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**ALTERNATIVE REPORT OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)  
TO THE UN HUMAN RIGHTS COMMITTEE ON THE SECOND PERIODIC REPORT OF  
TAJIKISTAN UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL  
RIGHTS**

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*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## ICJ ALTERNATIVE REPORT TO THE HUMAN RIGHTS COMMITTEE ON THE SECOND PERIODIC REPORT OF TAJIKISTAN

1. The International Commission of Jurists (ICJ) welcomes this opportunity to submit its comments to the Human Rights Committee for the consideration of the Second Periodic Report of Tajikistan. In this submission, the ICJ focuses on questions arising under Articles 7, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) concerning the weak framework of protection against torture and other ill-treatment for those apprehended and detainees; the practices of arbitrary arrest and detention; and the inadequate protection of the right to a fair trial.

2. The ICJ raises various concerns about the criminal justice system, including the use of pre-trial detention in the majority of cases as the sole measure of restraint, and the use of torture and ill-treatment to extract "confessions". The ICJ also addresses the lack of equality of arms in the criminal process; and impediments to lawyers in the exercise of their professional duties.

### **Article 7: Freedom from Torture and Cruel, Inhuman or Degrading Treatment**

#### Criminalisation and prosecution of torture

3. The ICJ welcomes the 2012 amendment to the Criminal Code of Tajikistan incorporating the definition of torture provided under Article 1 of the Convention against Torture into national law.<sup>1</sup> This measure provides a firm legal basis to address the widespread use of torture through application of the criminal law. It remains to be seen however how the article will be applied in practice, in particular whether prosecutions will be pursued for the crime of torture in appropriate cases, rather than for a lesser crime such as "abuse of power" (Criminal Code, Article 316) or "coercion to give testimony" (Criminal Code, Article 354).<sup>2</sup> Furthermore, the Criminal Code does not expressly criminalise other ill-treatment falling within Article 7 which does not amount to torture,<sup>3</sup> although such acts may in some instances be prosecuted under other articles of the Criminal Code.<sup>4</sup>
4. The Code of Criminal Procedure (CCP) allows complaints of torture in oral and written form and appeals against the decision not to bring criminal charges against a person suspected of the commission of acts of torture.<sup>5</sup> Concerns remain, however, that the absence of an investigating mechanism independent from the bodies allegedly involved in torture may allow the impunity of perpetrators in contravention of Article 7 of the ICCPR.<sup>6</sup> This is corroborated by reports of the almost complete absence of convictions of public officials, or others acting in an official capacity, for the commission of acts of torture or other ill-treatment,<sup>7</sup> a situation that runs contrary to the positive duty to investigate and prosecute such crimes under Article 7 of the ICCPR.
5. Impunity for crimes of torture and ill-treatment also leads to lack of remedy and reparation for victims of such violations, contrary to Article 7 and Article 2(3) ICCPR. Although in

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<sup>1</sup> Criminal Code, Article 143<sup>1</sup>

<sup>2</sup> Second Periodic Report of Tajikistan to the Human Rights Committee, CCPR/C/TJK/2 (2011), <http://www2.ohchr.org/english/bodies/hrc/hrcs108.htm>, paras 101-103.

<sup>3</sup> Cf. Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13 26 May 2004, para.118.

<sup>4</sup> In addition to Articles 316; 354, these include Article 117 (infliction of physical or mental suffering by means of systematic beatings or other violent means); Article 116 (beatings); Article 112 (infliction of minor harm to health).

<sup>5</sup> Chapter 14 of the CCP; Articles 122 and 149 of the CCP.

<sup>6</sup> NGO Coalition Against Torture and Impunity, *Report on Tajikistan's Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dushanbe 2012.

