



Joint NGO submission to the United Nations Human Rights Committee ahead of the consideration of Tajikistan's Third Periodic Report at the 126th session in July 2019

Torture, ill-treatment, the death penalty and the shrinking space for NGOs

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1. Introduction

This document focuses on torture and ill-treatment in Tajikistan with a special emphasis on Articles 7, 9 and 10 of the International Covenant on Civil and Political Rights (ICCPR). It provides background information on general developments with relevance to the implementation of the ICCPR in Tajikistan, the **legislative framework** pertaining to torture and other forms of ill-treatment **and its implementation**. It highlights civil society concerns about **torture and other ill-treatment in detention** (including in police stations and temporary detention facilities, corrective labour facilities and prisons) as well as in **other closed or semi-closed facilities and the armed forces**. The document pays special attention to **vulnerable groups**, such as **women and LGBT people**, and highlights concerns pertaining to **investigations** into allegations of torture and other ill-treatment, **prosecutions** of perpetrators, and victims' access to **reparation**. It also includes a chapter about the **shrinking space for civil society organizations and activists** in Tajikistan including those working against torture and impunity (Article 22 of the ICCPR) and another about the need to fully abolish the **death penalty** (Article 6 of the ICCPR).

Each thematic chapter concludes with a list of suggested recommendations to the Tajikistani authorities. The main text contains short summaries of individual cases illustrating specific violations. The annex contains detailed descriptions of selected cases which lawyers of the NGO Coalition against Torture and Impunity in Tajikistan worked on in the period under review.

1.1. General developments with relevance to the implementation of the ICCPR in Tajikistan

On 30 May 2017 the **Law on regulatory legal acts** was adopted. It determines that law-making in Tajikistan is carried out with the aim of recognizing, respecting and protecting the rights and freedoms of human beings and citizens. Article 4 additionally stipulates that law-making activity in Tajikistan is carried out with the aim of recognizing, respecting and protecting human rights. International legal acts recognized by Tajikistan form an integral part of the legal system of the country; they come into force after their official publication and are effective immediately. The law also stipulates that **should domestic laws contradict international legal acts recognized by Tajikistan, then the norms of the international legal acts should be applied** (Article 10).

On 23 July 2016 a new **Law on international treaties of the Republic of Tajikistan** was adopted. Articles 10 and 11 stipulate that international documents that concern fundamental human rights and freedoms are subject to ratification by Tajikistan's Majlisi Namoyandagon of the Majlisi Oli (Lower House of Parliament). The **precedence of international documents** ratified by Tajikistan is established, including in other regulatory legal acts of the country such as procedural legislation.

To date, there is **no official translation into the state language of international human rights documents**, including the ICCPR. Unofficial translations are available on the websites of the State Commission on Implementation of International Human Rights Obligations (www.khit.tj), the Commissioner for Human Rights in the Republic of Tajikistan (www.ombudsman.tj) and the National Center on Legislation under the President of the Republic of Tajikistan (www.mmk.tj).

Procedural legislation in Tajikistan explicitly provides for the **possibility for courts to use international human rights documents**. The Criminal Procedure Code determines that "International legal acts recognized by Tajikistan form an integral part of the legal norms regulating criminal proceedings. If in accordance with these acts a different procedure is established than that provided in the Code, the provisions of international legal acts shall apply." The Code of Civil Procedure sets out that "the legislation of the Republic of Tajikistan on civil court procedures is based on the Constitution of the Republic of Tajikistan and consists of ... international legal acts recognized by Tajikistan. In case civil procedural norms are not consistent with the recognized international legal acts, the norms of international legal acts shall apply."

The **courts may use international human rights documents in cases of:** a) contradictions between a regulatory legal act and an international document; b) gaps in domestic legislation, and c) the need to interpret a standard in the area of human rights. Although there are cases when the courts applied international documents in their decisions, there no statistical information is available on the number of court decisions that applied international human rights documents.

When judges examine a case and find a **contradiction between a normative legal act and the Constitution of Tajikistan or international human rights documents** ratified by Tajikistan they may also apply to the Constitutional Court of Tajikistan (Article 40 of the Constitutional Law on the Constitutional Court of the Republic of Tajikistan). In this case, the judge suspends proceedings in a criminal case (Article 265 of the Criminal Procedure Code) or civil proceedings (Article 220 of the Code of Civil Procedure). When the Constitutional Court establishes that a law, which the court applied when considering a particular criminal case, contradicts the Constitution of Tajikistan, then this forms the basis for new criminal proceedings (Article 417 of the Criminal Procedure Code).

From 2012 to 2019, **Tajikistan improved the legal framework for mechanisms and procedures to implement the country's international human rights obligations.** For example: a) the goals and tasks of government Commissions working on each human rights issue are set out in detail; b) activities were centralized by merging the secretariats of the State Commission on Implementation of International Human Rights Obligations and the Commission on the Rights of the Child ; c) the composition and powers of the Commissions' Secretariat have been expanded; d) focal points responsible for human rights questions have been designated in ministries and departments, their functional responsibilities have been defined and mechanisms have been developed for interaction and cooperation between government bodies and the Secretariat of the Commission. (Refer to paragraphs 1 to 7 of the Government's replies to the Human Rights Committee's (HRC) List of Issues, CCPR/C/TJK/Q/3/Add.1).

In accordance with recommendations of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights, the Commissioner for Human Rights in of Tajikistan was removed as a member of the Commission and now has the right to participate in all meetings of the Commission in an advisory capacity with the Commissioner for Children's Rights of Tajikistan.

Civil society representatives received the right to participate in meetings of the Commission in an advisory capacity, and a mechanism was put in place to ensure turnover of civil society representatives and wider public participation in the Commission's work. However, **this provision does not work in practice** and at the moment, civil society institutions are not officially represented in the Commission's work. Despite the open cooperation of the Secretariat of the Commission and working groups with civil society institutions, NGOs are not formally involved in the preparation of reports by working groups.

In 2016, contact persons on human rights were appointed in nearly all ministries and departments, (one or two people or a section or department) to work closely with the Secretariat of the Commission and for collation and processing of information on human rights (refer to paragraphs 4 and 5 of the Government's replies to the HRC's List of Issues). **The appointment of persons responsible for human rights does not, however, provide for the allocation of a separate staffing unit in ministries and departments, and the designated employees carry out these new functions in addition to their previous duties, which in some cases means that there is a risk that insufficient time will be devoted to this work.**

To date, **not all ministries and departments have established functioning processes** for the collation and processing of information on human rights, and information is frequently not provided in a timely manner, and is often incomplete and/or of insufficient quality. There are problems with the efficacy of coordination and cooperation mechanisms between persons responsible for human rights at different ministries and departments, and those responsible for human rights in the Secretariat.

No steps have been taken to develop an implementation mechanism for decisions of UN bodies on individual communications and none of the decisions taken by HRC on individual communications have been

implemented, although this issue has been repeatedly raised at numerous forums, meetings, and national consultations. The provision on the State Commission on Implementation of International Human Rights Obligations only sets out a general framework for the Commission to “ensure the coordination of state bodies’ activities in reviewing and implementing decisions and concerns of the relevant United Nations body”. When preparing responses to Committee opinions on the admissibility and merits of individual communications, the state limits its work to studying the materials of criminal cases, and does not analyze the allegations of human rights violations communicated by the HRC.

In 2017, an interdepartmental working group was established to develop a **draft National Strategy for the Protection of Human Rights until 2030**. The strategy will define the government’s long-term human rights goals and objectives, reflect on the development of a progressive and unified intersectoral policy aimed at strengthening the protection of human rights in state bodies and promoting good governance in the country as a whole. The National Strategy will be based on recommendations submitted by UN human rights bodies to Tajikistan from 2010-2019. In 2019, work began on the preparation of the first work plan for the draft National Strategy.

Since 2013, the Tajikistani government has adopted **national action plans for implementation of therecommendations of UN bodies**. The plans feature implementation measures; set deadlines; and designate the government agencies responsible for implementation (the state body mentioned at the beginning of the list in the column entitled “executing body” is responsible for coordination). It is worth noting that the activities indicated in the action plans are not described in detail; there are no clear benchmarks or indicators for implementation; and there is no system for monitoring the implementation of activities. National action plans have been adopted for each UN body; the issue of duplication of recommendations has not, however, been resolved. With the exception of the Special Rapporteur on torture, no action plans have been adopted regarding recommendations of UN Special Procedures.

Every six months ministries and departments provide the Commission Secretariat with information on the implementation of activities in the national action plans. The information provided is very general; does not contain the detailed statistical data necessary to accurately assess the implementation of UN recommendations; and it does not describe the progress made on implementing specific activities.

When ministries and departments prepare this information, they refer to the measures indicated in the national plans as a starting point. If a recommendation is not included in the national action plan, no specific information is prepared about its implementation. This is due to the lack of effective system for processing information as well as the lack of specific indicators in national action plans.

Since 2015, the official website of the State Commission on Implementation of International Human Rights Obligations has been running in both Russian and Tajik (www.khit.tj). It contains the most complete information about the reports submitted, UN recommendations, national action plans on the implementation of UN recommendations, as well as some information on the implementation of national action plans. The site also provides information about national consultation processes.

However, the final recommendations are not translated into the national language, nor are they widely distributed to representatives of state bodies. There is no requirement to include this information in the professional training of representatives of government agencies.

1.2. Positive steps regarding torture and ill-treatment

Since the HRC considered Tajikistan’s Second Periodic Report and issued concluding observations in July 2013, the Tajikistani authorities have taken several significant steps to address concerns about torture and ill-treatment and implement some of the Committee’s recommendations. For example:

- In November 2014 the Ministry of Health and Social Protection of the Population (Ministry of Health) issued a form reflecting the principles contained in the Istanbul Protocol for use by its medical

personnel when examining detainees and recording signs of torture and ill-treatment. (For further information refer to the section "Medical examinations" in the chapter on "Access to legal safeguards in places of deprivation of liberty").

- On 27 December 2017 the Ministry of Health approved by decree (No. 1157) the "Compilation of Normative-Legal Acts on the Psychiatric Service and the Methodological Procedure of Organizing and Carrying out Forensic Psychiatric Examinations and the Procedure of Administering Psychiatric Assistance to People Suffering Psychiatric Disorders", which is in line with the principles set out in the Istanbul Protocol.
- On 1 May 2018 the Ministry of Justice and the Ministry of Health jointly approved the "Procedure to administer medical assistance to detainees and those serving criminal penalties". This includes a separate medical form, entitled "Protocol of medical certification of prisoners", which is designed for use by doctors in the penitentiary system when conducting medical examinations of alleged victims of torture and ill-treatment.
- In 2014 the families of two men who died in custody, were the first known cases involving allegations of torture to have been awarded compensation for moral damages by courts in Tajikistan. Courts later awarded compensation in other cases, but the NGOs jointly issuing this document are concerned that the amounts granted were neither fair nor adequate. (Refer to the chapter "Redress").
- In February 2014 a Monitoring Group established as part of the Office of the Commissioner for Human Rights in the Republic of Tajikistan (Ombudsperson for Human Rights) consisting of Ombudsperson Office staff and civil society activists began visiting detention facilities. (Refer to the section "Monitoring closed and semi-closed facilities" in the chapter "Monitoring of and conditions in closed and semi-closed facilities").
- In November 2014 the Criminal Procedure Code of Tajikistan was amended to the effect that extradition must be denied when there is a risk of torture in the receiving country.
- In December 2015 amendments were adopted to the legislation on the Ombudsperson for Human Rights of the Republic of Tajikistan that introduced the position of the Ombudsperson for the Rights of the Child as the Ombudsperson's Deputy. In May 2016 President Emomali Rahmon appointed the country's first Ombudsperson for the Rights of the Child.
- In May 2016 President Rahmon signed legal amendments, which significantly improved domestic legislation on safeguards in detention. (Refer to the chapter "Access to legal safeguards in places of deprivation of liberty").
- On 29 June 2017 the Programme to Reform the Juvenile Justice System (2017-2021) was approved by Government Decree 322. Civil society activists participate in the Ministry of Justice working group tasked with implementing the programme and the action plan.
- The National Action Plan on the Implementation of Recommendations by United Nations Member States under the Universal Periodic Review (Second Cycle) for 2017-2020 (further National Action Plan on the Implementation of UPR Recommendations, 2017-2020), adopted by Presidential Order on 7 June 2017, envisages the adoption of a National Human Rights Protection Strategy valid until 2025. At the time of writing, a working group was established and tasked with drafting the strategy. Civil society organizations are well-represented in the working group.
- On 24 January 2019 the National Action Plan on the Implementation of Recommendations by the UN Committee against Torture (2019-2022) was adopted. The Plan envisages activities to address the recommendations, establishes time lines and specifies government agencies responsible for their implementation.

- On 19 April 2019 the Programme of Judicial-Legal Reform of the Republic of Tajikistan (2019-2021) was adopted which provides for measures to further strengthen basic legal safeguards to protect the human rights of detainees and other persons deprived of liberty in the criminal justice system, including when considering cases and issuing rulings about remanding persons in custody.

1.3. Why do torture and ill-treatment continue to be widely used? A summary of key reasons

Despite the measures outlined above, torture and other forms of ill-treatment continue to be widely used in Tajikistan. Since the country was last reviewed by the CAT and by the HRC in 2012 and 2013 respectively, members of the Coalition against Torture and Impunity registered 25 (in 2013), 26 (2014), 45 (2015), 57 (2016), 66 (2017), 44 (2018) and 11 (in the first quarter of 2019) new cases of men, women and children who were allegedly subjected to torture or ill-treatment. The majority of these cases relate to physical abuse in the first hours of detention with the aim of extracting a confession. These figures represent a mere fraction of the problem, as fear of reprisals, lack of access to civil society activists or lack of trust in the criminal justice system as a mechanism to obtain justice prevent many victims or their relatives from lodging complaints.

Failure to punish perpetrators appropriately

Penalties under Article 143-1 ("torture") of the Criminal Code of Tajikistan are not commensurate with the gravity of the crimes committed. In the period under review, many perpetrators of torture and other forms of ill-treatment benefitted from amnesties. Domestic legislation allows for perpetrators of torture and ill-treatment who are convicted of crimes categorized as being of lower or medium gravity to be exempted from criminal responsibility after reconciliation, expiration of the statute of limitation, or repentance. (For further information, refer to the chapter "Prohibition and punishment of torture and ill-treatment").

Failure to provide reliable access to legal safeguards in detention

The legal amendments introduced in May 2016 significantly improved basic legal safeguards for detainees charged with criminal offences in detention, but further amendments are necessary and existing ones have yet to be consistently implemented. The risk of torture and ill-treatment continues to be particularly high in the early stages of detention and in many cases law enforcement agents continue to subject detainees to abuse in order to extract confessions. We are also concerned about the practice of subjecting individuals to period of administrative detention before opening criminal cases against them. (For further information, refer to the chapter "Access to legal safeguards in places of deprivation of liberty").

The lack of independent and comprehensive monitoring of closed and semi-closed facilities

A positive development in the period under review was the establishment of the Monitoring Group under the Ombudsperson's Office, which started functioning in February 2014. However, the Group's remit as well as its human and financial resources are limited, which prevents it from serving as a reliable safeguard against torture. In addition, some NGOs have memorandums for joint monitoring with the Ombudsperson's Office. The International Committee of the Red Cross (ICRC) has not had access to detention facilities for the purpose of monitoring since 2004. Other than joint monitoring with the Ombudsperson's Office, local NGOs have no access to closed and semi-closed facilities for the purpose of monitoring. (For further information, refer to the chapter "Monitoring of and conditions in closed and semi-closed facilities").

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

Investigations into allegations of torture and ill-treatment are rarely conducted effectively. There are no mechanisms in place to ensure prompt, thorough, impartial and fully independent investigations. (For further information, refer to the chapters "Reacting and conducting effective investigations into allegations of torture and other forms of ill-treatment" and "Deaths in custody and the armed forces").

Failure to consistently exclude evidence extracted under duress

Domestic legislation considers evidence to be inadmissible when it is obtained by way of torture or other ill-treatment. However, there is no mechanism in place to ensure the implementation of this legislation and the Coalition against Torture and Impunity is not aware of any case where evidence has been ruled inadmissible due to torture. (For further information, refer to the chapter “Excluding evidence extracted under torture”).

Failure to provide full redress

The amounts of compensation awarded for moral damages sustained through torture in the period under review have been neither fair nor adequate. Domestic legislation does not provide victims of torture with other forms of reparation such as rehabilitation, satisfaction or guarantees of non-repetition. (For further information, refer to the chapter “Redress”).

Vulnerable groups

Hazing continues to be used routinely in the armed forces of Tajikistan and filing complaints is usually strongly discouraged by peers and commanding officers.

The adoption of the Law on the Prevention of Violence in the Family in 2013 and other positive steps taken by the government since then to combat domestic violence are being undermined by remaining protection gaps in legislation, weaknesses in the criminal justice system and the failure of the authorities to systematically address the widespread problem.

The organizations issuing this report are aware of dozens of credible cases in recent years of police intimidating, arbitrarily detaining, physically or sexually abusing or threatening to abuse LGBT people. Police abuse and extort money from LGBT people with almost complete impunity.

(For further information, refer to the chapters “Conscripts and soldiers: torture and ill-treatment in the armed forces”, “Women: domestic violence” and “LGBT people: police abuse, arbitrary detention and extortion”).

Silencing human rights defenders

The organizations issuing this report are seriously concerned about the increasingly limited space for human rights and other civil society organizations and activists to operate. The situation has worsened in Tajikistan since the last HRC review in 2013 and this trend has intensified since 2015. As a result the human rights groups are finding it increasingly difficult and risky to provide support to victims of torture and other human rights violations. (For further information, refer to the chapter “The situation of human rights NGOs and activists”).

2. Prohibition and punishment of torture and ill-treatment (Article 7)

Tajikistan’s legislation unequivocally prohibits torture, and in 2012 Article 143-1 (“torture”) was introduced to the Criminal Code with a definition of torture that is in line with that contained in the Convention against Torture. However, penalties under this article are not commensurate with the gravity of the crimes committed. Many perpetrators of torture are not charged under Article 143-1 but under other articles of the Criminal Code. While amnesty acts issued in recent years have excluded perpetrators of torture and ill-treatment who were charged under certain articles of the Criminal Code, those charged under other articles have been eligible and 24 perpetrators benefited from the amnesty issued in 2016. Domestic legislation allows for perpetrators of torture and ill-treatment convicted of crimes categorized as being of lower or medium gravity to be exempted from criminal responsibility due to reconciliation, expiration of the statute of limitation, or repentance.

2.1. Prohibition of torture and ill-treatment, and commensurability of punishment to the gravity

of the crime

Article 18 of the Constitution of Tajikistan unequivocally prohibits torture and ill-treatment. The Criminal Procedural Code prohibits subjecting detainees and all other parties to the criminal process to such treatment. The Code on the Implementation of Criminal Punishment prohibits such treatment in relation to prisoners and also categorically prohibits subjecting them to medical or other scientific experiments that might pose a risk to their life or health.

On 29 February 2012, the Lower House of Parliament of Tajikistan introduced Article 143-1 ("torture") in the country's Criminal Code with a definition of torture that is in line with that contained in the Convention against Torture.

