaints without attention, limiting themselves to the calling and questioning investigators or policemen.

Lack of timely and unhindered access of lawyer to his/her client

In implementation of the CAT recommendation (7a), corresponding changes were made in the CPC according to which unhindered access of advocates to their clients is guaranteed. However, in

[3] Monitoring of arrest sanctioning. Human Rights Center. 2010

practice the absences of timely and unhindered access of advocates to detainees is serious problem and one of the factors that facilitates the use of torture during criminal investigation.

Extradition and non-refoulment

The situation with the practice of implementing extradition in Tajikistan is ambiguous. There is an ambiguous situation with an extradition process in Tajikistan. Tajikistan's legislation does not directly prohibit extradition from Tajikistan to another country, where a person may be subject to torture. Issues of extraditions are primarily regulated by bilateral agreements of General Prosecutor's Offices, Minsk and Chisinau Conventions on legal aid and legal relationships on civil, family and criminal cases, as well as by Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001) that fight against terrorism, separatism and extremism (2001) that provide only for procedural issues and do not contain any standards on freedom from torture. There is lack of available statistical information about persons extradited from Tajikistan. At the same time, there are more frequent incidences of abductions of persons, citizens of the Republic of Tajikistan, with respect to whom there are rulings of the European Court about prohibition of extradition (according to Article 3 of the ECHR and Rule 39 of the Court) from the Russian Federation to Tajikistan.

In the context of fighting against terrorism and extremism illegal arrests and use of torture against persons suspected or accused of these types of crimes have become more frequent. The problem seems to be getting worse as a result of lack of access of lawyers to their clients and the phenomenon of closed trials in this category of case.

Persons in pre-trial detention facilities and people sentence to imprisonment are the most vulnerable groups at risk of being ill-treated. Analysis of the activities of legal aid centers operated by member organizations of the Coalition indicates that torture and ill-treatment may be most widespread in the facilities of the State Committee on National Security.

Victims refuse to file complaints about torture

In Tajikistan statistics are not kept about the scale of use of torture and ill-treatment. Representatives of the Coalition against Torture in

Tajikistan documented more than 96 cases of torture and ill-treatment from 2010 – 2012. Documented cases are only those in which the victim agreed to file a complaint about torture. Human rights organizations are also aware of tens of more cases of torture in which the victims decline to pursue complaints, because of the practical absence of effective mechanisms for investigating torture and protecting victims and witness of torture, as well as the fear of victims that they will receive stricter sentences as retribution for filing complaints.

Systems of training and professional preparation of personnel are ineffective

A serious problem is the education system and professional education of young specialists in the legal faculties of higher educational institutions in the country. Forensic laboratories of higher educational institutions do not have sufficient equipment; young specialists do not receive the practical skills required for effective criminal investigation. There is no program in the country specifically to train court-medical experts and forensic experts.

Potential at-risk groups

Use of **physical punishment against children** is a widespread practice in both families and educational facilities. National legislation does not contain direct prohibitions corporal punishments. There is no procedure for consideration of complaints on physical punishments.

Domestic violence is a prevalent problem in Tajikistan. Despite the gravity and prevalence of this problem in Tajikistan, the Government does not take adequate measures to resolve it and prevent family violence. Poor legal awareness of women, especially in the rural areas, and an increasing number of early, polygamous and/or non-registered marriages add to women's vulnerability.

Serious problem in the Tajik **army** is **hazing or harassment** of young conscripts based on: a) service terms – old-timers use the rituals of initiation and violence against younger conscripts (the most common type of hazing); b) localism – soldiers are grouped in accordance with their places of origin and the fights occur between such groups. There are also rituals of initiation and torture practiced

in almost every military base. Violence in army is happening with participation of senior officers as well.

Lesbians, gays, bisexual and transsexual (LGBT) are a more latent at-risk group. There have been cases of torture and ill-treatment by the law-enforcement personnel and inhuman treatment by the medical personnel.

Non-implementation of international obligations on individual complaints to UN treaty bodies

As of 2012, the Human Rights Committee had issued the conclusion on 22 individual complaints against Tajikistan in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights. In every case, the Committee acknowledged that violations of the right to freedom from torture took place. However, not a single ruling of the Human Rights Committee has been implemented.

DEFINITION OF TORTURE AND PUNISHMENT

(Articles 1, 4 of CAT, concluding recommendation 5 (CAT/C/TJK/CO/1), issues 1, 2 of the list of issues (CAT/C/TJK/Q/2)

The country's criminal legislation provides a definition of torture, that overall corresponds with the requirements of article 1 of the Convention. At the same time, punishments that are too soft for use of torture, including punishment not related to imprisonment, and the application of amnesty to perpetrators found guilty of using torture, create a culture of impunity and facilitate the spread of torture and ill-treatment in the country.

A) Article 143 note 1, does not provide adequate punishment for use of torture based on its grave nature, as it is set out in paragraph 2 of Article 4 of the Convention

1. On 16 April 2010, the Criminal Code was amended with a new article 143[1] “Torture” that provides for criminal liability for use of torture. According to the provisions of this article, “torture is - the intentional infliction of physical and (or) mental suffering, by a person conducting an inquiry or preliminary investigation or another official or by another person at the instigation of or with tacit agreement or knowledge of the official with the goal of receiving from the torture person or a third person information or a confession, of punishing

him/her for an action he/she has committed or is suspected of having committed, or of intimidating or coercing him/her or a third person for another reason, based on discrimination of any kind." This article consists of the definition of torture and its qualifying characteristics, according to which the following types of punishment are envisioned a) fine, b) denial of the right to occupy certain positions or engage in certain activities, and c) imprisonment from 2 (for part 1 from 2 to 5 years) to 15 years. Part 1 of article 143^1 provides opportunities for punishments other than imprisonment, confining punishment to levying of a fine and denying the person the right to occupy certain positions or engage in certain activities for a period of up to five years. Depending on the circumstances, part 1 also prescribes minimal term of imprisonment from two years. Part 2 of the article provides for imprisonment from five to eight years for the cases in which torture was used a) repeatedly; b) a group of persons with pursuant to prior agreement; c) with respect to an obviously pregnant woman, a minor or a disabled person d) resulting in injury of medium severity. In the case of torture, leading to accidental death or serious health injuries, the law provides for imprisonment from 10 to 15 years.

B) Criminal legislation of the Republic of Tajikistan does not distinguish between the torture and other forms of cruel, inhuman and degrading treatment and punishment

2. There are other articles in Tajik legislation that provides criminal responsibility for acts of torture and other ill-treatment criminal, such as incitement to suicide (article 109 of the Criminal Code), abuse of office (Article 314), exceeding the powers of office (article 316), negligence (Article 322), and intentional violation of international humanitarian law committed during the armed conflict (Article 403 of the Criminal Code).

3. Article 316 of the Criminal Code (exceeding powers of office) provides for punishment of an official who committed a crime that clearly exceeding his authority that caused a substantial violation of the rights and legitimate interests of citizens or organizations or legally protected interests of society or the state. Part 3 of this article prescribes punishment of an official who exceeds his/her authority through use of violence or threats, as well as through the use of weapons or other special measures. The content of article 316 is very general. On the one hand it allows the use article 316 for

prosecution of officials accused of torture. On the other hand, article 316 does not provide clear and unambiguous characteristics of torture by an official as a criminal offense, which undoubtedly negatively influences the understanding of judicial bodies and other relevant authorities of the danger of torture as a gross violation of human rights. Aside from torture, article 316 of the Criminal Code also covers all other forms of abuse of power. Thus, when the competent state authorities gather statistics about the use of article 316 of "exceeding powers of office" they do not have a breakdown of how many times the article was applied with respect to torture, cruel or degrading treatment. This deprives authorities of an opportunity to provide an accurate assessment of the prevalence of torture and to plan effective measures for the prevention of these violations.

C) Lack of explicit prohibition of torture in thematic laws of the country

4. None of the following laws contain a direct provision of torture, cruel, inhuman or degrading treatment or punishment. Part 2 of Article 5 of the Law on Status of Military Servicemen defines "offense, violence, threats of violence, infringements on health, honor, dignity, etc." of military servicemen as the basis for military offence under the law. Article 8 of the Law on Parental Responsibility for the Upbringing and Education of Children requires parents (**but not the teachers or other competent bodies**) "to respect the honor and dignity of the child, to not allow them to be subject to ill-treatment, and to ensure physical and mental condition of the child as well as equal treatment". Article 5 of the Law on Psychiatric Care names among the rights of persons with mental illness (**but not of persons with mental disorders)** mentions "respectful and humane treatment, excluding degradation of human dignity; provision of medical treatment and social assistance in conditions that meet sanitary requirements do not degrade human dignity."

5. Article 10 of the Criminal Procedure Code (CPC) specifies that "none of the parties to criminal proceedings can be subjected to violence, torture and other cruel or Article 10 of the CPC stipulates that "none of the parties to the criminal proceedings can be subjected to violence, torture and other cruel or degrading treatment", at the same time **it does not prohibit cruel, inhuman or degrading punishment**. In addition, part 4 of the Article 171 of the CPC defines the inadmissibility of the use of violence, threats or

other illegal means, endangering the life and health of people in the course of investigation.

D) The country's legislation does not regulate the use of force by law enforcement officers

6. It is important to note that the Law on Internal Forces of the Ministry of Interior does not foresee the exceptional nature of the use of force and weapons and fails to guarantee the proportionality of its application. The law envisages certain limitations to the use of special measures and weapons[4], but there are no provisions to regulate the use of physical force. Before referring to physical force, special measures and weapons, the law enforcement officer should give a warning, allow sufficient time to meet the requirements, ensure that medical care is available, submit a report to relevant supervisors, and inform the prosecutor about injury or death, according to Article 19 of the above mentioned law. The law on Police in Chapter 4 adds a little bit to the previous law with the provision stating that the use of physical force, special means and firearms "depending on the prevailing situation, remains at the discretion of the police officer".

E) Acts of amnesty for persons convicted for the use of torture contribute to the culture of impunity

7. In the Republic of Tajikistan, there is a negative practice of granting amnesty to persons convicted of torture and other ill-treatment. This creates a culture of impunity. The Criminal Code,

[4] Article 21 Without warning, weapon used in repelling an attack using weapons, military equipment, vehicles, aircraft and sea vessels, during his escape from under the protection of a weapon or by means of vehicles and aircraft, as well as the escape of low visibility and during his escape from the vehicle while driving. Weapons must not be used against women, persons with visible signs of disability and minors when age is obvious, except in cases of armed resistance or attack that threatens people's lives. Article 22. Use of weapons. Use of weapon without warning is allowed in repelling of the attack with the use of weapons, military equipment, vehicles, aircraft and sea vessels, during his escape from under the protection of a weapon or by means of vehicles and aircraft, as well as the escape of low visibility and during his escape from the vehicle while driving.
Weapons must not be used against women, persons with visible signs of disability and minors when age is obvious, except in cases of armed resistance or attack that threatens people's lives.

which includes basic rules and principles of granting amnesties, fails to prohibit granting of amnesties for certain crimes defined by the Criminal Code. As a result, amnesty can be granted under the criminal law, including for crimes of torture cruel, inhuman or degrading treatment or punishment.

8. Due to the absence of a separate article defining torture in the Criminal Code up until April 2012 prosecution of torture and other ill-treatment was carried out under other articles of the Criminal Code, including: 314 (abuse of office), 316 (exceeding of official powers), 322 (negligent), 391 (abuse of power or position).

9. Most often perpetrators are prosecuted for use of torture and other forms of ill-treatment under the articles 314, 316 and 322 and sentenced to prison or given a conditional sentence (i.e. without deprivation of liberty) or sentenced to insignificant term of imprisonment (which later almost always fall under the acts of amnesty). In exceptional cases, perpetrators may be imprisoned for 10 to 12 years. At the same time, it should be noted that these articles of the Criminal Code can be applied not only when acts of torture are committed, but also other forms of exceeding official powers, which makes it impossible to assess the extent prosecuting and punishing crimes of torture.

10. During 2007 - 2012 three amnesty acts were adopted (2007[5], 2009[6], 2011[7]). In accordance with these laws, the amnesty should not be granted to persons sentenced to imprisonment for premeditated crimes under the Articles 316, part 3 (abuse of power by the use of violence or threat of force, weapons or special equipment, and / or causing serious consequences) and 391 part 3 and 4 (abuse of power or position, exceed of official powers or omissions by the authorities that result in death, other serious consequences -part 3, committed in a combat or war - part 4).

11. Acts of amnesty can be granted in almost all cases of use torture and other ill-treatment. The provisions of the Criminal Code, which prohibit granting amnesties for certain crimes are very rarely used in

[5] The Law of the Republic of Tajikistan «On Amnesty» of June 20, 2007 № 663
[6] The Law of the Republic of Tajikistan «On Amnesty» of November 3, 2009 № 560
[7] The Law of the Republic of Tajikistan «On Amnesty» of August 19, 2011 № 505

practice (according to the official statistics one person was prosecuted under the Article 391 for the period 2007-2010). Between 2007 and 2010 18 people were prosecuted under the Article 316, but there is no information how many of them were brought to justice under the Part 3 of the Article 316 (to which the acts of amnesty were not applied).

RIGHTS OF THE ARRESTED PERSONS AND PERSONS IN DETENTION

(article 2 and 11 of the Convention, Concluding Recommendations 7 a,b,d,e (CAT/C/TJK/1) and issues 4,5,7,8 of the List of Issues (CAT/C/TJK/Q/2)

In implementation of point 7 (a,b,d,e) of the Concluding Recommendations of the Committee against Torture, the government took measures, such as the handover of sanctioning of arrest from the prosecutors to judges, exclusion of provisions from national legislation that required the advocate in a given case receive preliminary agreement of the investigator leading investigation for a meeting with his or her client. At the same time, reforms to legislation coupled with implementation of legislation, together create conditions that worsen the situation with rights of detainees. For example, according to the CPC of the Republic of Tajikistan the overall period of pre-trial detention was lengthened from 15 months to 18 months (Article 112 of the CPC RT); along with this pre-trial detention can be sanctioned based using the sole justification of the severity of the crime (part 1, Article 111 CPC RT). At the same time judges were afforded the right to extend the period of initial detention by 72 hours an unlimited number of times (part 5, Article 111). Though legislation provides for unhindered access to legal representation based on the presentation of an order or advocate's license (part 2, Article 18 Law on the Order and Conditions of Pre-Trial Detention of Suspects, Accused, and Defendants), access to pre-trial detention centers (SIZO) is carried out through receipt of special permission from the head of SIZO on the basis of internal documents that are not accessible to human rights defenders and lawyers. Holding detainees incommunicado and lack of access of relatives to detainees continue to pose serious problems that also facilitate use of torture.

12. **Fabrication of the reasons for arrest.** Since various obstacles hinder the everyday police work, police, police officers view suspects' testimonies as a main source of information about the committed crime. The information on accomplices, circumstances of committing the crime (and traces which could be fixed as evidence), and the whereabouts of the instruments of the crime or the property acquired through criminal means. Such information substantially eases the process of investigating and solving concrete crimes by the police; there is no longer necessity to work out several versions of the events and in a place of searching for evidence you need to only complete the procedures for processing the evidence.

13. The police officers register the arrested person suspect in administrative crime (rather than a suspect in criminal investigation) in order to have a possibility to "cooperate" with the suspect and thus avoid responsibility for unjustified arrest and problems with gathering required documentation. For example, in the criminal case of *"53 from Istaravshan" administrative arrests had been applied against 19 persons for the period of 5 to 15 days. During this time they were contained in the buildings and offices of the representatives of security institutions, and were subjected to torture. As a result of the use of torture, they confessed in committing the crimes and the preventive measures in the form of detention under a criminal charge were applied against them.*

14. Police officers may call the suspect to testify as a witness in the case and hold him/her as long as needed to obtain the necessary information. According to the law, the witness does not have a right to a lawyer. In some cases, a person is not even granted the status of a witness, and is being detained in police department under the pretext of carrying out "conversations" and "operative measures". Such "conversations" are not defined by the law. However, according to common sense, they should be voluntary. In reality, a citizen brought to a "conversation" practically finds him-/herself deprived of freedom and cannot choose to leave "the conversation" at a chosen time. The actual purpose of detaining under the pretext of conducting "conversations" is avoiding the trouble of formalizing the acts of arrest and thus avoiding responsibility for an unjustified arrest. The avoidance of official arrest and interrogation during "conversations" allows the police officers to limit or exclude suspects' contacts with their legal representatives and family members. This eases the process of obtaining information from the suspects.

Arrest procedures

15. The national legislation does not prohibit arbitrary arrest and pre-trial detention.

16. The legislation of the RT distinguishes: (a) *Detention within the framework of the criminal process* (as a procedural restrictive measure) and *administrative process* (as a measure of enabling proceedings regarding an administrative offence). In the criminal process, the arrested suspect is brought to the investigative institution and detained in **short-time custody** (up to 12 hours[8] , but not longer than 72 hours[9] from the moment of arrest) in special detention facilities defined by the law and the Criminal Procedural Code. In the administrative process, a person may be detained in exceptional circumstances for short period of time (up to 3 hours[10], up to 30 days[11], up to 72 hours[12]). However, according to part 4 of Article 756 of the Code of Administrative Violation, the dates of the administrative arrest are counted not from the moment of the actual physical arrest but from the moment of delivery to the detention facility (and for a person in a state of alcoholic intoxication, from the moment of their sobering); (b) *Arrest, detention and home arrest* within the framework of criminal proceedings are considered as types of preventive measures and are applied on the basis of a judge's decision or court decree, in accordance with Articles 104, 110, 111 of the CPC (c) *Forced detention in a medical or correctional institution* is permitted only upon a decision made by a court or a judge, in accordance with part 2, Article 11 of the CPC.

17. The legislation does not foresee for the **definitions of the terms "arrest" and "arrested person".** The CPC does not define the status of the arrested person (until criminal case is initiated), procedures of arresting and brining the suspect for interrogation, obligation of the law enforcement institution to explain the suspect their rights at the moment of actual arrest (and not upon bringing them for interrogation at the investigative body), in accordance with

[8] With respect to a suspect, until the initiation of a criminal case, according to p.p. 1, 2, art. 92 of the CPC of the RT.
[9] According to p.3, art.92 of the CPC of the RT.
[10] With respect to a person who have committed an administrative offence, according to p.1, art.756 of the CoAO of the RT
[11] In connection with a particular necessity, with respect to persons without a defined place of residence, and upon the sanction of the Prosecutor, according to p.1, art. 756 of the CoAO of the RT.
[12] P.2, art.756 of the CoAO of the RT.

part 2, Article 94 of the CPC. This is precisely the situation of the suspects: during the time between the moment of actual arrest and the moment of filling in the documentation of the arrest, no explanation of rights to the suspect is provided.

