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Informe del Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, Juan E. Méndez

Adición

Misión a Tayikistán* **

Resumen

El Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes realizó una visita a Tayikistán del 10 al 18 de mayo de 2012.

En los dos últimos años, Tayikistán ha introducido algunos cambios alentadores en el marco normativo, entre ellos, la aprobación, en abril de 2012, de una nueva disposición penal que define la tortura y establece las penas aplicables a este delito. La amplia campaña de sensibilización sobre la prohibición de la tortura en el derecho internacional e interno que han puesto en marcha las autoridades constituye un paso en la dirección adecuada.

Ahora bien, persisten lagunas considerables en la legislación y las políticas y en las prácticas seguidas por los agentes del orden. El Relator Especial señala varias cuestiones generales de importancia fundamental para luchar eficazmente contra la tortura y los malos tratos.

El Relator Especial pide al Gobierno que adopte medidas decisivas para garantizar la aplicación inmediata y efectiva de sus recomendaciones, y hace un llamamiento a la comunidad internacional para que ayude a Tayikistán en su lucha contra la tortura y los malos tratos proporcionándole un apoyo financiero y técnico apropiado.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho figura en el anexo del resumen y se distribuye únicamente en el idioma en que se presentó y en ruso.

** Documento presentado con retraso.

Anexo

[Inglés y ruso únicamente]

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Tajikistan

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I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, conducted a visit to Tajikistan from 10 to 18 May 2012, at the invitation of the Government. The purpose of the visit was to assess the situation of torture and ill-treatment in the country, including conditions of detention, and to identify measures to prevent torture and ill-treatment in future.

2. During his mission, the Special Rapporteur met the President, the Minister for Foreign Affairs, the Minister for the Interior, the Prosecutor General, the Minister for Justice, the Head of the Department for Correctional Facilities at the Ministry of Justice, members of the Supreme Court and the Constitutional Court, the Ombudsman, the Head of the State Committee for National Security, the Head of the Department for the Fight against Organized Crime of the Ministry of the Interior, the Minister for Health, the Head of the Republican Centre for forensic-medical expertise under the Ministry of Health, the First Deputy Minister for Defence, district and city representatives of above-mentioned ministries in Khujand, Isfara and Kurgan-Tube, and representatives of United Nations agencies, other international organizations and of civil society organizations. The Special Rapporteur met with victims of torture and their relatives, and visited places of deprivation of liberty in and around Dushanbe, Khujand, Isfara, Istarafshan and Kurgan-Tube.

3. The Special Rapporteur expresses his appreciation to the Government for providing him with unimpeded access to all detention facilities in accordance with the terms of reference for fact-finding missions by special rapporteurs,[1] even though in some instances he noted excessive readiness and preparation.

4. The Special Rapporteur selected a representative sample of places and facilities, and visited a total of 17 detention centres of all types, including temporary detention facilities, pretrial detention facilities, police stations, a penal colony and one military unit in different parts of the country.[2] The testimonies heard about torture and ill-treatment shared the same pattern and were largely corroborated by forensic expertise.

5. The Special Rapporteur expresses his gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Human Rights Adviser at the United Nations Office of the Resident Coordinator, the United Nations country team, and others involved in organizing the visit and for the excellent assistance prior to and throughout the mission. The Special Rapporteur thanks the Tajik civil society and international community based in Tajikistan for their invaluable insight. The Special Rapporteur is grateful to all his interlocutors, including senior State officials, representatives of civil society, lawyers, detainees and victims of torture and ill-treatment who he met in Dushanbe, Khujand, Isfara, Istarafshan and Kurgan Tube. He expresses solidarity with victims and their families, and expresses his support to the important efforts of survivors of torture, their relatives and Tajik human rights defenders.

6. The Special Rapporteur shared his preliminary findings with the Government at the close of his mission. On 4 December2012, he sent an advanced preliminary version of the present report to the Government in English and Russian. On 10 January 2013, the

[1] E/CN.4/1998/45, appendix V.

[2] In principle, a temporary detention facility (IVS) is used to hold a detainee in the first 72 hours after arrest and before the courts have authorized remand for trial. A pretrial detention facility (SIZO) is used to hold a detainee after the initial court decision until trial. Penitentiary colonies are for inmates serving sentences. In principle, police stations are not used to hold detainees.

Government provided its comments, which the Special Rapporteur took into consideration before finalizing his report.

II. Legal framework

A. At the international level

7. Tajikistan is a party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. The State is also a signatory to the Rome Statute of the International Criminal Court. Tajikistan has been a party to the Convention relating to the Status of Refugees and the Protocol thereto since 1994.

B. At the regional level

8. Tajikistan has concluded more than 10 bilateral human rights agreements within the framework of the Commonwealth of Independent States (CIS). As a participating State in the Organization for Security and Cooperation in Europe (OSCE), it has made a number of commitments with regard to 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. Tajikistan is also a party to the CIS Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases and is a member of the Shanghai Cooperation Organization and the Collective Security Treaty Organization.

C. At the national level

1. Constitutional and legislative provisions

9. Article 18 of the Constitution states that no one may be subjected to torture or cruel or inhuman treatment. Under article 10 (2) of the 2010 Code of Criminal Procedure, “no party to criminal proceedings may be subjected to violence, torture or other cruel or such treatment that degrades human dignity”.

10. Until the introduction in the Criminal Code of a separate article 143-1 on torture in March 2012, crimes of torture were treated as “torture” (art. 117), “abuse of authority” (art. 314), “excess of official powers” (art. 316, part 3) or “forced confession by torture” (art. 354, part 2). If the lesser offences were applied, any penalties were subject to minor sanctions, reduction of sentences or amnesty.

11. Article 143-1 defines torture as the “intentional infliction of physical and/or mental suffering committed by a person conducting an inquiry or pretrial investigation, or any other officials or with their instigation or with the acquiescence or with their knowledge of another person with the purpose to obtain from the tortured or a third person an information or a confession, or punish him/her for the committed or suspected acts or intimidating or coercing him/her or a third party and for any other reasons based on discrimination of any kind”.

12. Article 143-1 envisages, in addition to penalties, deprivation of the right to occupy certain positions or to engage in certain activities, imprisonment for a period of two to five

years when the crime has been committed for the first time. Part 2 of article 143-1 provides for imprisonment for the period of five to eight years, with the revocation of the right to occupy certain positions or engage in certain activities for the period of five years, in the cases of repeated commission of torture, commission of torture by a group of persons on previous agreement, commission of torture of a pregnant woman, a person who is under age or disabled. The same actions, if committed with the infliction of grave harm to health, or if they have caused either the death of the victim or other grave consequences, are punishable by imprisonment for the period of 10 to 15 years, with the revocation of the right to occupy certain positions or to engage in certain activities for a period of up to five years.

