



Tajikistan: Committee against Torture

Written information for the List of Issues

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Introduction

This document was jointly prepared by the Civil Society Coalition against Torture and Impunity in Tajikistan¹ (Coalition against Torture), International Partnership for Human Rights (IPHR, Belgium) and Helsinki Foundation for Human Rights (HFHR, Poland). It is based on the Coalition's ongoing monitoring, documentation and analysis of key developments and cases relating to the principles enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²

This document aims at providing input into the Committee against Torture's preparation of the List of Issues that is scheduled to take place at the Committee's 62th session in November/December 2017. The document consists of thematic chapters, each of which concludes with recommended questions that the Committee against Torture may wish to address in its List of Issues.

Definition of torture and punishments commensurate to the gravity of the crime (Articles 1 and 4)

On 29 February 2012, the Lower House of Parliament of 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. To our knowledge, seven criminal cases have since been opened under this Article. In three of them the perpetrators were sentenced to between one and seven years' imprisonment; in one case the perpetrator received a suspended sentence; and in three further cases the charge of "torture" was later dropped or the case was closed. 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".

The organizations jointly issuing this document are concerned that, in violation of Article 4 of the Convention, penalties under Article 143-1 and the other articles often used to classify crimes of torture and other ill-treatment are not commensurate with the severity of the crimes committed. Article 143-1, part 1 ("premeditated administration of physical (or) psychological suffering") is

¹ The Coalition against Torture in Tajikistan (Coalition against Torture, www.notorture.tj) was founded in September 2011. It unites 11 human rights groups (Apeiron, Pamir Lawyers' Association, Bureau for Human Rights and Rule of Law, Independent Centre for Human Rights Public Foundation NotaBene, Public Health and Human Rights, Office of Civil Liberties, Legal Initiative, Rights and Prosperity, Equal Opportunities) and eight individual members across Tajikistan. The Coalition closely monitors and analyzes domestic legislation pertaining to the issue of torture and has documented and provided legal advice on numerous cases involving allegations of torture or other ill-treatment from across the country and engages in strategic litigation. It formulates policy recommendations, engages in dialogue with the Tajikistani authorities and in international advocacy. The Coalition offers its members support, professional advice and opportunities to increase their professional skills.

² IPHR is a non-profit organization based in Brussels. Founded in April 2008, its mandate is to support local civil society groups in their work to eradicate violations of human rights and help their concerns and efforts be heard at the international level.

punishable by a fine, suspension from duty or imprisonment of up to five years. 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.

On 26 December 2012, Khujand City Court found an officer of the Criminal Investigation Department of Sughd Oblast Police guilty of torture (Article 143.1 of the Criminal Code) and sentenced him to one year in prison. The policeman was found guilty of keeping the suspect in question in his office throughout the day and subjecting him to beatings, causing injuries to his ears and kidneys. The forensic medical examination confirmed the cause of the injuries.

What steps have the authorities taken or are envisaging to take to implement the Committee against Torture's recommendation, issued in November 2012, 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)?

Explain what steps are taken to ensure that perpetrators of crimes involving torture or other ill-treatment who are charged under other articles of the Criminal Code (such as "abuse of authority", "exceeding official authority" or "violating the code of military conduct") are handed down sentences that are commensurate with the gravity of the crimes committed.

Comprehensive statistics (Articles 1, 12 and 14)

The authorities do not publish comprehensive and unified statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture and other forms of ill-treatment. In early 2017 the Coalition against Torture sent letters to several government agencies and the Supreme Court asking for their statistics on cases of torture and other forms of ill-treatment in recent years. At the time of writing no replies had been received from the General Procurator's Office, the Ministry of Internal Affairs and the Military Procurator's Office. The Drug Control Agency responded on 21 April that it had not received any complaints between 2012 and 2016. It added that the General Procurator's Office had received a complaint in April 2015 accusing an officer of the Drug Control Agency of torturing a detainee, and that the General Prosecutor's Office had reviewed the case. In a letter dated 19 May the Anti-Corruption Agency also replied that it had not received any complaints about torture and ill-treatment between 2012 and 2016. The Ministry of Justice replied on 3 May that it does not keep records of statistics on individual cases. The Supreme Court replied on 26 April that "according to statistical information and reports that were approved by the Statistics Agency at the Office of the President, the Supreme Court of the Republic of Tajikistan is unable to provide information on legal acts which came into force under the Articles 143-1, 314, 316 and 322 of the Criminal Code of the Republic of Tajikistan and about payments of compensation on the types of cases mentioned above, due to their absence."