<sup>7</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Mission to Tajikistan*, A/HRC/22/53/Add.1 (2013), para 58; Human Rights Watch Report, *World Report 2013, events of 2012*; ICJ, *Roundtable seminar on the independence of the bar in Central Asia*, Almaty, 28-29 March 2013, <http://www.icj.org/icj-seminar-addresses-the-independence-of-the-legal-profession-in-central-asia/>.

principle compensation is available to victims of torture, the remedy is dependant on a criminal conviction. In practice, claims by victims of torture for compensation have been rejected by the courts on grounds that a criminal investigation has been closed.<sup>8</sup>

#### Safeguards against ill-treatment for persons deprived of their liberty

6. Introduction of certain procedural reforms to the CCP in 2010 may be seen as positive by the Government, including the right to not be held in pre-trial detention for more than 72 hours without a judicial decision and the right of the family to be notified within 12 hours of an arrest<sup>9</sup> which may contribute to prevention of ill-treatment. However, these purported safeguards have little if any effect in practice since it is in the first hours of detention that most cases of torture and ill-treatment take place.<sup>10</sup> Lawyers consistently testify that registration of an arrest does not occur within the three hour limit prescribed by law,<sup>11</sup> but rather is carried out in a discretionary fashion by officials.<sup>12</sup> During detention prior to registration, suspects are held without the application of legal safeguards such as notification of the family, access to a lawyer or to medical examination, and are therefore highly vulnerable to torture and other forms of ill-treatment.<sup>13</sup>

7. Contrary to Articles 49 and 53 of the CCP, in practice prior authorisation by investigators is often required to enable lawyers to meet with apprehended or detained persons. This violation of the right to access to a lawyer, in contravention of Article 9 ICCPR (see below) also impedes the prevention of ill-treatment or torture.<sup>14</sup> Lawyers report that their attempts to locate or reach an investigator to obtain such authorisation are often frustrated, as the investigator will typically make himself or herself unreachable for lawyers or family members.<sup>15</sup> Lawyers also report that they often have difficulty in finding information on the location of detained persons.<sup>16</sup> This practice is conducive to keeping detainees *incommunicado* in the first hours or days of detention.

8. Delays in the formal registration of apprehended persons facilitates other violations, such as the failure to inform detainees of their right to legal counsel or to delay provision of this information.<sup>17</sup> Tajikistan lawyers have informed the ICJ that there is an almost complete denial of confidential meetings with lawyers, in contravention of Articles 9 and 14.<sup>18</sup> Lawyers also report that they are not allowed to be present in all interrogations.<sup>19</sup> Such restriction of access to a lawyer is often linked with the use of ill-treatment to extract self-incriminatory statements before a person has a chance to receive legal advice, and facilitates concealment of ill-treatment.

9. Consistent and credible information received by the ICJ shows that the criminal system in Tajikistan fails to provide for regular and independent medical examinations within places of detention to identify cases of torture and other ill-treatment, and that competent institutions do not carry out *ex officio* investigations into allegations of torture or ill-

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<sup>8</sup> NGO Coalition Against Torture and Impunity, *Report on Tajikistan's Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, op cit, paras.62-63.

<sup>9</sup> Articles 92(3) and 100 of the CPC; Second Periodic Report of Tajikistan, CCPR/C/TJK/2 (2011), para 106.

<sup>10</sup> *Savridin Dzhurayev v. Russia*, Application No. 71386/10, judgment of 25 April 2013, para 168.

<sup>11</sup> Article 94(1) of the CPC. ICJ roundtable seminar, Almaty, op cit.

<sup>12</sup> Report of the Special Rapporteur on torture, op cit, para 32. ICJ roundtable seminar, Almaty, op cit.

<sup>13</sup> Human Rights Committee, *Boimurodov v. Tajikistan*, Communication No. 1042/2001, para 2.1; Human Rights Committee, *General Comment No. 7: Torture or cruel, inhuman or degrading treatment or punishment (Art. 7)*, 30 May 1982, para 1.

<sup>14</sup> Second Periodic Report of Tajikistan, CCPR/C/TJK/2 (2011), para 107.

<sup>15</sup> ICJ Roundtable Seminar, Almaty, op cit

<sup>16</sup> ICJ Roundtable Seminar, Almaty, op cit.

<sup>17</sup> Amnesty International Report, "Shattered Lives: Torture and other ill-treatment in Tajikistan" page 22; Report of the Special Rapporteur on torture, op cit, para 43; Human Rights Committee *Kirpo v. Tajikistan*, Communication No. 1401/2005, para. 6.4.

<sup>18</sup> See also: Amnesty International Report, *ibid*, pages28-29; Human Rights Committee, *Dovud and Nazriev v. Tajikistan*, Communication No. 1044/2002, para. 2.5.