13. While the Special Rapporteur welcomes the incorporation of article 143-1 into the Criminal Code, he is concerned that the penalties of five years of imprisonment or less envisaged are not commensurate with the gravity of the crime of torture, as required by article 4 of the Convention. A relatively minor penalty is not a strong disincentive to commit torture. First-time offenders may benefit from conditional sentencing or a non-custodial penalty and be released under the amnesty laws, which grant Parliament a rather broad degree of discretion to decide which sentences can be commuted, reduced or suspended. The Special Rapporteur recalls that legal provisions granting exemptions from criminal responsibility for torturers, such as amnesty laws and indemnity, should be abrogated.[3]

2. Safeguards during arrest and detention

14. Article 19 of the Constitution states that everyone has the right to the services of a lawyer from the moment of his or her detention. Under article 22 (1) of the Code of Criminal Procedure, any person may use the services of defence counsel as of the time of arrest.

15. Although under the amended Code of Criminal Procedure a detainee is entitled to procedural safeguards from the moment of actual arrest (arts. 10, 46 and 49), in practice these safeguards do not apply until the detention of the suspect has been registered. In addition, it is, not clear when the effect of the arrest actually comes into force, given that there are various interpretations, including the time when the person is delivered to the criminal prosecution agency or the time when the arrest record is drawn.

16. Under article 94 of the Code of Criminal Procedure, a report must be drawn up stating the grounds, place and time of detention within three hours of the arrest; the suspect must be informed of his or her rights, including the right to counsel, and to testify in the presence of counsel. Under article 100 of the Code, the family must be notified within 12 hours of the arrest and of the place of detention. Under article 103, charges must be brought within 10 days of the arrest. Whether this period includes the time between the actual arrest and the delivery of the arrested person to the police station remains unclear.

17. While article 96 (2) of the Code of Criminal Procedure stipulates that the arrest may not last for more than 72 hours from the time of arrest, under article 111 (5) regional courts and the Military Collegium of the Supreme Court may, in exceptional cases, extend the initial 72 hours of detention in various increments for up to 18 months (art. 112). No information is given on what measures the State party is taking to shorten the current pretrial detention period (*doznanie*)[4] and to ensure independent judicial oversight separate from the Office of the Prosecutor General over the period and conditions of pretrial detention.

[3] See E/CN.4/2003/68, para. 26 (k).

[4] CAT/C/TJK/CO/1, para. 7 (d).

18. Article 88 (3) of the Code of Criminal Procedure provides that evidence obtained through force, intimidation, torment, inhumane treatment or other unlawful means is invalid and may not be used as evidence in a criminal case. The Special Rapporteur notes that the term "invalid" should necessarily imply "inadmissible," but it would be best if the law determined that such evidence cannot be used in court under any other guise, such as indicia or as supporting information. In addition, there is no mechanism in place by which evidence may be declared inadmissible. Although article 88 renders any confession obtained under duress null and void, it does not prescribe measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment, nor does it envisage prosecution of those responsible for acts leading to such conditions.

19. The Special Rapporteur welcomes the decree of June 2012 of the Supreme Court clarifying the meaning of article 143-1 (torture) and the concept of inadmissibility of evidence obtained by means of illegal methods and expressing the hope that proper enforcement mechanisms would be put in place to implement the decree.

20. Article 105 of the Penal Enforcement Code provides for the medical care of persons deprived of their liberty. The Ministry of Justice and the Ministry of Health determine the procedure for providing medical services and their personnel for this purpose.

21. Although under article 201 (1) of the Code of Criminal Procedure interrogations may be audio- or video-recorded upon request, the investigator may deny the recording of interrogations if the case is considered confidential. The Special Rapporteur welcomes the proposal made in 2011 by the Office of the Prosecutor General to install video cameras in all investigators' offices in order to curb any "illegal action by investigators". At the time of the visit, this proposal had not been implemented.

22. Article 12 (3) of the Code of Criminal Procedure requires the judge, prosecutor or investigator to take measures if there are sufficient grounds to believe that victims or witnesses and their family members are threatened with murder or violence. The law on State protection of entities in criminal proceedings of 29 December 2010 regulates such measures, and a decree of 2 November 2012 approves 2013-2016 programme for the protection of participants in criminal prosecutions.

23. The Code of Criminal Procedure makes no reference to compensation following acts of torture, nor does it refer to fair and adequate compensation for damage caused, including the means for as full rehabilitation as possible, in accordance with article 14 of the Convention against Torture.

24. Article 34 of the law on procedure and conditions of detention of a suspect, accused or defendant envisages the separation of juveniles from adult detainees, with certain exceptions, stating that, when the prosecutor so decides, adolescents may be detained together with adults convicted for the first time for a crime not classified as grave or a felony.

3. Complaints and investigation of acts of torture and ill-treatment

25. Chapter 14 of the Code of Criminal Procedure provides possibility for oral and written complaints. According to article 122 of the Code, the Office of the Prosecutor General is entrusted with investigating crimes, including allegations of torture. Under Prosecutorial order N1, prosecutors are required to oversee the legality of detention and to consider cases within 24 hours. Following the amendments to the Law on the Ombudsman of 2011, the Office of the Ombudsman, in addition to conducting unimpeded visits to places of detention, is also entitled to receive, examine and order investigation into complaints. Under article 149 of the Code, a refusal to bring a criminal case after investigation may be appealed within 14 days after a copy of the decree has been provided.

It is unclear whether the legislation has been amended to eliminate the statute of limitations for registering complaints against acts of torture.

26. The Special Rapporteur notes with concern that, under article 28(1) of the Code of Criminal Procedure, a court, judge, prosecutor or investigator may terminate criminal proceedings and exempt the person in question from criminal liability by reason of repentance, conciliation with the victim, a change in circumstances or expiration of the period of statute of limitations for criminal prosecution. Furthermore, article 32 of the Code states that any request to institute criminal proceedings or to terminate criminal proceedings once the statute of limitations has expired must be rejected.

III. Assessment of the situation

27. Tajikistan has come a long way in institution-building and human rights protection since it declared its independence in 1991. By acceding to numerous international human rights treaties, the Government has sent a clear signal of its commitment to give high priority to the fight against torture and ill-treatment.