For the period of 2012 to the end of 2016, members of the Coalition against Torture documented 20 (2012), 25 (2013), 26 (2014), 45 (2015) and 57 (2016) cases 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 2017, the Coalition had registered 33 new cases. It is believed that these figures only reflect the tip of the iceberg since many victims of torture and their relatives refrain from lodging complaints for fear of reprisals or because they have no hope to attain justice.

Please provide the Committee with comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture and other forms of ill-treatment, segregated by sex, age and charges brought. Ensure to include not only cases under Article 143-1, but all cases involving allegations of torture or other forms of ill-treatment opened including those opened under charges such as “abuse of authority”, “exceeding official authority”, “negligence”, or, in cases from the armed forces, “violating the code of military conduct” or “abuse of authority or duty”.

Appropriate penalties, no amnesties, no statute of limitation for torture (Article 4)

In its November 2012 Concluding Observations the Committee against Torture urged Tajikistan to “ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice.”

The recent amnesty issued in August 2016 in connection with the 25th anniversary of Tajikistan's independence was the first amnesty in Tajikistan to explicitly state that those convicted of “torture” (Article 143-1 of the Criminal Code) were not eligible, which the NGOs issuing this document consider to be a positive development. However, many perpetrators of torture or ill-treatment who had been convicted under other articles of the Criminal Code were released or had their sentences reduced under the 2016 amnesty. The NGO Coalition is aware of 24 perpetrators of torture and ill-treatment, or their superiors, who benefitted from the amnesty.

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

Provide information to the Committee what steps the authorities have taken or are planning to take to ensure that all future prisoner amnesties will exclude those convicted of “torture” (Article 143-1 of the Criminal Code). Please also detail how the authorities will ensure that those convicted of crimes involving torture or other forms of ill-treatment but charged under other articles of the Criminal Code are excluded from prisoner amnesties.

Please inform the Committee whether there are intentions to abolish the statute of limitations and what steps have been taken.

Legal safeguards in detention (Articles 2 and 11)

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 to the Criminal Procedural Code (CPC), which significantly improved legal safeguards in detention and should be consistently implemented.

The amendments to the Law on detention procedures provide for improved detention registration procedures and the rights to promptly inform family members and legal counsel.

Changes to the CPC stipulate that detention starts from the moment of de-facto deprivation of liberty and that a detainee has the right to have confidential meetings with a lawyer from the moment of factual detention, including before interrogations begin. Arresting officers are now obliged to verbally inform detainees of their rights at the moment of deprivation of liberty and the identity of detaining officers has to be recorded in the detention protocol, which must be drawn up within three hours of a person arriving at a police station. The amendments also stipulate that a medical examination is obligatory prior to placing a suspect in a temporary detention facility, to determine the person’s state of health. A lawyer can request a medical examination by an independent expert. Once the detention protocol and medical examination are completed the detainee is to be directly transferred to the temporary police detention facility.

While these are significant improvements, further legislative amendments should be made to strengthen safeguards in detention. For example, the 72-hour limit of time from the moment of apprehension before being brought before a judge should be reduced to 48 hours, as recommended by the UN Human Rights Committee and the Special Rapporteur on torture. Judges at remand hearings should be obliged to inquire about the detainee’s treatment in custody and the CPC should be amended to stipulate that judges should not base their decision about remanding a detainee in custody solely on the basis of the gravity of the crime committed, which is currently the case in the majority of cases. In addition, given that torture and ill-treatment are often applied to individuals charged with administrative offences or those held by police as “witnesses” the NGOs jointly issuing this document are also concerned that the above amendments only apply to those detained on criminal charges.

The authors of this document are further concerned that the legal amendments introduced in May 2016 are not consistently implemented and the NGO Coalition against Torture has recorded several such cases in recent months. For example, Mukhabbat Davlatova told the Coalition against Torture that her son Djovidon 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 December, over a week after he was reportedly taken into custody. Djovidon was reportedly tortured while in incommunicado detention, but his lawyer’s request of 12 January for a prompt medical examination has not been satisfied. In a letter dated 8 February Mukhabbat Davlatova was informed that the Joint task force to

counteract extremism and terrorism, which comprises representatives of the General Prosecutor's Office, the Ministry of Internal Affairs and the State Committee for National Security, had come to the conclusion that Djovido had not been subjected to physical abuse.

