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Tajikistan: Briefing on the implementation of recommendations issued by the UN Human Rights Committee in paragraphs 16 and 23 of its 2013 Concluding Observations¹

This document was jointly produced by the NGO Coalition against Torture in Tajikistan (Coalition against Torture), that unites 12 human rights groups and five independent experts across Tajikistan, and International Partnership for Human Rights (Belgium). Its contents are supported by Helsinki Foundation for Human Rights (Poland) and the Norwegian Helsinki Committee. The Coalition against Torture has closely monitored and analyzed domestic legislation pertaining to the issue of torture and other ill-treatment and documented numerous cases involving allegations of these human rights violations from across Tajikistan in recent years.

In paragraph 27 of the Concluding Observations adopted on 23 July 2013, and published on 22 August 2013 (CCPR/C/TJK/CO/2), the United Nations (UN) Human Rights Committee requested the authorities of Tajikistan to “provide, within one year, relevant information on its implementation of the Committee’s recommendations in paragraphs 16 and 23, (in accordance with rule 71, paragraph 5, of the Committee’s rules of procedure).” This submission summarizes the state of implementation of the recommendations issued by the Committee under the relevant paragraphs and provides case examples in the annex.

For in-depth information about developments regarding torture and ill-treatment in Tajikistan, refer to:

- The February 2015 document *Tajikistan needs to do more to end torture. An overview of current concerns* that was jointly published by the coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan, Amnesty International (AI), HFHR, IPHR and World Organization against Torture (OMCT): <http://notorture.tj/en/reports/tajikistan-needs-do-more-end-torture-overview-current-concerns>
- The May 2015 document *Tajikistan: Second joint follow-up submission to the Concluding Observations of the United Nations Committee against Torture*, jointly produced by the Coalition against Torture in Tajikistan, AI, HFHR and IPHR: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fTJK%2f20451&Lang=en

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



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Comments on the implementation of recommendations under paragraph 16

Paragraph 16 of the Human Rights Committee's Concluding Observations:

"The Committee is concerned at: (a) the frequent failure to register detention following arrest within the time frame prescribed by the law, which facilitates the use of torture and ill-treatment with the aim of extracting confessions, and (b) the failure to apply procedural safeguards immediately after arrest despite the law in place, including access to a lawyer, family members and medical personnel. It is moreover concerned at the lack of systematic oversight of places of detention by organizations independent from the prosecution (arts. 7, 9, 10 and 14)."

"The State party should guarantee the registration of detainees within the legal time frame, and ensure that all arrested persons, including minors, fully enjoy their rights as required by the Covenant, including access to a lawyer, family members and medical personnel. It should also institute an independent mechanism for inspection of all detention facilities by relevant international humanitarian organizations and/or independent national human rights non-governmental organizations (NGOs)."

Ambiguous definition of the moment of arrest in Tajikistani legislation

In paragraph 8(a) of its Concluding Observations adopted in November 2012, the UN Committee against Torture recommended that Tajikistan "[a]mend the CPC to ensure that arrest starts from the moment of de-facto apprehension." The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment visited Tajikistan in May 2012. In the January 2013 report on his mission to Tajikistan he called on the authorities to "[a]mend the Code of Criminal Procedure to ensure that the time of arrest starts from de facto apprehension and delivery to a police station" (Recommendation 99e).

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

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

Article 91, part 1 states that "[t]he detention of a person consists of entering him into an agency of criminal prosecution and [his] temporary custody in specialized places defined by law and this Code." Thus, law enforcement agencies and courts typically consider a person a detainee when the detention record is drawn up. Article 94 of the Criminal Procedure Code (CPC) requires officers to draw up a detention record within three hours of the detainee's arrival at the police station. In practice, it is often drawn up several hours, sometimes even days after the de facto apprehension. Detainees and lawyers typically do not have access to the detention record.

Witnesses and those detained on administrative charges frequently held incommunicado

In January 2013, the Special Rapporteur on torture recommended Tajikistan to "(c)larify 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. (Recommendation 100 (b)).

However, the practice of using arrest for a purported administrative offence as an excuse to remand someone for the purpose of a criminal investigation until they are officially arrested as a criminal suspect, continues in Tajikistan and there have been no legislative or other changes to address this issue.

Another way of detaining people without granting them the protection of legal safeguards is the frequent police practice of summoning people as "witnesses" or simply calling them in for "a conversation."

Often police officers reportedly torture these individuals in order to obtain “information” or “confessions” that subsequently form the basis for opening criminal cases against them.

Failure to promptly inform detainees of their rights

The UN Committee against Torture’s recommended the Tajikistani authorities, to “[e]nsure that suspects are informed of their rights at the very moment of apprehension as well as reasons for their detention” (Recommendation 8(c)).