28. The Special Rapporteur welcomes the establishment of a working group headed by the Chairperson of the Constitutional Court to raise awareness and build capacity on the prohibition of torture among law enforcement agencies. He hopes that its mandate will be extended beyond 2012 and will aim at introducing institutional changes and establishing jurisprudence by which the Convention against Torture may be invoked within domestic legislation.

29. The Special Rapporteur notes numerous significant developments in the area of legislation, including the two-phase programme of judicial/legal reform aimed at strengthening the judiciary; the adoption of a new Code of Criminal Procedure, introducing remand hearing and transfer of the prerogative of prosecutors to authorize pretrial detention to judges;[5] the introduction of article 143-1 on the definition of torture in the Criminal Code; the orders addressed to law enforcement officials respectively issued by the Office of the Prosecutor General and the Minister of the Interior to strictly respect the rights and guarantees of persons deprived of their liberty; the decree issued by the Supreme Court on 2012 June providing guidance for judges to inquire into treatment during pretrial detention; the draft law on *advokatura*; and the Code of Professional Police Ethics adopted by the Ministry of the Interior in March 2011.

30. The Special Rapporteur hopes that proper mechanisms will be promptly put in place to ensure the implementation of the above-mentioned orders and instructions. It is important to keep up the momentum and to fill in all remaining gaps between the normative framework and practice, and that more determined steps be taken to prevent torture and ill-treatment in the future.

A. Torture and ill-treatment

31. Torture and other forms of ill-treatment by law enforcement officers are believed to be often practiced across Tajikistan and are often used to extract self-incriminating evidence, confession and money.[6] Because of a lack of capacity and expertise in investigating crimes, extracting confession through ill-treatment or torture is often seen as the only and the least time- and resource-consuming way to secure evidence. The

[5] Code of Criminal Procedure, art. 35, part 1, and art. 104, part 2.

[6] CCPR/CO/84/TJK, para. 10..

professional performance of investigative officers is assessed by their success in identifying perpetrators and solving crimes, which puts them under additional pressure to deliver.

32. In his report of 2011, the Ombudsman acknowledged that torture remained a challenging problem in Tajikistan. In a ruling issued in 2010, the European Court of Human Rights stated that "the Court is ready to accept that ill-treatment of detainees is an enduring problem in Tajikistan".[7] Between 2003 and 2011, the Human Rights Committee found that the State had violated its obligations with regard to the prohibition of torture and other ill-treatment in 17 cases concerning a total of 26 victims. Violations were reported in police stations, pretrial and temporary detention facilities at the Department for the Fight against Organized Crime and in detention facilities run by the State Committee for National Security.[8] It also found that victims had been put under pressure by authorities after filing applications with the Committee. Testimonies received by the Special Rapporteur indicated that cases of torture or other ill-treatment mostly arose secretly at the early stages of apprehension, during the first hours of informal interrogation and incommunicado detention in facilities run by the Ministry of the Interior. Such cases also reportedly arise in temporary and pretrial detention facilities run by the State Committee for National Security and the Department for the Fight against Organized Crime. Mistreatment at this phase of detention is normally of a short duration, consisting mainly in trauma caused by electric shock, asphyxia, beating with truncheons, verbal insults and rape (or threats of rape).

33. The Special Rapporteur heard numerous allegations from a number of defendants tried in Khujand in relation to their alleged membership in outlawed religious movements, that pointed to a pattern of incommunicado detention, the use of electric shock and of cold and hot water with the purpose of extracting confessions, incriminating other defendants or obtaining information about accomplices.

34. Testimonies showed that only those who had influential connections were immune from beatings or other forms of intimidation during the first hours of detention. Migrant workers returning from the Russian Federation, members of Islamic movements and Islamist groups or parties, and persons accused of being linked to Islamist extremists may be at particular risk of torture and ill-treatment by the Sixth Department of the State Committee for National Security under the pretext of the fight against terrorism and threats to national security. The Special Rapporteur observed that many cases went unreported because detainees and their families do not report cases of torture and mistreatment out of fear of reprisal, an adverse impact on the criminal case or further mistreatment. Instances of torture are often not reported to the lawyer at early stages of investigation owing to threats or false promises given by investigators. Witnesses are reportedly threatened or intimidated so that they retract their testimony. The Special Rapporteur learned that there were no State-supported specialized rehabilitation services for victims, nor were such programmes currently envisaged by the Government.

B. Safeguards and prevention

35. Despite the newly introduced Code of Criminal Procedure providing for procedural safeguards, in practice there is a serious lack of effective safeguards afforded to persons deprived of their liberty during the first hours of detention, including the registration of detention within three hours of his or her arrival in the police station (art. 94.1), the right to have a lawyer (arts 22.1 and 49.2), the right to give evidence in the presence of a lawyer, and the right to be brought before a judge within 72 hours of detention.

[7] *Khodzhayev vs. Russia*, May 05 2010, para. 105.

[8] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 40* (A/67/40), vol. I, chap. VI, sect. A.

36. The Code of Criminal Procedure does not clearly indicate to which procedural safeguards a person who has been apprehended on suspicion of having committed a crime is entitled. Article 46.2 of the Code states that a suspect must be questioned "without delay and within 24 hours of apprehension", without making any reference to the procedural rights of the suspect.

37. The Special Rapporteur notes with concern that the Code of Criminal Procedure does not require law enforcement officers to notify counsel or family members of transfers of detainees from pretrial detention facilities or removal from detention facilities for interrogation. The Special Rapporteur heard numerous testimonies indicating that the 12-hour time frame within which family members should be informed of detention is not always observed.

38. The Special Rapporteur learned that medical examination is not routinely practiced when detainees are admitted to police stations or temporary detention facilities. The medical personnel who are employees of the Ministry of Justice are under pressure not to document injuries caused by torture or mistreatment. If necessary, the medical examination is performed in the presence of the duty officer or investigator. According to the administration of a pretrial detention facility, any evidence or marks of torture are documented and recorded in the personal file of the detainee, at the discretion of the investigator. The Special Rapporteur was unable to obtain any information on the number of such cases reported to the Office of the Prosecutor or on any criminal investigation initiated in such cases.

