

SHATTERED LIVES

TORTURE AND OTHER ILL-TREATMENT
IN TAJIKISTAN

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Cover photo: Street scene in Dushanbe, Tajikistan, 2010.
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GLOSSARY

UN HRC	UN Human Rights Committee
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CPC	Criminal Procedural Code
ECtHR	European Court of Human Rights
MIA	Ministry of Internal Affairs
ICCPR	International Covenant on Civil and Political Rights
IMU	Islamic Movement of Uzbekistan
IVS	Temporary detention facility in police stations under the jurisdiction of the Ministry of Internal Affairs
OVD	Department of Internal Affairs at the MIA
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
NGO	Non-governmental organization
Sixth Department/UBOP	Department for the Fight against Organised Crime of the MIA
SIZO	Pre-trial detention facility under the jurisdiction of Ministry of Justice
SCNS	State Committee for National Security

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Torture and other ill-treatment in Tajikistan

INTRODUCTION

“ The Police have become a source of threat, not of protection.”

Mother of a victim of torture, Tajikistan 2011.

“The torture and violence that I experienced at the hands of police left their trace in my life [...] in those terrible days and nights I was all alone with my grief. Living in the 21st century and ending up in such a situation, I felt like the most humiliated, disenfranchised, unhappy person on the planet. ”

Extract from the November 2010 testimony of a man who reported being tortured in September 2008

As a state party to key human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel or Degrading Treatment or Punishment Tajikistan (CAT) has undertaken to ensure torture and other ill-treatment do not occur. The Tajikistani Constitution and other legislation contain key provisions which reflect these commitments¹.

However, Amnesty International’s research shows that practices of torture and other ill-treatment remain widespread² in all types of detention facilities in Tajikistan. Detainees at the early stages of detention were found to be at particular risk, subjected to torture or other ill-treatment by law enforcement officers in order to “solve” crimes by obtaining confessions of guilt and also to obtain money from torture victims or their relatives. The general climate of impunity keeps police abuse virtually unchecked³.

While the new Criminal Procedure Code (CPC) that came into force in April 2010 provides a number of important safeguards against torture, significant gaps in domestic legislation remain. For example, at the time of writing, domestic law does not guarantee prompt access to independent medical examinations when allegations of torture are raised. Nor does it oblige judges to act upon allegations of torture or ill-treatment at custody hearings, resulting in judges often ignoring allegations of torture, claiming it is not in their remit to investigate such facts but merely to decide on the legality of detention. Existing provisions on the inadmissibility of unlawfully obtained evidence are failing to ensure that information obtained through torture is not used as evidence in the trials of those detained⁴.

Those safeguards that do exist in domestic legislation are often not implemented in practice. For example, although the law guarantees a detainee the right to see a lawyer immediately after detention⁵, Amnesty's research shows that in practice detainees are routinely held incommunicado⁶ while initial interrogations are conducted, often without a lawyer.

Until early 2012, the Criminal Code of Tajikistan did not contain a definition of torture in line with Article 1 of the CAT, although at the time of writing the law is being amended to address this issue. The government has not published fully comprehensive statistics on complaints about torture and prosecutions of alleged perpetrators. In many cases people refrain from lodging complaints about torture for fear of repercussions. There is evidence that the authorities have put pressure on those who dared speak out about police abuse⁷.

In cases where individuals who claim to have suffered human rights violations have applied to the UN Human Rights Committee (UN HRC) to consider their case, Tajikistan has a poor track record of acting on the HRC's requests and decisions. When the UN HRC has requested information in relation to cases it was considering, Tajikistan has either not responded at all or has failed to provide appropriate information and documentation. In 17 individual cases on which the UN HRC reached a decision from 2003-2011, it found that there had been a violation by the state of the prohibition against torture or other ill-treatment. In some cases it is alleged that the authorities have pressurised victims for applying to the UN body⁸.

There are credible allegations that people forcibly returned or extradited from other countries to Tajikistan have been subjected to torture or other ill-treatment after return. In 2010 the European Court of Human Rights (ECtHR) ruled in three cases that the Russian Federation must not extradite Tajikistani citizens wanted by Tajikistan on charges including terrorism, incitement to overthrow the regime, and membership of an illegal organization, citing the widespread nature of torture in the country. It ruled in a fourth case in 2010 that the Russian Federation had already violated its obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms by extraditing the applicant to Tajikistan. Tajikistan requests dozens of extraditions every year⁹.

This report concludes with a list of recommendations to the Tajikistani authorities which would improve the country's human rights record and fulfilment of its international human rights obligations.

METHODOLOGY AND SOURCES OF INFORMATION

This report is primarily based on a fact-finding visit to Tajikistan from 4 to 18 April 2011, as well as on additional research conducted into the issues of torture and other ill-treatment and impunity. In April 2011 Amnesty International delegates visited the capital Dushanbe, the city of Khujand in the Northern Sughd region, and the town of Qurghonteppa in the Southern Khatlon region.

Amnesty International is grateful to those people and organizations who have contributed information to this report. These include torture victims, their relatives, human rights activists, lawyers, medical doctors, psychologists, social workers, and journalists, representatives of the Office of the Plenipotentiary for Human Rights of the Republic of Tajikistan (Ombudsperson), of the judiciary and law enforcement agencies, and other officials. The organization also met with representatives of intergovernmental organizations

and international organizations in Tajikistan.

Many victims of torture, their relatives and civil society activists requested to remain anonymous in this report for fear of repercussions. Several cases known to Amnesty International are not included in the report because the victims asked for strict confidentiality or they have given up hope of achieving justice.

When preparing this report Amnesty International put a number of questions to the Tajikistani authorities and judicial institutions on the issues covered in this report so that their views could be reflected. Prior to its visit to Tajikistan in April 2011 Amnesty International requested meetings with institutions including the Ministry of Foreign Affairs, the Ministry of Internal Affairs (MIA), the Head of the Sughd Regional Department for the Fight against Organised Crime at the MIA, the Department for Correctional Facilities at the Ministry of Justice, the State Committee for National Security (SCNS), the Prosecutor General, the Sughd Regional Prosecutor, the Constitutional Court, and the Supreme Court. Amnesty International also requested access to a police station and a temporary detention facility¹⁰, and to Ilhom Ismonov at the investigation isolation facility No. 2¹¹ in Khujand.

The organization was pleased to meet with and receive information from the Deputy Chair of the Supreme Court and the Heads of Collegiums on Civil, Criminal, Administrative and Economic Offences as well as from two advisors of the Supreme Court, the Chairman of the Constitutional Court, the Chairman of Sughd Regional Court, a judge of Sino District Court in Dushanbe, the Head of the Sughd Regional Department for Correctional Affairs, several senior investigators of the Sughd Regional Department of Internal Affairs, and the President of the Council of Justice in Sughd Region.

However, the other requests for meetings and visits were not granted. In June, July and August 2011 Amnesty International wrote to the Presidential Office, the Ministry of Foreign Affairs, the MIA, the Ministry of Justice, SCNS, the Prosecutor General and the Sughd Regional Prosecutor with questions about legislation and practice pertaining to torture and ill-treatment and submitted copies of all letters to the Ministry of Foreign Affairs with a request to forward them to the relevant government agencies. By the time of writing, the SCNS and the Office of Sughd Regional Prosecutor were the only official institutions to have replied.

Other governmental sources of information include the Second Periodic Report of Tajikistan to the Committee against Torture, received by the UN on 6 December 2010,¹² the Government submissions to the 2011 UN Universal Periodic Review,¹³ as well as interviews with government representatives reported in the media.

1. TAJIKISTAN'S INTERNATIONAL OBLIGATIONS AND STEPS TO IMPLEMENT THEM AT THE DOMESTIC LEVEL

1.1 INTERNATIONAL STANDARDS

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

Torture and other cruel, inhuman or degrading treatment are prohibited under international law, as set out in numerous international and regional human rights instruments and treaties, including the UDHR and treaties to which Tajikistan is party.

The prohibition applies to all states irrespective of their treaty obligations, as a rule of customary international law¹⁴, and applies at all times, in all circumstances, including in times of war or public emergency which may be a basis on which states can derogate from certain other of their human rights obligations.

Article 7 of the International Covenant on Civil and Political rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". "Torture" and "cruel, inhuman or degrading treatment or punishment" should not be seen as separate categories -- all such acts are absolutely prohibited. The UN Human Rights Committee has stated that "it is not sufficient ... to prohibit such treatment or punishment or to make it a crime" and has referred to the need for prevention, investigation, punishment of the perpetrators and reparation for the victims¹⁵.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) focuses on the prevention and prohibition of torture by or with the involvement of agents of the state. It defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". It places an obligation on states to ensure that acts of torture or other ill-treatment, as well as attempts to commit, or complicity or participation in, such acts, are offences under its criminal law punishable by appropriate penalties which take into account their grave nature. States must conduct prompt and impartial investigations into all complaints and credible reports of torture or other ill-treatment. They must also take "effective legislative, administrative, judicial or other measures" to prevent torture or other ill-treatment. The CAT also specifies preventive measures which states must take with regard to training public officials, and requires states to keep arrangements for interrogation and custody under systematic review.

Under Article 15 of the CAT, States have an obligation to ensure that any statement which is established to have been made as a result of torture or¹⁶ other ill-treatment shall not be invoked as evidence in any proceedings, except against a person accused of such acts. Similarly, the UN Human Rights Committee has stressed that "[i]t is important . . . that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment¹⁷."

Tajikistan is a party to the¹⁸ **International Covenant on Civil and Political Rights (ICCPR)** and has ratified the Optional Protocol to the ICCPR which provides a mechanism for the submission of individual complaints for review by the UN Human Rights Committee.

In 2005 the **UN Human Rights Committee**, examining Tajikistan's initial report as a party to the ICCPR expressed¹⁹ concern about "the widespread use of ill-treatment and torture by investigation and other officials to obtain information, testimony or self-incriminating evidence from suspects, witnesses or arrested persons" and called on Tajikistan to "take all necessary measures to stop this practice, to investigate promptly all complaints of the use of such practices by officials and to proceed to the rapid prosecution, conviction and punishment of those responsible, and to provide adequate compensation to the victims".

Tajikistan acceded to the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** on 11 January 1995, thereby undertaking to take "specific preventative measures [...] essential to prevent torture and cruel, inhuman or degrading treatment or punishment, particularly in custody or detention²⁰". In 2006, the Committee against Torture,²¹ examining Tajikistan's initial report as a party to the CAT, highlighted "numerous allegations concerning the widespread, routine use of torture and ill-treatment by law enforcement and investigative personnel, particularly to extract confessions to be used in criminal proceedings" and "an absence of preventive measures to ensure effective protection of all members of society from torture and ill-treatment." Five years on, the authorities have yet to fully implement the Committee against Torture's key recommendations aimed at strengthening safeguards against torture. At the end of 2010 Tajikistan submitted its Second Periodic Report to the Committee against Torture which will be reviewed in October 2012.

In October 2011, Tajikistan's human rights record was reviewed by the **UN Human Rights Council** which made a series of recommendations in eradicating torture. Of these, Tajikistan accepted recommendations to bring the definition of torture in domestic law into line with international treaty definitions and agreed to take steps to combat torture. It refused, however, to ratify the Optional Protocol to the CAT, which requires states to accept a system of regular visits to all places of detention by independent "national preventive mechanisms" and by an international expert body, citing a lack of resources, but agreed to study the issue further.

As a member of the **Organization for Security and Co-operation in Europe (OSCE)** Tajikistan is bound to uphold the organization's commitments with regard to the "human dimension", which include the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest or detention, and the right to a fair trial.

1.2 KEY PRINCIPLES IN DOMESTIC LEGISLATION PROHIBITING TORTURE

Tajikistan's domestic law sets out clear guidelines forbidding the use of torture and establishing the supremacy of international law²². The Constitution states that "[n]obody can

be subjected to torture, cruelty and inhuman treatment”²³.

The Criminal Procedural Code (CPC) provides that “[n]one of the participants in criminal proceedings can be subjected to violence, torture or other cruel treatment or such treatment that degrades human dignity²⁴; stipulates that the use of violence, threats and other illegal measures are not permitted in investigations²⁵, and that “[e]vidence obtained by way of force, pressure, causing suffering, inhuman treatment or other illegal methods during the inquiry and preliminary investigation is invalid and cannot form the basis of an accusation²⁶.”

However, Amnesty International remains concerned that domestic legislation does not provide for the necessary procedures and safeguards to ensure the respect for Tajikistan’s international obligations in practice.²⁷

1.3 GOVERNMENT ACTION

Senior government officials frequently state their commitment to human rights. In his speech to Parliament on 20 April 2011, President Emomali Rahmon stressed the government’s commitment to “protect human rights, the rule of law and order”.

In recent years, Tajikistan has carried out a two-phase Programme of Judicial-Legal Reform,²⁸ to strengthen the judiciary and “increase the judge’s role in the protection of rights, freedoms and legal interests of citizens, the state, organizations and institutions [...] and the knowledge, experience and responsibility [of judiciary employees]”.²⁹ A key step in this programme was the adoption of the new CPC which came into force on 1 April 2010. The new CPC strengthened safeguards against torture, for example, by introducing remand hearings and empowering judges, instead of Prosecutors, to authorize pre-trial detention and house arrest³⁰. However, as this report will show, serious shortcomings remain with regard to both the CPC’s provisions and their implementation. The second phase of the reform programme prioritizes eradicating corruption, raising judges’ salaries and introducing a new Criminal Code.³¹

President Rahmon instigated the creation of an Ombudsperson in 2007 to “further develop the process of democratization and to heighten the level of human rights protection³²”. In April 2008 the law on the Ombudsperson³³ came into force, and on 27 May Zarif Alizoda was appointed to the position³⁴. In November 2011, Zarif Alizoda was reported as saying that his powers as ombudsman were currently limited in scope but that amendments to the law were underway to allow him to follow criminal cases under investigation³⁵.

In January 2012, newly appointed Minister of the Interior Ramazon Rahimov stated his intention to crack down on law enforcement officials who were using unlawful investigation methods and ill-treatment³⁶. In 2011, Tajikistan issued an invitation to the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur on Torture) who visited the country in May 2012. Amnesty International welcomes a governmental campaign being developed at the time of writing by a governmental Working Group, headed by the Chairman of the Constitutional Court, with the aim of raising awareness of torture prevention amongst law enforcement bodies across the country.

Other steps to prevent torture include the revision in early 2012, of the Criminal Code to include a definition of torture in line with international law. In March 2012, Tajikistan also

announced its intention to implement some of the recommendations from the UN Human Rights Council's Universal Periodic Review, including ensuring access for detainees to legal and medical assistance when in custody; and amending the Criminal Procedural Code to ensure that the identity of law enforcement officers involved in arrests is recorded³⁷.

However, Amnesty International stresses that these developments, although positive and significant, are just small steps to addressing entrenched practices of torture and other ill-treatment amongst police and security services in Tajikistan.

2. THE SCALE OF TORTURE AND OTHER ILL-TREATMENT IN TAJIKISTAN

“We don’t torture, we mostly only use beatings.”

Police officer, when questioned about forms of torture during a training seminar in 2005

In Tajikistan torture and ill-treatment occur in a climate of secrecy. Detainees and their families are often afraid to talk about it and when they speak out and dare to lodge complaints the perpetrators are rarely brought to justice.

In January 2012³⁸ the Deputy Prosecutor General, Abduqodir Muhammadiev, reported that in 2011 some 26 complaints of torture and ill-treatment were registered, but only five were confirmed. He claimed this was an improvement on 2010 when 48 complaints were registered, and 13 confirmed³⁹. In January 2012, Minister of Justice Rustam Mengliev was reported as saying⁴⁰ that no cases of use of torture in penitentiary facilities were recorded in 2011. In his report on 2011, the Ombudsperson reported receiving five appeals related to torture, stating that “the issue of torture remains a challenging problem in Tajikistan”⁴¹.

However lawyers and human rights defenders in Dushanbe, Khatlon and Sughd regions told Amnesty International⁴² that they had information about far higher numbers of cases of alleged torture or other ill-treatment. A human rights activist told Amnesty International that: “People are more frightened of the police than of crime. The police is seen as a punitive body, not a protecting one”. A human rights observer reported in April 2011 that “It is very rare that someone is detained and not beaten [...] the detainee would need to be well-connected. The son of a prosecutor might enjoy the kind of treatment that everyone should get”. The lawyer Qayum Yusupov reported to Amnesty International that on 10 September 2009 he heard screams coming from the second floor of the administrative building of SIZO No. 2 in Khujand. “It was a hot day and the windows were open, so the lawyers and investigators who were waiting downstairs for their work and the relatives who were queuing to hand food parcels for detainees to SIZO personnel heard [...] a male voice shout ‘don’t beat me!’”. But the beatings evidently continued and relatives soon recognised **Tolib Juraev**’s voice. After Qayum Yusupov raised the incident with the SIZO director, the shouting reportedly stopped. The next day, on 11 September 2009, a doctor was called to attend to Tolib Juraev. “The Prosecutor’s Office of Sughd Region was informed, but nothing was done”, Qayum Yusupov said.

Monitoring projects run by national non-governmental organizations (NGOs) shed some light on the situation: A monitoring project run from June 2007 to December 2008⁴³ documented 92 cases of allegations of torture and other ill-treatment by law enforcement officials.

Another project run in Dushanbe, Khatlon and Sughd regions over 8 months of 2011 recorded 29 cases of torture and ill-treatment, the majority of these in pre-trial detention. NGOs and lawyers are adamant that many more cases go unreported.

The Charitable Association Avesto which works with rehabilitation of torture victims told Amnesty International⁴⁴ that some 30 new clients turn to them every year⁴⁵, and that torture victims treated by them, include men and women and children. In 2009 the organization worked on 69 cases; in 2010 on 72 cases. An Avesto representative informed Amnesty International on 5 September 2011 that from January to June 2011, 15 new clients had approached them for help. According to the organization, the majority reported being tortured in pre-trial detention or prison.

Between November 2003 and March 2011 the UN HRC issued 20 decisions on cases from Tajikistan, concluding that violations of the prohibition on torture or other ill-treatment had occurred in 17 of those cases. The cases covered incidents of torture which took place between 1998 and 2005, at police stations, in temporary detention facilities, in investigation-isolation facilities, at the Department for the Fight against Organised Crime of the MIA (known as the MIA Sixth Department or UBOP) and in detention facilities of the SCNS.⁴⁶ The detention facilities referred to are in Dushanbe and Khujand and other towns.

The ECtHR has also repeatedly expressed its concerns about practices of torture and other ill-treatment in Tajikistan, stating for example that “the Court is ready to accept that ill-treatment of detainees is an enduring problem in Tajikistan⁴⁷”.

In April 2011 the OSCE office in Dushanbe reported receiving complaints of torture and ill-treatment primarily from Sughd region but also from Khorog, Panjakent district and other regions.

NGOs and lawyers told Amnesty International that the perpetrators are often low ranking police officers who torture or ill-treat people during or immediately after arrest, at, or on the way to, the police station. Torture or other ill-treatment have also been reported from temporary detention facilities (izolyator vremennogo sodержaniya, IVS) in police stations under the jurisdiction of the MIA and pre-trial detention facilities (sledstvennyi izolyator, SIZO) under the jurisdiction of the Ministry of Justice where suspects are held on remand as well as detention facilities under the jurisdiction of the SCNS. By law, a person is apprehended and taken to an IVS for a period of not more than 72 hours, after which he/ she should appear before a judge at a remand hearing. The judge rules on remand in custody, an alternative measure such as bail, or release. If the judge decides to keep the suspect in custody, he/she is then transferred to a SIZO for pre-trial detention.

Based on its research, Amnesty International believes that in Tajikistan torture and other ill-treatment occur particularly in pre-trial detention, especially in IVS but also in SIZOs. Domestic law has significant shortcomings when it comes to safeguards against torture. In addition, those crucial safeguards that do exist in law, such as access to a lawyer immediately after apprehension, are rarely applied in practice.

2.1 TORTURE OR OTHER ILL-TREATMENT BY POLICE

“Unfortunately, we have some employees who don’t solve crimes with their brains but with a stick in order to get yet another promotion.”

Tohir Normatov, head of the investigative department of the Ministry of Internal Affairs, at a November 2008 OSCE seminar

2.1.1 PRESSURE TO SOLVE CRIMES

In Tajikistan the incentives for police officers to use torture and other ill-treatment are often stronger than the deterrents. Independent local sources report that most law enforcement officials continue to be unofficially assessed according to the number of crimes they solve. Such a system increases the risk of police officers holding a suspect in unofficial detention, and of using torture or other ill-treatment to obtain a confession.

A human rights observer in Khujand explained:⁴⁸ “It looks bad for police to register crimes as the country wants to have low crime statistics. Once a crime is registered it has to be solved. The more crimes an investigator solves, the better. It reflects well on his superior.”

Vecherka newspaper reported the Minister of Internal Affairs as stating that in 2011, 91 per cent of all crimes were solved⁴⁹.

Farhod Dadoboev, Nasim Salimzoda, Muhammadsharif Umarov, Ravshan Kholov and Yosin Safarov (aged between 22 and 25) were detained on 12 and 13 September 2011 on suspicion of a murder committed on 11 September in the village Khojai Alo village in Chorkuh Jamoat. They were held in the Department of Internal Affairs No. 2 (OVD-2) in Isfara, Sughd region. On 13 September all five “confessed” to murder and gave statements at the crime scene which were recorded on video. However, they later retracted their statements saying that they had been subjected to physical and psychological pressure. According to Nasim Salimzoda’s lawyer, he was not allowed to eat or sleep for three days, and was beaten in the kidneys with a truncheon. Police officers had reportedly put a plastic bag over Farhod Dadoboev’s head, and set a guard dog on one of the men. The parents of the men said that when they were at the police station they heard them screaming as they were beaten at the police station, but the police officers deny this, saying that these were other people’s screams.

A lawyer was contacted by the men’s parents on 14 September but was able to see only Nasim Salimzoda on that day. The suspects were transferred to the Department of Internal Affairs no.1 (OVD-1) in Isfara. The men reportedly stated that they were examined by a forensic medical expert on 15 September, in the absence of their lawyer, but that no report followed the examination.

At the remand hearing on 16 September 2011, the men reported that they had been beaten and forced do physical exercises (500 squats, push-ups and splits each). One of the men showed the bruises on his thigh to the judge. Reportedly the judge ignored the raised allegations of torture.

On 20 and 21 September the five men were charged with murder⁵⁰. Their families complained about the use of torture to the Regional Prosecutor’s Office and other authorities. Reportedly, on 24 February 2012 their charge changed from “murder” to “bodily harm leading to death”. On 7 March 2012 all five men were sentenced to between 10-12 years imprisonment. They are currently appealing against their sentences and are in detention in a SIZO in Khujand.