People detained on suspicion of crimes are often held in staff offices or in short-term detention in MVD maintenance duty offices (the so-called catacombs). There are no legislative provisions which cover detention in these places and conditions of detention do not comply with the Standard Minimum Rules for the Detention of Prisoners. It is a possibility that the activities of such places are regulated by internal documents, which are not publicly available.

In line with Article 91, part 5 of the Criminal Execution Code of Tajikistan, prisoners are entitled to have a legal consultation with a lawyer after lodging a request. However, in practice prisoners' requests are often not passed on to the lawyers and unless the lawyer can present the prisoner's written request to the prison authorities, he or she is not permitted to enter the prison.

Medical examinations: In December 2012, a working group that includes 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. On 1 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 those cases where detention facilities do not have their own medical personnel 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 a temporary police detention facility.

Many detainees are not examined by employees of the Ministry of Health, so examinations are not conducted based on the instructions and forms issued by this Ministry. For example, the medical professionals, who work in Dushanbe's temporary police detention facility and in the capital's Anti-Corruption Agency and examine detainees when they are placed into these facilities, are employed by the Interior Ministry and the Anti-Corruption Agency respectively. 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.

As part of the Action Plan for Combating Torture a draft law "On state judicial activity" was developed to ensure a coordinated approach to, amongst other issues, procedures for independent forensic expertise. The Working Group on the Implementation of the Istanbul Protocol Standards under the Ministry of Health and Social Protection submitted comments to the draft law which is currently under governmental review.

In Tajikistan only psychiatrists are authorized to examine and diagnose the psychological effects of torture. The forms that are used to record the results of psychiatric examinations have not been updated since 2001 and they do not reflect the standards of the Istanbul Protocol. The large majority of psychiatrists have not received training on the Istanbul Protocol.

The May 2016 legal amendments also stipulate that detainees may choose to be examined by an independent doctor. However, in practice detainees have no access to fully independent doctors since there are no forensic medical institutions outside of the government system and legislation regulating independent forensic examinations is yet to be adopted.

Monitoring detention facilities: Civil society access to places of deprivation of liberty is limited and the International Committee of the Red Cross (ICRC) has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004. Tajikistan has not ratified the Optional Protocol to the Convention against Torture (OPCAT) and has thus not committed itself to set 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.

In February 2014, the Monitoring Group, which was established as part of the Ombudsman’s Office and consists of Ombudsman’s Office staff and civil society activists began visiting detention facilities. It has visited over 40 detention facilities to date, and is permitted to visit all detention facilities except for those under the jurisdiction of the State Committee for National Security. 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. However, subsequently visits have taken place without advance notice and the members of the Monitoring Group have been able to conduct all interviews confidentially.

While the establishment of this Group is a step in the right direction, it is not able to function as an effective safeguard against torture/ill-treatment. The Ombudsman’s Office has limited capacity and can only conduct up to 15 visits per year and the civil society members of the Group are not authorized to conduct visits without Ombudsman Office staff. There are concerns that the Group does not have access to internal documents at detention facilities. In addition, in many cases detainees do not freely share information about their treatment in detention with the Monitoring Group because they regard representatives of the Ombudsman’s Office, who are always present during interviews, as not sufficiently independent since they are government employees. Other than in the framework of the Monitoring Group human rights defenders are not able to visit detention facilities for monitoring since domestic legislation does not grant them this right and the heads of detention facilities do not grant them discretionary access.

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.

Video recording in detention facilities: In its Concluding Observations issued to Tajikistan in November 2012 the Committee against Torture called on Tajikistan to “maintain 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" (Para. 9c).

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 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 temporary police detention facility. 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. According to members of the Monitoring Group under the Ombudsman's Office, many detention facilities have been equipped with video cameras, but in some cases no cameras were installed in interrogation rooms and yards where inmates go for walks.

In recent months several lawyers who cooperate with the Coalition against Torture petitioned that video recordings 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.

Provide information on how it is ensured that the May 2016 legal amendments introduced to strengthen basic safeguards in detention are implemented in practice.

Provide comprehensive statistics on all complaints lodged about lack of access to fundamental safeguards in detention since the legal amendments came into force. Indicate what measures have been taken in each case and what the outcome was.

Have any steps been taken to reduce the period of detention before the remand hearing from the current 72 to 48 hours, as recommended by the UN Human Rights Committee and the Special Rapporteur on torture?