However, the organizations jointly issuing this document are concerned that penalties under Article 143-1 are not commensurate with the severity of the crimes committed. Article 143-1, part 1 ("premeditated administration of physical (or) psychological suffering"), for example, is punishable by a fine, suspension from duty or imprisonment of up to five years.

In practice, cases involving torture or other ill-treatment are frequently opened under other articles of the Criminal Code such as "incitement to suicide" (Article 109), "abuse of authority" (Article 314), "exceeding official authority" (Article 316), "negligence" (Article 322), "unlawfully detaining or taking a person into custody" (Article 358) or, in cases from the armed forces, "violating the code of military conduct" (Article 373) or "abuse of authority or duty" (Article 391).

When cases are opened under articles other than 143-1 lawyers for the victims of torture usually do not call for the requalification of the crime/s because of the low penalties this Article carries.

Since Article 143-1 ("torture") was introduced to the Criminal Code in 2012, eleven criminal cases have been opened under the Article, according to Tajikistan's Third Periodic Report to the CAT and additional information provided by the Prosecutor General's Office at a press conference on 25 January 2018.

According to information from the Prosecutor General's Office, as cited in paragraphs 130 and 131 of the Government's reply to the List of Issues, which was submitted to the HRC in April 2019, the Office registered 16 complaints of torture in 2013, 13 in 2014, 21 in 2015, 10 in 2016, 23 in 2017 and 54 in 2018. After allegations were confirmed in 10 of these cases, the Prosecutor General's Office opened criminal proceedings. By the end of April 2019 five persons had been sentenced to prison terms in four of the cases. The Prosecutor General's Office does not specify under what articles the (suspected) perpetrators have been charged and it is unknown how many individuals have to date been sentenced under Article 143-1.

Below is a list of all cases known to the NGOs issuing this report of perpetrators who have been convicted of torture under Article 143-1 since 2012. The case descriptions are presented in chronological order and are based on official information and media reports:

*In September 2012 **Mashraf Aliyev**, a policeman from the town of Yavan in the southern Khatlon Region of Tajikistan, was sentenced to seven years' imprisonment under Article 143-1, part 3 for torturing 17-year old Khushvakht Kayumov. The officer had summoned Khushvakht to the district police station in April 2012, where he beat and kicked the young man and threatened to torture him with electric shock unless he confessed to a theft. Mashraf Aliyev let him go home in the evening, but demanded that he return the next day. The next day the beatings continued and Khushvakht eventually signed a "confession" in order to avoid further abuse. Mashraf Aliyev threatened that Khushvakht Kayumov would be beaten by 200 policemen if he later retracted his confession. Devastated by the experience of abuse, Khushvakht Kayumov attempted to commit suicide. On 29 April, his relatives found him hanging from the ceiling of the family's barn in an unconscious state. They were able to save his life by quickly arranging for him to be taken to the local hospital.*

*In December 2012 Khujand City Court sentenced **Khusrav Niyezkulov**, an officer of the department of criminal investigation of Sughd region, to one year's deprivation of liberty. He was found guilty of detaining a suspect in his office all day and beating him. The forensic medical examination confirmed that the detainee sustained injuries to his ear and kidneys.*

*In August 2013 **Nursat Yodgorov**, a former criminal investigator of Sarband District in the southern Khatlon region, was given a two-year suspended sentence by Kurgan-Tyube City Court, under Article 143-1, part 1. He was found guilty of unlawfully detaining a suspect in a police station in January 2013 and beating him.*

*On 23 November 2015 Rogun City Court sentenced police officer **Emomali Odinayev** to three and a half years' imprisonment. He was found guilty of subjecting Olimjon Sharifov to arbitrary detention at Rogun District Police Station in August 2015, torturing him with electric shocks and beating him.*

*At a press conference on 25 January 2018 Yusuf Rakhmon, Prosecutor General of Tajikistan, stated that **an officer of Sino District Police Station in Dushanbe** had been convicted under Article 143-1 after a complaint had been received about his actions in 2017. He gave no further details about the case.*

*According to paragraph 132 of the Government reply to the HRC's List of Issues, two officers were sentenced under Article 143-1 and other articles of the Criminal Code in connection with the case of K. Khodjinazarov. Police officer **L. Yuldoshev** of the Department of Internal Affairs in Sughd region was sentenced to 13 years' imprisonment and **Mukhammad Naimov**, officer of the State Committee for National Security of Asht district, was sentenced to 12 years' imprisonment. It is not known when these sentences were handed down.*

2.2. Amnesties, statutes of limitation and other exemptions from criminal liability for torturers

Article 82 of the Criminal Code of Tajikistan does not exclude any specific group of people from benefitting from amnesties. It stipulates that amnesty laws can be adopted which can specify groups of people covered by the respective amnesty.

From 2013 to 2018 two acts of amnesty were issued, in 2014 (Amnesty Law No. 1130 of 29 October 2014) and in 2016 (Amnesty Law No. 1355 of 24 August 2016).

The 2014 Amnesty Law stipulated that it is not applied to those charged with or convicted under Article 110, parts 2 and 3 (intentionally inflicting serious bodily harm, e.g. by causing the death of a person or carried out by an organized group) and Article 391, part 4 (abuse of authority or duty, exceeding authority or inaction in a war-like situation or during war). The 2016 Amnesty Law, issued in connection with the 25th anniversary of Tajikistan's independence, additionally excluded those charged or convicted under Article 110, part 3 and Article 391, part 4 and it was the first amnesty to state that those convicted of "torture" (Article 143-1 of the Criminal Code) were not eligible.

However, many perpetrators of torture or ill-treatment who had not been charged with "torture" under Article 143-1, but other articles of the Criminal Code were released or had their sentences reduced under these amnesties. The NGO Coalition against Torture and Impunity is aware of 24 perpetrators or their superiors, who benefitted from the amnesty in 2016.

*For example, 21-year-old conscript **Faruhjon Haytaliyev** died in January 2016 after he was repeatedly subjected to hazing by Alikhon Tuychiyev, a fellow soldier. Sufi Sufiyev, the Captain of his military unit, and his deputy Baburdjon Ortukov noticed that Faruhjon Haytaliyev was injured and unable to stand up after the beating, but they*

kept him in the military unit and failed to seek medical attention for several days. In May 2016 Dushanbe Military Court sentenced Alikhon Tuychiyev to 14 years' imprisonment for "violating the code of military conduct" and "intentionally inflicting serious bodily harm" and the two officers were handed down prison sentences of four years for "abuse of authority or duty". Three months later the prison sentences of Sufi Sufiyev and Boburjon Ortukov were reduced by one third under the prisoner amnesty act in connection with the 25th anniversary of Tajikistan's independence. (For further information on this case, refer to the Case Annex).

The Criminal Code stipulates that perpetrators convicted of crimes of lesser or medium gravity can be exempted from criminal responsibility on the grounds of reconciliation with the victim, expiration of the statute of limitations, or active repentance (Articles 72 to 75). In line with Article 18 of the Criminal Code, parts 1 and 2 of Article 143-1 relate to crimes of medium gravity.

2.3. Suggested recommendations to the authorities of Tajikistan

- Introduce a reference to Article 143-1 of the Criminal Code in all other articles brought to punish ill-treatment, such as articles 109, 314, 316, 322, 373 and 391, to ensure that Article 143-1 is applied in all cases grave enough to be qualified as torture.
- Amend Article 143-1 of the Criminal Code to ensure that punishments are commensurate to the gravity of the crimes committed.
- Ensure that the absolute prohibition of torture is included in all regulatory and legal acts including the Code on Public Health.
- Legislate that perpetrators of torture or ill-treatment are excluded from all amnesties.
- Revoke provisions in the Criminal Procedure Code which allow for the termination of criminal proceedings and exemption of the defendant from criminal liability whenever the case concerns allegations of torture and ill-treatment.
- Abolish the statute of limitation with regard to torture and ill-treatment.
- Take all necessary measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated, that perpetrators are duly prosecuted and, if found guilty, convicted with penalties that are commensurate with the grave nature of their crimes.

3. Deprivation of liberty and access to legal safeguards (Article 9)

Legal amendments introduced in May 2016 significantly improved basic legal safeguards in detention such as access to a lawyer and notification of family promptly after the actual arrest, as well as access to a doctor. However, these improvements only relate to those held on criminal charges. Also, domestic legislation still does not provide for a medical examination immediately after arrest and in practice access to a lawyer continues to be subject to permission by the investigator or judge. The time limits set out in domestic legislation before detainees, are brought before a judge for a decision on remand in custody are still too long. Judges only approve or reject the prosecutor's petition to remand the person in custody and do not review whether the person was subjected to human rights violations during the arrest including unlawful and arbitrary arrest and the use of torture and ill-treatment. Judges typically continue to decide to remand persons in custody based only on the gravity of the crime, and the law provides that detainees can be held in pre-trial detention and detention during the trial for excessive lengths of time.

The May 2016 amendments need to be consistently implemented and further legislative improvements are necessary. Some progress has been made in implementing the standards of the Istanbul Protocol and a series of trainings have been conducted, but most detainees still do not have access to effective medical and psychiatric examinations. Tajikistan has not passed legislation regulating the work of independent forensic experts. During the

period under review, video cameras have been installed in most detention facilities, but many interrogation rooms and other spaces such as duty offices, where detainees are held are not covered by video surveillance and often lawyers are not given access to crucial recordings. The risk of torture and ill-treatment is particularly high in the early stages of detention and in many cases law enforcement agents subject detainees to abuse in order to extract confessions.

3.1. May 2016 legal amendments: progress and remaining concerns

On 14 May 2016, President Emomali Rahmon signed legislation introducing amendments to the Law on Detention Procedures and Conditions for Suspects, Accused Persons and Defendants (further Law on Detention Procedures and Conditions) and to the Criminal Procedure Code, which significantly improved legal safeguards in detention for those detained under criminal proceedings.

The NGOs jointly issuing this document are concerned that the **improved safeguards only pertain to those detained under criminal proceedings**. The NGO Coalition against Torture and Impunity is aware of an increasing number of cases when **those held under administrative arrest or detention or those summoned as “witnesses” are subjected to torture and ill-treatment** by law enforcement agents to extract confessions before, as is often the case, criminal cases are opened against them. For further information on administrative detention and arrest, refer to the section “Persons subjected to administrative detention or arrest” below.

The Criminal Code provides sanctions for unlawfully holding a person in custody and Article 36 of the Law on the Police stipulates that “a police officer can be subjected to disciplinary, material, administrative and criminal responsibility for violating the law, abuse of power, exceeding official duties, failure to carry out or inappropriately carrying out duties, in line with the legislation of the Republic of Tajikistan”. Article 3, part 2 of the Law on Detention Procedures and Conditions stipulates that “detention of a suspect, accused or defendant in order to cause suffering, torture and physical and moral harm is not permitted.”

The May 2016 amendments to the Law on Detention Procedures and Conditions provide for improved detention registration procedures and the rights to promptly inform family members and legal counsel. However, the Code on the Implementation of Criminal Punishment has been left unchanged and stipulates that close family members have to be notified within ten days of placing a prisoner into a facility in the penitentiary system and of any transfers.

The amendments to the Criminal Procedure Code stipulate that detention begins from the moment of de-facto deprivation of liberty (Article 6), which is an important improvement. Arresting officers are now obliged to verbally inform detainees of the reason for the arrest and about their rights (Article 94, part 1) at the moment of de-facto deprivation of liberty. These rights include immediate communication with a close relative, prompt access to legal counsel, and the right to refuse to testify.

Within three hours of placing the detainee into a criminal prosecution facility, a law enforcement officer is required to complete the detention record. Thanks to the May 2016 amendments, Article 94, part 2 now stipulates that the identity of all detaining officers should be recorded, as well as that of other officers involved in the process leading to the suspect’s detention, such as interpreters. The detention record should also contain information about notification of family members, including the exact time, who notified them and how, as well as information about the officer who drew up the record.

The May 2016 legal amendments introduced an obligatory medical examination prior to placing a suspect in a temporary police detention facility (Article 94, part 4). Domestic legislation states that suspects have to be placed into this facility within three hours after the actual arrest.

Domestic legislation does not provide for a medical examination to be carried out when a detainee is moved from the temporary police detention facility to be placed into the investigation-isolation facilities (SIZO). The next medical examination takes place inside the SIZO.

The 2016 legal amendments (Article 94, part 4 of the Criminal Procedure Code) additionally stipulate that the detainee or the lawyer can request that the medical examination be conducted by an independent medical doctor or a forensic medical expert. (Refer to the section "Medical examinations" for further information).

Article 94, part 6 significantly reduces the time within which the prosecutor has to be notified in writing of a suspect's detention, to a maximum of 12 hours after the moment of de-facto deprivation of liberty.

While these are significant improvements, further legislative amendments should be made to strengthen safeguards in detention and bring Tajikistan's legislation fully in line with its international obligations. For example, in Tajikistan only traffic police officers are obliged to wear visible identity tags. Other police officers are instructed to present their official ID card and introduce themselves, but in practice they do not often do this, making it difficult for victims of torture or ill-treatment to identify perpetrators.

Article 92, part 3 of the Criminal Procedure Code, which applies to adults and minors alike, provides that **a maximum of 72 hours may elapse from the moment of apprehension until a detainee is brought before a judge**. The HRC and the Special Rapporteur on torture recommended that this period should be limited to a maximum of 48 hours. In paragraph 83 of its General Comment No. 10, issued in 2007, the UN Committee on the Rights of the Child recommended that this time period should not exceed 24 hours for minors.

It is important to note that **domestic legislation does not stipulate that persons who are deprived of their liberty have to be brought before a court to establish the legality of their detention**. Initially it is the prosecutor who decides about measures of restraint and only in those cases when the prosecutor decides that the person should be remanded in custody, does this decision have to be sanctioned by the court. In such cases the prosecutor and law enforcement officers dealing with the case submit a petition to the court outlining their reasoning. When reviewing the case the judge can only accept or reject the petition for remand in custody. The judge cannot select another measure of restraint. Judges only address the issues addressed in the petition and do not review other issues such as whether the person was subjected to human rights violations during the arrest including unlawful and arbitrary arrest and the use of torture and other forms of ill-treatment.

Monitoring conducted by the Coalition against Torture and Impunity shows that in the majority of cases **judges continue to base their decisions as to whether or not to remand a detainee in custody solely on the basis of the gravity of the crime**, in reference to Article 111, part 1 of the Criminal Procedure Code.

The authors of this submission are also concerned that Article 111, part 5 of the Criminal Procedure Code still authorizes judges to remand suspects in custody for an additional 72 hours before issuing a decision about measures of restraint.

Article 112, part 1 of the Criminal Procedure Code stipulates that a suspect/ accused should usually not be remanded in custody for longer than two months at the first remand hearing. In practice, when issuing the first remand decision judges usually do not specify the length of time for which a person should be held in custody. The **detainee is thus automatically detained for two months, i.e. the maximum period of time for the initial remand period** provided for under Article 112, part 1 of the Criminal Procedure Code.

The overall time limit for holding a person in custody is usually 12 months, although in exceptional cases this time can be extended to up to 18 months (parts 3 and 4). These time limits allow the person to be held in custody during the preliminary investigation and until the case is referred to the court. In line with Article 112, part 1 and Article 427, part 3 of the Criminal Procedure Code, minors can be remanded in custody for up to six months.

The Criminal Procedure Code also regulates time limits of detention during the criminal trial. As set out in Article 289 of the Criminal Procedure Code, from the time the case is admitted by the court until the verdict is pronounced, the defendant can be held in custody for up to six months (in exceptional cases 12 months).

As a result, overall domestic legislation provides for a person to be detained for up to 30 months until a verdict is reached (18 months during the preliminary investigation and 12 months while the case is being reviewed in court). While these time limits may be reasonable for certain complex cases the authors of this document are concerned that in practice detainees are often held in custody longer than strictly necessary.

A major weakness in domestic legislation is that it fails to regulate the time limits of custody in the period from when the criminal case is referred to the court until the admission by the court (presumption of release pending trial). This period of unregulated detention – after the pre-trial remand ruling has expired but no new measure has been taken – can last several days or sometimes even weeks.

The authors of this document are further concerned that the legal amendments introduced in May 2016 are not consistently implemented in practice. Most allegations of torture and other ill-treatment concern the time between the arrest and the placing of the suspect in a temporary police detention facility. In many cases detainees are held in incommunicado during this period. Often they are held in facilities that are not intended for detention, such as police duty stations or short-term confinement cells (the so-called “lock-ups” or “Katalazhki” in Russian). Tajikistani legislation provides for the following detention facilities: temporary police detention facilities, army detention cells (gaupTVakhta) and the facilities of the penitentiary system.

For example, Mukhabbat Davlatova told the Coalition against Torture and Impunity that her son Djovijon Khakimov was arrested in their home on 3 January 2017 and taken to the Department tasked with counteracting organized crime of the Ministry of Internal Affairs in Dushanbe. Reportedly, he was held incommunicado and without charge until he was taken to the temporary police detention facility of the Ministry of Internal Affairs in Dushanbe on 9 January, where his detention was officially registered. The remand hearing took place on 11 January, over a week after police had arrested him. Djovijon was reportedly tortured while in incommunicado detention, but his lawyer’s request of 12 January for a prompt medical examination was not satisfied.

3.2. Access to a lawyer of the detainee’s choice

Thanks to the May 2016 legal amendments, the Criminal Procedure Code now unequivocally stipulates that detainees are entitled to access to a lawyer as of the moment of their actual detention, which is a significant positive development. However, access to this right is not consistently ensured in practice.

Upon the first meeting with the detainee, suspect or accused person, the investigator is required to provide information on his or her rights, including the right to legal defence (Chapter 6 of the Criminal Procedure Code). In line with Article 51 of the Criminal Procedure Code the investigator is also required to provide the detainee with a lawyer. If a person is not represented by a lawyer in a case where the lawyer’s participation is obligatory by law, this is considered a grave violation of criminal procedural legislation and the verdict has to be annulled (Article 375 of the Criminal Procedure Code).

In practice there are cases where investigators put pressure on detainees to turn down legal assistance (by filing a statement under Article 52 of the Criminal Procedure Code) in order to avoid having to arrange for the services of a lawyer or in order to interrogate the person without the presence of a lawyer. There are also cases where law enforcement officers force detainees to reject a certain lawyer and put them in touch with a hand-picked lawyer who does not provide actual legal advice, but simply signs the procedural police documents.

Djovijon Khakimov was reportedly held incommunicado for several days after his arrest on 3 January 2017. After his transfer to the SIZO a lawyer from the Coalition against Torture and Impunity started working on his case, met with Djovijon Khakimov and filed complaints about allegations of torture requesting that a forensic medical examination be conducted. However, subsequently officials of the State Committee for National Security reportedly urged Djovijon Khakimov’s family to end the contract with the Coalition lawyer if they wanted “his situation to improve” and to stop writing complaints about torture. The officers reportedly claimed that Djovijon

Khakimov, who had a state-appointed lawyer representing him in the criminal case brought against him, did not need a second lawyer. The state-appointed lawyer reportedly did not pursue the allegations about torture.