The human rights activist A.Z. believes that the assessment system based on the number of

crimes they solve is at the heart of the problem: "Senior officials think more about their own career and security than that of their country. Everything goes up the ladder. The police case investigator reports to his superior, and so on. They all want to show their 'good work' and nobody wants to dig deeper and find out the truth."⁵¹

NGOs in Tajikistan report that in addition, the routine use of torture results from the lack of technical capacity to investigate crimes, and the forensic investigation services which do not function; there are few attempts to secure evidence and little expertise. Education on criminology is reported to be principally theoretical and the Faculty of Criminology lacks the necessary equipment. NGOs report investigation staff as saying that "knocking out a confession is often the only way to solve crimes."

In 2009 a report by the national NGO Bureau for Human Rights and Rule of Law stated that "police regard the suspect as the main source of information about crime. They try to obtain information about accomplices, the circumstances around the crime from him". The report explains that police chose this option as "the necessity to elaborate different versions of the event falls away [and enables them] to save time, human and material resources, which is extremely important for police who are overwhelmed by cases."⁵²

NGOs and lawyers reported torture was being used routinely, particularly against vulnerable members of the population who are unlikely to lodge complaints. A human rights activist working in Khujand stated that "police arrest and torture homeless people and street children simply to bump up their statistics."⁵³ Several NGOs also told Amnesty International that gay men and those perceived to be gay were at particular risk of being targeted by police. Reportedly, they are often held by police for a few hours, in some cases beaten, and then released for a bribe. "I know a homosexual man who is picked up by police every time a crime happens in his area", said one representative of an intergovernmental organization working in Tajikistan.

A local independent human rights observer told Amnesty International⁵⁴ that: "people may get away without beatings in less serious cases, but in cases involving grave crimes - if they don't confess, they get beaten", adding that police "won't hesitate to resort to violence [...] They don't care who is in front of them, an old man, a woman or a juvenile".⁵⁵

2.1.2 PERVASIVE CORRUPTION

"Corruption in Tajikistan is like a spider going everywhere. You can't achieve much by just cutting off one leg. Corruption infests the whole society."

International expert based in Tajikistan, April 2011

Fattoh Saidov, director of the State Anti-Corruption Agency was reported as saying that the police force is the most corrupt government agency and that "*some police officers have no conscience at all*".

Asia Plus News Agency, April 2011

In its 2011 "Corruption Perceptions Index" the international NGO Transparency International ranked Tajikistan as the 31st most corrupt country of the 183 countries and territories assessed. The index measures the degree to which public sector corruption is perceived to exist in these countries.

Editor in Chief of the Tajikistani news agency Avesto, Zafar Abdullaev, described corruption in the law enforcement services, saying “[n]owadays several police generals and colonels[...] own big houses, expensive cars, boutiques in the centre of the capital city. [...] and this is not considered shameful despite their official salaries being a thousand times smaller than this standard of living. But unfortunately [they] don’t ask themselves whether this threatens the Ministry of Internal Affairs system“.⁵⁶

Corruption is widely accepted as rampant in Tajikistan’s criminal justice system. Senior officials have acknowledged its existence, both within law enforcement agencies and the judiciary. In June 2011 President Rahmon told⁵⁷ newly-appointed law enforcement officers and judges that corruption “diminishes the reputation and honour of judicial bodies and their employees”. President Rahmon denounced nepotism and corruption⁵⁸ at a parliamentary meeting, stating “[t]he Constitution and laws apply to the President, the President’s children and to the ordinary citizen[...] No one has any privileges”, and a Governmental strategy⁵⁹ on fighting corruption, has been adopted. However, in practice corruption remains entrenched and few effective measures have been adopted to tackle it. In a study conducted by the Presidential Centre for Strategic Studies in 2011 on perceptions of corruption, the public believed police and prosecutors to be the most corrupt officials⁶⁰.

One form of corruption particularly relevant to the matters covered in this report is identified by local journalists, human rights activists, lawyers and international experts based in Tajikistan who claim that law enforcement officers often bring charges against people in order to extract bribes from them. One representative of an intergovernmental organization explained⁶¹: “Suspects can get off or have their charges reduced if they pay police in the police station; likewise in the IVS. In cases that come to court payment is again a means to influence the outcome of a case”.

Police abuse and corruption often go hand in hand. Amnesty International is aware of reports of law enforcement officers using torture or other ill-treatment to put pressure on victims’ families to pay to get the case closed or the charge reduced. A local journalist⁶² summarized: “Torture is a means of income. Police detain, torture and charge people, and then suggest that they can be bought off.”

Poverty is widespread in Tajikistan⁶³, and many detainees and their families cannot afford to pay the required bribes. An NGO activist told Amnesty International: “A ‘House for Sale’ sign is a sure sign that the family is in trouble with the law. In towns ordinary people will sell their house or jewellery to get their relative out of prison or improve his conditions [...] In the countryside people sell their livestock.”

People with money but without influential connections are at particular risk of torture and other ill-treatment. There are frequent reports that police target migrants returning to Tajikistan from abroad.

For example, **Ismonboy Boboev**, a 30-year-old migrant labourer, returned home from the Russian Federation on 12 February 2010. On 19 February 2010 he died in custody after being apprehended by police and allegedly targeted for money. On 21 February 2010 the news agency Asia Plus reported his father as saying that he had heard of cases where officers of the MIA Sixth Department had tortured detainees and only let them go after their relatives paid a large bribe.⁶⁴

2.2 TORTURE OR OTHER ILL-TREATMENT USED IN THE CONTEXT OF NATIONAL SECURITY AND COUNTER-TERRORISM

The fight against terrorism and threats to national security are often invoked by the Tajikistani authorities as key to securing national and regional stability. However, Amnesty International is concerned that frequently human rights are violated in the pursuit of groups perceived as a threat to national security and that innocent people are caught up in clampdown operations.

Amnesty International's research indicates that particular targets are Islamic movements and Islamist groups or parties, and that people accused of being Islamist extremists are at particular risk of torture and other ill-treatment in Tajikistan. This report will present several cases to illustrate this.

Alovuddin Davlatov, known as **Ali Bedaki**, a former warlord with the United Tajik Opposition (UTO) fighters during the 1992-1997 Tajikistan civil war, was accused of leading an ambush on government forces in the Kamarob Gorge in east of Tajikistan on 19 September 2010. Officials claimed that Ali Bedaki and other fighters were killed by government forces in a shootout on 4 January 2011. However, a month later a mobile phone video appeared on the internet showing Ali Bedaki, stripped to his underpants, being held in a car by mainly uniformed men, who were apparently members of the Tajikistani law enforcement agencies. The video shows one interrogating Ali Bedaki and another holding a pistol close to his head. The video, which appears to be authentic, indicated that Ali Bedaki was not killed in combat but extra judicially executed after being apprehended.

In September 2010 an explosion occurred at the office of the MIA Sixth Department in Khujand, resulting in several deaths and injuries to over two dozen people. Following this the Tajikistani authorities redoubled their efforts to find members of Islamic movements and Islamist groups or parties who they alleged were responsible. Law enforcement officers came under increased pressure to solve cases with national security implications. A Dushanbe-based diplomat told Amnesty International that: "word went down that local security officials should clamp down on extremists and 'take their gloves off'. This wasn't said explicitly but the call for arresting anyone threatening national security was interpreted this way on the ground. Many who had been left alone for years were rearrested and tried for membership in illegal extremist organizations"⁶⁵.

In rulings relating to extradition cases of Tajikistani citizens from abroad, the ECtHR has pointed out that members of Islamic movements and Islamist groups or parties including Hizb-ut-Tahrir, are at risk, saying:⁶⁶ "There are serious reasons to believe in the existence of the practice of persecution of members or supporters of that organization [Hizb-ut-Tahrir], whose underlying aims appear to be both religious and political".

2.2.1 HUMAN RIGHTS VIOLATIONS BY OFFICERS OF THE SECURITY FORCES

Amnesty International is concerned about reports of routine torture and other ill-treatment of people detained on charges relating to national security and religious extremism, in detention facilities run by specialised MIA departments which include the Sixth Department; and ones run by the SCNS. The SCNS is responsible for counter-terrorism operations, internal security, investigating fraud, unregistered or banned groups, organizations or parties.

Although most pre-trial detention facilities and prisons were transferred from the authority of the MIA to the Ministry of Justice in 2002, detention facilities run by the SCNS, were not. Detainees reportedly are typically held in SCNS detention facilities from two to six months, although human rights defenders report that in some cases people remain in SCNS detention facilities until trial. Lawyers report that it is particularly difficult to gain access to their clients in these detention facilities.

As far as Amnesty International is aware the law establishes rules governing detention procedures which regulate the work of all law enforcement officers in Tajikistan, including those working for the SCNS⁶⁷. However, there are reports that in individual cases unofficial directives or instructions to flout detention procedures in certain more sensitive cases are issued, by senior officials in the MIA or the SCNS, which are not made public. In such cases it appears to be more difficult for a detainee to access a lawyer, or the outside world, depriving detainees of key safeguards against torture and ill-treatment.

Law enforcement officials from the MIA Sixth Department reportedly frequently use torture and other ill-treatment. "The Sixth Department is the worst. You come out dead or crippled", said one human rights activist on 7 April 2011.

Some of the cases described in Chapter 2.3 are of torture and other ill-treatment of individuals held in the context of counter-terrorism operations in detention facilities run by the MIA and the SCNS.

2.3 TORTURE METHODS

"Even years later victims of torture often have strong psychological barriers to sharing information about the perpetrators, even on a confidential basis. It all happened in the country where they continue to live and they don't feel safe there anymore."

Representative of the Charity Avesto working with torture victims

A doctor working for the NGO Avesto told Amnesty International⁶⁸ about an examination she carried out on a torture victim in February 2011:

"He didn't talk much and said nothing about torture. When I examined him I asked 'Why is the bridge of your nose broken, and your ear drums burst?' I said everything he told me would stay between us. Then he started talking. He described how he was beaten at a police station and in a SIZO in Dushanbe. Police stamped on his face; beat his bare feet with a truncheon, they undressed him and beat him on the buttocks, sprayed ice cold water on his genitals and twisted his arm to force him to testify against a friend, his alleged accomplice. They applied electric shocks to his fingers. He served eight years in prison on drug-related charges, which, he says, were fabricated."

Amnesty International has received a number of first hand testimonies about the kinds of torture methods currently practised in Tajikistan. These include: the use of electric shocks to the body, including the genitals; pouring boiling water on a detainee's head; drenching with cold water; attaching plastic bottles filled with water or sand to the detainee's genitals; burning with cigarettes or chemicals. Beating with batons, truncheons, sticks, and kicking and punching are also reported as common. There were frequent reports of methods that are painful but which do not cause visible injuries, for example by hitting with plastic bottles filled with water.

Human rights defenders report cases of rape and threats of rape in relation to both female and male detainees. Cases of psychological torture are also reported. Lawyers reported cases where male detainees were briefly shown their mothers, wives, sisters or daughters who had been brought to the detention centre and were then told that they would be taken to another room where they would be raped. Amnesty International is not aware of any cases of this kind where this threat was actually carried out, but such a threat in such circumstances amounts to psychological torture of both the women and the men concerned. Other forms of psychological torture, such as blackmail, humiliation and insult, were also reported as common techniques to put pressure on detainees.

Representatives of the NGO Avesto told Amnesty International that they frequently encountered the following symptoms in torture victims: burst ear drums, broken teeth, broken noses; dislocated jaws; loss of function in fingers after electro-shock torture, and post-traumatic arthritis. Other symptoms included post-traumatic stress disorders such as depression, chronic insomnia, nightmares and emotional instability.⁶⁹

Twenty-eight year-old **Bahromiddin Shodiev** was detained on 19 October 2011 on suspicion of theft. He was reportedly held at the Shohmansur police department in Dushanbe for three days, before being taken, unconscious, to the National Medical Centre where he underwent emergency surgery. Bahromiddin Shodiev reportedly regained consciousness and told his mother that he had been badly beaten by police officers in order to force him to confess to crimes he did not commit. He said that he was given electric shocks while his mouth was covered with tape so no one could hear his screams. Bahromiddin Shodiev died on 30 October 2011. The MIA Press department claimed at first that Shodiev had thrown himself out of the second floor window during the interrogation. A criminal investigation was opened against three police officers for negligence resulting in death⁷⁰. All three were dismissed. The senior officer of the three was charged and a court case opened against him on 17 February 2012. However, at the time of writing the case has been sent for further investigation.

3. INADEQUATE SAFEGUARDS AGAINST TORTURE

Persons taken into custody are always at risk of abuse by the state's coercive powers, including torture and other ill-treatment; the greater the isolation of detainees from the outside world the more this risk increases. Essential safeguards to protect detainees from torture or other ill-treatment therefore include: the right to have a relative or third party of their choice informed of their detention; the right of access to a lawyer; and the right to a medical examination by a doctor of choice.

Because torture and other ill-treatment can begin very quickly after apprehension - or even at the point of apprehension it is important that these safeguards take effect without delay. Moreover in order for the right to these safeguards to be effective, it is essential that detainees are informed immediately of these and other rights applicable to them in detention.

Amnesty International considers that the establishment in law and practice of clear detention procedures providing these and other safeguards such as notifying detainees of their rights at the moment of detention, informing family members, contacting a lawyer and registering the detention and maintaining proper detention records would provide key safeguards against torture and other ill-treatment in custody. However, Amnesty International's research indicates that in Tajikistan both in law and in practice, provision of these safeguards falls short of the country's international obligations. This chapter describes these shortcomings.

3.1 INCOMMUNICADO DETENTION

"Torture is most frequently practised during incommunicado detention [and] incommunicado detention should be made illegal"

UN Special Rapporteur on Torture⁷¹

Amnesty International's research indicates that most instances of torture and ill-treatment in Tajikistan occur before a suspect is formally detained, i.e. before the detained person is registered at a police station.

Under international law a person is considered detained from the moment when he or she is deprived of their liberty and prevented from leaving a place by order of a public official⁷².

The CPC provides that once a person is deprived of their liberty, they should be taken to a police station and that a detention record should be drawn up within three hours of their arrival there⁷³. The detention record should specify the date, place and time of apprehension. Once the detention record is completed, the rights of the detainee should be explained⁷⁴, which include the right to know what he/she is suspected of⁷⁵, the right to a lawyer⁷⁶, the right to give evidence in the presence of a lawyer, and the right to decide whether or not to give evidence or statements⁷⁷ during interrogation. Interrogation of the detainee must take place within 24 hours of detention⁷⁸. Within 72 hours of detention, a remand hearing must take place where the judge rules on the legality of the detention and decide if the detainee

should be remanded in custody and transferred from the IVS to a SIZO, or alternatively be released.

However, a main shortcoming of the CPC is its failure to define the precise moment when a person is considered to be detained. Article 91.1 of the CPC states that detention of a person “consists of taking him to a criminal prosecution body and temporary custody in specialized locations defined by law.” Human rights defenders and lawyers report that law enforcement officers and courts often therefore consider that detention begins only once it is officially registered. Until a person who has been apprehended on suspicion of having committed a crime is officially registered with the procedural status of suspect, he or she is not entitled under domestic law to any procedural rights such as access to medical or legal assistance, to notify family members or have them notified, to be informed of these and other rights, all key safeguards against torture and other ill-treatment.

International standards are clear that any person should, at the moment of their arrest and at the commencement of detention, or promptly thereafter be given information on and an explanation of their rights and how to exercise them⁷⁹. But the CPC stipulates that police officers are only required to inform detainees of their rights⁸⁰ once the detention is registered. Although the law requires detention to be registered within three hours of a person being taken to a police station, in practice, this often happens much later. The CPC also crucially fails to specify a time frame within which law enforcement officers must take a person to a detention facility. The lawyer Alisher Majitov explained what this means in practice: “a detainee can be driven around in a police car for a long time without being informed him of his right to a lawyer [...] and the right to remain silent⁸¹”.

Amnesty International is concerned that the current system allows for routine arbitrary detention for indefinite periods of time at the discretion of the detaining authorities without access to the safeguards against torture and ill-treatment. This is not simply a legislative problem but a practical one leading to the torture and other ill-treatment of people in the early stages of detention.

Amnesty International urges the Tajikistani authorities to amend the CPC to stipulate that the detention must be registered at a police station within three hours of the deprivation of liberty, and that detainees’ procedural rights should be explained at the moment when they are deprived of their liberty.

In November 2010, **Ilhom Ismonov** was apprehended on suspicion of participation in a criminal group, and kept in unacknowledged detention for seven days in the building of the MIA Sixth Department of Sughd region, during which he alleges that he was tortured. When Ilhom Ismonov’s wife and lawyer complained to the Sughd Regional Prosecutor about this, the General-Lieutenant of Justice Yusuf Rahmonov⁸² replied dismissing allegations that Ilhom Ismonov had been illegally detained, and arguing that “even if the examination of materials related to his links to terrorist groups and terrorist crimes was delayed, in reality, Ismonov was not entered into an IVS and he was not illegally detained, but was held in the building of the Department for the Fight against Organized Crime”. In other words, in his view, Ilhom Ismonov was not detained because he was held at the Sixth Department rather than at a temporary detention facility and because he was not registered as a detainee. A possible explanation for this logic could be a narrow interpretation of Article 91 of the CPC. Amnesty International maintains, however, that Ilhom Ismonov was detained from the moment he was deprived of his liberty and that the Prosecutor’s interpretation of the definition of detention was erroneous.

Amnesty International is concerned that the delayed registration of Ilhom Ismonov's arrest deprived him of crucial safeguards against torture to which he should have been entitled and that he was arbitrarily detained.

Amnesty International has examined cases where the exact time of apprehension was not recorded and cases where the detention was not registered for several days. A senior investigator of Sughd Regional Department of Internal Affairs admitted:⁸³ "Arresting officers often don't fill in the detention record. When they don't do it, we do it. When I fill in the record I fill in the time when I start work on the case, not the time of the actual detention."

A human rights defender in Sughd region confirmed: "The investigator dealing with the case fills in and signs the registration journal. This is not usually the officer who carried out the arrest."⁸⁴

A lawyer in Qurghonteppa in the Southern Khatlon region told Amnesty International of a case where a man was held in an IVS for 28 days without any documentation being drawn up: "Whenever the lawyer came to gain access the police said 'you can't see him yet, he is not yet formally detained'. His family came every day to pass food to him. Later, when he was released, he found out that he had lost his job and had no way of proving he had been in police custody."⁸⁵

Amnesty International is concerned that in such cases people deprived of their liberty are in de facto incommunicado detention at the discretion of the detaining law enforcement officials. Until their detention is officially registered they are outside the protection of the law and without adequate protection against torture or other ill-treatment.

Based on its monitoring in 2010 of 55 court hearings ruling on detention measures, the NGO Human Rights Centre reported that in only 12 cases did judges try to establish the exact time of apprehension. In most cases they relied on information about the time of detention provided by the police investigator, even when the detainees claimed that they had been detained before the recorded time⁸⁶. A case which illustrates that incommunicado and unrecorded detention can provide a context for torture and ill-treatment is that of Mirzokhon Karimov.

Mirzokhon Karimov⁸⁷ was held in police custody in the town of Norak in Khatlon region from 13 to 15 June 2009 without access to a lawyer. He claims he was severely beaten by the three senior police officials, whom he identified, in order to get him to confess to drug possession. He recalls how "when the others left, [one of them] stayed with me until after 1.00 am, beating, kicking and hitting me." Mirzokhon Karimov spent the night handcuffed to the leg of a bed in the duty division office. The next day, the beatings continued and when Mirzokhon Karimov still refused to confess, he says he was handcuffed into a car by one of the officers who had beaten him the day before, driven to Dushanbe and left in the car in 40 degree heat while the police officers went for lunch with their relatives. "On 15 June I was beaten again near the windows [...] of the first floor. I suddenly saw my wife outside, looking for me. I was so ashamed she might see me being beaten that I tried to hide." He reported that he was beaten so severely that day that he could not stand it, and signed a confession stating he had bought the drugs which he alleges were planted on him for his personal use. "I'm not Rambo" he allegedly told the investigator when asked why he had signed the confession, "they beat me so hard".

On 15 June 2009 the case was passed to the investigator, who took him to Norak Prosecutor's office to make a

statement about police abuse. The Prosecutor reportedly told him that the “procedural violations were a disgrace”, added a note to his file that the confession was not given freely, and authorized his release. A forensic medical examination concluded that Mirzokhon Karimov had a “closed skull-brain injury”, concussion and bruising, sustained by heavy blunt objects.

Two of the police officers involved in his ill-treatment were reportedly sentenced to five years’ imprisonment for abuse of authority and exceeding official powers⁸⁸ but were later released under an amnesty. Mirzokhon Karimov continues to demand reparation and compensation for his illegal detention and ill-treatment. He wrote to the General Prosecutor on 15 May 2011 but has not received a reply at the time of writing. A case investigator reportedly⁸⁹ advised him give up applying to the authorities, saying “You’re free – just be glad about that”.

3.2 USE OF ADMINISTRATIVE ARREST AS A COVER FOR UNOFFICIAL CRIMINAL INTERROGATIONS

Amnesty International is concerned at reports of police making use of administrative arrest to prolong the detention of criminal suspects without a lawyer or other procedural safeguards. In certain cases police have reportedly apprehended people for allegedly violating the Administrative Code (for example, for resisting official authority) as a pretext for keeping them in official custody. They can be detained for administrative violations for up to 10 days, during which time police allegedly obtain confessions or information from them, after which they often register administrative detainees as criminal suspects. While a person is in administrative detention they currently do not benefit from procedural guarantees such as the right to appeal against detention measures and the right to see a lawyer. The Tajikistani authorities are thus using administrative detention to avoid judicial review of the legality of detention.

The UN Special Rapporteur on Torture, in his general recommendations to states on measures to combat torture and other ill-treatment, has stated explicitly that: “Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention”⁹⁰.

In March 2012, Tajikistan accepted recommendations from the UN Human Rights Council at its Universal Periodic Review to revise the Code on Administrative Offences⁹¹ to ensure administrative detainees the same rights to challenge the lawfulness of detention as those arrested for criminal offences. Amnesty International urges Tajikistan to implement this undertaking and make these reforms without delay.

3.3 DETENTION OF PEOPLE “AS WITNESSES”

Amnesty International has received reports of law enforcement officers summoning a person informally as a “witness” or a “victim of crime” or simply “for a conversation”. By law⁹², a witness can be compulsorily brought before a police investigator if he/she fails to do so voluntarily, but cannot be detained⁹³ unless he/she is suspected of committing a crime. In these cases there is no registration of the person being present in a police station, and witnesses have no access to safeguards to which detainees are entitled under domestic law. Amnesty International has heard of cases where police detain witnesses which is illegal and amounts to arbitrary detention according to the UN Working Group on Arbitrary Detention’s

criteria⁹⁴. The organization reminds the Tajikistani authorities that as soon as a person is deprived of his/her liberty they must be considered detained.