18. According to the norms of the Law on the Order and Conditions of Pre-Trial Detention of Suspects, Accused, and Defendants, the temporary detention centers (IVS) are intended for detention of suspects, accused and defendants, on the basis of the protocol of arrest in accordance with Article 5 of the law. The legislation does not define the time period for placing the arrested person into the temporary detention center, which may result in violation the rights of the detained.

19. The time frame for pre-trial detention, which is not ordered by the court, can be up to 12 hours, but not more than 72 hours, according to part 2, Article 92 of the CPC. The indictment should be presented to the suspect no later than 10 days from the moment of applying the preventive measure (from the moment of actual arrest). Accordingly, the person must be brought in front of a judge before 72 have passed. However, part 5, Article 111 of the CPC **allows the court to extend the 72-hours arrest for unlimited number of times** and, based on Article 112 of the CPC, order detention for the period of 2 moths, but no longer than 18 months. The indicated periods of pre-trial detention are excessively extended.

20. Part 1, Article 111 of the CPC establishes as the rule, pre-trial detention based solely on **"gravity of the crime,"** irrespective of other potentially mitigating factors.

21. ***Access to legal representation from the moment of actual arrest***. The Criminal Procedure Code defines that the "defense counsel is permitted to the participation in the criminal case from the moment of actual arrest of the suspect". The arrested person is acknowledged as a suspect from the moment of drawing up the minutes of arrest that is most often formalized upon i9nitiation of criminal case, which may take from several hours to several days from the moment of actual arrest. In this period of time, the suspect has not legal status.[13]

[13] In the Resolution of the Plenum of the Supreme Court of the Republic of Tajikistan "On the application of the criminal law and criminal procedure law to

22. No **requirement to indicate, during the formalization of the arrest, the names of the police officers who have directly carried out the arrest, is a serious shortcoming in existing legislation**. Instead, the registration logbook is filled out and signed by the investigator assigned to conduct the case, who as a rule does not participate in the arrest. The **absence of the requirement for the officers of the law enforcement bodies to carry visible identification numbers** allows the law enforcement officers to use torture with impunity from the moment of actual arrest to the official registration of the arrest by the investigative body. As a rule, the operative police officers do provide the arrested person with their names and ranks, thus there is no mechanism for establishing their identity.

23. ***Lack of access to legal representation while in detention*** is a serious problem in the law enforcement practice of the country. Although the legislation no longer requires for the defense counsel to obtain permission from the investigator to meet with their client, in practice those restrictions are persistent. While in criminal cases, lawyers may sometimes obtain access to their clients, this is practically impossible, when these cases are investigated by the national security bodies. The lawyers are also prevented from speaking to their clients in conditions of privacy and for sufficient period of time, because of the restrictive presence of law enforcement officers in the room.

24. The practice of engaging so-called "pocket advocates" in criminal proceedings is persistent. “The pocket advocates” are called by the investigative authorities. They provide no legal assistance to their clients, but sign all investigative documents provided by the investigative authorities. As a result, the defendants are de facto denied effective legal assistance. In the case of “53 from Istaravshan", the **majority of defendants waived their right to legal representation** during the first days of detention. However, this was done in absence of a lawyer**,** which contradicts p.1, art.52 of the CPC of the RT; 38 people waived their right from legal representation and approximately 10 people had never seen their assigned defense counsels during the periods of their detention,

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combat torture" from June 26, 2012 provided the concept of the actual arrest as "deprivation of a person to move freely and perform other actions on your own".

application of preventive measures against them (sanctioning of arrest), and preliminary investigation. The rest of the people had seen their counsel periodically; however, many investigative actions took place without the presence or knowledge of the lawyers. The 10 assigned defense counsels asked their defendants to sign the procedural documents without previously reading them.

25. During the meeting between the defense counsel and their client, all the technical equipment such as audio recording devices and mobile phones are seized, thus depriving them of the means to collect and prepare the evidence in the case. In violation of the norms of procedural legislation, the defense counsels are prohibited to keep written record of the trial proceedings on the computer, with the justification that the law allows only for writings in the (paper) notebooks or audio-recordings.

26. The low quality of the defense lawyer's services is a problem in criminal cases in general and particularly in torture-related cases. This is caused by limited or insufficient knowledge of the lawyers, and also by their reluctance to get involved with the law enforcement bodies as this might affect negatively their work on other criminal cases.

27. ***Notification of a person's family on the arrest***. The legislation does not define sufficiently the obligation to inform the family members about the arrest of the person. According to part 1, Article 100 of the CPC, the relatives of the arrested person should be notified on his/her arrest within 12 hours. At the same time, the legislation does not require that family members are informed about the location of the person if they are transferred from one place of detention to another.

INVESTIGATION OF TORTURE

(article 12 of the Convention, concluding recommendation 17 (CAT/C/TJK/CO/1) and Issues 33, 37 (CAT/C/TJK/Q/2)

In Tajikistan unified official statistics related to complaints of torture are not kept, there are not unified mechanisms for reaction and investigation of incidences of torture, and there is not an exclusive jurisdiction for torture cases. The Prosecutor's Office, which could perform the function of an independent mechanism of investigation,

does not have the opportunities to carry out investigative activities, necessary for investigation of crimes, including crimes of torture.

28. ***Scale of torture, cruel and degrading treatment in Tajikistan***. Despite evidence collected by NGOs confirming the widespread and systemic use of torture, there is no official data about the actual scale of the problem. There is no unified system of collecting statistics about the number of complaints submitted to the state institutions on torture issues, number of initiated criminal cases and number of people sentenced. Following the amendment of the Criminal Code in April 2012, the prosecutors and other competent bodies hold responsibility for keeping statistical criminal records (articles 314, 316, 322 of the Criminal Code of Tajikistan). Prior to the introduction of the special article on torture to the Criminal Code of Tajikistan in April 2012, the investigative institutions were unable to record relevant statistical information about torture crimes.

29. Torture and cruel treatment is widespread. At the same time torture is used not only against the persons in detention but also against their close relatives.

30. Prosecutors often do not react and do not start investigation in allegations of torture. Victims wait years before investigation is initiated regarding failure to investigate or unjustified termination of investigations.

31. Use of torture is common during arrests and preliminary investigations in criminal cases by the law enforcement officers from the Department on Combating Organized Crime of the Ministry of Internal Affairs of Tajikistan, investigation department of the Ministry of Internal Affairs and State Committee on National Security. Majority of victims of torture in detention are those suspected or accused of terrorism and extremism.

32. The most common forms of torture are: *Physical torture*: "incommunicado" detention, electric shocks, ice-cold showers in winter in the open air, beatings, beating with police baton, forcing people to sit in a split, adhesive tape binding, beating heels and kidneys with baton, keeping in cold basements without bed sheets, burning of different body parts with cigarettes, rapes, undressing women naked and photo shooting with threats of black mailing, tying of the plastic bottles filled with water or sand to genitals, asphyxiation with plastic bags, etc; *Psychological torture*: calling of close relatives and their humiliation in front of the arrested person, threatening to

undress close relatives, particularly wives and daughters and spreading of their photos in the Internet, forcing to strip naked, torture of other detained people in presence of a newly arrested person; The *following equipment is used for torturing*: electric wires, plastic bags and plastic bottles, police batons, ***"sangtuda"*** (equipment used as a visual aid for physics classes) ***"rogun"*** (field telephone, equipment used for checking cables in military field communications. "Sangtuda" is providing short variable discharge current less than in "Rogun". "Rogun" gives a constant current when turning the special handle continuously).

33. ***Investigation of alleged torture cases.*** According to the national legislation, criminal investigation may be opened upon submission of verbal or written complain by the victim, information provided by an official, information available in the media , information obtained by an interrogator, investigator, prosecutor (p.1 of article 140 of the CPC of Tajikistan). The complaint shall be considered within 3 days, and in exceptional cases upon the prolongation by the prosecutor – within 7 days. In case the prosecutor refuses refusal to open criminal investigation, a copy of a document with information about the appeal procedures shall be provided to the applicant in accordance with parts 2, 3 of article 149 of the Criminal Code of Tajikistan. The applicant may appeal the decision in front of the higher prosecutorial body or the court within 14 days upon receipt of the prosecutor's decision. The law does not provide for procedures for informing the detainee as to whether his/her complaint was received by the relevant addressee.

34. A complaint about use of torture provides the grounds according to which a criminal investigation may be initiated in accordance with part 1 of article 146 of the CPC. The applicant should be provided with d a confirmation document (stating that the application was accepted, registered and considered in accordance with part 1 of article 145 of the CPC). The confirmation document should include information on the appeal procedure (p.7 of art. 145 of the CPC of Tajikistan). Then, a pre-trial investigation is conducted by the investigator or the prosecutor. Pre-trial investigation shall be completed within 2 months period from the moment of the initiation of particular criminal case as in accordance with article 164 of the CPC.

35. The prosecutor rarely takes initiative to review the grounds for opening criminal investigation based on evidence indicating possible

use of torture. In most of the cases, such investigation is carried out only after the victims or their representatives have filed a complaint.

36. Law defines two stages of investigating complaints: review of existing evidence and preliminary investigation. The review is conducted in order to define basis and grounds for initiating a criminal case and full scale investigation process. Investigation is the process of evidence collection and identification of the perpetrator. Investigation is considered completed upon the announcement of the indictment (provided the investigation concludes that a crime was committed and sufficient evidence is collected against alleged perpetrators) or by decree on resuming the investigation. Reviewing stage is not necessary if there is credible evidence that the crimes was committed, thus the investigation in this case may start immediately.

37. Legislation is providing a list of institutions responsible for considering citizens' complaints. This includes the courts, prosecutors' offices and internal security services of the Ministry of Internal Affairs and the State Committee of National Security. Investigations of torture cases are mainly conducted by the prosecutor. According to the investigative jurisdiction, the review and investigation of torture complaints are conducted by the prosecutors' office in the region where police officers who allegedly committed the crime work. In most cases it is police officers who use torture. In some situations, the case may be taken by higher prosecutorial body for review and investigation. The Prosecutor's office is closely cooperating with the police during the investigation of crimes. Prosecutors and policemen from the same regions have close professional links and sometimes even personal relations. As a result, this practice could negatively affect the objectivity and neutrality of prosecutors.

38. Consequently, the district prosecutors do not have adequate capacity to conduct investigative activities, including in torture cases. In order to undertake these activities, the prosecutor office has to file requests/orders to the district police office. Thus the collection of evidences against police officer suspected of use of torture is carried out by his/or her colleagues and sometimes even by the suspect.

39. Not only do uniform of single mechanisms of reaction to and investigation of incidences of torture not exist, but the Criminal Procedure Code does not include an exclusive jurisdiction for cases

of torture. As was noted above, complaints about torture can be submitted not only the Office of the General Prosecutor, but also to the Ministry of Interior, State Committee on National Security, Drug Control Agency and other law enforcement agencies whose personnel are accused of using torture. In this case, review of the complaints of torture is carried out by the security service of each of these agencies. If a criminal case is not opened, the information may not be passed to agency responsible for oversight, the Prosecutor's Office. In this way, investigation into incidences of torture is not only ineffective, but it also cannot be impartial and independent as required by article 12 of the Convention against Torture.

40. Review and investigation of torture complaints are often not thorough and conducted with delays. Furthermore poor reviews and investigations contribute to unjustified decisions to resume further consideration of torture complaints without providing necessary arguments and evidence. Lack of adequate review and investigation, and unjustified decision regarding torture complaints might be appealed in higher prosecutor body or in court.

41. ***Independence of investigation***. Lack of full independence of the prosecutor offices results in ineffective investigation of complaints regarding use of torture by police officers

42. The law envisages that the prosecutor carries out both functions - criminal prosecution and supervision over the legality of the investigative process (preliminary investigation and criminal investigation). Within the criminal prosecution, the prosecutor investigates various types of crimes and presents indictment against the state institutions in courts, including the cases where the investigation was done by other agencies (i.e. police). While presenting the accusation in the court, the prosecutor is referring to information received during the criminal investigation. By revealing violations (including torture) during the investigative process, the prosecutors also undermine the legitimacy of the collected evidences on the criminal case and weaken the arguments presented in the indictment.

43. In practice conflicts between criminal prosecution function and supervision over the legality of the investigative process are often solved in favor of strengthening accusatory position rather than

resolving complaints regarding torture and other violations against the defendants.

RIGHT TO COMPLAIN

(article 13 of the Convention, concluding recommendation 18 (CAT/C/TJK/CO/1) and issues 34, 35 (CAT/C/TJK/Q/2))

The Committee against Torture in its concluding recommendation (18a) was concerned at the absences of a suitable legislative and practical mechanism allowing victims of torture and ill-treatment to submit complaints and enjoy the opportunity for timely and impartial consideration of their cases. Unfortunately, practically the mechanism of receipt and consideration of applications and complaints about use of torture have not changed. After submitting a complaint about torture, the complainant either is not informed about the results of the review of the complaint or is informed of the results without being provided with justification for any decision taken. The system of registration and referral of complaints in places of preliminary detention and in correctional facilities does not fully eliminate the possibility that representatives of the administration interfere in the form of reading the content of complaints and avoiding sending them further to the addressee. Lack of access on the part of victims of torture, their relatives and advocates to the materials of investigation is a serious cause for concern, as in accordance with the provision of the Criminal Procedure Code this right exists only after the investigation is concluded (article 42 of the CPC RT). The adoption of a specialized law on the protection of victims and witness participating in criminal processes notwithstanding, these mechanisms do not exist in practice.

44. In accordance with existing legal norms, the prosecutor's office shall respond to notifications, complaints and other communications (including communications about torture). If the notification or complaint was not followed up by an investigation, the applicants should be informed about the appeal procedure, and their right to refer to a court, when envisaged by law. In practice, the applicants are only informed about the decision on their complaint: initiation of criminal case (if there is satisfactory evidence) or refusal to initiate criminal case. Often, the applicants are not aware about details of the review or the answer does not provide sufficient information

about grounds for the respective decision. There is no information regarding actions undertaken to review the received complaint.

45. Chapter 14 of the CPC envisages verbal or written complaint process and against activities and decisions of interrogators, investigators, prosecutors, courts and judges. The complaint is addressed to state body/state officials responsible for the case during the preliminary investigation, investigation and trial. Article 122 of the CPC prohibits the person against whom the complaint was lodged from reviewing the complaint. In accordance with part 2 of article 122 of the CPC "The prosecutor or judge shall comprehensively review all argumentation in the complaint and shall request, **if necessary**, additional materials, and at the request of the applicant request, shall request authorities' explanation regarding the actions and decisions that are the subject of the complaint". This statement of the law allows the investigators to limit their review to the complaint's content without additional verification of the arguments indicated in the complaint.

46. Procedure on complaint review in the articles 123-125 of the CPC envisage the following: a) submission of complaint regarding the actions of investigator, interrogator to the prosecutor; the decision on the admissibility of the complaint should be made within 3 days; b) appeal to the higher prosecutor; c) right to appeal in court (regarding refusal to investigate a complaint regarding a crime or violation of law during the initiation or termination of the criminal case) within 1 month from the moment of receipt of the notification from the prosecutor; the appeal shall be considered within 10 days period; court decision cannot be appealed.

47. In practice, the applicants face serious obstacles during the appeal procedure: prosecutors do not provide their response and the court does not bring positive decision on admissibility of the complaint, referring to limited number of issues that can be taken under consideration by the court under the article 124 of the CPC. Thus the state has failed to implement international standards on victims right to make a complaint against state officials and criminal investigative bodies to a court (with further consideration in various instances, as minimum one higher instance court – in appeal procedure/or cassation procedure).

48. The legislation on procedure and conditions in detention of suspects, accused and persons on trial and Criminal Code of

Tajikistan envisage additional guarantees of the right to complain for people kept in pre-trial detention in penitentiary institutions. Complains addressed to the prosecutor, court, Ombudsman office or other state bodies authorized to monitor conditions in detention facilities shall not be censored and shall be forwarded in the sealed envelope not later that the next working day from the date of submission of the application or complain. Notifications and complaints addressed to other state bodies, public organizations and **defense lawyers** shall be registered by the administration of an institution and forwarded accordingly but not later that three working days (except for week-ends and holidays) from the date of submission. Complains on the actions and decisions of court, prosecutor, investigator or interrogator shall be forwarded in accordance with the regulations of the CPC, but not later than three days from the date of submission. Responses to the notifications and complains are announced to the suspect, accused and defendant who filed the complaint with a notification of receipt attached to the personal files. It is forbidden to prosecute the suspects, accused and defendants for notifications or complains the make regarding violations of their rights. Penitentiary officials found guilty for these violations are brought to liability in accordance with the legislation of Tajikistan. The legislation does not regulate the procedures on acquisition and review of the complaints, as this issue is regulated by administrative regulations of respective institutions, which are not public.

49. At the same time the existing procedure on complaints made to the respective state institutions and human right bodies does not completely prevent the penitentiary administration from accessing information about the content of the complaint and failing to forward the complaint to the respective recipient. In accordance with the present legislation registration of the complains and notifications from people detained in pre-trial detention and penitentiary facilities is handled by the administration of the institution that is later responsible for forwarding the complaints to the respective recipients. The detainees do not have realistic opportunity to verify whether the administration of the penitentiary institutions respects the prohibition of censorship and fulfills its obligations to forward the complaint to the recipient.

50. According to the opinion of the human rights activists and lawyers the effectiveness of the prosecutors work supervising the

legality of execution of criminal sentences and adequacy of conditions in pre-trial detention centers and penitentiary institutions is not very high. Systematic monitoring (in practice once a month) conducted by prosecutors in the penitentiary institutions is aimed mainly at assessing the quality of the registration documents issued by the administration of the penitentiary institution. At the same time the real picture of respect for inmates' rights is not given attention.

51. ***Applicants access to investigation process and investigation materials***. The CPC provides to the victim of crime (including torture) or his/her representative the possibility to request initiation of certain investigation activities, right to participate in the investigation activities with permission of the investigator, right to provide evidence, right to be informed about the decisions made on the case, right to access relevant materials, etc. the person filing a torture complaint or any other complaint is not automatically identified as a victim. The person receives the status of a victim based on a formal decision of the investigator.

52. The right to access investigation materials provided by the CPC refers only to the participants of the criminal investigation, including the victim. The prosecutors and investigators have no obligation to provide information on the content of the case to a person who submitted the complaint regarding use of torture in case the complaint was found inadmissible, no criminal case was initiated and the applicant was not acknowledged as the participant of the criminal justice process (as victim).