Although domestic legislation does not stipulate that access to a lawyer is conditional on the permission of an investigator, such permission is frequently required in practice when lawyers want to visit detainees in temporary police detention facilities, run by the Ministry of Internal Affairs, or in SIZOs, where detainees are transferred after the remand hearing and which are run by the Ministry of Justice. The Coalition against Torture and Impunity is aware of many cases in recent years, where police investigators delayed granting permission on various pretexts, limited the number of visits or obstructed access to a lawyer in other ways. Effectively, this means that the **investigator or judge determines whether or not a lawyer is able to see their client** and in practice lawyers often see their clients for the first time during the remand hearings or the trial. Unfortunately, many lawyers do not lodge complaints against such unlawful state actions.

SIZO staff often refer to internal regulations preventing them from granting access to lawyers. In recent years, members of the Coalition against Torture and Impunity in Tajikistan have repeatedly filed requests for information about internal SIZO regulations, but the requests were turned down on the grounds that these documents are with limited access and “for internal use only”.

Khudoydod Gaffarov was detained on 4 July 2017 and when his wife saw him briefly at the building of the State Committee for National Security the next day he was reportedly shaking with fear, hardly able to talk and there was blood under one of his finger nails. When a lawyer of the Coalition against Torture and Impunity started working on the case, the lawyer filed a petition stressing his right to meet the client confidentially, for as long and as frequently as necessary. The investigator responded ten days later, on 17 July, granting permission for only one meeting. Only after the lawyers’ persistent complaints did the investigator issue a permission for more frequent visits.

Ashurali Kholov was detained by police in plainclothes on suspicion of theft on 19 February 2015. He was reportedly held at Khamadoni District Police Station in Khatlon region for three days and beaten by two officers to extract a confession. Ashurali Kholov’s lawyer sent a request to the SIZO in the city of Kulyab for a confidential meeting with his client. The SIZO official replied that the lawyer should provide written permission from the investigator. When the lawyer asked to clarify the legal basis for this request, he received no reply. The lawyer was eventually able to meet his client in March after receiving written permission from the investigator.

In those cases where a **detainee is held in a pre-trial detention facility under the jurisdiction of the State Committee for National Security** independent lawyers are typically not given access to their clients at all.

When entering a temporary police detention facility, SIZO or post-trial facility lawyers are requested to hand over all technical equipment such as Dictaphones and mobile phones, which could help them record evidence of torture.

Lawyers rarely meet their clients confidentially since law enforcement officers or guards are usually present in the meeting room, despite the fact that domestic legislation provides for confidential meetings (Article 9 of the Law on the Advokatura and Lawyers’ Activities, Article 18 of the Law on the Order and Conditions in Custody of Suspects, Accused Persons and Defendants, Articles 46, 47 and 53 of the Criminal Procedure Code and Article 24 of the Instruction on Detention). Typically, the guards also limit the time of the conversation.

In line with Article 91, part 5 of the Code on the Implementation of Criminal Punishment of Tajikistan, inmates of labour colonies and prisons are entitled to a legal consultation with a lawyer after lodging a request. The inmate is required to send a letter to the director of the penitentiary facility requesting a meeting with the lawyer. However, in cases of torture and other ill-treatment it is unlikely that a meeting will be granted. **When the inmates’ relatives hear that the inmate was tortured there is no procedure which allows them to arrange a meeting between the inmate and the lawyer.**

In the period under review changes were introduced with regard to free legal aid. On 2 July 2015 the Concept of Free Legal Aid in the Republic of Tajikistan was approved by Government Decree. In line with the concept, free legal aid can either be provided by lawyers who are members of the Lawyers' Union of Tajikistan and who are included in a special register kept by the Coordination Centre of the Ministry of Justice or by law firms or legal aid clinics belonging to the Lawyers' Union. In the latter case the lawyers participating in this scheme are registered in a special register of the Lawyers' Union. In all cases payment is regulated by the Ministry of Justice.

Two call centres have been set up to facilitate access to free legal aid. One is run by the Ministry of Justice and serves the northern Sughd region. The other is run by the Lawyers' Union and covers the southern Khatlon region. In the city of Dushanbe and the surrounding region requests made by courts and law enforcement agents are directed to the Lawyers' Union of Tajikistan.

3.3. Medical examinations

On December 2012 the Working Group on Implementing the Standards of the Istanbul Protocol, that includes NGO representatives, was established by decree (No. 719) of the Ministry of Health and tasked with developing internal regulations, manuals and forms for forensic medical and psychiatric examinations and appropriate documentation, in line with the standards of the UN Istanbul Protocol. On 1 November 2014 the Ministry of Health adopted the "Compilation of Normative-Legal Acts on Forensic Medical Examinations and the Methodological Procedure of Organizing and Carrying out Forensic Medical Examinations" and an annex containing a form for a forensic medical examination report, a form for the expert's conclusion and a checklist for the medical examination of detainees by doctors and other medical professionals (Decree No. 918). When an examining doctor is informed by a detainee that he or she was tortured or ill-treated, the doctor or the forensic medical expert is required to record the allegation and request an interdisciplinary examination (forensic medical and/or psychiatric).

The above-mentioned working group has ensured that information about the standards of the Istanbul Protocol is included in the curriculum of relevant educational facilities and has conducted an extensive series of trainings for forensic medical experts, psychiatrists, general practitioners, and staff of the penitentiary system, judges and lawyers.

On 30 October 2017 the Minister of Health replaced the working group with a newly-established one which was tasked with taking forward the parts of the National Action Plan on the Implementation of UPR recommendations (2017-2020) that are aimed at integrating the standards of the Istanbul Protocol into the activities of medical institutions. Civil society activists participate in this working group.

A number of obstacles remain to detainees' access to effective medical and psychiatric examinations.

Firstly, according to information obtained by the Coalition against Torture and Impunity, in practice **doctors rarely fill in the above-mentioned forms of the Ministry of Health** for a variety of reasons: the Ministry has not made available a sufficient number of forms; many doctors are not aware of their existence; and some are worried that they might face reprisals by law enforcement officers if they record evidence of torture.

Secondly, not all medical personnel tasked with examining detainees and prisoners are employees of the Ministry of Health. **When detainees are admitted to detention facilities that have their own medical personnel, these are not bound by regulations adopted by the Ministry of Health regarding the Istanbul Protocol.** Medical professionals who work in Dushanbe's temporary police detention facility and the Anti-Corruption Agency are employed by the Interior Ministry and the Anti-Corruption Agency respectively. It is not known whether internal (unpublished) regulations governing medical questions in SIZOs run by the State Committee for National Security and medical facilities and the Centre of Forensic Medicine of the Ministry of Defence are in line with international standards including the Istanbul Protocol. **Medical staff of these facilities as well as of the temporary detention facility of the Anti-Corruption Agency have not undergone training on the Istanbul Protocol.** As set out in Article 195, part 3 of the Code on the Implementation of Criminal Punishment, the

Ministry of Defence regulates the administration of medical treatment to inmates held in disciplinary facilities of the armed forces and their access to other medical personnel.

On 1 May 2018 the Ministry of Justice and the Ministry of Health jointly approved the "Procedure for Administering Medical Assistance to Detainees and those Serving Criminal Penalties". This document was drafted by members of the Working Group of the Ministry of Health and it includes a separate medical form, entitled "Protocol for Medical Certification of Prisoners", which is designed for and used by doctors in the penitentiary system during medical examinations of alleged victims of torture and ill-treatment.

Thirdly, the authors of this document are concerned that the **existing forensic centres in Tajikistan lack sufficient financial resources** and, in many cases, the necessary equipment to conduct reliable forensic examinations. In some centres there are no functioning laboratories. The regional forensic centres in the southern Khatlon region and GBAO have not been modernized since the 1950s. Many district forensic facilities are not accommodated in separate buildings, but often function next to the local morgue, and do not meet basic standards of hygiene.

On 27 December 2017 the Ministry of Health approved by decree (No. 1157) the "Compilation of Normative-Legal Acts on the Psychiatric Service and the Methodological Procedure of Organizing and Carrying out Forensic Psychiatric Examinations and the Procedure of Administering Psychiatric Assistance to People Suffering Psychiatric Disorders", which is in line with the principles set out in the Istanbul Protocol. Currently plans are underway to train psychiatrists on the implementation of the standards contained in this Compilation. The NGOs Independent Centre for Human Rights (Tajikistan) and experts of the international NGO Doctors without Borders play a key role in implementing these activities.

Accessing medical or psychiatric forensic examinations is limited by the fact that, by law, the lawyer has to lodge an official request, which has to be approved by the investigator, the prosecutor or the judge involved in the case. In practice, these requests are rarely approved or they are reviewed for so long that the examination is carried out too late.

The May 2016 legal amendments stipulate that detainees should undergo a medical examination prior to being placed in a temporary detention facility. Article 94, part 4 also states that the suspect or the lawyer can request that the examination be conducted by an independent doctor or an independent forensic expert. **However, to date, Tajikistan has not regulated the activity of independent forensic experts and there are no independent forensic medical institutions in Tajikistan.**

The Programme of Judicial-Legal Reform in the Republic of Tajikistan (2015-2017), adopted by Presidential Decree on 5 January 2015, envisaged a study of all existing (state-run) forensic institutions and exploration of the possibility of carrying out forensic examinations outside the state system. The Ministry of Justice and its agency, the Republican Centre for Forensic and Criminalistic Examinations, were tasked to carry out the study. In 2016 the Ministry submitted a draft law ("On Forensic Examinations") to the Republican Centre for Forensic and Criminalistic Examinations, which provided comments, but for unknown reasons the work on the draft law was discontinued.

The authors of this submission are concerned that, although by law (Article 210 of the Criminal Procedure Code), forensic examinations of victims and witnesses are conducted subject to voluntary and written consent, **in practice suspects, accused persons and defendants can be forced to undergo forensic examinations.**

3.4. Video recording in detention facilities

According to the 2015 Government Information on the Implementation of UPR Recommendations, the Interior Ministry equipped all temporary detention facilities in Dushanbe and the corridors of buildings belonging to Interior Ministry agencies with video cameras and this initiative is being extended to other parts

of Tajikistan. On 28 April 2015 in the framework of national consultations about the implementation of recommendations issued to Tajikistan under the UPR, government representatives reported that video cameras had been installed in four facilities of the Interior Ministry in Dushanbe, including the capital's temporary police detention facility. The State Committee for National Security, the Drug Control Agency and the Anti-Corruption Agency also reported that they had installed cameras, but gave no details.

According to members of the Monitoring Group under the Ombudsperson's Office, most detention facilities had been equipped with video cameras by the time of writing, but the NGOs issuing this document are concerned that they do not cover all the necessary areas. For example, **no cameras have been installed in exercise yards and only two to three police detention facilities have cameras in the interrogation rooms. Video cameras are usually not set up in psychiatric facilities.**

In 2016 and 2017 several lawyers who cooperate with the Coalition against Torture and Impunity petitioned for video recordings relevant to their clients' cases to be made available to them. They were told that the footage had not been saved or that due to a power cut at the time no recordings had been made.

*For case examples refer to the cases of **Shamsiddin Zaydulloyev** and the recent case of **Shahboz Ahmadov** in the Case Annex).*

3.5. Persons subjected to administrative detention or arrest

The current Criminal Procedure Code was adopted in 2009; it introduced remand hearings in those cases when the prosecutor recommended to remand a person in custody and stipulated that the hearing must be held within 72 hours. It is now a widespread problem that, in practice, **police often subject persons to administrative detention before a criminal case is opened** and recorded in order to avoid that the clock starts ticking for the time limit of the remand hearing. Often individuals are subjected to torture or ill-treatment during this period of administrative detention in order to extract confessions, which are then used as a basis to open a criminal case. The authors of this report are aware of cases when judges ruled about the administrative arrest in the detainee's absence. (For a case example of torture during administrative detention, refer to the case of **Khayriddin Amonov** in the Case Annex).

Tajikistan's legislation defines the concepts of administrative detention and administrative arrest. In addition to the Code of Administrative Violations, which sets out different types of administrative offenses and penalties, the Procedural Code of Administrative Violations, provides for procedures, terms, grounds and fundamental guarantees of human rights during administrative detention and administrative arrest.

Administrative detention is the temporary restriction of liberty, applied in exceptional cases to ensure the timely and correct consideration of the case, as well as the implementation of a decision related to an administrative offense. Domestic legislation defines some basic human rights guarantees for administrative detention. For example, it sets out that relatives and the lawyer are notified of the place where the detainee is held (Article 61 part 1, 3 of the Procedural Code of Administrative Violations). A detention report is drawn up on the administrative detention, which indicates the time and place, the position, the full name of the person who prepared the report, information about the detainee, the time, place, reasons and grounds for the detention. The record is signed by the official who compiled it and the detainee. A copy is given to the detainee (Article 62). Decisions on the legality and validity of the detention and decisions to release a person who was unlawfully detained are entrusted to the prosecutor's offices (Article 61 part 6).

The NGOs jointly issuing this document are concerned that the legal safeguards in detention fall short of Tajikistan's obligations under Article 9 of the ICCPR. For example, **domestic legislation does not stipulate a time period within which relatives and lawyers are notified of the detainees' whereabouts** and it **does not grant persons subjected to administrative detention the right to be brought before a judge** when ruling about the administrative arrest. Domestic legislation does not regulate the court procedure necessary to extend the time period of administrative detention (up to 30 days) and no information is publicly available about court reviews of such cases.

Legislation sets out the time limits of administrative detention: a) in general administrative detention cannot exceed three hours; b) in exceptional cases, with respect to persons without a place of residence and with court approval, this period may be extended up to 10 days; c) when an investigation is conducted into an administrative violation that carries administrative detention as a possible penalty, the person may be subject to administrative detention before the judge considers the case, provided that a written request is submitted to the prosecutor no later than 24 hours after the moment of deprivation of liberty; d) the period of detention of foreign citizens or stateless persons for violating the visa regime and rules of stay may be extended in exceptional cases by the court at the request of the Prosecutor General of the Republic of Tajikistan, his deputies, prosecutors of GBAO, other regions or Dushanbe city, the transport prosecutor of Tajikistan or their deputies up to one month (Article 63 of the Procedural Code of Administrative Violations).

The period of administrative detention for someone who committed an administrative offense is calculated from the moment of his or her delivery to a place of detention and not the time of actual detention, which can result in periods of incommunicado detention.

Administrative detainees are held on the premises of internal affairs bodies, customs authorities, forestry and hunting authorities, paramilitary security, the State Automobile Inspectorate, the Military Automobile Inspectorate, border troops of the national security bodies, state bodies of national security, the Presidential drug control authorities, bodies of state financial control and the fight against corruption, or in special institutions established by local authorities. According to the law, these premises must meet sanitary requirements and it must be ensured that detainees cannot leave them without authorization. Men, women and minors held in administrative detention must be kept separately from each other (Article 64 of the Procedural Code of Administrative Violations).

Administrative arrest is a type of administrative penalty (Article 36 of the Code of Administrative Violations) and consists of the short-term deprivation of liberty for an administrative offense, which is decided by the court for a period of one to 15 days (Article 47, parts 1 and 2) or up to 30 days during states of emergency. The term of administrative arrest is calculated in hours and days (Article 52).

Administrative arrest is applied for violating the requirements of a restraining order (Article 93-2 of the Code of Administrative Violations), engaging in prostitution (Article 130, part 2), driving while intoxicated (Article 332), a vehicle driver evading an intoxication test (Article 339, part 2), production, storage, importation, transportation and distribution in Tajikistan of prohibited media productions and other prohibited printed materials (Article 374), disorderly conduct (Article 460), violation of the established rules in a state of emergency and martial law (Article 471), disobedience of a lawful order or demand of a police officer or other persons performing duties to protect public order (Article 479), violation of the rules of administrative supervision (Article 485, part 3h), contempt of court (Article 528).

According to the law, administrative arrest can only be imposed in exceptional cases and cannot be applied to pregnant women, women with children under the age of 14, persons under the age of 18, persons with group 1 and 2 disabilities, and persons of retirement age (Article 47, part 3 of the Code of Administrative Violations). The time period of administrative detention counts towards the length of administrative arrest (Article 47 of the Procedural Code of Administrative Violations).

A judge's decision to impose an administrative penalty in the form of administrative arrest is implemented by the law enforcement bodies immediately after it is issued and individuals under administrative arrest are kept in places determined by law enforcement agencies (Article 241 of the Procedural Code of Administrative Violations). In Tajikistan, **legislation does not contain information on the procedure for serving a term of administrative arrest, nor the basic human rights requirements of persons serving a term of administrative arrest, or requirements for detention conditions.** In practice, persons serving terms of administrative arrest are held in temporary detention facilities of the internal affairs agencies, which are not intended for long stays of up to 15 days.

3.6. Forced hospitalization of psychiatric patients

In 2017, a new Health Code was adopted, encompassing all legislation on access to health care. Chapter 35 of the Code is devoted to medical and social assistance for people suffering from mental disorders. The legislation guarantees the provision of medical and psychiatric care to persons suffering from mental disorders, as well as access to a lawyer of their choice (Article 177), the right to be informed about the grounds and purpose of forced hospitalization, and the right to notify relatives and legal representatives of hospitalization within 24 hours (Article 189).

The Code stipulates that voluntary consent to hospitalization in a psychiatric institution must be given in writing (Article 185); forced hospitalization can take place only after a decision by a psychiatrist (Article 186). The grounds for forced admission include: a pronounced mental disorder, depriving a person of the ability to make informed decisions and representing an immediate danger to themselves or others; or a person not covered by treatment and psychiatric care, entailing a danger to health and causing serious moral and material damage to others. Within 72 hours of hospitalization, individuals must be examined by a commission of psychiatrists to decide on the reasonableness of hospitalization. If hospitalization is considered reasonable, the conclusion of the commission of psychiatrists is, within 48 hours, (from the time the medical commission of psychologists reaches a conclusion) sent to the court nearest the psychiatric institution, to rule on extending the period of stay in the institution (Article 187). Thus, the law allows a period of 120 hours (five days) from the moment of forced hospitalization to a decision being sent to court for consideration of the reasonableness of the forced hospitalization.

However, these norms contradict the requirements of Article 308 of the Civil Procedural Code, which states that "an application for compulsory hospitalization must be filed within forty-eight hours from the time a person is placed in a psychiatric hospital".

Furthermore, a court review of the decision on compulsory hospitalization should be undertaken every six months (Article 187).

During visits to closed and semi-closed facilities the Monitoring Group has recorded the following concerns: **Personnel at psychiatric centres typically do not know the relevant legal procedure concerning forcible admissions to psychiatric hospitals.** For some staff members the doctor's or family's decision was sufficient justification of forcible hospitalisation. Therefore, there is a risk that the legal regulations referred to above are not consistently applied in practice. Another serious problem concerns the **widespread failure to obtain informed consent to treatment from patients.** Hospital employees were either unable to provide any information about how patients were informed about the proposed treatment and how their consent to that treatment was obtained, or said that such information was only given to family members.