3.4 DELAY IN ACCESS TO LEGAL COUNSEL

“Investigators are constantly running away from lawyers”

Human rights defender, Khujand⁹⁵

“The usual scenario is that a person is taken to the police station, they are beaten or tortured to get the necessary testimony or confession, the police fill in the detention record and only after that do they contact a lawyer. When the lawyer comes he is not really needed anymore as the person already confessed to everything.”

A lawyer from Qurghonteppa⁹⁶

Nematillo Botakozuev, a Kyrgyzstani human rights defender, went missing in Dushanbe on 26 February 2010. Weeks later it became known that he had been detained at the SCNS after visiting the office of the United Nations High Commissioner for Refugees to apply for refugee status. During this time Nematillo Botakozuev had no access to a lawyer and his relatives did not know his whereabouts. Human Rights Watch stated that “[w]hen a source known to Human Rights Watch finally saw him in mid-March, Nematillo Botakozuev appeared to have been tortured⁹⁷. He was reportedly denied appropriate medical treatment. Nematillo Botakozuev was wanted by the Kyrgyzstani authorities for his alleged involvement in a demonstration in the town of Nookat in 2008. He was extradited to Kyrgyzstan in May 2010 and released by a court in the city of Osh after two weeks, having reportedly been warned by state security agents not to undertake human rights activities.

Although domestic law⁹⁸ reflects international standards⁹⁹ in allowing detainees access to a lawyer, from the moment of detention¹⁰⁰, in practice the lack of a clear definition of the moment of detention in the CPC means that lawyers' access to their clients is often significantly delayed. The CPC¹⁰¹ stipulates that law enforcement officers are only obliged to inform detainees of their right to see a lawyer, once the detention record is drawn up, which should take place within three hours of arrival in the police station but in practice often happens much later. The CPC provides that a suspect must be questioned “without delay and within 24 hours of apprehension¹⁰²” but contains limited references to a suspect's procedural rights. It states that a lawyer is entitled to be present at interrogations at the request of the detainee or the lawyer¹⁰³, but in practice, in many cases, lawyers are not permitted timely access to their clients and so initial interrogations take place without them. Amnesty International takes the view that detainees should be informed of their basic procedural rights including the right to a lawyer at the moment of apprehension. In addition, the CPC should be amended to stipulate that a lawyer is entitled to be present at all interrogations and that a detainee should not be interrogated until he/she has had access to a lawyer¹⁰⁴. The CPC should also stipulate that evidence obtained from interrogations of a suspect which have taken place without a lawyer present should not be admissible in court.

Lawyers in Tajikistan told Amnesty International that investigators find different pretexts to delay access, and said they were usually only able to see their client three to five days after apprehension. Several lawyers reported that investigators denied them access until the detention has been registered, which is a problem when registration of detention is routinely delayed. Others reported first seeing their clients at the remand hearing, which, according to domestic legislation¹⁰⁵, should take place within 72 hours of apprehension. Amnesty

International is, however, aware of cases where lawyers were denied access for significantly longer than 72 hours after the deprivation of liberty.

Lawyers in Dushanbe, Khujand and Qurghonteppa told Amnesty International that they were not allowed to see their clients in detention facilities without obtaining prior permission from police investigators and that officials refer to outdated legislation or internal regulations to justify this. In June and July 2011 Amnesty International wrote to the MIA, the Ministry of Justice, and the Prosecutor General to ask for information about any internal regulations governing lawyers' access to clients in detention but had received no reply by the time of writing.

Lawyers report that in practice access to their clients depends on the goodwill of individual officials. "We have to get written permission to meet our client from the investigator, the prosecutor or the judge, depending on the stage of the case. We need separate permission for each visit. Or we have to go along with the investigator or prosecutor", explained a lawyer from Qurghonteppa¹⁰⁶.

On 22 July 2011 a group of Jehovah's Witnesses including four children aged two to 13 were reportedly held in detention without access to a lawyer in a police station in Shohmansur district in Dushanbe. Their lawyers tried unsuccessfully to gain access to their clients, despite appealing to the Shohmansur District Prosecutor. Two of the women and the children were released from custody at 2am on 23 July, following five hours of questioning and after signing documents stating that one of the group, **Sherzod Rahimov**, was giving them religious instruction. Sherzod Rahimov, a disabled man of Uzbek nationality alleges he was subjected to beatings and threatened with electric shocks to get him to renounce his faith¹⁰⁷. He spent the night on the floor of the police station because the temporary detention facility would not admit him due to his disability. Sherzod Rahimov and **Surayo Ismoilova** were taken to the SCNS for questioning on 23 July. Their lawyers were again refused access by the SCNS. One woman was subsequently fined by Shomansur District Court without being allowed to familiarise herself with the charges against her. Her lawyers were unable to access the court documents. Sherzod Rahimov was charged with illegal religious activity and violating passport regulations and expelled to Uzbekistan on 17 August 2011.

This report concentrates on the early stages of detention, but lawyers told Amnesty International that access to detainees throughout pre-trial detention was also a major problem.

In March 2012 Tajikistan accepted recommendations from the UN HRC on the occasion of the Universal Periodic Review that detainees should be ensured prompt access to a lawyer from the time they are taken into custody. Amnesty International urges the Tajikistani authorities to amend the CPC to reflect this and to take immediate steps to ensure that the right to a lawyer is enforced in all places of pre-trial detention in practice, without exception. All law enforcement officials should be informed of this by internal circulars which make it clear that disciplinary measures will be taken against officers who violate the procedural rights of detainees.

Asad Shukraliev was apprehended by police on suspicion of theft of livestock in Shahrison, Sughd region on 27 January 2011. However, police files state he was detained on 1 February. On 2 February Asad Shukraliev's 61-year-old uncle **Akhmad Sadiev** was brought into the police station and held until 6 February, without access to a lawyer or being allowed to inform his family. **Nazarqul Holiqulov (Kholikulov)** was also arrested as

a suspect in the same case and taken into custody on 16 February 2011. He reportedly died in the evening of 17 February, allegedly following torture by police. Asad Shukuraliev and Akhmad Sadiev report that they were ill-treated while in incommunicado detention to force them to confess. Reportedly, this included police threats to bring Asad Shukuraliev's daughter to the police station to rape her.

On 23 February, lawyers for Akhmad Sadiev and Asad Shukuraliev drove from Khujand to Shahrison to request access to their clients in the local SIZO, but permission was refused. On 28 February the Head of the Sughd Regional Police Investigative Department telephoned the Investigator in Shahrison urging him to ensure the lawyers' had access to their clients. On 2 March the lawyers drove to Shahrison again and saw the investigator enter the police station, but were told by his colleagues that he was not in the office. The lawyers went to the district's prosecutor's office but officials there could not find the investigator either. They then went to the head of the police station of Shahrison, who told them that the investigator had gone home "for family reasons" and that they could not see their clients in his absence. After complaints were made to the regional prosecutor's office the lawyers were eventually allowed to see their clients for the first time on 14 March, over a month from the time of detention.

In January 2012, the General Prosecutor ordered an investigation into the allegations of torture and ill-treatment and ordered the exhumation of Nazarqul Holiqulov's body. A criminal investigation into the activities of a senior law enforcement official of Shahrison Branch of the MIA Department of the Fight against Illegal Drug Trafficking is ongoing at the time of writing. The officer is accused of exceeding official responsibility¹⁰⁸, and using violence and weapons with serious consequences.

At his trial Asad Shukuraliev was sentenced to six years' imprisonment and is still in detention. Akhmad Sadiev was also sentenced to six years' imprisonment but was released from detention under an amnesty in view of his old age.

Lawyers who complain about procedural violations or who are perceived by the authorities as being too persistent in assisting their clients to make complaints about alleged torture or other ill-treatment often find themselves put under pressure. "When a lawyer starts complaining he'll get into conflict with the investigator", reported one lawyer¹⁰⁹. Several lawyers in Tajikistan told Amnesty International that in such cases police often put pressure on the detainee to renounce the lawyer and engage somebody more timid. This practice is not limited to cases involving allegations of torture or other ill-treatment or other procedural violations.

3.4.1 DENYING AND DELAYING ACCESS TO LEGAL ADVICE IN MIA SPECIALIST DEPARTMENTS AND SCNS FACILITIES, OFFICES AND INTERROGATION ROOMS

BBC journalist **Urunboy Usmonov**, aged 59, had no access to a lawyer for a week after he was apprehended by officers of the SCNS in Khujand on 13 June 2011.¹¹⁰ His detention was not registered until 14 June. His family instructed a lawyer on 15 June but in blatant violation of Tajikistani law¹¹¹ and international standards, the SCNS investigator delayed access and the lawyer was only able to see him on 20 June.

On 18 August, two days into his trial for allegedly being a member of the banned Hizb-ut-Tahrir party¹¹² and conducting extremist propaganda using the internet, Urunboy Usmonov told the judge of the Sughd Regional Court that he had been tortured in the early stages of detention, including by having his arms burnt with cigarettes. Urunboy Usmonov claims he was forced under torture by SCNS officers to renounce the services of a lawyer, and was told that lawyers were of no use in political cases. At Urunboy Usmonov's trial, SCNS officers

confirmed that no lawyer had been present when he had renounced legal assistance, but denied torture and delay in registering his detention. On 14 October 2011, Urunboy Usmonov was found guilty and sentenced to three years' imprisonment but released immediately under an amnesty. The Supreme Court recently upheld the verdict¹¹³.

Urunboy Usmonov maintains that his contact with Hizb-ut-Tahrir was in order to report on the causes for the party's increasing popularity. Amnesty International maintains that he is innocent and that he was targeted for his legitimate work as a journalist and for peacefully exercising his right to freedom of expression.

Lawyers report that gaining access to clients held at SCNS-run detention facilities is the biggest challenge. A lawyer in Khujand told Amnesty International¹¹⁴: "The SCNS is a closed system. The prisoners are in the basement and lawyers really have to be persistent to get access. You have to go there several times. Investigators hide from you and don't answer their phones." Amnesty International learnt of detainees who were held in SCNS-run detention facilities for several weeks without access to legal counsel.

The practice of holding detainees in facilities under the jurisdiction of their investigators and interrogators for protracted periods of time contradicts international standards. For example, the Special Rapporteur on Torture has stated: "Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted".¹¹⁵

Ilhom Ismonov and Zafar Karimov (see below) were among a group of 53 people arrested on suspicion of membership of the banned armed Islamic Movement of Uzbekistan (IMU) group and involvement in a criminal group after explosions at the MIA Sixth Department in Sughd region, on 3 September 2010. The explosions resulted in several deaths and injuries to over two dozen people.

Ilhom Ismonov was apprehended in Sughd region on 3 November 2010, and held in incommunicado detention. When his wife found out that he was in the MIA Sixth Department she hired a lawyer, who tried to visit him only to be told by police that "no case has been opened yet, we are just talking to him". On 5 November Ilhom Ismonov's wife returned with a lawyer from the Centre for Human Rights in Sughd region. They were denied access, but a policeman asked them to bring some ointment to treat Ilhom Ismonov's legs. On 6 November Ilhom Ismonov's wife saw him and reported that his hands had been burnt by electric shocks and several cuts on his neck. Ilhom Ismonov's lawyer was able to see him for the first time at the remand hearing on 11 November, eight days after he was apprehended.

In a letter to Ismonov's wife, the Sughd Regional Prosecutor stated that "Ismonov had access to a lawyer from the time when a criminal case was instigated and he was detained and brought before the court." This statement highlights the lack of clarity as to the moment in the criminal procedure when a detainee is entitled to legal advice and assistance. On 13 November 2010, in his ruling on Ilhom Ismonov's detention in custody, the Judge of Khujand Court acknowledged that he had been held in detention for several days before being taken on 10 November 2010 to the Sughd Prosecutor's department where detention protocol was filled in within three hours of arrival there. The Judge ruled that there had been a violation of the CPC by the personnel

of the MIA Sixth Department in Sughd region, as the place and time of apprehension had not been recorded in the detention records.

On 11 September 2010 **Zafar Karimov** was detained by officers of the SCNS in Sughd region on suspicion of IMU membership and involvement in the 3 September 2010 explosions¹¹⁶.

His lawyer requested access to his client on 23 September but saw him for the first time on 28 October 2010 at the remand hearing at Khujand City Court. "We met in the court room in the presence of SCNS officers, guards and the prosecutor and they made it impossible for us to talk to each other. I petitioned the judge in vain not to extend his pre-trial detention based on the fact that I had not been present at interrogations or investigative activities and I had not been given permission to meet my client" the lawyer told Amnesty International¹¹⁷. The judge ignored these requests. After the remand hearing the lawyer was not able to contact the investigator to get permission to see his client. "I was always told that [he] wasn't there. He did not answer telephone calls and avoided me". Zafar Karimov was reportedly held at the IVS of the SCNS in Khujand for nearly two months before being transferred to SIZO No. 2 in Khujand. He alleges that he was subjected to torture and ill-treatment during this time. His lawyer reported that in December 2010 the Head of the Investigative Department of the SCNS in Sughd region was replaced, and he suddenly gained unrestricted access to his client.

At the trial at Sughd Regional Court in July 2011, the defendants told the judge that they had been tortured to get them to confess to the charges against them. Several other defendants made similar complaints. The court sessions were declared closed to the public on 8 August 2011 until the trial concluded and the judge did not order an investigation into the allegations of torture. Amnesty International has received information that the Judge of the Sughd Regional Court passed sentence on some of the co-defendants involved in the case on 23 December 2011. Reportedly, the defendants' lawyers were absent and only members of the Sughd Regional SCNS were present. The defence lawyers were only given a copy of the court verdict one month after the sentencing and after intervention by the Ombudsperson with the Council of Justice. At the time of writing, the relatives of the accused have not yet received the full Court records which are needed to lodge an appeal. The legal deadline for lodging an appeal passed on 23 February 2012. Ten of the 53 defendants were reportedly found guilty of involvement in the explosions, and others of participation in extremist groups. The families of those sentenced in the trial continue to demand a thorough impartial investigation.

3.4.2 RIGHT TO UNRESTRICTED AND CONFIDENTIAL COMMUNICATION WITH LAWYER

International law clearly sets out a suspect's rights to confidential communication with the defence lawyer. The UN HRC has explicitly stated that: "The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications¹¹⁸.

However, Amnesty International is aware of many cases where lawyers have not been able to communicate confidentially with their clients¹¹⁹. A defence lawyer told Amnesty International¹²⁰ that in the IVS police officers often stay in the room, ostensibly "to protect the lawyer" and that it is often impossible to meet with a client confidentially. Some lawyers reported they suspect SCNS investigations rooms where lawyers meet clients are sometimes bugged. International guidelines stipulate that interviews with lawyers can be in sight, but

not within the hearing of a law enforcement official¹²¹.

A variety of tactics are reportedly employed to discourage lawyers from seeing and briefing their clients. For example, Ilhom Ismonov was taken to Isfara on 26 January 2011 as part of the criminal investigation. His lawyer was notified about the visit too late to be able to participate herself. During the reconstruction, Ilhom Ismonov alleges he was beaten by law enforcement officers at the local police station in Isfara.

In June and July 2011 Amnesty International wrote to the Head of the SCNS and the Prosecutor General requesting information about the existence of specific criteria for decisions on lawyers' access to people detained in SCNS facilities, but has received no reply at the time of writing.

3.5 NOTIFICATION OF FAMILY AND VISITS

The UN HRC has stated that people arrested or detained on a criminal charge must be permitted to contact their families "from the moment of apprehension"¹²² and has called for "mandatory notification of relatives of detainees without delay"¹²³. Similarly, Rule 92 of the UN Standard Minimum Rules states that "[a]n untried prisoner shall be allowed to inform immediately his family of his detention". Principle 16 of the UN Body of Principles For The Protection of All Persons Under Any Form of Detention or Imprisonment states that promptly after arrest a detained person shall be entitled to notify or to have notified his family or others of his choice of his arrest. Such a notification should be made without delay. The Committee against Torture has repeatedly recommended that family members be contacted from the moment of detention¹²⁴, and specifically recommended that Tajikistan "adopt measures to ensure detainees prompt access to lawyer, doctor and family members from the time they are taken into custody"¹²⁵.

By law¹²⁶, detainees in Tajikistan have the right to inform family members about their detention and whereabouts within 12 hours of apprehension. This can be done either by the detainee or by police. In his 2010 report, the Ombudsperson reported receiving appeals from relatives indicating that this time frame is not always adhered to in practice. Non-governmental sources in Tajikistan report many cases where relatives were notified late or not at all, especially in cases where detention records were not completed on time.

In Tajikistan, relatives play a key role in finding a defence lawyer and therefore prompt notification of family is an important safeguard against torture.

International law¹²⁷ stipulates that a detainee should also be allowed to inform family members after each transfer to a different detention facility. Domestic law in Tajikistan does not allow detainees the right to notify their lawyers and families of transfers between pre-trial detention facilities or of their removal from detention facilities for the purpose of conducting investigative activities. Nor are law enforcement officers under an obligation to inform the relatives. The CPC should be amended to ensure families and lawyers are notified in advance of any transfers of detainees.

3.6 INSUFFICIENT AND DELAYED MEDICAL EXAMINATIONS

International standards¹²⁸ call for detainees and prisoners to be offered a medical examination as soon as possible after admission to a place of detention as an independent

medical examination is a vital safeguard against torture. The UN HRC has emphasized the need “to have suspects examined by an independent doctor as soon as they are arrested, after each period of questioning and before they are brought before the examining magistrate or released”¹²⁹. In November 2006, the Committee against Torture recommended Tajikistan “[c]onsider the establishment of a health service independent from the Ministries of Internal Affairs and Justice to conduct examinations of detainees upon arrest and release, routinely and at their request, alone or together with an appropriate independent body with forensic expertise”. In addition, steps should be taken to ensure the ability of doctors employed by the state to act independently in recording and reporting signs of ill-treatment in accordance with medical ethics.

In March 2012, Tajikistan supported recommendations¹³⁰ to ensure detainees have prompt access to a doctor and independent medical examinations upon apprehension. Amnesty International urges the government to implement this without delay and to conduct a thorough review of the internal regulations governing temporary detention centres (IVS) and pre-trial detention facilities (SIZO) to ensure this happens in practice.

Medical examinations upon admission to police stations and IVS detention facilities: Despite the adoption in June 2011 of the Law “On Detention Procedures and Conditions of suspects, accused persons and defendants”, which provides for medical examinations upon admission to a place of detention, in practice there are no routine medical examinations upon admission to police stations and temporary detention facilities (IVS). These facilities have no medical services.

Lawyers and NGOs reported that sometimes police called in a trusted doctor “for a quick fix” in emergency cases. Lawyers in Khatlon region said that police sometimes called an ambulance but put pressure on medical personnel not to record that injuries were sustained from torture¹³¹.

Medical examinations upon admission to SIZOs: When detainees are transferred to SIZOs under the jurisdiction of the Ministry of Justice they undergo a medical examination by prison doctors, who are employees of the Ministry of Justice. But, according to a lawyer in Khujand, detainees are often afraid to tell SIZO personnel about torture or ill-treatment by police, and medical personnel rarely ask about the cause of injuries and the treatment in detention. Detainees are reportedly unaware that police stations and temporary detention facilities belong to the MIA and that, when entering the SIZO, they are transferred to a facility under the jurisdiction of the Ministry of Justice.

Lieutenant Colonel Olimjon Saidolimov, Head of the Department for Correctional Affairs of Sughd Region, who is in charge of all detention facilities under the Ministry of Justice in the region, told Amnesty International¹³²: “Medical personnel have to examine every new detainee to make sure there was no torture. Anyone with injuries is taken to hospital by police.” However, lawyers claim that it is common practice for SIZO personnel to return detainees with injuries from the SIZOs to the IVS police custody until the injuries are no longer visible. Lieutenant Colonel Saidolimov explained record-keeping procedures: “In cases where we don’t admit prisoners the doctors do not record this [the case details] because the prisoners are not in their care at this stage. Perhaps the police make a record of it [the injuries] or perhaps not – it is not within our remit.” Asked what the SIZO administration

does when doctors find injuries upon admission, he was categorical: “Then we immediately inform the Prosecutor’s Office; that is, if there were such cases, but there aren’t any.”

A lawyer told Amnesty International¹³³ that despite legislation obliging SIZO personnel to carry out medical examinations when people are admitted to SIZOs, these remained at the discretion of the duty officer: “If he is a responsible person, he’ll do it but sometimes they make a deal with the investigator.” Amnesty International is concerned at these reports of SIZO personnel apparently refusing to admit detainees with injuries as this is where they should be held once a judge has authorised their continued pre-trial detention.

The CPC does not require medical personnel in SIZOs to examine detainees when they are moved in and out of the facilities for reconstructions or other investigative activities. Lawyers confirmed that there are no routine medical checks when people are moved in and out of SIZOs.

Medical investigations into cases of alleged ill-treatment: In addition to routine medical examinations, when there is reason to believe that a prisoner has been ill-treated, the prisoner should be given an immediate medical examination by a doctor who is able to make an accurate report without interference from the authorities¹³⁴. The UN HRC has called for medical examinations to be “automatically provided following allegations of abuse”¹³⁵.

The Committee against Torture recommended Tajikistan in November 2006 to “ensure that [...] independent medical expertise be provided at the request of detained persons rather than solely when permitted or requested by officials”.

The 2010 CPC¹³⁶, however, requires lawyers and detainees to request the investigator’s permission for medical examinations, although forensic examinations are obligatory to establish the cause of death and the nature of the injuries¹³⁷. The investigator must order an examination if it is of relevance to the case¹³⁸. The CPC does not specify how quickly the medical examination must be conducted once the request is made.

The investigator has five days to respond and provide written grounds in the case of refusal. A refusal can be appealed to the prosecutor who examines the request within three days, or seven days in exceptional circumstances. There are legitimate concerns amongst Tajikistani human rights defenders that the extra time for the Prosecutor’s review will mean in practice that physical traces of ill-treatment will have disappeared and complicate the process of proving ill-treatment.

In practice, in cases where police investigators give permission for medical examinations they are often carried out after a significant delay when the injuries have already disappeared.

During trials, judges can order forensic medical examinations if they feel it is necessary¹³⁹ or if one of the parties in the trial requests it. However, they very rarely do so.

On 6 November 2010 **Ilhom Ismonov**’s wife briefly saw her husband and saw signs of electric shocks and cuts on his neck. Before she was able to look closely at his legs, officers stopped the meeting and escorted her out.

