



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial reports of States parties due in 1996**

**TAJIKISTAN\***

[30 June 2005]  
[Original: Russian]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....		3
PART I .....	1 - 166	5
Article 1 .....	1 - 14	5
Article 2 .....	15 - 96	6
Article 3 .....	97 - 105	15
Article 4 .....	106 - 115	18
Article 5 .....	116 - 122	20
Article 6 .....	123 - 131	21
Article 7 .....	132 - 140	23
Article 8 .....	141 - 149	24
Article 9 .....	150 - 155	26
Article 10 .....	156 - 166	27
PART II .....	167 - 272	30
Article 11 .....	167 - 213	30
Article 12 .....	214 - 219	36
Article 13 .....	220 - 238	37
Article 14 .....	239 - 258	40
Article 15 .....	259 - 268	43
Article 16 .....	269 - 272	44

**INITIAL REPORT OF THE REPUBLIC OF TAJIKISTAN ON THE  
IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE  
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT, COVERING THE PERIOD 2000-2004**

**Introduction**

This report is submitted under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and has been prepared in accordance with the general guidelines regarding the form and contents of initial reports to be submitted by States parties.

The following legislative instruments regulate torture-related issues in Tajikistan: the Constitution of the Republic of Tajikistan (1994), the Constitutional Act on the Courts (2001), the Constitutional Act on Procuratorial Agencies (1996), the Constitutional Act on Legal Arrangements in a State of Emergency (1995), the Criminal Code (1998), the Code of Criminal Procedure (1961), the Code of Civil Procedure (1963), the Penal Enforcement Code (2001), the Labour Code (1997), the Family Code (1998), the Penal Correction System Act (2004), the Reproductive Health and Reproductive Rights Act (2002), the Psychiatric Care Act (2002), the Weapons Act (1996), the Citizens' Communications Act (1996), the Militia Act (2004), the Foreign Citizens (Legal Status) Act (1996) and the Bar Act (1995).

Besides the collapse of the Soviet Union, which resulted in difficult external conditions and the disruption of trade and economic ties with the former republics of the USSR, an armed conflict broke out in Tajikistan, resulting in many deaths and the forced departure of many citizens from the country. The country's economy and sociocultural fabric sustained colossal damage, estimated at more than US\$ 7 billion.

Recognizing the harmfulness of the war's consequences for the future of the people of Tajikistan, the Government, after restoring constitutional rule, adopted a firm policy intended to establish peace and ethnic harmony through exclusively peaceful means, i.e. through dialogue. Tajikistan's path to peace was long and hard. The signing of the General Agreement on the Establishment of Peace and National Accord in Tajikistan and the full implementation of its provisions in 1997 brought to a close one of the most protracted and bitter conflicts in the post-Soviet region. Besides searching for ways to establish peace, the Tajik Government has also had to take on the challenge of transforming the economy, this being the only way to pull the country out of deep crisis, eliminate the consequences of the civil conflict and manage the natural disasters that have beset the country.

The practical implementation of the agreements that were reached led to the establishment of peace and national accord in Tajikistan and paved the way for the reform of its political, economic and social life. The process of establishing a democratic, secular society subject to the rule of law, with a market economy and a reformed legislative framework, has begun. Owing to the internal armed conflict, the Government was not able to submit its report to the Committee against Torture before the prescribed deadline.

Tajikistan has submitted reports under the following United Nations human rights instruments: core document (26 January 2004), the International Convention on the Elimination of All Forms of Racial Discrimination (26 January 2004), the Convention on the Elimination of All Forms of Discrimination against Women (28 April 2005), the International Covenant on Civil and Political Rights (25 May 2004) and the International Covenant on Economic, Social and Cultural Rights (28 April 2005).

The Committee on the Elimination of Racial Discrimination considered Tajikistan's report under the International Convention on the Elimination of All Forms of Racial Discrimination in August 2004. The Committee's recommendations are currently being put into practice.

The Republic of Tajikistan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 July 1994, and the Convention entered into force in Tajikistan on 10 February 1995.

The report describes events that took place in the period 2000-2004.

