



INFORMATION BULLETIN #2

Istanbul Protocol: From theory to practice

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INFORMATION NEWSLETTER #2

**Istanbul Protocol:
From theory to practice**

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ABRIVIATIONS:

RT-----REPUBLIC OF TAJIKISTAN

SC-----SUPREME COURT

MHSP RT-----MINISTRY OF HEALTH AND SOCIAL PROTECTION
OF THE REPUBLIC OF TAJIKISTAN

MJ-----MINISTRY OF JUSTICE

CDPI-----CHIEF DIRECTORATE FOR PUNISHMENT IMPLEMENTATION

NCMFE-----NATIONAL CENTER OF MEDICAL FORENSIC EXAMINATION

DIAO -----DEPARTMENT OF INTERNAL AFFAIRS OFFICE

NUT-----NATIONAL UNIVERSITY OF TAJIKISTAN

CC-----CRIMINAL CODE

UNDP-----БАҶНОМАИ РҶШҶИ СОЗМОНИ МИЛЛАЛИ МУТТАҲИД

OSCE -----ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

MASS MEDIA-----MASS MEDIA

DCGS-----DISTRICTS OF CENTRAL GOVERNMENT SUBORDINATION

PO -----PUBLIC ORGANIZATION

FOREWORD



Dear friends, we are pleased to introduce to you the second edition of the newsletter generated in the framework of the Project "Raising awareness and capacity building of penitentiary facilities officers, doctors and members of the monitoring group for the promotion of effective documentation of torture and cruel, inhumane and degrading treatment or punishment" which is developed and published under the support of the Ministry of Foreign Affairs of Finland and the UN Development Program.

In the first newsletter, we provided you information on the history of the adoption of the Istanbul Protocol and its importance in dealing with cases of torture and other cruel, inhuman or degrading treatment or punishment, as well as we brought to light the application of the provisions of the Istanbul Protocol in the Republic of Tajikistan starting from 2012 to 2015.

In the present second edition, information is provided on the implementation of the provisions of this document for the period of 2015 - 2017 which is related to the professional activity of the relevant professionals implementing fair trial. Also, in this edition, you will get familiarized with the professional activities of those who are in charge of protection of the rights of the military persons, the victims of domestic violence, the judiciary representatives, the co-authors of the Istanbul Protocol and other stakeholders in the implementation of this important document. It is important to note that the co-authors of the Istanbul Protocol have started the process of informing the law enforcement agencies on the criteria of this document in 2011-2012, during this period, international experts "Physician for Human Rights" conducted a number of training sessions for judges, prosecutors, lawyers and specialists and doctors in the Republic of Tajikistan. Then, this activity was continued with the support of the Working Group under the MHSP RT and PO "Human Rights Center" in the Legal and Practical Standards and Acts.

The Istanbul Protocol provides guidelines to the investigation, judicial and medical institutions on the strategies of conducting investigations and principles of medical evaluation (psychological, physical impacts of torture). The documentation methods provided in this guideline can be used in cases of domestic violence, or other violent acts against human. At the same time, the Republic of Tajikistan is taking active measures to prevent the evidence of torture through reforms in the country's legislation and the law enforcement practice. In particular, a number of activities are being undertaken by ministries and agencies together with civil society in the field of freedom from torture.

This bulletin is prepared by the PO "Human Rights Center" and is of informative nature meant for a wide range of stakeholders in investigating cases of torture, cases of domestic violence, and other serious violations and the importance of physical and psychological condition evaluation of victims of torture, as well as the role of specialists

(physician, forensic medical expert, psychologist) in the documenting of such cases in conformity with the provisions of the Istanbul Protocol.

We hope that the issues raised in this newsletter will have a positive effect on investigating and documenting cases of torture by medical professionals. We hope that the present newsletter will become a good guidance and future archive for all stakeholders discussing issues and progress on the effective mechanisms of investigation on cases of torture and other types of cruel treatment.

*Nurmahmad Khalilov,
Director of PO "Human Rights Center."*

*Parvina Navruzova
the head of the Program "Introducing Istanbul Protocol Standards
in the Republic of Tajikistan," a lawyer of the PO "Human Rights Center."*

THE ESSENCE OF THE ISTANBUL PROTOCOL

Guidelines for Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Istanbul Protocol), was developed by 75 experts in the field of law, health and human rights, representatives of 40 organizations and institutions of 15 countries of the world.

Generating the basic idea and development of this guide is a result of work of forensic medical experts, physicians, psychologists, human rights activists and lawyers from Germany, Denmark, Israel, India, Costa Rica, Holland, the United Kingdom, the United States and Turkey. Seriousness of the effectiveness of investigations and documentation of torture and other cruel and inhuman or degrading treatment or punishment of the person, types of treatment and punishment are incorporated into the Resolution 55/89 of the General Assembly (dated December 4, 2000) and the Resolution 2000/43 of the Human Rights Commission (dated April 20, 2000) and adopted without voting.

The Istanbul Protocol is an important guideline to the specialists to the medical experts and lawyers for co-operation in the field of torture evidence documentation. The essential requirements of the Istanbul Protocol are a comprehensive investigation and a thorough documentation. Comprehensive investigation of the torture evidence by the joint and coordinated participation of physicians, psychologists, lawyers and other experts allows for the most severe cases to be studied thoroughly and to bring to light the actual original situation. Detailed and accurate documentation of torture provides an opportunity for coordination of the information and evaluation, which ensures the correct assessment of the incident.

Experts participating in the investigation of torture and cruel treatment should be guided by the highest ethical standards of professional conduct and prior to carrying out any evaluation or diagnoses must obtain an informed consent on it.

The examination should conform to the specified medical standards.

For example, for the purposes of medical examination, medical examination should be conducted behind closed doors, under the supervision of a medical specialist and without the presence of a representative from the law enforcement agency.

The Istanbul Protocol reflects the strategy for conducting investigations and the principles of medical evaluation (psychological, physical impacts of the bodily torture) to investigation, judicial and medical institutions.

(For more information, please see the Istanbul Protocol section on this site at <http://www.ohchr.org/Documents/Publications/training8Rev1ru.pdf>).

The present guideline is intended to provide the state an effective instrument to address one of the issues in the protection of human being from torture as well as to address the issue of the correct and effective documenting of torture and ill treatment. Documentation will allow for the use of torture and ill-treatment to be determined, defined, confirmed and presented. This way of acting enables the courts to make fair judgment and makes it possible to bring to court a person who committed an illegal action and to be punished according to his crime. The documenting methods provided in this guideline can also be used in other situations. In particular, during the investigation and monitoring in the field of human rights; evaluating the situation of a person seeking political asylum; the protection of the person who "confessed to his crime" under the pressure of torture; when evaluating the need for assistance to a victim of torture and so on.

The Istanbul Protocol is based on the assessment of the real situation of persons who have been subjected to torture or ill-treatment, in the event of a case-by-case investigation of the alleged torture and the results of such evaluation and judicial investigations or the investigation of any institution, serves as the international standards because the guidelines apply the principles of effective investigation and documenting of torture and other cruel treatment or forms of degrading treatment or punishment.

The United Nations General Assembly and the UN Commission on Human Rights (Resolution No. 55/89 of 4 December 2000) following the proposal of the United Nations Special Rapporteur on Torture in the course of the 56th Session strongly demanded from the States to acknowledge the provisions of the Istanbul Protocol as an affective instrument combating torture.

The Istanbul Protocol is an Effective Guidelines for Investigation and documenting torture and other types of inhuman, degrading treatment and cruel punishment
UN-2004, p.2

Notion and importance of Istanbul Protocol and recommendations of international experts given to forensic experts on effective application of this document

Vincent Iacopino,



M.D., Ph.D. Physicians for Human Rights Senior Medical Advisor. Adjunct Professor of Medicine University of Minnesota Medical School. Senior Research Fellow Human Rights Center University of California, Berkeley

- What is Istanbul Protocol?

