



Tajikistan: Joint NGO submission under the Committee against Torture's follow-up procedure

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1. Introduction

In paragraph 51 of the Concluding Observations adopted on 14 May 2018, and published on 18 June 2018 (CCPR/C/TJK/CO/2), the United Nations (UN) Committee against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) requested the authorities of Tajikistan to provide, by 18 May 2019, information on follow-up to the Committee's recommendations on **investigating acts of torture**, the enjoyment of **fundamental legal safeguards**, and **hazing, ill-treatment and torture in the armed forces** (see paras. 10, 18 and 46 above).

This joint NGO submission summarizes the state of implementation of the recommendations issued by the Committee under the relevant paragraphs and provides case examples where appropriate. The document was jointly produced by the NGO Coalition against Torture and Impunity in Tajikistan¹, International Partnership for Human Rights (Belgium) and Helsinki Foundation for Human Rights (Poland).

General developments on torture since the CAT issued its May 2018 Concluding Observations to Tajikistan

This chapter provides a brief overview of the main developments regarding torture and ill-treatment in Tajikistan as well as key steps taken since May 2018, which were aimed at preventing torture and strengthening accountability. All developments specifically relating to paras. 10, 18 and 46, which are highlighted under the CAT's follow-up procedure, can be found in the chapters below.

Despite some progress, **torture and other forms of ill-treatment are still widely used** in Tajikistan. Members of the Coalition against Torture and Impunity (further Coalition) registered 44 new cases in 2018 and 52 new cases in 2019 of men, women and children who were allegedly subjected to torture or ill-treatment. As was previously the case, the vast majority of cases of torture and ill-treatment originate during preliminary investigations, as well as in the armed forces. These figures only provide part of the picture, as fear of reprisals and lack of trust in the criminal justice system prevent many victims and their relatives from complaining.

The **authorities do not publish unified and comprehensive statistics** on complaints, investigations and convictions relating to torture and other forms of ill-treatment. In December 2019 the Coalition sent requests for statistics to several government agencies. It received replies from the Prosecutor General's Office, the Presidential Agency for the Control of Narcotic Substances (Anti-Drugs Agency) and the Agency of State Financial Control and the Fight against Corruption of Tajikistan (Anti-Corruption Agency).

In its reply of 6 January 2020, the Prosecutor General's Office provided no statistical information and stated that such information is made public during its bi-annual press conferences. The Anti-Drugs Agency and the Anti-Corruption Agency replied that they had not registered any complaints about torture and other ill-treatment from May 2018 to the end of 2019.

On 28 January 2020 the Prosecutor General's Office announced at its press conference that it had seen a decline in complaints about torture in the period under review. In 2018 it registered 48 complaints, in 2019 - 14. In 2019, two criminal cases were opened and seven law enforcement officers were brought

¹ The NGO Coalition unites 12 civil society groups and nine independent experts across Tajikistan.

to justice and convicted by the courts. These statistics only cover crimes opened under Article 143.1 (“torture”) although cases involving allegations of torture and other forms of ill-treatment are often opened under other articles of the Criminal Code such as “abuse of power”, “exceeding official duties” or “failure to carry out or inappropriately carrying out duties”.

The Coalition noted a general trend of law enforcement officials using **methods of torture** that do not leave injuries likely to be detected by forensic medical experts who usually only record visible external injuries. The Coalition recorded an increase in the use of electric shocks, mock rape and threats of rape in relation to males. In 2019 the Coalition recorded three cases where detainees were allegedly injected with psychotropic substances against their will by police officers, resulting in them partially losing consciousness and muscle control.

On 24 January 2019, a **National Action Plan** was developed and approved for the implementation of the UN Committee against Torture recommendations for 2019-2022. The Plan outlines a set of measures, deadlines and a list of government bodies responsible for implementing the recommendations.

On 19 April 2019, a **Judicial Legal Reform Programme** for 2019-2021 was adopted, which aimed to strengthen the basic human rights guarantees in the criminal justice system, including the application of measures of restraint during pre-trial detention.

On 7 September 2019, the Prosecutor General adopted an **“Instruction on Methods for Prosecutorial Supervision of the Legality of Prevention, Detection and Investigation of Torture”**. (For further information, refer to the chapter “Investigation of acts of torture (para. 10)” below).