Are judges conducting remand hearings required to inquire into the detainee's treatment in custody?

Are there guidelines or legislation instructing judges on how to select the appropriate measure of restraint at remand hearings?

Provide statistics covering the period since Tajikistan was reviewed by the Committee against Torture in 2012 indicating which measures of restraint have been applied at remand hearings.

How is it ensured that those summoned to the police as witnesses or those held on administrative charges are not subjected to torture or other forms of ill-treatment? Are there plans to strengthen safeguards with regard to these categories of people?

Please provide information on the legal status of short-term detention rooms in duty/maintenance sections of MVD facilities;

Please provide detailed information about medical examination of detainees:

- a) Which detention facilities have their own medical personnel and which facilities use the services of public health clinics for the examination of detainees?**
- b) In those cases when detention facilities have their own personnel, which government agency employs them and which agency supervises them?**
- c) How is it ensured that medical personnel conduct the examination with full independence, based on the standards of the Istanbul Protocol?**

Provide information on what steps the authorities have taken or are envisaging to take to set up an independent forensic medical service tasked with examining detainees upon their arrest, transfers and their release from detention, and, additionally, on their request.

What steps are the authorities envisaging to take to ensure that psychological consequences of torture are diagnosed and recorded appropriately, for use as evidence in court?

Why are independent civil society organizations not allowed to conduct monitoring of places of detention outside the framework of the Monitoring Group under the Ombudsman's Office?

What are the remaining obstacles to ratifying the OPCAT and what steps have been taken or are still necessary to take to overcome the remaining obstacles?

Please provide a full list of which detention facilities have been equipped with video cameras in Tajikistan and whether all interrogations are video-recorded. Provide examples, if such exist, of when footage of these cameras provided evidence relevant to cases involving allegations of torture or other ill-treatment.

Effective and independent investigation (Article 12)

In its 2012 Concluding Observations the Committee against Torture expressed concern about the small number of convictions for violations of the Convention against Torture in Tajikistan, despite the numerous allegations and reports of torture/ill-treatment. Impunity continues to be the norm. In recent years several international human rights bodies and procedures including the Committee against Torture (November 2012 Concluding Observations, Para. 11a), the Human Rights Committee 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 the establishment of such a body. However the

statistics cited by officials only included cases instigated under Article 143-1 of the Criminal Code ("torture"), and most cases involving torture and ill-treatment are opened under the articles of the Criminal Code which punish "negligence", "abuse of authority or duty" or "violating the code of military conduct" in what appears to be a conscious attempt to keep torture statistics low.

In those cases where investigations are opened, they are frequently ineffective. While cases of torture instigated under Article 143-1 of the Criminal Code are usually investigated by prosecutors, cases under other articles are often investigated by law enforcement agencies whose employees are themselves implicated in the complaint. Prosecutors have an inherent conflict of interest originating from their roles of both taking forward the criminal prosecution and supervising the legality of the investigative process. In many cases known to the Coalition against Torture investigators fail to gather sufficient evidence to properly examine the circumstances of the alleged torture from all perspectives and often fail to interview witnesses and medical personnel or order a forensic medical examination; in many cases they do not interview the victims and they do not carry out cross-questioning of police and victims. Instead, investigators rely primarily on statements obtained from the alleged perpetrators and their colleagues.

In recent years judges have more frequently ordered prosecutors to investigate allegations of torture/ill-treatment, but these investigations were often not conducted thoroughly, impartially and independently and lawyers representing the alleged victim typically did not have access to documents relating to the investigation. NGOs are not aware of a single case where prosecutors subsequently 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.

Additionally, when the suspension or closure of a criminal case into torture allegations is appealed to the court or the prosecutor's office, the case is often sent back to the same investigator who ordered the suspension or termination of the criminal case. There are no legislative provisions which prohibit this. Investigations into allegations of torture and ill-treatment are often drawn out unreasonably. .

There is a practice of unreasonably prolonging the investigation of allegations of torture and ill-treatment and deliberately obstructing access of lawyers to case materials. For example, on 29 August 2015 law enforcement officials of the town of Vakhtat arrested 35 year old Umar Babazhanov and took him to the police station. As a result of the repeated beatings that they inflicted upon him as he lay on the floor of a corridor in the police station he lost consciousness and was taken to hospital. Umar Babazhanov never regained consciousness and died on 9 September 2015. A forensic examination concluded that had died from a traumatic brain injury. During the investigation, the lawyer acting for Umar Babazhanov's repeatedly lodged complaints against the police investigator in charge of the criminal case for inactivity; obstruction of access to case materials; failure to include witnesses in investigations with the General Prosecutor's office the human rights Ombudsman and the President. The lawyer was only informed on 21 June 2016 by the police investigator that investigations had been suspended in February on the grounds that the identity of the perpetrators

could not be established.