53. The list of rights included in article 42 of the CPC includes another set of obstacles for victims of torture, in particular – the claimant is allowed to access materials of the criminal case only upon completion of the pre-trail investigative process. As a result, the pre-trial investigation does not reveal all necessary evidence that could have been identified if the victim have had participated in the process. *Question of contradictions between article 42 of the CPC and the Convention against Torture was raised in the Constitutional court of Tajikistan in the complaint regarding protection of interests of the representative of the deceased victim of torture, Mr. Juraboi Boboev. The son of Mr. Boboev died as a result of torture committed by the representatives of the law-enforcement. Although the criminal case on this issue was resumed, for the two years neither Boboev nor his lawyer have been able to obtain information about the*

reasons of termination of the criminal case as required by article 42 of the CPC. Unfortunately, the Constitutional Court of Tajikistan, while considering this case, did not find any contradictions between the Constitution of Tajikistan and the provisions of the International Covenant on Civil and Political Right and Convention against torture.

54. ***Protection of victims and witnesses.*** Regardless of the context in which torture was committed, there is an issue of providing protection to the persons complaining about use of torture, their families and witnesses testifying against state officials. Part 3 of article 12 of the CPC states that if there is sufficient information suggesting that victims, witnesses and their families may be at risk, the court, judge, prosecutor, investigator and interrogator are obliged to take adequate legal measures to protect the life, health, dignity and property of such persons. The Law on State Protection of the Participants of Criminal Proceedings adopted in 2010 envisages long list of measures and guarantees on protection of victims and witnesses of crimes. However, the law is not implemented. As a result, persons complaining to the prosecutor office about use of torture, as well as witnesses and their relatives are subjected to additional pressure. In some cases they are subjected to violence. The detainees complaining about torture and cruel treatment by representatives of the penitentiary administration are in worst situation. During the review and investigation of their complaint the detainees are never transferred to another facility, where they could avoid pressure and threats by the state officials against whom they complained. Lack of protection measures for the applicants and witnesses' contributes to the ineffectiveness of the investigation process. Many victims often withdraw their complaints. Many victims decided not to file a complaint at all. *For example, 21 August 2012 after the conclusion of consideration by the city court of Yavan district of the criminal case against police officer Mashraf Aliev on charges of torture of a juvenile, the relatives of the defendant openly threatened the victim, his parents, and the advocates for the victim, Sharipov A.P and Kulmatov A. As a result of a scuffle (which was caught on video) the mother of the defendant took the official identification of the advocate Sharipov, A.P. from his front breast pocket. During the incident, law enforcement personnel did nothing. On the next day, a complaint was made to the Department of Internal Affairs of Yavan, but the application was left unconsidered. On 28 August 2012 the advocate appealed to the Office of the Prosecutor in Yavan city about the actions of the mother and the inaction of the police, who were supposed to guarantee security for the proceedings. Following this incident, court proceedings in the case were announced to be closed*

in the interest of protecting the rights of the victim, but state protection for the victim and his lawyers was not forthcoming. As of 10 October 2012, the Prosecutor's Office had not informed the complainant as to any measures taken with respect to incidences of pressure on the victim and lawyers, and the theft official identification of the advocate.

ROLE OF MEDICAL PERSONNEL IN DOCUMENTING AND PREVENTING TORTURE[14].

The recommendation of the Committee against Torture related to the creation of an independent institute of forensic medical examination was not implemented. In Temporary Detention Centers there are not staff doctors and there is no medical examination conducted at the moment of factual arrest. The Criminal Procedure Code of the Republic of Tajikistan does not guarantee the right to medical examination and does not specify the procedure by which medical examination should take place. Law enforcement personnel are almost always when judicial medical expertise is being conducted, which leads to the situation that the supposed victim of torture does not have the opportunity to communicate to the examiner the circumstances under which he/she sustained the injuries.

55. The delayed forensic examination of torture victims and the absence of independent judicial review contribute to the culture of impunity in the country. CPC specifies that the examination shall be ordered at the discretion of the investigator. At the same time, it does not clearly define procedures for judicial - medical examination at the request of a defense lawyer. There is no doctor at the detention center, and thus medical examination cannot be carried out immediately after the person is detained. As a result, staff and investigators call doctors from local city hospitals to examine detainees that were subjected to beatings and torture. These doctors then report on absence of injuries.

56. Very often, the medical examination is a standard procedure. The medical condition of torture victims is described in standardized

[14] The present section was prepared based on the results of monitoring of medical institutions "Effective documentation of torture and other ill-treatment by medical institutions of Tajikistan" by Human Rights Center Dushanbe 2012

statements with inaccurate description of the sustained injuries or conclusions about the good health.

57. The criminal procedure legislation requires a medical examination, which includes a procedure distinguishing marks, traces of the crime, bodily injury. The inspection may be conducted against the will of the suspect, accused, victim and witness. This procedure is performed on the basis of the investigator's request, in the presence of witnesses and, if necessary, in the presence of a physician[15].Thus, although this action includes body inspection or establishment of his/her condition, it can be done without a doctor since his presence during this step is optional. If the investigator cannot conduct the examination due to gender-related sensitivities, the CPC considers mandatory medical examination in the presence of witnesses of the same sex as the victim of torture. The CPC does not recognize the rights of the examined person. In addition, the law does not regulate the procedure of examining the alleged victim of torture, including situations when the doctor is not involved. Also, the CPC does give details on procedures of documenting and keeping recordings of the examination and what issues should be reflected in the documentation.

58. The Law on the Order and Conditions on Pre-trial Detention of Suspects, Accused, and Defendant requires that the suspect, accused or defendant undergo medical examination immediately after being transferred to the detention facility, in line with provisions of internal order of the facility that are not available to the public[16]. In this regard, it is not clear what is the purpose and procedure of the medical examination of suspects and accused persons and whether the established procedures allow identifying and documenting the cases of torture.

59. In the institutions of forensic examination there is no unified standard way of documenting medical examination of alleged victims of torture. For example there is no requirement to list all persons present during the examination, including the police. Also there is no requirement to describe the behavior of those accompanying the prisoner, include a full description of all of diagnostic tests, photos of

[15]Article 186 CPC RT.

[16]Article 16 of the Law of RT "On the procedure and conditions of the detention of persons suspected or accused"

all injuries. The doctors are also not obliged to obtain informed consent from the examined person, and so on. Experts do not always provide a copy of their conclusion to the examined person.

60. The country's legislation does not require medical staff to report crimes to the law enforcement authorities.

61. Medical experts often tolerate torture. Monitoring conducted by human rights organizations indicates that most experts admit that they have dealt with cases when they identified injuries from torture on detainee's body, while the detainees denied that torture was committed against them. Experts pointed out that investigation of the cause of injuries does not fall under their competences, since they are only obliged to conduct examination and issue a conclusion. Very often police officers are present during the examination, claiming to provide protection to the medical personnel. As a result, the alleged victim of torture is prevented from explaining to the expert the circumstances of the sustained injuries. Programs for the preparation of medical personnel on the standards of the Istanbul Protocol do not exist. International organizations and NGOs conduct these types of trainings, but they are not sufficient. For example, 27.09.2012 the Collegium of Cassation of the Supreme Court of the Republic of Tajikistan resumed consideration of the criminal case know as the case of «53 from Istaravhshan,» during which the prosecutor shared the conclusions of investigations into complaints of torture lodged by 49 defendants and one witness about the use torture. The Prosecutor concluded not to open a criminal case based on the allegations. In the course of the proceedings, it was revealed, that the expert who had conducted the examinations had not been trained according to the Istanbul Protocol, did not know what constituted torture, and admitted that while conducting the examination he did find traces of a broken bone, but that it was not within his competence to determine the time and cause of the injuries.

PRACTICE OF COMPENSATION TO VICTIMS OF TORTURE

(article 14 of the Convention, Concluding Recommendation 18 b (CAT/C/TJK/CO/1)

Torture is not named among the list of justifications, on the basis of which a victim can receive compensation for damages. The Legislation of the Republic of Tajikistan does not contain provisions about fair and adequate compensation for inflicted harm "for the

possibility of full rehabilitation," as required by part one of Article 14 of the Convention against Torture. Human rights defenders are unaware of instances of payment of compensation in cases of torture, there are nearly no experts and specialists that could assess moral damages inflicted through torture. Victims of torture do not file suit seeking compensation fearing further scrutiny by personnel of law enforcement agencies.

62. According to the CPC and the Civil code, harm caused to a citizen as a result of the use of torture and other forms of ill-treatment is subject of compensation. The institution that carries out the criminal investigation is obliged to inform the victim of torture about their right to file a compensation claim for material and moral damage and also about the procedure of filing such a suit[17].

63. According to Article 461 of the CPC, if the victim was forced to give a false confession (which came out as a result of the use of violence, threats and other illegal measures), this does not affect victim's right to compensation. This measure presupposes that there is presence of documentary evidence of coercion to give false testimony, in the form of a conviction of the guilty official, which would also serve as justification for compensation. Correspondingly, the "establishment by the investigative bodies, prosecutor, or court of the fact of using illegal measures" is obvious according to part 4, Article 461 of the CPC. Thus, first a registration of the victim's complaint on the crime, then the investigation and passing the sentence should take place, and only afterwards comes the right to demand the compensation of damages. *Mirzokhon Karimov, who was arrested on 13.06.2009 with the purpose of obtaining admission of guilt, was beaten by the police with a baton on the head and the back, and handcuffed to a radiator battery. Unable to endure the inflicted physical pain and psychological pressure, Karimov signed the deliberately false admission of guilt in committing the crime. As a result, a criminal investigation was opened with respect to Safarali Soliev and Ibrokhim Toshev. The investigation was later resumed on the basis of an amnesty act. Karimov filed a law suit for compensation, but the court declared the complaint inadmissible, because the criminal investigation against the officers in question had been closed, therefore no basis for bringing the suit and satisfying the claims existed.*

[17] The decision of the Plenum of the Supreme Court of the Republic of Tajikistan #1 of 25 June 2012 "On Application of the Norms of Criminal and Criminal Procedural Legislation on Counteracting Torture".

64. According to part 2, Article 12 of the CPC of the RT, "harm caused to a person as a result of violation of their rights and freedoms in *criminal proceedings* is subject to compensation …" The state compensates in full volume the damage inflicted to a citizen as a result of illegal arrest, detention and home arrest, temporary removal from office, placement in a medical establishment, conviction, application of preventive measures of medical nature[18]. Torture is not named among the list of reasons for which the compensation is prescribed. Besides, the legislation of the RT does not contain a provision on a fair and adequate compensation for the purpose of as full rehabilitation as possible as required by p.1, art.14 of the Convention against Torture provides. Article 462 of the CPC of the RT lists the possible compensations: material (property) damage[19], *consequences* of moral damage, restoration in pension, labor, housing and other rights.

65. The courts in the country do not order that compensation be paid to victims of torture. The country lacks specialists able to assess the psychological suffering sustained by victims of torture. Torture victims and their families do not file compensation claims, because they are afraid of retribution. *I. Bachajonov died in the strict regime correctional colony as a result of torture. In the course of criminal proceedings against the employees of the correctional colony, the representatives of the deceased were informed about their right to file a civil complaint and demand compensation from the state. In April 2012, the spouse of Bachajonov, Savrinisso Gulova, filed a law suit against the Main Department of Implementation of Criminal Punishment of the Ministry of Justice of the RT and the Ministry of Finance. Mrs. Gulova is seeking compensation of 655 thousand Somoni for the damage caused by the loss of the breadwinner (following an evaluation of moral damages conducted by an expert, Mrs. Elena Volochay form Ukraine). To date, 12 judicial hearings have taken place in this case, in the course of which the authorities refused to recognize the basis for the law suit and demanded that*

[18]According to p.1, art.461 of the CPC of the RT.

[19] I.e., compensations of the salaries, pensions, allowances, other financial means which he/she was deprived of as a result of illegal actions, illegally confiscated or converted to the income of the state on the basis of sentences or decisions of the court, property, fines and procedural expenses exacted for the execution of an unlawful sentence of the court, fees paid for rendering legal assistance, and other expenses

compensation should be sought from employees of the correctional colony, who were found guilty by the court for the use of torture. During the court proceedings, the specialists of the Ministry of Health were asked to testify in the cause. However, the Ministry responded that they lacked employees who could provide expert opinion about the evaluation conducted by Mrs. Volochay. The Ministry of Health requested the Commission of Forensic Psychiatrists to examine Gulova S. and to provide their opinion. Mrs. Gulova lawyers rejected the option. The court subsequently requested the Chair on Psychology of the Tajik National University to carry out the psychological examination of Mrs. Gulova. This compensation suit is in its 7th month of consideration.

RIGHTS OF THE CHILD

(concluding recommendation 9 (CAT/C/TJK/CO/1)

The new Criminal Procedure Code adopted in 2009 included significant improvements in the sphere of juvenile justice. At the same time, the practice of pre-trial detention in cases of juveniles is widespread, parents are not informed of the arrest of juveniles in a timely manner, interrogations are conducted (often at night) without the presence of parents and legal representation, and torture and ill-treatment are used in juvenile cases. The law does not provide for a direct obligation to conduct medical examination upon entrance to the juvenile colony. There is a practice of sending children to the disciplinary isolator for violations of the regime in detention centers. Use of corporal punishment is a widespread practice, in families and in educational institutions, and it is not regulated by domestic legislation.

66. ***Juvenile Justice***. The Republic of Tajikistan has taken certain measures for the reform of the juvenile justice system in the recent years. A National Plan of Action for Juvenile Justice System Reform 2010-2015 was adopted by the Commission on Child Rights in 2009. The Plan is based on internationally recognized principles and most of objectives it sets are appropriate. The Plan has limitations. Implementation of activities scheduled for the first years (2010-2011) was limited. The cost of implementation has not been calculated, for

example, and coordination mechanisms are not yet operating effectively[20].

67. The national legislation of the Republic of Tajikistan does not contain any special provisions related to the right of the child to be free from torture and other degrading treatment. There is no separate Law on protection of the rights of the child. In 2008 the Chairman of the National Commission on Child Rights under the Government of the Republic of Tajikistan adopted and recommended for using a Child Protection Policy for all closed facilities for juveniles. This document contains many important provisions and guaranties but unfortunately it does not have legally binding force for application by the relevant ministries and agencies. The Complaints Procedure for Closed Institutions for Children was developed by the National Commission on Child Rights. Besides some closed institutions for juveniles elaborated Child Protection Procedures for the Implementation of the abovementioned Policy. These procedures do not have binding character because they were not approved by the relevant ministries and agencies (Ministry of Internal Affairs, Ministry of Education, ministry of Justice). These procedures are not applied on practice.

68. A revised Code of Criminal Procedure was adopted in 2009. The Code has separate chapter (# 44) "Proceeding in criminal cases involving minors" which sets out due process guarantees for minors accused of committing a crime. The Code makes several important improvements in juvenile justice. It recognizes the right of prosecutors, and police inspectors with the consent of a prosecutor, to divert cases of first offenders accused of minor offences[21]. The right of a child to have legal assistance as from the moment of arrest and the right to not be questioned unless a lawyer is present are recognized[22]. Detention before trial is limited to 2 months, but this can be extended by 6 months, when the accused is a juvenile[23]. The legislation in force allows juveniles may be held in police custody for **72 hours** before being presented to a judge[24].

69. In general, any person accused of an offence punishable by more than 2 years of imprisonment may be detained before and

[20] National Plan of Action for Juvenile Justice System Reform 2010-2015 ("NPAJJ") Objective 1, Activities 1 and 2, p.9
[21] CPC, Art.432
[22] CPC, Art.49 and 227(3)
[23] CPC, Art.112(1) and 427(3)
[24] CPC, Art. 92.2

during trial, if there is evidence that accused may try to flee or interfere with the investigation or legal proceedings. However, accused juveniles may be detained "only in exceptional cases for committing a very severe crime."[25] Very severe crimes are those punishable by a prison sentence of 12 years or more, and are rarely committed by juveniles[26]. It appears that this norm is not applied in practice as detention before the court trial is a wide spread measure.

70. Minor's parents or other legal guardians shall be notified whenever the minor is arrested, detained or has his/her term of incarceration extended[27]. . The national legislation does not contain standard on immediate notification of parents and other legal guardians about fact of the detainment of juvenile. There are cases when parents are notified about the fact of the detainment of the minor in 24 hours after arrest or they are not notified at all that his/her child is in the Investigative Isolator.

71. The new CPC does not contain very important standard on separate detention of children and adults. The Law of the Republic of Tajikistan "About the order and conditions of detention in custody" allows in exceptional cases with the consent of prosecutor to place minors together with adults if the minor characterized positively, if he/she is a first offender and the offence is of minor or medium gravity[28]. The Law does not contain comprehensive and clear list of such cases. Various sources informed that juveniles confined in pre-trial detention facilities other than the Dushanbe facility are not separated from adults[29].

72. According to Supreme Court Plenum decision No. 6 of 12 December 2002 on judicial practice in hearing cases involving offences committed by a minor, as revised and completed on 22 December 2006, in order to ensure strict compliance with criminal procedure law, calling for the assignment of a skilled judge in every district court who should be the only person responsible to deal with cases of juveniles. However, the assessment team was informed

[25] CPC, Art.427(2)

[26] Examples include murder, treason, espionage, sabotage, armed rebellion or trafficking large quantities of drugs. See Criminal Code, Art.113, 200, 305, 308 and 312.

[27] CPC, Art.427 (4).

[28] Law "About the order and conditions of detention in custody", Art. 34.

[29] "Assessment of Juvenile Justice in Tajikistan", page 20

that in practice only two courts have designated judges to handle juvenile cases. Prosecutors who handle juvenile cases also are not specialized[30].

73***. Pre-trial Detention Center (SIZO) and Temporary Detention Center (IVS)***. The conditions of children confinement in the Pre-Trial Detention Center (SIZO) are satisfactory. However central heating does not work in the winter and electricity cut offs are very frequent. Cases of violations of CPC provisions regarding length of detention occurred. According to the CPC detention before trial of juveniles cannot exceed six month. However there were cases when juveniles were detained in Investigative Isolator more than six month (7 month and more).[31]

74. The Law "About the order and conditions of detention of suspects, accused, and defendants" provides that in cases of violation of obligations by juvenile following sanctions can be applied: reprimand and placement to the punishment cell or solitary confinement on period up to 7 days[32].

75. Placement in the punishment cell is based on decision of a head of detention facility and report of a medical worker on capability of a person to stay in the punishment cell. Sleeping accommodation in the punishment cell is provided only in the sleep period. The right on contacts with outer world is limited, exchange of correspondence is prohibited, meetings (except of meetings with a lawyer), purchase of foodstuff, getting of dispatches and right to leisure. The right to daily walk is limited to 30 minutes[33].