<sup>19</sup> ICJ Roundtable Seminar, Almaty, op cit.

treatment.<sup>20</sup> Pursuant to article 208 of the CCP, regular medical examinations performed by independent professionals have to be authorised by an investigator, the Prosecutor's office, or prison officials. Such authorisation is often subject to undue delays in order to avoid the identification of signs of torture and ill-treatment. Furthermore, medical examinations and consultations may take place in the presence of the investigators.<sup>21</sup>

10. Other legal safeguards aimed at preventing torture or ill-treatment are also often ineffective in practice. For example, despite article 201(1) of the CCP allowing video surveillance upon request in places of detention and during interrogation, this can be denied by an investigator on the grounds of confidentiality of the information.<sup>22</sup>

11. National law does not prescribe a comprehensive procedure and safeguards to complain against torture, apart from the right of a victim to use a sealed envelope to present a complaint. In practice, victims, relatives and lawyers are often subjected to threats and other intimidation when they allege torture or ill-treatment.<sup>23</sup>

#### Self-incriminatory statements obtained through ill-treatment

12. Testimony of lawyers to the ICJ confirms that torture or ill-treatment is regularly used against suspects as a means to obtain self-incriminatory statements, including so-called "confessions" and is rarely reported. Failure to report torture or ill-treatment may be due to fear of reprisals or to false promises of less severe sanctions if no complaint is made. These risks are supported by a 2005 report of the UN Special Rapporteur on the Independence of Judges and Lawyers,<sup>24</sup> which suggests that the situation has not changed in the past ten years. Suspects held on terrorism charges or on other charges raising issues of national security, in particular where involving members of Islamic groups, are particularly vulnerable to torture and other forms of ill-treatment.<sup>25</sup>

13. Information, including "confessions", obtained through torture or ill-treatment are in practice admitted as evidence in court despite the prohibition under article 88(3) of the CCP,<sup>26</sup> and in violation of Article 7 of the ICCPR.<sup>27</sup>

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<sup>20</sup> Report of the Special Rapporteur on Torture, op cit, paras 38, 39 and 48; Human Rights Committee, *Khomidov v. Tajikistan*, Communication No. 1117/2002, para 3.3.

<sup>21</sup> Report of the Special Rapporteur on Torture, op cit, paras 38, 55 and 56; Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council, resolution 5/1: Tajikistan*, A/HRC/WG.6/12/TJK/2 (2011), para 25.

<sup>22</sup> Report of the Special Rapporteur on Torture, op cit, para 21.

<sup>23</sup> Report of the Special Rapporteur on torture, op cit, paras 31 and 39; Amnesty International Report, op cit, page 46; Human Rights Committee, *Boimurodov v. Tajikistan*, Communication No. 1042/2001, paras 2.1 and 2.2; Human Rights Committee, *Kurbonov v. Tajikistan*, Communication No. 1096/2002, para 2.1.

<sup>24</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, *Mission to Tajikistan*, E/CN.4/2006/52/Add.4 (2005), para 39.

<sup>25</sup> ICJ Roundtable Seminar, Almaty, op cit; Report of the Special Rapporteur on torture, op cit, para 34; Amnesty International Report, "Shattered Lives: Torture and other ill-treatment in Tajikistan", op cit, page 17.

<sup>26</sup> Second Periodic Report of Tajikistan, CCPR/C/TJK/2 (2011), para 108.

<sup>27</sup> Report of the Special Rapporteur on torture, op cit, paras 31 and 32; Radio Free Europe/Radio Liberty Press Release, "Tajik Torture Claims Put Prisons Under Scrutiny", 16 October 2012, <http://www.rferl.org/content/tajik-prisons-prison-ikromzoda-sharifov-kazakov/24741689.html> [Accessed April 12, 2013]; Amnesty International Press Release, "Tajikistan's Use of Torture in Absence of Rule of Law 'Shocking'", 12 July 2012, <http://www.amnestyusa.org/news/press-releases/tajikistan-torture-unchecked-in-the-absence-of-rule-of-law> [Accessed April 12, 2013].