3.7. Suggested recommendations to the authorities of Tajikistan

- Compile and publish comprehensive statistics on cases of law enforcement agents and other officials accused of, charged with and punished for failing to implement the legal safeguards for detainees contained in the Criminal Code of Tajikistan. Detail the types of punishments handed down.
- Legislate that basic legal safeguards that apply to criminal cases are also applied to cases of administrative detention and arrest.
- Amend legislation to ensure that medical examinations are carried out immediately after a person is deprived of his or her liberty.
- Amend legislation to ensure that detainees unfailingly undergo a medical examination after being taken out of the temporary police detention facility and before being admitted to the investigation-isolation facility (SIZO).
- Amend the Code on the Implementation of Criminal Punishment to ensure that close family members of prisoners are promptly informed of her or his whereabouts upon admission to a penitentiary facility and of any transfers.
- Oblige detaining officers to wear visible identity tags at all times.
- Reduce the 72-hour limit for a detainee to be brought before a judge to 48 hours (as recommended

to Tajikistan by the HRC and the Special Rapporteur on torture), and to 24 hours with regard to minors (as recommended by the UN Committee on the Rights of the Child).

- Amend the Criminal Procedure Code to ensure that courts do not base their decisions to authorize remand in pre-trial detention only on the gravity of the alleged crime.
- Strengthen legislation obliging courts to verify that there are sufficient grounds to remand a person in custody and to check that there are valid and legal grounds to detain a person in custody.
- Ensure that nobody is held in custody for longer than strictly necessary and consider reducing the maximum period detainees can be held in custody, both before and during the trial.
- Regulate in law the time limits of custody from the time that the criminal case is referred to the court and until the court admits it.
- Establish a functioning mechanism enabling detainees to meet with a lawyer of their choice immediately after the arrest.
- Ensure in practice that lawyers can freely, without having to seek further permission, meet with their clients in all types of detention facilities, before and after the trial, and including facilities run by the State Committee for National Security, without interference, for adequate periods of time and in a confidential setting.
- Ensure that all medical personnel responsible for examining detainees are truly independent of law enforcement agencies and the agency running the respective detention facility, and that they follow the standards of the Istanbul Protocol during examination and documentation.
- Modernize the infrastructure of state forensic services across Tajikistan to ensure that forensic experts can conduct high-quality examinations.
- Update the forms used for recording the results of forensic psychiatric examinations and bring them into line with the standards of the Istanbul Protocol.
- Put in place a mechanism to ensure that forensic examinations are carried out upon request of the detainee or the lawyer, in line with Chapter 24 of the Criminal Procedure Code.
- Provide the necessary legislative framework to allow for the establishment of independent forensic medical and psychiatric institutions.
- Legislate that suspects, accused persons and defendants must not be forced to undergo a forensic examination.
- Conserve video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or a doctor may be violated. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers. Punish those responsible if relevant recordings are not made available to detainees and their lawyers upon request.
- Review the time limits set out in the Health Code and the Civil Procedure Code relating to forced hospitalization and ensure that they are consistent and in line with international human rights principles.

4. Deaths in custody and the armed forces (Article 7)

Cases of deaths in custody and in the armed forces continued to be reported since the HRC last reviewed Tajikistan in 2013. The Coalition against Torture and Impunity documented several cases where the investigation into such allegations has not been conducted effectively.

From 2014 to 2018 the Coalition against Torture and Impunity recorded 10 cases of death in custody¹ and 19 cases of death in the armed forces (another two individuals were driven to suicide)². (For further information about torture in the army, refer to the chapter “Conscripts and soldiers: torture and ill-treatment in the armed forces”).

In some of these cases investigations into allegations of torture were not conducted effectively. The Coalition against Torture and Impunity is aware of cases where the investigation into such allegations was terminated without grounds and lawyers were prevented from accessing the case materials.

For case examples refer to the cases of Shamsiddin Zaydulloyev and Umar Bobojonov in the Case Annex).

4.1. Suggested recommendations to the authorities of Tajikistan

- Compile and publish comprehensive statistics on all cases of death in custody in recent years and indicate the location and the cause of death in all cases. Include information on what measures have been taken to investigate the circumstances of death; list all officials who have been punished in connection with these cases for committing crimes of torture other forms of ill-treatment; and provide information of any sanctions handed down on these officials.
- Conduct prompt, thorough, impartial and independent investigations into all deaths in custody and the armed forces; bring to justice the perpetrators; assess any liability of their superiors and other officials; and provide reparation including fair and adequate compensation to the victims’ families.

5. Monitoring of and conditions in closed and semi-closed facilities (Article 7 and 10)

The ICRC has not had access to detention facilities for the purpose of monitoring since 2004. A positive development in the period under review was the establishment of the Monitoring Group under the Office of the Ombudsperson for Human Rights, which started to pay up to 15 visits per year to closed and semi-closed facilities in February 2014. Civil society groups are not permitted to monitor facilities other than jointly with the Ombudsperson’s Office. Tajikistan has implemented some of the recommendations issued by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (Subcommittee on Accreditation) in 2012, but it has taken no measures to ensure that Office of the Ombudsperson can function with full independence. Although significant improvements have been made, conditions in closed and semi-closed facilities often do not meet international minimum standards.

5.1. Monitoring closed and semi-closed facilities

¹ 2014: Umedjon Todjiyev, Nizomiddin Khomidov and Saymurod Orzuyev; 2015: Shamsiddin Zaydulloyev and Umar Bobojonov; 2016: Uktamdjon Igamov; 2017: Tolibjon Dustov and Komil Khodjinazarov.

² 2014: A. Davlatov and M. Nosirov; 2015: F. Rakhmatov and A. Kayumov; 2016: F. Khayitov, M. Saburov, B. Kurbonmarov, Z. Ramazon, A. Kurbonov, M. Dusmatov, Ch. Kurbonov and Sh. Tavalloyev. Ch. Kurbonov and I. Tavvalloyev were driven to suicide; 2017: I. Khonov.

The Monitoring Group, which consists of staff of the Office of the Ombudsperson for Human Rights and civil society activists, was established within the Ombudsperson's Office and began visiting pre- and post-trial facilities as well as other closed and semi-closed facilities in February 2014. The Monitoring Group is part of the Working Group on Moving towards Ratification of the Optional Protocol to the Convention against Torture (OPCAT).³ The Ombudsperson is in charge of coordinating the monitoring mechanism.

To date, the Group has visited over 60 facilities (up to 15 visits per year). It has permission to visit almost all places of deprivation of liberty, including temporary detention facilities of the Ministry of Internal Affairs, SIZOs, correctional facilities, homes for the elderly, homes for persons with disabilities, psychiatric clinics, drug clinics and juvenile justice facilities. Up until the end of 2014 the Monitoring Group had to give prior notice of its visits and was not allowed to speak to detainees confidentially. Subsequently the Monitoring Group was able to visit without giving advance notice and its members have been able to conduct all interviews confidentially.

A number of problems remain. The **low number of Ombudsperson Office staff in the Monitoring Group significantly limits the number of facilities that can be visited** because civil society members of the Group are not authorized to carry out visits without Ombudsperson Office staff; the Monitoring Group **has not been given access to specific detainees for follow-up on complaints about torture or ill-treatment submitted to the Group** by detainees or their relatives; the Monitoring Group **does not in all facilities have access to internal documents that are labelled "for official use only"**, such as internal regulations; the type of facilities the Monitoring Group has permission to visit continues to be limited and **SIZOs run by the State Committee for National Security, by the Agency on State Financial Control and the Fight against Organized Crime and by the Presidential Drug Control Agency remain off-limits**.

Other than in the framework of the Monitoring Group some civil society organizations have separate memorandums with the Ombudsperson for Human Rights on conducting joint monitoring. For example, since 2014 the NGO Office of Civil Freedoms, a member organization of the Coalition against Torture and Impunity, has conducted joint human rights monitoring in army facilities. To date, they have carried out monitoring in at least 24 facilities across the country. The monitoring is conducted in all army barracks, canteens, medical units, bathrooms and laundry rooms, leisure and living rooms, conference rooms and libraries. The monitors evaluate the relationships amongst the soldiers, and that of the soldiers and officers, the summer and winter living conditions, the quality and amount of food and the quality of and access to medical services.

Tajikistan has not ratified the OPCAT, often citing financial limitations. The ICRC has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004. Other than in the framework of the Monitoring Group under the Ombudsperson's Office, civil society organizations do not have access to closed and semi-closed facilities.

5.2. Implementing recommendations by the Subcommittee on Accreditation Identified to strengthen the Office of the Ombudsperson

In April 2012, the Ombudsperson for Human Rights underwent an accreditation procedure in the Subcommittee on Accreditation. The Subcommittee accredited the Ombudsperson for Human Rights with "B" status and issued relevant recommendations concerning the independence of the Ombudsperson and his/her Office, the process of his/her selection and appointment, ensuring the plurality of staff, interaction with the international system for the protection of human rights, and the need to increase funding. There

³ The Working Group was set up on 6 August 2013. It consists of 12 representatives of government agencies and civil society: the Office of the Ombudsperson for Human Rights, the Office of the Prosecutor General, the Main Directorate for the Execution of Punishments, the Supreme Court, the Parliament, the President's Office, Professor T. Sharipov and the NGOs Notabene, Bureau on Human Rights and Rule of Law, Human Rights Center and Avesto.

were also recommendations regarding the powers of the Ombudsperson for Human Rights to receive and consider complaints from places of detention.

From 2012 to date, measures have been taken to implement some of the recommendations. The position of the Deputy Commissioner for Human Rights -- the Commissioner for the Rights of the Child of Tajikistan -- was established; the powers of the Ombudsperson for Human Rights were strengthened regarding visits to places of deprivation of liberty and the Subcommittee recommended that the Ombudsperson for Human Rights play a role in facilitating ratification or accession to international human rights instruments. The Law on the Commissioner for Human Rights in the Republic of Tajikistan was amended in 2016 and the Ombudsperson was endowed with powers to "facilitate ... the ratification and accession by Tajikistan to international legal acts on human rights".

The Subcommittee also noted that the Ombudsperson for Human Rights participated under the UPR as part of the government delegation, which compromised the Office's independence or, at least, the perception thereof. The Subcommittee underlined the importance of National Human Rights Institution's engagement with the international human rights system, in particular, the Human Rights Council and its mechanisms (special procedures and UPR), as well as treaty bodies, in a way that reflects the principle of independence. This includes the provision of independent reports (shadow reports) and follow-up activities at the national level on recommendations on the implementation of international legal commitments on human rights. **The Law on the Ombudsperson for Human Rights in the Republic of Tajikistan does not explicitly provide for the Ombudsperson to prepare national reports to the UN human rights bodies.** Article 25 of the law defines the authority of the Ombudsperson to prepare *special* reports, but limits the range of bodies to which these can be sent and UN structures are not included in the list.

To date, no measures have been taken to ensure the independence of the Ombudsperson for Human Rights in Tajikistan, and there are no open and transparent procedures for the selection and appointment of the Ombudsperson, and the independence of Ombudsperson Office staff.

5.3. Conditions in detention and other closed and semi-closed facilities

Although significant improvements have been made, **conditions in detention and other closed and semi-closed facilities often fail to meet international minimum standards.** Information obtained by the Monitoring Group indicates that most temporary detention facilities (IVS) do not provide sufficient conditions for detainees to maintain personal hygiene.. For example, in the temporary detention facilities in the districts of Muminobod and Khovalinsk, both located in the southern Khatlon region, there are no facilities to take a shower or a bath; there is no permanent access to water in washing places and toilets in the temporary detention facilities in the southern Temurmalik district and in the Vanj district of the eastern Gorno-Badakhshan Autonomous Region (GBAO, after the Russian acronym); toilets are situated outdoors, remain in poor sanitary condition and do not guarantee any privacy for the persons using them in the temporary detention facilities in Rudaki district not far from Dushanbe and in the districts of Darvazsk and Rushansk in the GBAO.

The Monitoring Group found that the investigation isolation facility (SIZO) in Kurgant'yube was overcrowded. In the cells for men the area per person was only 1.9 m², and in the cells for women it was 2.9 m², despite the fact that the standard defined in the national legal regulations requires a minimum of 4 m² per person. Overcrowding was also noted in colonies for persons serving terms of imprisonment. In one of the living quarters of the prison colony in the Ghafurov district in the northern Sughd region the area per prisoner was 3 m².

Barracks in prison colonies often house over 50 persons in a single room.

Some facilities, particularly psychiatric institutions, lack basic furniture such as a sufficient number of chairs, places to hang clothes, shelves for personal items and toiletries, and often there are no radios. The yards of

many psychiatric and other facilities, which are used for exercise, have no benches; some have no toilets and provide no shelter from rain and snow. While the lighting in prison cells is usually good during the day there is usually only one weak lamp that can be turned on at night. Some psychiatric facilities, e.g. the Regional Psychiatric Centre in the City of Kulyab, have no library.⁴ Some psychiatric facilities have metal bunk beds and bars on the doors and windows. Many psychiatric facilities lack qualified doctors and specialized medication. Some detention facilities are insufficiently heated in winter. Although efforts have been made to increase financial resources for food in places of deprivation of liberty, the quality of the food remains poor. In psychiatric facilities, for example, 10 to 12 Tajik Somoni (TJS) is budgeted per patient per day (approx. EUR 1), which is insufficient to meet the patients' nutritional requirements.

According to the Monitoring Group, some institutions, particularly psychiatric ones like the Regional Psychiatric Centre in the City of Kulyab, do not allow patients access to pen and paper and do not provide boxes for letters and complaints. Staff explained that there is no need for correspondence with relatives because relatives can visit and the patients are given mobile phones upon request when they want to communicate with people outside.

Discipline in places of deprivation of liberty is regulated by legislation and internal rules. When being admitted to corrective labour facilities or prisons inmates are usually verbally informed of these rules, but the rules are not displayed in accessible places in all facilities.

Article 105, part 5 of the Code on the Implementation of Criminal Punishment stipulates that "the forcible administration of food or prescribed medicines is permitted when a prisoner refuses to eat and to take medicine prescribed by a doctor, and if his life is at risk."

5.4. Suggested recommendations to the authorities of Tajikistan

- Allow the International Committee of the Red Cross full access to conduct monitoring of detention facilities and visit detainees and prisoners in Tajikistan.
- Ratify the Optional Protocol to the Convention against Torture and set up a National Preventive Mechanism.
- Set up a mechanism of public control over all places of deprivation of liberty and other closed and semi-closed facilities.
- Swiftly implement all recommendations by the Subcommittee on Accreditation and pay particular attention to strengthening the independence of the Office of the Ombudsperson for Human Rights of Tajikistan.
- Publish details about all places of deprivation of liberty, their location and inmate capacity, as well as the actual number of inmates in each facility, disaggregated by age and sex.
- Allocate sufficient budgetary resources to improve conditions in all places of detention and other closed and semi-closed facilities and bring them in line with basic international standards.
- Ensure that the food provided in places of deprivation of liberty is of sufficient nutritional value taking into account specific needs based on age, health, weight and religious dietary requirements.
- Ensure that the legislation and internal rules governing corrective labour facilities, prisons and all other closed and semi-closed facilities are displayed clearly in places that are accessible to the inmates.
- Publish all internal rules and regulations governing all places of deprivation of liberty.
- Cease holding prisoners serving life imprisonment in complete isolation, take steps to improve their living conditions, and repeal legislation limiting their contacts with lawyers and family members.

⁴ The Monitoring Group visited this psychiatric centre on 14 and 15 March 2017. Further information about the visit can be found on: <http://notorture.tj.org/rehab/gruppa-po-monitoringu-mest-ogranicheniya-i-lisheniya-svobody-posetila-oblastnoy>

6. Reacting and conducting effective investigations into allegations of torture and other forms of ill-treatment (Article 7)

The authorities do not publish statistics on all cases involving torture and other forms of ill-treatment, but only on those opened under Article 143-1 ("torture"). Monitoring conducted by the Coalition against Torture and Impunity reveals that torture and ill-treatment continue to be widely used and impunity persists. Many victims and their families refrain from lodging complaints for fear of reprisals or because they are convinced that the perpetrators will not be brought to justice. There is no independent body tasked with investigating complaints about torture and ill-treatment and the agencies involved in examining and investigating such allegations lack independence. Criminal cases and investigative activities are often conducted with great delays. Victims and witnesses are often subjected to abuse and threats during confrontations and experiments carried out as part of the investigation. Evidence is not collected or not collected professionally. For fear of reprisals, medical staff, particularly from villages or small towns, often do not record injuries or avoid recording their gravity when they find out that law enforcement officers were the perpetrators.

The authorities do not publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to all cases involving allegations of torture and other forms of ill-treatment. They also fail to disclose statistics about deaths in custody or in the armed forces and the causes of death. (Refer to the section "Data collection" below).

Since Tajikistan was last reviewed by the CAT and the HRC in 2012 and 2013 respectively, members of the Coalition against Torture and Impunity registered 25 (2013), 26 (2014), 45 (2015), 57 (2016) and 66 (2017), 44 (2018) and 11 (in first quarter of 2019) new cases of men, women and children who were allegedly subjected to torture or other forms of ill-treatment. The majority of these cases relate to physical abuse in the first hours of detention with the aim of extracting a confession. These figures represent merely a fraction of the whole picture, as fear of reprisals prevents many victims and their relatives from lodging complaints. In addition, individuals held in closed or semi-closed facilities are often unable to pass complaints to civil society activists since NGO activists have no access to these facilities other than as part of the Monitoring Group led by the Ombudsperson for Human Rights. (For further information, refer to the section "Monitoring detention facilities and other closed and semi-closed facilities").

Methods of torture recorded by the Coalition against Torture and Impunity in the period under review include pushing needles or nails under the victim's finger nails or in the anus, twisting a person's arms behind their back and attaching them to the feet, applying electric shock to fingers, the mouth, the back or to male genitals, attaching heavy bottles to male genitals, slipping a gas mask over the victim's head squeezing tight the air supply, covering the victim's mouth with tape; rape and threats of rape including with regard to close family members, particularly wives; cigarette burns; forcing the victim into cold water on a cold day or keeping the victim's feet in cold water for one or two days; forcing detainees to brutalize each other; beatings with fists, truncheons and other objects; intimidation and threats of violence directed at the victim's relatives. In recent years the NGO Coalition against Torture and Impunity has recorded torture methods that do not leave visible traces on the skin and that cannot be found by an external examination of the victim; forensic medical experts in Tajikistan usually do not examine internal organs. The Coalition has also found an increase in applying electric current; it is very difficult to find traces of the entry points. In 2018 and 2019 the Coalition also recorded an increase in rape threats and rape with various objects in relation to male detainees.