In the State Party’s submission on the implementation of the Human Rights Committee’s recommendations in paragraphs 16, 18 and 23, dated 24 August 2014, the Tajikistani authorities state that “when the detention record is presented to the detainee, the detainee is explained his rights, including the right to invite a lawyer and testify in his/her presence.”

As mentioned above, the CPC of Tajikistan stipulates that detainees should be informed of their rights after the detention record is drawn up (Article 94). Under Article 94.1 of the CPC the detention record should be drawn up within three hours of the detainee’s arrival at the police station. Domestic legislation does not specify the time frame within which detainees have to be admitted to a police station after being apprehended. In practice the arrival of a detainee at the police station can be hours or even days after the detainee was apprehended, according to members of the NGO Coalition against Torture in Tajikistan.

The Instruction on Detention of Tajikistan stipulates that detainees must be given a written explanation of their rights. However, lawyers cooperating with the Coalition against Torture have never seen such a document in their clients’ case files and the Coalition is not aware of a case where a detainee reported to have been handed this information.

Failure to include the identity of the arresting officer/s in the detention record facilitates impunity

Both the Committee against Torture and the Special Rapporteur on torture called on Tajikistan to ensure that detention is recorded from the very moment when a person is deprived of liberty and that, among other issues, the identity of the arresting officer/s is recorded. In addition, in its Concluding Observations the Committee against Torture called on Tajikistan to “[e]stablish an official, central register in which the arrest is scrupulously and immediately recorded”.

To date no amendments have been made to the CPC requiring police to include the identity of the arresting officers in the detention record. The lack of such a requirement continues to provide the authorities investigating torture allegations with an excuse for claiming it was not possible to establish the identity of the apprehending officer/s.

According to the Preliminary Report on the *Implementation of the Government Action Plan on Torture* distributed to human rights groups and other interested parties by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015, the Ministry of Justice set up a working group to discuss the introduction of draft amendments to the CPC and the Law “On Detention Procedures and Conditions of Suspects, Accused Persons and Defendants” pertaining to data to be included in detention records. The Coalition against Torture in Tajikistan learnt of the existence of this working group through the March 2015 report and it has no further information about its composition and activities. We believe that the working group should include broad consultations with civil society organizations with relevant expertise in order to provide recommendations and comments on relevant draft legislation.

To our knowledge, despite the above-mentioned recommendation by the Committee against Torture, no central register has been introduced in Tajikistan to record crucial information about each detainee, the detaining officers and the officers responsible for him or her in custody.

Lack of immediate access to a lawyer of the detainee’s choice

Both the Committee against Torture and the Special Rapporteur have recommended that Tajikistan guarantee the right to access to a lawyer of their choice at the very moment of apprehension (Recommendations 8(c) and 100(a) respectively).

The Constitution of Tajikistan stipulates that “a person is entitled to services of a lawyer from the moment of detention” and the CPC includes similar formulations. However, as mentioned above, the definition of the moment of detention is ambiguous in domestic legislation.

In practice many detainees have no access to a lawyer in the first hours or days of detention. (For a case example, refer to the **case of Shamsiddin Zaydullov in the annex**, who died in custody in April 2015.)

Police investigators often deny independently hired lawyers access to their clients for days and lawyers often see them for the first time at the remand hearing or even later.

In those cases where detainees or their families do not appoint their own lawyer, but the detainee requests legal counsel or the participation of a lawyer is obligatory by law (cases of especially serious crimes), the detainee is entitled to the services of a lawyer whose services are paid by the state. In such cases, the investigator should submit a written request for a lawyer to be involved to a local representation of a collegium of advocates (law firm), and it is the lawyer on duty at the time who should take up the case. On average it takes 24 hours until a lawyer starts working on a case. However, it is a common practice in Tajikistan that the investigator directly contacts a specific lawyer to act as an ex officio (state-appointed) lawyer, effectively hand-picking someone who will not provide effective defence and may be inclined to overlook torture or other ill-treatment. (For a case example, refer to the **case of Tolib Shodiev in the annex**).

In some cases involving state-appointed lawyers detainees are unaware that they have a lawyer until the relatives contract with an independent lawyer who informs them of the existence of another lawyer in the case.

