



**International  
Partnership**  
for Human Rights

HR HELSINKI FOUNDATION  
for HUMAN RIGHTS



11 September 2015

## TAJIKISTAN: HUMAN RIGHTS SITUATION ON THE GROUND

### TORTURE AND OTHER ILL-TREATMENT

Submission to the UN Universal Periodic Review  
25<sup>th</sup> session of the UPR Working Group, April-May 2016<sup>1</sup>


#### TABLE OF CONTENTS:

<b>INTRODUCTION</b>	<b>2</b>
<b>FOLLOW-UP TO THE PREVIOUS REVIEW: KEY DEVELOPMENTS AND ONGOING CONCERNS</b>	<b>2</b>
Overview of key developments and positive steps taken by the authorities	2
Torture and ill-treatment of detainees continue to be of serious concern	3
Torture and ill-treatment in the armed forces	3
Lack of prompt access to legal safeguards in detention	4
Independent monitoring of detention facilities crucial	6
Evidence extracted under duress routinely used in court	6
Failure to conduct prompt, thorough, impartial and independent investigations into all credible allegations of torture	7
Perpetrators often not punished adequately	7
Failure to provide comprehensive reparation to victims of torture	8
Need to cooperate with civil society	8
<b>RECOMMENDATIONS FOR ACTION FOR THE STATE UNDER REVIEW</b>	<b>9</b>

<sup>1</sup> This publication was produced within the project "Action for Freedom from Torture in Kazakhstan and Tajikistan". Its contents are the sole responsibility of the NGOs issuing it and can in no way be taken to reflect the views of the European Union and the co-funding Open Society Foundations.



Co-funders in 2015:

 **OPEN SOCIETY  
FOUNDATIONS**



## INTRODUCTION

This document was jointly produced by the NGO Coalition against Torture in Tajikistan (Coalition against Torture), that unites 12 human rights groups and five independent experts across Tajikistan, and International Partnership for Human Rights (Belgium). Its contents are supported by Helsinki Foundation for Human Rights (Poland), the Norwegian Helsinki Committee and the World Organisation Against Torture (OMCT).

The submission concentrates on developments regarding torture and other forms of ill-treatment since the first cycle of the Universal Periodic Review (UPR) in October 2011. At the beginning of thematic sections, where applicable, the document refers to recommendations made by other countries to Tajikistan in the framework of the 2011 UPR that were accepted by Tajikistan.

The document also takes into account and comments on information received from governmental sources, in particular the document entitled *Information on the Implementation of the National Action Plan of the Republic of Tajikistan regarding Recommendations of Member States of the UN Human Rights Council in connection with the Universal Periodic Review of the Republic of Tajikistan on Human Rights for 2013 to 2015 (Government Information on the Implementation of UPR Recommendations)* and the *Preliminary Report on the Implementation of the Government Action Plan on Torture (Government Report on the Implementation of Action Plan on Torture)*. Both documents were sent to the Coalition against Torture by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015.

## FOLLOW-UP TO THE PREVIOUS REVIEW: KEY DEVELOPMENTS AND ONGOING CONCERNS

*Strengthen measures to combat and prevent torture and other cruel and degrading treatments (Brazil, UPR Recommendation 88.25). Adopt and implement efficient measures to prevent torture and other forms of ill-treatment (Slovakia, Recommendation 88.26). Take concrete actions to eradicate the use of torture, including through strengthening relevant provisions in national legislation (United Kingdom of Great Britain and Northern Ireland, Recommendation 88.28).*

This chapter summarizes key developments and steps the authorities have taken since the first cycle of the UPR in 2011 to address concerns of torture, other ill-treatment and impunity. It also provides an overview of ongoing concerns identified by the organizations presenting this submission.