6.1. Data collection

As mentioned in the section “2.1. Prohibition of torture and ill-treatment, and commensurability of punishment to the gravity of the crime”, the Prosecutor General’s Office compiles and sometimes publishes statistics on criminal cases opened under Article 143-1 of the Criminal Code (“torture”). However, most cases involving allegations of torture or other forms of ill-treatment continue to be opened under other articles of the Criminal Code, such as “incitement to suicide” (Article 109), “abuse of authority” (Article 314), “exceeding official authority” (Article 316), “negligence” (Article 322), or, in cases from the armed forces, “violating the code of military conduct” (Article 373) or “abuse of authority or duty” (Article 391). These articles are also applied to criminal cases that do not involve torture or other forms of ill-treatment, so official statistics on cases opened under them do not exclusively relate to crimes involving torture/ill-treatment. **No official statistics are available that compile all cases of torture and other forms of ill-treatment.**

The Ministry of Internal Affairs does not regularly publish its own statistics on complaints about the use of torture or ill-treatment by its employees, although it has sometimes provided figures at press conferences in recent years. In 2016 and 2017 the Ombudsperson for Human Rights published Interior Ministry figures in its annual report, stating that the Ministry recorded 111 complaints in 2016 and 90 in 2017. No figures were included in the most recent annual report covering 2018 and the Ministry of Internal Affairs did not provide figures for that year during its February 2019 press conference either, which covered results of the Ministry’s work in 2018.

According to the Ombudsperson for Human Rights, the Office received nine complaints of torture and other ill-treatment in 2016, also nine in 2017 and 13 in 2018.

6.2. Confidential complaint mechanisms and protecting victims, their families, human rights defenders and lawyers from reprisals

Article 12, part 3 of the Criminal Procedure Code states that if there is sufficient information suggesting that victims, witnesses, other participants in the criminal procedure 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.

In practice, however, victims of torture or their relatives sometimes face or are threatened with reprisals after lodging a complaint with the authorities about torture or other forms of ill-treatment and have no access to functioning protection mechanisms. Law enforcement officers often urge them to withdraw the complaint or to refrain from being represented by an independent lawyer.

Lawyers have also been subjected to threats and reprisals in many cases and often threats have involved warnings that the lawyers’ family members would be targeted unless the lawyer withdraws from the case or pursues it less vigorously. Lawyers defending clients charged with “terrorism” or “extremism” are systematically threatened with reprisals by security service agents when they lodge complaints about torture on behalf of their client. Lawyers from villages and small towns typically do not lodge complaints about torture because of the high risk of reprisals against them and their clients.

In line with the Criminal Procedure Code, the Law on Detention Procedures and Conditions and the Code on the Implementation of Criminal Punishment, the administration of a detention facility is tasked with receiving and forwarding complaints of suspects, accused persons, detainees and prisoners to the relevant addressee. In practice, the confidentiality of complaints’ submissions is not always adhered to.

6.3. Responding to allegations of torture and ill-treatment: domestic legislation

By law, criminal investigations may be opened upon the submission of a verbal or written complaint by the victim, or based on information provided by an official, in the media or obtained by an interrogator, investigator, or prosecutor (Article 140, part 1 of the Criminal Procedure Code).

When a person submits a complaint about torture the applicant is warned that criminal liability can be incurred for knowingly providing false information which is noted in the protocol, and certified by signature. The complaint shall be considered within three days, and in exceptional cases with approval from the prosecutor – within seven days. If the prosecutor refuses to open a criminal investigation, written information about the appeal procedures shall be provided to the applicant in accordance with Article 149, parts 2 and 3 of the Criminal Code. The applicant may appeal the decision to a higher prosecutorial body or the court within 14 days upon receipt of the prosecutor's decision. The law does not provide for procedures informing the detainee as to whether his/her appeal was received by the relevant official body.

In those cases when the inquirer, the investigator or the prosecutor open a criminal investigation (in accordance with Article 146, part 1 of the Criminal Procedure Code) the applicant is given a document certifying that the application was accepted, registered and considered, in accordance with Article 145, part 1 of the Criminal Procedure Code; this should contain information about the appeals procedure (Article 145, part 7 of the Criminal Procedure Code). Next the prosecutor or investigator conducts a preliminary investigation into the complaint which should be completed within two months from the time the criminal case is initiated (Article 164 of the Criminal Procedure Code).

The law establishes a two-stage procedure for the investigation of complaints: first a pre-investigation check of existing evidence and then the investigation. The pre-investigation check is conducted to establish the basis and grounds for initiating a criminal case and to start the investigation process. During the pre-investigation check (i.e. before the institution of the criminal case) the only investigatory activities permitted are the inspection of the scene of the alleged crime, the medical examination of the alleged victims of torture, and the questioning of the applicants, eyewitnesses and alleged perpetrators. A criminal case is initiated if it becomes clear that it is necessary to conduct forensic examinations, cross-question suspects and witnesses or carry out identification and other investigative actions. The investigation is the process of collecting evidence of the crime and the identification of the perpetrator/s. If the investigation concludes that a crime was committed and sufficient evidence is collected against the alleged perpetrators, an indictment is issued. Otherwise the investigation is closed. The initial pre-investigation check is not necessary if the investigative bodies consider that there is credible evidence a crime was committed, meaning that the investigation stage can start immediately.

Domestic legislation lists all state institutions responsible for considering citizens' complaints. These include the courts, prosecutors' offices, the internal security services of the law enforcement agencies and the State Committee for National Security. Investigations of cases opened under 143-1 ("torture") are conducted by prosecutors (Article 161, part 2 of the Criminal Procedure Code).

6.4. The need for effective and independent investigations

Several international human rights bodies and procedures including the HRC, the CAT and the UN Special Rapporteur on torture have recommended that Tajikistan establish an independent investigatory body, but the authorities have repeatedly stated that what they claim to be a low number of torture cases does not warrant this. However, they only refer to the number of cases opened under Article 143-1 ("torture") of the Criminal Code, whereas as mentioned above, most cases involving torture and ill-treatment are opened under other articles of the Criminal Code, such as those punishing "negligence", "abuse of authority or duty" or "violating the code of military conduct". (For further information, refer to the chapter "Prohibition and punishment of torture and ill-treatment" and the section "Data collection").

In practice complaints about torture and ill-treatment are often not investigated effectively in Tajikistan because the investigating institutions are not sufficiently independent.

As indicated above, complaints about torture and other forms of ill-treatment can be submitted not only to the Office of the Prosecutor General or other prosecutors' offices, but also to the State Committee for

National Security, the Ministry of Internal Affairs, the Drug Control Agency and other law enforcement agencies whose personnel are implicated in the complaint. The security service of the respective agency will subsequently proceed to review the complaint, but there is an inevitable conflict of interests as this service lacks independence. If the agency decides that there are no sufficient grounds for opening a criminal case domestic legislation does not require it to forward information about the case to the Prosecutor's Office.

When complaints are lodged with prosecutors' offices the investigation also often lacks effectiveness and independence. Domestic legislation invests prosecutors' offices with two functions: one pertains to the criminal prosecution and the other to the supervision of the legality of activities relating to searches, pre-investigation checks and investigations. As part of their function within the criminal prosecution prosecutors' offices carry out investigations into various crimes. They also represent the state prosecution in court, including in cases where the actual investigation was carried out by other law enforcement agencies, such as the police. When representing the prosecution in court, the prosecutor bases his/her statement on evidence obtained in the course of the searches and the investigation. If the prosecutor provides information which highlights violations regarding the conduct of the law enforcement officials who carried out the investigative work in relation to the criminal case, (for instance torture), the prosecution would cast doubt on the evidence against the defendant and thus jeopardize its own position in court. In practice the conflict between the two functions represented by the Prosecutor's Office is usually weighted in favour of a strengthening of the position of the prosecution rather than the examination of allegations pertaining to torture, ill-treatment or other violations of the suspects' and defendants' rights.

When prosecutors initiate torture investigations, they lead the investigation, but domestic legislation permits them to order police to undertake investigative activities and gather evidence. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links. This clearly hinders the possibilities for impartial and independent investigations to be conducted. It is not unusual that a police officer implicated in a complaint about torture or his colleagues are engaged in collecting evidence in relation to the case.

The Coalition against Torture and Impunity has documented many cases where **prosecutors failed to promptly react to allegations or complaints of torture.** Investigations are usually only instigated after the victim or the lawyer have filed a complaint. When prosecutors decide that there are insufficient grounds to open an investigation, they typically do not provide sufficient detail to explain their decision.

In many cases known to the Coalition against Torture and Impunity **investigations are not conducted effectively;** investigators do not gather sufficient evidence to properly examine the circumstances of the alleged torture; they often fail to interview witnesses and medical personnel or to order a forensic medical examination. Often they do not interview the victims themselves and do not carry out cross-questioning of police and victims. Instead, prosecutors frequently rely on statements obtained from the alleged perpetrators and their colleagues. By law, torture victims and their lawyers are only entitled to access the case materials upon completion of the pre-trial investigation, which makes it difficult or impossible to put up a strong defence.

When a complaint is lodged with the Prosecutor General's Office against the decision of a local prosecutor's office not to open a criminal case into allegations of torture/ill-treatment or to suspend the investigation, the Prosecutor General's Office typically refers the case back to the same local prosecutor's office if it considers that the case needs further checking. In this way cases can be bounced back and forth between prosecutors' offices for months or even years.

Saymurod Orzuyev, aged 30, was found dead near a river in Nurobod district in central Tajikistan on 29 April 2014, four days after he had been apprehended by traffic police and officers of Nurobod District Police. His family reported that he briefly called his sister in the evening of 25 April, but was only able to tell her -- through tears -- that he was being held at Nurobod Police station, before the phone went dead. The family were unable to see him. On 21 May 2014 Nurek District Prosecutor's Office started examining the circumstances of Saymurod Oruyev's death. Since then and up to the time of writing the Prosecutor General's Office of Tajikistan has annulled decisions by Nurabod

Prosecutor's Office to close the case on **nine occasions** and has returned it to Nurabod prosecutor's office for further checks. In 2018 lawyers of the Coalition against Torture and Impunity lodged a complaint with the court about the lack of action by the Nurobod Prosecutor, but the court did not accept the complaint. But in August 2018 the Prosecutor General's Office opened a criminal case under Article 104, part 2 (murder) and referred it for further investigation to the Prosecutor's Office in Nurobod. Four months later Nurobod Prosecutor's Office decided to suspend the investigation stating that it had not been able to find the perpetrator. Currently a complaint against this decision is pending with the Prosecutor General's Office.

Bakhriniso Narzulloyeva was reportedly beaten by officers of the Shakhmansur District Police Station in Dushanbe on 2 October 2016 and taken to the local police station. She was released the same day and went to the Central Republican Hospital for a forensic medical examination, which recorded injuries to her head and hands. She turned to the Coalition against Torture and Impunity and on 14 October her lawyer lodged a complaint about the ill-treatment with the Dushanbe City Procurator's Office. The case was transferred to the district prosecutor's office, which ruled that there were no grounds for opening a criminal case. Since then Bakhriniso Narzulloyeva's lawyer has repeatedly lodged complaints and the Prosecutor General's Office has sent the case for additional checking to Dushanbe City Prosecutor's Office on two occasions. However, Dushanbe City prosecutors ruled again not to open a criminal case. On both occasions the same investigator of Dushanbe City Procurator's Office was tasked with the additional checking.

For further case examples refer to the cases of **Umar Bobojonov** and the recent cases of **Shahboz Ahmadov** and **Khayriddin Amonov** in the Case Annex).

In recent years judges have ordered prosecutors to investigate allegations of torture/ill-treatment more frequently, which is a positive development. **At the same time the Coalition against Torture and Impunity is not aware of a single case, in which prosecutors subsequently confirmed that torture had taken place, although the evidence appeared to have been compelling in several of the cases.** Sometimes judges summoned the police officers accused of torture to testify. When they denied the allegations, the judge's review of the torture allegations was usually closed and no further inquiries were made.

The Coalition against Torture and Impunity also continues to document cases where **judges ignore allegations of torture raised during the trial and refuse to order investigations.**

6.5. Suggested recommendations to the authorities of Tajikistan

- Put in place a unified registration system for cases involving torture or other forms of ill-treatment and compile comprehensive statistics disaggregated by sex, age and, where applicable, detail charges brought, complaints, investigations, prosecutions, convictions and means of redress. Ensure that not only cases under Article 143-1 of the Criminal Code are reflected, but all cases involving allegations of torture or other forms of ill-treatment including those opened under charges such as "incitement to suicide" (Article 109), "abuse of authority" (Article 314), "exceeding official authority" (Article 316), "negligence" (Article 322), or, in cases from the armed forces, "violating the code of military conduct" (Article 373) or "abuse of authority or duty" (Article 391).
- Establish an effective, accessible and confidential system for receiving and processing complaints about torture and other ill-treatment in all places of detention and army facilities.
- Ensure that complainants and witnesses are protected against reprisals as soon as the authorities receive the complaint/witness report and that appropriate disciplinary or, where relevant, criminal measures are imposed against perpetrators for such actions.
- Establish an effective and independent investigation mechanism with no connection to the state body prosecuting the case against the alleged victim.
- In the meantime, strengthen the role of the Prosecutor General's Office with regard to the investigation of torture and ill-treatment, in both law and practice. In particular, legislate that the Prosecutor General's Office should conduct all investigations involving allegations of torture and other forms of ill-treatment including those opened under Articles 143-1, 314, 316, 322, 373, 391 or

other relevant articles of the Criminal Code; also ensure that all investigative activities are not conducted by law enforcement officers, but by specialized investigators of the Prosecutor General's Office.

- Ensure that lawyers have prompt and full access to materials relating to the investigation into torture allegations, so that they can prepare a meaningful defence.

7. Excluding evidence extracted under torture (Article 7)

Under domestic legislation evidence is considered inadmissible when it is obtained by way of torture or other forms of ill-treatment. However, no mechanism has been established to guarantee the implementation of the relevant legislative provisions and the Coalition against Torture and Impunity is not aware of any case where Article 88-1 ("inadmissible evidence") has been applied in practice.

In line with the May 2016 amendments to the Criminal Procedure Code, evidence is considered inadmissible if it is obtained by way of torture, ill-treatment, violence, threats, deception or other unlawful activities (Article 88-1, "inadmissible evidence"). Questions of inadmissibility of evidence and limitations on their use in the criminal procedure are decided by the police inquirer, the investigator, the prosecutor, the court, the judge, either on their own initiative or following a petition by the parties. Evidence of torture or ill-treatment of a suspect, accused or defendant has to be checked and evaluated regarding the admissibility of their statements as evidence, no matter whether a complaint or a petition have been filed by the victim or the lawyer. The inquirer, investigator, prosecutor, court or judge who decide about the question of admissibility are obliged to clarify in each case which specific violation took place and issue a decision with a justification. When evidence is ruled to be inadmissible because it was extracted under duress, the police inquirer, investigator, prosecutor, court or judge take relevant action in relation to the perpetrators. All evidence ruled to be inadmissible is considered invalid.

However, there is no reliable enforcement mechanism in place to guarantee the implementation of this legislation in practice. Often, judges dismiss torture allegations by defendants or close the inquiry following an interview with the alleged perpetrators. Or, when lawyers petition during the trial that Article 88-1 be applied, judges often delay their decision until the verdict is pronounced, which violates Article 175 of the Criminal Procedure Code ("obligatory consideration of petitions"). **The Coalition against Torture and Impunity is not aware of any case where Article 88-1 has been applied in practice.**

7.1. Suggested recommendations to the authorities of Tajikistan

- Ensure in practice that any statement or confession elicited as a result of torture or ill-treatment is not used as evidence in any proceedings except those brought against the alleged perpetrators.
- Publish detailed statistics on all cases where judges excluded evidence extracted under torture.

8. Redress (Articles 7 and 9)

Domestic legislation does not list torture and ill-treatment as grounds for compensation, but in practice it has been possible to file suits in such cases. In 2014 the families of two deceased men were the first known cases to receive compensation for moral harm sustained through torture and to date there are eight such cases. These are important precedents, but the amounts granted were neither fair nor adequate. Domestic legislation does not provide victims of torture with other forms of reparation such as rehabilitation, satisfaction or guarantees of non-repetition.

8.1. Compensation

Both the Criminal Procedure Code and the Civil Code of Tajikistan regulate the issue of compensation payments. Neither of these codes explicitly lists torture and other forms of ill-treatment as grounds for compensation, but in practice it has been possible to file suits with Tajikistani courts for compensation of moral and material harm sustained through torture and ill-treatment. An obligatory pre-condition for lodging such a suit is a guilty verdict against the perpetrator. Due to protracted investigations into allegations of torture and ill-treatment it often takes years before a guilty verdict is pronounced.

In 2014, the families of two men who died in custody in 2011 (Safarali Sangov and Bakhromiddin Shodiyev) were the first known cases involving allegations of torture to have been awarded compensation for moral damages by courts in Tajikistan. To date the courts have awarded compensation for moral damages in relation to eight victims of torture (deaths: Nazomiddin Khomidov, Murod Nosirov, Firdavs Rakhmatov, Safarali Sangov and Bakhromiddin Shodiev; severely disabled: Shakhbol Mirzoyev; sustained serious bodily harm: Farkhod Goyibov; attempted to commit suicide after torture: Khushvakht Kayumov).

While these are important precedents **the amounts the victims or their families received were neither fair nor adequate**. Domestic legislation does not explicitly instruct courts to grant fair and adequate compensation. In practice the courts' rulings do not appear to be guided by the principles of fairness and adequateness, but by an assessment of available resources in the state budget.

The amounts granted have ranged from the equivalents of approx. EUR 400 to EUR 5300. In 2014 the families of the deceased Safarali Sangov and Bakhromiddin Shodiyev were awarded TJS 46 500 (approx. EUR 5300 at the time) and TJS 14 579 (approx. EUR 1650 at the time) for moral damages respectively. In July 2015 the court awarded TJS 16 000 (approx. EUR 1800 at the time) in moral damages for the torture of 17-year old Khushvakht Kayumov.

Subsequently, **the amount of compensation granted by the courts has noticeably decreased**. For example, the families of two deceased men were awarded TJS 5000 (approx. EUR 560 at the time; cases of Nizomiddin Khomidov and Firdavs Rakhmatov) respectively. Farkhod Goyibov, whose kidney had to be removed after police officers subjected him to ill-treatment, was awarded TJS 9000 (approx. EUR 1000) for moral damages. Shakhbol Mirzoyev, an army recruit, who was tortured so severely that he was left paralyzed, was granted only TJS 4000 (approx. EUR 400 at the time). In 2018 and 2019 the courts did not review any cases related to compensation for moral harm sustained through torture and ill-treatment.

The authors of this document are concerned that **judges dealing with compensation cases do not seriously consider evidence and opinions submitted by international experts**. In those cases where international expert conclusions were submitted, the courts subsequently ordered local experts to examine the same case. There is no law allowing independent forensic examinations, so all forensic examinations are conducted by state forensic experts in specialized institutions set up by the government of Tajikistan. Usually the conclusions of the state experts fail to highlight any medical, psychological and social consequences of torture. Apart from lacking independence, state forensic experts also often lack the expertise to conduct examinations on this issue as only a few of them have been trained on the standards of the Istanbul Protocol and diagnosis of torture. It is unknown whether and to what extent those state forensic experts who participated in specialized trainings have applied their knowledge in practice.

8.2. Other forms of redress

Domestic legislation does not provide for measures of rehabilitation to victims of torture and/or their relatives. Rehabilitation programmes are instead offered by NGOs, using their own financial resources. In 2016, for example, the Coalition against Torture and Impunity provided rehabilitation to 27 victims of torture and ill-treatment or their relatives. In 2017, the Coalition provided rehabilitation services to 46 victims of torture or their relatives (24 men and 22 women) and in 2018 to 49 people (20 women and 29 men).