The Coalition has noted some progress in state responses to allegations of torture and ill-treatment in the criminal justice system. In 2018, two people were convicted of torture or other ill-treatment and handed down adequate and proportionate sentences. In the first case, the perpetrator was found guilty of “torture” under Article 143-1 of the Criminal Code. In the second case, the perpetrator was charged with “abuse of power” under Article 316. In 2019, three criminal cases were successfully investigated in accordance with Article 143-1 and are currently pending with the courts.

The Law **“On Amnesty”** that was adopted on 25 October 2019 excludes those accused of or convicted of torture under Article 143-1 of the Criminal Code. However, perpetrators of torture or other forms of ill-treatment charged under other articles of the Criminal Code benefited from the amnesty, e.g. through reductions of punishment.

On 2 January 2020 President Rahmon signed a series of laws and amendments that significantly strengthened fundamental legal safeguards to prevent torture and other forms of ill-treatment in the criminal justice system.

This includes the law “On prevention of juvenile delinquency” (Law No. 1658). The new law provides that the National Commission on the Rights of the Child (NCRC, under the government) coordinates its implementation. However, the NCRC is an interdepartmental body without a permanent staff which meets only on an irregular basis. Coordination mechanisms are lacking both in regard to implementation of the law and to interagency communication.

Based on recommendations issued to Tajikistan by UN bodies, legal amendments (Law No. 1661) were adopted to Article 143-1 (“torture”) of the Criminal Code, according to which sanctions for the crime of torture were tightened. Furthermore, a “third party” was added: “1) Intentional infliction of physical and (or) mental suffering committed by the person conducting the inquiry or preliminary investigation, or by another official, either with their instigation or with the tacit consent or with their knowledge by

another person in order to obtain information or confession from a tortured or third person or punish him for an act that he or a third party has committed or is suspected of committing, as well as to intimidate or coerce him or a third party or for any other reason based on discrimination of any kind. " The amendments also increased sanctions: in part 1 - from five to eight years in prison (previously it was: two to five years) with the deprivation of the right to hold certain positions or engage in certain activities for up to five years (previously up to three years); in part 2 - from eight to 12 years of imprisonment (previously from five to eight) with the deprivation of the right to occupy certain positions or engage in certain activities for a period of five to 10 years (previously: up to five years) and in part 3 - from 12 to 15 years imprisonment (previously from 10 to 15) with the deprivation of the right to hold certain positions or engage in certain activities for a period of 10 to 15 years (previously up to five years). Fines were also removed from the possible sanctions under Article 143 Part 1 of the Criminal Code.

As follow up on UN recommendations Article 32 of the Law "On the Procedures and Conditions for the Detention of Suspects, Accused and Defendants" was amended. The Article covers conditions of holding minors in custody. Part 6 now states "upon receipt of a report about the use of torture against a minor, a mandatory medical examination is carried out to determine the degree of physical injuries, signs of violence, torture and ill-treatment by at least three medical workers who are not subordinate to the place of detention of the minor suspect, accused or defendant." Unfortunately, the Article does not contain a requirement to conduct a psychological examination of the torture victim.

In accordance with the January 2020 amendments, the holding of minors in detention with adults is prohibited (previously this possibility was in exceptional cases with the permission of the prosecutor), as is holding a minor in punishment cells, solitary confinement and guardhouses (part 2 of article 34 and part 2 of article 38, respectively).

2. Investigation of acts of torture (para. 10)

CAT CONCLUDING OBSERVATIONS 2018

Para. 10 (a): Establish a separate investigative mechanism or unit that is capable of carrying out effective criminal investigations and prosecutions of allegations of torture and ill-treatment committed by public officials and which operates independently both of the authorities accused of having perpetrated the crimes and of the authorities responsible for prosecuting the person alleging torture.

In the period under review no separate and independent investigative mechanism or unit capable of carrying out effective criminal investigations and prosecutions was set up.

In addition to the CAT, the UN Human Rights Committee and the UN Special Rapporteur on torture also recommended that Tajikistan establish an independent investigatory body, but the authorities have repeatedly stated that what they claim to be a low number of torture cases does not warrant this. However, when using this argument, they only refer to the number of cases opened under Article 143-1 ("torture") of the Criminal Code, whereas most cases involving torture and other forms of ill-treatment are opened under other articles of the Criminal Code, such as those punishing "negligence", "abuse of authority or duty" or "violating the code of military conduct".