- The Istanbul Protocol is a series of guidelines for effective investigation and documentation of torture and other forms and ill treatment. The purpose of the Istanbul Protocol is really to empower alleged victims, to give them a voice through documentation and investigation.

It serves as a framework for states to conduct their own effective evaluation, because often times they are not, since torture is the crime of the state, and often time forensic investigations do not document. And it can be a framework for accountability as well. If states are not conducting evaluations properly, people can advocate that they are not. On the other side it empowers civil society - people who are independent of the government who have medical expertise to document physical and psychological evidence of torture, and to bring it to bare in court.

One thing i would like to add - torture is done in concealed way. People are in incommunicado detention, and it is often there are no witnesses and so forth. Therefor medicine testimony is really the most compelling forms of material evidence to corroborate allegations of torture. So there is a certain weight to that evidence that is perhaps is greater than other forms of evidence.

Particularly judges (who should be aware of the Protocol). Because the judges often times do not know what a good quality examination is. They receive a state of evaluation that says there are no signs of injury or lesion only, or perhaps there will be a cataloguing of injuries with no assessment of allegations and the injuries disappear over time and so forth. The Istanbul Protocol evaluation, the medical evaluation is often times very lengthy and complex. You can abbreviate examinations, but the ones in the medical legal context are quite lengthy, and judges need to know what they look like. And they need to know how to qualify some of them on the basis of their knowledge and experience using the Istanbul Protocol. So judges figure very prominently as a target group for understanding and applying the Istanbul Protocol.



Juan Méndez,

UN Special Rapporteur on torture and other forms of cruel, inhuman and degrading treatment.

- From the perspective of international law the protocol is a document adapted in 1999 that United Nations have successively and several times now endorsed and it represent a standard by which we can measure that states are complying with their obligations to investigate, prosecute, and punish torture. The standard by which we can measure whether the states are living up to their obligations to exclude evidence obtained under torture because the first thing that needs to happen is to establish whether torture have happened or not. I think in fact the Protocol is a very invaluable document that allows not only international mechanisms of protection, but also civil society organization fighting torture in their own countries to put before the states in each case, whether judges have responded directly to evidence of torture, if prosecutors used their tools at their disposal to investigate torture. And particularly because it is basically a standard by which we obtain scientific evidence. It carries the way that testimonial evidence by itself cannot really match. But of course it depends on the protocol being used appropriately.

I should add also that in addition to the obligation to investigate, prosecute and punish and to exclude evidence obtained under torture the Protocol is very useful on other states obligations that derive from the absolute prohibition of torture in international law. Specifically the obligation to provide reparation and rehabilitation, and also not to return people to places where there might be a risk of torture. Because past histories of torture can also be analyzed under the Istanbul protocol to make representation to a government not to send people to places where there might be a risk of torture.

Question: What advice would you have for medical and forensic clinicians to effectively use the Istanbul Protocol to investigate the allegations of torture.

Mendez - If I may talk now about the perspective of a victim of torture. A long time ago when I was arrested in Argentina and tortured, a couple of times doctors came to inspect me, but mostly to allow the torturers to continue, saying that I could take some more [torture]. But when I brought before a judge and I still had some marks of electric shocks, the doctor of the judicial services examined me and said that those marks were consistent with my story. This was really gratifying for me not only because I could prove that I been wrongly arrested and accused, but more than anything the validation of my story before the official made all the difference. I still had to spend a year and a half in prison, but it was important that I had encounters with medical professionals within days that were so different from one to the other.

Vince - This very moving story helps to bring to light this very dark aspect of torture that we are also trying to fight against - this is a complicity of health professionals in torture, which is very common. And it is not only common because people need examination evidence and so forth. I think health professionals are used to help people psychologically

disconnect and justify their actions [of torture], that there is a medical person for the healing purposes and to protect detainees. We see this in the United States, in Guantanamo the role of medical personal which is involved in the design, implementation, concealment of torture. The Istanbul Protocol also serves as an ethical focal point. Our duty is to protect people and to heal, and to be a part of justice. Not to inflict severe pain. So the Istanbul Protocol represents an opportunity for clinicians to have a broader effect in terms of their duty to do something about human suffering.

For more information, please refer to: <https://vimeo.com/222339777> A video of the Institute of Human Rights of the International Association of programs and initiatives for the Prevention of Torture in Washington College with the key international experts on the effective use of the Istanbul Protocol, some problems which medical and legal professionals face in their implementation.

**ISTANBUL PROTOCOL IN TAJIKISTAN:
Activities carried out to implement the standards of this Protocol**

(Continued, beginning is provided in the newsletter number 1)

COAH 2015

● **Capacity building of healthcare specialists – development of training module:**

Torture and other cruel treatment are illegal acts applied by officials who are in power and the identifying of such acts and misconducts, their prevention and punishment of offenders in accordance with the international standards are vested on the state and government.

Taking into account the commitments undertaken by the Republic of Tajikistan against torture and other ill-treatment, the Action Plan on Combating Torture is elaborated where one of the key points is training of medical personnel in effective documentation of torture.

In February 2015, the MHSP RT and the PO "Human Rights Center" developed the module according to International standards (the Istanbul Protocol) on "Specific features of medical examination and forensic medical and psychological examination and for victims of torture and other cruel and inhuman treatment as well as affective documentation of torture evidences.

The purpose of the module is to improve the qualification level of physicians of various fields, members of the Monitoring Group under the Commissioner on Human Rights (Ombudsman) who carry out their activities in the detention places in the field of studying legal aspects, issues related to the medical examination of detained persons or victims of torture or other ill-treatment; as well as to train a target group in the international best practices on effective documentation of combating torture and other inhuman or degrading treatment.

● **Training for physicians and Monitoring Group:**

Starting from March to April 2015 PO "Human Rights Center" together with the Central Department of Forensic Medical Expertise under the Ministry of Health and Social

Protection of Population (CDFME and MHSP) conducted six 3-day trainings for forensic physicians and members of the Monitoring Group under the Human Rights Commissioner. The training was carried out with the support of the Open Society Institute in Tajikistan, UNDP, the UN Office of the High Commissioner for Human Rights and the German Embassy in Dushanbe and in total covered 138 participants.

Training was devoted to the subject of the Istanbul Protocol Standards and practical use of a new form of "Protocol on Examination of Detainees", which was adopted by the resolution of MHSP RT N918 as of November 01, 2014.

Trainings and Number of Participants:

Medical experts/ lawyers	Dushanbe	DCGS	Khatlon Region	Sugd Region	In Total
Forensic medical experts	2	2	1	1	6
Traumatologists	16	2	2	17	37
Doctors of first Assistance	8	2	-	6	16
Surgeons	9	5	1	15	30
Psychiatrist	5	1	2	1	9
Neurologists	-	-	-	2	2
Psychologist	-	-	-	1	1
General practitioner	-	-	3	1	4
Gynecologists	2	1	2	2	7
Cardiologists	-	-	-	1	1
Prison Doctors	6	1	1	2	10
Doctors of Emergency rooms	1	3	1	1	6
Lead Specialist of Health Department	-	-	-	1	1
Human Rights Commissioner	3	-	1	1	5
Non-governmental organizations	2	-	1	-	3
IN TOTAL:	54	17	15	52	138



Training was devoted to the subject of the Istanbul Protocol Standards and practical use of a new form of "Protocol on Examination of Detainees", (which was adopted by the resolution of MHSP RT N918 as of November 01, 2014) for forensic medical experts and Members of the Monitoring Group under the Commissioner on Human Rights (Ombudsman).