To our knowledge, other forms of reparation such as measures of satisfaction and guarantees of non-repetition are not provided to victims in Tajikistan and domestic legislation does not provide for such measures.

8.3. Suggested recommendations to the authorities of Tajikistan

- Amend domestic legislation to explicitly stipulate that victims of torture or ill-treatment and/or members of their families are entitled to fair and adequate compensation for moral damages.
- Ensure that guidelines for judges are elaborated to ensure that the sums of compensation payments for moral harm are fair and adequate.
- Legislate that victims of torture and/or members of their families are entitled to free medical, psychological and psychosocial support.
- Set up a state-run rehabilitation centre offering comprehensive and free services to victims of torture and members of their families. Alternatively, provide funding for rehabilitation programmes to civil society organizations with the relevant expertise.
- Ensure that victims of torture are also granted other forms of reparation by the state such as measures of satisfaction, guarantees of non-repetition and as full rehabilitation as possible.

9. Conscripts and soldiers: torture and ill-treatment in the armed forces (Article 7)

From 2012 to date, there have been significant changes regarding the protection of the rights of servicemen in the Tajikistani army:

- Since 2013, after harsh criticism by President Rahmon, the practice of illegal methods of recruiting citizens for military service (arbitrary detention and forcible transfer to places of service) sharply decreased and more cases of arbitrary detention for the purpose of forcible transfer to military service are investigated in a timely manner.
- The Concept on Political and Educational Work in the Armed Forces of the Republic of Tajikistan was adopted by presidential decree on 20 February 2015, after which the Ministry of Defense developed two documents: a Manual on the Prevention of Un-statutory Relations, Cases of Suicide and War Crimes in the Armed Forces and Guidelines on Strengthening Military Discipline and the Rule of Law in the Armed Forces. The Manual includes mechanisms, tasks and steps to prevent torture, investigate and document the causes of ill-treatment in the army, strengthen military discipline, and recommendations for officers to prevent hazing.
- In 2016-2017, the Tajikistani Military Prosecutor's Office, together with the Human Rights Ombudsperson and the NGO Office of Civil Liberties, conducted trainings for officials in the military prosecutor's office on standards of freedom from torture and developed a manual for military prosecutors on prevention of torture, ill-treatment and punishment including un-statutory relations in military units and troops.
- From 2014 to 2018 the Ombudsperson and the NGO Office of Civil Liberties conducted 24 preventive visits to military units.
- The Ombudsperson, the Ministry of Defense, the Main Military Prosecutor's Office, and the NGO Office of Civil Liberties also ran over 40 meetings for officers in 20 military units, on the theme of prevention of ill-treatment in the army. More than 500 officers attended the meetings.

Despite these positive steps, ill-treatment and hazing remain common in the army. Ill-treatment is used to strengthen the discipline of soldiers, to ensure they strictly comply with orders and instructions of their seniors, as a punishment for violation of discipline, and also as part of cruel military rituals.

For 2014–2018 civil society organizations documented 36 cases of torture and ill-treatment in the army against over 62 people, including 19 cases of torture and cruel treatment resulting in death and two cases where people were driven to suicide.

The military prosecutor's office is tasked with investigating allegations of torture, cruel and inhuman relations and punishments in the army; it initiates criminal proceedings under Articles 373 and 391 of the Criminal Code, which provide for liability for non-statutory relations and abuse of authority.

Mansurov Mardonzhon was killed by army officers 10 days before the end of his military service. He died after receiving serious injuries as a result of a ruptured spleen and not receiving the necessary medical care. The last 10 minutes of the soldier's life were recorded on a surveillance camera in a military unit. In 2018, the Court of First Instance sentenced the military officer Nurov to deprivation of liberty under Article 110 (murder) of the Criminal Code and 391, part 3 to three years' imprisonment. However, citing mitigating circumstances the term of imprisonment was changed to two years' probation. The case concerning a second officer is currently being tried at the garrison court in Dushanbe.

A. B. was called up for military service in spring 2017. After 18 months of service, a military unit lieutenant beat him on the side of the neck in order to punish him for talking on the phone. An examination showed that the soldier sustained a broken tooth. The court ordered the officer responsible to pay a fine of 11 150 somoni (USD 1181), and restriction of service for one year, in accordance with Article 391, part 1.

While cases of torture and ill-treatment with serious consequences are usually promptly investigated by the prosecution authorities, impunity for cases involving allegations of hazing without serious consequences remains a problem. This is due to the lack of effective complaints mechanisms and a culture in the military that discourages complaints and appeals to law enforcement agencies and human rights organizations. Those who seek help are at risk of further insults and other reprisals. Domestic legislation does not establish mandatory measures to protect victims and witnesses of torture in the army. In many cases the military prosecutor's office transfers witnesses and victims of torture to other military units to protect them, but this does not happen in all cases and not always sufficiently quickly.

Since 2015, several senior officials have been brought to justice for their part in allowing the abuse to happen. For example, in the cases of F. Rakhmatov, A. Kayumov, I. Kholov, Shakhbol Mirzoyev, Ch. Kurbonov, the officers and platoon leaders were brought to justice for negligence in service, resulting in serious consequences (torture of a soldier). In most cases, the military prosecutor's offices and the courts demanded that the commanders of the military unit and their deputies be brought to disciplinary responsibility, and the military authorities took disciplinary measures in relation to the commanders for the failure to protect conscripts from being subjected to torture.

Independence of the courts

In paragraph 18 of its 2013 concluding recommendations to Tajikistan, the HRC recommended that Tajikistan "without further delay prohibit military tribunals from exercising jurisdiction over civilians". During the reporting period, no measures were taken to implement this recommendation.

According to the Constitutional Law on the Courts of the Republic of Tajikistan of 2014, the military court system of the Supreme Court of Tajikistan and military courts of the garrisons are included in the system of military courts. The Law on the Courts of the Republic of Tajikistan stipulates that all criminal, civil and family

cases to which military personnel are parties, as well as all administrative offenses involving military personnel are to be tried by military courts.

When draftees challenge decisions of the draft board, civil courts refer the case to military courts although the draftee is not yet a soldier. Civil courts argue that conscription is exclusively a matter for the military and that, accordingly, military courts should consider such cases.

Alternative civil service

Domestic legislation does not provide for a civil alternative to military service.

According to Article 1 of the Law on Universal Military Duty and Military Service, every citizen has the right to perform alternative service instead of military service. The procedure for performing alternative service must be regulated by a separate law. However, to date, this law has not been passed.

At the end of April 2018, the media published information that the Ministry of Defense submitted a Draft Law on Alternative Military Service to the lower chamber of Parliament but civil society groups do not have any information about the content of the bill.

The Guardhouse: limiting the freedom of military personnel

The guardhouse is a building where military personnel are detained. Guardhouses are located in each garrison, in each region. Soldiers can be placed there for up to 10 days, for violations of military discipline or for committing crimes. Detention in the Guardhouse is considered a measure of administrative arrest. The law does not establish guarantees for military detainees - such as the provision of a lawyer, contact with relatives, the right to a phone call.

Soldiers and sergeants who are detained for disciplinary offences are kept in general or single cells and sleep on bare plank beds. Sergeants (foremen) are kept in the guardhouse separately from the soldiers. Officer cadets are held separately from detained sergeants and soldiers, and are kept in the guardhouse under the supervision of the head of the guard.

The stay in the guardhouse should not exceed 20 days; this includes time spent for violations of the rules of stay in the guardhouses. Soldiers kept in a general cell in the guardhouse work for 10 hours a day. Sergeants who are held in common cells are used to supervise their work.

Guards conduct a morning inspection and an evening check to establish the presence of all detainees and to conduct a bodily inspection of each person detained.

Detainees are entitled to seven hours of sleep per day; sleeping or lying down during the day is prohibited. After the morning call the bunk beds are removed while folding bunks are locked up. During the day, with the exception of work (classes) and walks (at least 50 minutes a day), the detainees are kept in locked cells. The cells where officer cadets are held, are not locked.

Only officer cadets are allowed to keep their books, money, toiletries and writing utensils in the cells while in detention in the guardhouse. They are also given bedding (a blanket, two sheets, a pillow with an upper pillowcase and a mattress) for sleeping.

In order to access toilet facilities the detainees are escorted, one at a time or in groups of up to five people.

The detainees have the right to wash in the bathhouse once a week; the same day they undergo a weekly medical examination.

Servicemen arrested for violations of military discipline are given the same food rations as other soldiers. Detainees eat in the cells or in the dining room of the guardhouse. In the dining room, food is issued at different times: separately for soldiers, separately for sergeants and separately for officer cadets. Those in solitary confinement eat in their cells.

Detainees are allowed to read newspapers, regulations, military and educational literature and listen to the radio and television. Smoking is allowed only in designated areas.

9.1. Suggested recommendations to the authorities of Tajikistan

- Urgently prohibit military tribunals from exercising jurisdiction over civilians.
- Take steps to ensure that the law recognizes the right to refuse compulsory military service for religious or other beliefs, and also to create non-punitive alternatives to military service.
- Publicly acknowledge that hazing is a crime and that the perpetrators, including superior officers, who are directly or indirectly responsible for the abuse, will be punished.
- Publish comprehensive statistics on complaints, investigations, prosecutions and convictions related to ill-treatment in the army, indicating the position and / or rank of the victim and the perpetrator and, if applicable, the highest officials involved in the case.
- Establish accessible confidential complaints mechanisms in all military units.
- Conduct effective investigations into all allegations of torture or other forms of ill-treatment in the armed forces, bring to justice those responsible and, if applicable, senior officials involved in the case.

10. Women: domestic violence (Article 7)

The adoption of the Law on the Prevention of Violence in the Family in 2013 and the State Domestic Violence Prevention Programme for the period 2014-2023 and other positive steps taken by the government since then to combat domestic violence are being undermined by remaining protection gaps in legislation, weaknesses in the criminal justice system and the failure of the authorities to systematically address the widespread problem. Obstacles to justice for victims include the fact that domestic violence is not criminalized as a separate offense in the Criminal Code. Perpetrators of domestic violence frequently avoid prosecution, or benefit from amnesties, resulting in ongoing impunity. The requirement for victims of certain types of crimes which are classified as less serious to pursue complaints against their abusers through the criminal justice system themselves discourages them from fighting for justice. The state has not prioritized funding of support services and shelters for victims of domestic violence from the central budget and service provision remains inadequate leaving many victims particularly in rural areas with no where to turn.

Assessing the scale of domestic violence against women in Tajikistan is hampered by the **lack of comprehensive, disaggregated statistics**. Data collection is inconsistent and uncoordinated, and under-reporting is a problem. Although NGO service providers use a common database, the State Commission on Implementation of International Human Rights Obligations provides statistics in its progress reports, and the Committee for Women's and Family Affairs publishes annual statistics there is no central governmental database providing up to date statistics in enough detail to allow for meaningful analysis. However, recent studies by UN bodies, academics and NGOs indicate that domestic violence continues to be prevalent and estimate that as many as one in five or even one in two women in Tajikistan have been subjected to domestic violence (physical, psychological or economic abuse) at some time in their lives by their husbands, mother-in-laws or other family members.

The adoption of the Law on the Prevention of Violence in the Family in 2013, the Government Action Plan for implementation of the Law on Prevention of Violence in the Family (2014 – 2023), and other positive steps to combat domestic violence have been undermined by the **failure to criminalize all forms of domestic violence** (physical, psychological and economic). Legislation does not provide a clear definition of the term "family

violence” and thus does not cover those in polygamous marriages; it also fails to establish clear implementation and referral mechanisms and attribute clear responsibilities to different government bodies. **Co-ordination between state bodies on service provision to victims of domestic violence therefore remains weak.** Legislation on domestic violence also fails to attribute funds from the central budget for domestic violence prevention and protection, leaving costs to be covered from local authority budgets.

The Law on Militia was amended in early 2016 to require police to act to prevent family violence. The amended law punishes violations of the Law on Prevention of Violence in the Family and violation of restraining orders. However, NGO representatives and lawyers told IPHR in November 2016 that only those police officers who have received specialized training on domestic violence actively issue restraining orders.

At least twelve posts of specialized police inspectors working primarily on issues related to domestic violence were established and are funded by the MIA. NGOs report improved police responses to domestic violence cases in the areas where specialized police officers work, but the number of posts is insufficient given the scale of the problem. In areas without specialized police inspectors, victims report being met with dismissive attitudes by police officers when trying to register complaints about domestic violence.

By law, victims of domestic violence who sustain medium or minor injuries (usually under Criminal Code Articles 112 and 116) and who wish to pursue complaints against their aggressors are required to do so in a private capacity without support. This discourages reporting and leaves victims vulnerable to pressure not to press charges. Other obstacles to justice include evidentiary requirements meaning that victims of domestic violence need to swiftly obtain documentation of their injuries which can be difficult for women living in remote rural areas. In addition the requirement that medical certificates used in criminal prosecutions for domestic violence should contain evidence of physical abuse makes it impossible for victims of economic and psychological abuse to pursue complaints.

Support is inadequate for victims who try to pursue private prosecutions through the courts and judges sometimes prioritize the protection of the family unit over protection of the victim. Prosecutions for domestic violence are often dropped when the victim reconciles with the perpetrator. The practice of allowing perpetrators to benefit from amnesties contributes to impunity and undermines efforts to put a stop to domestic violence. Amnesties are regularly applied to perpetrators of domestic violence both who are under investigation and who have been convicted.

For further information on domestic violence, refer to the March 2017 report “Domestic violence in Tajikistan: Time to right the wrongs”, based on field research and jointly produced by Nota Bene, a member of the Coalition against Torture, IPHR and HFHR. The report is available on: <http://iphronline.org/domestic-violence-tajikistan-time-right-wrongs-20170308.html>.

10.1. Suggested recommendations to the authorities of Tajikistan

- Centrally collect and publish comprehensive statistics and data on domestic violence, disaggregated by sex and age and details of the perpetrator-victim relationship as well as the number of convictions for domestic violence offences and the penalties imposed.
- Include in the Criminal Code a specific article criminalizing all forms of domestic violence (expressly including a reference to psychological violence).
- Amend legislation to provide that a victim of domestic violence is no longer responsible for initiating criminal proceedings against the perpetrator in crimes which are classified as “less serious”. Take steps to ensure that the victim of domestic violence is never pressurized by judges or law enforcement officials to reconcile with the abuser;
- Provide statistics showing how many people under investigation for domestic violence and convicted perpetrators of domestic violence have benefitted from amnesties in the last five years.

11. LGBT people: police abuse, arbitrary detention and extortion (Article 7)

The human rights of lesbian, gay, bisexual and transgender (LGBT) people in Tajikistan are often egregiously abused, although consensual homosexual relations between adults were decriminalized in Tajikistan in 1998. In recent years law enforcement agencies have repeatedly stated that it was necessary to counteract homosexuality and they appear to have increasingly targeted LGBT people. The authors of this report are aware of dozens of credible cases in recent years of police intimidating, arbitrarily detaining, physically or sexually abusing or threatening to abuse LGBT people. Police abuse and extort money from LGBT people with almost complete impunity. Societal homophobia and transphobia make NGOs working with LGBT clients particularly vulnerable to government pressure and several have been forced to discontinue their work in recent years.

For further information, refer to the February 2018 report "LGBT people in Tajikistan: beaten, raped and exploited by police" that is based on field research and was jointly produced by IPHR and HFHR. The report is available on: <http://iphronline.org/tajikistan-reports-abuse-lgbt-people-domestic-violence-submitted-un-committee-torture.html>.

11.1. Suggested recommendations to the authorities of Tajikistan

- Refrain from targeting LGBT people because of their sexual orientation or gender identity and erase government registers on members of sexual minorities.
- Devise and implement specific procedures to ensure that LGBT people who lodge complaints or provide witness reports about extortion or physical abuse by police or non-state actors are protected against reprisals as soon as the authorities receive the complaint/witness report and that appropriate disciplinary or, where relevant, criminal measures are imposed against perpetrators for such actions.
- Ensure that all credible allegations of arbitrary detention, extortion, torture or other ill-treatment of LGBT people by government agents or of their abuse by non-state actors are promptly, thoroughly, impartially and independently investigated, and that the perpetrators are brought to justice in fair proceedings.
- Engage with human rights and LGBT rights groups in Tajikistan to develop training programmes for law enforcement agents, prosecutor's offices and the Ombudsperson's Office on human rights and sexual minorities and measures to prevent and remedy police abuse against LGBT people.

12. The situation of human rights NGOs and activists (Article 22)

In its 2013 Concluding Observations on Tajikistan's second periodic report, the HRC urged the Government of Tajikistan to "bring its law governing the registration of NGOs into line with the Covenant, in particular with articles 22, paragraph 2, and 25. The State party should reinstate NGOs which were unlawfully shut down and should refrain from imposing disproportionate or discriminatory restrictions on the freedom of association".

Unfortunately, the situation of civil society organizations and activists in Tajikistan, in particular those working on torture and other human rights issues has seriously deteriorated since the last HRC review in 2013. This trend has intensified since 2015. NGOs, activists and lawyers have been subjected to pressure by the authorities to drop or refrain from taking up politically sensitive issues or cases, and it has become increasingly difficult for them to work on certain issues. Many groups have been subjected to intrusive inspections of their activities by the Tax Committee, national security services and other state bodies.

A decade ago there were dozens of NGOs working on promoting democratic reforms and free elections, but now not a single NGO addresses such issues or carries out election monitoring. NGOs also generally refrain from working on violations of religious freedoms since the government has linked defending religious freedoms to the promotion of “terrorism” and “extremism”. Similarly, organizations, activists or lawyers working on cases related to individuals associated with the political opposition, including cases involving torture allegations are labelled as “extremists” and face severe pressure. NGOs and activists who defend the rights and interests of sexual minorities or sex workers are at particular risk: they are frequently criticized by state bodies, which accuse them of “spreading Western values” and “undermining traditional values and morals”.⁵

In the last few years, a **growing number of NGOs have been subjected to inspections by the Tax Committee, national security services and other state bodies**. Such inspections are time-consuming and stressful for the NGOs targeted and create uncertainty for them since they do not know what the outcome will be. In some cases, the inspections have also resulted in warnings and sanctions because of alleged violations of the law, and some NGOs have been forced to close down.

Below are only a few examples of NGOs that have been subjected to intrusive checks and punitive measures by state bodies:

In June 2015, the Tax Committee filed a lawsuit against the **Public Foundation “Nota Bene”** – a well-known Dushanbe-based human rights NGO that is a member of the Coalition against Torture and Impunity, requesting that the organization be closed down for allegedly taking advantage of gaps in the law when registering in 2009. Like many other NGOs in Tajikistan, Nota Bene is registered as a “public foundation” with the Tax Committee rather than as a “public association” with the Ministry of Justice. Both types of organizations are foreseen by national law. The registration process for “public foundations” is simpler and new organizations established in recent years have often registered as “public foundations” given the complications associated with the process of registering “public associations”. The court with which the lawsuit was filed eventually left it without consideration on the grounds that the parties to the case “did not appear” for the hearing. However, the lawsuit established a problematic precedent for NGOs registered as “public foundations” and it cannot be excluded that the Tax Committee may re-initiate the lawsuit in the future.