39. There is neither a proper mechanism nor an independent complaint procedure for places of detention. When asked about the complaint mechanisms available to detainees, the Special Rapporteur was informed that a complaint could be filed in a sealed envelope to the head of the facility or to the Office of the Prosecutor General. There is no information on the extent to which the State ensures the confidentiality of complaints of torture and ill-treatment or protection against reprisal.

40. None of the detainees with whom the Special Rapporteur spoke could confirm that complaints had been meaningfully followed up. Most detainees refrain from filing complaints with prosecutors or inquiry officers during their monitoring visits out of fear of reprisal. Complaints against law enforcement officials of the Ministry of the Interior are addressed to the relevant investigative department within the Ministry for review by bodies also subordinate to it. Most officials at the Ministry of the Interior with whom the Special Rapporteur met stated that they had been in their offices for only a few months and were unaware of past cases of torture, did not know the number of deaths in custody or of mistreatment or were reluctant to report on those cases, describing them as cases of the past.

41. It is also not clear whether legal provisions are in place to ensure fair and adequate redress for all victims of torture and ill-treatment and whether individuals may seek compensation and other forms of redress.

1. Detention and access to lawyers

42. According to the testimonies received by the Special Rapporteur, individuals are first held at a temporary detention facility (under the State Committee for National Security, Department for the Fight against Organized Crime) for periods of time lasting from a few days to several months before being transferred to a pretrial facility under the jurisdiction of the relevant authorities. The practice of holding detainees in facilities under the jurisdiction of investigators and interrogators for more than the time required by law to obtain a judicial warrant of pretrial detention makes detainees extremely vulnerable to the risk of torture and mistreatment. According to article 9 of the International Covenant on

Civil and Political Rights, detainees must be brought promptly before a judge. There are often delays in registering persons arrested within the required three hours of arrival in a police station. In addition, the law defines no time frame within which a person must be taken to a detention facility. The Special Rapporteur heard numerous testimonies according to which the actual time of apprehension was not recorded or detention was not registered for several days.

43. The Special Rapporteur heard testimonies about delayed access to a lawyer or unlawful restrictions on lawyers' confidential and private access to their defendants. In the majority of cases, defendants had been able to see their lawyers for the first time three or five days after apprehension or at a remand hearing. Lawyers have testified that they were denied access to their defendants for much longer than 72 hours after the deprivation of liberty. The Special Rapporteur was informed that, in some cases, meetings between detainees and counsel took place in the court room in the presence of an investigator, guards and a prosecutor.

44. Although under articles 22 and 49 of the Code of Criminal Procedure detainees have access to a lawyer from the moment of arrest, in many instances access is actually authorized by the investigator, prosecutor or the judge and not allowed simply as a matter of right. In addition, in practice, until a person who has been apprehended is officially registered, he or she is not entitled to any procedural rights, including access to a lawyer. Law enforcement officers may therefore refuse access to a detainee who is not yet formally detained and registered and who is in de facto incommunicado detention, at the discretion of the law enforcement officer.

45. Since in practice the detention record indicating the exact time of apprehension is not properly registered by the arresting officer, the investigative officer regards the time of actual detention as starting from the time when he works on the case. In addition, the identity of delivering officers who carry out the initial arrest remains unknown, in contradiction to principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[9]

46. The Special Rapporteur noted that, in Tajikistan, the registration book is usually signed by the investigator dealing with the case rather than by those who ordered detention, which in turn facilitates impunity for crimes of torture committed by arresting officers. The Special Rapporteur welcomes the Government's acceptance of the universal periodic review recommendation made in March 2012 whereby Tajikistan would amend the Code of Criminal Procedure to reflect the identity of the officers apprehending a person.

47. Testimonies point to a pattern by which apprehended persons are taken to the investigator's offices for questioning even before official registration. On at least one occasion in Sino police district, the Special Rapporteur witnessed a suspect being taken directly to the office of the operative investigative agent without first being registered.

2. Evidence obtained under torture, and ex officio investigations

48. The Special Rapporteur learned that courts and prosecutors do not comply with their obligation to initiate an ex officio investigation whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment, or to order an independent medical examination if they suspect that the detainee has been subjected to ill-treatment. At the time of reporting, no information was available on the number of cases in which judges had ordered a criminal investigation into alleged torture or ill-treatment on the basis of a complaint. Even when there seems to be clear evidence of torture and mistreatment, judges either do not react to such statements or simply interrogate

[9] General Assembly resolution 43/173, annex.

law enforcement officers, who usually deny the use of torture during interrogation. The Special Rapporteur was informed that, often, when defendants try to demonstrate their injuries in the court, the judge interrupts them and refers them to the investigator or prosecutor. In practice, prosecutors rarely look beyond the results provided by investigative officers, and judges are widely seen as merely rubberstamping prosecutorial decisions.

49. The Special Rapporteur was informed by several defendants that, during their pretrial hearing in November 2010, the judge had repeatedly ignored testimonies about beating and torture. Reportedly, some of the defendants were pressured by law enforcement officials and in the presence of the investigator to retract their earlier allegations of torture and ill-treatment. Forensic examinations were conducted with a significant delay, with the conclusion that no physical injuries were found, while the prosecutor concluded that torture had not been used, without any explanation of how this conclusion was reached.

50. The Special Rapporteur received testimonies on the failure of judges to dismiss or return cases for further investigation in instances where confessions had been allegedly obtained as a result of torture and recanted by the defendant at the first meeting with the judge.

51. In other cases where detainees raised torture allegations, judges would enquire about the reasons why a formal complaint had not been submitted earlier or why allegations had not been raised during the preliminary investigation. The Special Rapporteur was informed that, unless there was a complaint with allegations of torture, the prosecutor would not order an investigation. In the case of complaints prevented from being filed at an early stage, identification and corroboration of torture is more challenging.

52. The Special Rapporteur recalls that article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 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.[10] The Special Rapporteur notes that the Code of Criminal Procedure provides for the automatic investigation of any case of torture or ill-treatment brought to their attention, even when victims do not lodge complaints through the prescribed legal channels. If this was regularly done, however, the implementation of these provisions should be reflected on a larger number of cases initiated by the prosecutorial bodies.

3. Burden of proof and independent medical examinations

53. The Special Rapporteur notes that, although under article 21 (2) of the Code of Criminal Procedure a judge, court, investigator or inquiry officer is not allowed to shift the burden of proof to the defendant, it does not make specific reference to allegations of torture or other forms of ill-treatment. It further fails to indicate that the burden of proof lies with the prosecution, to prove beyond reasonable doubt that any confession made has not been obtained by unlawful means, including torture and similar ill-treatment. The Special Rapporteur welcomes the Supreme Court resolution dated 5 June 2012 establishing that the burden of proof lies with the prosecutor.