The authorities do not publish comprehensive and unified statistics on cases involving allegations of torture and other forms of ill-treatment.

CAT CONCLUDING OBSERVATIONS 2018

Para. 10 (b): Promptly, effectively and impartially investigate all incidents and allegations of torture and ill-treatment, prosecute those who are found to be responsible and report publicly on the outcome of such prosecutions.

Complaints about torture and other forms of ill-treatment are often not investigated effectively in Tajikistan because the **investigating institutions are not sufficiently independent**.

In Tajikistan complaints about torture and ill-treatment can be submitted to the Office of the Prosecutor General or other prosecutors' offices, or to law enforcement agencies whose personnel are implicated in the complaint such as the State Committee for National Security (SCNS), the Ministry of Internal Affairs or the Drug Control Agency. When complaints are submitted to **law enforcement agencies**, the security service of the respective agency reviews the complaint, but the institution inevitably lacks independence because personnel of the same agency are implicated in the complaint. If the agency decides that there are no grounds sufficient to warrant opening a criminal case, domestic legislation does not require it to forward information about the case to the Prosecutor's Office. The Coalition against Torture and Impunity is aware of many cases when the security service of the Ministry of Internal Affairs has removed or destroyed evidence relevant to the investigation - such as case documentation or video recordings from detention facilities, or where they put pressure on witnesses to make them refrain from implicating police officers.

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

When prosecutors initiate investigations into torture allegations, they lead the investigation, but domestic legislation allows them to instruct police to undertake investigative activities and gather evidence. Prosecutors and policemen from the same regions often have close professional and sometimes even personal links. This clearly hinders the chances of the investigations being impartial and independent. It is not unusual for a police officer implicated in a complaint about torture or his colleagues to be involved in collecting evidence in relation to the case.

As mentioned in the introduction, on 7 September 2019, the Prosecutor General adopted an **“Instruction on Methods for Prosecutorial Supervision of the Legality of Prevention, Detection and Investigation of Torture”**. The Instruction contains key principles outlined in the Convention against Torture and the Istanbul Protocol. It sets out a detailed and consistent mechanism for the investigation of allegations of torture. It also establishes a detailed, step-by-step procedure of for medical examination of victims of torture based on the standards of the Istanbul Protocol. The Instruction is a binding document for employees of prosecutors’ offices. It is still too early to assess its implementation in practice, but the NGOs jointly submitting this document welcome its adoption and call for its consistent implementation.

The Coalition against Torture and Impunity has documented many cases, including cases received since the CAT issued its 2018 Concluding Observations to Tajikistan, where prosecutors and police **failed to promptly open investigations** after complaints of torture were received. When no formal complaint is filed it is very unlikely that a case involving allegations of torture or ill-treatment will be investigated. When investigators or prosecutors decide that there are insufficient grounds to open an investigation, they typically do not provide detailed explanations for their decision.

However, even when investigations are opened they are frequently **not conducted effectively**. Investigatory activities are often conducted without rigor; investigators do not gather sufficient evidence to properly examine the circumstances of the alleged torture; they often fail to interview witnesses and medical personnel or to order a forensic medical examination. Often, they do not interview the victims themselves and when they do, victims often report rude behaviour and psychological pressure. Investigators rarely carry out cross-questioning of police and victims. Instead, they frequently rely on statements obtained from the alleged perpetrators and their colleagues. Reports of medical examinations are often unreliable because doctors, especially in rural areas, often record that the injuries are less serious than they are for fear of reprisals from law enforcement agents. By law, torture victims and their lawyers are only entitled to access the case materials upon completion of the pre-trial investigation, which makes it difficult or impossible to put up a strong defence.