Lawyers continue to experience obstacles to visit and communicate with their clients in investigation-isolation facilities (SIZOs), the detention facilities under the jurisdiction of the Ministry of Justice. In some cases, lawyers have been prevented from seeing their clients until the police investigator sent confirmation to the SIZO administration certifying that the lawyer is involved in the specific criminal case. Effectively, this practice means that the investigator determines whether or not a lawyer has a permission to see their client. SIZO staff have often referred to internal regulations preventing them from granting access to lawyers. In recent years, members of the Coalition against Torture in Tajikistan have repeatedly made requests for information about internal SIZO regulations but have received no response. Members of the Monitoring Group consisting of Ombudsman’s Office staff and civil society activists that began visiting detention facilities in February 2014 also requested to be given a copy of the internal SIZO regulations. However, the SIZO administration stated that this information could not be shared as it was confidential and for internal use only. (For further information on the work of the Monitoring Group, refer to chapter “Lack of sufficient independent inspections of detention facilities” below).

The independence of lawyers continues to be an issue of concern. The law “Ob advokature” (On Bar and Legal Activity) entered into force in March 2015 after being developed by the working group “On developing draft legislation ‘Ob advokature’”, set up by the Presidential Administration and the Ministry of Justice. The law authorizes the Ministry of Justice in charge of the Qualification Commission to issue and withdraw lawyers’ licences, which might undermine the independence of lawyers. This and other provisions such as the requirement for practising lawyers to re-qualify in order to keep their status as a defence lawyer risks rendering lawyers more vulnerable to administrative controls by the authorities and facilitating the revoking of licences for political or other arbitrary reasons.

Lack of prompt access to family

The UN Committee against Torture recommended Tajikistan in its Concluding Observations adopted in November 2012 to “[a]mend the CPC to repeal the 12-hour period for notification of arrest by law enforcement officers to family members” (Recommendation 8 (g)).

To date, the CPC has not been amended and Article 100, part 1 still stipulates that family members should be notified of the detention and the detainee’s whereabouts within 12 hours of apprehension, either by police or the detainee.

In the current context in Tajikistan, notification of family is a particularly important safeguard as family members in many cases try to appoint a lawyer of their choice for the detainee and prevent them being

appointed to an ex officio (state-appointed) lawyer who, as described above, often fails to ensure a proper defence.

According to the March 2015 Preliminary Report on the *Implementation of the Government Action Plan on Torture* by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan, the Prosecutor General's Office set up a working group to discuss the introduction of draft amendments to domestic legislation pertaining to prompt notification of the detainee's close relatives. The Coalition against Torture in Tajikistan learnt of the existence of this working group through the March 2015 report and it has no further information about its composition and activities. We believe that the working group should include broad consultations with civil society organizations with relevant expertise in order to provide recommendations and comments on relevant draft legislation.

Lack of access to qualified and independent medical personnel

The Committee against Torture recommended Tajikistan to "(e)nsure that anyone arriving at a detention facility undergoes a routine medical examination, and that access to independent doctors is provided when requested by the detainee without conditioning such access on the permission or request of officials" (Recommendation 8 (e)). The Special Rapporteur on torture recommended Tajikistan in January 2013 to "ensure that all medical personnel are in practice under the authority of the Ministry of Health" (Recommendation 100 (e)).

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

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

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

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

Video cameras in temporary detention facilities

In its November 2012 Concluding Observations the Committee against Torture recommended Tajikistan to "(m)aintain video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or a doctor may be violated. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers" (Recommendation 9(c)).

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

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

Remand hearings

In its Concluding Observations the Committee against Torture recommended Tajikistan to "(m)andate that a detainee be brought promptly before a judge, in line with international standards, and reduce the 72-hour period of police custody" (Paragraph 8 (f)). Other UN human rights bodies issued similar recommendations. For example, in its 2013 Concluding Observations on the second periodic report of Tajikistan, the UN Human Rights Committee recommended to "ensure that persons in police custody are brought before a judge within a maximum period of 48 hours" (Paragraph 17). In the follow-up report on his mission to Tajikistan, published in February 2015, the UN Special Rapporteur on torture "urge(d) the Government to reduce the period of lawful pre-charge detention to 48 hours in line with acceptable international standards" (Paragraph 16).

The CPC of Tajikistan continues to stipulate that remand hearings should take place within 72 hours after a person is taken into custody. In practice, detainees are often brought before a judge later than the 72-hour limit. (For example, refer to the **case of Tolib Shodiev in the annex** below).

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

Lack of sufficient independent inspections of detention facilities

The Committee against Torture and the Special Rapporteur on torture recommended Tajikistan to ratify the Optional Protocol to the Convention against Torture (OPCAT) and establish a National Preventive Mechanism (NPM) (Recommendation 14(c) and 100(h) respectively). Both also recommended that Tajikistan grant unimpeded access to the International Committee of the Red Cross (ICRC) and independent non-governmental organizations to all places of detention for the purpose of independent monitoring (Recommendations 14(c) and 100(i) respectively).