54. The Special Rapporteur was unable to obtain information on instances when judges and prosecutors had been known to have ordered prompt medical examinations on their own initiative in response to allegations or signs of abuse. The Special Rapporteur notes that it is difficult to prove torture when medical examinations by independent and impartial forensic experts are not promptly conducted. Even when such examinations are conducted, defendants should not have to bear the burden of proof of coercion to exclude self-incriminating statements.

[10] CAT/C/20/D/59/1996, para. 8.6.

55. Furthermore, since independent medical examinations must be authorized by investigators, prosecutors or penitentiary authorities (Code of Criminal Procedure, art. 208), there is ample opportunity to delay authorization. The evidence suggests that detainees are often held for longer periods until the signs of torture have disappeared, then transferred to a pretrial detention facility. As a result, a forensic examination might identify bruises, but fail to establish the time of mistreatment or its cause.

56. Following the visit to the Republican centre for forensic-medical expertise under the Ministry of Health, the Special Rapporteur learned that forensic services are not adequately equipped or even staffed with personnel trained in documenting and investigating torture in accordance with the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Those services also lack independence. The Special Rapporteur was informed that, although the graduates of the State medical university are provided with basic training and some have been trained in neighbouring countries, specialized training in forensic examination is lacking. There is no legal minimum time within which medical examination is to be provided. Moreover, although the conduct of the forensic expertise is the competence of the Ministry of Health, in practice, forensic experts are beholden to the authorities of the Ministry of Health and the Ministry of Justice and come under pressure from the Ministry of the Interior. In most of the testimonies the Special Rapporteur heard, the examination of traumas or bruises is conducted in the presence of a law enforcement agent, who then reports the case to the investigator or prosecutor.

4. Investigation of torture allegations

57. According to the office of the Prosecutor General, in 2010 and the first eight months of 2011, of 70 complaints of torture, beating and abuse of power filed against Tajik law enforcement and security personnel, 16 resulted in conviction and one case was subject to amnesty. Disciplinary measures were applied in all these cases, including those that were dismissed. At May 2012, 14 allegation letters had been received and criminal proceedings had been brought against three police officers on charges of exceeding official powers resulting in the death of the victim. Two police officers were sentenced to eight years of imprisonment, which were subsequently reduced to six years under an amnesty. The third police officer was charged with “negligence” and was later released under an amnesty. Following an appeal by defence counsel, the court referred the case for further investigation. Since the introduction of article 143-1 in the Criminal Code in March 2012, one case of torture has been prosecuted, one case of an alleged beating by a law-enforcement officer is before the court of first instance and two cases involving allegations of torture against police officers in the regional department of the Ministry of the Interior are under investigation.

58. The Special Rapporteur notes that there is an apparent lack of convictions under article 117 of the Criminal Code providing for responsibility for torture of public officials or others acting in an official capacity. In addition, perpetrators of acts of torture and ill-treatment committed between 1995 and 1996 during the civil war and following the peace agreement have been granted amnesties and exempted from criminal responsibility.

59. The Special Rapporteur welcomes the 2011 order of the General Prosecutor on strengthening prosecutorial oversight during the inquiry and preliminary investigation. He notes, however, that prosecutorial oversight, although regularly exercised, does not focus on receiving or detecting cases of torture, but mostly on the legality of detention, the availability of medical records, conditions of detention and whether or not detainees are transferred to a pretrial detention facility (SIZO) in due course.

60. The Special Rapporteur was unable to obtain information on the number of complaints filed following visits to detention centres by prosecutorial bodies. There was evidence of prosecutorial negligence in cases of torture and ill-treatment even when signs of ill-treatment were visible.

61. The Law on the Ombudsman allows the Ombudsman to order an investigation into any complaints received. In four months in 2009 and throughout 2010, 1,543 appeals were registered with the Ombudsman, including 14 complaints concerning torture allegations, which were transmitted to the office of the Prosecutor General for enquiry. The Special Rapporteur noted that, owing to its lack of capacity and resources, the office of the Ombudsman was unable to ensure regular, effective and independent oversight of places of detention.

62. When requested to comment on the status of investigations into cases of death in custody, the relevant authorities replied that cases were still under consideration, had been referred to the Office of the Prosecutor General for reconsideration or were before the Supreme Court. The status of these investigations and the steps taken by the Government to reduce excessive delays in investigations into allegations remain unclear.

63. Furthermore, whether any mechanisms are in place to ensure prompt, impartial and full investigation into all complaints on torture and deaths in custody is unclear, as is whether the results of investigations are made available to relatives of victims; indeed, the Special Rapporteur was informed that only the verdict and sentence handed down were communicated to the lawyer and the family in a letter. Furthermore, no information was available on whether any compensation or other measures for reparation were provided to victims or their relatives.

C. Conditions of detention

1. Temporary and pretrial detention facilities and colonies

64. Responsibility for the penitentiary system, including pretrial detention facilities, has been transferred from the Ministry of Interior to the Ministry of Justice. The responsibility for the pretrial detention facilities of the State Committee for National Security, the Agency against Corruption and the Agency for Drug Control still remain under their respective jurisdictions.

65. Despite several modifications in sentence enforcement conditions, including the enlargement of windows in disciplinary units and punishment cells, execution of a sentence still consists in putting convicted persons in standard, reinforced or strict regime penal colony settlements, thus placing heavy restrictions on inmates' contact with the outside world.

66. The Special Rapporteur noted that important steps had been taken in recent years by the Ministry of Justice responsible for places of execution of punishment to improve conditions in prison colonies and pretrial detention facilities, which is commendable given the old infrastructures and the limited resources available.

67. Even allowing for the fact that, in some of the temporary detention facilities visited, the administration had taken steps to prepare the facilities in view of the visit of the Special Rapporteur, such as repainting the walls, providing additional food and bedding supplies and, in some cases, transferring inmates between facilities or removing inmates from solitary confinement, the overall physical conditions and food supply found in all the temporary and pretrial detention facilities, as well as open regime colonies, visited were acceptable and, in many cases, even good and decent. The Special Rapporteur notes that, while inmates benefitted from the above-mentioned preparations, it is in the interest of the

State to allow monitoring of actual conditions, especially if improvements are only temporary.