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

Case example: No effective investigation into allegations of torture and rape

In early August 2019, Nargis², aged 25, was detained by police officers in Vakhsh district in relation to an alleged theft in her aunt’s house. During the interrogation at the police station Nargis was reportedly blindfolded (with cloth), pushed across the room, severely beaten, kicked and punched. A police officer grabbed her by the hair and hit her head against the wall, after which she lost consciousness. When she regained consciousness a police officer was giving her an intramuscular injection in the buttock. Another officer entered the room and raped her. Officers told her she would be released if she pleaded guilty. Out of despair and in great pain Nargis “confessed” to the crime and signed several documents (without reading them) provided by the investigator. She was then allowed to leave the police station.

² This is not her real name. Her real name has been withheld to protect her identity.

On 9 August the Forensic Medical Institute of Khatlon region conducted a medical examination at Nargis' request. The conclusion recorded "bodily injuries in the form of bruises, the mark of an injection and an abrasion. These injuries have no harmful effects on Nargis' health, as they will limit her ability to work for a short time only. The characteristics of the injuries inflicted show that they could have been applied when exposed to blunt and hard objects, the day before the application was made." No medical examination or treatment in connection with the reported rape was carried out because the required methodology and expertise was allegedly not available in Khatlon region. Some samples of body liquids were taken for possible examination at a later stage.

On 20 August, Nargis' lawyer filed a complaint about physical and sexual abuse with the Vakhsh Department of the Ministry of Internal Affairs. Since then the case has been passed back and forth between the Prosecutor General's Office, the Prosecutor's Office of the Vakhsh district and the Ministry of Interior Affairs. To date none of the perpetrators has been brought to account.

Case example: No effective investigation into the case of 68-year-old Istat Kurbanova

On 2 January 2019, Istat Kurbanova, a 68-year-old resident of Ayni district in the northern Sughd province, was detained for unauthorized occupation and construction on a plot of land (Article 338, part 2 of the Criminal Code) and "intentional destruction or damage to property" (Article 255, part 1) and taken to the district's temporary police detention facility.

After being placed in the detention facility, Istat Kurbanova's state of health suddenly deteriorated as she suffered from hypertension and an umbilical hernia. After a medical examination she received initial medical treatment.

On 11 January 2019, the Ayni District Prosecutor's Office sent a letter to the Ayni Police Department of the Ministry of Internal Affairs requesting Istat Kurbanova's hospitalization until her health improved. Ignoring the prosecutor's request, officials of the Ayni Police Department began to prepare for Istat Kurbanova to be transferred to pre-trial detention center No. 5 in Istaravshan.

On 12 January at around 7 a.m., the deputy head of Ayni Police Department ordered the medical officer to give Istat Kurbanova a sedative injection. When she resisted, police officers restrained her and the medical worker gave the injection. After that Istat Kurbanova's state of health deteriorated sharply, she felt dizzy and sick. She asked to go out into the yard to get some air and suddenly felt that her clothes were burning. She did not understand how this had happened. Istat Kurbanova sustained burns on her face, neck, chest, and abdomen and armpit area.

At around 8 a.m., the deputy head of the Ayni Police Department, the severely injured woman was taken to the Istaravshan pre-trial detention center. However, officials at the pre-trial detention center refused to admit her because of her poor health, including her burns.

The police officers returned Istat Kurbanova to Ayni and only in the evening was she transferred to hospital. In the meantime, Istat Kurbanova's poor health was life-threatening. At the hospital, she was placed in the intensive care unit, and was treated for over a month.

On 19 February 2019, Ayni District Prosecutor's Office issued a decision refusing to initiate criminal proceedings for "negligence" (Article 322 of the Criminal Code). On 9 March 2019, the lawyer appealed the decision to the Prosecutor General's Office. Since then the case has been passed

back and forth between the Prosecutor General's Office and Ayni District Prosecutor's Office. To date not one the perpetrators has been brought to account.

Case example: The circumstances of Umar Bobojonov's death in custody in 2015 remain unclear

In another case, 23-year-old Umar Bobojonov died in September 2015, a few days after he had been taken into custody by police in the city of Vahdat, some 20 kilometers east of Dushanbe. Two eye-witnesses confirmed that police officers abused him. Vahdat Prosecutor's Office has suspended the investigation into his death five times since 2015 – most recently in August 2019 – stating that investigators were unable to identify the perpetrator. Each time the Prosecutor General's Office cancelled the decision of Vahdat Prosecutor's Office, reopened the case and sent it back to Vahdat. Although the lawyer repeatedly submitted complaints to the Prosecutor General's Office, the Ombudsperson for Human Rights and to the Executive Office of the President about the failure to conduct an effective investigation, the circumstances of Bobojonov's death remain unclear.