## **PART I**

### **Article 1**

1. Legal reforms are being implemented and Tajik legislation is being improved in accordance with the constitutional principle that human rights are a priority and that Tajik legislation should comply with the international legal instruments recognized by Tajikistan.
2. Article 5, paragraph 1, of the Tajik Constitution states that human beings and their rights and freedoms are the supreme value.
3. Article 10, paragraph 3, of the Constitution states that international legal instruments recognized by Tajikistan are an integral part of the national legal system. When national statutes conflict with recognized international legal instruments, the provisions of the international legal instruments apply.
4. Under the International Treaties Act, Tajikistan endorses the strict observance of international treaties and confirms its adherence to the principle of scrupulous compliance with international obligations.
5. Article 14, paragraph 2, of the Constitution states that individual and civil rights and freedoms shall be exercised directly. They underlie the purpose, content and enforcement of laws, drive the agenda of the legislature, the executive, and local government, and are protected by the judiciary.
6. Article 17 of the Tajik Constitution states that everyone is equal in the eyes of the law and the courts. The State guarantees the rights and freedoms of all, irrespective of their ethnic origin, race, sex, language, religion, political views, education, social status or wealth.  
  
Men and woman have equal rights.
7. Article 18 of the Constitution states that no one shall be deprived of his or her life except by the judgement of a court for a particularly serious crime. The inviolability of the person is guaranteed by the State. No one shall be subjected to torture, cruel or inhuman treatment. It is prohibited to force a person to take part in medical or scientific experiments. The application of the death penalty has been suspended in Tajikistan pursuant to the Death Penalty (Suspension) Act (No. 45 of 15 July 2004) and the Criminal Code (Amendments) Act (No. 46 of 15 July 2004).
8. Article 19, paragraph 1, of the Constitution states that Tajikistan guarantees judicial protection to all. Everyone has the right to request that his or her case be examined by a competent, independent and impartial court established by law. No one may be detained or held in custody without legitimate grounds. An individual is entitled to the services of a lawyer from the moment he or she is detained.
9. Article 21 of the Constitution states that the law protects the rights of victims. The State guarantees victims a judicial remedy and compensation for injury.

10. The judicial system is described in chapter 8 of the Constitution. The judiciary is independent and judicial power is exercised on the State's behalf by judges. The judiciary defends human and civil rights and freedoms, the interests of the State, organizations and institutions, due process of law, and equity.

Judicial power is exercised by the Constitutional Court, the Supreme Court, the Supreme Economic Court, the Military Court, the court of the Gorny Badakhshan Autonomous Region, the courts of the provinces, the city of Dushanbe, towns and districts, the Gorny Badakhshan economic court, and the economic courts of the provinces and the city of Dushanbe.

The formation of special courts is prohibited.

11. As stated in article 1, paragraph 2, of the Criminal Code, the Code is based on the Tajik Constitution and the universally recognized principles and norms of international law.

12. The Criminal Code (Amendments and Additions) Act was adopted on 17 May 2004. Under the Act, article 117 of the Criminal Code was supplemented with the following general note: "In this and other articles of the present Code, torture is defined as the infliction of physical or mental suffering with a view to coercing a person to testify or perform any other action against that person's will, or as a form of punishment or for any other purpose."

13. The definition of "torture" in the Criminal Code is broader than that in the Convention against Torture. In this respect, it conforms to article 1, paragraph 2, of the Convention, which stipulates that national legislation may contain provisions of wider application. One infers from the definition of torture in the Convention that only persons exercising public authority whose actions are connected with the performance of their public duties may be considered the perpetrators of such a crime. Under the definition of torture in the Tajik Criminal Code, the perpetrators may include other persons whose actions are not connected with the performance of public duties, but who act in combination with persons exercising public authority or investigating crimes.

14. Under article 45 of the Tajik Criminal Code (Execution of orders or directives), a person who issues an unlawful order or other directive shall be criminally liable for any harm resulting from the execution of the order or directive. The article also stipulates that a person who intentionally commits an offence (including torture) in executing an unlawful order or directive shall be open to prosecution in accordance with the normal procedure.

## **Article 2**

15. The collapse of the Soviet Union led to the emergence on the international stage of a new regional organization, the Commonwealth of Independent States (CIS), of which Tajikistan is a member.

The legal basis for the activity of the CIS is its Charter, which was adopted in January 1993. On 26 May 1995, the CIS member States adopted the Convention on Human Rights and Fundamental Freedoms, which entered into force for Tajikistan on 11 August 1998. This Convention guarantees nearly all the civil, social and economic rights listed in the Universal Declaration of Human Rights and the human rights covenants. The statute of the CIS Human

Rights Commission is an integral part of the Convention. Several provisions of the CIS Convention are formulated in very general terms and not fleshed out. However, the contents and tenor of article 3 of the CIS Convention are amplified in Tajik constitutional provisions.

16. For the first time in Tajikistan, the hierarchy of values accepted by developed democratic States has been established in law: the interests of the individual come first, followed by those of society and the State. This concept is underpinned by article 5 of the Constitution, which states that human beings and their rights and freedoms constitute the supreme value. The State recognizes, respects and protects human and civil rights and freedoms.