### ***Overview of key developments and positive steps taken by the authorities***

*Bring the definition of torture in domestic law into line with the definition in article 1 of CAT (Czech Republic, UPR Recommendation 88.23). Incorporate a definition of torture into its domestic law, in line with article 1 of CAT (Australia, Recommendation 88.23). Establish a legal definition of torture in line with article 1 of CAT (Canada, Recommendation 88.24)*

In 2012, Tajikistan introduced Article 143-1 (“torture”) in its Criminal Code with a definition of torture that is in line with that contained in the United Nations (UN) Convention against Torture. Five criminal cases have since been opened under this Article. There continues to be concern, however, that penalties under Article 143-1 and other articles often used to classify crimes of torture and other ill-treatment are not commensurate with the severity of the crimes committed.

In December 2012, a working group that included NGO representatives was established on the initiative of the Minister of Health and Social Welfare (Ministry of Health) to introduce the standards of the UN Istanbul Protocol into internal documents of forensic experts. In November 2014, the Ministry of Health adopted a form reflecting the principles contained in the Istanbul Protocol for use by medical personnel when examining detainees and recording torture or ill-treatment. Starting in March 2015, the form was forwarded to medical institutions obliging medical personnel to use it when examining detainees at the onset of detention, i.e. before police fills in the detention record.

In order to address the recommendations issued by the UN Committee against Torture and the UN Special Rapporteur on torture, the government of Tajikistan approved an Action Plan on torture in August 2013. Local human rights organisations were not involved in drawing up the Plan and the comments and recommendations the Coalition against Torture sent to the authorities were not reflected in the final document. The Action Plan lacks clear indicators, which would allow for

implementation to be measured or assessed. There is therefore a risk that although crucial issues are being discussed and studied there may be no practical steps that fundamentally improve the situation of torture and ill-treatment.

In 2013, the Prosecutor General adopted a textbook for prosecutors, entitled “Legal foundations and organization of activities of the organs of the procuracy on prevention, detection and investigation of torture”.

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. However, we are concerned that the compensation payments granted by civil courts in these and three subsequent cases involving allegations of torture were neither fair nor adequate.

In February 2014, a Monitoring Group established as part of the Ombudsman’s Office and consisting of Ombudsman Office staff and civil society activists began visiting detention facilities, but there are concerns about their ability to conduct unlimited and unannounced monitoring.

In November 2014, the Criminal Procedure Code (CPC) of Tajikistan was amended to the effect that extradition must be denied when there is a risk of torture in the receiving country. It is not yet possible to assess whether this legislation is adhered to in practice in all cases.

In 2015, the authorities set up a working group to elaborate a concept for reforming the penitentiary system. In May representatives of the Coalition against Torture were invited to attend the working group’s meetings and provide comments and recommendations.

### ***Torture and ill-treatment of detainees continue to be of serious concern***

As recently as in February 2015 the Special Rapporteur on torture raised concern about ongoing torture and ill-treatment and about impunity for the perpetrators in the follow-up report to his mission to Tajikistan.

The authorities do not publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture/ill-treatment.

From 2011 to the end of 2014, members of the Coalition against Torture documented more than two dozen cases each year of men, women and children who were allegedly subjected to torture or ill-treatment in pre- and post-trial facilities and in the armed forces. By the middle of August the Coalition had registered 25 new cases in 2015.

In its Concluding Observations issued to Tajikistan in 2012, the Committee against Torture expressed concern about the small number of convictions for violations of the Convention against Torture, despite numerous allegations of torture. Throughout the period under review official investigations were opened only in a small number of cases, and in many cases — whilst the incidence of torture or ill-treatment would appear to have been confirmed, at least partly — only disciplinary proceedings have been imposed. Many victims of torture did not file complaints for fear of reprisals.

### ***Torture and ill-treatment in the armed forces***

Since the beginning of 2014, the Coalition against Torture has documented 12 cases of torture and ill-treatment, including hazing, in the armed forces, both under the authority of the Ministry of Defence and the State Committee on National Security of Tajikistan (in particular, the Border Guards). In six of these cases soldiers died (five of them were serving in the Border Guards). In one case a soldier serving in the Border Guards was injured so severely that he was left paralyzed.

Hazing of new recruits by fellow soldiers is routine in Tajikistan’s army, although it is prohibited in domestic legislation. Reportedly, such abuse frequently takes place with the consent, acquiescence or approval of officers or other military personnel. In some cases officers themselves engage in abusing soldiers.