Further concerns include the lawyer being denied access to the case materials for many months and significant delays in the investigators' replies to the lawyers' petitions. It took three years of persistent work before Umar Bobojonov's father was admitted to qualify as a witness in the case and was questioned as part of the preliminary investigation in July 2018.

Appeals to the Legal Assistance Group of the NGO Coalition against Torture and Impunity show that judges usually do not initiate a prosecutorial check when defendants allege in court that they were subjected to torture. The chances of a prosecutorial check being initiated are higher when a lawyer petitions on the defendant's behalf. The Coalition is aware of four such cases in 2019.

When female detainees become victims of rape by law enforcement agents they face major obstacles when they decide to pursue a complaint. The victims and their lawyers have to push for a forensic medical examination that records injuries resulting from the rape; they have to provide evidence that the sexual intercourse took place without the victim's consent; they have to identify the perpetrator; and they have to obtain recordings of video cameras in detention and name witnesses. In the course of the forensic medical investigation and other investigatory activities the woman is usually examined and questioned by male officers, prosecutors and medical personnel. Domestic legislation does not prescribe a female prosecutor in cases involving the rape of a female detainee. The victim's family and the general public often blame the rape victim, which poses an additional disincentive for victims to seek justice and, if they decide to go ahead with the complaint, victims often cannot rely on support from their families.

3. Fundamental legal safeguards (para. 18)

The Coalition against Torture and Impunity in Tajikistan continued to receive credible reports that detainees lacked access to fundamental legal safeguards and were subjected to torture and other forms of ill-treatment in the period under review, i.e. since May 2018. Most allegations of torture continued to originate in the early stages of detention when detainees are often held incommunicado.

CAT CONCLUDING OBSERVATIONS 2018

Para. 18 (a): Take effective measures to guarantee that all detained persons, including minors, are afforded in practice all the fundamental legal safeguards from the very outset of their deprivation of liberty, in accordance with international standards, including the safeguards mentioned in paragraphs 13 and 14 of the Committee's General Comment No. 2 (2007) on the implementation of article 2. In particular, it should ensure that detainees have the following safeguards:

- (i) To be informed about the charges against them and about their rights, both orally and in writing, in a language that they understand, and to sign a paper confirming that they have understood the information provided to them;

The situation regarding the issues raised in this recommendation has remained unchanged since the CAT issued its Concluding Observations in May 2018.

- (ii) To have all periods of deprivation of liberty accurately recorded immediately after apprehension or arrest in a register at the place of detention, including for persons in administrative detention and those invited informally to police stations for "conversations" or as witnesses and who are subsequently detained without official status before official charges are brought against them, as well as in a central register of persons deprived of liberty, to have detention reports drawn up accordingly to prevent any cases of unrecorded detention, and to ensure access to the register of detainees by their respective lawyers and relatives.

The situation regarding the issues raised in this recommendation has remained largely unchanged since the CAT issued its Concluding Observations in May 2018.

However, the Coalition has registered an increase in cases of administrative detention before criminal charges were brought.

CAT CONCLUDING OBSERVATIONS 2018

Para. 18 (a): (iii) To have prompt access to a lawyer from the very outset of deprivation of liberty, and, if necessary, to legal aid, including during the initial interrogation.

The situation regarding the issues raised in this recommendation has remained unchanged since the CAT issued its Concluding Observations in May 2018.