**Article 9:  
Right to Liberty and Security**

Detention in criminal proceedings

14. Violations of the right to liberty and security, including arrests undertaken without an arrest warrant, apprehension without charges against the suspect and frequent cases of *incommunicado* detention continue to be widespread in Tajikistan.<sup>28</sup>

15. The protection against arbitrary detention established in the existing legal framework in Tajikistan is often not enforced in practice. In particular, delays in the formal registration of detention are used to undermine legal protection of the rights of the detainee. As noted above in regard to Article 7 of the ICCPR: suspects are often not registered within the first three hours of arrival at the police station (as required by article 94(1) of the CCP);<sup>29</sup> until registration is formally completed, suspects do not have access to a legal counsel (as required by articles 22(1) and 49(2) of the CCP); and detainees are not allowed to contest the lawfulness of the detention before a Court.<sup>30</sup>

16. Communications brought before the Human Rights Committee show that the authorities apply undue restrictions on access to a lawyer in detention, including by coercing suspects to sign a disclaimer prior to the interrogation to waive the right to be represented by a lawyer.<sup>31</sup> As described above in regard to Article 7 of the ICCPR, lawyers are often allowed to meet with their clients only in the presence of the investigators or other officials.<sup>32</sup> The ICJ has heard accounts of cases in which two officials monitored meetings with lawyers in order to prevent the communication of any information unnoticed by the authorities.<sup>33</sup> These discrepancies between the law and its implementation undermine the purpose of the safeguards introduced in the national law, which in practice become illusory, leading to a high risk of arbitrary detention, as well as lack of access to a lawyer, contrary to Articles 9 and 14 of the ICCPR.

17. There is a practice of "inviting" suspected persons for interview by investigators, not as persons afforded rights protections as suspects, but as "witnesses" in order to displace the guarantees otherwise provided by law, including the right to a lawyer.<sup>34</sup> Procedures such as "conversations" or "operative measures" are also used to obtain information without affording the procedural rights that apply to someone designated as a suspect.<sup>35</sup> Moreover, the ICJ has not heard of any cases where information obtained through such means has not been accepted into evidence by the courts.

18. The ICJ is also concerned that pre-trial detention is imposed solely on the grounds of the gravity of the crime, which according to the CCP, refers to any offence that prescribes a

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<sup>28</sup> Amnesty International Report, op cit, pages 20 and 21; Human Rights Committee, *Boimurodov v. Tajikistan*, Communication No. 1042/2001, para 2.1; Human Rights Committee, *Kurbanova v. Tajikistan*, Communication No. 1096/2002, para 3.1; Human Rights Committee, *Idieva v. Tajikistan*, Communication No. 1276/2004, para 3.2.

<sup>29</sup> CAT concluding observations, CAT/C/TJK/CO/1, 7 December 2006, para 7. See also Human Rights Committee, *Kurbanov v. Tajikistan*, Communication No. 1208/2003, para 2.2.

<sup>30</sup> Amnesty International Report, op cit, pages 20 to 24; *Compilation prepared by the Office of the High Commissioner for Human Rights on Tajikistan*, op cit, para 36. See further Human Rights Committee, *Boimurodov v. Tajikistan*, Communication No. 1042/2001, para 2.1-2.3; Human Rights Committee, *Iskandarov v. Tajikistan*, Communication No. 1499/2006, para 6.5; Human Rights Committee, *Kirpo v. Tajikistan*, Communication No. 1401/2005, para 2.7.

<sup>31</sup> Human Rights Committee, *Iskandarov v. Tajikistan*, Communication No. 1499/2006, para 2.7; and Human Rights Committee, *Kurbanova v. Tajikistan*, Communication No. 1096/2002, para 2.1.

<sup>32</sup> ICJ Roundtable Seminar, Almaty, op cit; Human Rights Committee, *Khomidov v. Tajikistan*, Communication No. 1117/2002, para 2.4; Human Rights Committee, *Dovud and Nazrievv. Tajikistan*, Communication No. 1044/2002, para 2.5; Amnesty International Report, op cit, pages 28 and 29.

<sup>33</sup> ICJ Roundtable Seminar, Almaty, op cit.

<sup>34</sup> NGO Coalition Against Torture and Impunity, *Report on Tajikistan's Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dushanbe 2012, page 18.