During research for a study on the protection of human rights in the army conducted jointly by several Tajikistani human rights groups in 2011 and 2012, numerous soldiers reported that complaining about abuse was strongly discouraged by peers and commanding officers in military units and that anybody who complains would be labelled as a “traitor” and risked further abuse. Complaints submitted to

senior officers were usually not investigated. Most soldiers saw beatings, kicking and other abuse as a normal feature of everyday army life.

There are several cases where victims of abuse in the army or their families decided not to keep silent. In some particularly severe cases the Military Prosecutor's Office instigated investigations and perpetrators were brought to justice. The Office informed NGOs in 2012 that it did not publish statistics on complaints, investigations, prosecutions and convictions relating to abuse in the army because such information was considered a state secret. The lack of transparency persists.

The Coalition against Torture is aware of many cases where victims of abuse in the army are not represented by lawyers and in those cases where lawyers are involved, investigators frequently prevent lawyers from accessing important case files.

### ***Lack of prompt access to legal safeguards in detention***

*Ensure that administrative detention is subject to the same right to challenge the lawfulness of detention as other forms of detention. (Canada, UPR Recommendation 90.32)*

*Ensure detainees have prompt access to a lawyer, doctor and family members from the time that they are taken into custody. (Turkey, Recommendation 90.35)*

According to cases recorded by the Coalition against Torture in the period under review, the risk of torture remains highest in the period between apprehension and the detainee's registration at the police station. During this period, that can last for hours or even days, detainees are often held incommunicado and effectively deprived of fundamental safeguards.

### **The beginning of detention and the detention record**

*Amend the Criminal Procedural Code to the effect that detention records have to record the identity of the officers involved in detaining a person, in line with Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Czech Republic, UPR Recommendation 90.30)*

Domestic legislation provides detainees with a range of legal safeguards, but it is ambiguous as to when a person is considered a detainee.

In June 2012, the Plenum of the Supreme Court of Tajikistan issued a decision on *The implementation of norms included in criminal and criminal-procedural legislation regarding torture prevention* that, among others, clarified that a person is considered a detainee as soon as he or she is deprived of his or her liberty and entitled to all relevant legal safeguards. However, this decision was principally directed at judges rather than law enforcement officials and is regarded as a recommendation rather than binding law.

In practice, law enforcement agencies and courts typically consider a person a detainee when the detention record is drawn up. Article 94 of the CPC requires officers to draw up a detention record within three hours of the detainee's arrival at the police station. In practice, it is often drawn up several hours, sometimes even days after the de facto apprehension. Detainees and lawyers typically do not have access to the detention record.

Although Tajikistan accepted the recommendation made by the Czech Republic to include in the detention record the identity of the apprehending officers, the CPC has not been amended accordingly. The lack of such a requirement continues to provide the authorities investigating torture allegations with an excuse for claiming it was not possible to establish the identity of the apprehending officer/s.

### **Providing information about detainees' rights, notifying family and ensuring access to a lawyer**

International standards clearly state that any person should, at the moment of their apprehension and at the commencement of detention or promptly thereafter, be given information on and an explanation of their rights and how to exercise them. However, domestic legislation requires police to inform detainees of their rights only when the detention record is presented to them. The Instruction on Detention of Tajikistan stipulates that detainees must be given a written explanation of their rights. However, lawyers cooperating with the Coalition against Torture have never seen such a document in their clients' case files and the Coalition is not aware of a case where a detainee reported to have been handed this information.

The CPC stipulates that family members should be notified of the detention and the detainee's whereabouts within 12 hours of apprehension. We believe that the time limit should be significantly reduced to enable relatives to swiftly hire a lawyer of their choice.

Domestic law does not grant detainees the right to notify their lawyers and relatives of transfers between pre-trial detention facilities or of their removal from detention facilities for the purpose of investigative activities, nor are law enforcement officers under an obligation to inform the relatives. During such transfers or removals detainees are at particular risk of torture or ill-treatment.