17. The Tajik Government is working hard to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment. To this end, it has developed and adopted statutory, administrative and judicial arrangements to protect human rights and freedoms and comply with the Convention.

18. The following statutory guarantees are in place:

- The Constitution (arts. 5 and 14-47);
- The Criminal Code (arts. 9, 45, 109, 110, 111, 116, 117, 120, 130, 131, 133, 134, 181, 314, 316, 347, 354, 358, 359, 373 and 391);
- The Code of Criminal Procedure (arts. 1-3, 6-14, 17, 19, 22, 54, 64, 70, 105 and 219-221);
- The Penal Enforcement Code (arts. 1, 6, 7, 10 and 16);
- The Code of Administrative Offences (arts. 14 and 16);
- The Civil Code (arts. 171-174).

19. The use of torture and other cruel, inhuman or degrading treatment or punishment is prohibited by the Tajik Constitution. Thus, article 18 of the Constitution states that the inviolability of the person is guaranteed by the State. No one may be subjected to torture, cruel or inhuman treatment. It is prohibited to force a person to take part in medical or scientific experiments.

20. Judicial protection is guaranteed to all. Everyone has the right to request that his or her case be examined by a competent, independent and impartial court established by law. No one may be detained or held in custody without legitimate grounds. An individual is entitled to the services of a lawyer from the moment he or she is detained (Constitution, art. 19).

21. The Tajik Constitution stipulates that no one shall be deemed guilty of an offence until his or her sentence has become enforceable. No one may be prosecuted after the expiry of the statute of limitations, or for actions that were not crimes at the time of their commission. No one may be convicted twice for the same offence. A law adopted after a person has committed an

unlawful act shall not have retroactive force if it increases the penalty for that offence. If liability for an unlawful act is voided or diminished, the new law shall apply. The complete confiscation of a convict's property is prohibited (art. 20).

22. The law protects the rights of victims. The State guarantees victims a judicial remedy and compensation for injury (art. 21).

23. Everyone in Tajikistan must abide by the country's Constitution and laws, and respect the rights, freedoms, honour and dignity of others. Ignorance of the law does not exempt a person from this responsibility (art. 42).

24. The new Criminal Code entered into force on 1 September 1998. It is based on the universally recognized principles and norms of international law (Criminal Code, art. 1, para. 2). This provision has been included in criminal law for the first time and conforms to article 10, paragraph 3, of the Constitution, which states that international legal instruments recognized by Tajikistan are an integral part of the national legal order. In the event that national laws do not conform to recognized international legal instruments, the norms of the international legal instruments shall apply.

25. Pursuant to the ratification of the Convention against Torture, the norms in the Tajik Criminal Code prohibiting torture and other cruel, inhuman or degrading treatment or punishment have been formulated more precisely.

26. Punishment and other criminal-law measures applied to offenders shall not be intended to cause physical suffering or to demean a person (Criminal Code, art. 9, para. 2).

27. A person who deliberately commits an offence in pursuance of an unlawful order or directive shall incur criminal liability in the normal way.

28. Refusal to execute an order or directive known to be unlawful shall preclude criminal responsibility (Criminal Code, art. 45).

29. In addition, measures to prevent torture and other forms of inhuman treatment and punishment are provided for in connection with the following offences: incitement or attempted incitement to commit suicide by duress, cruelty or systematic actions calculated to demean the victim (art. 109); intentional infliction of serious harm to health attended by special cruelty (art. 110, para. 2); intentional infliction of moderate harm to health attended by special cruelty (art. 111, para. 2); battery (art. 116); cruel treatment (art. 117); threatened homicide or infliction of serious harm to health (art. 120); abduction (art. 130); trafficking in persons (art. 130<sup>1</sup>); unlawful deprivation of liberty (art. 131); unlawful placement in a psychiatric hospital (art. 133); coercion (art. 134); hostage-taking (art. 181); abuse of official position (art. 314); improper exercise of authority (art. 316); criminal prosecution of a person known to be innocent (art. 348); use of coercion by a person conducting an initial inquiry or pretrial investigation or a person administering justice, with a view to obtaining testimony (art. 354); unlawful detention or remand in custody (art. 358); falsification of evidence (art. 359); breach of regulations governing relations between military personnel outside the chain of command (art. 373); and abuse of authority or official position, improper exercise of authority by officials, or official inaction (art. 391).