76. ***Observation of the rights of the child during arrest, interrogation and in the Departments of Interior.*** The largest number of violations of children's right to freedom from torture can be observed at the stages of arrest, delivery of the arrested juvenile to the Department of Interior as well as during time spent in the Department of Interior and at interrogation. The most wide spread violations are: late notification of parents about the fact of arrest of a child, conducting interrogation in the absence of a lawyer,

[30] Dan O'Donnell, "Assessment of Juvenile Justice in Tajikistan", 2011, page 18.
[31]Torture and other cruel treatment with children in the context of juvenile justice in Tajikistan", Public Organization Child Rights' Center, page 25.
[32]Law "About the order and conditions of detention in custody", Art.38.
[33]Law "About the order and conditions of detention in custody", Art. 40.

conducting interrogation in the night time, beatings, threats, not allowing detainee to visit the toilet, holding detainee in a cold place, and not providing food. For example 6 of 9 children that were held in Departments of Interior faced violence in some from. These are just some cases.[34] *1) A boy (14 years old) was arrested by policemen for theft. His parents were notified about the fact of the arrest after 24 hours. A lawyer was provided also after 24 hours from the time arrest. The interrogation was carried out in the absence of parents and lawyer. The boy was questioned at night, because he had been arrested at night. The boy had 4 meetings with a lawyer. 2) During the arrest of a 16 year old boy, policemen frightened him, yelled at him during questioning, did not provide him food and it was cold. He was provided with a lawyer only a month after the arrest. He was interrogated in the absence of a lawyer, parents and pedagogue. 3) A 17-year-old boy was arrested by police and provided with a lawyer only after transfer to the Temporary Investigation Isolator (SIZO, where persons are transferred to await trial after they have been held for 72 hours). Five policemen interrogated him in the absence of his parents, lawyer and a pedagogue. He was interrogated at night and was woken up each hour for questioning from 11pm until the morning.*

77. Practice of the Child Rights Center in implementing the project "Duty lawyer" shows that torture and ill-treatment can be used against children for obtaining evidence: *"Three boys, ages 15, 16, 17, were delivered to the police station of Sino district of Dushanbe city. They were suspected of committing robbery. They were severely beaten and their legs were beaten with a police baton. A policeman held a pistol to the temple of one boy. They cursed at the boys. Interrogation lasted from 5 p.m. to 3 a.m. The children were released into the custody of their parents at 3:30 am only after they had confessed to the crime. The children were sentenced to the 5 years imprisonment by the court decision (at the present an appeal of the verdict is ongoing)".*

78. Despite the occurrence of such cases, parents often refuse to complaint about the use of torture, because they are afraid for children's security.

[34] "Torture and other cruel treatment with children in the context of juvenile justice in Tajikistan", Public Organization Child Rights' Center, page 29-32.

79. Violations of children's right to freedom from torture and other cruel treatment may have serious consequences: "*17-year-old R.S. was arrested by police on suspicion of theft. Another minor girl was also arrested with her as an accomplice. Both girls were delivered to the police station and were severely beaten. According to R.S., she was hit in the head, threatened with rape, pulled up by her hair and then thrown violently to the floor. R.S. spent two days in the police station. Policemen did not notify girls' parents about the fact of the arrest. The girls confessed after spending two days subjected to illegal methods of obtaining evidence and were released into the parents' supervision. After she was called back for interrogation R.S. disappeared. After 24 hours she was found unconscious by her house. The medical report stated that the girl is in grave condition due to burns to her internal organs as a result of drinking vinegar. The girl died in the hospital two days later."*

80. ***Temporary Isolation Centre for Juveniles***. The Temporary Isolation Centre (TIC) for Juveniles is a specialized subdivision of the Service for Prevention of Crimes and Offenses among Youth and Adolescents under the Ministry of Internal Affairs. Neither laws, nor the internal documents of TIC require that children undergo medical examination to determine whether a child has been tortured or ill-treated.

81. ***Special School (SS) and Special Vocational School (SVS).*** The Special Vocational School and Special School fall under the system of education in the Republic of Tajikistan and constitute a group of special educational establishments that have special conditions for education and upbringing, special educational climate, provide medical and social rehabilitation, education and vocational training for children and youth who need requiring ongoing medical treatment, who have physical or psychological disabilities or behavior that is considered dangerous for society.[35] Children can be placed in the SS and SVS by the decision of local authorities or by a court ruling. Neither the Law "On Education" nor regulations of SS contain a specialized provision prohibiting use of torture and other cruel and degrading treatment with respect to children. Though the regulation on Special Schools provides for the creation of medical station in the school, it does not contain requirement of medical examination of

[35]The Law "On Education", Art. 1.

children during admission on the matter of finding the traces of the use of torture or ill-treatment.

82. ***The juvenile prison colony***. There is only one juvenile prison colony in Tajikistan; boys who have committed crimes are held at this facility located in the capital.[36] Girls convicted of crimes who receive prison terms serve their sentences in the women's prison in Nurek. Imprisonment continues to be used as a punishment for juveniles who have committed non-violent crimes. About 80 percent of the population of the juvenile prison colony is serving sentences for theft.[37]

83. There is information about violence and ill-treatment used by prison staff in relation to children. Children note that they were victims of violence or they know about cases of violence. The following forms of violence have been used: threats, verbal abuse, beatings, and placement in a cold or hot place. Placement in the punishment cell (disciplinary isolator) for the period from 5 to 7 days is also used for. There were cases when juveniles who did not violate regime were placed to the punishment cell[38].

84. The following punishment measures may be imposed on convicted juveniles for violating of the established penalty serving regime: reprimand, repeal of the privileged conditions of detention, cancellation of the next short-term or long meeting or telephone conversation for the period up to one month[39], revocation of the right to watch movies for a period of one month and placement in disciplinary isolator for a period of up to seven days with release for period of study[40].

85. Convicted persons placed in disciplinary isolator have the right to have daily two-hour walk[41]. The punishment cell had stone walls, four metal bed frames attached to the walls and a solid metal door. A

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[36] Psycho-social approach to work with children in the conflict with the law: methodological recommendations//Yunusova N.M., Kurganova G., Egorycheva S.V., 2009, page 8.

[37] "Assessment of Juvenile Justice in Tajikistan", 2011, page 27.

[38]"Torture and other cruel treatment with children in the context of juvenile justice in Tajikistan", Public Organization Child Rights' Center, page 27.

[39]Criminal Executive Code (CEC) of the Republic of Tajikistan, Art.120.

[40] CEC, Art. 144

[41] CEC, Art., 145

barred transom above the door with a bare light bulb outside was the only source of light. Outside the cell proper is a small office with a desk and chair where a guard reportedly is stationed 24 hours per day when a prisoner is confined in the cell. Just outside the cell and guards station is a roofless cell where prisoners may be placed during the two hours per day they have a right to be out of their cell. A toilet and washroom were located a short distance away.

86. Code of Implementation of Criminal Punishment does not contain requirement of medical examination of children during the enrollment on the matter of finding the traces of the use of torture. The newly arrived at correctional institution convicted persons shall be brought to the quarantine department for the period up to fifteen days[42]. The Code of Implementation of Criminal Punishment does not have any instructions on how to react in cases when traces of torture could be found.

87. ***Corporal Punishment***. The use of corporal punishment as a method of maintaining discipline in the family, schools and other educational establishments is a wide spread practice in Tajikistan. National legislation does not provide for express prohibition of using corporal punishment. The complaint procedure in the cases of using corporal punishment is not established. In particular, on 1 August 2011 the Law on Responsibility of Parents for Education and Raising Their Children entered into force where the parents are obliged, in Article 8, to exclude cruel treatment as a method of education and maintaining discipline in the family. This provision is not an express prohibition to use corporal punishment. The same obligations in Article 12 of the same Law are NOT established for teachers, educators and other persons responsible for the education of children in educational establishments.

PRISONERS RIGHTS[43]

Concluding Recommendations 16, 20 (CAT/C/TJK/CO/1)

The recommendations of the Committee against Torture were not implemented related to provision of access to places of pre-trial

[42]art 77 Code of Implementation of Criminal Punishment

[43]Monitoring of human rights for freedom from torture and ill-treatment in detention centers and prisons in Dushanbe, Khatlon, RRS and GBAO. NGO "Independent Center for Human Rights" 2012.

detention and implementation of criminal punishment for civil society and the ICRC to conduct independent monitoring. Beginning in 2005, a number of international organizations and NGOs have unsuccessfully conducted negotiations with the country's government agencies about access to pre-trial detention facilities and penitentiary facilities for the purpose of monitoring. Investigations into incidences of death in places of pre-trial detention and deprivation of liberty are unjustifiably delayed. Amendments to domestic legislation limiting rights of persons sentenced to life in prison to visits with their relatives and receipt of parcels are discriminatory.

88. The Code of Implementation of Criminal Punishment of RT was amended granting the Human Rights Ombudsman was granted access to places of detention to monitor prison conditions and interview detainees in private. Also, a Law on the Order and Conditions on Pre-trail Detention of Suspects, Accused and Defendants was adopted.

89. The penitentiary system, detention centers and prisons are managed by Main Administration for the Implementation of Criminal Punishment of the Ministry of Justice, with the exception of the detention Facility of the State Committee of National Security. There are special detention facilities run by the Ministry of Defense (for military personnel accused of committing a crime) and the Ministry of Security (for those who are accused for committing crimes servicing in an official capacity).

90. Currently, civil society and the ICRC are not allowed to monitor conditions of detention in correctional institutions. Only a limited number of NGOs, which are engaged mainly in humanitarian and charitable activities, are granted access to prisons. Since 2005 a number of international organizations and local NGOs have been advocating for obtaining access to places of detention for monitoring purposes.

91. Information about the number of sentenced persons, number and location of prisons and detention facilities, statistics on morbidity and mortality in prisons, documentation of visits to detention centers by supervising authorities, particularly prosecutor, is strictly concealed. At the same time, some information is available in the media following press conferences organized by state institutions or presentations by state representatives during official events.

92. In 2011, a governmental working group for monitoring places of detention and prisons was established. The working group included representatives of the President Administration, various government agencies and the Human Rights Ombudsman. However, representatives of civil society were excluded from the working group. There is no information on the results of the monitoring visits conducted by the working group.

93. In 2011-2012, the Human Rights Ombudsperson refused to hold a joint monitoring of places of detention and execution of criminal penalties together with NGOs, claiming that "NGOs lack authorization from government agencies (Ministry of Justice) to visit places of detention".

94. ***Access to legal representation for persons serving sentences in prison.*** In accordance with Part 4 of Article 91 of the Code of Implementation of Criminal Punishment "legal assistance to convicts is provided upon their written request. The prisoner may also request to meet their lawyer in private". Lawyers are denied access to their clients by authorities of penal institutions on the basis of this regulation. If a prisoner is subjected to torture, the relatives are unable to arrange legal assistance for him/or her without a direct written request from the prisoner. Currently, advocates are preparing a complaint to the Constitutional Court, arguing that the provisions of this regulation violate prisoners' rights ensured by the Constitution and the international human rights standards. The complaint will be considered in fall 2012.

95. Persons in pre-trial detention are in the same situation as described above. In accordance with the Law on the Order and Conditions on Pre-trial Detention of Suspects, Accused and Defendants, detainees have unhindered access to legal representation based on the presentation of an order or advocate's license. However, the prison authorities prevent lawyers from seeing their clients, arguing that access to pre-trial detention centers (SIZO) is carried out through receipt of special permission from the head of SIZO on the basis of internal documents and regulations. *For example, in the criminal case number 23578 (regarding a terrorist attack on the building of the Department for Combating Organized Crime of the Ministry of Internal Affairs and membership in extremist organizations) the Cassation Chamber of the Supreme Court of the Republic of Tajikistan g allowed the lawyers to meet one of the*

accused, who was sentenced to life imprisonment. However, the Head of the Detention Center № 1 prevented the lawyers from seeing their client, arguing that he had no authority to do so. He referred the lawyers to the Head of the Main Administration for the Implementation of Criminal Punishment at the Ministry of Justice The lawyers filed a compliant to the above mentioned agency, but they received no response up to date.

96. ***Change of the sentence***: According to the Code of Implementation of Criminal Punishment, if the convict commits a crime or violates the procedures of serving the sentence, the head of the prison may a file a request to the court, asking for permission to modify the level of custody and move the prisoner to another facility in the prison. Lawyers have no access to judicial proceedings that are held in detention facilities. Almost all such requests are positively reviewed by the courts. While judges may consider up to 10-15 requests for modifications of custody level at a time, inmates have no access to legal defense. Upon modification of custody level and prisoners are subjected to "prevention measures for the newly arrived prisoners", in form of beating them with police batons. *For example, convicted Ismoil Bachajonov was beaten to death in prison on 21 January 2011 after his regime of custody had been changed from strict to prison type. Pavel Kirpo, who was released from prison, stated that he was also beaten after his level of custody was modified from strict surveillance to prison in Detention Center № 1 of Dushanbe. All his complaints were ignored by the authorities. He also said that this beatings are a systematic practice aiming to"break the sprit" of the prisoners.*

97. ***Conducting effective investigation of cases of death in detention****. Human rights activists have been receiving increasing number of reports on deaths resulting from torture. Thus, only for the period of 2010-2012 lawyers and human rights organizations have documented and provided legal assistance in several cases, such as Boboev, Shodiev, Sangov, Murodov, Bachajonov and Ikromov. Almost in all of these cases no thorough and effective investigations were carried out, which resulted in impunity of the perpetrators. For example, a criminal investigation into the death of Boboev has been suspended for one and a half years. The criminal investigation into the death of Murodov opened in 2009 has not been completed up to date.*

98. ***Persons serving life imprisonment ("lifers")*** in prisons in Kurgan-Tube and in the block for "lifers" of the Pre-trial Detention Center (SIZO) in Dushanbe. In line with amendments to the Code of Implementation of Criminal Punishment, visits from family members are restricted and therefore since 2012 prison administration stopped taking packages from relatives. Under the law, persons sentenced to life imprisonment, and who serve their sentences in regular custody level, [44]can receive two parcels or transfers and the two packages per year. They are also permitted one short visit per year. Convicts serving sentences under lighter conditions of imprisonment can get three packages and three parcels, and have two short visits during the year".

99. There is a practice, with respect to lifers, whereby sentences are executed criminal judgments which have not entered into force and which are under consideration by the appeal or oversight. These individuals are placed in the unit for the lifers immediately after the verdict and are subject to the regular regime for lifers.

100. ***Conditions in correctional facilities.*** Interviews with former prisoners raised concerns over the conditions of detention of persons sentenced to a prison regime of detention in Pre-Trial Detention Center № 1 (SIZO) in Dushanbe: "The cells do not have sockets, light is constantly on with 40-watt light bulb. There is no possibility to heat the water. The essential items that are permitted include only a toothbrush and soap. Out of the 70 persons detained in the prison, 20 people were diagnosed with AIDS. At the same time, one shaving razor per 5 people was provided once every two weeks. Sanitary conditions are inadequate. In a cell for up to 16 people, there is only one table for 8 people. In the cell for 6 persons the table is for 2 people. Blinds on the windows are made of iron, which results in poor ventilation in the cells. In winter time, the windows are secured from outside with polyethylene. This results in insufficient ventilation in the cell. Change of underwear is not available; the prisoners are constantly in damp clothes and therefore often get sick. There is no means to dry the clothing. This leads to infections of the upper

[44]All prisoners upon arrival at the colony of special regime placed in the ordinary conditions of imprisonment. Transition from the usual conditions of serving the sentence to the eased conditions is foreseen after the convict served at least ten years, if the convict has no penalties for violation of the rules of serving and conscientious attitude to work (part 2 st.134 note 1 Penal Enforcement Code of RT)

respiratory tract. Convicts with tuberculosis are held in communal cells, which results in spread tuberculosis among other prisoners.

101. Toilets are located in the cells near the sink. Water for flushing the toilets can only be taken with a plastic bottle, as there is no water supply. Toilets are not separated by a fence, thus if someone is sitting at a table, they see others using a toilet. During mass poisoning prisoners are in pain, as there is only one toilet for 15 people.

102. The prisoners have to wrap sheets around the tap in order to stop it from dripping. In some cases, there is no water at all.[45]

103. Bed linen is provided and changed rarely. The prisoners' uniform is issued only once, and usually not by size. Clothes (summer and winter - underwear, shirts, etc.) are mainly brought by relatives. Personal hygiene products are not provided at all and, in most cases delivered by relatives. Prisoners are allowed from 10 to 40 minutes to shower with cold water. In summer time, they are allowed to use the main washroom only once a week.

104. Food that is given by the prison administration is of very poor quality, and therefore the prisoners mainly rely on the food sent by the relatives or they cook themselves. At the same time, the monitoring showed that persons deprived of liberty, are allowed to purchase and take food from relatives.

15. ***Right to information***. Upon arrival in the prison and correctional institution the inmates are not provided with introduction to the internal rules and regulations of the detention facilities. They have to obtain the information from other inmates. According to the prisoners' relatives, the prisoners are not provided with reports on their medical examination.

106. ***Punishment***. Former prisoners noted that the prisoners are subjected to penalties when they "violate" the internal regulations, file complaints against the prison staff or use a mobile phone without permission. The penalties for prisoners include prolonged detention in solitary confinement, beatings and insults. Seven former detainees reported that they abused by other prisoners (inmates), they were forced to do the dirty work, beaten, insulted and their clothes and

[45]From the interview with former prisoner (January 2012)

food was taken away. The prisoners are also abused by the prison's personnel with verbal insults, they are forced to lie on the floor while guards walk over their bodies, they are stripped off naked, beaten with police batons, prevented from sleeping during the day and forced to sit on a chair all day.

As it was noted by some of the interviewees, such actions of the prison staff are reported in a form of written complaint, but unfortunately they do not reach the relevant authorities. Sometimes, the prisoners cannot write a complaint, because they have no pens and paper.

VIOLENCE AGAINST WOMEN

Domestic violence is a widespread problem in Tajikistan, considering the lack of specialized legislation on prevention of domestic violence, lack of effective mechanism for reaction and investigation, and unwillingness on the part of victims to appeal to the countries law enforcement agencies with this type of complaint. Criminal legislation does not adequately assess the social harm of domestic violence, there is no terminology for psychological violence in criminal law in Tajikistan, and there is no practice for reacting to rape within the family.

107. **Women** are included to the **category of vulnerable groups, which are often subjected to torture and ill-treatment in the form of psychological pressure, beatings, rape and threats of rape. At the same time, there are cases when the violent scenes are recorded on phones with the threat of further dissemination.** In such cases, women rarely report on the crimes of rape, as it threatens to destroy the family, husbands can kick his wife out of the house, and women cannot count on the support of their relatives.

108. **Domestic Violence** is a widespread problem in Tajikistan. Despite the seriousness and prevalence of the problem, the Government of Tajikistan does not take adequate measures to address and prevent domestic violence. Low level of legal awareness among women, especially in rural areas, growth of early, polygamous or unregistered marriages increases their vulnerability.