<sup>35</sup> *Ibid.*

penalty of two years or more of imprisonment.<sup>36</sup> Moreover, pre-trial detention continues to be used in an overwhelming majority of cases as the sole measure of restraint, without consideration of less grave and more proportional measures such as bail or home arrest,<sup>37</sup> in contravention of Article 9(3) of the ICCPR requiring that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”.

#### Abductions and unlawful transfers

19. Tajikistan is a member of the Shanghai Cooperation Organisation, which has provided the framework for increased cooperation between law enforcement and intelligence services of its Member States – Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan – often in contravention of the rule of law and without adequate human rights safeguards. The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001 requires Member States to exchange information, develop joint legal frameworks and share “practical assistance” including through extradition of suspects.<sup>38</sup>

20. Under the auspices of the Shanghai Cooperation Organisation, suspects have been unlawfully transferred to Tajikistan, through processes akin to renditions that violate Articles 7 and 9 of the ICCPR.<sup>39</sup> The case law of the European Court of Human Rights points to a pattern of abductions of persons in Russia, their ill-treatment and transfer to Tajikistan, outside of any legal process. For example, in the recent case of *Abdulkhakov*, the applicant was allegedly abducted in Russia, taken to a forest, beaten and his hands burnt with a lighter, before being transferred to Tajikistan.<sup>40</sup> In the case of *Dzhurayev*, the abductors beat up the applicant and threatened to kill him, putting a gun to his head.<sup>41</sup> In the case of *Iskandarov*, the guards kept the applicant in a sauna and beat him.<sup>42</sup> In all such cases the abducted individual was transferred by plane to Tajikistan and handed over to Tajik authorities. There are allegations that the Tajikistan authorities or agents are directly involved or complicit in such abductions<sup>43</sup> and unlawful transfers. Such complicity would imply that Tajikistan bears responsibility for the violations of Covenant rights entailed at all stages of these transfers, even where they take place outside the territory of Tajikistan, and irrespective of the direct involvement of Tajik agents.

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<sup>36</sup> Organisation for Security and Cooperation in Europe, “III Expert Forum on Criminal Justice for Central Asia Final Report”, 18 June 2010, pages 7 and 8.

<sup>37</sup> *Idem*.

<sup>38</sup> See further, Declaration of Heads of Member States of Shanghai Cooperation Organisation, section III, 5 July 2005.

<sup>39</sup> Amnesty International Report, *op cit*, pages 55-56; European Court of Human Rights, *Iskandarov v. Russia*, Application No. 17185/2005, paras 129-135; Human Rights Committee, *Khudayberganov v. Uzbekistan*, Communication No. 1140/2002, para 2.4.

<sup>40</sup> European Court of Human Rights, *Abdulkhakov v Russia*, Application No. 14743/11, 2 October 2012, para 56.

<sup>41</sup> European Court of Human Rights, *Dzhurayev v Russia*, Application No. 71386/10, 25 April 2013, para 39.

<sup>42</sup> European Court of Human Rights, *Iskandarov v Russia*, Application No. 7118585/05, 23 September 2010, para 39.

<sup>43</sup> *Idem*.

### **Article 14: Right to a Fair Trial**

21. The Committee has found at least one Article 14 violation in all 18 cases concerning Tajikistan which have been declared admissible.<sup>44</sup> This suggests existence of structural problems in the criminal justice system. Persons undergoing criminal procedures in Tajikistan have systematically been denied the right to a fair trial, including equality of arms. Judges often act in a manner indicating a lack of impartiality. In particular, they frequently decline to call key defence witnesses,<sup>45</sup> or to consider challenges to the lawfulness of arrests and/or detention.<sup>46</sup> In this manner, the defence rights of an accused and to their right to presumption of innocence are often undermined. This is in part due to the weak position of judges vis-à-vis prosecutors, law enforcement agencies and the executive.

22. Judges routinely disregard allegations that “confessions” have been obtained by unlawful means, including under torture, ill-treatment or coercion. The failure to consider these allegations is usually on grounds they were not raised in previous stages of the process, or due to the lack of conclusive evidence to prove that torture or other forms of ill-treatment were committed, such as the absence of medical reports.<sup>47</sup> Allegations of torture or ill-treatment are sometimes considered by courts as “attempts to avoid responsibility” or to “discredit law enforcement bodies”, a position alluded to by Tajikistan in its Second Periodic Report.<sup>48</sup> This contributes to impunity for state officials alleged to be involved in torture or ill-treatment.