Are investigations opened only when a formal complaint is received by the authorities or do the investigative bodies take action based on media and other reports? Please provide examples.

What steps have the authorities taken to ensure that investigations are carried out impartially and by an independent body?

Provide the Committee with statistics on the number of cases where detainees or defendants made allegations of torture or ill-treatment in court detailing at what stage of the proceedings the allegations were made; which actions the judge took; whether prosecutors opened an investigation; how many disciplinary and criminal cases were opened as a result; and which sanctions were handed down on perpetrators.

Excluding evidence extracted under torture (Article 15)

Article 88 of 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.”

Provide detailed up-to-date statistics and case examples where evidence was excluded from court proceedings because it was believed that they were or may have been extracted under duress.

Redress (Article 14)

Domestic legislation does not explicitly list torture and other forms of ill-treatment as grounds for compensation and, generally, petitions for compensation can only be lodged after perpetrators have been brought to justice and convicted. Since not many perpetrators of torture or ill-treatment have been convicted in Tajikistan the large majority of victims has not had access to compensation.

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. To date civil courts in Tajikistan have awarded compensation for moral damages to a total of six victims of torture. While these are important precedents the amounts were neither fair nor adequate. The families of four deceased men were awarded the equivalents of EUR 500, EUR 710, EUR 2,015 and EUR 6,600. Shakhbol Mirzoev, an army recruit who was tortured so severely that he was left paralyzed, was granted the equivalent of EUR 2,900 by a court in 2015 for moral damages. The decision was later overturned and the amount was later reduced to the equivalent of EUR 400. Although the authorities

promised to cover all of Shakhbol's medical expenses, they only covered some and Shakhbol's family had to sell their house to cover the remaining expenses.

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.

Provide detailed statistics indicating the number of victims or their families who lodged suits to compensation for moral harm sustained through torture or other forms of ill-treatment with civil courts since 2012 and the number of cases where courts awarded such compensation. Please indicate the amounts of compensation in each case.

How is it ensured that the amounts in compensation that torture victims receive to cover for moral damages are fair and adequate?

What other measures of redress are made available to victims of torture?

Protection from being expelled, returned, extradited under risk of torture (Article 3)

In November 2014, the CPC of Tajikistan was amended to the effect that extradition must be denied when there is a risk of torture in the receiving country (Article 479).

However, expulsions of refugees and asylum seekers continue to be carried out on the basis of administrative legislation, which does not contain an obligation to check for the risk of torture.

Additionally, in practice, deportations and extraditions to countries of the Commonwealth of Independent States (CIS) or members states of the Shanghai Convention occur on the basis regional treaties and agreements such as the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) and the Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001).

Please provide detailed statistics of all cases and countries in relation to which Tajikistan has turned down extradition requests since the new legislation came into force, due to a risk of torture in the receiving country.

Please provide the Committee with details about what sources of information and what criteria the authorities use to determine the level of risk that a person wanted under an extradition request will be subjected to torture in the receiving country. If the authorities consider certain countries to be "safe", please provide a list of these countries.

Please provide information on measures taken to ensure that provisions in the Convention are prioritized over other, less protective legislation.

Please provide information about the appeal procedures that are in place when an asylum application is turned down. Clarify whether the expulsion, return or transfer of a person is halted pending a final decision in the appeal process.

Please provide the Committee with up-to-date statistics pertaining to the period since the previous government report was reviewed by the Committee in 2012, segregated by age, sex and nationality on the following issues:

- a) the number of people who applied for asylum in Tajikistan;**
- b) the review stage of their application;**
- c) the number of people who were / are due to be subjected to expulsion, return or transfer;**
- d) the countries that they have been / are due to be expelled, returned or transferred to;**
- e) if there were such cases, give examples where the authorities of Tajikistan refrained from expelling, returning or transferring a person to a country because he or she would have been at risk of torture in the receiving country. Explain how this case was subsequently dealt with.**

Torture and ill-treatment in the armed forces (Articles 1, 2, 12, 13, 16)

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. Complaining about abuse is strongly discouraged by peers and commanding officers in military units and anybody who complains risks being labelled as a "traitor" and subjected to further abuse. Complaints that do come to light usually relate to particularly severe torture and ill-treatment, including torture leading to the death of the victim.