68. The temporary detention facilities visited were invariably clean and well kept, although many seemed to have been recently painted. In almost all temporary and pretrial detention facilities visited, there was no separation between convicted and pretrial inmates. In the facilities visited, tuberculosis patients were held separately.

69. The Special Rapporteur noted that there was no permanent medical presence in temporary detention facilities, and health emergencies were handled by calling an ambulance. The pretrial detention facilities visited had modestly equipped medical units, and there was a shortage of medical personnel. Meals (of poor nutritional value and in small portions) were served three times a day. Drinking water was largely accessible. There was no television sets or telephones at the disposal of inmates, and very limited (if any) recreational activities were available.

70. As noted elsewhere in the present report, during their detention in temporary detention facilities, detainees were taken to the officers of investigators where some were coerced into confessions or even severely mistreated. The Special Rapporteur received numerous complaints of threats, humiliation and mistreatment by detention facility employees, especially in relation to those imprisoned for life. The Special Rapporteur was informed that the penitentiary system throughout the country lacked specialized medical staff.

71. The complaints received from inmates during visits to penitentiary institutions revealed consistent, broad patterns of the application of various methods of torture and ill-treatment during arrest and investigation, as well as of denial of access to legal counsel. The Special Rapporteur received complaints indicating that the testimonies obtained under torture were used by courts as grounds to hand down long terms of imprisonment. Most of the written complaints received by the Special Rapporteur named the perpetrators, who were also officials of the State Committee for National Security and the Ministry of the Interior.

72. The Special Rapporteur received complaints about the lack of occupational and recreational activities in detention facilities and about the bribes required to have access to such activities, the absence of independent complaint mechanisms, the fear of reprisals by the administration against inmates filing a complaint, as well as about serving a sentence in a closed regime despite a court ruling sentencing the inmate to a colony settlement.

2. Juvenile justice

73. The Special Rapporteur learned that children in conflict with the law were often mistreated by police inquiry officers of the Ministry of the Interior during arrest and at various stages of detention. According to credible reports, in the juvenile colony and in the basement of a special school for underage offenders run by the Ministry of Education, children were reportedly kept in disciplinary isolation cells for up to 15 days as a disciplinary measure for breaking the establishment's rules. The Special Rapporteur recalls that juvenile offenders, children or minors should not be subjected to solitary confinement of any duration at all.

74. Despite the recently adopted child protection policy prohibiting violence against children in closed institutions and establishing a complaint procedure, in practice there is no accessible and effective complaint mechanism available to children in these facilities.

75. Juveniles are not afforded most procedural safeguards, including that of informing their family of their arrest without significant delay. It is unclear whether juvenile offenders are allowed to hold private interviews with court-appointed legal counsel and at what stage

they are guaranteed access to legal counsel of their choice. The Special Rapporteur learned that cases of mistreatment for the purpose of extracting a confession from underage defendants go unreported owing to fear of reprisal.

76. According to credible reports, there is no strict separation between adults and juveniles in pretrial detention facilities or police cells outside the capital.

3. Inmates serving life imprisonment

77. Despite the moratorium on the death penalty of 2004, both the Constitution and the Criminal Code retain provisions for the death penalty.

78. Currently, prisoners who have been sentenced to life imprisonment are housed in various pretrial detention facilities. The prison regime and physical conditions are especially harsh for those serving a life sentence compared with those in the general prison population. Prisoners serving a life sentence are confined in virtual isolation in their cells for up to 23 hours a day in small, cramped, unventilated cells, often in extreme temperatures, and they are subject to inadequate nutrition and sanitation arrangements; denial of contact with lawyers and only rare contact with family members; excessive use of handcuffing or other types of shackles or restraints; physical or verbal abuse; lack of appropriate health care (physical and mental); and denial of access to books, newspapers, exercise, education, employment and or any other type of prison activities. Indeed, the recent changes made to the law actually introduced unnecessary and inexplicably harsh restrictions for family contacts (only once a year) and on parcel delivery.

4. Non-refoulement and extradition

79. The Special Rapporteur received credible reports that individuals forcibly returned or extradited from other countries to Tajikistan had been subjected to torture or other ill-treatment upon return. In some cases, these returns were conducted despite the request of the European Court of Human Rights to take interim measures to stay extradition pending a judgement by the Court.

80. The Special Rapporteur heard testimonies pointing to a pattern of kidnapping, reappearance, remand and forcible return to Tajikistan, incommunicado detention and solitary confinement in the buildings of the State Committee for National Security or the Sixth Department, or transfer to pretrial detention facilities under their jurisdiction, and interrogations over the course of several months. In other cases, trials appeared to be used as a formality to extend temporary detention. Allegations made by the victims that, if extradited, they ran the risk of being tortured or of fabricated charges, were not given any consideration.

81. Tajikistan is party to regional agreements, mainly in the field of security cooperation, such as the Shanghai Cooperation Organization, although its domestic legislation does not contain provisions to implement the principle of non-refoulement as contained in article 3 of the Convention against Torture. Under the Code of Criminal Procedure, the Office of the Prosecutor General is the only body with jurisdiction over issues relating to extradition. There are no clear procedures in the Code for challenging the legality of extradition and deportation proceedings before a court.

82. The Special Rapporteur learned that, when extraditions are carried out, reference is often made to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the Minsk Convention) and the an agreement on visa-free travel. While it appears that CIS citizens in other CIS member States enjoy rights similar to those of citizens, the Minsk Convention is actually designed to regulate interaction between the authorities, in particular courts and law enforcement agencies, of contracting parties rather than to afford guarantees to individuals subject to extradition.