In August 2015, following an inspection carried out by the Tax Committee, the **Bureau for Human Rights and Rule of Law** – another well-known Dushanbe-based human rights NGO that is a member of the Coalition against Torture and Impunity – was ordered to pay a substantial fine of the equivalent of some 6000 EUR for alleged violations of the Tax Code. This was a heavy financial burden for the organization.

In November 2017, **Rohi Zindaghi** (“Life Path”), an NGO working on LGBT rights in the Sughd region of northern Tajikistan, announced that it had been forced to close down following a series of inspections by the local administration, fire safety officials, the prosecutor’s office and other official bodies. The chair of the organization said that they made this decision since they were tired of all inspections, although these had only found minor violations. She also said that the organization had been under pressure from the authorities since it started addressing the rights of sexual minorities and “advised” to drop this issue if it wanted to continue its work.

In early February 2018, representatives of **several organizations that work with and provide assistance to Men who have Sex with Men (MSM)** in the cities of Kulyab, Kurgantuyube and Dushanbe were summoned for interrogation by law enforcement authorities. During the interrogations, the NGO representatives were requested to provide a list of MSM with whom they work and pressured to write statements saying that they would stop addressing MSM issues.

⁵ For further information refer to the February 2018 report “LGBT people in Tajikistan: beaten, raped and exploited by police” (<http://iphronline.org/tajikistan-reports-abuse-lgbt-people-domestic-violence-submitted-un-committee-torture.html>).

Another NGO activist from an NGO working on health issues of male homosexuals and bisexuals was detained by a group of law enforcement officials and taken to a local police station. After being interrogated for several hours about the nature of the work of the NGO and its clients, the activist was released. However, law enforcement officials also visited the NGO's office and confiscated project financial documents, as well as office equipment and several boxes of hygienic products (which are used for HIV testing of clients). The NGO's printer and financial documents were returned three days later.

After the detention of the NGO activist and the raid of the NGO office, police detained eight young MSM who were held and interrogated for several hours at the local police station. The young people reported being subjected to ill-treatment and pressured to disclose information about other MSM, especially high-ranking ones. They said that they were severely beaten, including with the use of a truncheon; subjected to electrical shocks; insulted and humiliated. The detainees were eventually released. However, it was a traumatic experience for them and they subsequently experienced psychological distress.

There are many other cases in which NGOs have been subjected to inspections and punitive measures. However, those targeted often prefer not to make public statements about this, fearing further pressure and sanctions. For this reason, the names of the NGOs and individuals concerned in the last example, as well as other details that could reveal their identity are also withheld.

Legislation regulating NGO activities

The right to freedom of association is enshrined in Article 28 of the Constitution. The 1999 Civil Code provides for various forms of non-commercial organisations, the most important ones being **public associations** (organizations) (Article 129 of the Civil Code) and **public foundations** (Article 130 of the Civil Code).

While the activities of public associations are covered by the Law on Public Associations, **there is no specific law regulating the activities of public foundations and other non-commercial organizations**. Registration of public foundations is regulated by the 2009 Law on State Registration of Legal Entities and Individual Entrepreneurs.

Law on Public Associations

Amendments to the Law on Public Associations adopted in 2015 require all public associations to report the receipt of grants and other funding from foreign sources to the Ministry of Justice. The reporting is implemented through a notification procedure, using a government-approved reporting form and so far, no NGOs are known to have faced sanctions for failing to comply with this requirement. However, it places an additional administrative burden on NGOs and it could potentially be used to obstruct access to funding and the work of NGOs. Among others, the UN Special Rapporteur on freedom of opinion and expression has criticized this requirement in the report about his mission to Tajikistan, issued in June 2017.

On 2 January 2019, the President signed into law amendments to the Law on Public Associations introducing a number of additional administrative burdens on public associations. Amendments made to Article 25 of the Law now require NGOs to: publish detailed information about the organization's income and expenditures annually; keep information about ongoing domestic and international activities for at least five years after the completion of the activities; provide detailed information to the registration authority (the Ministry of Justice) about the goals and objectives of the organization's activities, as well as persons who exercise control or monitor activities, including information on the senior management, board members and others.

The Law further stipulates that, in accordance with the Law on Combatting Money Laundering and Financing of Terrorism, the registering body should report to the Financial Intelligence Agency (National Bank), in case of doubt or if there are sufficient grounds for suspicion that a public organization is a cover for the collection of funds from terrorist or extremist organizations, or acts as a conduit for the financing of terrorism or extremism. The NGOs jointly issuing this document are concerned that the wording "in case of doubt" is vague and, given the current political climate in Tajikistan, provides ample opportunities for the state to use it to limit the activities of an organization.

According to the Ministry of Justice, the amendments were introduced to implement recommendations issued by the Financial Action Task Force (FATF).⁶ While FATF requires governments to take appropriate measures to ensure that local NGOs are protected from the risk of terrorist finance abuse, in its Interpretive note to Recommendation 8 (On Non-Profit Organizations) the FATF states that "it is important for such measures to be implemented in a manner which respects countries' obligations under the Charter of the United Nations and international human rights law".

Law on Non-Commercial Organizations

In 2015, the Ministry of Justice initiated the process of drafting a Law on Non-Commercial Organizations. Although this law directly affects NGOs, civil society representatives were not invited to participate in the drafting process or consulted in the course of it. In August 2017, a group of civil society organizations sent a letter to the Ministry of Justice, requesting that their representatives be included in the Working Group tasked with elaborating the draft Law on Non-Commercial Organizations. Although the Ministry of Justice gave assurances that NGO representatives would be invited to discuss the draft law in early 2018, civil society organizations received no such invitation. The Ministry told them instead that the draft law had already been submitted to the government and that civil society representatives would be invited to participate in discussions should the law be sent for further revisions. However, although the draft law was later sent back for revisions by the government, NGO representatives were not invited to participate in the Working Group. In May 2019, civil society groups were told that a new Working Group had been created under the Ministry of Justice to develop a new draft Law on Non-Commercial Organizations. At the end of May, civil society organizations sent a letter to the Ministry requesting inclusion in the Working Group and on 28 May the Ministry provided them with the current draft for comments and feedback. However, as the draft is almost completed, the NGOs jointly signing this document are concerned that there is no guarantee that the civil society comments and recommendations will be seriously considered and/ or incorporated into the final version.

The draft contains several provisions which provide for simplified and improved procedures, for example when NGOs wish to close branch offices or other subdivisions. Also, the new draft does not require NGOs to re-register when they move to another location.

However, there are a number of provisions of the new draft law that give cause for concern. For example, Article 5 increases obstacles for registering a non-commercial organization by stipulating that an organization whose founder or other representative was found guilty of committing serious crimes under articles of the Criminal Code such as terrorism, organization of an illegal armed formation or criminal organization, high treason and armed rebellion or who have committed administrative offences such as the production and distribution of prohibited printed materials cannot be registered. The draft law fails to specify if these provisions also concern persons whose criminal record has expired or in whose committed administrative offences in the past.

As mentioned above, there are currently two main types of non-commercial organization - associations and foundations – and they have different registration procedures. Associations register with the Ministry of Justice and Foundations with the Tax Office. The new draft Law on Non-Commercial Organizations provides for only one registration procedure for all organizations. The organizations co-signing this document welcome that under Article 43 of the draft Law, organizations and associations who registered as public foundations under the Tax Office before the law comes into force will not be required to reregister. However, they will be required to submit relevant documentation so that information about their organizations can be added to the new State Registry of Non-Commercial Organizations or the new Registry of Accounting for Branches and Representative Offices of Non-Commercial Organizations, which will be created under the new law.

Civil society organizations are concerned that the draft law does not provide for a mechanism for organizations currently registered as public foundations to transfer from the jurisdiction of the State Tax

⁶ <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

Committee to the Ministry of Justice. In practice, in order to transfer from the “Unified Window” of the State Tax Committee to the Ministry of Justice, organizations are required to be liquidated by a court decision, since there is no other mechanism of transition foreseen in the legislation so far.

On 30 May 2019 civil society organizations submitted comments and recommendations on the draft Law on Non-Commercial Organizations to the Working Group under the Ministry of Justice.

Amendments to the **Law on the Fight against Corruption** and the **Law on the Agency for State Financial Control and Combating Corruption of the Republic of Tajikistan**, adopted in 2017, require non-commercial organisations, political parties and even international organisations operating in Tajikistan to provide a detailed annual assessment of the risks of corruption in their activities to the anti-corruption agency. On 29 May 2018 the Government approved a Decree (No. 253) on “Methodology of the procedure and the methods to conduct an analysis of activities (the risks of corruption)”. The methodology was prepared without consultation with civil society.

12.1. Suggested recommendations to the authorities of Tajikistan

- Ensure that human rights NGOs, defenders and lawyers are not subjected to pressure by state bodies or officials because of their work and that they can carry out their work without fear of reprisals.
- Ensure that inspections of NGOs carried out by state bodies do not result in undue interference into the activities of the organizations targeted and that NGOs do not face unfounded, disproportionate and excessive penalties, such as harsh fines or suspension or closure because of alleged violations of a technical nature.
- Promptly, thoroughly and impartially investigate all allegations of intimidation, harassment and other violations of the rights of NGO representatives and individuals with whom they work and hold those responsible accountable.
- Bring existing legislation relating to NGOs into line with international standards and ensure that NGOs are consulted and granted the opportunity to influence draft legislation affecting them prior to its adoption.

13. The death penalty (Article 6)

In paragraph 8 of the 2013 concluding recommendations to Tajikistan, the HRC recommended that Tajikistan expedite its efforts on the complete abolition of the death penalty in the country.

In April 2004, Tajikistan announced a moratorium on executions and death sentences that has remained in force since. Despite the fact that in Tajikistan the death penalty has not been practiced for several years, the question of complete abolition and ratification of the Second Optional Protocol to the ICCPR is very important. The death penalty remains as a possible punishment in the Constitution “for the most serious crimes” (Article 18) and the Criminal Code. The Criminal Code permits the use of the death penalty for five crimes, including terrorism, rape of a minor, genocide and biocide, however, since the start of the moratorium, no-one has been sentenced to death for these offences. In March 2005, the Criminal Code was amended establishing long-term prison sentences instead of death sentences. All death sentences were commuted to prison sentences when the moratorium entered into force and no one is currently on death row in the country. Life imprisonment is the maximum term in Tajikistan.

During the second cycle of the UPR (May 2016), Tajikistan expressed its readiness to implement recommendations to accede to the Second Optional Protocol. On 7 June 2017, the President of Tajikistan approved the National Action Plan for implementation of UPR recommendations for 2017-2020, but the activities envisioned under the Plan are limited to examining the possibility of ratifying the Second Optional Protocol.

Since 2010, a State Working group, which consists of representatives of various ministries, government agencies, the Ombudsperson and academics, has been studying the social and legal implications of the abolition of capital punishment. According to the Third periodic report of Tajikistan to the HRC, the Working Group drafted an Action Plan that includes a study of global practice and legislation in countries that have abolished the death penalty, an analysis of the crime situation before and after introducing the moratorium, and sociological research among various segments of society.

The issue of full abolition of the death penalty has been regularly raised in various international fora, including the Human Rights Dialogue between Switzerland and Tajikistan. Tajikistan has stated that in order to fully abolish the death penalty, there is a need for a national referendum in order to introduce amendments to the Constitution. However, during the most recent national referendum which was held on 22 May 2016 this issue was not raised. The authorities have also argued that the population is not ready for the complete abolition of the death penalty. However, the results of a public opinion survey carried out in 2013 for the Tajikistani NGO Nota Bene found that of over 2 000 respondents, 67 per cent wanted the death penalty abolished.⁷

Until 2004 when the moratorium was put in place, all matters relating to the death penalty were considered a state secret in Tajikistan. Secret executions following unfair trials and cases of confessions being obtained through torture were not uncommon. In addition, according to Article 221 of the Criminal Code of Tajikistan “the body of an executed prisoner is not given for burial, and the place of his burial is not disclosed.” Thus, the relatives of those who were executed before the moratorium still do not have a right to information about the places of burial.

13.1. Suggested recommendations to the authorities of Tajikistan

- Tajikistan has to fulfill its international obligations and to take a final decision on whether or not the death penalty should be kept as a form of criminal punishment in Tajikistan.
- The Government Working Group should develop a more specific Action Plan that should include a clear timeframe for the abolition of the death penalty, as well as the necessary changes to domestic legislation.
- The Parliament should ratify the Second Optional Protocol to the ICCPR.
- De-classify statistics on the number of executed death sentences and the location of the burial sites of the executed, and take measures to inform the families of the burial sites of those who were executed before the moratorium.

⁷ <http://notabene.tj/publication/ours/reports/>

CASE ANNEX

The case examples are listed in chronological order based on the date of the reported incident/s of torture/ill-treatment.

Shakhbol Mirzoyev

Shakhbol Mirzoyev, physically disabled after being tortured at a Border Guard unit in 2014, struggled for years to receive compensation that eventually was neither fair nor adequate

Shakhbol Mirzoyev, who voluntarily enrolled for service in the Border Guards of Tajikistan in October 2013 after finishing his Commercial Law studies, was subjected to torture by medical and military personnel serving at a border guards unit, on 6 March 2014. Usmon Gayratov, a serviceman and medical attendant, harassed and attempted to humiliate the 22-year old Shakhbol. When the young man ignored the provocation, the medical attendant grabbed and threw him on his back on the floor. As a result of the fall, he lost all sensation in his limbs. When others noticed that Shakhbol Mirzoyev was not moving they lifted him up three times, tried to stand him up on his feet, but the young man fell down and hit his head on the floor. Then soldiers reportedly cut the soles of his feet with razor blades, pricked different parts of his body with needles, and poured boiling water over his back. When they understood that Shakhbol Mirzoyev had lost feeling in his legs, they left him alone in the clinic.

Doctors of the National Medical Centre later diagnosed him with a fracture to the fifth spinal disk, damage to various organs, and the loss of sensitivity in his arms and legs. Shakhbol Mirzoyev had to be flown to Moscow because there are no specialist surgeons in Tajikistan trained to carry out the operation he required. Shakhbol's family sold their house to cover the cost of this. At the time the administration of the Border Guards of Tajikistan promised to cover all medical expenses, although it only covered expenses incurred during his hospitalization at the National Medical Center in Tajikistan. Shakhbol Mirzoyev is now seriously disabled. He is severely limited in his movement and has to spend most of his time in bed or in a wheel chair. In 2015 and 2017 the authorities determined that he was unable to work due to his disability and needed special assistance, thus categorizing his status as "severely disabled" ("disability of the first category"). Based on this, he receives a pension of TJS 250 every month (approx. EUR 23 at the time of writing).

On 19 June 2014, the Military Court of Dushanbe sentenced Usmon Gayratov to nine years' imprisonment for "violating the code of military conduct" (Art. 373, part 2 of the Criminal Code) and "leaving somebody in a dangerous situation" (Art. 127, part 1) and ordered him to pay TJS 570 000 (approx. EUR 83 000) to cover expenses incurred by the Administration of Border Guards for Shakhbol Mirzoyev's medical treatment. A servicewoman and medical attendant was also sentenced to 18 months' corrective labour for "negligent attitude to service" (Art. 392) and "violating the code of military conduct" (Art. 373). She was scheduled to be on duty in the medical unit the day Shakhbol Mirzoyev was tortured, but left the premises and put Usmon Gayratov in charge of the unit although she was aware that Shakhbol Mirzoyev was not safe. The authorities failed to conduct a thorough, impartial and independent investigation into whether the commanding officer of the Border Guards unit committed the crime of "negligence" by not preventing the torture of Shakhbol Mirzoyev.

In November 2014, Shakhbol Mirzoyev applied to Dushanbe Military Court seeking compensation for material and moral damages. On 25 May 2015, the Court decided to award him TJS 97 265 (approx. EUR 14 200) for material damages and TJS 20 000 (approx. EUR 2 900) for moral damages. However, on 6 August 2015 the Military Collegium of the Supreme Court of Tajikistan overturned the decision and referred the case back to the court of first instance. On 26 October 2015 Dushanbe Military Court heard the case again. According to the lawyers, the respondent party presented false information to the court regarding Shakhbol's health and claimed that he had undergone unnecessary medical treatment in Moscow. Shakhbol's lawyer

refuted these claims, pointing out that his health significantly improved after surgery and rehabilitation treatment. The court requested further information about the costs of the medical treatment Shakhbol had received in Russia and representatives of the Border guard forces undertook further investigations into evidence presented in court relating to the expenditures incurred by Shakhbol's family for his medical treatment in Moscow; including the fact that they had to sell their home and their two cars.

Eventually, on 22 November 2016 the court ruled that Shakhbol was entitled to compensation, but significantly reduced the amounts to TJS 36 621 for material and TJS 4000 for moral damages, which, according to the Coalition against Torture and Impunity, is neither fair nor adequate. Shakhbol had to wait until 25 December 2017 to receive the funds because the State Committee for National Security initially refused to implement the court order.

Shamsiddin Zaydulloyev

No effective investigation conducted into the circumstances of Shamsiddin Zaydulloyev's death in custody in April 2015 and no compensation to family for moral damages sustained as a result

Shamsiddin Zaydulloyev, age 25, was detained in his home in the capital city of Dushanbe by officers of Tajikistan's Drug Control Agency on 8 April 2015, and later charged with "selling small quantities of drugs"(Article 200, part 1 of the Criminal Code of Tajikistan). The next day his mother visited him in the building of the Drug Control Agency. She recalled: "When I stroked his head he said I shouldn't touch the back of his head because it was swollen and painful. I asked him in a low voice whether he was beaten and he nodded. "When she wanted to visit her son again on 10, 11 and 12 April she was not given access under various pretexts. On 13 April Shamsiddin's parents were informed that their son was dead. When they saw his body in the morgue it was covered in bruises. They gave the NGO Coalition against Torture and Impunity several photographs to support their claims.

On 25 April the Prosecutor General's Office opened criminal proceedings under Article 143-1 of the Criminal Code ("torture"). Lawyers of the Coalition against Torture and Impunity, who represent Shamsiddin's family, petitioned to view the recordings of a video camera installed in the detention facility of the Drug Control Agency where Shamsiddin was held, but a technical examination carried out in May 2015 concluded that the camera was not working from 8 to 13 April. The family's lawyer refuted this, however, pointing out that footage from the same camera dated 12 April was included in the case file.

Three forensic medical examinations conducted by experts of the Republican Center of Forensic Medical Examinations of Tajikistan (RCFME) in order to establish the cause of Shamsiddin's death yielded contradictory results. The first examination was carried out after the autopsy and the experts concluded that Shamsiddin had died of pneumonia. Shamsiddin's mother has maintained that her son was not sick when he was detained and following a petition by the family's lawyers, the Prosecutor General's Office ordered the RCFME to carry out an exhumation and an interdisciplinary forensic medical examination. The examination, conducted on 3 August 2015, concluded that Shamsiddin's death may have been caused by serious bodily injuries including four to five broken ribs and a fracture in his skull. In addition, the experts pointed out that he may have been administered First Aid too late. On 18 August the Prosecutor General's Office commissioned a third forensic examination. Like the first forensic examination, this examination concluded that he died of pneumonia.