30. The Code of Criminal Procedure translates the provisions of the Criminal Code into action.
31. The purpose of criminal proceedings is to solve crimes rapidly and comprehensively, to incriminate offenders and to apply the law correctly in order to ensure that every offender is justly punished and that no innocent person is prosecuted or convicted (Code of Criminal Procedure, art. 2).
32. The judge, the procurator, the investigator and the agency conducting the initial inquiry must institute criminal proceedings within their respective areas of competence whenever evidence of a crime is discovered, and must take all measures prescribed by law to establish the circumstances of the crime and identify and punish the perpetrators (Code of Criminal Procedure, art. 3).
33. No one may be held in custody except on the basis of a judicial decision or the authorization of a procurator (Code of Criminal Procedure, art. 6).
34. A suspect, accused person or defendant has the right to legal defence (Code of Criminal Procedure, art. 14).
35. It is prohibited to extract confessions from an accused person or other parties to proceedings under duress or using other unlawful measures (Code of Criminal Procedure, art. 15).
36. Judges, procurators and other parties to trial proceedings must withdraw from the proceedings if they have a personal, direct or indirect interest in a case (Code of Criminal Procedure, art. 17).
37. The work of judges is supervised by higher-ranking courts (Code of Criminal Procedure, art. 18).
38. The Procurator General and his subordinate procurators monitor the correct and uniform application of the law in criminal proceedings (Code of Criminal Procedure, art. 19).
39. Judicial proceedings in respect of offences committed by foreign citizens or stateless persons shall be conducted in the territory of Tajikistan in accordance with the provisions of the Tajik Code of Criminal Procedure.
40. Legal proceedings in the case of persons with diplomatic immunity may be taken only at their request or with their consent. Consent to such proceedings shall be sought through the Tajik Ministry of Foreign Affairs (Code of Criminal Procedure, art. 22).
41. A victim is considered to be a person who, irrespective of his or her age or mental or physical state, has suffered moral, physical or material harm as a result of a crime, or a person whose rights and interests have been directly threatened by an attempted crime. A person conducting an initial inquiry, an investigator or a judge shall issue a decision (or a ruling in the

case of a court) formally designating a victim as soon as the existence of a crime and the existence of injury resulting from a crime have been established (Code of Criminal Procedure, art. 53).

42. The victim and his representative have the right to:

- Submit evidence;
- File petitions;
- Take part in investigative actions carried out at their request;
- Have access to the entire case-file;
- Take part in scrutinizing the evidence at the judicial examination phase;
- Take part in oral argument;
- Challenge a party to proceedings whom they suspect of impartiality;
- File complaints regarding the actions and decisions of persons conducting the initial inquiry, investigators, procurators, courts and judges;
- Have access to the court record and make comments on it (Code of Criminal Procedure, art. 54);
- Appeal the sentence.

43. A confession of guilt by the accused may form the basis of a charge only if it is corroborated by all the available evidence in the case (Code of Criminal Procedure, art. 70).

44. Procurators, investigators, agencies conducting initial inquiries and judges must take cognizance of reported crimes or preliminaries to a crime and react appropriately within 3 days of the date of receipt of the report or, in exceptional cases, within 10 days (Code of Criminal Procedure, art. 105).

45. Complaints regarding actions taken by agencies conducting initial inquiries and investigators shall be transmitted to the procurator directly or through the person conducting the initial inquiry or the investigator whose actions are the subject of the complaint. Complaints may be in written or oral form. Oral complaints shall be set down in a record signed by the person making the complaint and the person taking cognizance of it. The person conducting the initial inquiry or the investigator must pass on any complaints that they receive, with their comments, to a procurator within 24 hours. The receipt of a complaint, until such time as the matter is resolved, shall not suspend the application of the action being challenged, unless this is deemed necessary by the person conducting the initial inquiry, the investigator or the procurator (Code of Criminal Procedure, art. 219).