The Coalition against Torture registered four cases of torture or ill-treatment in the armed forces -- both under the authority of the Ministry of Defence and the State Committee on National Security of Tajikistan -- in 2013; three in 2014; six in 2015; nine in 2016 (five of them died) and two in the first half of 2017 (both died). To our knowledge, for 2016 13 perpetrators were convicted in recent years, six of which were commanding officers. The NGOs issuing this document are also concerned that dozens of perpetrators of torture in the army have benefitted from amnesties in recent years and had their sentences reduced. In 2016, as a result of acts of amnesty under Article 3, paragraph 5 of the 2016 Law "On Amnesty", some prisoners were released from punishment or had their sentence partially reduced. In a number of cases, commanders of the military unit put pressure on relatives of soldiers.

The Military Prosecutor's 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.

Which legislative, administrative and other steps have the authorities taken to prevent hazing and other forms of torture or ill-treatment in the army?

Explain why statistics on complaints, investigations, prosecutions and convictions relating to abuse in the army are not publicly available. Provide comprehensive statistics to the Committee.

Provide information on all cases involving hazing and other ill-treatment in the army where superiors of the immediate perpetrators were brought to justice for their role in facilitating or failing to prevent the crime.

Please explain what complaint mechanisms are available to those serving in the army and how they can be accessed.

Why does Tajikistan not allow independent and unlimited public monitoring of conscription commissions and military units?

Torture and ill-treatment of LGBT people (Articles 1, 2, 12, 13 and 16)

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. The Constitution and other domestic legislation guarantee equality before the law, but there is no mention of sexual orientation and gender identity as prohibited grounds for discrimination. Homophobia and transphobia run deep in Tajikistan's society.

There are allegations that unpublished internal instructions task agencies of the Ministry of Internal Affairs to counteract the "spread of homosexuality" and law enforcement officers appear to have added the fight against homosexuality to their legally sanctioned work against crimes and offences covered in the sections on public order and morality in the Criminal Code and the Administrative Code of Tajikistan. For example, on 12 June 2014 the press service of the Ministry of Internal Affairs reported that during raids conducted earlier that month, that mainly targeted sex workers, three people had been taken to agencies of the Interior Ministry to "take the necessary measures for homosexual behaviour". According to a July 2014 press release, where the Ministry provided statistics of its fight against "amoral crimes, prostitution and procurement", "homosexuality and lesbianism" were included in the list of crimes and offences the Ministry had counteracted.

IPHR, HRHF and Tajikistani NGOs recorded dozens of credible cases in recent years of police intimidating, arbitrarily detaining, physically or sexually abusing or threatening to abuse LGBT people. In many of these cases police put pressure on the victims to coerce them into disclosing contact information of rich LGBT people in order to blackmail and extort money from them. As many LGBT people in Tajikistan lead double lives they have much to lose if their wives, husbands, parents, other relatives, neighbours, teachers or employers find out about their sexual orientation or gender identity.

Police abuse and extort money from LGBT people with almost complete impunity. Victims targeted because of their sexual orientation hardly ever lodge complaints due to their particularly vulnerable position in society. There were cases of LGBT people who wanted to lodge a complaint but refrained from doing so when officials expressed homophobic attitudes or threatened them with reprisals.

In recent years local and international human rights groups have become increasingly concerned about the shrinking space for independent civil society organizations in Tajikistan.³ Registration and excessive reporting requirements for NGOs, which give broad powers to the Ministry of Justice and other government entities, provide room for undue state interference in the work of NGOs. Societal homophobia and transphobia make groups working with LGBT clients particularly vulnerable to government pressure. There have been several incidents in recent years where the authorities targeted such NGOs and pressurized them to discontinue their work with sexual minorities.

NGOs working with LGBT people in the framework of health or human rights programmes are not invited to government-organized round tables or working groups. Thus, they lack opportunities to contribute to policy discussions and the legislative process pertaining to areas of their work or to provide input into Tajikistan's engagement with United Nations (UN) treaty bodies and mechanisms or the UN's Universal Periodic Review.