Conclusions and Recommendations following the outcomes of the trainings:

Participants raised questions and issues to be discussed and resolved, such as:

- Absence of a specific medical form, which could be used at the stage of initial medical examination;
- The impossibility of conducting complex examinations, due to the absence of conditions for conducting such medical examination (a separate medical room, insufficient light for detection and registration of physical injury, lack of medical equipment);
- Limiting the time frame for conducting a medical examination by law enforcement officers;
- The presence of law enforcement officers during the medical examination;
- The fear of medical experts before law enforcement officers during the conduct of a detainee medical examination;
- Doctors do not have sufficient information about a detainee; law enforcement officers do not provide medical record statements of detainees;
- Inconsistency of medical conclusions - law enforcement officials take into consideration second medical opinion which denies the existence of any evidence of physical injury;
- At medical examination of a detainee in the trauma department absence of physicians –experts of other fields of medicine. Usually, in most cases, an examination is carried out by one doctor, with a visual examination of the skin;
- Retention of detainees from internal examination, such as (gastroenterology, proctologic, etc.);
- Disrespectful treatment of law enforcement officers to doctors, disregarding terms (queues) at health care facilities;
- Insufficient availability of technical equipment - absence of x-ray and photocopy and printer, or the presence of obsolete or damaged x-ray devices and other appliances;
- The burden to doctors, a large number of detainees brought for medical examination, but wages are not increased (low wages);
- Another challenging issue to the physicians is filling out a medical examination Protocol of detainees, which requires a certain time;
- Refusal to undergo medical examination by victim, sometimes victims ask that their physical injuries not appear on the examination protocol, but the other day they require doctors to give them a medical report about their injuries;
- Low level of education/awareness (legal, social, documentary, awareness etc.) of the population;

The issues raised by the participants of the two training sessions mainly concerned an issue of insufficient knowledge of doctors about their rights and their guarantees. Also a lack of experience/practice in conducting medical examinations by doctors and lack of technical equipment were also noted by the training participants as problems to be solved.

Recommendations:

- Providing regular expert assistance during forensic medical examination;
- Development of an educational manual, which can define the procedures and rules for identifying the physical and psychological damage resulted as a consequence of torture in accordance with the requirements of forensic medical and psychiatric examination;
- Conducting multidisciplinary trainings on psychological evaluation of evidences;
- Developing a comprehensive clinical protocol in order to improve the conduct of examinations;
- Participants noted that to enhance the capacity in effective documentation of torture evidences additional training materials, participation in conferences and usage of efficient survey methods, as well as formal action plan for the implementation of the Istanbul Protocol are required.
- Develop a Law, which guarantees protection of doctors from pressures of law enforcement officers;
- Establishing the Unified Expert Center with specialist-doctors of various fields, an appropriate laboratory that can provide rapid and timely physical and psychological evaluation of detainees.
- Raising awareness of physicians about their rights and responsibilities at medical examination of detainees.
- Providing information to the general public about National Legislation of the Republic of Tajikistan and rights and obligations of citizens in accordance with provisions of National Legislation by the state and public organizations;
- Provide technical support to medical institutions, including photocopy machines and printers, as these devices are important and necessary for doctors to conduct a medical examination of a detainee.
- Capacity building of doctors in describing injuries and psychological consequences resulted from torture (violence). Because in most of cases the injuries are not fully described and information on the patient's and his/her surroundings psychological symptoms are not fully summarized;
- Use of the Single Blank Form that is meant for conducting a medical examination of the detainee. "Medical examination Protocol of a detainee", because some heads of medical institutions did not explain to their employees the necessity of using such Forms during the medical examination of a detainee.

Conducting training for lawyers of all medical institutions concerning protection of procedural rights and responsibilities of doctors with the purpose of accessing physicians to legal advice;

- Setting up 24x7 live hotline (including a representatives of the ombudsman, MHSP RT, public organizations, etc.);
- Developing the information boards about the rights, guarantees and responsibilities of physicians and patients and their dissemination of such boards in all healthcare facilities. During the training, the "Protocol on Examination of Detainees" was disseminated to the participants in a soft and hard copies. Also in the process of the training as a part of practical workshop the proper way of filling out this document was shown.

COAI 2016

- **Istanbul Protocol and practice of detention places physicians (prison doctors):**

In 2016, a draft of the Internal Regulation "Procedure of organizing medical assistance to persons in detention places and prisons" was developed by the Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT) and the Ministry of Health and Social Protection of Population of the Republic of Tajikistan (MHSP RT) in collaboration with the public organization "Human Rights Center" and the experts incorporated the rules of the Istanbul Protocol into this paper.

In Article 3 of the paper "Providing preventive healthcare of suspects, criminals and convicts at the medical office", the provisions focused at ensuring medical security are specified very clearly and meaningfully.

"At placing in the pre – trial detention each and everybody (including those who are retransferred) undergoes to an initial medical evaluation to identify patients who bear any infectious diseases creating threat to others or to identify the need to any medical care. Particular attention is paid to skin diseases, infection diseases, injuries and so on".

Article 28 states that "in the case of a person entering the Institution with a physical injury, on the initiative of the Deputy Head of the Institution- an officer who is on duty, or following a statement of the injured person, as well as in the event of identifying bodily injuries during medical examination by physician (physician, nurse) an Act is drawn up in a free form. This Act shall be executed in two copies and one is attached to the medical statement and the other copy shall be given to a suspected, accused or convicted person, after his or her signature in the original copy.

The Istanbul Protocol also recommends that medical examination is to be carried out in accordance with the specific requirements as a timely evaluation of the injuries is serious evidence of illegal actions. The second part of this Article fully complies with the requirements of Istanbul Protocol standards.

Particular attention should be paid to the development of mechanisms for identification and documentation of psychological and physical injuries by doctors of correctional institutions and the incorporation of these facts to the new Regulation. Also, specialists, experts of the field have been developed a new medical form i.e. Medical examination Protocol of a detainee.

- **Round Table on the Internal Regulations:**

On March 14, 2016, a public organization "Human Rights Center" in collaboration with the Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT) arranged a round table on the presentation of the Draft Law of the Republic of Tajikistan "Organizing medical care to persons in prisons and persons under arrest", Act on medical evaluation of the detained persons and the result of the project funded by the Ministry of Foreign Affairs of Finland and the UN Development Program.

The purpose of the round table was presentation and discussion of the developed papers and the creation of cooperation mechanisms between the civil society institutions and state agencies in documenting the evidence of torture and ill-treatment in detention facilities and similar institutions.

It should be noted that the representatives of the General Prosecutor's Office, National Center on Protection of Population from Tuberculosis, Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT), a Supreme Court Judge, representatives of Public Organizations, OSCE, the UNDP, the Red Cross, Open Society Institute Foundation "Madad-Tajikistan" and mass media participated in the round table.

A number of proposals were made by the participants of the round table, such as:

- Internal Regulation's experts should analyze it and bring to compliance the requirements of this paper to the Resolution of the Supreme Court of the Republic of Tajikistan dated November 30, 2015, No. 74 "On Implementation of Compulsory Medical Measures";
- Also the original version of the Regulation and medical evaluation of the detained persons should be delivered to all ministries and agencies, for their comments and recommendations;
- Dissemination of the present Regulation among lawyers (barristers) is to be discussed.
- To conduct training courses for physicians and staff of Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT) on the interpretation of the standards and requirements, concerning provision of medical care and treatment for persons under detention and persons in prison;
- The issue of incorporating the Act of a medical evaluation to the criminal case materials, if the case is filed with a criminal case on the facts of torture in places of detention.

Recommendations on further activities while training staff of correctional institutions for documenting torture and other cruel treatment in accordance with the provisions of the Istanbul Protocol:

- Trainings on Istanbul Protocol Standards should be held for more of medical personnel and operational staff of the correctional institutions;
- In the course of trainings Participants are to be trained in pilot use of the Internal Regulation standards and provisions of the act on medical evaluation of the detained persons;
- Also the members of the Monitoring Group of detention places under Commissionaire on Human Rights (Ombudsman) are to be involved into these trainings.
- Development of training programs of the Institute for Upgrading Qualification of correctional institutions officers by inclusion information about the Internal Documentation of the Medical Department of the Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT) and the standards of the Istanbul Protocol;

- After the adoption of the document and the Act by the Medical Department of the Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT), during the monitoring of detention facilities, the implementation quality of the newly adopted papers must be evaluated;
- Development of information materials on the role of detention facilities and prison doctors in documentation of torture and ill-treatment; Information materials is to be disseminated among the judges, the prosecutor's office, the Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT), the barristers and the civil society for proper understanding of the Istanbul Protocol provisions;
- Raising awareness and capacity building of health workers and staff of the Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT), members of the Monitoring Group under the Human Rights Commissionaire.