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

The ICRC has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004.

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

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

Comments on the implementation of recommendations under paragraph 23

Paragraph 23 of the Human Rights Committee's Concluding Observations:
"The Committee expresses concern that the Law on Non-governmental Associations (2007) imposes undue conditions and restrictions on the registration of public associations and endows the Ministry of Justice with excessive oversight power, resulting in major practical obstacles and delays in the registration and operation of such groups. The Committee is further concerned at reports of the arbitrary shutting-down of various human rights-based NGOs, without observance of procedural safeguards or as a disproportionate response to technical irregularities (arts. 22, 25)."

"The State party should bring its law governing the registration of NGOs into line with the Covenant, in particular with articles 22, paragraph 2, and 25. The State party should reinstate NGOs which were unlawfully shut down and should refrain from imposing disproportionate or discriminatory restrictions on the freedom of association."

The NGOs jointly submitting this briefing are alarmed that amendments to the Law on Public Associations, adopted in August 2015, and recent and ongoing checks of scores of NGOs, including member groups of the NGO Coalition against Torture in Tajikistan, by the Tax Committee, the Labour Inspection, prosecutors, the State Committee on National Security and other government agencies may be aimed at intimidating and silencing NGOs. Human rights groups and others perceived by the authorities as promoting "Western values" are particularly at risk.

On 21 January 2015, the Minister of Justice of Tajikistan was reported by the news agency Avesta as saying that there were a total of 2,800 public organizations in the country. In addition, the Coalition against Torture believes that the Tax Committee of Tajikistan has registered at least ten public foundations since 2007. Among both types of organizations are those working on human rights.

Public organizations are required to register and report to the Ministry of Justice and, in addition, to file reports with the tax authorities and other government agencies. Their activities are regulated by the Law on Public Associations. The activities of public foundations and other types of non-governmental groups are regulated by the Law on State Registration of Legal Entities and Individual Entrepreneurs. These organizations register with the tax authorities in a simplified procedure and are not required to report to the Ministry of Justice. They submit regular reports to the tax authorities and other government agencies.

NGOs under threat of liquidation

Unregulated inspections of public organizations and public foundations continue in the country and several local human rights groups recently underwent or are currently undergoing checks by the Tax Committee, the Labour Inspection or prosecutors (**for case examples featuring prominent human rights groups refer to the annex**). Some of these inspections are conducted on the orders of the State Committee on National Security (**refer to the cases of the Bureau for Human Rights and Rule of Law and the Independent Center for the Protection of Human Rights in the annex**).

The Law on Public Associations provides for inspections of public organizations to be undertaken, but does not regulate how they should be carried out. An addition to the Law on Public Associations that was adopted on 8 August 2015 stipulates that "the order of inspecting the statutory activities of public associations is established by the Ministry of Justice of the Republic of Tajikistan" (Article 34, part 2 of the Law). We consider this addition to the Law on Public Associations a positive step as it acknowledges the need to establish a procedure that guides inspections of public organizations. However, to date the Ministry of Justice has not published any information about its methods and procedures.

NGOs usually do not know which government agency will inspect them, when the inspection will take place, and what documents and information will be required. In recent years NGOs have in many cases learnt of upcoming inspections through a phone call from the Ministry of Justice, the Labour Inspection or the Prosecutor's Office one or two days before the inspection commenced. During this phone call the NGOs were given a list of documents they were expected to prepare for the inspectors. By law the tax authorities

are entitled to conduct a so-called planned inspection of any organization once every four years and, in practice, they notify NGOs of such inspections in writing in advance. However, in order to conduct an audit, the Tax authorities are not legally required to provide advance notification.

The Law on Public Associations stipulates that public organizations can be liquidated for violations of the Law, including the failure to comply with requirements of a technical nature (e.g. failure to re-register an organization after a change of legal address).

On 24 June 2014, the Constitutional Court of Tajikistan considered a complaint by the **Young Lawyers Association Amparo**, an NGO closed down on technical grounds in 2012, requesting the Court to look into what it believed were contradictions between articles of the Law on Public Associations and the Constitution of Tajikistan. The Constitutional Court ruled there were no contradictions. However, it stated that provisions of the Law on Public Associations concerning the closure of NGOs are not sufficiently clear and recommended Parliament to analyze the law and make necessary changes to Article 37 of the Law on Public Associations to specify the grounds on which NGOs can be liquidated. No amendments have since been made to this Article.