Later that day Ilhom Ismonov’s wife submitted complaints to officials requesting a forensic medical

examination. Ilhom Ismonov's lawyer sent similar requests on 9 and 10 November. On 15 November Amnesty International issued an Urgent Action calling for a prompt, thorough and independent investigation.¹⁴⁰

On 10 November Ilhom Ismonov was reportedly transferred from the MIA Sixth Department in Khujand to the IVS in the town of Chkalovsk, Sughd region. The head of the facility reportedly told Ilhom Ismonov's family that a doctor had examined him on 11 November. However, no documentation was given to the family or the lawyer. Ilhom Ismonov's wife told Amnesty International: "He was so unwell, he was hardly able to walk, so they called in a doctor. The IVS director told us about it; we had to pay 50 somoni for medicine. I think my husband was in such bad shape that the SCNS didn't want to admit him to their detention facility. So the Sixth Department found another solution by transferring him to the IVS, where they treated him a little."

On 22 November Ilhom Ismonov was transferred to SIZO No. 2 in Khujand. Eventually, a forensic medical examination was conducted, but with a significant delay. The forensic expert concluded on 27 November that "no physical injury was found on Ismonov's body".

Amnesty International has credible information on cases involving allegations of torture or other ill-treatment which were raised in court, but where forensic medical examinations were not ordered.

For example, to Amnesty International's knowledge no forensic medical examination has been conducted to investigate the allegations that BBC journalist **Urunboy Usmonov** was tortured and ill-treated at the early stages of detention. Fayzinisso Vohidova, Urunboy Usmonov's lawyer, was reported by the news agency Asia Plus on 22 August 2011 as saying that the judge at Khujand City Court who conducted the remand hearing on 15 June "should have seen the injuries resulting from torture on Usmonov. He had an open wound at his eyebrows and burns on his hands, but the judge didn't even ask him about the origin of these injuries."

The Ombudsperson is entitled to order investigations during his examination of complaints from individuals¹⁴¹. Senior officials at the office of the Ombudsperson confirmed to Amnesty International¹⁴² that this also covers forensic medical examinations, but added the Ombudsperson had not yet made use of this right.

Amnesty International wrote to the Head of the SCNS in July 2011 to ask if the SCNS has its own medical personnel in the detention facilities under its jurisdiction. No reply had been received by the time of writing.

3.6.1 PRESSURE ON MEDICAL EXPERTS

Some lawyers and human rights defenders in Tajikistan told Amnesty International that while medical experts, employed by the Ministry of Health, often conducted examinations in an impartial and professional way; others reported cases where the authorities had put pressure on medical experts. A medical expert reportedly received threats from the authorities after having informed Asia Plus journalist Ramziya Mirzobekova about the second forensic examination conducted after Ismonboy Boboev had died in custody. The journalist told Amnesty International¹⁴³ that officials from the General Prosecutor's Office asked repeatedly for the name of the medical expert interviewed.

Ismonboy Boboev, a 30-year-old father of three, worked regularly in Russia trading dried fruit. On 12 February 2010 he returned to his family in the town of Isfara in the northern Sughd region of Tajikistan. On 19 February 2010, he was detained by officers of the MIA Sixth Department in Isfara and transferred to the MIA Sixth

Department in Khujand.¹⁴⁴ Ismonboy Boboev died the day he was taken into custody. On 20 February his father was told by officers of the MIA Sixth Department in Khujand that Ismonboy Boboev had fallen off a chair and died during interrogation on suspicion of belonging to an illegal organization.

Ismonboy Boboev's father told Asia Plus that when he identified his son's body, he saw bruises on his legs and dark traces around his fingers.

The initial forensic medical examination established mechanical asphyxia as the cause of death¹⁴⁵. According to Asia Plus the expert of the Forensic Centre of Sughd region, stated that Ismonboy Boboev had an epileptic fit due to emotional stress, and that asphyxia had been caused by the falling back of his tongue. The expert noted that there were wounds on some fingers and that on his knees he had scratches and bruises, but stated that these could have been sustained before his detention.

Before the funeral Ismonboy Boboev's father took several pictures of his son's body, to document the injuries and demanded that a criminal investigation be conducted into the case.

On 25 March 2010, the Sughd Regional Prosecutor opened a criminal investigation into Ismonboy Boboev's death. In April 2010 his body was exhumed for a second forensic medical examination. Experts¹⁴⁶ concluded that Ismonboy Boboev died from severe cardiovascular and respiratory failure. One of the experts told Asia Plus on condition of anonymity that "I can tell you with confidence that Boboev's death was caused by asphyxia, but the cause of the asphyxia was the electro trauma - Boboev was tortured with electric shocks". He added that the copper and aluminium found in Ismonboy Boboev's body were further proof of him having been electrocuted.

Two officers of the MIA Sixth Department were reportedly detained for four days after the second medical investigation. In interviews with the news agencies Ferghana.news and Asia Plus, Ismonboy Boboev's father said he had heard that the criminal investigation against the alleged perpetrators was suspended because their families had bribed senior officials in Dushanbe.¹⁴⁷ On 25 June 2010 the criminal case was suspended due to the suspects being ill. At the time of writing the investigation has not recommenced. Asia Plus reported one of the alleged perpetrators was later reinstated as head of the MIA Sixth Department in Isfara.

Ismonboy Boboev's father reported that neither he nor his lawyers were allowed to see the criminal case materials against the alleged perpetrators. The General Prosecutor reportedly referred to the CPC, saying that the victim of a human rights violation is only allowed to see the case materials once the criminal case has been concluded. This decision was appealed to the Constitutional Court questioning the constitutionality of the CPC in this respect. On 15 May 2012 the Constitutional Court turned down the appeal.

3.7 ANONYMITY OF ARRESTING OFFICERS

International human rights standards¹⁴⁸ and recommendations of international expert bodies make clear that detention records should include information about those who authorized or carried out detention. A serious shortcoming of domestic legislation in Tajikistan and one that hinders the effectiveness of investigations into torture allegations is that police are not obliged to include information in the detention record about the identity of arresting officers, a practice that facilitates impunity. Rajabmoh Badriddinova, Head of the Department of State Protection of Civil and Political Rights at the Ombudsperson's office confirmed¹⁴⁹ that: "Usually the investigator signs the detention record. He doesn't include the names of the arresting officers and, as a result, later on it is often impossible to find those who carried out

the arrest.” Amnesty International is concerned that this allows law enforcement officers to use torture or other ill-treatment with virtual impunity since their participation is not officially recorded and therefore difficult to prove.

In Tajikistan arresting officers do not wear name tags or visible identification numbers. Amnesty International believes that the anonymity of police officers increases the risk that they might commit acts of torture and other ill-treatment and perpetuates impunity. Name tags and/or visible identification numbers are important safeguards against torture and other ill-treatment and are a crucial element in governments’ efforts to end impunity for law enforcement officials who carry out such practices.

Tajikistan made an undertaking¹⁵⁰ to the UN Human Rights Council in March 2012 that it would amend the CPC to the effect that detention records have to record the identity of the officers involved in apprehending a person. Amnesty International urges that this measure be implemented as a priority.

4. NEED FOR NATIONAL AND INTERNATIONAL MONITORING

The Special Rapporteur on Torture has stated that regular inspection of places of detention “constitutes one of the most effective preventive measures against torture”. The Committee against Torture and the UN HRC have called for the establishment of systems of monitoring visits to places of detention.

At the time of writing 62 countries are parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which provides for independent international and national bodies to regularly visit detention facilities. State parties to the OPCAT undertake obligations to establish national, independent preventative mechanisms (NPM) staffed with independent personnel. The authorities¹⁵¹ must grant the NPM “[a]ccess to all places of detention and their installations and facilities”, “[t]he opportunity to have private interviews with the persons deprived of their liberty without witnesses”, “[a]ccess to all information referring to the treatment of those persons as well as their conditions of detention”, and to “make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment”.

Tajikistan has not signed the OPCAT; although a governmental working group is currently exploring this issue. Amnesty International recommends that Tajikistan move expeditiously to establish the relevant procedures and ratifies OPCAT.

International Committee of the Red Cross (ICRC) inspections of detention facilities can act as safeguards against torture or other ill-treatment. Tajikistan reported in its report to the UN Human Rights Council’s Universal Periodic Review¹⁵² that in August 2011 the ICRC had been invited to visit detention centres and that a draft cooperation agreement would be developed once this initial visit had taken place, although Amnesty International has no further information on this.

Institutions of human rights ombudspersons can also be effective in monitoring detention facilities, provided they are given the necessary mandate and functional independence.

In Tajikistan the **Ombudsperson** has the potential to play an important role in the fight against torture and other ill-treatment. The post holder can receive¹⁵³ and review individual complaints¹⁵⁴ on decisions, actions or inaction by government representatives. To examine complaints he is entitled to “unhindered visits to state organs [...] facilities of execution of criminal punishment” which includes police stations, IVS, SCNS detention facilities and military units to receive information, explanations and relevant documents on the case in question. He or she can meet and correspond privately with detainees¹⁵⁵ and monitor state institutions independently or with others¹⁵⁶, order expert examinations¹⁵⁷ and request the instigation of disciplinary, administrative or criminal proceedings in relation to officials

accused of human rights violations. The Ombudsperson can petition the Chair of the Supreme Court and the Prosecutor General to review legal acts which have already come into force, and is one of the few bodies with the right of initiative before the Constitutional Court.

At the time of writing, the Ombudsperson is advocating to extend his authority to be able to work more proactively on behalf of victims of human rights abuses, by influencing the passage of new laws on human rights, for instance, or attending public or closed court hearings. However, despite the post of Ombudsperson being established in law in 2008, representatives of the Ombudsperson's office interviewed in April 2011 by Amnesty International reported that they had yet to conduct the first visits to detention facilities. They said they were planning to "visit all places of deprivation of liberty over the coming two years, including IVSs, SIZOs, the women's colony, the colonies for juveniles, and semi-closed institutions". The Ombudsperson reports¹⁵⁸ having visited one penitentiary institution and one temporary detention facility in Khujand in 2011. At the time of writing, his office is reportedly planning joint visits to an IVS and a SIZO with human rights NGOs.

5. JUDGES: GUARDIANS OF JUSTICE?

“We had a case where a defendant displayed burns in court. The judge just said ‘pull your shirt back down.’”

Defence lawyer of detainee allegedly tortured

Although domestic law clearly establishes judicial independence¹⁵⁹, there are a number of fundamental problems affecting the judiciary in Tajikistan. In its 2011 submission to the UN Universal Periodic Review a coalition of NGOs in Tajikistan pointed out that “the court system remains weak and inefficient [...] the judiciary is under the control of the executive power.” The coalition listed the problems affecting judicial independence as low salaries, bureaucracy, corruption, influence of prosecutors, and poor professional training.

NGOs claimed “pressure is exerted by way of forced retirement and transfer of judges to less popular remote districts”. They expressed concern at the powerful influence over the judiciary of the Council of Justice, an institution belonging to the executive power that functions as the Presidential administrative¹⁶⁰ organ of the lower courts. Among other issues, the Council of Justice is tasked with training judges and plays an important role in the process of appointing judges and the issuing of disciplinary punishments.

Corruption and bureaucracy have damaged public trust in the judicial system, as does the low rate of acquittals. On 9 January 2012, the Chair of the Council of Justice of Tajikistan stated in a press-conference that in 2011 the total number of verdicts on criminal cases was 5,973, among them 54 defendants acquitted. Fifteen defendants were found not guilty and the rest had been partially acquitted.

Amnesty International notes Tajikistan’s undertaking to the UN Human Rights Council in March 2012¹⁶¹ to place the Council of Justice outside the control of the executive and ensure its full independence and urges its implementation as a priority.

5.1 REMAND HEARINGS: A FORMALITY THAT PROVIDES LITTLE PROTECTION FROM TORTURE

Ilhom Ismonov was first detained on 3 November 2010 but his remand hearing only took place on 11 November. By law, the remand hearing should take place no longer than three days after a person is deprived of liberty.

At the hearing, Ilhom Ismonov told the judge that he had been tortured with electric shocks and boiling water. The judge reportedly refused to let Ilhom Ismonov show the signs of torture on his body. He did not address the torture allegations, and said instead that the lawyer should take them up with the prosecutor.

The hearing concluded on 13 November and the judge remanded Ilhom Ismonov in custody, justifying his decision as a preventive measure by saying that the suspect had committed grave crimes and therefore not depriving him of his liberty could obstruct the preliminary investigation.

The requirement to bring detainees promptly before a judicial authority after arrest is firmly anchored in international human rights law¹⁶² as a key safeguard to protect detainees. It is a means to ensure that detentions are lawful and necessary and of providing supervision of detention through judicial control, removing the absolute power over a prisoner, which police or other officials might otherwise wield. It can also be an important safeguard against torture and ill-treatment provided judges act upon allegations by the detainee or any noticeable signs of ill-treatment. However, very often in Tajikistan judges at remand hearings examine only the question of whether to remand a person in custody or to grant conditional release and disregard allegations of ill-treatment in pre-trial detention by detainees, referring alleged victims and their lawyers to the prosecutor to lodge a complaint.

In Tajikistan, remand hearings are a relatively new development as they were first introduced in 2010¹⁶³. Detainees have to be brought before a judge within 72 hours of apprehension, or released¹⁶⁴. In the past it was prosecutors who authorized pre-trial detention or house arrest, but now only judges are entitled to authorize these measures. Other measures of control include bail and undertakings not to leave the country, but these can also be issued by law enforcement officers¹⁶⁵.

While the fact that detainees now have to appear before a judge who rules on whether they can continue to be detained is a significant step forward, it is imperative that this occurs much sooner after arrest. A delay of 72 hours is clearly too long to be an effective safeguard against torture, which can commence very quickly when a person is apprehended. Amnesty International recommends that this is reduced to no more than 48 hours. The situation in Tajikistan is exacerbated by the fact that police recurrently “fiddle with the detention record”, as one lawyer in Dushanbe put it, so that the remand hearing sometimes takes place much later than 72 hours after apprehension. In the current context in Tajikistan where detainees in pre-trial detention often have difficulty seeing a defence lawyer, a doctor or contacting their family before they are brought before the judicial authority, 72 hours remains too long to be an effective safeguard against torture.

5.2 PRE-TRIAL DETENTION SHOULD BE EXCEPTIONAL

In accordance with the right to liberty and the presumption of innocence, Article 9.3 of the ICCPR states that “it shall not be the general rule that persons awaiting trial should be detained in custody”, and the UN HRC has emphasized that: “Pre-trial detention should be an exception and as short as possible”¹⁶⁶. The UN HRC has stated that pre-trial detention must not only be lawful, but must also be necessary and reasonable in the circumstances, and has held that the suspicion that a person has committed a crime is not sufficient to justify detention pending investigation and indictment. It acknowledged that custody may be necessary in certain circumstances, for example to prevent flight, to prevent interference with witnesses and evidence, to prevent further offences being committed or when a person

presents a clear and serious threat to society which cannot be contained in any other manner¹⁶⁷. If a person is held in detention pending trial the authorities must keep the necessity of continuing such detention under regular review¹⁶⁸.

In contravention of international standards Tajikistani domestic law authorizes judges to authorize pre-trial detention based purely on the gravity of the crime committed but with provisions for exceptional cases which effectively allow anyone to be held in pre-trial detention¹⁶⁹. The Ombudsperson of Tajikistan pointed out in his report on 2011 that nearly 97% of requests for pre-trial detention were approved and that courts primarily take into account the severity of the crime committed, and highlighted the imperfection of the CPC in this respect.

However, the criteria set out in the CPC should only be relevant to a decision in a custody hearing if in combination with other factors they give grounds to believe that the accused might cause harm to public safety, if there is a risk of absconding or of interference with the course of justice. Lawyers and human rights defenders in Tajikistan told Amnesty International that judges at remand hearings rarely take the specific circumstances of a case into account, for example by assessing the risk of absconding or other risks which would justify pre-trial detention under international law and standards. A human rights defender summarized the situation, saying not only “especially dangerous criminals are remanded in custody but also people who committed a first offence or people who committed non-violent crimes.”¹⁷⁰

The Special Rapporteur on Torture has said that those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted¹⁷¹. However, Amnesty International is concerned that in practice this does not appear to happen and that detainees are sometimes transferred to SIZOs from police custody (IVS) after much longer than 72 hours.

One of the reasons for this is that if the judge finds there are no well-founded grounds for remanding a person in detention pending trial, he/she is not obliged to order the release of the suspect on bail but can postpone his/ her ruling on pre-trial detention by a further 72 hours and request the investigation to present such grounds within this time¹⁷². However, the law places no limits on the number of times a judge can extend pre-trial detention in this way¹⁷³. This significant loophole which can result in detention (in effect) for the purposes of criminal investigation should be closed.

Another concern is the provision that, at the request of courts, police investigators or prosecutors, detainees can be temporarily transferred from SIZOs to IVSs (and vice versa) for the purpose of participating in investigative activities, for not more than 10 days per month¹⁷⁴. Amnesty International is concerned that this provides occasions for unsupervised contact with interrogators or investigators and puts detainees at risk of further torture or other ill-treatment. Sources in Tajikistan reported that judges nearly always chose pre-trial detention over release with other forms of control and rarely use other measures such as bail or travel restrictions to ensure that they appear for trial. The Chair of the Shohmansur District

Court in Dushanbe cited the Council of Justice of Tajikistan as reporting that in the first six months after the introduction of the new CPC, courts ruled on 237 requests from the prosecution to retain a detainee in custody but that in only 16 cases did judges rule against detention¹⁷⁵. During monitoring of 55 court hearings dealing with the question of measures of control the NGO Human Rights Centre found that judges approved pre-trial detention in 54 cases and ruled against it in only one case¹⁷⁶.

Amnesty International wrote to the Department for Constitutional Guarantees of Citizens' Rights of the Presidential Office of Tajikistan in August 2011 asking for statistics on court decisions that refuse to authorize pre-trial detention but had not received a reply at the time of writing. The Chair of the Council of Justice stated¹⁷⁷ on 9 January 2012 that in 2011 the courts approved requests for pre-trial detention in 6,167 cases and refused them in only 129 cases.

5.3 JUDGES SHOULD ACT ON ALLEGATIONS AND SIGNS OF TORTURE

5.3.1 FAILURE TO INVESTIGATE ALLEGATIONS OF TORTURE AND ILL-TREATMENT AT REMAND HEARINGS

Principle 37 of the UN Body of Principles on Detention specifies that when reviewing the detention, the judicial or other authority should hear any statement from the detainee on his or her treatment while in custody. The detainee should be able to address the judge in an atmosphere free from intimidation. If there is any sign of torture or ill-treatment, the judge should inquire into it without delay, even if the detainee has not volunteered any statement¹⁷⁸. If the inquiry, or the detainee's own statement, gives reason to believe that torture or ill-treatment was committed, the judge should initiate an investigation and take effective steps to protect the detainee against any further ill-treatment.¹⁷⁹

"Judges must check claims involving torture and ill-treatment, summon investigators, SIZO staff and police for questioning", one of the heads of Supreme Court collegiums told Amnesty International on 14 April 2011 in Dushanbe¹⁸⁰. Naim Mansurov, the Chair of the Sughd Regional Court, told an Amnesty International delegation on 12 April 2011 that new judges were currently not given training on how to identify those cases where torture or other ill-treatment may have occurred so that they can be investigated.

At the time of writing there is no legislation or Supreme Court guidance requiring judges in Tajikistan to inquire into the treatment in pre-trial detention and the CPC does not provide instructions to judges on cases when detainees report torture or other ill-treatment. A Supreme Court Resolution providing this guidance is in preparation.

Lawyers and human rights defenders interviewed by Amnesty International said that at remand hearings judges rarely inquire into treatment in police detention and that sometimes judges tell the detainees to stop talking when they try to report torture or ill-treatment. Lawyers in Qurghonteppa in Khatlon region told Amnesty International¹⁸¹ that in cases where detainees raised torture allegations judges often moved on to other issues after asking why, if their allegations are true, they did not submit a complaint earlier. In other cases judges listened to the allegations and summoned the police, but when police said the allegations were untrue, the matter would normally be closed.

Based on its monitoring of 55 court hearings on measures of control the NGO Human Rights Centre reported that in two cases detainees claimed that they had been physically abused

shortly after apprehension, but that judges did not react to the suspects' statements, in a third case the judge ignored obvious signs of beatings on the suspects face".¹⁸²

5.3.2 CONFESSIONS AND TESTIMONY OBTAINED UNDER TORTURE OR OTHER ILL-TREATMENT USED IN COURT

Allegations of torture are often only heard for the first time during trials, long after the events described by the defendants. When such allegations are brought to the court at the trial, usually months after the torture or ill-treatment took place, the courts are primarily interested in written statements and complaints, and without these judges are inclined to view torture and ill-treatment allegations as an attempt by the defendant to avoid criminal liability and therefore they do not conduct separate hearings into the admissibility of the evidence allegedly obtained under torture.

International law is unequivocal that evidence elicited through torture or other ill-treatment is inadmissible in court (except if such material is used as evidence that torture or other ill-treatment took place)¹⁸³. The UN HRC has stressed that the right not to be compelled to testify against oneself or to confess guilt must be "understood in terms of the absence of any direct or indirect physical or undue psychological pressure [...] on the accused, with a view to obtaining a confession of guilt [...] Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence [...] and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will¹⁸⁴". The Body of Principles prohibits taking advantage of the situation of detainees to compel them to testify or confess, or using violence, threats or methods of interrogation which impair their capacity of decision or their judgement¹⁸⁵ and that non-compliance with these principles in obtaining evidence must be taken into account in determining the admissibility of such evidence¹⁸⁶.

The CPC of Tajikistan reflects this in Article 88 which states that "[e]vidence 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 the accusation". However, lawyers and human rights activists in Dushanbe, Sughd region and Khatlon region reported that evidence extracted under torture is routinely used in court, and report that when defendants raise the issue of torture, judges often dismiss the allegations. "If the lawyer or defendant talks about torture in court, the judge says 'come on, continue on the matter of the case'," a defence lawyer from Khujand told Amnesty International¹⁸⁷.

A trial monitoring project conducted by the NGO Human Rights Centre since 2005 found that¹⁸⁸ "In the majority of cases when defendants complained about cruel treatment, judges paid no attention to these statements and admitted the confessions [...] as evidence. At other trials judges [...] summoned the police officers accused of torture to testify. Once [they] had denied [the allegations], the investigation was closed [...] "To date human rights defenders are not aware of any case where a court excluded from the case materials evidence because it had been established that it was obtained through torture."

Some judges appear to suspect defendants of inventing complaints of torture to avoid being brought to criminal responsibility. On 7 June 2011 Temur Boev, the Chair of the Qurghonteppa City Court, said¹⁸⁹ that his court had not reviewed a single case involving torture in 2011, before adding, "It does happen that during the trial defendants claim

beatings in pre-trial detention or that they testified under pressure [...] But for some reason they don't talk about this during the preliminary investigation, when their interrogations take place in the presence of lawyers."