In the period under review police investigators often denied independently hired lawyers access to their clients for days and lawyers often saw their clients for the first time at the remand hearing or even later. Lawyers continued to experience obstacles to visit and communicate with their clients in investigation-isolation facilities (SIZOs), the detention facilities under the jurisdiction of the Justice Ministry, as SIZO staff often requested a permission by the investigator.

### **Access to independent medical examinations**

*Establish regular medical examinations of persons deprived of their liberty (Austria, UPR Recommendation 90.34)*

*Consider the establishment of an independent health service to conduct examinations of detainees upon arrest and release. (Turkey, Recommendation 90.35)*

Medical professionals, who work in Dushanbe's temporary police detention facility (IVS) and in the capital's Anti-Corruption Agency, examine detainees when they are entered into these facilities. They are employed by the Interior Ministry and the Anti-Corruption Agency respectively, thus they lack independence. To our knowledge, other law enforcement agencies and IVS in Tajikistan do not have their own medical personnel. Instead, police usually take detainees to public health clinics where they are examined by doctors or medical attendants of the Ministry of Health before transferring them to an IVS. Medical personnel in SIZOs are supervised by the Ministry of Health but are employees of the penitentiary administration of the Justice Ministry, which runs the SIZOs.

The Coalition against Torture has learnt of many cases in recent years where medical examinations were either not conducted at all or they were not conducted in line with the standards of the Istanbul Protocol. For example, there were cases where medical personnel certified that no injuries were found during the examination even when the detainee complained of police abuse and injuries were visible on the detainee's body. Sometimes examinations were conducted in the presence of police officers. Doctors did not routinely explain to the detainees the purpose of the examination; detainees were not asked for their consent; and detainees were often not given a copy of the examination's results.

Since 2012, the NGO Human Rights Center, a member of the Coalition against Torture, and the US-based NGO Physicians for Human Rights have jointly conducted trainings on standards of the Istanbul Protocol for over 150 professionals, including forensic experts, psychiatrists and medical personnel of closed institutions.

In November 2014, the Ministry of Health adopted a form reflecting the principles contained in the Istanbul Protocol, for use by medical personnel employed by this Ministry when examining detainees. Starting in March 2015, the form has been forwarded to medical institutions obliging medical personnel to use it when examining detainees before they are entered into a police detention facility. The Coalition against Torture is currently monitoring the situation to assess the impact of these recent steps.

### **Video cameras in temporary detention facilities**

According to the 2015 *Government Information on the Implementation of UPR Recommendations*, the Interior Ministry equipped all IVS in Dushanbe and the corridors of buildings belonging to Interior Ministry agencies with video cameras and this initiative is being spread to other parts of Tajikistan. On 28 April 2015, in the framework of national consultations about the implementation of UPR recommendations in Tajikistan, government representatives reported that cameras had been installed in four facilities of the Interior Ministry in Dushanbe, including the capital's IVS. The State Committee on National Security, the Drug Control Agency and the Anti-Corruption Agency also reported to have installed cameras, but gave no details.

In recent months several lawyers petitioned that videorecordings relevant to their clients be made available to them. They were told that the recordings had not been saved, that no recordings had been made because the light was not working at the time, or that lawyers were not entitled to view them.

### **Remand hearings**

UN bodies and mechanisms recommended Tajikistan to ensure that detainees are brought before a judge no later than 48 hours after they are apprehended. However, the CPC continues to stipulate that remand hearings should take place within 72 hours after a person is taken into custody. In practice, detainees are often brought before a judge later than the 72-hour limit.

Domestic legislation does not require judges at remand hearings to ask detainees how they were treated in custody. In those cases where detainees make allegations of torture or ill-treatment at remand hearings, judges usually do not request an investigation into the allegations.