23. The routine reliance of judges on “confessions” as a sole basis for convictions facilitates the use of torture and ill-treatment, and impunity for such acts, making torture and ill-treatment a cornerstone of criminal investigation and the criminal justice system. The use of information obtained under torture or other ill-treatment as evidence, and the lack of initiative by the competent authorities to investigate such allegations, are in violation both of Article 7 and of the right to a fair trial pursuant to Article 14 of the ICCPR.

#### The position of the legal profession

24. The ICJ is especially concerned with the fragile position of lawyers in Tajikistan, where there are significant barriers to the free exercise of functions by the profession. Despite guarantees provided by law,<sup>49</sup> lawyers are frequently refused private contact with their clients from the moment of actual apprehension; are not allowed enough time to prepare the defence; and are prevented from exercising their professional functions in judicial

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<sup>44</sup> Human Rights Committee: *Kurbanova v. Tajikistan*, Communication No. 1096/2002; *Saidov v. Tajikistan*, Communication No. 964/2001; *Khomidov v. Tajikistan*, Communication No. 1117/2002; *Khalilov v. Tajikistan*, Communication No. 973/2001; *Aliboev v. Tajikistan*, Communication No. 985/2001; *Boimurodov v. Tajikistan*, Communication No. 1042/2001; *Kurbonov v. Tajikistan*, Communication No. 1208/2003; *Nazriev v. Tajikistan*, Communication No. 1044/2002; *Ashurov v. Tajikistan*, Communication No. 1348/2005; *Karimov and Nursatov v. Tajikistan*, Communication No. 1108/2002 and 1121/2002; *Rakhmatov et al. v. Tajikistan*, No. 1209, 1231/2003 and 1241/2004; *Khuseynov and Butaev v. Tajikistan*, Communication No. 1263/2004 and 1264/2004; *Dunaev v. Tajikistan*, Communication No. 1195/2003; *Sattorov v. Tajikistan*, Communication No. 1200/2003; *Idiev v. Tajikistan*, Communication No. 1276/2004; *Khostikoev v. Tajikistan*, Communication No. 1519/2006; *Kirpo v. Tajikistan*, Communication No. 1401/2005; *Iskandarov v. Tajikistan*, Communication No. 1499/2006.

<sup>45</sup> Human Rights Committee, *Kurbanova v. Tajikistan*, Communication No. 1096/2002, para 3.3

<sup>46</sup> Amnesty International Report, op cit, page 37 and 40; *Compilation prepared by the Office of the High Commissioner for Human Rights on Tajikistan*, op cit, para 34.; Human Rights Committee, *Iskandarov v. Tajikistan*, Communication No. 1499/2006, paras 6.6 and 6.7 ; Human Rights Committee, *Dovud and Nazriev v. Tajikistan*, Communication No. 1044/2002, paras 2.6 and 8.4.

<sup>47</sup> See Human Rights Committee, *Boimurodov v. Tajikistan*, Communication No. 1042/2001, para 2.6; Human Rights Committee, *Kurbonov v. Tajikistan*, Communication No. 1208/2003, para 2.5; Human Rights Committee, *Idiev v. Tajikistan*, Communication No. 1276/2004, para 2.6(a).

<sup>48</sup> Second Periodic Report of Tajikistan, CCPR/C/TJK/2 (2011), para 112.

<sup>49</sup> *Ibid*, para 178.

proceedings.<sup>50</sup> There are consistent reports that lawyers are harassed for carrying out their professional duties, as in the case of *Iskandarov v. Tajikistan*, where the lawyers of the victim received threats after publicly denouncing the acts of the Government against their client or, as in the recent 'disappearance' since 15 March 2013 of Salim Shamsiddinov, a lawyer and leader of the Uzbek community in the Khatlon Region in Tajikistan.<sup>51</sup> These barriers to the effective work of lawyers jeopardize the principle of independence of the legal profession and violate the right to a fair trial under Article 14 of the ICCPR.