Case example: Shahboz Ahmadov reportedly tortured in incommunicado detention

At around midnight on the night of 16 to 17 July 2018, 29-year-old Akhmedov Shahboz was detained by police officers at his home in the Yavan District. They said they wanted to take him to the Yavan Department of the Ministry of Internal Affairs (OMVD) to ask some questions “about the circumstances of a crime”, promising to release him immediately. When they arrived at the police station three officers reportedly took Shahboz into an office and locked the door. Shahboz later recounted that: Two officers changed into comfortable sportswear, after which one of them grabbed him by the hair, punched him in the face, and shouted at him. The two officers then slapped his face and told him that he had stabbed a woman. When Shahboz refused to agree an officer grabbed the hair on the back of Shahboz’s head and banged his forehead against the desk. After this, one of the officers turned to his colleague and said: “If he does not confess, let’s do it.” One of them made Shahboz sit on the floor and the other kicked him in the back from behind, making Shahboz fall face down on the floor. Then the officers handcuffed his hands behind his back and an officer kicked his legs together, before putting handcuffs on his legs too. Then another officer wrapped a rag around Shahboz’s head and face and secured it with scotch tape. They threw another rag on top of his head so that he could not see anything at all. They wired three fingers of each hand, connected them to a source of electricity and began to increase the voltage. Shahboz began to shake his head and made it clear that he was ready to confess to the crime. They removed the wiring, tape and handcuffs. Akhmedov asked for water, to which an officer replied: “I will now see to my needs in the palm of your hand, and then you drink.”

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

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

He was then brought back to the OMVD, where he was held all day until he was transferred to the IVS late on 17 July. On the night of 21 July 2018, the police rang Shahboz’s brother and told him to come and pick him up as he was not guilty. Two of the officers who had tortured him ordered Shahboz not tell anyone about what had happened. Throughout the period of his detention, Shahboz had no contact to a lawyer or his family.

The Coalition against Torture and Impunity continued to receive reports of lawyers rarely being given the opportunity to conduct confidential meetings with their clients. Law enforcement officers or security guards are usually present in meeting rooms, despite the fact that domestic law provides for the confidentiality of these meetings (Section 9 of the Law on Advocacy and Attorney Activities, Section 18, Law “On the Procedure and Conditions for the Detention of Suspects, Accused and Defendants”, Articles 46, 47 and 53 of the Code of Criminal Procedure). As a rule, guards also limit the time of such meetings.

Lawyers continue to come under immense pressure when they lodge complaints against torture and face criminal prosecution through fabricated criminal cases. This particularly concerns rural regions.

CONCLUDING OBSERVATIONS PARA. 18

(a) (iv) To receive a medical examination conducted confidentially by an independent doctor within 24 hours of arriving in a place of detention, and to have the right to request and receive, at any time, an independent medical examination. The State party should guarantee in practice the independence of doctors and other medical staff dealing with persons deprived of liberty, ensure that such staff duly document all signs and allegations of torture or ill-treatment, provide a copy of the results of the medical examination without delay to competent appropriate authorities for further investigation and make them available to the detained person concerned and his or her lawyer;

The situation regarding the issues raised in this recommendation has remained unchanged since the CAT issued its Concluding Observations in May 2018. The Coalition continued to document cases of detainees who were entered into detention facilities without a medical examination.

Case example: Khamza Solekhov was reportedly tortured and entered into the temporary police detention facility without medical examination

On 7 January 2019, between 4:00 and 5:00 pm, five law enforcement officials in plain clothes detained Khamza Solekhov and took him to the Ministry of Internal Affairs building in Dushanbe. The officers reportedly started beating Solekhov. One officer hit him on the head so hard that one eardrum burst, and he was bleeding. Police officers then reportedly asked him to confess to drug trafficking but he refused. After that Khamza Solekhov was placed on his stomach, his arms and legs were tightly bound. Wet wipes were wrapped around his little fingers and connected to wires. The officers tortured him with electric shocks for hours until 6:00 am. Unable to bear the excruciating pain, Khamza Solekhov signed the papers without reading them. He was then transferred to another office where ointment was put on him to hide the bruises on his body.

On 8 January, at around 10:00 pm, Khamza Solekhov was taken to a temporary police detention center. No medical examination was carried out before he was placed in a cell. Only on 12 January 2019, was a forensic medical examination carried out by an expert of the Center for Forensic Medical Examination of the Ministry of Health.

Based on a complaint filed with the prosecutor's office by a relative of Khamza Solekhov, a criminal case was opened against the five perpetrators on 13 January 2019. On 16 December 2019 the City Court of Dushanbe sentenced Farhod Nurkhonov, Deputy Head of the Criminal Investigation Department of the Ministry of Internal Affairs in Dushanbe, to 17 years' imprisonment; Avaz Sabzayev, the Head of the Department, to nine years' imprisonment; Ikromiddin Akhliddin, an employee of the Department, to nine years' imprisonment; and the Police Investigator Umed Vakhkhobova to seven and a half years' imprisonment. The fifth perpetrator, also an employee of the same Department, did not receive a custodial sentence and has allegedly left the country.