### ***Independent monitoring of detention facilities crucial***

*Grant the ICRC full access to closed institutions (Austria, UPR Recommendation 90.34)*<sup>2</sup>

Tajikistan has not yet ratified the Optional Protocol to the Convention against Torture (OPCAT) and has thus not committed itself to setting up a National Preventive Mechanism (NPM), often citing financial limitations. According to the March 2015 document *Government Information on the Implementation of UPR Recommendations*, a Justice Ministry working group studied the question of ratifying OPCAT and establishing an NPM and concluded that “further analysis of all aspects” is needed and that the experience of other state parties to OPCAT should be studied.

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

In February 2014, a Monitoring Group established as part of the Ombudsman’s Office and consisting of Ombudsman Office staff and civil society activists began visiting detention facilities. The Group does not have access to all relevant information and records and some members reported that, in some cases, the administration of the detention facility appeared to have been informed of their visit in advance, although, since early 2015, no advance notification is required. When the Monitoring Group receives allegations of torture in a specific case and wants to visit urgently, the administration of the detention facility typically only admits Ombudsman Office staff and denies access to the Group’s civil society members.

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

### ***Evidence extracted under duress routinely used in court***

*Harmonize domestic legislation in order that statements obtained under torture are not used as evidence in legal proceedings (Mexico, UPR Recommendation 89.1)*<sup>3</sup>

The CPC of Tajikistan stipulates that “evidence obtained during the inquiry and preliminary investigation by way of force, pressure, causing suffering, inhuman treatment or other illegal methods, is invalid and cannot form the basis of an accusation.” In recent years judges have more frequently ordered prosecutors to investigate allegations of torture/ill-treatment, but it is believed that these investigations are not conducted thoroughly, impartially and independently and lawyers representing the alleged victim do not have access to documents relating to the investigation. NGOs are not aware of a single case where prosecutors confirmed that torture had taken place, although the evidence appeared to have been compelling in at least some of the cases. In other cases, when defendants complained about torture, judges simply dismissed the allegations without further checking or summoned the police officers accused of torture to testify. When they denied the allegations, the judge’s review of the torture allegations was closed and no further inquiries were made.

---

<sup>2</sup> In the February 2012 UPR Addendum the Tajikistani authorities stated they considered this recommendation already implemented.

<sup>3</sup> In the 2012 UPR Addendum the authorities stated they considered this recommendation already implemented.

## ***Failure to conduct prompt, thorough, impartial and independent investigations into all credible allegations of torture***

*(E)nsure prompt and credible investigations into all allegations of torture including deaths in custody (Slovakia, UPR Recommendation 88.26). Ensure prompt, impartial and full investigations into all complaints and all instances of deaths in custody (Czech Republic, Recommendation 88.48). Ensure impartial investigations into all instances of death in custody (Poland, Recommendation 88.48). Conduct independent, impartial and transparent investigations into all human rights allegations, such as those raised by the Human Rights Committee and Special Rapporteur mandate holders, with a view towards ensuring against impunity (Thailand, Recommendation 90.36).*

*Establish an independent complaints mechanism for persons held in custody (Poland, UPR Recommendation 88.49). Establish (...) independent mechanisms to investigate and prosecute (...) cases (related to torture) (Canada, Recommendation 88.24).*

According to the *Government Report on the Implementation of Action Plan on Torture*, the Prosecutor General's Office set up a working group to examine recommendations on establishing an independent mechanism to carry out investigations into allegations of torture/ill-treatment. The Prosecutor General's Office stated that no separate mechanism was currently needed considering the "very insignificant" number of torture complaints.

However, NGO monitoring demonstrates that torture and ill-treatment occur frequently in Tajikistan (see the NGO statistics above) and the groups that have produced this submission are concerned that criminal proceedings against officials accused of torture or ill-treatment often appear to be perfunctory, which perpetuates the cycle of impunity for these violations.

In Tajikistan complaints of torture/ill-treatment in detention are examined by the internal security services of the Interior Ministry, the State Committee on National Security or other law enforcement agencies – if they are submitted to these very agencies that are implicated in the complaint – or by prosecutors. If the internal security services' preliminary investigation does not find evidence of abuse that they consider requires the opening of a criminal case, domestic legislation does not oblige them to forward the case information to the Prosecutor's Office.