109. Despite the fact that the NGO centers of legal assistance registered a large number of complaints from women - victims of domestic violence committed by their relatives (husband, mother in

law), virtually there is no evidence that when the victims of domestic violence report to the police. There is a lack of professional staff to work with victims of domestic violence. According to the national legislation the cases of domestic violence related to the cases of private prosecution and are instituted at the request of the victim of the crime and closed in case of settlement between the applicant and the defendant. In rare cases, the police, having received allegations of domestic violence, do not take urgent and adequate measures to curb crime, believing that "anything can happen in a family". The victim in order to achieve the application of criminal penalties has to overcome a number of obstacles, such as the reluctance of police officers to receive and consider the statement, ill-treatment against her, many grueling and pointless questions, late referral for forensic examination, traumatic confrontations, lack of adequate protection of the victims[46].Very often already at the process of appealing to the law enforcement agencies, the victims are the most vulnerable and can be re-abused. *Thus, according to the information of the Human Rights Center in 2011, a woman addressed the police regarding her husband who caused her bodily harm. When she called the police to know the outcome of the complaint, the police officer told her to visit him at his office. At the police station he demanded her to have sex with him after which she tried to escape. However, the door was locked; he knocked her to the floor and raped her. He threatened her that if she will complain about the incident he would arrest her. When the woman and her elderly grandmother turned into the police, the police chief warned her that she should never report the incident because she can not prove it, and the police officer could sue her for libel. Despite all the efforts of human rights organizations, the criminal case on this fact has not been raised.*

110. Also, throughout the process, law enforcement officials are trying to reconcile the victim and the aggressor, instead of instituting an investigation, in order to "save the family". With the exception of fatalities, the authorities rarely intervene in the so-called "family dispute".

111. **There is no legislation on the prevention of violence against women in the Republic of Tajikistan**. In the absence of a specific law on domestic violence in May 2006, the Ministry of

[46]"EU-Tajikistan".CivilSocietyHumanRightsSeminar."Freedomfromtortureandothercruel, inhumanordegradingforms of treatment or punishment" Dushanbe. 12-13 June 2012

Interior issued a decree according to which all state authorities should react appropriately to information on violence against women, provided by the crisis center. According to the crisis center, often victims reported that was the police stations inform them about the availability of such centers and advised to apply there.

112. **The criminal legislation of the country law does not provide a proper assessment of violence as a public threat, there is no such term as psychological violence in the criminal law.** The Criminal Code of the Republic of Tajikistan criminalized infringement of sexual freedom, sexual integrity of women, rape for engaging in sexual intercourse with a person underage, for torture and beatings, forced suicide. Cases of domestic violence in the criminal law, as a rule, are carried under article 112 (intentional infliction of bodily harm) and article 116 (beating) of the Criminal Code, which as stated above are related to the cases of private prosecution. The courts, in its turn, cannot carry out operational activities for the investigation of the crime; they have to go through police, long and time-consuming procedures and very often by time they receive any information they signs of physical abuse could be gone. In practice, there are cases when the courts refuse to accept from the police materials on citizens petitions related to the private prosecution. Thus police after receiving and proceeding (direction for examination, obtaining explanatory, etc) of the citizens' complaints cannot refuse to open a criminal case (as it is not included their competence), or take to the court. Therefore, sometimes the police officers on the ground reject citizens' appeals. As a result, public authorities, by their inaction, contribute to the impunity, and when the victims either commit a suicide or to any other extreme measures.

113. There is no practice of psychological examination of victims of domestic violence.

114. Information on violence against women from the law enforcement agencies is very rarely, because of fear to be persecuted by the offenders.

115. Moreover very often women themselves refuse to report violence against them, fearing public reproach for the disclosure of family problems. This pressure increases the lack of adequate housing and women's economic dependence on their abusers.

116. Besides the punishment, according to articles 112 and 116 of the Criminal codec RT generally provides for a fine, which will burden the family budget, and hence the victim herself and children.

117. **Domestic violence is very often accompanied by rape and other forms of sexual violence**. Despite the fact that rape is strictly condemned in Tajik society, rape and sexual violence by a husband, is considered as internal family issue and usually is not discussed. The Criminal Code of the Republic of Tajikistan also does not provide for criminalization of marital rape. *Thus, according to the Human Rights Centre, "one of the clients who recently turn to the Center is married and has two children. Her husband frequently travels to Russia for work. After the birth of her second child in 2010, her husband returned from Russian Federation and took the applicant along with their kids to Dushanbe. According to the applicant her husband immediately began to mock her, committing sexual assault, forced her to undress, inflicting blows with a rubber strap, iron chains, and sexually abused her. Thus she decided to leave, not being able to stand the bullying, took the children ran to her parents and told them about the incident as well as took forensic medical examination, which confirmed the fact of sexual violence. However the prosecution bodies did not take the results of the examination into account. Prosecutor's office decided not to initiate a criminal case, claiming that shed could appeal to the court on the fact of beating in the form of private prosecution"*[47].

118. In addition, **domestic violence is one of the reasons of the numerous cases of suicide and other psychological trauma**. According to the Committee on Women and Family Affairs under the Government of Tajikistan in 2010 compared to 2009 the number of suicides cases had increased from 106 to 703. According to the Committee report out of total number of the suicides 310 incidents were committed by women and girls, in 107 cases by minors, most of which occurred on the grounds of family quarrels. The highest number of suicides was registered in Sughd Province[48]. According to the Interior Ministry data in 2011 there were 277 incidents

[47]Larisa Aleksandrova. Speech "Legal issues of victims of the domestic valance access to justice under the existing legislation of the Republic of Tajikistan.OSCE Preliminary Human Dimension Meeting. Dushanbe. July 2012.

[48]http://www.news.tj/ru/news/suitsid-v-tadzhikistane-nabiraet-oboroty-0

involving Tajik women perceive suicide as the only way out. In the first three months of 2012, there are more than sixty[49].

119. Very often the relatives of the victims, trying to conceal the fact of suicide and present it as an accident. According to the Ministry of Interior information in 2011, there were only 20 persons were prosecuted for incitement to suicide, which were considered by the courts[50].

120. There are also **incidents when women have resorted to killing their abusers**. According to the Special Rapporteur on Violence against women Yakin Erturk's report many of the women detainees, she met in the Nurek prison were convicted for murdering their partners, whether during a fight or in a premeditated manner. They were condemned to heavy sentences ranging from 7 to 20 years in prison[51].According to official statistics, following the Law "On Amnesty" № 764, from August 20, 2011, as of March 16, 2012 there only 96 women left in prison for various crimes sentences[52].

HUMAN RIGHTS IN THE ARMY[53]

Issue 16 of List of Issues (CAT/C/TJK/Q/2)

121. The citizens are called up for military service 2 times a year, and according to official data from 15,000 to 16,000 men aged 18-27 years annually join the ranks of the armed forces of the Republic of Tajikistan. Due to poor household, hygiene, parochialism, and frequent cases of abuse, the prevalence of hazing among old-timers and recruits, young people prefer to hide from the officers of military commissariats and not engage into military service.

122. Recruitment of additional soldiers into the Armed Forces of the Republic of Tajikistan is carried out by means of general

[49] http://www.ariana.su/?S=6.1206051053
[50] http://www.news.tj/ru/news/suitsid-v-tadzhikistane-nabiraet-oboroty-0
[51]ReportoftheSpecialRapporteur on the violence against women and its causes and consequences Yakin Erturk, 26 May 2009.A/HRC/11/6/Add.2
[52]http://pda.pressa.tj/news/akn-oprovergayut-dannye-hri-o-kolichestve-osuzhdennyh-zhenshchin-v-tadzhikistane
[53]The present section was prepared on the results of the monitoring "Human Rights in the military service of the Republic of Tajikistan" Association of the young lawyers "Amparo" Dushanbe 2012

conscription. The recruitment process is accompanied by grave violations, such as unlawful detention, accompanied by intimidation, insult. Not uncommon are the cases of inflicting injuries to recruits and their family members, violations of privacy of the home, limitation of freedom of movement, and sending to the military service of recruits which are eligible for deferment or exemption from military service.

123. ***Forced recruitment (raid)*** is the arrest of a citizen, conducted without summons, by military commissioners, representatives of jamoats and militia at the streets, markets, in public places, in order to bring the recruit to the military commissariat for undertaking of recruiting activities and for further transfer to places of military service. During the raid called “oblava”, the representatives of the organs responsible for the draft to the military service, often break into homes of recruits early in the morning or late at night in order to bring the recruits to the draft board. Access of human rights activists and general public to draft boards is limited by the fact that even though the draft boards are civil organs they are located in the buildings of military commissariats and military departments, which are military objects and have restricted access.

124. A **serious problem in the Tajikistan army is hazing,** which is based: a) on the term of service - old-timers (“grandfathers”) use initiation rituals and beatings of recruits (the most common type of hazing), and b) on regionalism - the soldiers are grouped according to regions of their origin, and beatings take place between the regional groups. Also there are abuse and initiation rituals that are practiced in almost all military units.

125. **The types of hazing,** which are abusive are: a) **Gulshukuft** ("flower blooms"): recruits squeeze fingers, collecting all fingertips together, as unopened bud. “Grandfather” strongly hits the fingertips with some hard non-sharp object, most often with the army bayonet knife (non-sharp side of the blade) or a soldier's belt buckle, after which the recruit should very slowly open his fingers showing that the flower started to bloom. The soldier shall make no sounds, except to say "flower (and the area from which the soldier was called to the military service, for example Khujand) blooms." The slightest deviation from the rules of "blossoming flower" makes the process start again. There were instances when because of a strong hit several finger nails of a recruit were broken. When talking to a

soldier who was accused of hazing, to the question of the investigator about "why he committed such a brutal act against the recruit," the soldier replied that he, too, was subjected to this ritual, and he also experienced such consequences, b) **"Bicycle"** - a soldier is lying on his back, the matches are put and lit between his toes and he must lie on his back and "turn the pedals" with burning matches between his toes, and c**) "The title of General"** – is applied to the newly arrived soldiers in the first days of their arrival to the military units when soldiers are hit on bare shoulders with a buckle of soldier's belt, so that the pattern of the buckle is left on the shoulders as military shoulder straps. In this way the soldier receives his first informal title in the armed forces, and d) **"Shashak"** – after the sixth month of military service starts the soldiers are beaten six times on the buttocks by the buckle of a soldier's belt, so that the marks from the buckle are left on the soldiers bodies. This means that the hardest six months of the military service are behind.

126. **The part of the officers** is very important in maintaining order in the military unit and in fighting of hazing. There are cases when the officers themselves break the rules of the relations between military servants and apply violence to the soldiers, which can take place as follows: a) ***self rafti (self-go)*** - is a form of punishment that according to the soldiers is mainly applied by the officers for disobedience or for misconduct. The officer says "self sit-uprafti" and names a number, for example 500 times. This means that soldier must quickly stand facing the wall and with keeping his hands behind his head to do 500 sit-ups, or "self 400 push-ups rafti", and b) ***"hop"*** - soldiers stand in the rank, blow their cheeks with air, and the officer or the old-timer at the instigation of the representative of officers beats soldiers' faces with his hand, and when the soldier is slapped he must shout "Hop."

127. **For breach of military discipline there is the penalty of detention in the guardhouse** (premises for keeping soldiers under arrest). Soldiers and sergeants arrested in the disciplinary order are kept in communal cells or in solitary confinement and sleep on bare boards. Sergeants are kept in the guardhouse separately from the soldiers. The total period of stay in the guardhouse with taking into account of the additional measures may not exceed 20 days. Soldiers kept in the guardhouse in communal cells have to work for 10 hours a day. During the day, except for the time of work and

walks (not less than 50 minutes a day), the arrested are kept in locked cells.

128. **Taking away of food and money**. Upon their arrival to the place of military service the soldiers are stripped of almost all personal items they brought with them by the old-timers. Relatively new uniforms that were procured for beginners were immediately shifted for old clothes of old-timers. Pursuant to the law, every recruit receives allowance according to the category, according to the rank and position. This allowance is between 17 to 25 somoni (about 3.5 to 5.15 US dollars) per month. *A group of soldiers from two military units (cities of Dushanbe and Kurgantube) stated that an allowance is paid to the soldiers in time: "we are taking our allowances with our own hands and with our own hands give them to our commanding officer." According to the soldiers, commanding officers sit together with an accountant who pays the allowance. The soldiers receive allowances, sign the documents about that, and immediately, in the presence of the accountant and other soldiers, the money is given to the commanding officer. This scheme of payment of the allowances was confirmed by other soldiers of the military unit. According to the soldiers, the commanding officers use the allowance to buy personal hygiene products (toothpaste, soap, shaving products) for the soldiers themselves*.

129**. Nutrition** of a soldier depends on the term of his service in the Armed Forces. According to the soldiers, the meat (which was given very rarely), bread and butter (for breakfast) are often taken away by old-timers. *"The fruit was never given, and because of the lack of vitamins I often get sick, and it takes me long to recover. One small wound from a soldering iron does not heel for 3 weeks. Every morning the wound festers, and I go to the doctor to apply zelenka ("brilliant green") to the wound... zelenka, because there are no other medications available."*[54] *"Eggs they give us only on holidays, 1 boiled egg, but it is almost always raw. During the 7 months of service we were given eggs 6 times, as I recall".* [55]*"Because of hunger we ate everything that was edible, ate grass",* said one of the soldiers called to the military service from Asht region, who served in

[54]From the anonymous interview with the serviceman in one of the military bases in Dushanbe, 15 April 2012

[55]From the anonymous interview with the serviceman in one of the military bases in Dushanbe, 15 April 2012

the mountainous region. According to the soldiers, in the military unit only the old-timers and the officers get a full meal, the recruits are left with low-calorie soup and bread. *"Bread saves us",* the soldier told us, according to him, the soldiers, when they were very hungry, came to the canteen and asked for bread, supposedly for the officer who sent them to bring him bread. If the bread was given by the canteen, it was divided between the soldiers and eaten. If the officer learned that the soldiers used his name to ask for bread, they were punished. The issue of nutrition also depends on the location of the military unit. In remote areas, especially in the winter season, military units are not regularly provided with food. The soldiers told that they had to go to the villages and ask for food from people that lived there. In return, the soldiers were ready to do any work that citizens asked them to do, for example, to help with building or cleaning.

130. **Hygiene (bathing days, washing)**. At least once a week soldiers have the opportunity to take a shower and wash their clothes. But the frequency of bathing days depends on the season. For example, during cold weather, the soldiers could not take a shower more than 1 time per month. In the period from December 2011 to February 2012, when the weather was cold and the power supply was limited, many military units could not procure the heating of bathhouses.

131. In the barracks of military units there are cockroaches, mice and bugs. A special type of parasite was named "Mandal" (meaning human lice). According to the soldiers, lice bites cause skin irritation. Lice live in the seams of clothing, in beds in the barracks. According to the soldiers, they take their mattresses out in the sun almost every week, clean and disinfect the barracks, but the lice are always present. In the winter season, when there is no possibility to wash and bathe often, lice get extremely spread, and in some barracks it was talked about the epidemic of lice.

132. ***Complaints about hazing and living conditions during military service*** are strongly condemned. The soldiers are saying that "complaining is not accepted," even if the soldier complains about hazing to his commanding officer, the case will often be concealed, and the commandment will take measures aimed to prevent leaking of information outside a military unit. As a result, the complaint does not get enough attention, and the perpetrators are not brought to justice.

RECOMMENDATIONS:

133. The State must publicly recognize the existence of torture and other ill-treatment and unambiguously declare a policy of "zero tolerance," to send a clear message to state officials and law enforcement that torture and ill-treatment will not be tolerated. In order to achieve the goal of eliminating torture and ill-treatment, authorities must introduce a set of urgent measures alongside the development of a long-term strategy to combat torture.

134. Within the framework of urgent measures, the state must prioritize the prompt adoption of the following recommendations:

- Ensure timely access for civil society representatives to temporary detention centers and investigative detention centers in order to conduct independent monitoring;
- Provide the International Committee of the Red Cross with immediate access to detention facilities to evaluate observance of rights of detainees;
- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and establish an effective National Preventative Mechanism to monitor places of detention in regular, independent and unrestricted manner;
- Ensure that all complaints of torture are registered and reviewed by a special Commission; the Commission should be created under the General Prosecutor's Office with the participation of the office of the Human Rights Ombudsman and representatives of civil society to take effective measures in investigation of incidences of torture and provision of compensation to victims of torture;
- Establish a working group to develop a long-term state programme on prevention of torture and ill-treatment with associated state funding and a clear mechanism for accountability and monitoring the program's implementation. The programme should specify long-term activities for the elimination of torture, including mechanisms for monitoring the domestic implementation of international obligations in the sphere of freedom from torture such as the recommendations of UN treaty bodies, the Universal Periodic Review and Special Procedures of the Human Rights Council.

135. Prioritize the urgent adoption and implementation of the following legislative reforms in order to effectively fight impunity and prevent the use of torture.

- Amend the provisions of Article 143 part 1 to specify punishment proportionate to the gravity of the crime of torture (in order to prevent impunity resulting from closure of investigations following settlement agreements or amnesties) in accordance with articles 1 and 4 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Ensure effective punishment of the crime of torture, by introducing amendments to criminal legislation that would exclude the possibility of applying amnesty in the cases of persons convicted of using torture;
- Provide for explicit prohibition for the use of torture and cruel, inhumane or degrading treatment or punishment in the thematic laws such as the laws "On the Status of Military Servicemen", "On Health Protection of the Population", "On Psychiatric Assistance" and others;
- Secure the prohibition of deportation of persons to a country where there are serious grounds to believe that he/she might face the use of torture; and elaborate the mechanisms of realization of the said right in accordance with the requirements of article 3 of CAT;
- Ensure in the Criminal Procedure Code a mechanism for prompt, thorough, independent and impartial investigation of facts of torture or other ill-treatment by an independent body in accordance with articles 12-13 of the CAT and requirements of the Istanbul Protocol;
- Strengthen the guarantees of access to legal representation and right to file complaints for persons in pre-trial detention regardless of the administration of the institution;
- Provide for a procedure in the Criminal Procedure Code for conducting prompt medical examination within the first hours of detention for all persons detained by investigative structures;
- Develop an independent institute of forensic medical examination and a legislative basis for its existence;
- Include “torture” in the list of justifications for which a victim can be compensated. Provide legislative regulation of fair and adequate compensation for harm caused in the form of “the fullest rehabilitation possible” as prescribed by part 1 of article 14 of the CAT;

- Exclude the following regulations from criminal procedure legislation: a) from among the justifications for choosing restraint measures in the form of pre-trial detention - the gravity of the crime and an accusation of committing a crime of a medium gravity; (b) the authority of the court to extend pre-trial detention by 72-hours an unlimited number of times, as this provision violates the principle of legality and adversarial proceedings (part 5 article 111 of the Criminal Procedure Code);
- Provide for an exclusive character of the use of force and weapons as well as for proportionality of use of force in the Law "On Interior Troops of the Ministry of Interior";
- Introduce legal provisions that will guarantee regular monitoring by civil society actors of pre-trial and post-conviction places of detention to assess the situation with respect for rights of detainees, including the freedom from torture and other ill-treatment.