CAT CONCLUDING OBSERVATIONS 2018

Para. 18 (a) (v) To be able to notify a family member or any other person of their own choice of their detention immediately after apprehension and not only after seeing a judge;

The situation regarding the issues raised in this recommendation has remained unchanged since the CAT issued its Concluding Observations in May 2018.

CAT CONCLUDING OBSERVATIONS 2018

Para. 18 (b): Bring all detained persons promptly before a judge, in line with international standards, and reduce the 72-hour period of pre-charge police custody;

The situation regarding the issues raised in this recommendation has remained unchanged since the CAT issued its Concluding Observations in May 2018. The Coalition recorded cases in 2018 and 2019 where detainees were held even longer than 72 hours before the remand hearing took place.

CAT CONCLUDING OBSERVATIONS 2018

Para. 18 (c): Start monitoring the effective implementation of these recommendations by collecting data on the performance of the police concerning the provision of fundamental safeguards to persons deprived of their liberty, including comprehensive data on cases in which police officers have been subjected to disciplinary or other measures for failing to respect such safeguards, and should provide this information in its next report to the Committee.

The situation regarding the issues raised in this recommendation has remained unchanged since the CAT issued its Concluding Observations in May 2018.

4. Hazing, ill-treatment and torture in the armed forces (para. 46)

CAT CONCLUDING OBSERVATIONS 2018

Para. 46 (a): Reinforce measures to prohibit and eliminate violence and abuse, including sexual, physical and verbal abuse, in the military and ensure prompt, impartial and thorough investigation of all allegations of hazing, ill-treatment or torture in the military, and establish the liability of direct perpetrators and those in the chain of command, and prosecute and punish those responsible with penalties that are consistent with the gravity of the act committed.

Torture, ill-treatment and hazing remain common in the army and since the CAT issued its Concluding Observations to Tajikistan in 2018 no effective measures have been taken to prohibit and eliminate sexual, physical and psychological abuse in the army.

In 2019 the NGO Office of Civil Freedoms (OCF), a member of the NGO Coalition against Torture and Impunity, provided legal assistance in nine cases involving allegations of torture and other forms of ill-treatment in the armed forces. The NGO registered three cases in 2019 involving the death of a soldier.

Only the most severe cases resulting in the death of a soldier or grave long-term health problems are prosecuted. The vast majority of cases which do not leave serious physical injuries and do not lead to serious damage to health are not investigated. This is due to the lack of effective complaints mechanisms and a culture in the military that discourages complaints and appeals to law enforcement agencies and human rights organizations. Those who seek help are at risk of further insults and other reprisals.

In those cases that came to trial, charges were only brought against the immediate perpetrators while the commanding officers escaped criminal prosecution even if they had ordered the soldiers to “discipline” the victims. In several cases involving officers or commanding officials, the perpetrators were subjected to disciplinary sanctions such as fines, restriction on military service, and deprivation of the right to hold certain posts or engage in certain activities for a specific period of time.

The Criminal Code of Tajikistan contains a section specifically punishing crimes committed in the army. Article 143-1 that punishes “torture” is contained in a different section of the Criminal Code and has so far never been applied to a case from the army. Usually cases of torture and ill-treatment in the armed forces are opened under the following articles: “abuse of official authority” (Article 391), “violation of statutory relationships” (Article 373) or “negligent attitude to service” (Article 392), which carry punishments that, in many cases, are not commensurate to the gravity of the crimes committed.

In July 2018, after a year and a half of serving in the armed forces, Kurbon³ was beaten on the side of the neck by a lieutenant of his military unit as a punishment for talking on the phone. After being hit, the conscript lost consciousness several times and fell asleep. The medical examination showed that Kurbon had suffered a fractured dental root. In October 2018 the court sentenced the lieutenant responsible to a fine of 11 150 somoni [1030 EUR] and a restriction of service for a year, in accordance with Article 391, part 1 of the Criminal Code. Lawyers for the injured party appealed against the verdict, stating that it was not commensurate with the gravity of the crime committed but the Supreme Court rejected the appeal and confirmed the verdict.