Immediate steps need to be taken to implement Article 88 of the CPC in practice and to ensure that evidence extracted under torture or other ill-treatment is not used as evidence in trials. Recommendations from the Special Rapporteur on Torture should be implemented, particularly that "[w]here allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment"¹⁹⁰, and that prosecutors and judges "should not require conclusive proof of physical torture or ill-treatment [...] before deciding not to rely as against the detainee on confessions or information alleged to have been obtained by such treatment; indeed, the burden of proof should be on the State to demonstrate the absence of coercion"¹⁹¹.

As an additional safeguard the Special Rapporteur on Torture has recommended recording all interrogations and excluding evidence from non-recorded interrogations from court proceedings¹⁹². In Tajikistan, the CPC provides for video or audio recordings upon request of the detainee, victim or witness¹⁹³, but allows the investigator¹⁹⁴ to forbid the use of recordings if the case material is confidential. The trial monitoring project run by the Human Rights Centre from 2005 to 2011 did not record any cases where an interrogation had been audio or video recorded.

In May 2011, the Prosecutor General of Tajikistan called for video cameras to be installed in all investigators' offices in order to counteract the "illegal actions of investigators"¹⁹⁵. Amnesty International calls on the Tajikistani authorities to take forward this proposal as a matter of priority. In addition they should legislate that evidence from non-recorded interrogations must not be used in court proceedings.

6. DENIAL OF THE RIGHT TO A REMEDY

“Cessation of an ongoing violation is an essential element of the right to an effective remedy.”

UN Human Rights Committee¹⁹⁶

“My son was killed, but his murderers have still not been punished. What other proof is needed? What else can I do to be heard?”

Ismonboy Boboev's father on his pursuit of justice after his son died in police custody allegedly following torture and ill-treatment.

Impunity for torture or ill-treatment has long been the norm in Tajikistan. Although criminal proceedings have been instigated against police in individual cases of torture and ill-treatment these remain exceptions. Lawyers and NGOs in Tajikistan told Amnesty International that in cases where police officers are convicted, sentences are often not commensurate to the gravity of the crimes.

The absence of an effective independent mechanism to monitor practices in detention facilities combined with the weakness of the judiciary exacerbates the problem. “All branches of power are links in one chain. No institution acts as a check or a balance. Judges don't want to get into conflict with the MIA or prosecutors' offices. They don't want to have problems”,¹⁹⁷ a local human rights observer explained, who believes that “torture is a symptom of general arbitrariness, the lack of the rule of law. If current laws, even with their deficiencies, were actually applied diligently, then the situation regarding torture would be much better.”

States have an obligation under international law not only to respect and protect human rights but to ensure an effective remedy and reparation to those whose rights have been violated¹⁹⁸.

Such reparation includes, among other things, compensation, guarantees of non-repetition and bringing to justice those responsible¹⁹⁹. Impunity of perpetrators of torture and other ill-treatment can contribute to the recurrence of such violations²⁰⁰.

States have an obligation to ensure that torture, attempts to commit torture and acts of complicity or participation in torture and other ill-treatment are criminal offences punishable by penalties which take into account their grave nature²⁰¹. The CAT clearly stipulates the obligation of State Parties to carry out prompt and impartial investigations into allegations of torture and other ill-treatment committed by officials²⁰². It requires such investigations to be

made into complaints and reports of torture and other ill-treatment. The Committee against Torture has stressed that it is essential to investigate and establish the responsibility of persons in the chain of command as well as that of the direct perpetrator(s)²⁰³. The public officials alleged to be responsible should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings²⁰⁴.

The Committee against Torture has made clear that States are responsible for investigating allegations of torture, saying “in principle, article 13 of the Convention does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation”.²⁰⁵ In a decision on Spain²⁰⁶ the Committee against Torture called on the authorities “to institute procedures for the automatic investigation of any case of torture or ill-treatment brought to their attention by any means whatsoever, even when the victims do not lodge complaints through the prescribed legal channels”²⁰⁷. The Committee against Torture has also held that one of the sources which may trigger such an investigation is information supplied by NGOs.²⁰⁸

However, in Tajikistan, a number of practices facilitate impunity and obstruct the right to remedy and reparation, including:

6.1 FAILURE TO CARRY OUT EFFECTIVE INVESTIGATIONS

In November 2006, the Committee against Torture recommended that Tajikistan “[e]stablish a fully independent body outside the procuracy to provide oversight on the proper conduct of investigations, which is empowered to receive and investigate individual complaints²⁰⁹”. It urged the authorities to “take effective legislative, administrative and judicial measures, such as the establishment of an independent body, to ensure that all allegations of acts of torture and ill-treatment by State agents are investigated, prosecuted and the perpetrators punished²¹⁰”. At the time of writing, Tajikistan has not yet done so although in March 2012 it stated its intention to the UN Human Rights Council to thoroughly investigate allegations of human rights abuses and to establish an independent complaints mechanism for torture allegations²¹¹.

In many cases detainees refrain from lodging complaints with prosecutors’ offices about their treatment in custody for fear of repercussions. They instead wait for the remand hearing or trial before telling the judge about torture allegations, but in the majority of cases judges have not taken steps to ensure that an effective investigation takes place or to rule on the admissibility of evidence allegedly obtained under torture or other ill-treatment.

An NGO coalition that examined 92 cases involving allegations of torture or other ill-treatment between June 2007 and December 2008 reported that relatives, victims and coalition members lodged complaints in 27 of these cases²¹². In most other cases victims or relatives reported being afraid to lodge complaints or withdrew them at a later stage. In six instances criminal cases were opened against the alleged perpetrators and in some of these cases the perpetrators were convicted. In one of the six cases the torture victim was acquitted of those crimes where it was established that the confession had been extracted under torture. In another case the judge did not take into account the torture allegations but released the defendant from the courtroom ruling that the crime could not be proven. A more recent NGO monitoring project carried out from March to December 2011 found 29 cases of

torture, in 13 of which the family members were not willing to lodge complaints for fear of reprisals. Only 6 cases ever reached court.

However, the 2007/2008 NGO study found that in 12 cases, where complaints were made to law enforcement officers or courts the complaints were dismissed or simply disregarded and that in most cases when complaints were submitted to prosecutor's offices, "complaints remain[ed] without movement or the prosecutor's offices respond[ed] that the allegations [were] not confirmed". To Amnesty International's knowledge, prosecutor's offices have often not disclosed information about how these complaints were examined and the grounds for concluding that torture had not taken place. In one case cited in the NGO report, the prosecutor simply stated that "the complaint is far-fetched and there are no grounds to consider it."

Khurshed Bobokolonov, a senior oncologist at the Tajikistani Oncology Centre, died on 27 June 2009 after being taken away in a police car by officers of Ismoili Somoni District Police in Dushanbe. Persistent attempts by his mother and lawyers to find out what exactly happened and who is responsible for his death have come to nothing. Instead his mother has found the authorities reluctant to take action to identify the culprit/s and uncooperative, failing to provide her with information on investigative activities or to reply to letters from her lawyer. She told Amnesty International²¹³ that one of her worst experiences was copying out by hand six pages of the autopsy carried out on her son's corpse as she was not allowed to take a photocopy of the document.

Khurshed Bobokolonov had planned to celebrate his 33rd birthday with friends on 27 June 2009. Around 10pm he called his wife to say he would be home soon. When he had not returned at 11pm his mother called his phone and she heard noise in the background that – in retrospect – she believes was the police beating him. Later that night the family learned that Khurshed Bobokolonov was dead. His mother went to the morgue in Dushanbe, but was not allowed in. She was given a bag of his clothes and his mobile phone on which she found a recording of what she believes is the roughing-up by police.

In an interview published by Asia Plus on 9 July 2009 General Abdurakhim Qakhkhorov, then the Minister of Internal Affairs of Tajikistan, said that Khurshed Bobokolonov had resisted police orders to go to the police station.

The conclusion of the autopsy of 28 June 2009²¹⁴ stated that Khurshed Bobokolonov died of asphyxiation as a result of blocked airways due to vomiting. Medical experts recorded a number of bruises on his body, which may have been caused by heavy blunt objects shortly before his death.

On 22 July the Tajikistani news agency Khovar reported the Minister of Internal Affairs as announcing that an investigation into "death through negligence²¹⁵" had been opened. The lawyer for Khurshed Bobokolonov's family was only given access to the case materials on 4 November 2009. He learnt that according to the investigator, Khurshed Bobokolonov was drunk and talked rudely to the police. Police put him in their car to take him to the police station and establish his identity. However, when they arrived they noticed that he was dead.

The investigation was closed and reopened several times. After receiving no information about progress Khurshed Bobokolonov's mother wrote to the Deputy Prosecutor of Ismoili Somoni district on 28 October 2009. He reportedly reopened the case but on 5 November 2009 informed Khurshed Bobokolonov's mother that the case had been closed again, saying they had been unable to identify those to be held accountable for the

crime. On 10 December 2009 the family's lawyer petitioned the Office of the Prosecutor of Dushanbe City to reopen the case. In May 2011 Khurshed Bobokolonov's mother told Amnesty International that she had received a letter from the Prosecutor General's office in May 2010 informing her that the case had been referred to Dushanbe City Prosecutor's Office for further investigation, but that she had received no answer as to how her son sustained the injuries recorded in the autopsy report. In November 2011 human rights NGOs in Tajikistan learnt that the Prosecutor General's Office had reopened the criminal case. Investigations are ongoing at the time of writing.

6.1.2 INTIMIDATION OF THOSE WHO SPEAK OUT ABOUT TORTURE

"We have never received complaints of someone being beaten before he was admitted to the SIZO or while he was in the SIZO[...]. We did have some statements, but they were not realistic. There are inmates who have nothing to do, so they write complaints."

Lieutenant-General Saidolimov, Head of the Department for Correctional Affairs of Sughd Region, 13 April 2011.

"We tell people who complain to us about torture or beatings that we can write a complaint, but they are usually afraid to pursue the matter."

Human rights activist 12 April 2011

State parties to the CAT undertake to protect those who complain about torture and ill-treatment²¹⁶. However, Amnesty International is concerned that in Tajikistan many detainees and their relatives refrain from lodging complaints fearing further mistreatment or adverse effects on the criminal case. According to lawyers²¹⁷, police recurrently put pressure on detainees whose lawyers have lodged complaints about torture or other ill-treatment and sometimes urge detainees to renounce the services of such defence lawyers. This further contributes to a climate of impunity.

While NGO sources told Amnesty International that going public and lodging complaints is sometimes the only way to achieve justice, this approach can also put torture victims and their families at risk.

For example, Ilhom Ismonov's wife lodged complaints of torture and ill-treatment with the authorities when she saw her husband's injuries and requested a medical examination and a full investigation. She also contacted human rights groups and journalists. Public attention to the case reportedly resulted in Ilhom Ismonov being transferred to another detention facility, where he was allegedly not subjected to torture. However, officials then reportedly pressurized him to retract the allegations of torture he had made previously.

In May 2011 the Parliamentary Committee on Legislation and Human Rights wrote to Amnesty International, claiming that *"Ismonov himself stated that he was not tortured and did not have any complaints about his health"*. However, according to information from Ilhom Ismonov²¹⁸ in December 2010 he was taken briefly to the SCNS in Khujand where, in the presence of the investigator, he was threatened by a man, who introduced himself as a prosecutor that unless he retracted his allegations of torture he would face similar treatment again. "I signed as I feared for my life", Ilhom Ismonov wrote. He is currently serving a 12-year prison sentence for participating in organised crime.

The case of **Nizomkhon Juraev**²¹⁹ illustrates the repressive measures which are sometimes taken against those who dare to make allegations of torture and ill-treatment public. On 2 September 2010 Tajikistan requested

Nizomkhon Juraev's extradition from Russia in connection with charges of violent organised crimes, economic crimes and unlawful possession of weapons. Amnesty International opposed this, believing he would be at serious risk of torture if sent back to Tajikistan, as in 2008 several of his 33 co-defendants alleged they had been tortured and ill-treated, including with electric shocks, during their trial at the Supreme Court of Tajikistan to force them to incriminate Nizomkhon Juraev²²⁰.

Co-defendants of Juraev serving prison terms in Tajikistan, sent letters Nizomkhon Juraev's lawyer in Russia, Anna Stavitskaya, detailing their experiences of torture and ill-treatment to support the case against Nizomkhon Juraev's extradition. Anna Stavitskaya told Amnesty International in June 2011 that the Russian Prosecutor General's Office forwarded the letters to the Tajikistani authorities after receiving them from her.

Shortly afterwards, Tajikistani officials reportedly threatened the authors of the letters that "things would go badly" for them unless they retracted their statements. Some of the prisoners did as they were told and the prosecution presented their retractions to the Moscow City Court in April 2011.

On 13 April 2011 Amnesty International delegates spoke to a senior investigator at the Department of Internal Affairs of Sughd Region about Nizomkhon Juraev. He claimed that: "We questioned those people who gave information to the Russian lawyer about torture. They said 'we don't understand Russian; we just signed something that was dictated to us'."

Anna Stavitskaya told Amnesty International that after the trial she received letters from the co-defendants saying they had been forced to retract their initial allegations. One of the defendants wrote on 25 April 2011: "After I wrote to Stavitskaya, people from the Prosecutor General's Office came to me, scared and threatened me. [They said] that if I confirmed my statement [about torture] they would try me again and sentence me to life imprisonment. I got really scared and I made a statement that I never wrote the earlier statement." The letter was in Tajik.

According to several sources no thorough investigations were conducted into the men's allegations that they were tortured and ill-treated and none of the alleged perpetrators have been brought to justice.

Amnesty International has received reports that witnesses of beatings are often under pressure to withdraw their statements or they refuse to give evidence to the authorities for fear of repercussions. For example, two witnesses involved in the murder case which occurred in the village Khojai Alo in Chorkuh Jamoat in September 2011²²¹ were reportedly ill-treated by police in order to force them to incriminate the five official suspects. In addition, one witness was reportedly offered a cash bribe by a local government employee in exchange for retracting his testimony against the people who the witness believed were the true perpetrators. Following the ill-treatment of the two witnesses, a third witness fled the country fearing for his safety but subsequently returned. In early 2012 the prosecutor reportedly accused the three witnesses of taking bribes from the relatives of the suspects and giving false testimonies and called for criminal proceedings to be instigated against the three of them. Following this, the two witnesses had to leave Tajikistan.

6.2 FAILURE TO BRING PERPETRATORS OF TORTURE AND OTHER ILL-TREATMENT TO JUSTICE

The CAT requires states to "ensure that all acts of torture are offences under its criminal law" and "make these offences punishable by appropriate penalties which take into account their

grave nature²²²". The UN HRC emphasises that failure to bring perpetrators of torture and ill-treatment to justice constitutes a breach of the ICCPR²²³.

In November 2006, the Committee against Torture expressed concern about the small number of convictions under domestic law for violations of the CAT, despite the numerous allegations of torture and ill-treatment in Tajikistan²²⁴. Amnesty International shares this concern.

Previously, Tajikistan's Criminal Code did not contain a definition of torture in line with international standards. Until March 2012, the Criminal Code contained one article entitled "torture" (Article 117) which punished the causing of physical or psychological suffering but omitted to state that torture is carried out by or with the acquiescence of somebody acting in an official capacity.²²⁵

Therefore, to date, many criminal proceedings opened into allegations of torture or other ill-treatment have been treated as abuse of authority, and not as torture and ill-treatment. Charges brought often involved "negligence"²²⁶, "abuse of official authority"²²⁷, "exceeding official authority"²²⁸, "pressure to extract testimony"²²⁹, or "abuse of power or position"²³⁰. These articles cover crimes other than torture and ill-treatment, meaning that government statistics on these articles of the Criminal Code do not provide specific data on cases relating to torture or other forms of ill-treatment.

Safarali Sangov was detained on 1 March 2011 in his back yard and taken to Sino District Police in Dushanbe. The same day he was admitted to the National Medical Centre "Karabolo" in Dushanbe in a coma and, according to a forensic examination, died from brain damage on 5 March. There were allegations that he was tortured by police at the police station, although the police claim he fell down the stairs at the police station and then threw himself against a safe and a wall.

Following a public outcry, in June 2011 two police officers were charged with "negligence"²³¹, and one with "exceeding official authority"²³². However, the Court referred the case for further investigation after the defence appealed on the basis of discrepancies between the witness statements given to the investigator and those given in court. Reportedly, no charge was brought against a third policeman for health reasons²³³. Investigations are ongoing at the time of writing.

On 29 March 2012, Tajikistan's upper house of Parliament approved amendments to the Criminal Code introducing a separate article (Article 143) defining "torture", in line with the definition of torture²³⁴ contained in the CAT²³⁵. Amnesty International notes this as a step towards treating torture as a grave crime and one which may help strengthen the deterrent effect of the prohibition on torture, and facilitate tracking of where torture occurs²³⁶.

In the government's 2010 report to the Committee against Torture the authorities cited the following statistics: According to the MIA of Tajikistan, there were 60 complaints and applications about police violations of rights in 2007; 53 in 2008; 40 in 2009; and 23 from 1 January to 31 May 2010²³⁷. According to the authorities, 50 of a total of 176 applications were found to be justified and "relevant measures of disciplinary character were taken with regard to those responsible". It is not clear how many or whether any of these complaints involved torture or other ill-treatment.

According to the MIA Information Centre, criminal proceedings were opened against a total of 97 people for “abuse of official authority”²³⁸ “inaction whilst on duty”²³⁹, “exceeding official authority”,²⁴⁰ “negligence”²⁴¹ and “abuse of power or position”²⁴² from the beginning of 2007 until the end of the first half of 2010. It is not clear, however, how many of these cases involved law enforcement officers and how many of them were accused of torture or other ill-treatment.

According to the Office of the Prosecutor General of Tajikistan, from 2007 to 2009, criminal proceedings were instituted against 174 law enforcement officers and disciplinary proceedings were opened against 709 officers for exceeding official authority. They included officers at courts, the prosecutor’s office, the SCNS, the MIA, the Customs Service and the armed forces. The exact charges brought against them are not known to Amnesty International and it is not known how many cases involved accusations of torture or other ill-treatment.

On 8 August 2011, Radio Ozodi reported the Prosecutor General as saying that his office had received “around 50 letters of complaint about the use of physical force regarding citizens”. On 17 August 2011 Asia Plus reported the Prosecutor General’s office as saying that in 2010 they had received 48 complaints about torture or other ill-treatment by law enforcement officers. Thirteen were confirmed and criminal cases had been opened. Ten of them had been forwarded to the court. In November 2011 the Human Rights Ombudsman reported that the Prosecutor’s office had instigated criminal proceedings against law enforcement of officers in 16 cases of torture and that 13 of those cases had already come before a judge²⁴³.

Of additional concern is the practice applying amnesties in cases where state officials have been imprisoned for crimes such as “exceeding official authority”, meaning that they are swiftly released from prison. Amnesty International is aware of a number of such cases, such as that of Ismoil Bachajonov. The UN HRC has stated that where public officials have been found guilty of violations of torture and ill-treatment “[s]tates must not relieve perpetrators of personal responsibility, as has occurred with certain amnesties [...] no official status justifies persons who may be accused of responsibility for such violations from being held immune from legal responsibility²⁴⁴”.

On 15 September 2011, three officers from the SIZO under the Ministry of Justice in Dushanbe were found guilty by the Court of causing the death of 32 year old **Ismoil Bachajonov**²⁴⁵. Ismoil Bachajonov was serving time in a maximum security prison in the Sino district of Dushanbe for illegal possession of drugs. He was moved to the SIZO pending his transfer to a different prison after the court ruled he could serve the remainder of his sentence under a standard regime. He died during transfer from the SIZO to a medical centre run by the Ministry of Justice. A criminal investigation was initiated by the Prosecutor General and two officials were convicted of inflicting grievous bodily harm resulting in death²⁴⁶ and abuse of power²⁴⁷ and sentenced on 15 September 2011 to eight years imprisonment (reduced to six years under amnesty). A third official was charged with negligence²⁴⁸, his punishment of three years imprisonment was revoked under amnesty. On 6 June 2012 the Court of Ismoil –Somonī began hearing a compensation claim by Ismoil Bachajonov’s widow.

6.3 PRESSURE ON JOURNALISTS WHO REPORT ON CASES OF TORTURE AND ILL-TREATMENT

Journalists and media outlets reporting on allegations of torture and other ill-treatment also risk repercussions and can face serious harassment to prevent them from publishing material which is perceived to criticize the authorities.

Amnesty International is concerned at the frequent use of defamation laws by Tajikistani officials against independent journalists in ways which serve to silence the independent media and discourage victims of human rights violations from speaking out and seeking redress. According to the OSCE, there has been an increase in the number of cases of government agencies initiating defamation proceedings²⁴⁹ against media outlets in the recent years. This may be linked to the media being more active and also Government decrees²⁵⁰ obliging state authorities to respond to media criticism.

It is well established in international law that public officials should tolerate more, rather than less, criticism than private individuals. Journalists and the media play an important role in enabling people to realise their right to freedom of expression including the right to receive information. While international human rights law permits certain restrictions to be imposed on freedom of expression provided they are a demonstrably necessary and proportionate measure to protect the rights and reputations of others, the use of defamation laws against journalists or anyone else with the purpose of preventing legitimate criticism of public officials or the exposure of official wrongdoing or corruption cannot be justified.

The journalist for Asia Plus newspaper Ramziya Mirzobekova told Amnesty International²⁵¹ that an article by her published 21 December 2010 entitled "*Investigation or Inquisition?*" caused outrage because she openly wrote about the link between torture and corruption and included a case involving allegations of rape by law enforcement officers. The article featured cases involving allegations of torture by officers of the MIA Sixth Department in Sughd region. Among them were the cases of Ismonboy Boboev and Ilhom Ismonov. Other cases were cited anonymously in the interest of the victims' safety.

On 21 January 2011, Major-General Anvar Taghoymurodov, the head of the MIA Sixth Department, brought a civil suit against Asia Plus, claiming that the newspaper "spreads [...] various rumours about UBOP [...], of offensive and slanderous nature thereby degrading the honour and professional reputation of this Department." Anvar Taghoymurodov demanded personal compensation from Asia Plus for moral harm suffered, requesting one million Tajik somoni, equivalent to some 210,000 USD.

Ramziya Mirzobekova was summoned to the prosecutor's office several times. She told Amnesty International: "The prosecutor's office always wanted to know who gave me the information as they believed there must be a 'leak' of information on investigations. Their interest in the details of the torture described in the article was much more perfunctory. As a result, the General Prosecutor sent us a six page document full of accusations[...] The paper's editor Marat Mamadshoev and I are accused of violating [...] laws in the writing of this article. To summarise, the document was implying that the paper did not have the right to publish this article. Of course, we responded to their 'discontent' but the purpose of the document remains unclear to us. Later, this document somehow ended up with the plaintiff who used it against us in court. He could only have obtained this document at the General Prosecutor's office, but why then did they not provide a copy of our reply as well? It seems that this document was prepared specifically with the aim of strengthening the position of the

plaintiff in court. In short – the journalists were being accused, and not the policeman.”