136. Add the following provisions to the Criminal Procedure Code: (a) a requirement for the court to review the sufficiency of grounds for pre-trial detention and the issue of legality of the arrest; (b) definition of the terms "detainee" and "actual arrest"; (c) provisions on the procedure of arrest and transport of arrestee to the police station; (d) provisions on the concrete period of arrest without sanctions of the court, taking into account the practice of international treaty bodies; (e) a clear list of the rights of the detainee, which would contribute to ensuring minimal guarantees; (f) a clear procedure for the court's consideration of sanctioning restraint measures, with a view to ensure all the rights of the detainee (that includes guaranteeing detainee's right to be heard in front of the court, submission of evidence in one's defense and other), the parties, and formalization of the judicial process; (g) an obligation for the court to more thoroughly review justifications for prolonging restraint measures, guaranteeing that there is a reasonable and adequate justification; (h) definition of a reasonable timeframe for pre-trial detention, providing that the duration is founded and presumption of innocence is upheld; (i) requirement that all personnel of law enforcement agencies wear visible identification numbers.

137. Ensure immediate and unhindered access to a lawyer from the moment of actual arrest; prohibit the conduct of any investigative actions without the participation of a lawyer; eliminate the practice by

which advocates are required to obtain permission from law enforcement agencies or the court to access their clients.

138. Introduce technical tools for effective oversight mechanisms to guarantee the rights of detained persons, namely: (a) install video surveillance cameras in the buildings of the Department of Interior, and develop a normative legal act that would regulate the order of storing the video recordings, provide for liability improper maintenance of those video cameras, oversight of the data; (b) equip special transparent spaces for questioning and interrogation in the Department of Interior; (c) use of audio- and video equipment by police officers during the arrest; (d) installation of the audio- and video equipment in vehicles used to transport detainees.

139. Develop and introduce a mechanism of regular independent medical and psychological examination of persons in pre-trial detention and penitentiary institutions without interference by law enforcement or prison personnel.

140. Provide professional training of judges, law enforcement personnel, medical and other personnel who come into contact with persons in pre-trial and post-conviction detention on prohibition of torture and other ill-treatment. It is also necessary to ensure that the procedures of re-attestation of those officers also test their knowledge of standards of freedom from torture and other ill-treatment.

141. Transfer all remaining places of pre-trial detention (temporary detention centers and pre-trial investigation detention centers) of the State Committee for National Security to the isolators of interim containment, the IOs (Investigative Isolators) of the SCNS (State Committee of National Security) to the Ministry of Justice of the RT.

142. Ensure children are protected from use of torture and other ill-treatment through the following measures:

- Adopt a law on the rights of the child or a system of protection of child's rights that would also ensure the right of the child to freedom from torture and other ill-treatment;
- Introduce amendments to the Child Protection Policy in the system of closed facilities to include prohibition of torture and other ill-treatment;

- To the relevant ministries, confirm Procedures for the implementation of the Child Rights Policy and introduce Procedures for children in closed institution to file complaints;
- Introduce amendments to the Code on Implementation of Criminal Punishment to eliminate the use of punishments such as solitary confinement with respect to children;
- Prohibit on the level of legislation corporal punishment of children in all facilities (including educational institutions), establish procedures for filing complaints, and associated liability.

143. In the area of prevention of domestic violence:
- Adopt immediately the draft Law on Social and Legal Protection against Domestic Violence;
- Ensure that violence against women and girls is investigated and prosecuted as a criminal offence. Provide immediate access for the women and girls who fall victim to violence to effective means of legal and other protection, including protective orders and provision of a sufficient number of shelters; criminally prosecute and punish the guilty parties;
- Effectively train the officials of the judiciary and state agencies, in particular, law enforcement officers and employees of the public health system, so that they can render adequate assistance to the victims.

144. With regard to prohibition of torture and other ill-treatment in military service:
- Provide immediate transfer for military personnel that complain of harassment or violence and witnesses to harassment;
- Ensure effective investigation of cases of desertion and voluntary abandonment of military service to determine whether individual left service as a result of harassment. Take disciplinary measures against the perpetrators and those responsible for ensuring that rights of servicemen;

Conduct systematic visual examination of soldiers to determine whether soldiers have bodily injuries (such examinations should be conducted regularly by the Military Prosecutor's Office, medical personnel of the military unit, and the officer corps of the military unit).

ATTACHMENTS

INDIVIDUAL CASES

ILKHOM ISMANOV (Issues 4 (c), 32, 37 (c), 41 of the List of Issues (CAT/C/TJK/Q/2))

Arrested on 3 November 2011, Ismanov alleges torture in the early stages of pre-trial detention when he was held not in a detention center but in the building of Department of Interior in Sughd, Northern Tajikistan. His first one on one meeting with a lawyer took place only 19 February. Ismanov has repeatedly complained of health problems and has not been provided with timely medical assistance. Allegations of torture made during court proceedings were left unconsidered and he was convicted on 23.12.2011 to 8 years. During the appeal, currently ongoing, the prosecutor found no evidence of torture.

On November 3, 2010 at approximately 19:00pm Ilkhom Ismanov was kidnapped by unknown people from the yard of his house. Unknown people put the sack on his head and threatening with pistols put him in a car.

On November 4, 2010 his wife found out that Mr. Ismanov is in the building of the Department on Combating Organized Crime of Khujand city. Relatives could see Mr. Ismanov only on November 6, 2010 but during this meeting he could not stand or move and his legs were broken.

The same day they were informed that Ismanov escaped, although the relatives stated that it was impossible due to his health conditions as Ismanov was unable to walk. After the intervention from the prosecutor of Sugd oblast, his wife could meet with Ismanov, who was still kept in the building of the Department on Combating Organized Crime of Khujand city. He sat on the chair in underwear, water was running from him and there was puddle of water under his feet, despite the fact that it was November. His arms have been burnt with electric shock, there were several cuts on his neck made by some sharp object. When his wife wanted to see his injuries closer, she was kicked out from the room.

On November 12, 2010 on the 10th day of detention Ismanov was transferred to Khujand city court for selection of the restrain measure, he was cuffed and his head was covered with hood. He

was barely walking with broken legs. The lawyer saw him for the first time only in court. In court Ismanov showed his arms with marks from electric shock and reported that they poured boiling water on his head. The lawyer made verbal appeal to conduct court medical examination, but it was rejected by court. On November 13, 2010 the court issued arrest warrant and issued a special ruling indicating illegal actions of the officers of 6th department (i.e. Department on Combating of Organized Crime).

On January 11, 2011 the lawyer again submitted an appeal on medical examination of Ismanov. On January 21, 2011 the reply was received from the head of the Department of Correctional Affairs of Sugd oblast, where it was reported that Ismanov has bronchial-pneumonia but for more precise diagnostics it is required to have X-Ray machine, which is allowed only upon the permission from the State Committee on National Security, which is in charge of investigation.

On February 19, 2011, during first one on one meeting between Ismanov and the lawyer, Ismanov told the lawyer that the officers of the Department on Combating Organized Crime tortured him with low frequency electric shock, he was losing consciousness but they shocked him with 220V from the socket. Ismanov was so exhausted that he pulled this wire and shocked himself into chest and lost consciousness. He was thrown into some basement, where he laid unconscious but than they poured him with cold water and threatened with further violence in case he would complain about torture. On April 19, 2011 during meeting with Ismanov, he informed his wife that the prosecutor officer in the building on national security threatened him with torture and forced him to sign statement on refusal from torture complains.

On May 11, 2011 during meeting with wife, Ismanov told her that he was beaten with baton on his heels and they bandaged his head with doormat and tightened it from both sides and he was losing consciousness because of pain. They attached wires to his fingers on his hand, genitals and put on the electric shock. They did it almost every day until his genitals started bleeding. They tightened his arms and legs and poured boiling water on his head. At the same time he was regularly beaten. His lung disease started while he was kept in detention.

On October 18, 2011 Ismanov was diagnosed with bronchial asthma.

Several complaints on torture remained without results. Thus on February 18, 2011 the reply was received from the Internal Security department on Sugd oblast that the statements about torture and lack of access to the lawyer are not proven. For late registration of arrest the officers of the Regional Department on Combating Organized Crime of Sugd oblast were disciplined.

On June 17, 2011 criminal case against Ismanov was handed over to the Sugd oblast court. In court Ismanov made several inconclusive complaints on torture. During case consideration in cassation instance, his complains about torture together with other applications on criminal case were forwarded for verification of torture facts. In September 2012 despite the obvious torture marks and other evidences, General Prosecutor's office refused to open a criminal case on torture.

BAHROMIDDIN SHODIEV (Issue 30 a of the List of Issues CAT/C/TJK/Q/2))

Bahromiddin Shodiev died on 30 October 2011 at the National Medical Center following surgery for injuries incurred in police custody. Following surgery, he told his mother that he was severely beaten and subjected to electroshock in custody. A criminal case was instituted on 4 November 2011 against three policemen for negligence; prosecutors later requested re-qualification of the charge to exceeding official powers, but the court denied this request. In February 2011, the case was sent back for additional investigation. On 28 September, amnesty was applied in the case of all but one police officer. The case against another police officer charged with negligence and a claim for compensation filed in February 2012 are still pending.

On October 13-14, 2011 three people in civilian clothes, most likely police officers, accompanied by the district policeman captured Bahromiddin Shodiev of 28 years old in the entrance to their house, twisted his arms, forced him into the car and drove him to the Department of Internal Affairs of Shohmansur district of Dushanbe city. After some time, representatives of the Department of Internal Affairs called Shodiev's mother on the phone and asked her to return 800 somoni that have been allegedly stolen by Shodiev. Then, the officers of the Department of Internal Affairs came to Shodiev's mother and brought her to the police department. Mother gave 800 somoni to policemen without any protocols. Shodiev was in the

Department for three days and the relatives were not allowed to see him. On October 20, 2011 Shodiev was brought to the resuscitation department of the National Medical Centre in unconscious conditions. He needed urgent surgical operation and agreement of the relatives for such operation. Policemen had to inform his mother about difficult health conditions of Shodiev and that he is in the hospital.

Couple days after surgery her son came to his sense and he was transferred to the general room under policemen supervision. While conscious Shodiev told his mother that he was severely beaten by policemen, who had forced him to admit he was guilty for the crimes that he did not commit. He told her that he was tortured with electric shock and his mouth was taped that nobody hears his screaming. Police officer who was nearby listening to their conversation upon departure of his mother took off his shoe and started beating Shodiev on his mouth. Shodiev decribed what happened to his mother and asked her not to visit him as he is afraid of "further beatings". While being almost unconscious Shodiev heard how the police officers agreed to say that he was injured after jumping from the second floor of police department building. On October 30, 2011 Shodiev did not recover and passed away.

By decision of the prosecutor of the Shohmansur district on November 4, 2011 the criminal case was opened against Dodov A. and others on article 322 (negligence) p.2 of the Criminal Code of Tajikistan.

On November 4, 2011 three members of the Department of Internal Affairs of Shohmansur district, particularly Inoyatov A., Murodov D. and Khotamov S. were dismissed upon the internal investigation of the Ministry of Internal Affairs due to the death of the arrested Shodiev B. Deputy chairman of the police department colonel of police Karimov I. was also dismissed. And the head of the police department of Shohmansur district Odinaev S. and the head of investigation department of the police department Nazarov A. received severe reprimands.

On December 1, 2011 investigator of the prosecutor's office of Shohmansur district of Dushanbe city Kholikov F. requested the re-qualification charges against suspects Dodov A., Inoyatov A. And Murodov D. from article 322 of the Criminal Code of Tajikistan into

article 316 p.3 of the Criminal Code of Tajikistan. This request was rejected.

On February 17, 2012 the court trial started in the court of Shohmansur distrtict. On February 29, 2012 the court issued decision on forwarding the criminal case for additional investigation to the prosecutor's office of Shohmansur district of Dushanbe city. Meanwhile the accusation side asked the court to convict the defendant and sentence him to 2 years of imprisonment.

On February 17, 2012 before the court trial the complaint on damage compensation was submitted to reimburse the damaged caused by the crime. The defendant is the Ministry of Internal Affairs of Tajikistan.

On September 28, 2012 by decision of investigator the criminal case against Inoyatov A., Murodov D., Khotamov S. Was stopped after the announcement of the accusation in accordance with article 322 p. 2 of the Criminal Code of Tajikistan, due to application of article 27 p.2 of the Criminal Procedure Code of Tajikistan and amnesty. For the time the court received only the case against the investigator Dodov A. on article 322 of the Criminal Code of Tajikistan.

SANGOV SAFARALI (Issues 30 b of the List of Issues (CAT/C/TJK/Q/2))

On 16 July 2012, eleven months after a district court judge ruled to send the case back for additional investigation, proceedings were halted and amnesty was applied in the case against two police officers charged in the death in custody of 37-year old Safarali Sangov. Following Sangov's death on 5 March 2011, the General Prosecutor's Office opened a criminal case 12 March, and proceedings began 2 June against two police officers charged with negligence, before being indefinitely suspended on 11 September of the same year.

37 year old Safarali Sangov died on March 5, 2011 in the National Medical Hospital "Kariyai Bolo", four days after he was brought to the hospital unconscious with many bodily injuries from the Department of Internal Affairs – 1 of Sino district of Dushanbe city.

Wife of Safarali Sangov informed that around noon on March 1 several people in civilian clothes broke into the yard of their house and started beating Safarali Sangov. They conducted personal

search of Safarali Sangov without showing search warrant or arrest warrant. They did not find anything and put the handcuffs on him, put him into a car and drove away. As it was mentioned some relatives were also beaten as they witness the beating including children and a woman of 4 months pregnancy. Neighbors and shop workers nearby the house also saw as the people were beaten.

Later the relatives found out that Safarali Sangov was arrested by the officers of the Department of

Internal Affairs – 1 of Sino district, who initially brought him to the district department and afterwards to the National Medical hospital "Kariyai Bolo" of Dushanbe city.

The same day relatives of Safarali Sangov came to the hospital but he was already in coma and was placed in resuscitation department. They accidentally heard a conversation of medical personnel about multiple bone fractures of Safarali Sangov, including spine fracture, hip joint fracture and nose. It was informed that one of the doctors mentioned drug overdose but later on according to the information blood test did not reveal any drug substances.

Wife of Safarali Sangov reported that on March 1, 2011 she and another relative heard the conversation of police officers who were recognized as the perpetrators. These people discussed details of beating up Safarali Sangov.

On March 5, 2011 when the relatives came to hospital, medical personnel informed them that Safarali Sangov died this morning. Relatives expressed willingness to see his body but police representatives closed their way to the department of intensive therapy and used another doorway to take the body into the morgue. Later on the same day body of Safarali Sangov was given to the relatives for burial ceremony.

On March 11, 2011 wife of Safarali Sangov received a certificate from the Republican center of court-medical expertise of the Ministry of Health, which was dated the same day. This certificate stated that the death was caused by the brain damage. Opinion letter was made based on the court-medical expertise conducted in the morgue.

On March 12, 2011, General Prosecutor's office informed wife of Safarali Sangov that the criminal case was opened by the prosecutor's office of Sino district on the fact of her husband's death.

However nobody from witnesses, who observed the arrest of Sangov on March 1, 2011 was called to give evidences on this case.

The lawyer submitted complaint to the General Prosecutor's office of Tajikistan on illegal actions of the law enforcement officers.

On March 18, 2011 the lawyer requested access to documents confirming the death of the victim and the medical documentation. This request was rejected stating that the lawyer and the relatives will get acquainted with all case materials upon completion of investigation. Only on May 17, 2011 the lawyer got acquainted with the criminal case materials on prosecution of Yakubov A. and others in accordance with article 322 (negligence) of the Criminal Code of Tajikistan and accused in death of Sangov. The lawyer was also introduced with the results of court-medical expertise.

On April 6, 2011 the lawyer made complaint where he requested transfer of the criminal case for further investigation to the General Prosecutor's office of Tajikistan. This complaint was immediately approved, although the case was transferred from the Prosecutor's office of Sino district to the Dushanbe city prosecutor's office.

Later on the lawyer submitted request on additional commission expertise, additional investigation, etc. The request remained without response.

On June 2, 2011 the court trial on this case started. On June 17, 2011 the court made decision on appointment of additional court-medical expertise. Thus the court hearing on this case was stopped until the expertise results.

On September 14, 2011 court of Sino district of Dushanbe city issued a ruling on submission of the criminal case materials for additional investigation to the Dushanbe city prosecutor's office.

On July 16, 2012 investigator of the prosecutor's office of Dushanbe city issued a resolution on termination of the criminal case with regards to Yakubov A. and Khasanov K. in accordance with article 27, p. 1 and the law of Tajikistan "on amnesty".

BOBOEV ISMONBOY CHURABOEVICH (Issue 30d of the List of Issues (CAT/C/TJK/Q/2))

Despite the existence of a forensic medical exam that testifies Boboev died from electroshock, the criminal case against two

police officers opening in March 2011 on charges of murder, abuse of power, fraud and extortion, has not resulted in any convictions. Boboev's father filed an individual complaint with the UN Human Rights Committee in March 2012. Following this communication the General Prosecutor's Office took a renewed interest in the case, but investigation is still ongoing.

On February 19, 2010, around 12:00, near the main mosque in Isfara, Sughd, three officers of the Department for Combating Organized Crime of the Ministry of Interior of the Republic of Tajikistan at Sughd province had detained Mr. Usmonboy Churaboevich Boboev (citizen of Russian Federation) on suspicion of belonging to the banned extremist organization "Hizb-u-Tahrir".Three days later, his body was found near his parent home, with a marks of physical abuse.

Boboev's father managed to make the authorities to launch the investigation of his son's death. Two medical examinations were carried out regarding this case. The first examination, conducted on March 10, 2010 (20 days after Boboev's death), indicated that the death was caused by mechanical asphyxiation due to tongue fall. However his father requested another examination (held late April, 2010) which demonstrated that Boboev's death resulted from the use of electric shocks, and proved that he had been tortured during the interrogations.