25. Lawyers in Tajikistan are often unable to protect their independence from external interference and pressure, including from courts, and to defend and promote the interests of the profession.<sup>52</sup> The current reform aimed at creating a unified body of professional rules, and a mandatory registration proceeding in a single bar association, with a significant participation of the Ministry of Justice weakens the independence of lawyers and their protection against threats, harassment and executive interference. The proposed draft law envisages the dismantling of the current structure under which bar associations are able to decide on access to the legal profession and disciplinary proceedings against lawyers. A strong and independent legal profession is an essential requirement for the fulfilment of the right to a fair trial as prescribed in Article 14 of the ICCPR. Any reforms should be aimed at strengthening the independence and self-governance of the profession in accordance with the UN Basic Principles on the Role of Lawyers.

#### Non-cooperation with UN mechanisms

26. The ICJ also brings to the attention of the Committee the consistent lack of cooperation of Tajikistan in contravention of its obligations under the Optional Protocol to the ICCPR, such as the failure to present observations in communications brought before the Committee,<sup>53</sup> as well as non-adherence with interim measures,<sup>54</sup> which jeopardise the protection conferred by the Covenant.

27. There is lack of information as to what individual as well as general measures Tajikistan has taken to implement the Views of the Committee on individual communications and to provide remedies to the victims of the violations found by the Committee and to prevent re-occurrence of similar violations in the future.

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<sup>50</sup> Human Rights Committee, *Kurbanova v. Tajikistan*, Communication No. 1096/2002, paras 3.1 and 3.3; Human Rights Committee, *Khomidov v. Tajikistan*, Communication No. 1117/2002, paras 6.4 and 6.5; Human Rights Committee, *Kirpo v. Tajikistan*, Communication 1401/2005, para 2.6.

<sup>51</sup> See further Human Rights Committee, *Iskandarov v. Tajikistan*, Communication No. 1499/2006; Amnesty International Press Release, "Tajikistan: Uzbek community leader goes missing: Salim Shamsiddinov", 26 March 2013, <http://www.amnesty.org/en/library/asset/EUR60/002/2013/en/0d5756a8-06fb-4e6a-a2d7-4fd9ca98764b/eur600022013en.html> [Accessed April 30, 2013].

<sup>52</sup> Open Society Justice Initiative Report, "Recommendations on reform of the legal profession in Tajikistan", July 2006, [http://www.opensocietyfoundations.org/sites/default/files/tajikstan\\_20060720.pdf](http://www.opensocietyfoundations.org/sites/default/files/tajikstan_20060720.pdf) [Accessed April 10, 2013]; Mahira Usmanova, "The Legal profession in Tajikistan", OSCE Expert Workshop on the Reform of the Legal Profession and Access to Justice, 13-14 November 2008, <http://www.osce.org/odhr/36313> [Accessed April 10, 2013].

<sup>53</sup> Human Rights Committee, *Ashurov v. Tajikistan*, Communication No. 1348/2005, para 4; Human Rights Committee, *Idiev v. Tajikistan*, Communication No. 1276/2004, para 4; Human Rights Committee, *Kirpo v. Tajikistan*, Communication No. 1401/2005, para 4; Human Rights Committee, *Iskandarov v. Tajikistan*, Communication No. 1499/2006, para 4.

<sup>54</sup> Human Rights Committee, *Dovud and Nazriev v. Tajikistan*, Communication No. 1044/2002, para 1.2; Human Rights Committee, *Idiev v. Tajikistan*, Communication No. 1276/2004, para 7.1.

## **RECOMMENDATIONS**

28. Against the background of the information provided within this alternative report, the ICJ urges the Human Rights Committee to take up the following questions and recommendations in the examination of Tajikistan's second periodic report:

### **Article 7**

1. Inquire whether the Government has taken steps to ensure the effectiveness of the absolute prohibition of torture and other forms of ill-treatment, as well as the obligation to undertake effective investigations of allegations and hold accountable the perpetrators, and in particular to:
  - a) Guarantee that new Article 143<sup>1</sup> of the Criminal Code, that defines the crime of torture, becomes operative and is in practice used to prosecute those involved in torture so that acts of torture are not prosecuted in the form of other less grave offences under the Criminal Code such as "abuse of power";
  - b) Provide statistical information on the use of Article 143<sup>1</sup> of the Criminal Code;
  - c) Guarantee in practice unrestricted access to a lawyer from the time of arrest without interference by investigators, prosecutors or other officials and require that detainees be immediately informed of this right;
  - d) Guarantee the right to an independent medical examination of detainees from the time of arrest;
  - e) Ensure a secure, confidential and independent mechanism for detainees to disclose allegations of torture or other ill-treatment;
  - f) Remove barriers to the initiation by courts of investigation into allegations of torture or ill-treatment in appropriate cases;
  - g) Provide for prompt, independent, and thorough investigations into allegations of torture or ill treatment, leading, where appropriate, to prosecutions and punishment;
  - h) Ensure that such investigations are conducted by an independent mechanism that excludes state agencies involved in, connected to through any form of subordination, or affiliated with the persons or agencies allegedly involved in torture or ill-treatment;
  - i) Exclude from criminal proceedings the use as evidence of information that is obtained by means of torture or other ill-treatment; and
  - j) Ensure that whenever allegations of torture or ill-treatment are made in the course of criminal proceedings, the judge can order an independent investigation into such allegations.
  - k) Guarantee in practice that where torture or other ill-treatment has taken place the State fulfils its duty to provide an effective remedy in accordance with Article 2(3) ICCPR. Such remedies should include judicial remedies and must comprise not only recognition of a violation and its cessation, but also compensation, just satisfaction, restitution and where necessary rehabilitation.

### **Article 9**

2. Inquire as to what steps Tajikistan has taken to guarantee that Article 9 of the ICCPR is fully respected in practice, including steps to:
  - a) Ensure that no apprehended person, whether registered or not, falls outside of the legal framework and that all such persons enjoy full guarantees of rights afforded by law, including rights of access to a lawyer and to challenge the lawfulness of their detention before a court;

- b) Ensure that arrests have a legal basis, including the obtaining and presentation of a legal warrant;
- c) Ensure that the reasons for arrest are presented at the time of the apprehension of a suspect;
- d) Guarantee that lawyers are able to have confidential meetings with their clients without any restrictions or subject to discretionary powers of law enforcement personnel;
- e) Ensure that law enforcement agents act within the legal framework and do not use procedures not provided for by law, such as informal "conversations", to deprive suspects or witness of their rights under national and international law;
- f) Guarantee that pre-trial detention is not applied as a general rule, but only in those cases where other measures of restriction would fail to be effective and ensure that detention is applied only for the purposes of ensuring appearance before trial;
- g) Guarantee that other measures of restraint, including bail, are applied with respect to the principle of proportionality;
- h) Conduct independent, effective and prompt investigations into alleged instances of abductions and illegal transfers of persons to Tajikistan from a third state with regard to violations of the rights under the ICCPR, including Articles 7, 9 and 14; and
- i) Hold accountable those under the jurisdiction of Tajikistan involved or complicit in the perpetration of violations under the ICCPR in connection with unlawful transfers.

#### **Article 14**

##### The position of the legal profession

- 3. Raise questions regarding safeguards to ensure Tajikistan's compliance with Article 14 of the ICCPR, including measures to:
  - a) Ensure the independence of the judiciary and of individual judges;
  - b) Ensure the right of access to a lawyer and the right of detainees to consult with a lawyer in private from the moment of apprehension;
  - c) Protect defence lawyers from harassment, intimidation, persecution or interference in the exercise of their professional functions;
  - d) Guarantee the right to equality of arms and the right to call and cross-examine witnesses, including with regard to allegations of torture or ill-treatment in detention; and
  - e) Ensure that the legal profession is governed exclusively by lawyers, and that independent bar associations control access to the profession and disciplinary proceedings against lawyers independently from the Ministry of Justice.

##### Non-cooperation with UN mechanisms

- 4. Request information as to what steps Tajikistan has taken to fulfil its obligations of bona fide cooperation with the Committee. In particular, the Committee should ask the Government to:
  - a) Provide information as to what steps have been taken to ensure that the Government complies with interim measures indicated by the Committee;
  - b) Provide information regarding the mechanism for implementation of the Views of the Committee; and
  - c) Provide information as to the remedies and reparations provided to the victims of violations found in the Views of the Committee on Tajikistan, including what steps are taken to prevent re-occurrence of similar violations in the future.