IV. Conclusions and recommendations

A. Conclusions

83. **The Special Rapporteur welcomes the political will and significant efforts made by the Government of Tajikistan to revise legislation and launch capacity-building activities among law enforcement officials. Despite the introduction of a number of changes, however, numerous loopholes and inconsistencies in the Code of Criminal Procedure and in law enforcement practices persist.**

84. **The Special Rapporteur notes that insufficient sanctions and mitigating benefits envisaged under the recently introduced article on torture create an environment conducive to impunity. Under international law, the prohibition of torture cannot be subject to waiver; the obligation to investigate and prosecute torture is therefore not subject to a statute of limitations. The penalty for torture must be commensurate with its gravity and equated with the most serious crimes. In a like manner, torture can never be subjected to amnesty.**

85. **The Special Rapporteur welcomes the introduction of article 88 (3) of the Code of Criminal Procedure outlawing the use of evidence in judicial proceedings obtained under torture. At the time of the visit, however, article 88 (3) was not invoked in a single case to exclude statements of defendants from judicial proceedings. The Special Rapporteur welcomes the decree of the Supreme Court 2012 June clarifying the meaning of article 143 (1) on torture and the inadmissibility of evidence obtained by means of illegal methods, and expresses the hope that proper enforcement mechanisms will be put in place promptly to implement the decree and that the Supreme Court will eventually elaborate jurisprudence on how the law should be applied in this respect.**

86. **The Special Rapporteur notes with satisfaction the judicial legal reform agenda for the period 2011-2013, which sets forth the need to develop the law on the provision of legal aid. He hopes that the draft law on *advokatura* or regulation of the legal profession, currently under discussion, will clarify the right of defendants to have access to legal aid from the time of apprehension. He also expects the Government of Tajikistan to create a meaningful, independent pro bono legal service for those who cannot afford a lawyer.**

87. **The Special Rapporteur notes the implicit recognition among senior authorities that torture is practiced; nonetheless, the State Committee for National Security of the Department for Fight against Organized Crime of Ministry of the Interior has given no clear indication or instruction to subordinate operative and investigative agents declaring unambiguously that torture and ill-treatment will not be tolerated and that perpetrators will be held to account.**

88. **The Special Rapporteur is aware of the fact that Tajikistan inherited many of the negative features of the Soviet criminal justice system, in particular with regard to the methods of operative and investigative techniques prohibited by international law, on the basis of an unfounded belief that such methods solved crimes. In this regard, the Special Rapporteur welcomes the announcement made by the newly appointed Minister for the Interior of his intention to crack down on law enforcement officials who resort to illegal methods of interrogation for the purpose of extracting confessions, and hopes that proper mechanisms will be put in place to prevent misconduct by law enforcement officials. Although there has been an acknowledgment that a problem exists, steps taken to date have not been effective.**

89. **The Special Rapporteur notes that, owing to the failure to register suspects at the time of apprehension, persons deprived of their liberty are extremely vulnerable to torture and ill-treatment, given that it is during the time of detention that basic safeguards are not generally forthcoming. The Special Rapporteur welcomes the acceptance by the Government of recommendations made at its universal periodic review that detainees should be ensured prompt access to a lawyer from the time they are taken into custody. He encourages the Government to amend the Code of Criminal Procedure to reflect as much.**

90. **The Special Rapporteur concludes that the complaint mechanisms currently available are neither effective nor independent. In addition, victims or families are afraid to file complaints with authorities or are threatened with reprisal. There is no effective witness protection mechanism.**

91. **Despite the commitment made by the Government during the universal periodic review of Tajikistan in March 2012 to investigate thoroughly all allegations of human rights abuses and to establish an independent complaints mechanism to respond to allegations of torture, the Government has yet to take measures to establish such a mechanism with full respect for the principle of confidentiality and guarantees for protection against reprisals, and without the participation of the investigating officer.**

92. **On the basis of discussions held with public officials, judges, lawyers and representatives of civil society, interviews with victims and with persons deprived of their liberty, the Special Rapporteur concludes that acts of torture for the purpose of extracting confessions are committed during arrest and while suspects are in police custody and under the jurisdiction of operative and investigating officers. Factors such as the denial of access to a lawyer at the time of apprehension and during detention, lack of independent medical aid, and threats and extortion in exchange for withdrawing the complaint continue to be practised with impunity. Acts of torture are facilitated by the lack of preventive safeguards and effective monitoring mechanisms.**

93. **Despite the recent amendments to the Code of Criminal Procedure granting the Ombudsman free access to places of detention, the penitentiary system remains non-transparent. There is no systematic oversight of places of detention by national and international monitors. Representatives of the International Committee of the Red Cross (ICRC) and non-governmental organizations have no access to places of detention. Despite the regular oversight function of the Office of the Prosecutor General, the Special Rapporteur was unable to obtain information on the number of complaints received and initiated following its visits. The Office of the Ombudsman has neither the capacity nor the resources necessary to conduct regular monitoring and reporting. In addition, its activities are focused on capacity-building and have a limited impact.**

94. **Even allowing for the fact that, in some of the detention facilities visited, the administration had made extensive preparations for the visit of the Special Rapporteur, conditions in the temporary and pretrial detention facilities visited were adequate. The conditions in penal colonies with open cell blocks and work and recreational opportunities were commendable. The Special Rapporteur notes, however, that overall penitentiary policies have retained their punitive nature, given that different prison regimes serve as a form of punishment and impose heavy restrictions on contacts with the outside world. In addition, in practice, there is very little difference between various prison regimes except for the number of visits afforded to inmates; detention conditions and treatment are substantially the same in all regimes of imprisonment. Of particular concern are the newly introduced restrictions on the regulation of punishment, according to which prisoners serving a**

life sentence are entitled to meet members of their family and receive a parcel only once a year.

95. **While noting the adoption of the national plan of action for juvenile justice reform for the period 2010-2015, the Special Rapporteur echoes the concern raised by the Committee against Torture, namely, that the criminal justice system lacks juvenile courts and judges specialized in juvenile justice. Children younger than 14 years (the age of criminal responsibility) are frequently subjected to arrest and detention, while youths aged 16 and over are kept in closed institutions for minor offences.**

96. **The Special Rapporteur notes with concern that the Code of Criminal Procedure of Tajikistan does not contain an absolute prohibition of extradition or deportation in cases where the subject would be at risk of torture in accordance with the requirements of article 3 of the Convention against Torture.**

97. **While welcoming the establishment of a working group on 9 April 2010 to expedite consideration of the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights and the removal of capital punishment from the Criminal Code, the Special Rapporteur regrets that there has been no progress in considering the ratification of the Optional Protocol to the Convention against Torture.**

B. Recommendations

98. **In a spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with appropriate assistance from the international community, including the United Nations and other actors, take decisive steps to implement the recommendations below.**

99. **With regard to legislation, the Special Rapporteur recommends that the Government of Tajikistan:**

(a) Amend article 143 1 of the Criminal Code to ensure that torture is defined as a serious crime in accordance with article 1 of the Convention against Torture, sanctioned with penalties commensurate with the gravity of the crime, and include in the Law on Amnesty that no person convicted for the crime of torture may benefit from an act of amnesty;