*A round table dedicated on presentation of the draft Internal Regulations
“Organizing medical care to persons in prisons and persons under arrest”,
Act on medical evaluation of the detained persons.*

● **In April and May of the year 2017**, three training sessions had been conducted on Istanbul Protocol standards to the medical staff and the officers of Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT) and members of the Monitoring Group of detention facilities in prisons under Commissioner on Human Rights, in total 68 participants (50 men and 18 women) were covered.

Participants	Dushanbe	DCGS	Khatlon	Sugd	In total
Medical specialists from correctional institutions	15	7	6	5	33
Correctional Institutions Officers	8	2	5	7	22
Representatives of the Commissioner on Human Rights	2			1	3
Lawyers, members of Coalition	5			5	10
In total	30	9	11	18	68

The purpose of the training is to study the basic principles of the Internal Regulation “Organizing medical care to persons in prisons and persons under arrest”, Act on medical evaluation of the detained persons and Istanbul Protocol and hard copies of the Paper (with the support of UNDP) were distributed to the participants.

The results of training revealed that participants (doctors, lawyers) have no sufficient knowledge of the regulatory legal acts regulating torture and other types of cruel treatment. It is important to include the issue of freedom from torture and documentation of such cases in the post-diploma programs of relevant institutions:

- Documentation of violence, torture and other types of cruel treatment are generally done, but its method is not well arranged and is not in compliance with international standards;
- The impact of physical injuries and psychological consequences in cases of violence, torture or other cruel treatment in practice is documented in a free form, and this document does not have a proof of evidence therefore in most cases is a major reason for negative forensic medical examination;
- Torture is not known to all of the training participants as a criminal sentence, and its concept according to the National Legislation Standards is not interpreted neither to medical personnel nor to the higher education law students.
- The developed project "The Internal Regulation, “Organizing medical care to persons in prisons and persons under arrest”, Act on medical evaluation of the detained persons, is a timely important and most welcome project, and materials in the course of training will be used by all the participants as the basis in their practice



Training on Istanbul Protocol standards to medical personnel and officers of the Chief Directorate for Punishment Implementation under a Ministry of Justice of the Republic of Tajikistan (CDPI MJ RT), and members of the Monitoring Group of detention facilities in prisons under Commissioner on Human Rights.

● **Raising awareness of judges on Istanbul Protocol Standards:**

PO "Human Rights Center" together with the Training Center of Judges under the Supreme Court of the Republic of Tajikistan held four 3-day trainings for 57 judges and 11 intern-judges on documentation evidences of torture and other cruel treatment in accordance with the provisions of the Istanbul Protocol. In the course of these trainings judges were trained on specifics of controls and investigations from the moment of detention, preliminary investigation, judicial investigation and role of specialists (physician, forensic medical experts and psychiatrists) in physical and psychological assessments, psychiatric evaluation and providing of medical advice to preliminary and judicial investigations.

The main problems raised and discussed by the participants and the trainers:

Preliminary and judicial investigations:

- The lack of knowledge in the field of medical forensics, including the methods of determining the process and the timing of torture and injury signs and so forth. Also, the exact timing of wounds that usually occur after a certain period of time;
- The majority of participants stated that judges can not conduct evaluation or in the course of the proceedings conduct forensic medical examination (criminal investigations, or sanction for detention). As a result, the speaker explained to the training participants about the importance of appointing a timely medical examination, as well as identifying the prosecutor's supervision and taking measures to identify torture and other cruel treatment;
- It was also noted that examination materials on torture should be required for familiarization by the court, only prosecutor's resolution on absence of torture evidence is not sufficient. The speaker informed the participants the standards of the Supreme Court Resolution on the fight against torture, which states: "The Judges must read out the results of the prosecutor's investigations to the court case participants and attach them to the criminal case materials." Participants-judges noted that they verbally refer to the prosecutor's office to provide investigation materials in a timely manner, but sometimes it is not done;

- The issue of the exact amount of moral damage and its payment procedure was also discussed by the participants;
- It has been stated that the institution of a non-governmental forensic examinations should be established;
- Organizing training courses for judges and prosecutors in other countries;
- To aggravate the criminal liability for torture and other cruel treatment.



Training on documenting the facts of torture and other cruel treatment according to Istanbul Protocol standards for judges and intern judges.

Problems and Recommendations on Mental and Psychological Forensic examination.

- In most cases, it is difficult to distinguish the role of a psychologist from psychiatrist in civil cases. It should be understood that the psychiatrist's task is not only to determine the (responsibility) of the defendant (s);
- Lack of information about mental disorders after torture or other cruel treatment in such cases;
- Problem in asking focused questions the psychiatrist to identify psychological problems after torture and its subsequent treatment;
- The majority of participants asked the psychiatrist questions related to physical injuries that fall under the competence of the forensic medical doctors;
- Positive aspect – participants paid efforts to identify the existence of mental disorder after application of torture, discuss an issue of rehabilitation and recovery of torture victims;
- Incorrect realization of the fact that psychiatrics defines the severity of the injury as a result of the torture. The speaker explained to participants that the level of damage to health is identified by a forensic medical expert as a result of evaluation of physical injury. The psychiatrist can only identify a person's mental condition without classification of a damage inflicted to a person's health.
- Wrong perception that when the psychiatrist determines the need for further treatment of torture victims he/she should also determine the cost of treatment;
- Trainers have provided information about the importance and necessity of this document to the participants.

It should be noted that the judges realized a psychiatrist's role in conducting a diagnosis (examination) to determine the situation after inflicting the psychological injury as a result of torture in criminal cases.

Forensic Medical examination

- The majority of training participants asked the forensic medical expert "how serious is the physical injury as a result of torture?";

Speaker – a forensic medical expert explained to the participants that the definition of torture is not provided in the framework of forensic expert's performance. Forensic medical expert only determines the existence of the injury, the mechanism of its inflicting and the timing of such injury;

- Most participants satisfied only by conducting a forensic medical examination.

The Speaker – forensic medical expert explained to participants the importance of appointing a complex forensic examination (forensic medical and psychiatric examination) for determining not only physical injury but also the mental condition following the torture, which is obligatory in accordance with the requirements of the Istanbul Protocol;

- At putting questions, many participants did not specify exactly the date and time of the incident but put the question concerning specifying the level of damage.

The speaker noted that this action contradicts to the CC provisions, as in this case not the level of injury, but the form of damage to the health is more important. Also, the speaker explained that according to the rules of the Istanbul Protocol, the experts should identify the level of injury according to the information provided by the victim and determine the ways of incurring such injury. Also attachment of photographs, identification of mental disorders after torture and the need for clinical treatment shall be specified by the forensic expert.

● **A round table on project results:**

On October 27, 2016 the PO "Human Rights Center" together with the Training Center of judges under the Supreme Court of the Republic of Tajikistan conducted a round table discussion in Dushanbe on the results of training for judges on the Istanbul Protocol. Also in this event educational program and lectures, for the Department of criminalistics and forensics of the faculty of law of the Tajik State University, according to the standards of Istanbul Protocol was presented. At the same time, Dushanbe Court judge made a presentation on the case study of torture.

It should be noted that during the round table the challenges and opportunities concerning torture and other ill-treatment investigation had been considered, and a number of problems and proposals with regards to Istanbul Protocol standards implementation in Tajikistan had been stated.