We are also concerned that the authorities do not publish comprehensive and up-to-date statistics pertaining to the registration and liquidation of NGOs. On its website the Ministry of Justice recently made available a list of a total of 1,642 public organizations across the country. According to the website, 13 organizations that are listed on the website have been liquidated by court decisions in recent years, out of a total of 155 NGO liquidations. However, the total number of NGOs mentioned on the website contradicts figures provided by the Ministry of Justice on other occasions and some organizations that have been liquidated in recent years are not included in the website statistics.

In recent years representatives of NGOs whom the authorities perceive as promoting “Western values”, including human rights organizations, have increasingly been subjected to pressure (see the case descriptions of the **Public Organization Equal Opportunities and of other human rights groups** in the annex). Several NGOs have been liquidated by court orders in recent years (refer to the cases of the **Public Organization Rushd** in the annex). Others are under threat of liquidation (see the case of the **Public Foundation Nota Bene** in the annex).

The Law on Public Associations

After representatives of the Ministry of Justice had repeatedly denied that draft amendments to the Law on Public Associations were being prepared by the Ministry, local human rights groups were able to obtain the proposed amendments from a representative of the Ministry in November 2014.

The draft amendments evoked broad criticism by civil society in Tajikistan and the international community who accused the authorities of lack of transparency in the process of elaborating the draft amendments and failure to consult with NGOs. In a statement entitled *Tajikistan: Drop draft legislation restricting access to NGO funding*, that was jointly issued by 92 local and international organizations on 25 November 2014, NGOs expressed concern about attempts by the government of Tajikistan to unduly limit access of NGOs to funding.² They pointed out that in their view the draft amendments are in contravention of international standards protecting the right to freedom of association and pose a serious threat to NGO activities in the country.

In response to criticism about the lack of transparency when elaborating the draft law, the Ministry of Justice conducted a meeting with representatives of civil society organizations on 4 December 2014, in order to discuss the proposed amendments. At the meeting Justice Minister Rustam Mengliev stated that the amendments were necessary to implement recommendations made by the intergovernmental Financial Action Task Force on Money Laundering (FATF). He claimed that the registration of grants was of a solely “informative nature” and would not be used by the authorities to control NGOs.

However, on 21 January 2015, the Tajik news agency Avesta reported the Justice Minister as saying that “we have nothing against civil society organizations, but questions about what political views they support, what political activities they engage in, all this has to be monitored by the government.”³

² The statement can be found on: <http://www.iphronline.org/tajikistan-ngo-law-appeal-20141125.html>

³ News article by the news agency Avesta, entitled “The Minister of Justice explained the amendments of the Law ‘On Public Organizations’”, 21 January 2015 (in Russian): <http://www.avesta.tj/sociaty/30257-glava-minyusta-razyasnil-sut-popravok-v-zakon-ob-obschestvennyh-obedineniyah.html>

At the 4 December 2014 meeting, Ministry of Justice officials asked NGOs for their recommendations on the draft law. Representatives of local civil society groups subsequently submitted a list of recommendations but no significant changes were made to the draft on that basis.

In recent years public organizations have been required to present annual reports about their activities, sources and size of funding to the Ministry of Justice and the tax authorities. Amendments and additions to the Law on Public Associations, adopted on 8 August 2015 by the Parliament of Tajikistan, are likely to provide the authorities with further tools to tighten government control over NGO activities, in particular those groups that receive funding from foreign sources.

Article 27, part 2 of the Law on Public Associations stipulates that the Ministry of Justice must enter donations, grants and property that public organizations receive from foreign governments, foreign legal entities or international organizations and NGOs into the Special Register of Humanitarian Aid for Public Associations in Tajikistan. It also requires the registration of funds received “through other physical and legal entities,” an ambiguous provision leaving it unclear whether the registration requirement also pertains to funds received from local sources. The law does not specify whether the registration requirement applies to all funds originating from these sources, irrespective of size. Additionally, the Law states that “public associations can carry out the programs that are funded by the above mentioned (entities or organizations) when the (Ministry of Justice) has been informed.” The Law provides no information about the procedure of registering funds, stating that the procedure will be defined by the Ministry of Justice.

ANNEX

1) CASE EXAMPLES: TORTURE AND OTHER ILL-TREATMENT

The case of Nazomiddin Khomidov: death in custody

In the evening of 30 March 2014, Nazomiddin Khomidov was detained by officers of Vakhsh district police in Khatlon region, on suspicion of theft. On 1 April, police called his family to say that he had committed suicide by hanging himself in the IVS of Vakhsh district. The same day a local media outlet published an article about Nazomiddin Khomidov's death in custody and the Prosecutor's Office of Vakhsh district opened a criminal case against the officer on duty at the IVS at the time for "negligence" (Article 322, part 2 of the Criminal Code). Vakhsh district court subsequently sentenced the duty officer to pay a fine of 36,000 Somoni (approx. 5,000 EUR) to the government and ordered that he be removed from his work place for three years.