Provide information about all complaints lodged with the authorities by LGBT people in recent years involving allegations of torture, ill-treatment, sexual abuse and extortion by police or abuse by non-state actors, and about subsequent investigations and convictions.

Detail how the authorities ensure that LGBT individuals who lodge complaints about police abuse or extortion are protected from reprisals.

On 12 June 2014 the press service of the Ministry of Internal Affairs reported that during raids conducted earlier that month, which mainly targeted sex workers and were accompanied by reports about arbitrary detention and cases of ill-treatment, three people had been taken to agencies of the Interior Ministry to "take the necessary measures for homosexual behaviour". According to a July 2014 press release, in which the Ministry provided statistics of its fight against "amoral crimes, prostitution and procurement", "homosexuality and lesbianism" were included in the list of crimes and offences the Ministry had counteracted. Please provide legal texts or instructions detailing the Ministry of Internal Affairs' tasks with regard to homosexual orientation and behaviour.

Why are Tajikistani human rights activists working with and monitoring the situation of LGBT people not invited to government-organized round tables and seminars, particularly those set up to provide opportunities for civil society to have input into discussions ahead of UN treaty body sessions or the Universal Periodic Review on Tajikistan?

³ For further information refer to: *Central Asia's civil society at 25 years of independence: Appeal for solidarity*, jointly issued on 21 September 2016 by Central Asian human rights groups and IPHR: <http://iphronline.org/central-asia-civil-society-appeal-20160921.html>

For further information on torture, ill-treatment and sexual abuse of LGBT people in Tajikistan, refer to the 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 will be available on IPHR’s website after 3 July 2017 at: <http://iphronline.org/lgbt-people-tajikistan-beaten-raped-exploited-police.html>.

Domestic violence (Articles 2, 12, 13, 16)

Lack of comprehensive statistics on domestic violence: Assessing the scale of domestic violence against women in Tajikistan is hampered by the lack of comprehensive statistics. Data collection is inconsistent and uncoordinated, under-reporting is a problem. Although NGO service providers use a common database for service provision, 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 indicate that high levels of domestic violence continue and 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.

Failure to criminalize domestic violence: 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 fails to: clearly define the term “family violence” thus does not cover those in polygamous marriages and 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.

Police response: The Law “On Militia” was amended in early 2016 to require police to act to prevent family violence. The amended Law “On Militia” 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.

Ten specialized police inspectors in Tajikistan 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 they operate, but the number of posts is insufficient given the scale of the problem.

In areas without specialized police inspectors, ongoing issues with police intervention in cases of domestic violence include dismissive attitudes by police officers who are reluctant to consider

complaints from victims; a system of “private prosecution” whereby 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; and evidentiary requirements meaning that victims of domestic violence need to obtain documentation of their injuries which can be difficult for women living in remote rural areas. 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 attain justice.

Obstacles to judicial redress for victims of domestic violence: Support is inadequate for any 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 sometimes 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.

Provide information on plans to ensure that statistics and data on domestic violence are collated centrally, disaggregated by sex and age and details of the perpetrator-victim relationship and are made publicly available.

Please provide a clear timeframe for the amendment of the Criminal Code to include a specific article criminalizing all forms of domestic violence (expressly including a reference to psychological violence).

Clarify when amendments to the Law on Prevention of Violence in the Family will be made to include a definition of “marriage” and “family” and specify that domestic violence can be carried out “by one or several members of the family”;

Please provide figures on funds that have been attributed from central state budget to shelters, protection and prevention programmes for domestic violence compared with the funds that come from local budgets;

Are there plans to increase the number of specialized police inspectors and to establish mechanisms whereby these officers would provide support and advice to other police officers? Please provide information on steps the authorities have taken or are envisaging to take.

Please clarify how you intend to amend legislation to provide that the victim of domestic violence is not responsible for instigating criminal proceedings;

What steps are taken in practice to ensure that a victim of domestic violence is not pressurized to reconcile with the abuser?

Please 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;

Please provide statistics giving a breakdown of prosecutions for domestic violence and the penalties imposed.

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>.

Physical abuse of children (Article 16)

Violence against children in Tajikistan in families or schools is often overlooked or considered as normal and there is no effective system of protection for children from such violence. Domestic legislation does not outlaw corporal punishment or other ill-treatment of children. While the Law “On Parental Responsibilities” stipulates that parents must not allow ill-treatment with respect to children, it does not prohibit such treatment.