Recommendations by:

Supreme Court of the Republic of Tajikistan:

- Increasing the number of trainings and study courses based on best practices in forensic medicine of other countries;
- Making amendments and additions to the Plenary Session Resolution of the Supreme Court of the Republic of Tajikistan, as amendments had been made to the Criminal Procedure Code of the Republic of Tajikistan, also incorporating the provisions of the Istanbul Protocol standards;
- It is necessary to expand the scope of the Article 1431 of the Criminal Code of the Republic of Tajikistan, as this article covers investigation and inquiry bodies, while torture in military units and places of detention is considered in accordance with other article of the Criminal Code of the Republic of Tajikistan;
- To develop a manual concerning making inquiries and asking questions from/to specialists/experts by judges, prosecutors and lawyers/barristers;
- To develop statistical data of appeals to court with regards to torture;
- Torture is used immediately after detention, therefore it is necessary to improve the work with investigating bodies, including installing surveillance cameras in the inquiry rooms, information data base system in DMIA (the prosecutor's office expressed its willingness , but presently no funds are available in the budget);
- In the course of trainings it is necessary to tell more about cases in Guantanamo and Pakistan prisons for the judges to have more relevant information;
- Development of a Resolution of the Supreme Court of the Republic of Tajikistan on the procedure of arresting/detention, inquiry and investigation;
- To increase liability of specialists providing result of expert examinations;
- Involvement of psychologists and psychiatrists in criminal cases.

Center for Qualitative Improvement at the General Prosecutor's Office of the Republic of Tajikistan:

- Conduct training for prosecutors on the Istanbul Protocol standards;
- Also including such study in the curriculum of the faculties of law;
- Further in the projects related to the reforms of detention facilities and prisons and investigations of criminal cases on torture to involve prosecutor's office responsible for observance of detention places and prisons.

Military Prosecutor's Office of the Republic of Tajikistan:

- It was noted that torture and ill-treatment exist in military units, however these crimes are considered as violation of military statute relationships (bullying), since sub-paragraphs 1431 CC Of the Republic of Tajikistan limits interpreting such actions of military servicemen as a torture.
- Mass Media often publishes articles about torture in military units, although these actions are not considered to be as torture according to the law. It should explain to the mass media representatives about torture and other cruel treatment.
- More examples from the international practice related to torture and other ill-treatment cases are to be brought in light during training sessions.

Recommendations to:

To judges:

1. Conducting training on international standards, including the International Convention on Political and Civil Rights and International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
2. Conducting monthly courses on forensic medical evaluations (forensic psychological and psychiatric examination) on cases related to torture or other cruel treatment;
3. Arrangement of workshops with the participation of judges, lawyers, prosecutors, physicians (forensic medical experts and psychiatrists) to review and strengthen the role of judges in investigating the cases of torture;
4. Analyses and introduction of Istanbul Protocol standards to the Resolution N1 of the Supreme Court of the Republic of Tajikistan “about adoption of Criminal legislation standards and criminal proceedings in fight against torture” as of 2012;
5. Strengthening and control over implementation of Resolution N1 of the Supreme Court of the Republic of Tajikistan “about adoption of Criminal legislation standards and criminal proceedings in fight against torture” by judges in the process of reviewing criminal cases;
6. Setting up statistical reports within the Supreme Court of the Republic of Tajikistan on the use of torture and other cruel treatment;
7. Publication and submission of the Istanbul Protocol to all judges of the cities and districts of the Republic of Tajikistan;
8. Conducting trainings for judges of the military courts of the Republic of Tajikistan, who consider the investigation of criminal cases on torture in military units.

To prosecutors:

1. Conducting trainings for prosecutors (prosecutor and military prosecutors) on Istanbul Protocol standards;
2. Analysis and introduction of the Istanbul Protocol standards to the methodological guidelines for detection and investigation of torture and other cruel treatment for Prosecutor's Office staff as of 2012;
3. Monitoring of prosecutors on the activities of doctors who carry out medical examination/evaluation of persons under detention;
4. Publication and submission of the Istanbul Protocol to all prosecutors of the cities and districts of the Republic of Tajikistan.

General:

1. Trainings for psychiatrists (not all psychiatrists were covered by all training sessions, but involved in evaluating consequences of torture);
2. Introduction of Istanbul Protocol standards into the curriculum (educational program) of the Narcology and Psychiatry department of the Medical Institute (the Department named after prof. Minhoj Gulomov).
3. Extension the scope of Article 143 of the Criminal Code of the Republic of Tajikistan;

4. Introducing Section 3 of the Istanbul Protocol to the curriculum (educational program) of the department of criminal law or the supervisory department of law faculties;
5. Conducting the implementation of the structural or supervisory strategy (monitoring) of the Istanbul Protocol in courts, prosecutions, medical institutions, etc.;
6. Torture is used immediately after detention, therefore it is necessary to improve the work with investigating bodies, including installing surveillance cameras in the inquiry rooms, information data base system in DMIA (the prosecutor's office expressed its willingness , but presently no funds are available in the budget);
7. Arrangements of lawyers/barristers activities and the rehabilitation group of victims of torture under the NGO Coalition against torture and impunity in Tajikistan while documenting torture in accordance with the provisions of the Istanbul Protocol;
8. Information campaigns on the role of judges, prosecutors and doctors in the investigation of torture cases and evaluating the impacts of physical and psychiatric damages.

● **International Conference:**

An international conference dedicated to the implementation of the principles of the Istanbul Protocol standards and the introduction of regional practice into the international standards for affective investigation and documentation of torture was held in Bishkek from September 21 to September 22.

The conference was held jointly with the experts of the "Physicians for Human Rights" (Coauthors of Istanbul Protocol), NGO Coalition against torture and impunity in Kyrgyzstan, European Union, "Soros Foundation" Kyrgyzstan, Institute name after Ludwig Balsman for Human Rights, OSCE Office in Bishkek, the Regional Office of the Office of the High Commissioner for Human Rights in Central Asia, the International Council on Rehabilitation of Torture Victims, the Open Society Institute of Tajikistan, and others.

The purpose of the conference was to implement the "Action Plan for the Implementation of the Istanbul Protocol Standards", introduction of regional practice into the international standards for affective investigation and documentation of torture. In the opening of the conference, the video presentation of professor Juan Mendez - the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, was broadcasted online.

In his speech the special rapporteur highlighted on the possibility of implementing the provisions of the Istanbul Protocol as an effectively functioning mechanism in investigation of torture and other cruel treatment, and pointed out the successful implementation of this instrument in Tajikistan and Kyrgyzstan.

At the conference a number of sections were devoted to the issues of the research and role of doctors in evaluating the effects of physical and psychiatric consequences of torture and presentation of representatives of various states, such as Austria, the United States, Mexico, Moldova, Kyrgyzstan, Kazakhstan, Tajikistan, etc. was heard.

Participation of experts proactively involved in implementation of the Istanbul Protocol standards in Tajikistan in this conference had become possible by the support of the Open Society Institute, Assistance Foundation.

● **Training for lawyers/barristers:**

From September 27 to September 29, 2016, a three-day training session on Istanbul Protocol standards was held for lawyers/barristers and representatives of the NGO coalition members. The training was conducted by Rasudan Beriashvili - expert of international organization "Physicians for Human Rights", Begijon Yusupov - doctor psychiatrist and Parvina Navrurova - a lawyer of the PO "Human Rights Center" and covered 12 participants.

● **Round Table: Effort for Rooting out Torture**

On October 6, 2017, a round table was held in Dushanbe on the development and elaboration of the interpretation of the Criminal Code of the Republic of Tajikistan execution and the results of the project "Improvement of professional skills of the physicians according to the provisions of Istanbul Protocol standards". At this session participated representatives of law enforcement agencies, public and international organizations and experts.