Based on this fact, the Prosecutor's Office of Sughd Oblast on March 25, 2010 launched a criminal case, on article 104, Part 1 (murder), article 316, part 3 (abuse of power), article 247 (fraud), and article 250 (extortion) of the Criminal Code of RT against the officers of the Department for Combating Organized Crime of the Ministry of Interior of the Republic of Tajikistan at Sughd province Akbarov M.G and Shokirov F.F.

On 25 June 2010 the criminal case was suspended due to "the illness of the suspected Akbarov M.G and Shokirov F.". During that time, Shokirov F. had resigned from the Interior Ministry on his own, while Akbarov M.G got promotion and continued to work as deputy chief Department for Combating Organized Crime of the Ministry of Interior of the Republic of Tajikistan at Sughd province. Thus, from June 2010 until now (for 10 months) there was not any investigation

conducted. However nor Boboev's father neither his lawyer were not informed about the suspension of the preliminary investigation.

On repeated requests by Boboev D. to prosecute the perpetrators responsible for his son's death, the Prosecutr's Office in Sughd Oblast informed that the General Prosecutor's Office had sent an order to Moscow (Russian Federation) to conduct the interrogation of the offence victim Narzulloev M.Z.[56] and still awaits their response. (letters # 18\14 from 15.07.2010 and #18\15-id from the February 7, 2012).

On 07.10.2011, lawyers (Sharipov, A., and Romanov S.) submitted a petition to the investigation department of the Prosecutor's Office of Sughd and on 08.10.2011, to the Prosecutor's General's Office of RT with the request to obtain the investigation materials for further examination. In their letter #18/142-11c from 13.10.2011 the prosecutor's office of Sughd Oblast responded that on 17.09.2011 the criminal case was sent to the Prosecutor's General Office of RT to further study and actions.

In all subsequent statements, the defense lawyers appealed to the Sughd Regional prosecutor's office and the Prosecutor's General Office to cancel the illegal decision to suspend the investigation and bring those responsible to justice and send the case to court.

The prosecutor's office of Sughd Oblast in their response #18\156-11 on 10.12.2011) rejected the request by Boboev J. to get access to the case materials on the basis of Article 42 paragraph 8 of Part 2, of the Criminal Procedure Code of RT under which the victim has the right to "review the materials of the criminal case only when the investigation is completed". The Prosecutor's General Office in its letter #15\137-11 from 23.11.2011 refused the lawyers Romanov S.T. and Sharipov A.P. to become familiar with the case materials on the basis of Article 53 of the Criminal Procedure Code of RT, which states that the defender has the right to review materials of the criminal case after the preliminary investigation is completed. Its refusal the Prosecutor General's Office motivated that by the time they received the appeal the preliminary investigation was not completed. Thus nor Boboev's father neither his lawyers received

[56] Narzulloev M.Z. was acknowledged as a victim, from whom Akbarov and Shokirov allegedly demanded several thousand US Dollars for release

any information on what investigative steps had been taken in the inquiry into Boboev's death.

On 02/02/2012 Boboev's lawyers applied to the Constitutional Court of the Republic of Tajikistan on the inconsistencies between paragraph 8 Part 2 of the Article 42 of the Criminal Procedure Code, the Constitution of the Republic of Tajikistan and Articles 12, 13 of the Convention against Torture. The Constitutional Court of the Republic of Tajikistan in its Resolution from 15 May 2012 did not find any contradictions of the law with international standards.

Boboev J. addressed the UN Committee on Human Rights with individual complaint on the violations of articles 6, 7, in conjunction with Article 2 (3) of the ICCPR. In light of this communication, the General Prosecutor's Office of the Republic of Tajikistan had requested the criminal case from the Prosecutor office in Sughd region to study. As a result, the General Prosecutor of the Republic of Tajikistan decided to cancel the earlier decision taken by the investigative branch of the Prosecutor's Office in Sughd region to suspend the investigation because of its illegality. The investigation into the death of I. Boboeva was resumed.

BOBOKALONOV KHURSHED SAIDALIEVICH (Issue 30d of the List of Issues (CAT/C/TJK/Q/2))

In November 2011, after over six months of appeals from Bobokalonov's lawyers and family, the General Prosecutor's Office reopened the investigation into Bobokalonov's death in custody in June 2009. As of August 2012 there were new results of forensic medical exam, but lawyers for Bobokalonov have not yet been allowed to see them.

On June 27, 2009, approximately at 22:00 – 23:00pm on Rudaki Avenue of Dushanbe city Bobokalonov Kh. was taken by policemen into police car "for resistance to police officers and examination on the use of drugs and other intoxicating substances" and they took him to the Department of Internal Affairs of I. Somoni district. When they came into the yard of the Department of Internal Affairs and opened the car door, Bobokalonov was already dead. According to the court-medical expertise death of Bobokalonov Kh. was caused by mechanical asphyxiation by the vomiting substance, which is identified by the remaining of the vomit in the anatomical airway, sever emphysema of lungs and heart (spot of Tardieu), sharp

plethora of internal organs, splenic anemia and heavy corpse spots. Expertise also revealed the following body injuries: abrasions of heels and knee joints, rear surface of the right palm, left side of forehead, right side of parietal area. Nature of the injuries surface is wet that defines their cause by hard blunt objects shortly before his death. On July 6, 2009, prosecutor of I.Somoni district opened a criminal case on article 108, p. 2 of the Criminal Code of Tajikistan[57]. On September 5, 2009, by the resolution of investigator the case was stopped. On October 20, 2009, criminal case was reinitiated and on November 5, 2009 by the resolution of investigator this criminal case was terminated due to not establishment of persons involved in death of Bobokalonov Kh.

Lawyers of Bobokalonov's mother starting from April to November 2011 submitted numerous complaints to the General Prosecutor of Tajikistan, which resulted in re-initiation of the case on November 19, 2011 in accordance with the same article of Criminal Code and an the General Prosecutor investigator continues pre-trial investigation.

On April 28-29, 2011 the lawyers applied for re-commission a comparative expertise of previous expertise results with involvement of independent experts in order to reveal any discrepancies in the experts decisions related to the death of Bobokalonov Kh.

On June 2012, investigative experiment was conducted with participation of young people, who accompanied Bobokalonov Kh. that night. It was possible to identify police car, which took Bobokalonov before his death.

On August 2012, the results of court-medical expertise were ready, although victim side is not acquainted with these results yet. On several requests for introduction with the results, the law-enforcement bodies replied with absence of the investigator due to business trip and only upon his return the results will be provided to the victim side and the defense lawyers will be able to get acquainted with the results. Thus the lawyer and mother of

[57] Article 108, p.2 "Death from negligent conduct as a result of improper fulfillment of professional duties by an individual, as well as death of two or more individuals from negligent conduct is punishable by imprisonment for a period from 2 to 5 years."

Bobokalonov Kh. are not able to get expertise results already for two months.

KARIMOV MIRZOHON BOBOHONOVICH (Issue 38 List of Issues (CAT/C/TJK/Q/2))

Mirzohon Karimov complained of arbitrary arrest and torture at the at the hands of police of Nurek Town in June 2009. In October 2009, a criminal case against two officers on charges of abuse of office and abuse of power was sent to court by the Prosecutor's Office; in November 2009 a Law on Amnesty was passed and the court ruled to amnesty the two officers before the case was considered.

Karimov Mirzohon was arrested on 13 June 2009, at approximately 16:45, by the traffic police at Nurek City on suspicion of possession of narcotics. Karimov had been kept in the building of the Department of Interior of Nurek from 13 June until 16 June 2009, without registering and filing arrest protocols. Police officers, led by the Deputy Chief of Department of Interior of Nurek Izatulloev Mahmasaid tortured Karimov in order to extract confessions. The beat him with a truncheon on the head and back, tied with handcuffs to the battery. Unable to withstand the infliction of physical pain and mental pressure, Karimov signed a false testimony, in which he admitted to have committed a crime. His wife, Karimova Salomat Hochaevna addressed with a written statement to the country authorities (the President of the Republic of Tajikistan, the Commissioner for Human Rights, Chairman of Majlisi Oli Machlisi Milli and Machlisi Namoyandagon PT (Parliament), the Prosecutor General of the Republic of Tajikistan, Chairman of the Committee for National Security of the Republic of Tajikistan, Minister of Internal Affairs of the Republic of Tajikistan, Director of the Agency for Combatting drug trafficking, Director of the Agency for State Financial Control and Anti-Corruption, Chairman of Nurek region and the Prosecutor of the Nurek region) about the illegal actions against her husband. As a result of these appeals on 16 June 2009, Karimov M.B. was released from the custody.

As a result of medical examination, conducted at the Republican hospital named A.Sino (Kara-Bolo), where Karimov addressed immediately after his release on 15 June 2009, doctor diagnosed the presence of closed head injuries, contusions and bruises. Besides following the instruction from the Internal Affairs Department of the

Ministry of Interior of RTon 16.6.2009, Karimov was examined by the Expert from the Center forensic medical examinations of the Ministry of Health, was received their conclusion # 3740 on 18 June 2009, which proves the evidence of injury causing bodily harm on Karimov's body.

On 19 June 2009 Mr. Karimov M.B was again arrested regarding the same criminal case. The charges against him were the same. He was placed in the detention center of the Nurek's Department of Interior. On 19 June 2009 Karimov M.B. together with the lawyer filed a complaint to the Prosecutor of Nurek about unlawful actions of the officials of Nurek's Department of Interior. Upon the telephone call from the Prosecutor's Office in Nurek, Deputy Chief of Department of Interior, one of the alleged perpetrators of torture against Karimov, forcibly transferred Mr. Karimov to the building of the Department of Interior of Nurek, where on the same day the Prosecutor sanctioned his arrest for 10 days in accordance with Article 83 of the CPC RT (1961 edition) (application of preventive measures against the suspect)

On 2 July 2009, he was released from custody on the grounds that the investigation did not proved Mr. Karimov's involvement in drug trafficking.

On the grounds of making a knowingly false intelligence reports about the alleged involvement of Karimov M.B in drug trafficking, the Prosecutor Office of Kurgan Tube launched a criminal case against the officers of the Department of Interior of Khatlon Oblast, Soliev S.D. and Toshev I.B. under articles 314 (abuse of office); 36-323 (forgery) and Part 1 of Article 316 (abuse of power) of the Criminal Code. On 12 October 2009 the case was transferred to the Court of Kurgan-Tube.

However, there was no investigation regarding the illegal detention and torture of Mr. Karimov.

By the decision of city court of Kurgan Tube (Khatlon) from 17 November 2009, in respect of the defendants Soliev S.D. and Toshevd I.B. accused of committing crimes under article 314 (abuse of office); 36-323 and Part 1 of Article 316 (abuse of power) of the Criminal Code of RT, the prosecution was terminated in connection with the application of subsection "B" of the Article 6 of the Law "On amnesty" from 03.11.2009, № 560. Further complaints of Mr.

Karimov on bringing those responsible to justice, were rejected by the state authorities on the basis of the amnesty.

IKROMZODA KHAMZALI

20 September 2012, 22-year-old Khamzali Ikromzoda died in penitentiary institutions #3/1. Visible marks of bodily injuries were explained by the prison administration as having resulted from attempts to revive Ikromzoda after he had hanged himself. On 1 October, the General Prosecutor's Office initiated a criminal case into the incident.

On September 20, 2012, due to torture the detained person Ikromzoda Khamzali born in 1985 was killed. He was sentenced for a crime committed earlier (article 249, p. 4, 250 p. 4 and 195, p.2 of the Criminal Code of Tajikistan) and detained in the penitentiary institution #3/1 of the Ministry of justice of Tajikistan.

During the conversation in the village "Hirmanak" of Hissar region, mother of Ikromzoda and his relatives informed that this crime was committed by the penitentiary officers. The reason was the regular extortion of money from the prisoner and their relatives carried out by the prison administration, and the quarrel happened day before the death of Ikromzoda between the prison administration and the prisoners. Ikromzoda's body had visible marks of body injuries including severe burns in the ribs, back, neck and hematoma on the back and legs, head injuries.

According to the relatives, the court medical expertise was conducted by the expert Mamur Bobonazarov on 20 September 2012, although the relatives were not allowed to the autopsy procedure. For the time being the results of this expertise are not ready yet.

On 25 September 2012, deputy head of the Department of Correctional Affairs Bakhrom Abdulkhakov gave an interview to the information agency "Asia Plus" where he commented on death of Ikromzoda. He stated that in the evening of 20 September the penitentiary officer, who was conducting regular monitoring of the prison facilities, found Ikromzoda hung on the door bars wrapped up with his own shirt. Penitentiary officer raised the alarm and the representative of the Department of Correctional Affairs, medical staff, prison administration and prosecutor officers came to the place

and tried to safe Ikromzoda's. Mr. Abdulkhakov mentioned that upon the recommendation of the doctors the inmate was covered with hot water bottles. Doctors fought for his life for about half an hour. When his pulse disappeared, the doctors tried to reanimate by performing DPC three times on his chest around the heart area. This is how Mr. Abdulkhakov explained the electric shock marks on the chest of the diseased.

The lawyer submitted application to the Prosecutor on supervision over the execution of laws in the penitentiary institutions in Tajikistan and the complaints were submitted to the General Prosecutor's Office, State Committee on National Security and the Ministry of Internal Affairs of Tajikistan with request to conduct thorough, independent and impartial investigation and bring those responsible to justice.

On 3 October 2012 the lawyer met with one of the witnesses of Ikromzoda's death. The witness is also detained in the penitentiary institution #3/1 of the Department of Correctional Affairs of the Ministry of Justice of Tajikistan. According to the relatives, this prisoner is one of many witnesses who saw how the prison's personnel placed Ikromzoda in isolation one day before his death, after he was beaten by them. However the lawyer was unable to receive any information from the witness, because he conducted the interview in presence of the prison staff member and the representatives of the Department of Correctional Affairs. Lawyer's request for one to one meeting was ignored.

On 1 October 2012 a criminal case was initiated regarding Ikromzoda's death.

MURODOV DILSHODBEK

On 14 August 2009, Authorities of the Prison Administration informed Murodov's mother that he had died of heart failure on 8 August. He was buried by the prison administration. In October 2009, exhumation and medical examination revealed broken bones and a serious skull fracture resulting from blow with a blunt object. Nonetheless, in December 2009 the investigator in the case dismissed it due to lack of evidence. Following repeated appeals by the mother and her legal representative, on 6 February the General Prosecutor's Office sent the case for further investigation by the taskforce on

unsolved crimes, but to date the victim's representatives have received no further information.

On December 9, 2008 district Court of I.Somoni of Dushanbe convicted Dilshodbek Gulmirzoevich under Part 2 article 200 of the Criminal Code and sentenced him to 6 years of imprisonment in colony number 3/1 Chief Directorate for Punishment Implementation under the Ministry of Justice of RT in Dushanbe.

On 8 June 2009 his mother Burkhanova L.R. met her son on his birthday. During the meeting he was in good health, did not complain and was hoping for the possibility of early release from prison.

On 8 August 2009 Chief Directorate for Punishment Implementation (CDPI) under the Ministry of Justice of RT notified Mrs. Burkhanova L. about her son's death and provided medical certificate № 30 of 14.08.2009, which states that the cause of death of Murodov Dilshodbek was heart failure. The CDPI authorities also notified Mrs. Burkhanova that they have allegedly conducted the ritual bath and a funeral service according with national-religious traditions, and thus the body could be buried without revealing the burial shroud.

According to the written response from the CDPI authorities, № 5/1/3-B-13 from 14.08.2009, about the circumstances of Murodov's death "on 08/08/2009, approximately 13:00 hours convicted Muradov went into the toilet, lost his balance and fell forward. As a result, the left part of his face was injured from hitting the concrete floor. When he came to conscious, he told those who helped him that he is fine and can move independently. However, after few steps he staggered and fell back on the concrete floor of the toilet room and hit his head and elbows. After this, he was taken to the medical center of the prison. After being provided with first medical aid and taking medicines his condition stabilized. During the walk convicted Murodov felt unwell and his nose started bleeding. Murodov got injection, which caused high blood pressure. He was sent to the General Hospital CDPI MJ RT, where the doctors little scratches on his left leg, left arm and left side of the face that were not dangerous to life and health of the convict. Apart this there were no other damage or bodily injury was found. Despite the doctors' efforts to improve the health of the convicted Murodov he died".

However, his mother Mrs. Burkhanova did not trust this version of her son's the death cause, as it contradicted the death certificate

with a diagnosis of heart failure. Therefore, when she received her son's remains in the morgue, she requested examination, which revealed bruises on the body. She complained to the President of the Republic of Tajikistan about the injuries and demanded to open a criminal case and bring the perpetrators to justice. In response, her complaint was sent to the Prosecutor General of Tajikistan, where the criminal case was launched under part 3 of article 110 of the Criminal Code (causing serious bodily harm that caused the death of the victim).

Based on the order of the investigating officer responsible for overseeing detention places from the Prosecutor General Office on 02.10.2009 Murodov's body was exhumed. The forensic medical examination revealed that all limb bones were damaged, there was a crack in the back of the head as result of hit from solid blunt object or falling from a height of a man size. By the decision of an investigator from 20.12.2009, the criminal case was stopped for a lack of evidence of a crime.

About the investigator's decision to stop the case Murodov's mother was notified only in the beginning of February 2010. On 02/05/2010, she lodged an application to the Prosecutor General Office with the demand to discontinue the illegal decision of the investigator about closing the criminal case and to continue the investigation. Prosecutor's Office cancelled the investigator's decision to dismiss the criminal case and sent it for further investigation to the same department, which had decided to discontinue the proceedings (the Prosecutor's Office for Supervision of places of detention).

The criminal case was launched by the Prosecutor department for Supervision of places of detention and without any further investigation the case was again dismissed on the grounds of paragraph 1, Article 27 Part 1 of the Criminal Procedure Code (absence of a crime).

In the repeated appeals against unlawful termination of a criminal case, there was distrust to the actions of the Prosecutor's Office Department for Supervision of the places of detention and required to transfer the case to the investigators at the Prosecutor General's Office. The application was granted, the decision to dismiss the criminal case was annulled and the case was accepted for proceedings of the General Prosecutor's Office investigator.

At the request of the lawyer there was additional investigative actions conducted at the crime site which revealed that version of obtaining serious bodily injury from a falling from a height of human size is groundless.

Currently, by the decision of the General Prosecutor's Office investigator from 20 June 2011 on the basis of paragraph 1 p.1 article 230 of the Criminal Procedure Code in connection with the failure to identify the person to be brought to justice as the accused, the criminal case was suspended.

No measures were taken against the head of CDPI MJ RT and Colony № 3/1 management for inadequate supervision and negligence in the performance of official duties and attempt to hide evidence regarding the crimes committed against the victim, which were the cause of victim's death in the detention facility under supervision.