In February the Firdavsi District Court in Dushanbe began hearing the case. On 17 August, the Asia Plus lawyers reported being threatened in the court room by Valikhon Mulloev, Anvar Taghoymurodov’s representative and a senior police official. He reportedly called them “enemies of the police” and threatened to destroy them. The lawyers complained and the MIA began an investigation on 19 August. On 25 October, Judge Saifiddin Kamolov of the Firdavsi District Court ruled to end the civil case.

In January 2012 Anvar Taghoymurodov was moved to head the Department of Internal Affairs of Khatlon region²⁵². Valikhon Mulloev was promoted to head of the MIA Sixth Department of Khatlon Region in August 2011.

7. FAILURE TO ACT ON REQUESTS, RECOMMENDATIONS AND DECISIONS BY THE UN HUMAN RIGHTS COMMITTEE

As a party to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) since 1999, Tajikistan authorized the UN HRC to “receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the ICCPR”.²⁵³

Between November 2003 and March 2011 the UN HRC issued 22 decisions on submissions from Tajikistan involving a total of 29 people. In 18 applications to the UN HRC it was alleged that law enforcement officers applied torture or other ill-treatment and in 17 decisions, which concerned a total of 26 victims of human rights violations, the Human Rights Committee indeed found a violation of Article 7 (Freedom from torture and ill-treatment).

The government of Tajikistan has a poor track record of cooperating with the UN HRC where individual cases are concerned. For example, before Tajikistan introduced its moratorium on death sentences and executions in 2004, five men including brothers Dovud and Sherali Nazriev were executed despite urgent interventions by the UN HRC calling on the authorities to stay the execution for six months pending consideration of the case by the UN HRC²⁵⁴. In its March 2006 decision on the case of the Nazriev brothers the UN HRC stated that “the State party breached its obligations under the Protocol by executing the alleged victims before the Committee concluded consideration and examination of the case[...] it is particularly inexcusable for the State to have done so after the Committee [had issued interim measures of protection] and in spite of several reminders addressed to the State part to this effect”.

In several individual cases submitted to the UN HRC the Tajikistani authorities did not respond to repeated requests for information from the UN body and failed to provide crucial information such as documentation relating to internal investigations or medical examinations.

The Tajikistani authorities have continually failed to implement UN HRC decisions. The case of Pavel Kirpo reveals continuing major shortcomings in ensuring effective communication with the UN body.²⁵⁵ Pavel Kirpo's mother alleged that her son's prison regime was made harsher to punish the family for complaining to the UN HRC.

On 27 October 2009 the UN HRC ruled that **Pavel Kirpo's** rights under the ICCPR had been violated, in particular Article 7 (Freedom from torture and ill-treatment), Article 9, paragraphs 1-3 (Right to liberty and

security of person) and Article 14, paragraph 3(g) (Right not to be compelled to testify against oneself or to confess guilt).²⁵⁶

Pavel Kirpo's mother, who applied to the UN HRC on behalf of her son in May 2005, alleged that her son had been arrested on 7 May 2000 and held at a Ministry of Security detention facility until 20 May 2000, without access to a lawyer and without receiving official information about the reasons for his detention. During this time he was allegedly tortured with electric shocks and severely beaten with police truncheons and metal sticks, causing broken ribs and resulting in him being able to talk and move with difficulty. Pavel Kirpo's mother told the UN HRC that no investigation had been carried out into the allegations, despite repeated complaints by her son's lawyer to the authorities and the courts.

In January 2001 Dushanbe City Court sentenced Pavel Kirpo to 15 years' imprisonment for armed robbery (Article 249, part 4b and v) and the Supreme Court confirmed the sentence in May that year.

In its October 2009 decision on the case the UN HRC pointed out that the authorities of Tajikistan had "[failed] to provide any information with regard to the admissibility or the substance of the authors' claim". It stated that "in the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that these have been properly substantiated." The UN HRC concluded that Tajikistan was therefore under obligation to provide Pavel Kirpo with an effective remedy, including pursuit of criminal proceedings to establish responsibility for ill-treatment, appropriate reparation including compensation, and consideration of a retrial.

After the UN HRC decision Pavel Kirpo's mother sent petitions to the various institutions²⁵⁷ requesting to review the verdict handed down on him in 2001 and to grant him reparation including compensation. On 17 February 2010 the Supreme Court replied that "the conclusion that confession statements made by Kirpo P.E. were given under force does not correspond with the objective facts in the case materials". On 29 February the Prosecutor General's Office wrote that "the court verdict is in line with the demands of the law and there are no grounds to initiate an appeal through the supervisory procedure". Neither reply referred to the UN HRC's Views. The Presidential Office replied that it had not received any communications on Pavel Kirpo's case from the UN HRC before December 2009 and that his rights under the ICCPR had not been violated.

Pavel Kirpo's mother reported that after the UN HRC decision, her son was transferred to a stricter prison regime in order to punish the family for complaining to the international human rights body²⁵⁸. The prison regime was changed by Ismoili Somoni District Court in Dushanbe on 27 October 2010 following an application by the director of the prison where Pavel Kirpo was held, stating that he had violated prison rules.

Pavel Kirpo was released under the September 2011 Presidential amnesty issued on the occasion of Tajikistan's 20th anniversary of independence. Thousands of prisoners were affected by the amnesty.

With regard to the government providing information requested by the UN HRC, in its 2011 submission to the UN Human Rights Council on the occasion of its Universal Periodic Review, the Tajikistani authorities stated that "the Government is taking measures to ensure the timely examination of individual complaints in line with the [ICCPR]". It added that "with regard to those individual complaints where the Government, for objective reasons, wasn't able to provide information in a timely manner, measures are being taken and information will be provided to the relevant UN Committees about the final decision regarding them".²⁵⁹

Human rights activist and director of the NGO Independent Centre for Human Rights Sergey Romanov identified several obstacles to the swift implementation of UN HRC decisions on Tajikistan both in legislation and practice²⁶⁰.

Under domestic law UN HRC decisions are not considered a reason to review convictions due to the emergence of new circumstances. In practice, this means that when the UN HRC finds that there has been a violation of Article 7 of the ICCPR (Freedom from torture and ill-treatment) "Tajikistan [first] has to open a criminal case regarding the use of torture, find the perpetrator, bring him to justice, and only then the person who had turned to the UN HRC will have the right to have their verdict [...] reviewed".²⁶¹

Another obstacle to the implementation of UN HRC decisions is that although domestic legislation guarantees the implementation of Tajikistan's international commitments, it does not prescribe clear rules for this.²⁶²

Neither does domestic legislation provide for a functioning mechanism granting compensation to victims of human rights violations. For example, while by law compensation should be paid to a person who suffered harm as a result of illegal pre-trial detention or an illegal conviction, "no mechanism to realize this right has in reality been developed"²⁶³.

Moreover, Sergey Romanov stresses that in Tajikistan "the process of controlling the implementation of the Views (decisions) of the UN HRC is not regulated. This leads to the absence of an objective and efficient analysis by the authorities of the Views issued against the Republic of Tajikistan, and this, in turn, leads to a significant delay in taking general measures and [...] to an increase in the number of complaints by Tajikistani citizens."²⁶⁴

In autumn 2011, certain Ministries, including the Ministry of Justice, were asked to submit proposals on a mechanism to implement UN HRC decisions. The Department for Constitutional Guarantees of Citizens' Rights of the Presidential Office reported that it planned to reform the Commission on Implementation of International Commitments. No information is available at the time of writing about the timeframe for this.

8. TORTURE AND OTHER ILL-TREATMENT UPON RETURN TO TAJIKISTAN

Amnesty International is extremely concerned at a number of cases in recent years where people who were extradited or forcibly returned to Tajikistan by the authorities of other countries have been tortured or ill-treated by law enforcement officers in Tajikistan.

ALLEGEDLY TORTURED AFTER RETURN FROM GUANTANAMO BAY

Abdumuqit Vohidov and **Ruhniddin Sharopov** spent five years in US custody in Afghanistan and in Guantanamo Bay without judicial review of their cases. They were held in strict isolation, they were not charged²⁶⁵ and no trial was held. In early March 2007 Abdumuqit Vohidov and Ruhniddin Sharopov were flown to Tajikistan. Upon arrival they were arrested and taken into custody. The two men's fathers told Amnesty International²⁶⁶ that they were held without access to a lawyer until their trial in August that year, and that their families were notified only at the end of April. In May the men's fathers were able to meet them in the SIZO in Dushanbe. They were not allowed to meet their sons again before the trial began.

Both men reportedly stated in court that they were tortured and beaten by law enforcement officers in Tajikistan to extract confessions and incriminating evidence. Abdumuqit Vohidov's fingers were allegedly electrocuted or burnt with a flame. Abdumuqit Vohidov went on hunger strike to protest the verdict and was allegedly beaten by guards of the IVS facility to force him to eat again. No investigation is believed to have been opened into the allegations of torture and ill-treatment. On 17 August the Supreme Court of Tajikistan sentenced both men to 17 years' imprisonment for "illegally crossing the border of the Republic of Tajikistan²⁶⁷" into Afghanistan in 2001 and for taking part in "mercenary activities²⁶⁸" for the IMU²⁶⁹. Appealing the sentence, their lawyer stated that the men were not aware that they were being hired by the IMU, and that no evidence was presented in court proving the men had participated in combat. The appeal was turned down. In 2009 Ruhniddin Sharopov received an additional ten years' prison sentence for an alleged attempt to escape from prison. As of July 2011 Abdumuqit Vohidov was in prison in Dushanbe and Ruhniddin Sharopov in Qurghonteppa.

Abdumuqit Vohidov's family is able to visit him two or three times per year. Ruhniddin Sharopov's parents are very poor and can only afford to make the trip from their home in Isfara in the northern Sughd region to the prison once a year. Both families are calling on the authorities to transfer their sons to a detention facility in Sughd region so that they would be able to visit them more easily.

Amnesty International is calling on the Tajikistani authorities to open a thorough, impartial and independent investigation into the allegations of the torture of Abdumuqit Vohidov and Ruhniddin Sharopov. It is calling for a retrial of the two men in proceedings that are in line with international human rights standards considering they had no access to a lawyer in pre-trial detention and in view of allegations that no evidence was presented in court proving that they actually participated in combat.

Amnesty International knows of cases of Tajikistani citizens who were extradited from Russia to Tajikistan and who were allegedly tortured upon their return to Tajikistan. One is that of Muhammad Akhadov.

ALLEGEDLY TORTURED AND RAPED BY OFFICERS OF THE MIA SIXTH DEPARTMENT AFTER EXTRADITION FROM RUSSIA

Muhammad Akhadov was arrested in the town of Kolomna in the Moscow region in Russia in 2007 and held in detention while an extradition request from Tajikistan was considered. The Tajikistani authorities requested his extradition in connection with charges involving breaking and entering, drugs, and obstruction of justice.²⁷⁰

On 29 September 2008, Muhammad Akhadov was handed to officials of the Tajikistani MIA at Vnukovo airport by officials of the Russian Prosecutor General's Office. He arrived in Dushanbe the next day and claims he was taken to the building of the MIA Sixth Department; [t]hey beat and abused me. Late at night [...] two officials [of the MIA Sixth Department] stripped me naked, tied up my hands and legs. These officials subjected me to brutal sexual violence... While one of them [...] raped me, the other [...] recorded the terrible process on camera."²⁷¹ The officials reportedly threatened that unless he confessed to the crimes and agreed to testify against Nizomkhon Juraev²⁷² they would circulate the photos of his rape throughout Tajikistan.

Muhammad Akhadov reported that he was told by officials that he was accused of involvement in a second crime which was not specified in the extradition request. He reportedly refused to sign a confession and police continued to torture and ill-treat him daily until 3 October when he was transferred to the IVS in Dushanbe. There, he was reportedly subjected to further abuse by an official of the MIA Sixth Department. Muhammad Akhadov says that while in the IVS he sent a request to the Prosecutor General calling for an investigation into his torture. An investigation was reportedly carried out and in October 2008 a criminal case opened against the two officers of the MIA Sixth Department. However, these officers reportedly left the country.

Amnesty International is concerned at a series of recent cases where the Tajikistani authorities have made extradition requests based on unreliable information for people alleged to be members of banned Islamic groups, who have subsequently alleged being tortured on their return. Many of these extradition requests have been issued for people in the Russian Federation.

The ECtHR ruled in four²⁷³ cases in 2010 that applicants would be at risk of torture and their rights under Article 3 would be violated if extradited to Tajikistan from Russia. The Tajikistani authorities requested the extraditions on charges including terrorism, incitement to overthrow the regime, membership in an illegal organization, and banditry. In the case *Gaforov vs. Russia*, for example, the Court pointed out that "evidence from a number of objective sources describes a disturbing situation in Tajikistan. In particular, the UN Committee against Torture, the US Department of State, Amnesty International and Human Rights Watch described the practice of torture against those in police custody as 'systemic', 'widespread' and 'routine'".

Amnesty International is particularly concerned at a pattern of recent incidents where ECtHR applicants²⁷⁴ were reportedly abducted by Tajikistani security forces operating in the Russian Federation and forcibly returned to Tajikistan. These illegal returns occurred despite the ECtHR having applied interim measures under Rule 39 of the Rules of Court requesting

Russia to stay the extradition pending the ECtHR judgement on the case. There are concerns that some of these people were subjected to torture or other ill-treatment upon return to Tajikistan. The most recent cases concern Nizomkhon Juraev, who was illegally abducted and returned to Tajikistan from the Russian Federation in April 2012, and Savriddin Juraev (Dzhurayev) whose case is described below.

Twenty-seven -year-old **Savriddin Juraev** is accused by the Tajikistani authorities along with 33 others of participating in the banned organizations “Bayat” and the IMU.

Savriddin Juraev reports that he fled to the Russian Federation following the death of his Koran tutor Sadullo Marufov in police custody in 2006 and police interrogations of his followers. Savriddin Juraev was arrested in Moscow in November 2009 and held in SIZO number 4 in Moscow. The Tajikistani authorities requested his extradition, on the grounds that, in 1992, the then 7- year-old Savriddin “used the outbreak of civil war and resulting chaos in the republic to destabilise the political situation in the Republic of Tajikistan and illegally appropriating the official authority of law enforcement officers” and joined a banned Islamist group.

The Deputy General Prosecutor of the Russian Federation approved the extradition and Savriddin Juraev appealed twice to the courts against this decision, unsuccessfully. On 7 December 2010 the ECtHR applied interim measures requesting the Russian authorities not to extradite Savriddin Juraev pending its ruling on the case on the grounds of risk of torture should the applicant be returned to his country of origin. Savriddin Juraev was released on 20 May 2011 after 18 months in detention²⁷⁵ and got temporary asylum status in August. However, on the night of 31 October 2011 he was kidnapped in Moscow by unknown people dressed in plain clothes. The Russia-based NGO the Human Rights Institute later found out that he was taken out of Russia on the night of 1 November, through Domodedovo airport, despite the fact that he did not have a valid passport.

Savriddin Juraev wrote to his lawyers assisting with his application to the ECtHR that on the evening of 31 October in Moscow he was abducted by four or five men in plain clothes who bundled him into a car, beat him, put a gun to his head and threatened to kill him if he would not agree to return to Tajikistan. The person who spoke to him was Tajikistani. He was held all night and the next day in the cars, then about midnight taken direct to an aircraft at Domodedovo airport and handed over to the Tajikistani convoy; he arrived early the next morning at Khujand airport in Tajikistan. Five officials took him to the MIA Sixth Department and covered his eyes so he could not see, beat him and interrogated him without a lawyer, pressing him to testify against certain people but he refused. He maintains his innocence.

In March 2012 the Russian authorities reportedly informed the ECtHR that they had no information about his whereabouts, him leaving the country or whether he left by plane or train.

On 19 April Savriddin Juraev was sentenced to 26 years in prison. His co-defendants received prison terms of between eight and 28 years for charges which included murder (Article 104), organization of an illegal armed group (Article 185.1), banditry, creation of an armed group to attack people and organizations (Article 186); organization of a criminal organization to commit grave or especially grave crimes (Article 187 1 and 2), incitement to national, racial, ethnic or religious hatred (189.3); forcible seizure of power or forcible retention of power (Article 306.3); public appeals to violent change of the constitutional system of the Republic of Tajikistan, committed on the instructions of hostile organizations or representatives of foreign states (Article 307.3)²⁷⁶. Serious allegations of torture and ill-treatment were raised by Savriddin Juraev’s co-defendants in the case.

To Amnesty International's knowledge, at the time of writing the ECtHR had issued interim measures under Rule 39 of the Rules of Court with regard to at least three people from Tajikistan currently in the Russian Federation in order to prevent them from being extradited pending consideration of their applications to the Court. These are Ismon Azimov²⁷⁷, Farrukh Sidikov²⁷⁸ and a Mr Latipov. Their lawyers applied to the ECtHR as they believe that their extradition would violate key provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, including the prohibition on returning a person to a country where he or she would be at risk of torture or inhuman or degrading treatment or punishment.

9. CONCLUSIONS AND RECOMMENDATIONS

This report describes Amnesty International's concerns regarding torture and other ill-treatment of people in the early stages of detention, inadequate procedures or non-compliance with procedures for protecting detainees against such abuses, inadequate investigations, and the failure of the Tajikistani authorities to hold those responsible to account; inadequate access of the victims to effective remedy and reparation, and impunity for the perpetrators. Amnesty International is aware of the measures that Tajikistan has taken in recent years such as the adoption of a new Criminal Procedural Code (CPC) in 2010, amending the Criminal Code to include a definition of torture in line with international standards in 2012, and, in March 2012, of Tajikistan's stated willingness to implement recommendations of the Universal Periodic Review, but it believes that there are a number of specific additional measures which are needed to ensure that torture and ill-treatment in pre-trial detention in Tajikistan are brought to an end in practice.

Accordingly, Amnesty International makes the following recommendations to Tajikistan which it believes are necessary if Tajikistan is to comply with its obligations under international and human rights law. Their timely implementation would be a positive indication of Tajikistan's commitment to end torture and other ill-treatment.

RECOMMENDATIONS

General

- Publicly and unreservedly condemn any use of torture and other ill-treatment. In particular make clear to all law enforcement officers that these practices are unlawful and will not be tolerated and that those who use them will be subject to disciplinary and criminal sanctions. This must be reflected in the training of law enforcement officials.
- Compile and publish clear annual information and statistics regarding complaints of torture and ill-treatment, the investigations conducted, and the outcome in terms of disciplinary proceedings, prosecutions, convictions and sentences and compensation and other reparations for victims.

Strengthen procedural safeguards for detainees:

The following procedural rights should apply to all detainees, including those charged with administrative offences:

- Ensure that detainees are transported to a place of detention as soon as possible after arrest and not kept in other locations apart from official places of custody; and that the CPC is amended to require the registration of detention in an official place of custody within three hours of the moment of deprivation of liberty.
- Amend the CPC to ensure that the definition of deprivation of liberty is in line with international human rights law and that the time that this occurs is treated as the outset of

detention and recorded as such in the detention record.

- Amend the CPC to ensure that it explicitly provides, from the moment of deprivation of liberty, for the right to notify a third person, of access to a lawyer of their choice, of the right to remain silent, and ensure detainees are informed of these rights at the moment of the deprivation of liberty.
- The detention record should be opened as soon as possible after arrest of each detainee which should state, at a minimum, the time of arrest; the reasons for arrest; the identity of the arresting officer(s); the location where they are detained and any subsequent transfers; and the identifies of the officers responsible for them in custody.
- Ensure that detainees have access to the lawyer of their choice and that consultations between the detainee and their lawyer take place confidentially and in private.
- Ensure that anyone arriving at a detention facility undergoes a routine medical examination and ensure independent medical examinations are provided when requested by the detainee and not solely when permitted or requested by officials. Ensure that such examinations are carried out in private and free of charge for detainees, and that detainees who in addition wish to have a medical examination in private by a doctor of their choice at their own expense can do so and that detainees have access to their medical records.
- Legislate that remand hearings must take place much earlier than currently prescribed by the CPC (72 hours), and at the latest within 48 hours of the outset of detention; and strengthen the presumption in favour of liberty.
- Amend the CPC so that it no longer allows judges to indefinitely extend periods of pre-trial detention when the prosecution has failed to present well-founded grounds for the person to remain in custody.
- Legislate that no statement or confession made by a person deprived of their liberty, other than one made in the presence of a judge or a lawyer, should have a probative value in court.

Other reforms

- Ensure assessment procedures for law enforcement officials are not purely quantitative as such a system exacerbates the risk of torture or other ill-treatment.
- Ensure that in practice detainees are not held in SCNS or IVS or other facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention. Then they should be transferred to SIZOs and no further unsupervised contact with the interrogators or investigators should be permitted.
- Implement as a matter of priority the introduction of name tags or visible identification numbers for all law enforcement officers.
- Ensure that detainees are entitled to have their lawyer present at all interrogation sessions.

- Ensure that formal and complete records are kept of all interrogation sessions, by means of transcripts or, preferably, by means of audio and video recordings. The records should include a record of the identity of all persons present. The records should be made available to the detainee and their lawyer.
- In addition, establish audio and video surveillance of all areas of custody facilities where detainees may be present, except where this would violate detainees' right to privacy or to confidential communication with their lawyer or with a doctor. Recordings should be kept in secure facilities for a reasonable period and in the event of a complaint be made available for investigators, individuals who have made a complaint and their representatives.
- Ensure internal directives regulating communication between defence lawyers and detainees are made public and that these comply fully with the norms of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to which Tajikistan is a party.
- Take steps as a matter of priority to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and establish an effective National Preventative Mechanism which is resourced and permitted to conduct regular, independent, unannounced and unrestricted visits of inspection to all places of detention, with the opportunity for the inspectors to speak privately with individual detainees.
- Ensure that appropriate disciplinary, and where necessary criminal, measures are taken against law enforcement officials who harass or intimidate individuals making a complaint about alleged criminal offences by police.

Judicial authorities and their role in combating torture and other ill-treatment:

At remand hearings:

- Ensure that judges inquire into the legality of police detention and into how the detainee has been treated in custody, and if the detainee makes any complaint, or, even in the absence of an explicit complaint, if there is any reason to believe that they have been tortured or ill-treated, initiate a prompt, effective, and impartial investigation.
- Oblige judges to routinely verify whether all procedural safeguards in the CPC have been adhered to, including the timely and correct completion of the detention record; notification to the detainee of his/her rights; prompt notification of their family or other third party; prompt, unrestricted and confidential access to a lawyer; prompt and confidential access to a doctor; and compliance with the time limits stipulated in law.
- As a preventative measure against torture and ill-treatment, ensure that people are only remanded in pre-trial detention in exceptional cases for as short a time as possible and abolish the provision in the CPC that entitles judges to authorise pre-trial detention based only on the gravity of the alleged crime as contradictory to the principle of the presumption of innocence.