A forensic examination that was conducted shortly after Nazomiddin Khomidov died concluded that the cause of death was suffocation resulting from hanging himself. Video footage of the examination presented in court revealed bruises on his body including in the area of his ribs. However, the authorities did not conduct an effective investigation into the circumstances of his death and it remains unclear why he allegedly committed suicide and why his corpse showed injuries. Nazomiddin Khomidov's relatives believe that he died of police torture and that police subsequently suspended him from the ceiling of his cell to make his death look like suicide.

When the Coalition against Torture in Tajikistan started working on the case in April 2014, it learnt that Nazomiddin Khomidov did not see a lawyer while in detention and no medical examination was conducted before he was entered into the IVS. Several officers of the IVS were subsequently reprimanded and one was dismissed for failing to request a medical examination.

On 7 July 2015, Sino district court in Dushanbe granted Nazomiddin Khomidov's parents a compensation of 5,000 Somoni (approx. 710 EUR) for moral damages. The court stated that the duty officer had acted negligently by not preventing Nazomiddin Khomidov's death and highlighted that his family lost their main breadwinner.

The case of Tolib Shodiev

On 25 March 2014, officers of the Department for the Fight against Organized Crime (commonly known as UBOP by its Russian acronym) detained Tolib Shodiev in his home and held him until the afternoon of 26 March 2014 in UBOP's IVS in Tursunzade District in the west of Tajikistan. On 27 March, he was transferred to the IVS in Dushanbe. Tolib Shodiev's relatives told the Coalition against Torture that they were not informed of his whereabouts and the grounds for his arrest. The remand hearing took place on 1 April, seven days after his arrest. Following permission of the investigator, a lawyer of a law firm in the city of Dushanbe was present when charges were brought against Tolib Shodiev on 7 April. When the lawyer was briefly able to speak to him in confidential circumstances, he reportedly told the lawyer that he had been subjected to torture. He later told a lawyer belonging to the Coalition against Torture that he had shown the lawyer bruises on the left side of his back and the left forearm. However, the lawyer reportedly took no steps to address the detainee's complaint. Subsequently, Tolib Shodiev's relatives turned to a member organization of the NGO Coalition against Torture in Tajikistan for help and engaged the NGO's lawyer. This lawyer was only able to gain access to his client ten days after he started working on the case. The lawyer submitted complaints during pre-trial detention and at the court hearing highlighting procedural violations and allegations of torture or other forms of ill-treatment. However, the competent authorities and the court took no action to investigate the allegations.

On 24 November 2014, when Tolib Shodiev's criminal case reached the Collegium on Criminal Cases of the Supreme Court, the Collegium directed an order to the Prosecutor's Office to examine the allegations of torture. At the same time the Collegium turned down a request by Tolib Shodiev's lawyer to examine his late transfer to the IVS two days after he had been deprived of liberty and the late completion of the detention record stating that police had made a "technical error" when registering the date of when Tolib Shodiev was detained.

On 15 December 2014, the Prosecutor's Office concluded that no criminal case had to be opened for lack of evidence of a crime. Tolib Shodiev's lawyer has subsequently submitted complaints about the failure of the Prosecutor General's Office to conduct an effective investigation into the allegations, first to the Chair of Sino District Court in Dushanbe, then to the Prosecutor General's Office. In July and early August 2015 he also asked the Prosecutor General's Office to provide details about its reasons to close the case, but has not received a reply.

The case of Shamsiddin Zaydulloev: death in custody

Shamsiddin Zaydulloev's mother told the Coalition against Torture in Tajikistan that in the evening of 8 April 2015, as his son was waiting in his car outside a shop in the Sino district of Dushanbe, three or four men in plainclothes suddenly opened the doors of his car, grabbed and handcuffed him without an explanation and beat him. When several of his neighbours and a passer-by peacefully intervened, the men detached the handcuffs and left. Later that evening, however, officers of the Drug Control Agency of Tajikistan came to the family's flat and detained him accusing him on drug-related crime. Reportedly, they did not present an arrest warrant and took him to the building of the Drug Control Agency. Among the detaining officers were the same men who had been in plainclothes earlier that evening and had abused Shamsiddin in his car.

On 9 April, Shamsiddin Zaydulloev's mother visited him in the building of the Drug Control Agency. She recalled: "When I patted his head he said I shouldn't touch the back of his head because it was swollen and painful. I asked him in a low voice whether he was beaten and he nodded." When she wanted to visit her son again on 10 and on 11 April she was not given access under various pretexts. In the evening of 11 April Shamsiddin Zaydulloev's reported to have received a phone call from the investigator's telephone. First Shamsiddin Zaydulloev told her that the remand hearing had taken place that day, that he was charged with "selling small quantities of drugs" (Article 200, part 1 of the Criminal Code of Tajikistan) and that he needed a lawyer. Then the investigator took the receiver and confirmed the information.