(b) Ensure that article 88 (3) is brought into line with the provisions of article 15 of the Convention against Torture in order to exclude explicitly any evidence or extrajudicial statement obtained under duress; that statements or confessions made by a person deprived of liberty other than those made in the presence of a judge and with the assistance of a lawyer have no probative value in court against the declarant; that any allegation of torture and ill-treatment made in court is promptly addressed by the judicial authorities without the need for a written complaint; and that the burden of proof is shifted to the prosecution, to prove beyond reasonable doubt that the confession was not obtained by any unlawful means, including torture and ill-treatment;

(c) Amend the Code of Criminal Procedure to include a provision on the right of the suspect to one free telephone call, and to reduce the 12-hour period for notification of arrest by the investigator to the family;

(d) Revoke the legal provisions of the Code of Criminal Procedure allowing the termination of criminal proceedings and exempting defendants from criminal liability by reason of repentance, conciliation with the victim, change in circumstances

or expiration of the statute of limitations for criminal prosecution, whenever the case concerns allegations of torture and ill-treatment; and institute procedures for the automatic investigation of any case of torture or ill-treatment brought to the attention of the authorities by any means, even when victims have not lodged a complaint through the prescribed legal channels;

(e) Amend the Code of Criminal Procedure to ensure that the time of arrest starts from de facto apprehension and delivery to a police station, that arrest is scrupulously recorded, reflecting the name of the arresting officer and the detainee's state of health upon arrival at the detention centre; establish the rule that arrests will proceed only by judicial warrant, except in cases of *in flagrante delicto*; and, where persons are held for initial inquiry, guarantee that the maximum duration of three hours for detention pending formal arraignment is respected;

(f) Establish appropriate enforcement mechanisms in legislation to ensure that victims obtain redress and fair and adequate compensation, including the means for the fullest rehabilitation possible; and ensure that there are effective mechanisms in practice to protect complainants from reprisal;

(g) Amend the Code of Criminal Procedure to ensure that it takes into account the principle of non-refoulement contained in article 3 of the Convention against Torture.

100. **With regard to safeguards and prevention, the Special Rapporteur recommends that the Government:**

(a) Ensure strict adherence to registration from the very moment of actual arrest; that police station chiefs and investigating and operative officers are held criminally accountable for any unacknowledged detention; and that access to lawyers of the suspect's own choosing is granted from the moment of apprehension, through amendments to legislation, where necessary;

(b) Clarify the status of suspects, accused persons and witnesses in the law on detention procedures and conditions of suspects, accused persons and defendants by providing them with the same procedural safeguards at the time of apprehension;

(c) Reduce the 72-hour period of police custody and mandate that a detainee must be brought promptly before a judge, in accordance with international standards;

(d) Increase the number of qualified health personnel in temporary and pretrial detention facilities and ensure that medical staff in places of detention are truly independent from law enforcement and trained in the Istanbul Protocol; allow access to independent medical examination without interference or the presence of law enforcement agents or prosecutors; and ensure timely access to independent medical check-ups at the time of arrest and upon transfer to another place of detention;

(e) Enact legislation establishing a minimum time within which medical examination is to be provided without delay, and provide forensic medical services with training in the medical investigation of torture and other forms of ill-treatment;

(f) Introduce independent, effective and accessible complaint mechanisms in all places of detention by means of the installation of telephone hotlines or confidential complaints boxes, and ensure that every detainee has unimpeded and unsupervised access to the prosecutor upon request and that complainants are not subject to reprisals;

(g) Establish an effective and independent criminal investigation and prosecution mechanism with no connection to the body investigating or prosecuting

the case against the alleged victim; expedite a prompt, impartial and thorough investigation into all allegations of torture and cruel, inhuman or degrading treatment or punishment; and establish the liability of direct perpetrators and those in the chain of command;

(h) Take concrete measures to speed up the ratification of the Optional Protocol to the Convention against Torture, and subsequently establish an effective national preventive mechanism and ensure budgetary allocations to equip the mechanism with human and other resources sufficient to enable it to inspect all places of detention regularly, receive complaints, initiate prosecutions and follow them through to their conclusion;

(i) Grant ICRC and independent non-governmental organizations unimpeded access to all places of detention, and ensure regular inspection of places of detention.

101. **With regard to conditions of detention, the Special Rapporteur recommends that the Government:**

(a) Allocate sufficient budgetary resources to provide adequate health care, improve food quality and ensure the separation of minors from adults and pretrial prisoners from convicts; design a system of execution of sentences that aims at rehabilitating and reintegrating offenders; and abolish restrictive regimes and create work opportunities and recreational activities for inmates;

(b) Eliminate the complete isolation of inmates sentenced to life imprisonment, repeal legislation limiting their contacts with lawyers, medical personnel and family, and move them to open or semi-open facilities.

102. **With regard to institutional reform, the Special Rapporteur recommends that the Government:**

(a) Have the highest authorities, in particular those responsible for law enforcement activities, declare unambiguously that they will not tolerate torture or ill-treatment by their subordinates and that perpetrators will be held to account;

(b) Take measures to transfer authority for temporary and pretrial detention facilities from the Ministry of the Interior and the State Committee for National Security to the Ministry of Justice;

(c) Raise the awareness of personnel of the Office of the Prosecutor General and investigating officers of the Ministry of the Interior of their role in preventing torture and ill-treatment by means of mandatory training on international standards on the prohibition of torture, provisions governing investigations of torture and ill-treatment, and interrogation techniques; and develop training programmes, to be delivered during professional qualification courses, for health and legal professionals on detecting, reporting and preventing torture;

(d) Establish mechanisms and programmes to provide all victims with rehabilitation, including relevant infrastructures within the Ministry of Health, and fund private medical, legal and other facilities, including those administered by non-governmental organizations that provide medical, psychological and social rehabilitation;

(e) Consider providing bilateral direct funding for civil society organizations assisting victims and their family members, and the establishment of specialized services within the national health system. The United Nations Voluntary Fund for Victims of Torture is invited to consider requests for assistance by non-

governmental organizations that work to ensure that persons who have been tortured have access to medical care and legal redress;

(f) Reform the policy and practices of execution of sentences to take into account rehabilitating and reintegrating offenders; in particular, abolish restrictive prison rules and regimes for persons serving long prison terms, and afford them reasonable contact with the outside world.

103. **The Special Rapporteur requests the international community to support Tajikistan in its efforts to implement the above-mentioned recommendations, in particular to reform its legal system, to establish a preventive framework against torture and ill-treatment and an effective national preventive mechanism, and to provide appropriate training for police and prison personnel.**