Since Article 143-1 was introduced to the Criminal Code in 2012 prosecutors have led the investigations in all five cases that have since been opened under this Article. However, domestic legislation has not yet been amended to reflect this practice. Most cases involving allegations of torture or ill-treatment continue to be opened under other articles of the Criminal Code such as "abuse of authority", "exceeding official authority" or "negligence" or, in cases from the armed forces, "violating the code of military conduct" or "abuse of authority or duty". In all these cases investigations are carried out by the agency that conducted the preliminary investigation.

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.

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

### ***Perpetrators often not punished adequately***

Although Article 143-1 ("torture") introduced a definition of torture into the Criminal Code that is in line with that contained in the Convention against Torture, penalties under the Article are not commensurate with the severity of the crimes committed. In November 2012, the Committee against Torture recommended Tajikistan to "amend article 143-1 of the Criminal Code to ensure that sanctions for the offence of torture reflect its grave nature, as required by article 4 of the Convention" (Para. 6). However, to date, no such amendments have been made.

Cases relating to torture or ill-treatment in the army are not opened under Article 143-1, but under Articles 373 ("violating the code of military conduct") or Article 391 ("abuse of authority or duty") that are contained in the section "Crimes against Military Service" of the Criminal Code. We are concerned that the maximum penalties contained in these articles are not commensurate with the severity of the crimes committed.

Domestic legislation does not exclude perpetrators of torture or ill-treatment from benefitting from prisoner amnesties and we are aware of several cases in recent years where torturers were released from prison following such amnesties or had their sentences reduced.

We are also concerned that Tajikistani legislation contains a statute of limitations applicable to the crimes of torture and ill-treatment, which is strictly forbidden under international law.

### ***Failure to provide comprehensive reparation to victims of torture***

We are aware of five cases involving torture allegations where compensation was awarded for moral damages by civil courts in Tajikistan, but we believe that the amounts are neither fair nor adequate. In two of these cases, the victims (Safarali Sangov and Bahromiddin Shodiev) died in custody in 2011 and their families received 46,500 Somoni (approx. 6,640 EUR) and 14,579.30 Somoni (approx. 2015 EUR) respectively. In 2015, civil courts awarded compensation for moral damages in three further cases. Shakhbol Mirzoev, who was tortured so severely that he was left paralyzed, was granted 20,000 Somoni (approx. 2,900 EUR) by a court in May 2015. On 6 August, the Military Collegium of the Supreme Court cancelled the decision and returned the case to the Military Court of Dushanbe for a new review. Torture victim Khushvakht Kayumov was granted a compensation of 16,000 Somoni (approx. 2,300 EUR) and the parents of Nazomiddin Khomidov, who died in custody in 2014, was granted 5,000 Somoni (approx. 710 EUR).

To our knowledge, other forms of reparation such as measures of satisfaction and guarantees of non-repetition have not been made available to victims in Tajikistan and legislation does not provide for such measures. Rehabilitation programmes are offered by NGOs, using their own financial resources.

### ***Need to cooperate with civil society***

Engage civil society in the UPR follow-up process (**Poland**, UPR Recommendation 88.9).

As mentioned in the section "Overview of key developments and positive steps taken by the authorities", the authorities invited representatives of the Coalition against Torture to join two working groups, one on the Istanbul Protocol, the other on reforming the penitentiary system.

Through the 2015 *Government Report on the Implementation of Action Plan on Torture* and the *Government Information on the Implementation of UPR Recommendations* the NGO Coalition learnt of the existence of several other working groups tasked with discussing or studying recommendations made by international human rights bodies.

For example, the Justice Ministry set up a group on the application of prisoners amnesties to people convicted under Article 143-1 ("torture") of the Criminal Code. It also established a group on possible legislative amendments pertaining to data to be included in detention records. The Prosecutor General's Office established a working group on notifying the detainee's relatives. Additionally, the Office set up a group to examine "the possibility of setting up a new organ to review complaints and statements of torture victims or to designate an existing structure and endow it with the authority to deal with this question".