During the meeting, Saidahmad Ikromov, project manager of the UNDP project "Rule of Law and Access to Justice" stated: "So far, for more than two years, the Development Program together with the programs of other partners, such as the Soros Foundation and the Office of the UN High Commissioner for Human Rights supports public organizations and government agencies in implementing the Istanbul Protocol standards. During this period the internal documents of correctional institution doctors for documenting cases of torture had been improved, special trainings on the use of such documents were held. We hope that the efforts of partners in this direction will lead to eradication of torture and other cruel, inhuman or degrading treatment or punishment in the Republic of Tajikistan".

Safaralizoda Zafar, head of the Child Rights Division within executive office of the President of the Republic of Tajikistan with the regards to the issues under consideration and Importance of the Istanbul Protocol in the prevention and exercise of investigation of torture stated: "The Istanbul Protocol adopted in 1999 and ratified and acknowledged by the United Nations as an international instrument on the fight and prevention of torture and it is the single document that provides effective international guidelines for the prevention of torture and documenting cases of torture. Also, the development of the interpretation of the Criminal Code execution will be an effective practical and theoretical guide for those who carry out their activities in this field ."

Parvina Navruzova, a lawyer of the PO "Human Rights Center" concerning the project on Improvement of professional skills of the physicians according to the provisions of Istanbul Protocol standards and development of the interpretation of the Criminal Code execution of the Republic of Tajikistan, stated: "The Istanbul Protocol is a short form of the instrument about effective investigation and documentation of torture and other forms of cruel treatment and punishment, adopted by the United Nations General Assembly and the Commission on Human Rights in the year of 2000.

The Working Group was established by the Order of the Ministry of Health and Social Protection of the Republic of Tajikistan, and every year we develop our action plan and events to implement the standards of this protocol. Over the last two years, we have collaborated with physicians and others to introduce the Istanbul Protocol standards into internal documents, as well as in capacity building of health workers and other specialists on the requirements of the Istanbul Protocol standards."

In this event concerning the rights of convicted persons for hunger-strike it was stated: "A convicted person by sentencing to prison is deprived only of his liberty and his other human rights must be observed, including the right to hunger-strike. Only in case of threat to health medical specialists or correctional institutions supervisors can interfere with hunger-strike of the convicted person. Even in this case, the task of the physician is not to identify the reason of hunger-strike, it is a competence of a correctional institution officer. The medical officer's duty is to control his / her health status without interfering with the right to a hunger strike, and only if he / she has a high risk of starving, the necessary documents are compiled and the decision to feed the forced food, forced water or use of medicines shall be made, " said **Nigina Bahrieva**, lawyer of the Public Fund " Notabene ".

Also concerning forced treatment it was stated that according to the international standards no one has any right to force someone else to treat his/her disease, however this right is respected to the extent when such disease is not infectious and threatens to the health of surrounding people.

"However some diseases, such as tuberculosis, drug addiction, toxic substance abuse, HIV / AIDS and other infectious diseases, according to the Criminal Procedure Code which falling to the group of diseases of force treatment. It should be noted that the interpretation of the Criminal Procedure Code of the Republic of Tajikistan was initially started by the Chief Directorate for Punishment Implementation under a Ministry of Justice, but due to shortage of time, the university teachers were involved to develop this paper. Due to the fact that the Chief Directorate for Punishment Implementation officers have extensive law enforcement practice, it would be better the developed interpretation to be submitted to the Directorate officers for their comments and amendments, if any," stated **Mr. Furkat Ganiev**, PhD in medical sciences, director of the State Forensic Medical Examination Center Judge of Sugd Region.

At the same time, the developed interpretation of the Criminal Procedural Code of the Republic of Tajikistan was presented during this session by Zubaydullo Kamolov, the Associate Professor of Criminal Law Department of the Tajik National University. He stated that "since August 15, 2001 so far 16 years past but still an interpretation of the Criminal Procedural Code of the Republic of Tajikistan was not developed. Regardless of the fact that Criminal Procedural Code is more of a complex nature, but we when applying this standards more relied on other normative and legal acts which may be adopted by other government agencies on the implementation and execution of the punishment. Therefore, interpretation of the Criminal Procedural Code of the Republic of Tajikistan is very important and necessary. "

He also added that starting from the moment of adoption of the Constitution, the reforms of the legal system is vigorously underway, which determine the directions of the state in the fight against crime.

A number of proposals had been made by the participants:

- Introducing the Istanbul Protocol standards to the educational programs of the Center of the Qualitative Improvement at the Ministry of Justice of the Republic of Tajikistan;
- Offering amendments and additions to the Articles of the Criminal Procedural Code of the Republic of Tajikistan in accordance with Istanbul Protocol standards;
- Developing a rehabilitation concept of convicted persons;
- Capacity building of the CDPI officers and physicians;
- It is important to include the issues related to freedom from torture, the documentation of such cases into post graduate educational programs after the completion of relevant agencies.

It should be noted that within the framework of the project in cooperation with the Chief Directorate for Punishment Implementation under the Ministry of Justice of the Republic of Tajikistan training was conducted for the Penitentiary system physicians, the representatives of the Comissionere for Human Rights (Ombudsman), lawyers and barristers, NGO coalition against torture and impunity in Tajikistan. At the initiative of the Chief Prosecutor of the Ministry of Justice of the Republic of Tajikistan, the process of interpretation of the Criminal Code of the Republic of Tajikistan was initiated.



The Round Table dedicated to the development of interpretation of the Criminal Procedural Code of the Republic of Tajikistan and the results of the project "Capacity building of health workers and other specialists on the requirements of the Istanbul Protocol standards".

ACTIVITIES OF ORGANIZATIONS OVER PAST ONE YEAR –
SUCCESSSES AND CHALLENGES:



RUSUDAN BERIASHVILI,

expert of international organization "Physicians for Human Rights":

- The role of the international organization "Physicians for Human Rights" in the fight against torture is very significant. For over more than 30 years of its activities in the field of human rights protection, from medical perspective the Organization has become a Nobel Prize winner.

If we touch upon the Georgia's experience in implementation of the Istanbul Protocol standards, it should be stated that this activity had been commenced about 15 years ago. It is noted that the Istanbul Protocol is a very important document which is should be implemented step by step and at the same time it is necessary to monitor the correctness of its implementation on a regular basis. If we talk about Georgia experience, we have worked in several directions - changes in legislation, day-to-day practice of doctors, forensic medical experts, psychologists and psychiatrists. In fact these days according to the amendments and additions made to the legislation of our country, we can investigate and document cases in conformity with Istanbul Protocol standards. We even have such precedent that following our investigation in accordance with the requirements of the Istanbul Protocol, the cases were filed with the European Court and had been resolved in the favor of victims.

Today, we can proudly say that torture is not used in the police of our country. A few years ago, everything that occurred behind the prison walls was a totally closed subject but today, in Georgia there is no subject that is taboo, especially torture. The people themselves - both the society and the government are very active in the fight against torture. This is one of the most important achievements in the implementation of Istanbul Protocol standards.

During my visit to Tajikistan in 2013 I had an opportunity to meet and study the situation in the country. It should be noted that after the collapse of the Soviet Union in the last few years, we did not have a relationship with our Tajik colleagues, however during my visit; I found out that, in Tajikistan, the main documents regulating performance of forensic medical doctors are the same as Georgia.

With regards to the positive achievements of the Republic of Tajikistan in the implementation of the Istanbul Protocol, I am personally very optimistic. Over the four years of activities of the "Physicians for Human Rights" in Central Asia, Tajikistan is implementing the principles of this important international document at sustainable steps. Since the beginning of the work, the Ministry of Health is trying to introduce the requirements of the Istanbul Protocol at documenting. Development and adoption of medical evaluation blank forms and training of doctors on documenting cases of torture can prove the statements I made.

The participation of judges in professional trainings is also worth mentioning

because their willingness to study the standards of the international documents and their subsequent implementation in the practice is highly appreciated.

Another important point is that this joint cooperation of the Government of the Republic of Tajikistan and civil society in the person of the NGO Coalition against torture and impunity in Tajikistan. Compared to other neighboring countries, the NGO Coalition against torture and impunity in Tajikistan is more active.