In March 2018, just ten days before the end of his military service, Masbutjon Mansurov was beaten by officers resulting in him sustaining serious injuries and a ruptured spleen. He was hospitalized the same evening and died the next morning, on 24 March, after an operation. On 18 May 2018 the Military Court of Bokhtar sentenced officer Mekhridin Nurov to three years’ imprisonment for “abuse of official authority” (Article 391 part 1 of the Criminal Code), but due to what the court regarded as extenuating circumstances, the term of imprisonment was reduced to two years’ probation. On 18 January 2019 another officer, Idimat Pirov, was sentenced to seven and a half years’ imprisonment for “abuse of official authority” (Article 391 part 3a) and “intentionally causing serious harm to health” (Article 110, part 3). The lawyers representing Masbutjon Mansurov’s father unsuccessfully attempted to get the officers responsible for his son’s death tried on charges of “torture” (Article 143-1).

3 This is not his real name. His real name is withheld to protect his identity.

The NGOs jointly issuing this document are also concerned that domestic legislation in Tajikistan does not establish the mandatory transfer of victims and witnesses of torture and other forms of ill-treatment to another military unit while an investigation is being conducted into the allegations. As a result victims and witnesses are at risk of reprisals, with direct consequences for the effectiveness of the investigation. Transfers can be ordered by investigators, but they are optional and OCF is not aware of any such cases in 2018 and 2019.

CAT CONCLUDING OBSERVATIONS 2018

Para. 46 (b): Ensure that servicemen can submit complaints confidentially in order to protect them from reprisals and that their complaints are promptly passed on to the military prosecutors' offices for investigation.

During monitoring visits to military units conducted in 2018 and 2019, OCF observed that the soldiers' complaint boxes were located in places where they can be seen by commanding officials and other military personnel, or by video cameras. This practice is unsafe and may lead to reprisals against soldiers who use the complaint boxes.

Usually conscripts are not able to make confidential phone calls. They are typically only given access to their own mobile phones at weekends for short periods of time. They are only allowed to speak in places where conversations can be overheard and usually each phone call (time and phone number) is registered. This prevents soldiers from seeking support or legal assistance if they are being subjected to hazing or have other complaints.

CAT CONCLUDING OBSERVATIONS 2018

Para. 46 (c): Ensure access for the Ombudsman and the Monitoring Group to carry out unannounced monitoring visits to all military units and conduct confidential interviews with conscripts.

From 2014 to 2018, the Ombudsman and OCF staff conducted monitoring visits to from five to six military units of the Ministry of Defense every year. They had no access to border troop units (where most allegations of hazing occur), draft commissions, military guardhouses (gauptvakhta), the Committee for Emergency Situations, the National Guard, or convoy troops.

Since the new Ombudsperson, Umed Bobozoda, took up his position in 2019, no monitoring or other visits to military units have been carried out by the previous team of Ombudsman Office representatives and OCF.

CAT CONCLUDING OBSERVATIONS 2018

Para. 46 (d): Provide redress and rehabilitation to victims, including through appropriate medical and psychological assistance, in accordance with the Committee's general comment No. 3.

In 2018 and 2019 Coalition lawyers assisted several victims of torture in the army and families of deceased victims to obtain compensation for moral and material damages. Some plaintiffs were awarded compensation but the amounts were neither fair nor adequate.

Idimat Pirov, one of the two perpetrators convicted in the case of the deceased Masbutjon Mansurov, was ordered to pay 1000 Tajik Somoni (the equivalent of approx. 92 EUR) while the court ruled that the other defendant, Mekhriddin Nurov, should not pay any compensation.

In the case of P. Sheraliyev, Dushanbe Garrison Court obliged defendant Shamshod Muminov to pay the plaintiff 2200 somoni (approx. 230 EUR) for moral damages after finding him guilty. The claim for the compensation of material damages and lost salary costs was refused.

Nasriddinov Bahriddin was seriously injured and left with permanent disabilities; Ch. Kurbonov and I. Tavalloyeva died as a result of hazing. In all three cases the perpetrators were found guilty and convicted. However, claims lodged by the victim or their relatives for compensation of moral harm were rejected by the courts.