We believe that these working groups should engage in broad consultations with civil society organizations with relevant expertise in order to provide recommendations and comments on relevant draft legislation.

More generally, the NGOs jointly producing this submission are alarmed at the increasing pressure faced by NGOs in Tajikistan that limits the space within which they can operate. We are particularly concerned about amendments to the Law on Public Organizations that were adopted on 8 August 2015 and ongoing checks of scores of NGOs, including members of the Coalition against Torture, by the Tax Committee, the Labour Inspection and prosecutors. We are concerned that these checks may be aimed at intimidating and silencing the most active NGOs.



## **RECOMMENDATIONS FOR ACTION FOR THE STATE UNDER REVIEW**

The organizations that produced this submission urge the members of the Human Rights Council to call on Tajikistan during the second cycle of the UPR to implement the following recommendations:

### **General recommendations:**

- The President and/or other senior government officials should publicly state that torture and ill-treatment are strictly prohibited in all contexts including in detention and in the armed forces and that those responsible for such crimes will be brought to justice.
- Incorporate concrete measures into the Action Plan against Torture and designate timelines, authorities responsible for oversight, as well as measurable indicators for implementation and accountability.
- Publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture/ill-treatment, including in the army.

### **Ensuring access to legal safeguards in detention:**

- Clarify in domestic legislation that a person is considered a detainee as soon as he/she is deprived of liberty.
- Amend the CPC to ensure that it explicitly provides, from the moment of deprivation of liberty, for the right to notify a third person, access to a lawyer of choice and ensure that detainees are informed of these rights at the moment of de facto apprehension.
- Amend the CPC to ensure that police include the names of the apprehending officers in the detention record and amend domestic legislation accordingly.
- Amend the CPC to ensure that detainees have the right to notify their lawyers and relatives of transfers between pre-trial detention facilities or of their removal from detention facilities for the purpose of investigative activities.
- Ensure that lawyers have unhindered access to their clients at all stages of detention and in all detention facilities. In particular, ensure that access is not subject to permission by the investigator.
- Ensure that, shortly after apprehension, all detainees undergo a medical examination by independent medical personnel that is conducted in line with the standards of the Istanbul Protocol.
- Ensure, in addition, that independent medical examinations are provided when requested by the detainee and not solely when permitted or requested by officials.
- Amend the CPC to ensure that remand hearings take place no longer than 48 hours after apprehension. *(This recommendation is in line with recommendations made by the Human Rights Committee and the Special Rapporteur on torture).*
- Oblige judges at remand hearings to inquire into the detainee's treatment in custody and to order an effective investigation if the detainee complains about torture or ill-treatment or if there is any other indication that he or she may have been subjected to such treatment.

### **Independent monitoring of detention facilities:**

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

### **Excluding evidence extracted under torture:**

- Ensure 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.

### **Investigating allegations of torture effectively:**

- Introduce legislation to create and fund an independent body endowed with sufficient authority and competence to conduct prompt, thorough and independent investigations into allegations of torture and ill-treatment.
- In the meantime, establish dedicated units of prosecutors responsible for carrying out all investigations into allegations of torture and ill-treatment, no matter whether they are opened under Article 143-1 or other articles of the Criminal Code, and amend legislation accordingly.
- Suspend any law enforcement officer who is under investigation for having committed acts of torture or ill-treatment, for the duration of the investigation.

**Punishing perpetrators adequately:**

- Legislate that perpetrators of torture or ill-treatment are excluded from prisoners amnesties.
- Abolish the statute of limitations with regard to torture and ill-treatment.

**Providing comprehensive reparation to victims of torture:**

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

**Engaging with civil society:**

- Ensure that civil society activists and groups can carry out their work without interference from the authorities.
- Ensure greater consultations with civil society in the development and implementation of future measures designed to combat and prevent torture and ill-treatment.
- Include representatives of independent expert NGOs as full-fledged members of the Commission on the Implementation of International Obligations in the Field of Human Rights, which should play an active role in coordinating and monitoring the progress of implementing recommendations made by UN human rights mechanisms.