In my opinion, in order to achieve more desired results all the law enforcement authorities of the country pay joint efforts in introducing the standards of this important document. Working with victims of torture is difficult and in this regard it is important that the state structures help the Coalition members, primarily to their own benefit. To achieve the ultimate goals, all judges (particularly from remote areas) and prosecutors are to be actively involved. Since prosecutors play an important role in consideration of torture cases and if they participate in the training sessions on the Istanbul Protocol, they would apply the knowledge and skills gained in the trainings in practice and the indicators of successful reduction of torture in the country will be very significant.

At the same time, training programs for lawyers, forensic medical experts, psychologists and psychiatrists, ombudsmen officers and public activists on the requirements of the Istanbul Protocol are to be regularly conducted.

In the future, we intend to continue to cooperate more and more broadly with media. As representatives of the media, play important role in identifying torture and other forms of cruel treatment cases, therefore it is important to train journalists is essential in presenting materials about torture in accordance with the ethical standards and the principle of no harm to the victim.

Personally on behalf of myself I wish all the success for the people of the country and responsible bodies for the commenced joint initiatives. I also feel myself as a member of the Tajik community because I have found many colleagues and friends in a joint initiative. Our main goal is to deliver cases to the courts and insuring appropriate decision making by the court. All these are requirements of the Istanbul Protocol standards.

Thank you for your friendship and cooperation!



***DILRABO SAMADOVA,
the head of the PO "Civil Freedoms Office":***

- The civil freedoms office, one of whose main areas of activity is protection of the rights and interests of soldiers and conscripts to the armed forces of the country, can point out a number of positive changes in this direction.

It should be noted that during the years of independence of the country a number of changes had been made to the armed forces that are for the benefit of soldiers and military men. In particular, the government has been offering various privileges to the youth to mobilize to military service. For example, when calling for military service determining status of the family, the soldier is located to the nearest military unit to the place of his

residence and his family. To enter the Universities of the county, the young men demobilized from the military service are provided with 75 additional scores at the National Testing Center.

Also, some communities allocate land plots for soldiers demobilized from military service. Although this privilege has not been approved at the legislative level, it has been implemented by the chairmen of the communities and districts.

In terms of living conditions and military service within the military units, as well as in the food and the equipment needed for military service there is a positive change. The most important thing is the role of the military prosecutor in enforcing the law within the military units. This body actively participates in the life of military units such as fights against bullying, in prevention of law violation and criminal offenses, conducts awareness raising and supervision throughout the country, also proactively functions in disclosure of offenses and illegal actions with regards to young soldiers and conscripts.

One of the most important achievements in this field is public appeal of the President of the country in eradication of illegal conscription campaign to military service (whereby young men were caught and forcibly mobilized to military service).

On February 15, 2014, the President of the country Emomali Rahmon, Commander General of the military forces of the Republic of Tajikistan at the meeting with military officers ordered to stop completely any form of illegal conscription (whereby young men were caught and forcibly mobilized to military service). After this appeal of the President of the country and acknowledgement of the existing of this problem at high political level the problem of illegal conscription has been reduced for times. It should be noted that after the outbreak of the President of the country concerning the ban of illegal conscription, the prosecutor's office intensified its work and supervision of the process of conscription to the army, several criminal cases had been initiated for violation of citizen's rights against military commissars officers and representatives of the medical commission and the violators had been brought to responsibility. According to statistics since 2013, 25 officers of the military commissions had been charged with criminal offence for illegal conscription to the military service.

Over the past few years, for the first time in Tajikistan a precedent occurred in moral compensation of victims – a freshman soldier bullied by “old man soldier” was initiated by the PO "Civil Freedoms Office". In 2016, in two cases, our lawyers gained a court decision on compensation of inflicted moral and material damage to victims of torture and ill-treatment in the Armed Forces. Three other similar cases are at the court proceedings level.

According to the registration logbook of the PO “Civil Freedoms Office” in 2016 legal assistance was rendered to 635 persons and up to September 1, 2017 such assistance was rendered to 174 people.

Starting from 2014 PO "Civil Freedoms Office" and the Ombudsman in Tajikistan, for the first time during 25 years of independence carried out the monitoring of military units directly after visiting them. The monitoring covered 10 military units located in the remote areas of the country whereby service of the years 2014-2016 was inspected, where in a total of 200 soldiers and officers from military units participated in the questionnaire.



SHOIRA DAVLATOVA,
the head of the PO "Independent Human Rights Protection Center":

- Public organization "Independent Human Rights Protection Center" is an organization focused in protection of human rights, including the fight against torture and impunity in Tajikistan. Our organization is a member of the Civil Society Coalition against torture and impunity in Tajikistan

and within this program we work with complaints of citizens on torture and other cruel, inhuman and degrading treatment used by governmental officials. Our task is to protect the rights of victims of torture in pretrial detentions, prisons and courts, as well as to provide legal assistance to compensation for incurred damage.

In 2016, the "Independent Human Rights Protection Center" was selected as an information coordinator of Civil Society Organizations Coalition against Torture and Impunity in Tajikistan.

If we point out the positive steps in reducing torture, as well as about the investigation and monitoring of such cases, then the following points should be stated, that in 2012 the article 1431 of the CC RT was included, which provided for punitive punishment for torture. In this year, on June 25, the Plenary Resolution #1 of the Supreme Court of the Republic of Tajikistan was adopted "on the implementation of the Criminal Procedure Law on Torture".

According to the appeals of citizens who have been subjected to torture by governmental officials, the Prosecutor's Office and the Court initiated criminal cases on the basis of article 1431 of the Criminal Code of the Republic of Tajikistan, such officials were accused in committing a criminal offence and the relevant sentences had entered into force and are currently being implemented.

On May 14, 2016 President of the country Mr. Emomali Rahmon initiated the amendments to the Criminal Procedure Code (CPC) and the Law of the Republic of Tajikistan "About procedures and conditions of detention of suspects, accused and culprits".

Changes in the legislation have reduced the maximum number of days a person can be kept in temporary custody (temporary detention facility) for up to three days. This change also ensures the process of registration of arrest and timely notice of family members and access to lawyer by the detained person.

According to positive changes in legislative norms, including the Criminal Procedure Code of the Republic of Tajikistan, the period of taking into custody shall commence from the moment of the depriving of liberty and persons detained under custody have a right to private consultations with a lawyer, from the moment of actual detention.

But it must be noted that in the legislation, the main problem is the conformity of Article 1431 of the Criminal Code of the Republic of Tajikistan in the form of alternative

punishment for torture (fines, correctional labor, the size of fine there is from 365 to 912 calculation rates or deprivation of the right to hold certain positions for up to five years).

Also, torture used by officials can be interpreted in other way, i.e. a violation of job description, which provides for a lesser degree of responsibility. Also, most investigative bodies, who investigate the existence of torture, after the preliminary investigation of alleged torture, refuse initiating a criminal case as if due to the absence of criminal offense in the actions of the officials.

However, the positive aspect is that the government of the country is taking initiatives to adopt amendments into the national legislation taking into consideration compliance with the relevant international standards.

To improve the situation, it is necessary to intensify collaboration with experts in the fight against torture and to put new knowledge into practice. In order to eradicate torture it is also important to use the best practice with the aim of establishing effective measures against torture in the country.



LARICA ALEXANDROVA,
the head of the Public Fund "Your Choice":

- The Public Fund "Your Choice" is an organization that implements International Standards when assisting victims of domestic violence in accordance with the national mechanisms in the country. Our Fund, together with the Human Rights Office, conducted a gender analysis of the Law of the

Republic of Tajikistan "On the Prevention of Domestic Violence" and participated in the various networks in generating recommendations into alternative report to the United Nations Committee reviewing domestic violence and gender problems in the Republic of Tajikistan. Also our Fund will participate in generating an alternative report to the UN Committees on political and social rights, make recommendations to the contractual bodies and legislative bodies of the UN and in the Human Right Committee and generate a report to the UN Committee on the Elimination of All Forms of Discrimination against Women. We render legal advice to victims of domestic violence when they turn to us but it is not an ongoing help. It is mainly a free of charge service, because we have no special projects yet.