The investigation continues to the present time by a written instruction on routine investigations to secure the evidence of the crime and bring those responsible to justice. One of the requirements of the defense lawyer is to launch investigation against the medical personnel of the prison that gave intentionally false medical certification of the death of convict Murodov and management actions of CDPI MJ RT that admitted the fact of causing grievous bodily harm convict, which caused him death.

On February 6, 2012, by order of the Prosecutor General of the Republic of Tajikistan, the case was sent for further investigation. From February to now Murodov's mother has not received any information about the investigation into her son's death.

MIRZOYEV UMED, MURTAZOYEV IA AND KAKHAROVA B.R

Kahhorov and Murtozoev complain that they were tortured to extract confessions while in the custody of police in November 2011. They allege that torture continued following their confession, in order to implicate a third accomplice in the crime of stealing a mobile. The three were confined to pre-trial detention based solely on the gravity of the crime, in violation of article 9 of the ICCPR.

Murtazoev Iskandar Kahhorov Bahtovar and Mirzoyev Umed were arrested November 29, 2011 on suspicion of stealing a mobile

phone. Kahhorov B and Murtazoev J. were kept in the offices of the investigators of the district police department of Shohmansur Dushanbe. Despite the fact that they immediately confessed to the theft, the investigators used electric shocks, subjected the arrestees to systematic beatings and burning of suspects' fingers. Torture was used to obtain evidence against the third defendant Mirzoyev U's (although the witnesses, Mirzoyev himself and other defendants during the investigation and trial, confirmed that Mirzoyev was buying the phone and was not involved in the theft).

On March 27, 2012 in the District Court of Shohmansur of Dushanbe hosted the criminal proceedings on charges against Mirzoyev U., Murtazoyev I and Kakharov B. During the trial, the defendants Kakharov B and Murtazoev I made allegations of torture. During the trial Kakharov B told that they were brought to the district police of Shohmansur of Dushanbe, where they had been kept for about 14 hours and were tortured in the form of beatings with a truncheon on the body through stool bench, so that no traces of beatings could be seen, tying their feet with duct tape, and a mouth with a scarf and handcuffed. Mirzoyev U. at trial stated that approximately on 12 May 2012 he informed a prosecutor about the use of torture, who was visiting the detention center at that time. The prosecutor said that the investigator will provide them with a lawyer and since then no action was taken by the prosecutor. Murtazoev J. at trial argued that as a result of torture inflicted by the Police Officers of the district of Shohmansur he got physical wound in the upper arm, which was rotting because of failure to provide timely medical care. Only a month after a significant impairment of health, he was given assistance in the form of surgery.

The doctor of the emergency station 1 at the RCH № 3 Sharipov Yunus, told the court that during the examination on the detainees bodies no traces of violence (bruises, contusions, bruises), and no other injuries and scars were identified. However, the defendants Murtazoev I., Kahhorov B. and Mirzoyev U accused the doctor of perjury. So Kahhorov, denied the doctor statement about the absence scars on his body and demonstrated to the trial participants his elbow of both hands, with the trace of multiple chronic signs of systematic injecting drugs (which also had to be registered by the physician during examination, although the latter documented in a medical record that no scars on the body have been found). Defendant Kahhorov B in the court process said the document

issued by a doctor falsified, since it was not his signature and the text was written on his behalf by someone else.

District Court of Shohmansur from April 16, 2012 sentenced Murtazoev I. and Kahhorov Bahtovar to 3 years and 6 months in the colony of strict regime and Mirzoyev Umed to 2 years and 6 months imprisonment in a penal colony.

The court based its decision against Mirzoyev, Kahharova and Murtazoyev on the basis of only the nature of the crime with reference to Part 1 of Article 111 Criminal Procedure Code ("Imprisonment as a preventive measure shall be decided by order of a judge or a court decision only if suspect, accused or defendant for the crime for which the criminal law punishable by imprisonment for a term exceeding two years"). 04/09/2012, lawyers appealed to the Constitutional Court to recognize this provision to be unconstitutional, contradictive to the Article 9 of the International Covenant on Civil and Political Rights. The Constitutional Court dismissed the lawyers to initiate constitutional proceedings.

CRIMNAL CASE # 23578 ON THE ACCUSATION OF TERRORISM AND EXTREMISM (SO COLD THE CASE OF 53 "ISTARAVSHANIES")

The Supreme Court of the Republic of Tajikistan has declared terrorist and banned 13 organizations. Currently in Tajikistan there is a practice established that with accusation of terrorisms the law enforcement agencies in almost 100% of cases are detaining and prosecuting persons confessing Islam. There are serious violations of the rights of persons accused of terrorism during arrest and pre-trial investigation: unlawful detention, torture, lack of access to a lawyer. The judges do not give a proper assessment of allegations of torture made by defendants during the trials.

Another serious concern is raised about the new amendments to the law "On combating terrorism", according to which the State Committee of National Security has the authority of preparing a list of persons suspected of terrorism and thus their bank accounts, movable and immovable property of whom could be seized. This creates a risk of arbitrary restrictions on human rights for political or other reasons.

The criminal case number # 23578 fairly demonstrates the human rights violations during the investigation and trial.

General information about the criminal case and its proceeding in the Court of first instance

On September 3, 2011 there was a massive explosion, which was provoked by the car "Volga", which has entered the building through the yard of the Regional Office for Combating Organized Crime (ROCOP) of Soghd Region of the Ministry of Interior Affairs of the Republic of Tajikistan. The blast killed the driver himself (according to the investigation: a suicide bomber), and three employees of ROCOP, 26 officers of ROCOP and five residents of Khujand Region got injuries of various degrees.

On September 3, 2010 the Soghd Regional Prosecutor's Office has initiated a criminal case under Part 3 of Art. 179 (Terrorism) of the Criminal Code of the Republic of Tajikistan and sent for further review to the investigative department of the Soghd State Committee for National Security of the Republic of Tajikistan. The preliminary investigation lasted for nine months.

Based on the results of the blood tests the suicide bomber was identified as Mr. Akmal Karimov. Farther of Mr. Karimov and the defense questioned the fact of establishing the similarity of blood type of Mr. Akmal Karimov and body parts found at the scene, because at the time of the explosion the bodies of several people were torn apart, thus it is insufficient to identify the human only by the blood type. Father of Mr. Akmal Karimov demanded the examination of DNA, but it has not been assessed. Later, the brothers and close relatives of the alleged suicide bomber (Mr. Karimov) were arrested.

Judicial review of the criminal case was opened on 9 July 2011. There were 53 people in the dock, mostly residents of Isfara, Spitamen, and Istravshan regions, as well as the city of Khujand of Soghd Region (Northern Tajikistan)[58]

In general, out of total number of convicted people, 10 defendants are charged on the fact a terrorist act in the building Soghd Regional

[58] This case is called "case of 53" based on the number of person, who were charged on terrorist act.

Office for Combating Organized Crime, the rest were charged with membership in the Islamic Movement of Uzbekistan and other extremist organizations (DzhamiyatiTablig etc).

According to attorneys a criminal case combines four groups of individuals: 1) the group charged under part 2 of Art.187 (organizing a criminal group) of the Criminal Code, which are not relevant to the act of terrorism; and 2) a group of Mr. Nozirov Abdumadzhid, who are charged under Art. 187 (Organization of Criminal Community) of the Criminal Code, has no relation to the act of terrorism; and 3) residents of Isfara region, convicted on extremist views and involvement in the Islamic Movement of Uzbekistan; and 4) a group charged on the terrorist attack in the Soghd Regional Office for Combating Organized Crime on the Interior Ministry.

All of them incriminated a number of serious articles of the Criminal Code of the Republic of Tajikistan – terrorism, the organization of criminal community, forcible seizure of power, forgery, unlawful possession of firearms, murder, abuse of authority, illegal crossing of state borders, etc. There were also those who are accused of failing to report the crime or its concealment.

According to the materials of the criminal case, 38 of those on trial declined the services of an advocate, however in the course of the hearing of the Cassation Collegium [second instance] they state that all of the refusals of legal representation had been written under duress and dictated by officials from law enforcement agencies.

According to lawyers, relatives of the defendants and statements given by them during the trial almost all the defendants inflicted various kinds of physical (beating, pulling out nails and beards, electric current, rape, etc.) and psychological (threat to rape wife, sister, the mother, and the torture of others, in the presence of a person and other methods) tortures. Different methods were used not to allow lawyers to see their defendants, even by renewing of sanctions on detention (from 3 to 6 months). The investigators invited the lawyers on the first months of the preliminary investigation at the request of victims; however the lawyers were formally involved in the case, signing all the documents of investigation. The lawyers met with their clients in the presence of the investigating authorities.

Statements of torture have been made in the course of the trial where the defendants described in detail the torture and called the

names of specific officers, who have been tortured them, of the Interior Ministry, of the State Committee of National Security and of the Prosecutor's Office. However, neither the court, nor the prosecutor did take into consideration statements of the accused ones.

The first few hearings were open, but then at the request of the prosecution, the judge declared a closed process. It is assumed (according to lawyers and relatives) that the reason for declaring a closed trial is statements of the accused ones of torture during detention, and criminal investigation.

On July 27, 2011 relatives of the defendants have addressed to the Chairman of Soghd District Court, Mr. Mansurov N. M. for assistance in accessing the judicial process, but the response to this letter was not received.

On December 23, 2011 in prison # 2 of Khujand city 5 persons on this case were convicted of eight years imprisonment to life imprisonment, in one case the court handed down a sentence of five years in prison for non – reporting of crime.

On December 4, 2011 the court left to the deliberation room. On December 23, 2011 when leaving to the deliberation room, they did not notify anyone out of 20 lawyers that they will read the verdict. Sentencing took place only in the presence of the prosecutor and several individuals.

According to the defendants the court verdict was read for 30 – 40 minutes, consisting of 212 pages. During sentencing some of the lawyers were not allowed to enter the court house.

Some of the persons brought to trial for distribution of banned religious literature, although according to the evaluation of the State Committee for Religious Affairs under the Government of Tajikistan this literature is not prohibited (for example, one of the defendants prosecuted for teaching "Fihi Akbar").

CONSIDERATION OF THE CASE AT THE CASSATION INSTANCE

On 6 August 2012, in the hall for court proceeings in the administrative building on the territory of the Investigative Detention Center No 9/1 (SIZO), the Cassation Collegium began consideration

of the cassation appeals of the defendents, residents of Istaravshan, Isfara, and Spitamen districts of Tajikistan's northern Sughd Province and their lawyers. The cassation appeals indicate that the sentence is illegal, unjustified, and unfair, and should be nullified. The appeals also highlight use of torture against the defendents during interrogation and preliminary investigation.

The Cassation appeals were considered with respect to five persons sentenced to life in prison: Firdavs Karimov, Ismatullo Dodoev, Akmal Khoshimov, Zafarjon Karimov, and Sohibjon Sobitov. In regard of the other defendants (44 persons) the cassation appeal started on August 8, 2012 at the territory of the Investigation Isolator #2 of Khujand.

The Advocates S. Romanov and A. Sharipov, who are representing the interests of Dodoev, made several requests to meet with their client, however, personnel of the Investigation Isolator No. 1 (SIZO No 1) in Dushanbe demanded that the advocates present a letter of authorization from the Supreme Court. When this letter was presented, the head of SIZO No 1, Rakhmonov, refused to grant the advocates a meeting with their client, referring to a directive of the Main Administration of the Implementation of Criminal Punishment (Prison Administration) about the necessity of receiving similar permissions from the administration itself. The actions of the head of SIZO No 1 of Dushanbe were appealed to the Prison Administration), however no answer was received.

The advocates and defendants drew the attention of the Cassation Collegium of the Supreme Court to the presence of torture traces on the defendants' bodies, presented medical statements about taking medical treatment at the medical unit of the Detention Center #9/2 Chief Directorate of the Ministry of Justice of RT located in Khujand. The advocates requested the medical forensic expertize in regard of each defendant.

The Advocates filed a motion on the basis of part 3, article 88 of the Criminal Procedure Code of the Republic of Tajikistan about the exclusion of testimony of the defendants that were obtained during the process of interrogation and pre-trial investigation through the use of torture. Unfortunately these motions have been left, until now without consideration. The court informed the advocates that the motions would be considered in chambers.

17 August 2012 the Collegium made a ruling about investigation into the use of torture and tasked personnel of the General Prosecutor's Office with carrying out this investigation and announced a break until they receive the results of the prosecutorial investigation into the use of torture.

Analyzing the testimony of the defendants the following should be highlighted:

All defendants during the judicial hearing **complained about illegal detention and use of torture at arrest and during preliminary investigation**, however **in the judicial sentence, there is only this formulation "complaints of defendants made during judicial proceedings about the use of torture were unconfirmed".**

In relation to **19 persons, administrative arrest was applied for a period of 5 to 15 days**, during which they were held in the buildings and offices of representatives of the security services and were subjected to torture. **As a result, they confessed to committing crimes, after which restraint measures in the form of pre-trial detention were applied**.

The majority of defendants declined to use the services of advocates in the first days following arrest**, though the details of their refusals were drafted without the presence of an advocate** in contradiction with part 1, article 52 of the Criminal Procedure Code of the Republic of Tajikistan. 38 persons signed documents refusing the services of advocates, and approximately 10 people did not see their court appointed advocates during their entire period of their detention, hearing to select pre-trial sanctions, and preliminary investigation. The remainder saw their lawyers periodically, however many investigative actions were conducted without the participation of advocates. 10 court-appointed advocates asked their defendants to sign procedural documents without reading them.

Persons, whom the defendants indicated during the judicial proceedings, as those who used torture against them, were:
1. Eshmatov, Alisher – investigator of the Administration of the State Committee on National Security (SCNS) of Sughd Province
2. Kholov, Abdulaziz – operative staff member of the SCNS of Sughd Province

3. Muhamadiev, Anvar (nickname “the butcher”) – operative staff member of the Department of Internal Affairs (DIA) of the city of Istaravshan
4. Razokov, Dilmurod – Head of Criminal Investigation of DIA of the City of Istaravshan
5. Dosov, Kh – Leader of the operational – investigative group within the framework of this case
6. Bokiev, Saidbek – Deputy Head of the SCNS in the city of Istaravshan
7. Mirzoev, Orzu – operational staff member of DIA of Istaravshan city
8. Bakhriddinov, Sohib – investigator of SCNS of Sughd Province
9. Usmonov, Bakhrom – Deputy Head of Criminal Investigation of city of Istaravshan
10. Talbakov, Sherfgan - SCNS Sughd Province
11. Kholikov, Abdumajdid – head of the administration of Counter Extremism and Terrorism
12. Jiyanov, Kh. – prosecutor (non-reaction in cases of torture)
13. Kabirov – Head of DIA city of Istaravshan

Complaints on use of torture were mostly made against Alisher Eshmatov, Abdulaziz Kholov, and Anvar Muhamadieva.

Some of the defendants named the family names and positions, on the basis of where they were held at one or another time, because in the framework of this criminal case, personnel fo the Department of Internal Affairs of the city of Istaravshan could be present in the offices of the State Committee on National Security, or vice versa.

Main types of torture, described by the defendants:

Physical torture: electric shock, dousing with cold water outside in winter, beatings with hands and feet, beatings with police baton, forced splits, being bound with tape, blows with baton on heels and kidneys, being left in cold basements without sheets, burning with cigarettes on different parts of the body, rape.

Psychological torture: showing photographs of Rahimov Dilshod who was «supposedly» killed by the, bringing close relatives and humiliating them in the presence of defendants, threat to undress close relatives, in particular wife of the defendant and to spread photos on the internet, stripping naked and torturing other detainees in their presence.

As instruments of torture were used:

“Sangtuda” - an instrument used in physics lessons as an aid in demonstrations.

“Rogun” - according to the description of defendants, it is a military field telephone. The instrument of checking the cables of military field communication.

The difference in the two intruments is: the «Sangtuda» gives short intermittent shocks of lower voltage that «Rogun». «Rogun», if it is continuously cranked with a special handle, produces a continuous shock.

On **27/09/2012**, the cassation board of the Supreme Court of RT resumed consideration of the criminal case. The state prosecutor had announced the conclusion of the examination of torture allegations. Based on the results of the examination it was decided to reject to initiate criminal proceedings in connection with lack of evidence of crime in the actions of members of investigation group who carried the criminal case. During the trial, it was revealed that the medical examination was carried out by the expert who hasn’t been trained on the standards of the Istanbul Protocol, doesn’t know what the “torture” means, and who lately admitted that in the course of the examination he saw traces of the fracture, but it not his competence to identify timing and a method the injury was received. The defendants claimed that their prison’s medical records contain information of the detainees arrived with injuries. The lawyers demanded to present the prison medical records of all prisoners. Given that the majority of prisoners are currently suffering from tuberculosis, the doctor was questioned by the lawyers about the causes of this disease was spread in the prison. The doctor answered that the reason is that the prisoners are kept in humid place and have poor nutrition. However, the panel of judges interrupted the doctor, justifying it by the fact that it is not an official witness on the case and withdrew him from the courtroom. For example the prison doctors provide a certificate that the defendant Dodoev I suffered from severe form of tuberculosis and at the moment his condition stabilized. Lawyers were provided with the medical records of the defendants however the cards were not numbered and lacked some lists, which were simply torn out of medical records.

The defense lawyer Sharipov A during the trial declared that the examination was conducted with gross violations of procedural and substantive law, in violation of the adversarial principle and equality of the parties, without the involvement of lawyers, in violation of the defendants' right to defense. Lawyers requested to present the materials of the prosecutor's examination for review. The prosecutor agreed, and cassation board Sun RT granted the lawyers to the documents. According to the records, the defendants in their submissions claim that they had no complaints of torture which completely contradicts their testimony given during the trial. According to the five defendants sentenced to the life imprisonment during the examination they reported to a medical examiner and prosecutors about all methods of torture that was used against them, however the examiner mentioned in his conclusion just their explanations without capturing e the essence of their testimonies of torture. The records also include explanations of the employees, members of the investigative task force, who claim that they were working within the law and no one was tortured. On September 28, 2012 during the trial lawyers requested re-examination and appointment of a commission with the participation of the lawyers. The court left this request unanswered.

On October 8, 2012 at the Temporary Detention Facility # 2 in Khujand the cassation board of the Supreme Court of RT continued consideration of the criminal cases. The defendants in a protest of not responding to all torture allegations, refused to examine the materials of the criminal case, but after discussions with their lawyers agreed to review the materials of the examination which will be conducted from 09 to 12 October 2012. Currently, lawyers are preparing a joint request for additional complex examination with the participation of experts in the field of surgery, traumatology, urology, cardiology and other medical fields in order to establish the true effects of torture, as well as an investigation with the presence of lawyers.

For its publications, the Public Fund "NotaBene" uses paper, the corresponding FSC (a group of products from responsibly-managed forests).

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