On 23 December the Prosecutor General's Office closed the criminal investigation on the grounds of "lack of evidence of a crime". Four days later the family's lawyer lodged a complaint against the decision. On 11 March 2016 the lawyer lodged a complaint with Sino District Court about the decision to close the investigation. The lawyers were able to get access to the case materials only in December 2017, after persistently lodging complaints, including a complaint to the Supreme Court about the inactivity of the judge.

Shamsiddin's mother and the lawyer have lodged further complaints and petitions urging to reopen the investigation and stating that it had not been conducted thoroughly and effectively before but the courts and supervisory court instances have turned them down. Then Shamsiddin's mother lodged a civil suit with Sino District Court demanding compensation for moral damages from the Prosecutor General's Office for the failure to conduct an effective investigation, but she was unsuccessful.

Umar Bobojonov

No effective investigation into Umar Bobojonov's death in custody in September 2015

According to Umar Bobojonov's brother Abdullo, police in plainclothes approached Umar in the centre of Vahdat on 29 August 2015, criticized him for having a beard and forced him and his friend Zoir into a car. At the local police station police officers beat and kicked them and one officer kicked Umar's head so severely that he hit the wall with the back of his head and fell to the ground unconscious. Zoir and another detainee witnessed the incident. Abdullo came to the police station later that evening in search of Umar. The duty officer reportedly told him that Umar was not there, but shortly afterwards Abdullo saw that an ambulance picked up his brother from the police station and he was allowed to join the severely injured Umar on the way to the hospital. Medical personnel at Vahdat City Hospital assessed Umar's situation as "very serious" and tried to resuscitate him, but he remained in a coma until he died on 4 September.

On 1 September the Vahdat Prosecutor's Office opened a criminal case for "intentionally inflicting serious bodily harm" (Art. 110, part 1 of the Criminal Code). On 4 September the forensic medical examination conducted by experts of the Vahdat branch of the State Forensic Medical Institute concluded that Umar Bobojonov died of head injuries. On 5 September the charge was changed to "inflicting serious bodily harm resulting in death" (Art. 110, part 3 of the Criminal Code).

Since 2015 the prosecutor's office in Vahdat has suspended the investigation into the case three times – in February and December 2016 and in December 2017 -- stating that they could not identify the perpetrator, and the Prosecutor General's Office subsequently referred it back to Vahdat to resume investigating. Every time the investigator only provided the lawyer acting on behalf of Umar Bobojonov's family with a copy of the decision with a great delay and after several reminders and complaints. According to the NGO Coalition against Torture, when the case was referred back to Vahdat, prosecutors undertook no investigative activities to identify the perpetrator.

In recent years, the lawyer has lodged several complaints with the Prosecutor General's office, Ombudsperson for Human Rights and the President complaining about the lack of effectiveness of the investigation; obstruction of access to case materials; the failure to grant victim status to Umar's father; frequent and significant delays in the investigators' replies to the lawyers' petitions, or lack of a response.

On 13 November 2017 the Prosecutor General's Office annulled the Vahdat prosecutor's decision to suspend the case for the third time and sent it for further investigation back to Vahdat Prosecutor's Office. On 2 December 2017 Sino District Court turned down the lawyer's suit for compensation of moral damages sustained through the ineffectiveness of the investigation, referring to the November 2017 decision.

On 31 May 2018 the lawyer lodged a complaint with Vahdat City Court about the investigator's inactivity. The Court referred the case to the Prosecutor General's Office.

On 10 July 2018 Bobojonov's family was informed that the December 2017 suspension of the case had been canceled and this time the Prosecutor General's Office took the case under its own control. On 27 July Umar Bobojonov's father was officially recognized as a victim and questioned for the first time in the course of the preliminary investigation.

However, in early December 2018 the Prosecutor General's Office suspended the investigation; on 12 January 2019 the investigation was resumed and handed back to the Prosecutor's Office of Vakhdat. Vakhdat prosecutors recently told the lawyer they could not provide him with any further information because they were busy dealing with the riot that took place in Vakhdat in May 2019.

Faruhjon Haytaliyev

Prison sentences of two perpetrators implicated in the death of Faruhjon Haytaliyev reduced under prisoner amnesty

Faruhjon Haytaliyev, aged 21, joined the armed forces in October 2014 and served in Unit No. 1/2847 of the Border Guards under the State Committee for National Security. According to the family's lawyer, Alikhon Tuychiyev, a fellow soldier, beat Faruhjon Haytaliyev with fists and a machine gun butt on 4 November 2015. On 8 and 11 January 2016 the soldier again beat, kicked and punched him and hit him with the butt of a machine gun all over his body. Sufi Sufiyev, Captain of Military Unit No. 2847, and his Deputy Boburdjon Ortukov noticed that Faruhjon Haytaliyev was injured and unable to stand up after the beating, but they kept him in the military unit and failed to seek medical attention for several days. While conscripts at the early stages of their service are often subjected to hazing by fellow-conscripts, those serving their second year – like Faruhjon Haytaliyev – are rarely subjected to abuse by fellow-soldiers unless officers have ordered them to ill-treat another soldier.

On 20 January 2016 Faruhjon Haytaliyev died as he was being taken to the military hospital. A forensic medical examination carried out from 20 January until 15 February concluded that Faruhjon's body was bruised and his left shoulder severely injured. Witness statements and photographs taken by Faruhjon Haytaliyev's family also provide evidence of the extent of the injuries.

On 20 January 2016 the Military Prosecutor's Office brought charges against senior military officers Sufi Sufiyev and Boburdjon Ortukov, and the soldier Alikhon Tuychiyev. On 25 May 2016 Dushanbe Military Court sentenced the two officers to four years' imprisonment for "abuse of authority or duty" (Art. 391, part 3a of the Criminal Code). Alikhon Tuychiyev was sentenced to 14 years' imprisonment for "violating the code of military conduct" (Art. 373, part 2a, b, g, d) and "intentionally inflicting serious bodily harm" (Art. 110, part 3a).

In August 2016, just three months after they were convicted, the prison sentences of Sufi Sufiyev and Boburdjon Ortukov were reduced by one third under the prisoner amnesty in connection with the 25th anniversary of Independence of Tajikistan.

Tolibjon Dustov

Officer implicated in Tolibjon Dustov's death in custody in July 2017 has not appeared in court for almost a year

On 25 July 2017 Tolibjon Dustov was detained in Shaartuz district in the southern Khatlon region by a group of police officers including a senior officer of Dusti district police station. Eye witnesses reported that the officers drove off in the direction of Dusti district, but later they took him to the hospital in Kubodiyon district, which is not on the way to Dusti police station. Later that day his relatives were informed of his death and they saw his body in Kubodiyon morgue. According to them, the left side of his head was heavily bruised and the left ear-drum had burst. In violation of the law, Tolibjon Dustov's relatives were not informed of the autopsy and were given the results much later. According to the preliminary conclusion of the autopsy, Tolibjon Dustov died of suffocation. The report stated that he was still alive when he arrived at the hospital. However, doctors of Kubodiyon district hospital told the lawyers of the Coalition against Torture and Impunity that he was dead when he arrived at the hospital.

On 25 August the Prosecutor General's Office opened a criminal case against officers of Dusti District Police for "exceeding official authority" (Article 316 of the Criminal Code). The lawyers unsuccessfully petitioned the investigator to requalify the case under Article 143-1, part 3 ("torture").

When the trial commenced the prosecutor requested to sentence the defendant to nine years' imprisonment. The alleged perpetrator did not appear at the next court hearing; a medical certificate indicated that he was too ill. On 8 June 2018 the judge suspended the case referring to the defendant's poor state of health. On 11 June 2018 the lawyers representing Tolibjon Dustov's family petitioned the Prosecutor General's Office and the Ministry of Health to check the reliability of the medical certificate and on 13 June they submitted a complaint against the suspension of the case.

The trial was set to resume on 20 June but the defendant did not appear in court. The lawyer petitioned that an arrest warrant be issued and that the defendant be remanded in custody during the trial. The court approved the petition and the defendant was put on the wanted list. By the time of writing the defendant had not been found and his photo had not been placed on the relevant section on the Interior Ministry's website.

Shahboz Ahmadov

No effective investigation into allegations that Shahboz Ahmadov was severely tortured by police in the southern Yavan district in July 2018

At around midnight in the night from 16 to 17 July 2018, an unfamiliar car drove up to the house of 29-year-old Akhmedov Shahboz and two people got out. They introduced themselves as police officers and told Shahboz they were taking him for some questions "about the circumstances of a crime", promising to release him immediately. Shahboz's elder brother Nematullo decided to go with him. Shahboz was first taken to a drug treatment center to determine if he was intoxicated. According to the conclusions of the medical examination No. 145 of 17 July 2018, which was compiled at 1:06 am by the state duty doctor Radjab Kurbonaliyev, Ahmadov Shahboz was in a state of mild intoxication.

Shahboz and the police officers arrived at the Yavan Department of the Ministry of Internal Affairs (OMVD) at about 1:35 am. Police officers took Shahboz into the building but refused to let Nematullo accompany him.

Three officers reportedly took Shahboz into an office and locked the door. Shahboz later recounted that: Two officers changed into comfortable sportswear, after which one of them grabbed him by the hair, punched him in the face, and shouted at him. The two officers then slapped his face and told him that he had stabbed a woman. When Shahboz refused to concur an officer grabbed the hair on the back of Shahboz's head and banged his forehead against the desk. After this, one of the officers turned to his colleague and said: "If he does not confess, let's do it." One of them made Shahboz sit on the floor and the other kicked him in the back from behind, making Shahboz fall face down on the floor. Then the officers handcuffed his hands behind his back as Akhmedov was lying face down and an officer kicked his legs together, before putting handcuffs on his legs too. Then another officer wrapped a rag around Shahboz's head and face and secured it with scotch tape. They threw another rag on top of his head so that he could not see anything at all. They wired three fingers of each hand, connected them to a source of electricity and began to increase the voltage. Shahboz began to shake his head and made it clear that he was ready to confess to the crime.

They removed the wiring, tape and handcuffs. Akhmedov asked for water, to which an officer replied: "I will now see to my needs in the palm of your hand, and then you drink."

Shahboz reported that at around 3:00 am that night police took him to a residential house and forced him to say that he had taken a knife from the son of the family that lived in the house. Shahboz reportedly did as he was told and the police officers then took the son, a minor, to the OMVD. Shahboz recounted that police beat the young man in front of Shahboz until he "confessed" to have given the knife to Shahboz.

At about 6:00 am on 17 July 2018, the officers told Shahboz that they had not managed to get any further information from the young man, and Shahboz should say that he took the knife from his own house. Reportedly, after more beatings Shahboz agreed to return home to give evidence on site.

He was then brought back to the OMVD, where he was held all day until he was transferred to the IVS late on 17 July. On the night of 21 July 2018, the police rang Shahboz's brother and told him to come and take him home as he was not guilty. Two of the officers who had tortured him ordered Shahboz not tell anyone about what had happened.

On the night of 21 July Shahboz was taken home by his brother Nematullo. On 22 July they went to the Yavan district prosecutor's office and lodged complaints about torture and ill-treatment. On 25 July, Shahboz went to see the medical forensic expert at the Inter-district forensic medical department who concluded that the scratches he found on Shahboz's body were not associated with harm to health and that they could have been received from the impact of blunt, hard objects on 17 July 2018.

On 9 August, Shahboz's lawyer filed a complaint about torture with the Prosecutor General's Office. On 15 August, the Prosecutor General's Office replied that the complaint had been sent to Khatlon Regional Prosecutor's Office.

On 23 August, the lawyer wrote to the Ministry of Internal Affairs, requesting assistance in obtaining recordings from OMVD surveillance cameras from Yavan district covering 16 to 20 August. On 16 September, the Department of Internal Security of the Ministry in Khatlon region replied that that due to the fact that a long time had passed since the recordings were made they had been erased.

On 24 August, Khatlon Regional Prosecutor's Office replied that they had sent the complaint which the lawyer had sent to the Prosecutor General's Office on 9 August to the Prosecutor's Office of Yavan District. Still in August, the Prosecutor's Office of Yavan District issued an official refusal to initiate a criminal case. On 17 September, the Prosecutor General's Office ruled to repeal the decision of the Prosecutor's Office of the Yavan District and case files were sent to the Khatlon Regional Prosecutor's Office for additional verification.

On 27 September, the Prosecutor's Office of the Yavan District initiated a criminal case against two of the alleged perpetrators under Article 143-1, part 2 (b) of the Criminal Code. However, on 25 December, the investigator in charge of the case closed the criminal case due to the "absence of concrete evidence of a crime". On 31 December, Shahboz's lawyer wrote to contest the decision.

On 28 January 2019, the Prosecutor General's Office sent a letter saying that the issue was being examined and a final decision had not yet been made. On 5 March, the lawyer appealed again to the Prosecutor General but on 25 March the Prosecutor General's Office answered that the complaint had not been satisfied and the investigator's decision was upheld.

On 4 April, Shahboz's lawyer appealed the investigator's decision to close the criminal case to Bokhtar City Court, which heard the case from 16 to 19 April 2019. On 19 April the court left the investigator's decision to discontinue the criminal case unchanged, and refused the lawyer's complaint.

On 25 April, the decision of the court of first instance was appealed to Khatlon Regional Court which, on 24 May, also upheld the decision of Bokhtar City Court. To date, Shahboz Akhmadov has not managed to get his complaint of torture and ill-treatment considered fairly. He intends to appeal against the decision.

Khayriddin Amonov

Allegations of Khayriddin Amonov who was reportedly tortured by police in administrative detention

Khayriddin Amonov, a resident of Zafarabad district of Sughd region, worked as a labour migrant in Novosibirsk, Russia, from 2013. In January 2018, a senior official of Sughd Regional Internal Affairs Directorate, reportedly rang Amonov to tell him that he was under suspicion of murdering his neighbour in 2010. On 25 January 2018, airport police officers detained Amonov as he arrived at Khujand airport and handed him over to officials of the Sughd Regional Department of the Ministry of Internal Affairs, who took him to the police station in the town of Buston.

Amonov was taken to a duty office in the police station, where four or five plain clothed police officers reportedly beat him on the head and stomach for 30 minutes, after which he confessed to the murder. That night he was made to stand up all night long with his hands up, and was not allowed to sleep. Four police officers reportedly watched and beat him if he fell asleep and let go of his hands.

On 26 January 2018, at about 9:10 am two police officials took him to Zafarabad district. At around 1.00-1.30 pm they told Amonov to get out of the car to have a smoke. As Amonov stood by the car, a man approached and started to provoke him. The senior police official of Sughd Region's Internal Affairs Directorate went up to them and, grabbing their clothes, pushed them together in an imitation fight. At that moment a district police inspector appeared and Amonov was taken to the Zafarabad Police Station where he was detained for disorderly conduct under Article 460 of the Code of Administrative Offences. The man who had approached Amonov was not taken to the police station.

The same day, at about 4:00 pm, Zafarabad Administrative Court heard the case and Amonov told the judge that the police officers had tortured him. The judge took no action on the allegations and ruled to detain Amonov under administrative arrest for six days. He was subsequently taken to the Zafarabad District Police Station, his personal details were recorded, and, 15 minutes later and in violation of the court order, he was transferred to Buston Police Station.

Between 7:00 and 9:00 pm that evening, he was reportedly taken to the duty office of the police station where about six or seven police officers insulted him and threatened to rape his wife and sisters if he did not confess. He denied committing any crime. The officers then reportedly put a bag over his head, took him to another office and attached electric currents to different parts of his body. This lasted for three hours until Amonov confessed.

Amonov told the head police officer that he did not attend school past the first grade and is illiterate. However, the officer refused to read out the confession and Amonov signed it without understanding what it said. The police officer then told him what to say when he gave evidence about the murder.

Amonov was then taken back to the temporary detention facility of Zafarabad and held in a cell overnight. On 27 January he was charged with murder, under Article 104, part 1 of the Criminal Code.

A medical examination concluded on 28 January 2018 that there were no signs of bodily injuries on Amonov's body. Amonov's lawyer reports that the police officers used techniques which did not leave marks, including striking Amonov through his clothes.

Only on 29 January 2018 was a detention report drawn up. While in the detention in Zafarabad Amonov's health deteriorated, he did not eat for several days and his hands and feet were numb. An ambulance was called twice. Amonov later told his lawyer that on 4 February 2018 the doctor concluded that he was healthy. The second time on 6 February an ambulance was called after Amonov complained of bleeding from the anus.

On 1 February, Zafarabad district court ruled to detain Amonov pending the trial. On 3 February, Amonov refused to testify during the preliminary investigation in the prosecutor's office of the Zafarabad district and withdrew his testimony as it had been given under torture. He was represented by two lawyers at the hearing, one state appointed and one appointed by his relatives. On 8 February he was transferred to SIZO-5 in Istaravshan to await trial.

On 19 March Amonov's brother Fakhriddin filed a complaint regarding the illegal detention and use of torture to the President, the Supreme Court, the Minister of Internal Affairs and the Minister of Justice. The complaint was redirected to Zafarabad district court.

During the trial in March Amonov stated that he had been tortured by officers of the Ministry of Internal Affairs in Sughd, but the judge did not take any measures. The senior official of the Ministry of Internal Affairs who is reportedly implicated in Amonov's arbitrary detention and abuse was summoned to court. On 16 November 2018 Zafarabad district court found Amonov guilty under Article 104, part 1 of the Criminal Code and sentenced him to 11 years' imprisonment in a high-security penal colony. This term was reduced by two years after an amnesty was applied.

On 25 January 2019, Amonov's lawyer requested information about his client's state of health on admission to Istaravshan SIZO-5 in February 2018, but he received no answer. In an appeal hearing on 6 February 2019, the judicial collegium on criminal cases of the Sughd Regional Court ruled to leave the judgment of the Zafarabad District Court unchanged.

On 13 February, Amonov's lawyer filed a petition with the court of Zafarabad district to familiarize himself with the materials of the administrative offense. The petition was granted. The documents in the administrative case state that during the fight, Amonov and the person who allegedly provoked him, traded obscene insults. However, the administrative protocol was drawn up in relation only to Amonov and not to the other man who was released without charge.

In its decision the court did not give an explanation why Amonov was held under administrative detention. Although Amonov is illiterate the court did not provide him with a lawyer at that point.

On 25 January 2019, Amonov's lawyer wrote to the Prosecutor General's Office about the torture. Amonov received a reply from Sughd Regional Prosecutor's Office dated 6 March, which did not respond to the substance of his complaint but simply stated that his case had been reviewed before and he had already previously been informed of the review's conclusions." But the results of the prosecutorial investigation into the allegations of torture in order to extract a confession of a crime were not made available to Amonov or his lawyer.

On 25 February 2019, the lawyer acting for Amonov's brother appealed to the Ministry of Internal Affairs to conduct an internal investigation and initiate a criminal case against the alleged perpetrators for abuse of authority and torture. No response had been received at the time of writing.