One of the most important steps in this field is the adoption of the Law of the Republic of Tajikistan "On the Prevention of Domestic Violence" and the adoption of the Regulations of the Ministry of Internal Affairs on this matter. Also, setting up a special room in the police to prevent domestic violence is a positive undertaking. Although this does not function effectively, but their mere existence is already one step forward. It is important that we move forward, get it all effectively functioning and to achieve these objectives the following is to be done:

- To improve the law from the perspective of effective mechanisms for the protection of victims of domestic violence, gender sensitivity, protection of vulnerable groups of citizens (HIV / AIDS, disabled, children, etc.);

- To establish a mechanism for redirection victims of domestic violence, which is not yet available;
- Allocations of resources for implementation of the Law and the State Program on Prevention of Domestic Violence. Creating temporary shelters for victims of domestic violence;
- Evaluating domestic violence as a crime, making amendments to the CC RT and CPC, taking into account the international standards in this regard;
- Lawyers should be allocated by the state to address the issues related to domestic violence.

It is important to emphasize that all this should be done by the state, and the public organizations and funds will assist in their turn.

The main problem is that all social groups, including law enforcement agencies, consider that domestic violence is a really a family problem, and should be resolved within the family. For this reason, law enforcement, judicial authorities and courts consider the problem of victims of domestic violence as a sensitive issue and neglect this problem. Free legal defense is not provided by the state to this vulnerable group (a lawyer to write application correctly and provide defense in court).

One of the other major problems is that even if the victims of domestic violence undergo forensic medical examination but this document is not acceptable as evidence of a third party's guilt and no psychosocial support is provided for victims of domestic violence. And the most important point is that the redirection mechanism of domestic violence victims is not been established at all. So it is very important that the government works more to minimize domestic violence.

NAJIBA SHIRINBEKOVA, the head of Public Organization "Right and Improvement":

- The Public Organization "Right and Improvement" it has been functioning in the country for about 20 years so far and is a member of NGO coalition against torture and impunity in Tajikistan since 2013.

Since 2015, our organization is a coordinator of the activities of the Legal Aid Group of the Coalition. Legal Aid Group (LAG) consists of eight member organizations of the Coalition and four partners of the Coalition functioning in the field of rendering Legal Aid. Members of the LAG help each other in raising their capacities, best practice of protecting the rights of citizens and providing legal assistance.

LAG's mission is to promote the establishment of an effective system for responding to torture and ill-treatment and promotion independent mechanisms of torture in Tajikistan, as well as coordination of rendering of legal aid to victims of torture and their relatives.

The LAG's task when the citizens complain on the facts of torture or other ill-treatment to the victims of torture and to clarify the facts of the torture and identify those who are guilty in this violation and assisting such victims within the framework of the existing legislation of the country. Members and personnel of the LAG begin their work only on the basis of the application of a victim of torture and other cruel treatment who addresses for legal aid.

The legal aid group, together with lawyers, pay efforts to identify evidence of torture (including medical evidence, possible witnesses). Currently, the aspects of formation of real grounds for the application or lack of it are a full responsibility of the state. The role of human rights activists is to collect such evidence and assist law enforcement agencies in investigation of such issues.

The LAG cooperates with mass media, experts in various fields and lawyers. An applicant who has been subjected to torture and other cruel treatment, or a representative of a person who had been likely to be tortured and severely beaten, can also receive rehabilitation courses for recovery of physical and mental health and to cure the impacts of the damage caused by the use of torture or other cruel treatment.

In the framework of the Strategic Plan of the Coalition, the LAG is paying particular attention to training of lawyers and barristers in the practice of dealing with torture in the preliminary investigations and judicial proceeding stages. Special attention is paid to the prospects of advocacy actions at the prosecutor's determination for allegations of torture in cases involving torture. An important issue for cooperation with lawyers and specialists is the opportunity to obtain medical evidence of torture and ill-treatment in accordance with the provisions of the Istanbul Protocol.

Notwithstanding the positive aspects of reducing and eliminating the use of torture and other ill-treatment and introduction of existing standards, in practice we face difficulties.

In practice, torture is applied during first hours of detention or within the first two days of custody in the temporary detention facility with a purpose to achieve self-accusation and self-incrimination. In court proceedings, when a culprit complains on the use of torture and other ill-treatment, it is found out that he / she when detained had been kept in incommunicado condition (without the possibility of contact with any person outside the detention facility - the author), it means that a detainee during the first two days of the detention was not allowed to contact a lawyer or his/her relatives. In some cases, the detainee signs a statement for refusal of the lawyer. According to the law, this action must always be done in the presence of a lawyer, but the police or investigator ignores this requirement.

According to provisions of Article 94 of the Criminal Procedural Code of the Republic of Tajikistan, in the detention of a suspect to the temporary detention facility to determine the detainees overall health condition or the presence of physical injuries medical examination shall be conducted by medical experts. The accused or his / her lawyer has the right to request the medical examination to be carried out by an independent doctor or forensic medical expert. The medical opinion of the medical examination is attached to the detention record. However, in practice, it is observed that not in all cases this requirement of the law is respected in the case placing the suspect to the temporary storage facility. Regardless of the complains about existing injuries and damages, in the medical certificate the condition of a detainee is registered as "healthy". At the same time, such detainee is taken to the nearest hospital or medical facility, and medical examination is carried out in the presence of police officer.

Concerning the timely conduct of medical examination in accordance with the requirements of the Istanbul Protocol, notwithstanding the presence of injuries in the body of a detainee such examination carried out timely at the preliminary investigation stage. Medical evidence plays a key role in investigating torture and other ill-treatment, but in the medical examination reports forensic medical experts do not fully register the bodily injuries or state them partially, that contradicts to the provisions of the Istanbul Protocol. In practice medical examination of an injured person is conducted by a trauma physician.

One of the other problems is the fact that when a victim complains about torture and other ill-treatment, medical evaluation of a victim in the presence of a lawyer is not practiced. Although the lawyers – the Coalition partners report on this problem and in their requests state appointing a medical examination, but in practice this requirement is not always followed.

The Istanbul Protocol demands such important investigation principles such as: timeliness, accuracy, independence. However in practice we observe that in the case of application of torture cases, the term for reviewing such applications are not taken into consideration.

According to the provisions of Article 145 of the Criminal Procedural Code of the Republic of Tajikistan, the resolution about incoming statements and reports on criminal offenses must be made within three days from the date of receipt and, if necessary for obtaining additional information from the applicant, any supporting documents, this term can be extended for up to 10 days. However, delays in such cases result in difficulty or impossibility of providing important evidences as traces of bodily injuries may disappear, locating witnesses and access to video records become difficult.

According to the provisions of the Istanbul Protocol, the persons conducting the evaluation/examination should be unbiased and impartial, act independently of the agencies where they work. But as a practice shows, cases of torture or other cruel treatment are conducted by the same investigators who investigate the case and the torture or allegation of torture is neglected by them.

In order to determine the use of torture, torture and other cruel treatment are documented. The documentation is carried out according to the statement of alleged victims of torture and / or their relatives to the Coalition and / or when obtaining information from other stakeholders, mass media, PO, lawyers, doctors, etc.

Over the period from January 1 to September 30, 2017, 53 appeals of Citizens to the legal assistance group of Coalition had been filed and according (for the same of 2016 there were 62 cases) to their statements they were subjected to torture and other ill-treatment. Out of them in 30 cases (20 cases in the same period of last year), the cost of advocacy services was funded by the LAG and the LAG lawyer is dealing with 12 cases rolled over from the past year.

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Istanbul Protocol: from theory to practice

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