At Trial:

- Ensure that any statement or confession elicited as a result of torture or other ill-treatment is not used as evidence in any proceedings except those brought against the

alleged perpetrators.

- Legislate that when allegations of torture or other forms of ill-treatment are raised by a defendant during trial or at any other time, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that such treatment did not take place and that any statement or confession made by them was not obtained by unlawful means.

Investigations into allegations of torture and other ill-treatment and ensuring the right to a remedy and reparation

- Establish a fully resourced, effective, independent agency to investigate all allegations of human rights violations committed by officers of all law enforcement agencies or by persons acting on orders of such agencies or with the knowledge or complicity of such agencies.
- When a complaint or allegation is made about torture or other ill-treatment, or if there is reason to believe that torture or other ill-treatment has taken place, there should be a prompt, thorough and impartial investigation by a body independent of the alleged perpetrators, including a medical examination of the individual concerned. Ensure that complainants, witnesses and others at risk are protected from intimidation and reprisals.
- Suspend any law enforcement officer who is under investigation for having committed acts of torture or other ill-treatment, for the duration of the investigation.
- A person in respect of whom there is credible evidence of responsibility for an act or acts of torture or other ill-treatment should be prosecuted in a fair trial and, if found guilty, given a punishment commensurate with the gravity of the offence.
- Amend the law so as to ensure that victims of torture or other ill-treatment are entitled to prompt reparation from the state, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation regardless of whether perpetrators of such torture have been brought to justice.

Training of police and judiciary

- Ensure that it is made clear during the training of all officials involved in the custody, interrogation or medical care of detainees that acts of torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment and to report any instance of it that they know about, and that those in command of arresting officers or in charge of places of detention at the time abuses are perpetrated and who did not take steps to prevent or punish the abuses will also be held responsible.
- Ensure that law enforcement officers receive training in the investigation of crimes by means of skilful interviewing of witnesses and suspects and obtaining forensic evidence, rather than relying on confessions as a means of solving crimes.
- Ensure that judges conducting trials and remand hearings are trained in how to identify indications of torture or other ill-treatment.

Cooperation with international human rights bodies

- Grant access to detention facilities to the International Committee of the Red Cross.
- Issue a standing invitation to all thematic Special Procedures mandate holders.
- Ensure prompt compliance with Tajikistan's specific obligations arising from decisions of the UN HRC on individual cases, including ensuring effective remedy, initiation of criminal proceedings to establish responsibility, appropriate reparations to victims including compensation, as well as the obligation to prevent further violations in the future.
- Establish a focal point within the government responsible for communicating with the UN Human Rights Committee, to ensure timely responses to UN Human Rights Committee's requests for information or observations from the authorities of Tajikistan on ongoing cases and ensure implementation of UN Human Rights Committee's recommendations.

ENDNOTES

- 1 See Chapter "Tajikistan's International Obligations and Steps to Implement them at the Domestic Level".
- 2 Amnesty International visited three areas of Tajikistan in April 2011 for a total of 14 days and was told about some 140 cases where there were allegations of torture or other ill-treatment.
- 3 See Chapter: "The Scale of Torture and Other Ill-Treatment in Tajikistan".
- 4 UN Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers: Addendum, Mission to Tajikistan, 30 December 2005, E/CN.41/2006/32 52/Add. 4 Report of the Special Rapporteur on the Independence of Judges and Lawyers , paragraph 39, p13, at: <http://www.unhcr.org/refworld/docid/441181fa0.html>, accessed 22 May 2012.
- 5 In this report the terms arrest, the moment of detention, the moment when someone is taken into detention and the moment when someone is deprived of their liberty are used interchangeably.
- 6 See Chapter 3 "Inadequate safeguards against torture".
- 7 See Chapter 6 "Denial of Right to a Remedy".
- 8 See Chapter 7 "Failure to act on interventions and decisions by the UN Human Rights Committee".
- 9 See Chapter 8 "Torture upon return to Tajikistan".
- 10 known by the Russian acronym "IVS" for "izolyator vremennogo sodержaniya"
- 11 known by the Russian acronym "SIZO" for "sledstvenny izolyator"
- 12 Second Periodic Report of the Republic of Tajikistan about the Implementation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment, received by the UN on 6 December 2010.
- 13 Republic of Tajikistan, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, A/HRC/WG.6/12/TJK/1, 19 July 2011, at: http://www.upr-info.org/IMG/pdf/a_hrc_wg_6_12_tjk_1_e.pdf, accessed 22 May 2012, and, Report of the Working Group on the Universal Periodic Review for Tajikistan, A/HRC/19/3/Add.1, 27 February 2012, at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.3.Add.1_en.pdf, accessed 22 May 2012.
- 14 see for example Office of the High Commissioner for Human Rights, General Comment 24, 52nd session, 4 November 1994, para 8, at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/69c55b086f72957ec12563ed004ecf7a?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/69c55b086f72957ec12563ed004ecf7a?Opendocument), accessed 22 May 2012.
- 15 see Office of the High Commissioner for Human Rights, General Comment 20, 44th session, 10 March 2012, paras. 8, 14, 15, at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument), accessed 22 May 2012.
- 16 See Committee Against Torture, General Comment No. 2, 24 January 2008, para 6, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>, accessed 22 May 2012.
- 17 Office of the High Commissioner for Human Rights, General Comment 20, 44th session, 10 March 2012, para 12, at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument), accessed 22 May 2012
- 18 Tajikistan became a party to the ICCPR on 4 January 1999.
- 19 Conclusions of the Human Rights Committee 22 July 2005
- 20 Committee Against Torture, General Comment No. 2, 24 January 2008, para 25, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>, accessed 22 May 2012

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- 21 A body of independent experts which supervises states parties' implementation of the provisions of the CAT.
- 22 Article 10, Constitution of the Republic of Tajikistan
- 23 Article 18, Constitution of the Republic of Tajikistan
- 24 Article 10, part 2 of the CPC.
- 25 Article 171.4 of the CPC.
- 26 Article 88 of the CPC.
- 27 Sergey Romanov: Practice of Implementing Rulings by the UN Human Rights Committee in the Republic of Tajikistan, Dushanbe, 2010 pp. 16-19.
- 28 The first phase, 2007-2010, was approved by Presidential decree on 23 June 2007, the second phase 2011-2013, on 3 January 2011.
- 29 Second Periodic Report of the Republic of Tajikistan about the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as received on 6 December 2010
- 30 Article 35, part 1 and Article 104, part 2 of the CPC.
- 31 Amnesty International's meeting with Supreme Court, 14 April 2011
- 32 President Rahmon, speech to Parliament, 2007.
- 33 Official title "On the Plenipotentiary for Human Rights in the Republic of Tajikistan"
- 34 The Ombudsperson is appointed by the President for a 5-year term.
- 35 "Ombudsman: the incident at the Shokhmansur police department must be thoroughly investigated", ASIA Plus, 9 November 2011, at: <http://news.tj/ru/news/ombudsmen-intsident-v-ovd-shokhmansur-dolzhen-byt-tshchatelno-rassledovan>, accessed 18 May 2012
- 36 In addition, the MIA adopted a Code of Professional Police Ethics in March 2011
- 37 In line with Principle 12, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly, 76th plenary meeting, 9 December 1988, at: <http://www.un.org/documents/ga/res/43/a43r173.htm>, accessed 22 May 2012.
- 38 "General Prosecutor's Office of the Republic of Tajikistan: Torture in Tajikistan is not a widespread ", ASIA-Plus, 10 January 2012, at: <http://news.tj/ru/news/genprokuratura-rt-pytiki-v-tadzhikistane-ne-imeyut-massovogo-kharaktera>, accessed 22 May 2012.
- 39 In May 2011, Sherkhon Salimzoda, the Prosecutor General of Tajikistan, reported an increase in the number of complaints about illegal actions of investigators. On 8 August 2011, Radio Ozodi reported him as saying that his office had received "around 50" letters of complaint about the use of physical force towards citizens.
- 40 "R. Mengliev: There is no evidence of torture in Tajikistan's detention facilities", ASIA Plus, 19 January 2012, at: <http://news.tj/ru/news/r-mengliev-faktov-pytok-v-ispravitelnykh-uchrezhdeniyakh-tadzhikistana-net>, accessed 23 May 2012.
- 41 Report of the Human Rights Ombudsman's Office in the Republic of Tajikistan for 2011, March 2012.
- 42 Meeting with Amnesty International, April 2011
- 43 Sources of information included victims, relatives and lawyers; human rights NGOs; court records; government officials. The monitoring was carried out in all three regions of the country including cities and towns such as Dushanbe, Khorugh, Khujand, Kulob, Qurghonteppa, Isfara, Istaravshan and Tursunzoda. Most cases registered originated from Dushanbe and Khujand. The NGOs attributed this to the fact that most coalition members were based in these cities. In other parts of the country it is likely that cases went unreported.
- 44 On 8 April 2011.

- 45 The Charitable Association Avesto is based in Dushanbe, and also works in Khujand, so most of their patients live in or around those cities.
- 46 Presidential Decree of 30 November 2006 mandated the State Committee for National Security with the functions of the former Ministry of Security.
- 47 Case of Khodzhayev vs. Russia, European Court of Human Rights, Judgement, 12 May 2010, at: http://www.icj.org/img/CASE_OF_KHODZHAYEV_v_RUSSIA.pdf, accessed 23 May 2012.
- 48 Interview with Amnesty International April 2011
- 49 "The Head of the Ministry of Internal Affairs promises to bring order", Veчерka, 20 January 2012, at: <http://vecherka.tj/news/glava-mvd-obeshhaet-navesti-poryadok/>, accessed 23 May 2012.
- 50 Article 104 part 2 of the Criminal Code of the Republic of Tajikistan.
- 51 Conversation with AI delegation, Khujand, 12 April 2011.
- 52 Bureau on Human Rights and Rule of Law and Freedom House, Доклад офактаҳпыткок ижестокогообращеня в Таджикистане за период март, 2007 по декабрь, 2008 года (Report on torture and cruel treatment in Tajikistan in the period from March 2007 to December 2008, pp. 522-523).
- 53 Conversation with AI delegation, Khujand, 12 April 2011.
- 54 on 13 April 2011
- 55 Conversation with AI delegation, Khujand, 11 April 2011.
- 56 "Ministry of Internal Affairs for the people, or the people for the Ministry of Internal Affairs", avesta.tj Information Agency, 27 May 2011, at: <http://avesta.tj/index.php?newsid=8557>, accessed 24 May 2012.
- 57 22 June 2011, news programme Akhbor, Tajik Television First Channel
- 58 "E. Rahmon: I am ashamed of your sycophancy", ASIA Plus, 20 January 2012, at: <http://news.tj/ru/news/e-rakhmon-mne-stydno-za-vashe-podkhalimstvo>, accessed 28 May 2012.
- 59 "The Strategy for the Fight against Corruption in the Republic of Tajikistan - 2008 to 2012" calls for "thorough and systematic research, a specific approach and complex and operative counteraction".
- 60 "Report: A sociological survey on the perception and attitudes towards corruption and the fight against corruption in Tajik society", Centre for Strategic Studies under the President of the Republic of Tajikistan, p38, at: http://mts.tj/projects/osce_report.pdf, accessed 28 May 2012.
- 61 Interview with Amnesty International April 2011
- 62 Interview with Amnesty International in April 2011.
- 63 An estimated 60% of the population lived below the poverty line in 2009 <http://web.worldbank.org/>
- 64 See Chapter 3.6.1, paras 2-7 for more information.
- 65 Conversation with AI delegation, Dushanbe, 5 April 2011.
- 66 ECtHR Khodzhayev vs. Russia (judgement 12/05/2010).
- 67 CPC and Law of 28 July 2011: "Detention Procedures and Conditions for Suspects, accused persons and defendants".
- 68 Interview with Amnesty International 7 April 2011.
- 69 Conversation with Amnesty International Delegation, Dushanbe, 7 April 2011.
- 70 Article 322.2 of the Criminal Code

71 Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, UN Doc. E/CN.4/2003/68, 17 December 2002, para.26(g), p10-11. at: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/\\$FILE/G0216049.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/$FILE/G0216049.pdf), accessed 28 May 2012.

72 For example, this is explicitly set out in Article 4(2) of the Optional Protocol to the UN Convention against Torture, which stipulates that "deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority".

73 Article 94.1 of the CPC provides that the detention should be registered within three hours of a person being "entered into an agency of criminal prosecution in specialized places defined by the law and this code".

74 Article 94.2 of the CPC.

75 Article 46.4 of the CPC.

76 Article 22.1, Article 49.2 of the CPC.

77 Article 46.4 of the CPC.

78 Article 46.2 of the CPC.

79 Principle 13 of the UN Body of Principles UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment on Detention states that "[a]ny person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights."

80 Article 94.1 and 94.2 of the CPC.

81 2010 OSCE Review Conference, Working Session 4, 8 October 2010, p2, at: <http://www.osce.org/ru/node/71951>, accessed 28 May 2012.

82 In a letter to Ilhom Ismonov's wife of 9 December 2011.

83 Interview with Amnesty International delegates on 13 April 2011.

84 2010 OSCE Review Conference, Working Session 5, 8 October 2010, p1, at: <http://www.osce.org/ru/node/71963>, accessed 28 May 2012..

85 Meeting of AI delegates with lawyers and human rights defenders in Qurghonteppa, 16 April 2011.

86 Nurmahmad Khalilov, Monitoring of court decisions on applications for security measures in criminal proceedings in the Republic of Tajikistan pp. 44 and 46.

87 Interview with Amnesty International delegates on 17 April 2011. See Chapter 3.4.1, paras 9-10 for further details on the case.

88 Articles 314.1 and 316.1 of the Criminal Code.

89 Conversation with Amnesty International March 2012.

90 Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, UN Doc. E/CN.4/2003/68, 17 December 2002, para.26(h), p11. at: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/\\$FILE/G0216049.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/$FILE/G0216049.pdf), accessed 28 May 2012.

91 Tajikistan stated that it is revising Articles 753-755 782 812 of the Code of Administrative Offences. Report of the Working Group on the Universal Periodic Review: Tajikistan, February 2012 A/HRC/19/3/Add.1., p4, at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.3.Add.1_en.pdf, accessed 28 May 2012.

92 Article 56 of the CPC.

- 93 Article 91 of the CPC.
- 94 The UN Working Group on Arbitrary Detention has identified three cases where deprivation of liberty can be deemed "arbitrary": This case falls under category 1): Where there is no legal basis for detention. This includes those held without charge or trial.
- 95 Conversation with AI delegation in Khujand, 12 April 2011.
- 96 Interview with Amnesty International on 16 April 2011.
- 97 Human Rights Watch, World Report 2011, p474-475, at: <http://www.hrw.org/sites/default/files/reports/wr2011.pdf>, accessed 28 May 2012.
- 98 The Constitution of the Republic of Tajikistan states that "a person is entitled to services of a lawyer from the moment of detention". This right is further confirmed in the CPC (Articles 22 and 49).
- 99 The UN Human Rights Committee has stated that "all persons arrested must have immediate access to counsel" and the Committee against Torture has also recommended "unrestricted access to counsel immediately after arrest".
- 100 CPC Article 22.1 provides that a lawyer can see a detainee from the moment of detention. Article 49.2 provides that a defence lawyer can participate in the criminal case from the moment of actual detention; Article 18.1 Law "Detention Procedures and Conditions for Suspects, accused persons and defendants".
- 101 Article 94.1 and 94.2 of the CPC.
- 102 Article 46.2 of the CPC.
- 103 Article 53, part 2 of the CPC states that a lawyer is entitled to be present at interrogations at the request of the lawyer and Article 51, part 1 of the CPC states that the participation of a lawyer is obligatory should the suspect or accused person request it.
- 104 Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, UN Doc. E/CN.4/2003/68, 17 December 2002, para.26(e), p10. at: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/\\$FILE/G0216049.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/$FILE/G0216049.pdf), accessed 28 May 2012.
- 105 Article 92, part 3 of the CPC.
- 106 Interview with Amnesty International delegates on 16 April 2011.
- 107 For further information on persecution of Jehovah's witnesses in Tajikistan see: Amnesty International, *Central Asia: Summary of Human Rights Concerns: March 2007- March 2008*, (Index: ECA 04/001/2008)
- 108 Article 316 of the Criminal Code.
- 109 Interview with Amnesty International 11 April 2011
- 110 Further information on the case of Urunboy Usmonov can be found further down in this report. Also refer to: Urgent Actions (UA: 211/11, AI Index: EUR 60/004/2011, 6 July 2011 and AI Index: EUR 60/007/2011, 29 July 2011); Public statement: Tajikistan: BBC journalist Urunboy Usmonov on trial for his professional activities, AI Index: EUR 60/008/2011, 24 August 2011.
- 111 Articles 51.1 and 53.2 of the CPC.
- 112 Article 307.3 part 2 of the Criminal Code.
- 113 "Tajik court sentenced a journalist confirmed BBC BBC", news.vdok.org, undated, at: <http://news.vdok.org/page.aspx?id=7324>, accessed 29 May 2012.
- 114 Interview with Amnesty International delegates on 11 April 2011.
- 115 Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, General Assembly, 56th session, A/56/156, para. 39(f), p11. at: <http://www.un.org/documents/ga/docs/56/a56156.pdf>, accessed 29 May 2012.

- 116 Under Articles 187.2, 306, 340.2, 36.5, 179.3 of the Criminal Code of the Republic of Tajikistan he was charged with membership of a criminal group, falsification of documents and participating in the explosion which took place at the Sughd Department for the Fight Against Organised Crime.
- 117 Information received by Amnesty International on 6 September 2011.
- 118 Article 14(3) of the ICCPR stipulates that accused people have the right to "have adequate time and facilities [...] to communicate with counsel." Detainees have the right to confidential communication with counsel. The Human Rights Committee has stated that the provision for communication with counsel in Article 14(3) of the ICCPR "counsel should be able to meet their clients in private and to communicate with the accused in conditions giving full respect for the confidentiality of their communications" (General Comment 32 on Article 14 of the ICCPR, para. 34). Principle 8 of the Basic Principles on the Role of Lawyers states that governments must ensure that detainees have opportunities to consult and communicate with counsel without delay, interception or censorship.
- 119 Article 53, part 2 of the CPC stipulates that the lawyer who participates in a criminal case is entitled to have such meetings with the client.
- 120 On 11 April 2011.
- 121 Principle 18(4) of the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment specifies that "[i]nterviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official."
- 122 United Nations, *Report of the Human Rights Committee*, vol.1, 26 October 2001, A/56/40, para. 86(18), p102.(referring to the Democratic People's Republic of Korea), at: [http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a91dea9af2c00fa7c1256ace0055cab5/\\$FILE/G0144476.pdf](http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/a91dea9af2c00fa7c1256ace0055cab5/$FILE/G0144476.pdf), accessed 29 May 2012.
- 123 United Nations, *Report of the Human Rights Committee*, vol.1, 21 September 1997, A/52/40, para. 438, p70-71. (referring to India), at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/247/64/IMG/N9724764.pdf?OpenElement>, accessed 29 May 2012.
- 124 (UN. Doc. CAT/C/KAZ/CO/Z) Kazakhstan; (UN. Doc. CAT/C/BIH/CO/2-5) Bosnia-Herzegovena; (UN. Doc. CAT/C/CR/28/4) Russian Federation; (UN. Doc. CAT/C/YEM/CO/Z/Rev.1) Yemen and others.
- 125 Conclusions and recommendations of the Committee against Torture: Tajikistan, 7 December 2006, CAT/C/TJK/CO/1, at: [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39fa173e34b80b52c125728f004d9e4b/\\$FILE/G0740308.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39fa173e34b80b52c125728f004d9e4b/$FILE/G0740308.pdf), accessed 29 May 2012.
- 126 Under Article 100, part 1 of the CPC.
- 127 Principle 16(1) UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment "after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authorities to notify members of his family or other appropriate persons of his choice of [...] the transfer and of the place where he is kept in custody".
- 128 The UN Standard Minimum Rules (Rule 24) and the UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (Principle 24)
- 129 United Nations, *Report of the Human Rights Committee*, vol.1, 21 September 1997, A/52/40, para. 109, p22. (referring to Switzerland), at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/247/64/IMG/N9724764.pdf?OpenElement>, accessed 29 May 2012
- 130 Report of the Working Group on the Universal Periodic Review: Tajikistan, 27 February 2012, A/HRC/19/3/Add.1, at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.3.Add.1_en.pdf, accessed 29 May 2012.
- 131 Meeting with AI delegation, April 2011
- 132 on 13 April 2011
- 133 on 2 September 2011
- 134 See Istanbul Protocol, and UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 135 United Nations, *Report of the Human Rights Committee*, 3 October 1995, A/50/40, para 94, (referring to Tunisia), at:

<http://www.un.org/documents/ga/docs/50/plenary/a50-40.htm> (mimeographed version), accessed 29 May 2012.

- 136 Article 208 of the CPC stipulates that investigators decide whether an examination should be conducted.
- 137 Article 209 of the CPC
- 138 Article 175 of the CPC
- 139 Article 318 of the CPC
- 140 Amnesty International, *Russian tortured in Tajikistan*, (UA: 238/10, Index: EUR 60/002/2010) and *Tajikistan: A coalition of non-governmental organizations is calling on the government to end torture and fulfil its international obligations*, (Index: EUR 60/003/2010).
- 141 Article 12, part 1d of the Law on the Ombudsman
- 142 During a meeting on 15 April 2011
- 143 on 7 April 2011
- 144 Ramziya Mirzobekova, "Investigation or Inquisition?", Asia Plus, 21 December 2010. All references to Asia Plus in this case description refers to this article.
- 145 Conclusion on March 10 2010
- 146 Centre of Forensic Medical Examinations of the Ministry of Health of the Republic of Tajikistan
- 147 Mariya Yanovskaya, Ferghana.news, Purely Tajik murder, or How to get money out of people in Isfara (For translator: Чисто таджикское убийство, или Как в Исфаре выжимают из людей деньги), 11 November 2010.
- 148 For example, principle 12 of the UN Body of Principles on Detention stipulates that the detention record must include information about the identity of the law enforcement officials involved in an arrest.
- 149 Interview with Amnesty International 15 April 2011
- 150 Report of the Working Group on the Universal Periodic Review: Tajikistan, 27 February 2012, A/HRC/19/3/Add.1 , at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.3.Add.1_en.pdf, accessed 29 May 2012.
- 151 Article 20 of OPCAT
- 152 Report of the Working Group on the Universal Periodic Review, 12 December 2011, A/HRC/19/3, at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-3_en.pdf, accessed 29 May 2012.
- 153 Amendments to Law on the Ombudsman, Law of 28.06.11г., №732
- 154 Article 14 of the Law on the Ombudsman
- 155 Amendments to Law on the Ombudsman, Law of 28.06.11г., №732
- 156 Article 12.1 (g) of the Law on the Ombudsman
- 157 Article 12 of the Law on the Ombudsman
- 158 Report of the Human Rights Ombudsman's Office in the Republic of Tajikistan for 2011
- 159 Constitution of the Republic of Tajikistan, Article 84
- 160 The Law on Courts No. 581 of 12.01.2010 stipulates that the Council of Justice is subordinate to the President of Tajikistan for plans for judicial reform, selection of judicial candidates etc, and that its Chairperson, his/her Deputy, and the Executive Secretary are all appointed by the President of Tajikistan
- 161 Report of the Working Group on the Universal Periodic Review: Tajikistan, 27 February 2012, A/HRC/19/3/Add.1 , at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.3.Add.1_en.pdf, accessed 29 May 2012.