Shamsiddin Zaydulloev's mother hired a lawyer (who does not work for the Coalition against Torture). When the two wanted to visit the young man in custody on 12 April they were unable to reach the investigator on the phone, after which they decided to try visiting him again the next day. In Tajikistan lawyers are often only given access to their clients in police custody when the investigator permits them to do so.

Early on 13 April, a neighbour of Shamsiddin Zaydulloev's parents told them that Shamsiddin Zaydulloev was dead. The neighbour had received the information from an official of the Drug Control Agency. The parents later told the Coalition against Torture that when they saw his body in the morgue it was covered in bruises and they provided the Coalition with several photographs as evidence. The same day the parents petitioned for a forensic medical examination to be conducted.

Shamsiddin Zaydulloev's parents hired a lawyer who cooperates with the Coalition against Torture because they wanted expert legal assistance in their struggle for justice. On 16 April 2015, the parents lodged a complaint with the Prosecutor General's Office of Tajikistan and urged to conduct an effective investigation into their son's death. On 25 April, the General Prosecutor's Office opened criminal proceedings under Article 143-1 of the Criminal Code ("torture").

On 13 May, the parents and the lawyer were given access to the results of the forensic medical examination that was conducted after the autopsy. The forensic medical expert concluded the cause of death was pneumonia. The same day the lawyer petitioned the Prosecutor General's Office for a new forensic medical examination and on 14 May the Prosecutor General's Office ordered that an interdisciplinary forensic medical examination be conducted. According to the conclusion of the forensic medical examination, dated 3 August, serious injuries including four to five broken ribs and a fracture of his skull may have caused Shamsiddin Zaydulloev's death. The experts added that another cause of his death may have been a delay in providing him with medical attention to treat these injuries. However, one of the team's experts had a different opinion and concluded the cause of death was pneumonia. Subsequently, the preliminary investigation into Shamsiddin Zaydulloev's death was extended for another two months to conduct an additional forensic examination – a complex forensic examination – in order to establish the cause of his death.

2) CASE EXAMPLES: NGOS TARGETED

The Public Organization "Equal Opportunities": Inspectors urge the LGBT NGO to promote "traditional values"

Representatives of the Public Organization "Equal Opportunities", which supports and defends the rights and interests of LGBT people and a range of other groups in Tajikistan, have been subjected to several inspections in recent years by officers of the Interior Ministry's Department dealing with so-called "moral crimes". The NGO's representatives reported that during the inspections it became clear that senior representatives of the Ministry of Internal Affairs were concerned about "propaganda of homosexuality" in Tajikistan and intended to stop "the influence of Western countries" in this regard. During another inspection police officers urged representatives of the NGO to give them the names and contact details of people the

NGO works with, as well as information about locations where LGBT people meet. They also urged NGO activists to refrain from supporting the LGBT community in Tajikistan and from carrying out “propaganda of homosexuality”. Instead, they called on them to promote “traditional” values.

The Public Organization “Rushd”: Liquidated in June 2015

Another example is the case of the Public Organization “Rushd”, which promotes education and participation in elections and works towards strengthening civil society in the Southern Khatlon region. In early February 2015, officers inspecting the NGO accused the group of violating the law as NGO representatives were unable to present a document confirming re-registration after moving the NGO office into the flat of an NGO member. The NGO’s director reported that they had to move offices for financial reasons and had informed the Ministry of Justice of this move in writing. During the inspection the NGO was told that unless it was able to rectify this and other violations of the law by 9 March 2015, the case would be passed to court and the organization would be liquidated. The NGO submitted a report on how it had addressed the authorities’ concerns, but as there were public holidays from 7 to 9 March, the authorities only received the document on 10 March. Since the authorities received the NGO’s report one day past the given deadline, they passed the case to court and on 17 June the court ruled to liquidate the group.

The Public Organization Independent Center for the Protection of Human Rights: Tax Committee leaves NGO in the dark about purpose and findings of unofficial tax inspection

On 5 June 2015, without prior notice, a representative of the Tax Committee of Dushanbe entered the office of the Independent Center for the Protection of Human Rights and presented a letter of the State Committee on National Security ordering a tax inspection of the NGO. The representative requested the NGO to immediately provide her with all relevant financial documents, but she refused to enter the inspection in the Tax Committee’s Book of Inspections stating that this was an unofficial inspection, not one ordered by the tax authorities. She promised that, at the end of the inspection, the NGO would be given a report certifying that an inspection had been conducted.