NGO representatives and lawyers who IPHR spoke to in 2016 were unanimous that insufficient protection, both in law and practice, is available for children who are witnesses to, or victims of domestic violence, and that children’s needs are rarely taken into account.

One victim of domestic violence told IPHR how her children suffered violence from her husband who used to punch them and bash them on the heads with a spoon. The woman told IPHR that police officers and representatives of the prosecutor’s office questioned her children but although the children confirmed they had also been subjected to violence, they were not included in the criminal case as victims and no support was provided to them.

Please provide information on measures taken to prohibit corporal punishment and prevent corporal punishment in schools and families;

Provide details of plans to raise public awareness around the issues of domestic violence relating to children as well as to include specific references into relevant legislation (including the Law on Prevention of Violence in the Family) regarding the welfare of children who are victims or witnesses of domestic violence and provide a detailed mechanism for their social protection and support.

Please provide updated information on measures taken to ensure that laws and practices related to the arrest, detention and interrogation of children and youths in conflict with the law are fully brought into line with internationally accepted procedures.

Please provide the Committee with updated information on the establishment and implementation of a specialized juvenile justice system.

Training (Article 10)

Please provide detailed information on the development of training programmes for all law enforcement officers and prison staff on the provisions and actual application of the Convention, as well as the UN minimum standards for the treatment of prisoners.

Please indicate which groups of officials have received training, including the titles of the individuals, the frequency of the trainings, as well as an assessment of the effectiveness and impact of educational and training programs on reducing the incidence of torture. Which topics are specifically addressed in the advanced training course on human rights for judges?

Has the government organized training programmes with psychiatrists and psychologists on identifying psychological consequences of torture, in line with the standards included in the Istanbul Protocol?

Finally, please provide information on any improvements in the system of legal training and in providing continuing legal training for the judiciary, prosecutors and lawyers.

Places of detention (Article 16)

Domestic legislation stipulates that information about the number and location of places of deprivation of liberty and statistics about the inmates are state secrets.

There continue to be frequent reports about deaths in penitentiary institutions. The authorities do not publish statistics and they give no information about the causes of death.

Prison conditions in many cases do not correspond to international minimum standards. Information obtained by the Monitoring Group under the Ombudsman's Office indicates that some facilities, particularly psychiatric institutions, lack basic furniture such as a sufficient number of chairs, hangers for clothes, shelves for personal items and toiletries, or radios. The yards of many psychiatric and other facilities that are used for walks have no benches; some have no toilets and no shelter from rain and snow. Some psychiatric facilities have no library. Some psychiatric facilities have metal bunk beds and bars on the doors and windows. Many psychiatric facilities lack qualified doctors and necessary medication. Some detention facilities are insufficiently heated in winter.

Please provide the Committee with updated information on the number and location of all prisons and other places of deprivation of liberty indicating how many detainees or prisoners they were designed for and how many individuals are currently kept in them. Indicate what categories of detainees (women, juveniles etc.) they hold.

Provide statistics on all cases of death in custody in recent years and indicate 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 or negligence; and provide information of any sanctions handed down on these officials.

Please provide detailed information about steps the authorities have taken since 2012 to increase material, human and financial resources to improve the conditions in pre-trial and post-trial facilities and bring them in line with basic international standards.

Protecting victims, their family members, human rights defenders and lawyers from reprisals (Articles 13)

The Coalition against Torture in Tajikistan recorded many cases in recent years where victims of torture or their relatives faced or were threatened with reprisals after lodging a complaint with the authorities. Law enforcement officers urged them to withdraw the complaint or to refrain from being represented by an independent lawyer. The reprisals documented by the Coalition included further physical abuse and the fabrication of a criminal case.

Lawyers have also been subjected to threats and reprisals in many cases and often threats have involved warnings that her or his 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.

The Coalition against Torture has also recorded cases in recent years where the authorities put pressure on human rights defenders or human rights organizations due to their anti-torture work. Methods have included unannounced and extraordinary checks of NGOs by tax authorities, the Ministry of Justice or other authorities, or requiring NGOs to get their project activities “approved” by law enforcement agents, which can cause major delays in the project implementation; and threats to subject human rights defenders or members of their families to physical abuse or other harm.

What steps do the authorities take to ensure that victims and their families are not subjected to reprisals when they lodge complaints about torture or other ill-treatment?

What steps do the authorities take to ensure that lawyers and human rights defenders working on torture cases are not subjected to intimidation, threats or physical abuse by law enforcement officers or other government agents?