162 Article 9(3) of the ICCPR stipulates that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power [...]”. The UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment 11(1) states: ‘A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.’

163 The Criminal Procedural Code came into force in April 2010

164 Article 92, part 3, Article 104, part 2 and Article 111 of the CPC.

165 Articles 104, 105 and 109 of the CPC.

166 UN Human Rights Committee, *General Comment No.8: Right to liberty and security of persons (Art. 9)*, 30 June 1982, para 3, at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f4253f9572cd4700c12563ed00483bec?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f4253f9572cd4700c12563ed00483bec?OpenDocument), accessed 29 May 2012.

167 See Van Alphen v. The Netherlands (305/1988) 23 July 1990 Report of the HRC Vol. II (A/45/40, 1990, at 115.

168 UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, A/RES/43/173, Principle 39, at: <http://www.un.org/documents/ga/res/43/a43r173.htm>, accessed 29 May 2012.

169 Article 111, part 1 of the CPC provides that those who are accused of crimes punishable by over 2 years in prison may be detained in prison pending trial. Those who are accused of crimes punishable by less than 2 years in prison can be detained pending trial if they have no permanent place of residence in Tajikistan, if their identity has not been established, if they hid from prosecution officials or the court.

170 2010 OSCE Review Conference, Working Session 5, 8 October 2010, p1, at: <http://www.osce.org/ru/node/71963>, accessed 28 May 2012..

171 Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, UN Doc. E/CN.4/2003/68, 17 December 2002, para.26(g), p10-11. at: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfc7edee4c65c1256cbb00367508/\\$FILE/G0216049.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfc7edee4c65c1256cbb00367508/$FILE/G0216049.pdf), accessed 28 May 2012.

172 Article 111, part 5 of the CPC.

173 The CPC does not specify how often judges are entitled to extend pre-trial detention in this manner.

174 Article 13.1 Law on “Detention Procedures and Conditions for Suspects, Accused persons and Defendants”.

175 Presentation by Yu. S. Salimov, in: Results of monitoring the practice of implementing the Criminal Procedure Code of the Republic of Tajikistan, Centre for Human Rights, 2011.

176 Nurmahmad Khalilov, Monitoring of court decisions on applications for security measures in criminal proceedings in the Republic of Tajikistan p. 44.

177 “Last year, Tajik courts sanctioned over 3,900 orders for arrests”, ASIA Plus, 9 January 2012, at: <http://news.tj/ru/news/v-proshlom-godu-tadzhikskie-sudy-vdali-okolo-39-tys-sanktsii-na-arest>, accessed 21 June 2012.

178 The Special Rapporteur on torture has stated: “Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to their condition”, in Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 1999/32, Addendum, Visit of the Special Rapporteur to Kenya, (E/CN.4/2000/9/Add.4), para. 93(k), p27. at: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e45663899d2802c38025668b9004ba1bf/\\$FILE/G0011509.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e45663899d2802c38025668b9004ba1bf/$FILE/G0011509.pdf), accessed 29 May 2012.

179 In Peru, the Committee against Torture found that torture had been “systematically used as a method of investigation”, it recommended judges to “order an immediate prior [medical] examination of detainees as soon as the latter are brought before them”, in Report of the Committee Against Torture, Supplement No.44 (A/56/44), para. 160, p62. at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/577/27/IMG/N0157727.pdf?OpenElement>, accessed 29 May 2012.

180 Meeting with Amnesty International 14 April 2011.

- 181 On 16 April 2011.
- 182 Nurmahmad Khalilov, Monitoring of court decisions on applications for security measures in criminal proceedings in the Republic of Tajikistan p. 48.
- 183 Article 15 of the Convention against Torture stipulates that "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." The Committee against Torture has expressly clarified that this provision is obligatory also with regard to other ill-treatment. See CAT General Comment 2, CAT/C/GC/2, 24 January 2008, para. 6. And Article 12 of the Declaration against Torture also prohibits the use of statements made as a result of other ill-treatment as well as torture.
- 184 UN Human Rights Committee, *General Comment No.32, Article 14: Right to equality before courts tribunals and to a fair trial*, 23 August 2007 (CCPR/31/CC/32), para. 41, p13. at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>, accessed 29 May 2012.
- 185 "It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person. 2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement", in UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, A/RES/43/173, Principle 21:1, at: <http://www.un.org/documents/ga/res/43/a43r173.htm>, accessed 29 May 2012.
- 186 "Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person", in UN General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, A/RES/43/173, Principle 27, at: <http://www.un.org/documents/ga/res/43/a43r173.htm>, accessed 29 May 2012.
- 187 Amnesty International interview Khujand, 11 April 2011.
- 188 2010 OSCE Review Conference, Working Session 5, 8 October 2010, p1, at: <http://www.osce.org/ru/node/71963>, accessed 28 May 2012.
- 189 "Khatlon officials claims the province is free of tortures", ASIA Plus, 7 June 2011, at: <http://news.tj/en/news/khatlon-officials-claim-province-free-tortures>, accessed 29 May 2012.
- 190 Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, UN Doc. E/CN.4/2003/68, 17 December 2002, para.26(k), p12. at: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/\\$FILE/G0216049.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/$FILE/G0216049.pdf), accessed 28 May 2012.
- 191 Report of the Special Rapporteur, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37, Visit by the Special Rapporteur to Turkey, 27 January 1999, (E/ CN.4/ 1999/61/Add.1), para 113 (e), p31. at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/104/37/PDF/G9910437.pdf?OpenElement>, accessed 29 May 2012.
- 192 Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment, UN Doc. E/CN.4/2003/68, 17 December 2002, para.26(g), p10-11. at: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/\\$FILE/G0216049.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/15adfcf7edee4c65c1256cbb00367508/$FILE/G0216049.pdf), accessed 28 May 2012; The UN Committee against Torture has also endorsed the electronic recording of interrogations, for example, Report of the Committee against Torture, Supplement 44, (A/51/44), para. 65(e), p14. at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N96/170/24/PDF/N9617024.pdf?OpenElement>, accessed 29 May 2012.
- 193 Article 201, part 1, CPC.
- 194 Article 201, part 2, CPC.
- 195 "In Tajikistan it is proposed to equip police investigator's offices with video cameras", (For translator; original title of the report: "В Таджикистане предлагают оснастить кабинеты следователей камерами видеонаблюдения" - IA Regnum, 12 May 2011.
- 196 UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (CCPR/C/21/Rev.1/Add. 13), 26 May 2004, para 15, p6, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, accessed 30 May 2012.

- 197 Human rights observer interview with Amnesty International delegates, 13 April 2011.
- 198 "Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights", in UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (CCPR/C/21/Rev.1/Add. 13), 26 May 2004, para 15, p6, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, accessed 30 May 2012.
- 199 "where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations", in UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (CCPR/C/21/Rev.1/Add. 13), 26 May 2004, para 16, p6, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, accessed 30 May 2012.
- 200 "the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations", in UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (CCPR/C/21/Rev.1/Add. 13), 26 May 2004, para 18, p7, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, accessed 30 May 2012.
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- 202 "[e]ach State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction". Under Article 13 of the Convention each State Party "shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities". in Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, at: <http://www2.ohchr.org/english/law/cat.htm>, accessed 18 May 2012.
- 203 Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, (U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4), 23 November 2007, at: http://www1.umn.edu/humanrts/cat/general_comments/cat_gencom2.html, accessed 30 May 2012.
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- 205 Blanco Abad v. Spain, Committee against Torture, (CAT/C/20/D/59/1996), 14 May 1998, para. 8.2, p9. at: http://www.bayefsky.com/pdf/105_spaincat029.pdf, accessed 30 May 2012.
- 206 which the Committee against Torture later found to have violated Articles 12 and 13 of the Convention.
- 207 Report of the Committee against Torture, Supplement No. 44, (A/53/44), 16 September 1998, para. 136, p15. at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/269/72/IMG/N9826972.pdf?OpenElement>, accessed 30 May 2012.
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74 SHATTERED LIVES
Torture and other ill-treatment in Tajikistan

- 211 Report of the Working Group on the Universal Periodic Review for Tajikistan, A/HRC/19/3/Add.1, 27 February 2012, at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.3.Add.1_en.pdf, accessed 22 May 2012.
- 212 Sources of information included victims, relatives and lawyers; human rights NGOs; court records; government officials. The monitoring was carried out in all three regions of the country including cities and towns such as Dushanbe, Khorugh, Khujand, Kulob, Qurghonteppa, Isfara, Istaravshan and Tursunzoda. Most cases registered originated from Dushanbe and Khujand. The NGOs attributed this to the fact that most coalition members were based in these cities. In other parts of the country it is likely that cases went unreported
- 213 on 8 April 2011
- 214 at the Republican Centre of Forensic Medical Examinations of the Ministry of Health of Tajikistan
- 215 Article 108, part 2 of the Criminal Code.
- 216 Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, provides that each State Party shall take steps "to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given".
- 217 Interviewed by Amnesty International delegates in April 2011.
- 218 In a letter from Ilhom Ismonov handed to the judge by his lawyer on 16 September 2011.
- 219 Amnesty International, Urgent Action: "Russia extradites Tajikistani asylum seeker" (Index: ECA 46/013/2011) and Urgent Action: "Tajik refused asylum seeker disappeared" (Index: ECA 46/013/2012)
- 220 Amnesty International has a copy of the court records.
- 221 See Chapter 2.1.1, paras 4-9.
- 222 Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www2.ohchr.org/english/law/cat.htm>, accessed 18 May 2012.
- 223 Human Rights Committee, General Comments 31, (CCPR/C/21/Rev.1/Add. 13), 26 May 2004, para.18, p7. at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, accessed 31 May 2012.
- 224 Conclusions and recommendations of the Committee Against Torture, 37th Session, (UN. Doc. CAT/C/TJK/CO/1) 7 December 2006, at: [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39fa173e34b80b52c125728f004d9e4b/\\$FILE/G0740308.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39fa173e34b80b52c125728f004d9e4b/$FILE/G0740308.pdf), accessed 30 May 2012.
- 225 See: Bureau on Human Rights and Rule of Law and Freedom House, Доклад о фактах пыток и жестокого обращения в Таджикистане за период март, 2007 по декабрь, 2008 года (Report about torture and cruel treatment in Tajikistan in the period from March 2007 to December 2008, pp. 516-517.
- 226 Article 322 of the Criminal Code of Tajikistan.
- 227 Article 314 of the Criminal Code of Tajikistan.
- 228 Article 316 of the Criminal Code of Tajikistan.
- 229 Article 354 of the Criminal Code of Tajikistan.
- 230 Article 391 of the Criminal Code of Tajikistan.
- 231 Article 322 of the Criminal Code of Tajikistan.
- 232 Article 316 of the Criminal Code of Tajikistan.
- 233 "Relatives of the deceased Sangov insist on a further investigation", Radio Ozodi, 6 February 2012, at: <http://rus.ozodi.org/content/news/24474973.html>, accessed 18 May 2012.
- 234 Conclusions and recommendations of the Committee Against Torture, 37th Session, 6-24 November 2006, UN Document CAT/C/TJK/CO/1, p2: In November

2006 the Committee against Torture pointed out that the definition of torture in domestic law falls short of the Convention "particularly regarding purposes of torture and its applicability to all public officials and others acting in an official capacity".

235 Second Periodic Report of the Republic of Tajikistan about the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as received on 6 December 2010, p12; Human Rights Council, Working Group Universal Periodic Review, (A/HRC/WG.6/12/TJK/1), 19 July 2011, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/149/55/PDF/G1114955.pdf?OpenElement>, accessed 31 May 2012.

236 Report of the Committee Against Torture, General Assembly Sixty-third Session: Supplement No. 44, 5 November 2008, p178, General comment 2, para. 11, states "By defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture and ill-treatment. Naming and defining this crime will promote the Convention's aim, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture. Codifying this crime will also (a) emphasize the need for appropriate punishment that takes into account the gravity of the offence, (b) strengthen the deterrent effect of the prohibition itself, (c) enhance the ability of responsible officials to track the specific crime of torture and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention."

237 Second Periodic Report of the Republic of Tajikistan about the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as received on 6 December 2010.

238 In 2007 criminal proceedings were instituted under Article 314 in two cases; 2008 – in 15 cases; 2009 – in 22 cases; and in the first half of 2010 – in three cases.

239 In 2007 criminal proceedings were instituted under Article 315 in four cases; 2008 – in no case; 2009 – in one case; and in the first half of 2010 – in no case.

240 In 2007 criminal proceedings were instituted under Article 316 in four cases; 2008 – in eight cases; 2009 – in two cases; and in the first half of 2010 – in four cases.

241 In 2007 no criminal proceedings were instituted under Article 322; 2008 – in six cases; 2009 – in 24 cases; and in the first half of 2010 – in one case.

242 In 2007 and 2008 no criminal proceedings were instituted under Article 391; 2009 – in one case; 2009 – in no case.

243 "Ombudsman: the incident at the Shokhmansur police department must be thoroughly investigated", ASIA Plus, 9 November 2011, at: <http://news.tj/ru/news/ombudsmen-intsident-v-ovd-shokhmansur-dolzhen-byt-tshchatelno-rassledovan>, accessed 18 May 2012.

244 Human Rights Committee, General Comments 31, (CCPR/C/21/Rev.1/Add. 13), 26 May 2004, para.18, p7. at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, accessed 31 May 2012.

245 "Case on the death of inmate Bachadzhonov: SIZO staff are sentenced", ASIA-Plus, 15 September 2012, at: <http://news.tj/ru/news/delo-gibeli-zaklyuchennogo-bachadzhonova-osuzhdeny-sotrudniki-sizo-minyusta>, accessed 18 May 2012.

246 Article 110 Part 3b of the Criminal Code of Tajikistan.

247 Article 316 Part 3a,b and c of the Criminal Code of Tajikistan.

248 Article 322 Part 2 of the Criminal Code of Tajikistan.

249 11 cases reported by OSCE in the past few years.

250 In 2004 and 2009.

251 On 7 April 2011.

252 "New changes in the structure of the Ministry of Internal Affairs", National Information Agency of Tadjikistan - Khovar, 16 January 2012, at: <http://khovar.tj/rus/president/31373-novye-izmeneniya-v-strukture-MVD.html>, accessed 18 May 2012.

253 Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights. Article 2 states that written communications can be submitted to

the Committee in cases where all available domestic remedies have been exhausted. Article 4 obliges the Committee to inform the State Party of the communication in order to enable the authorities to clarify the matter and what, if any, steps it has taken to remedy the violation.

254 The men were Gaibullozjon Saidov (or Ghaybullojon Saidov), Validzhon Saidov (or Valijon Saidov), Dovud Nazriyev, his brother Sherali Nazriyev, and Umed Idiev. See Amnesty International, *“Deadly Secrets: The Death Penalty in Law and Practice”* (EUR 60/008/2002), 29 September 2002.

255 In the most recent ruling issued on 30 March 2011 with regard to the case of Mahmadrusi Iskandarov, the Human Rights Committee reiterated concerns about the lack of cooperation of the State party. It stated that it had received no replies to several Notes Verbales made between 2006 and September 2010 requesting Tajikistan to submit information on the admissibility and the merits of the communication.

256 Kirpo vs Tajikistan, CCPR/C/97/D/1401/2005, UN Human Rights Committee (HRC), 3 December 2009, at <http://www.unhcr.org/refworld/publisher,HRC,.,TJK,4b66cd3a0,0.html> , accessed 18 May 2012.

257 The Supreme Court of the Republic of Tajikistan, the Prosecutor General's Office, the Ombudsman and the Department on Constitutional Guarantees of Citizen's Rights at the President's Office

258 Romanov: Implementing Rulings by the UN Human Rights Committee, pp. 39-41.

259 Human Rights Council, Working Group Universal Periodic Review, (A/HRC/WG.6/12/TJK/1), 19 July 2011, paras 18 and 19, p3. at: <http://daccess-dds-nv.un.org/doc/UNDOC/GEN/G11/149/55/PDF/G1114955.pdf?OpenElement>, accessed 31 May 2012.

260 In his 2010 report entitled Practice of Implementing Rulings by the UN Human Rights Committee in the Republic of Tajikistan ,

261 Romanov: Implementing Rulings by the UN Human Rights Committee, pp. 20-21.

262 Romanov: Implementing Rulings by the UN Human Rights Committee, p. 19.

263 Romanov: Implementing Rulings by the UN Human Rights Committee.

264 Romanov: Implementing Rulings by the UN Human Rights Committee, p. 12.

265 A US Department of Defence report of August 22 2005 refers to a review which found that Vohidov should no longer be considered an enemy combatant in the war on terror. Wikileaks

266 on 11 April 2011

267 Article 335, part 2 , Criminal Code of Tajikistan

268 Article 401, part 3, Criminal Code of Tajikistan

269 Islamic Movement of Uzbekistan.

270 Article 147, part 1, Article 200, part 3 and Article 346, part 2 of the Criminal Code of Tajikistan.

271 The names of the alleged perpetrators are known to Amnesty International.

272 See Chapter 8, paras 14-19 for further information.

273 The cases are Khodzhaev vs. Russia (judgement 12 May 2010), Khaydarov vs. Russia (judgement 20 May 2010), Mahmadrusi Iskandarov (September 2010) and Gaforov vs. Russia (judgement 21 October 2010).

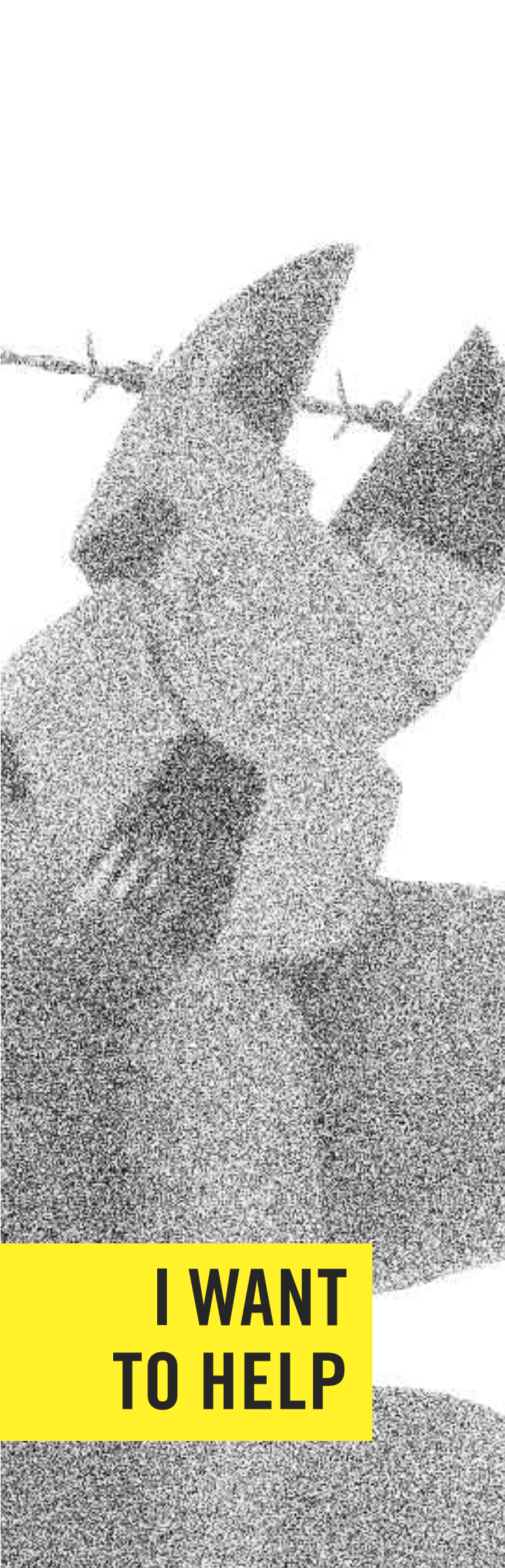
274 Dzhurayev v. Russia no. 71386/10; N. Dzhurayev v. Russia; Koziyev v. Russia no 58221/10 and Abdulkhakov v. Russia no.14743/11

275 The maximum time permitted for detention under Russian law.

276 "34 members of the IMU arrested in the north of Tajikistan", ASIA-Plus, 19 April 2012, at: <http://news.tj/ru/news/na-severe-tadzhikistana-vneseny-prigovory-y-otnoshenij-34-chlenov-idu>, accessed on 15 May 2012.

277 67474/11, Azimov v. Russia - Rule 39 of 24 November 2011. At the time of writing held in detention in the town of Serpukhov, Russian Federation. See AI Urgent Action <http://amnesty.org.ru/node/1975>.

278 73455/11, Sidikov v. Russia - Rule 39 of 6 December 2011.



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SHATTERED LIVES

TORTURE AND OTHER ILL-TREATMENT IN TAJIKISTAN

Torture and other ill-treatment can happen to anyone, anywhere in Tajikistan.

People can be picked up off the streets, detained without formal charges, and subjected to torture or other ill-treatment by police and national security officials. They are often tortured in order to obtain confessions and therefore “solve” crimes, and sometimes in order to extract bribes. Deaths after torture or other ill-treatment are not investigated effectively. The officials are rarely punished: they remain in their posts and their victims have no access to effective remedy and reparation.

In early 2012, the Tajikistani parliament approved a new law which defined torture in line with international standards. The government committed itself to “protect human rights”, by implementing improved safeguards against torture and cracking down on unlawful methods of investigation. Despite this commitment, Amnesty International continues to receive reports about torture and other ill-treatment, as well as victims being intimidated and threatened for speaking out about their abuse.

This report calls on the authorities in Tajikistan at all levels to comply with the country’s obligations under international human rights law and to swiftly implement specific measures to end torture and other ill-treatment.

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