The same day the NGO provided the Tax Committee with copies of all the requested financial documents. On 20 July, the representative of the tax authorities told the NGO that the inspection was finished and returned all documents. By the time of writing, although the NGO had submitted several reminders, it had not received the report of the tax inspection. In the middle of August the Tax Committee’s representative called and informed the NGO that the tax authorities had now decided to conduct an official tax inspection. By the time of writing, the NGO had not received a written confirmation.

The Public Foundation Nota Bene: Tax Committee files lawsuit to liquidate the NGO

On 8 June 2015, the Public Foundation Nota Bene, a prominent and outspoken human rights group, received a copy of a lawsuit, dated 4 June, that the Tax Committee had filed with Dushanbe Economic Court requesting the NGO’s liquidation. The organization had not received any prior warning and was not given any opportunity to address or rectify the alleged violations.

In the lawsuit, the Tax Committee stated that “under the Law on Public Associations, public organizations are required to register with the Ministry of Justice. However, Bakhrieva N. (the founder of Nota Bene) took advantage of the law and registered the Public Foundation in 2009 via the Tax Committee of the Republic of Tajikistan as the ‘single window’, without going through the legal examination of the documents and she willfully appointed herself as the organization’s director.” Due to these alleged violations, the Tax Committee requested that the organization be liquidated by the court.

When Nigina Bakhrieva registered Nota Bene in 2009, she registered the organization as a Public Foundation, in line with the requirements of the Law on State Registration of Legal Entities and Individual Entrepreneurs. Article 4, part 1 of the Law stipulates that the registration of public foundations and other types of non-governmental groups can take place through a simplified procedure whereby no legal examination of documents is required. Local NGOs estimate that over 100 public foundations, including human rights groups are registered in Tajikistan. To our knowledge, the Tax Committee registered at least one group as a public foundation as recently as in March 2015.

On 19 June 2015, the Economic Court of Dushanbe rejected the lawsuit stating that the issue raised by the Tax Committee is not subject to the Court’s jurisdiction.

On 30 June, Nota Bene received a copy of a new lawsuit, which was addressed to Ismoili Somoni District Court in Dushanbe, with the same content as in the previous claim. The preliminary hearing took place on 17 August and Nota Bene presented its objections to the Tax Committee’s claims. The main court hearing was postponed until 10 September due to international travel of the NGO’s lawyer.

At the beginning of July 2015, Nota Bene submitted documents to the Tax Committee pertaining to a change in the organization's leadership, in order to receive a new registration statement. Although the Tax Committee is legally required to amend the registration register within two working days, Nota Bene has not yet been sent the statement.

The Public Organization Bureau for Human Rights and Rule of Law: Fined after tax inspection conducted on orders of the State Committee on National Security

The Tax Committee in Dushanbe informed the Bureau for Human Rights and Rule of Law (BHR) that the State Committee on National Security had ordered a tax inspection of the NGO and that the inspection would start the next day. From 10 June to 30 July 2015 the tax inspector checked all financial documents of the organization pertaining to the period from 2010 to 2015.

On 12 August, the NGO received the tax authorities' report and decision, dated 3 August, ordering the group to pay a fine of 42,639 Somoni (approx. 6,020 EUR) within ten days of receipt of the letter. The NGO missed the deadline for lack of funds. A BHR representative stated: "This is a huge sum for our organization that could easily lead to our bankruptcy. We receive money for project activities and we don't have reserves that would enable us to cover such a fine. This inspection was aimed at closing us down because BHR is one of the most active and reknown human rights organizations in Tajikistan."

According to the tax authorities' report, the NGO had failed to adequately file and report on travel expenses. It pointed out that some receipts did not include the required tax number and some bills were missing. A BHR representative commented: "The inspector did not pay attention to our explanations that, for example, private taxi drivers are unable to issue the type of official receipt the tax inspector was looking for, and not all hotels, particularly those in remote areas, are able to put a stamp on their receipts with the hotel's tax identification number." The donor organizations that had provided funding for BHR's projects in recent years have not questioned the organization's use of funds and financial reporting.

The tax authorities did not provide the BHR with a detailed list of what it regarded as violations of the Tax Code and, when the NGO asked for such a list, the inspector told them they should go through their files and find the mistakes themselves or sue him in court. The NGO decided not to pursue the case in court as it believes it would not be able to successfully refute the Tax Committee's allegations in the absence of a detailed list of alleged violations that the NGO could respond to. Instead, it is hoping that donors will step in to save the organization.