46. Within three days of receiving the complaint, the procurator must look into it and notify the person making the complaint of the outcome of the investigation. A procurator who dismisses a complaint must state why it was found to be groundless (Code of Criminal Procedure, art. 220).
47. Complaints regarding procuratorial actions and decisions shall be submitted to a higher-ranking procurator (Code of Criminal Procedure, art. 221).
48. Tajik penal enforcement legislation must conform to the international legal instruments recognized by Tajikistan and the provisions of inter-State treaties concluded by Tajikistan.
49. Tajik citizens and stateless persons residing permanently in Tajikistan who are convicted by the courts of a foreign State may be extradited to Tajikistan to serve the whole or the remainder of their sentence in accordance with international legal instruments recognized by Tajikistan.
50. Tajik citizens convicted by the Tajik courts may under no circumstances be extradited to a foreign State (Penal Enforcement Code, art. 7).
51. It is expressly forbidden to subject convicts to torture or cruel, inhuman or degrading treatment or punishment, or to medical or other scientific experiments - even with their consent - that might endanger their life or health (Penal Enforcement Code, art. 10).
52. Convicts have the right to compensation for any injury sustained while serving their sentence, in the manner prescribed by law (Penal Enforcement Code, art. 16).
53. As part of efforts to improve the operation of the penal correction system and the laws regulating it, account is being taken of the standard minimum rules for the treatment of prisoners developed by the United Nations.
54. The Tajik penal correction system has no specific training programmes for medical personnel who treat detainees and suspects.
55. The Code of Administrative Offences specifies the circumstances in which officials shall incur liability for administrative offences. Officials are liable for administrative offences connected with failure to observe established rules regarding administrative procedure, State and public order, the environment, public health and other regulations that it is their duty to enforce (Code of Administrative Offences, art. 14).
56. Foreign citizens and stateless persons present in Tajikistan shall incur administrative liability under the normal procedure, in the same way as Tajik citizens. The question of liability for administrative offences committed in Tajikistan by foreigners who, according to the law currently in force and international treaties, are immune from Tajik administrative jurisdiction, shall be settled through the diplomatic channel (Code of Administrative Offences, art. 16).
57. In addition to the measures described above, Tajikistan is continuing to enact legislation to fulfil its commitments under the Convention.

58. The Weapons Act regulates the circulation of weapons and ammunition in the territory of Tajikistan.

59. Persons holding special licences have the right to use a weapon. It is prohibited to use a weapon without a licence, except in the cases provided for by law.

60. The conditions governing the use of weapons and the manner of their use are laid down by Tajik law.

61. It is not permitted to use a firearm against women, obviously disabled people, or minors, if their age is obvious or known, except in the event of an armed or group attack. Whenever the use of a firearm occasions bodily injury, the owner must immediately, and in any event within 24 hours, notify the internal affairs agencies at the place where the weapon was used (Weapons Act, art. 22).

62. Under article 5, paragraph 1, of the Militia Act, the militia must protect the rights and freedom of every individual and every citizen irrespective of citizenship, place of residence, ethnic origin, race, sex, language, attitude to religion, political views, education, social status or wealth.

63. When an agency or official conducting police inquiries violates the rights and legitimate interests of individuals and corporate bodies, a higher-ranking agency, procurator or judge must by law take measures to restore these rights and legitimate interests and indemnify any injury suffered (Police Operations Act, art. 5).

64. Article 13 of the Militia Act specifies the conditions for and limits on the use of physical force, special restraining devices and firearms. Under the Act, it is a criminal offence to use physical force, special restraining devices and firearms when compounded by improper exercise of authority.

65. The Tajik Government pays considerable attention to ensuring that officials study the norms of international law, and it is refining the system of judicial review and procuratorial supervision to ensure that persons who engage in torture are punished according to law once their guilt has been established. In addition to various statutes and judicial and administrative measures prohibiting torture, the State also makes extensive use of mass electronic and print media to expose torturers and stigmatize unlawful acts.

66. Justice in the Republic of Tajikistan is administered by the courts alone. In the performance of their duties, judges are independent and subject only to the Constitution and the law. Interference in their work is prohibited (Constitution, art. 87). The Tajik judiciary is regulated by chapter 8 of the Constitution and the Constitutional Act on the Courts (see paragraph 10 above for details).

67. In order to enforce the provisions of the Constitution, a phased process of judicial and legal reform is under way, including the preparation and implementation of a series of legislative and organizational measures to ensure the judicial protection and rigorous observance of human rights and freedoms in accordance with the universally recognized norms and principles of international law.

68. The starting point for this reform was the Constitutional Act on the Status of Judges in Tajikistan, adopted on 3 November 1995. The Act contains guarantees of judicial independence applicable to judges at every level that cannot be repealed or amended by other laws or regulations. All laws relating to the courts were subsequently amalgamated in the Constitutional Act on the Courts (No. 30 of 6 August 2001).

69. Judicial power in Tajikistan is exercised exclusively through the courts, by professional judges and duly empanelled lay judges. No other bodies or persons have the right to administer justice.

70. The judiciary is independent and acts in concert with the legislature and the executive.

71. The State authorities may not impose duties on a judge that are not provided for by the Tajik Constitution.

72. Judicial power is exercised through constitutionally sanctioned civil, economic, administrative and criminal court proceedings.

73. Trial procedures are laid down in the laws of Tajikistan.

74. The role of the Tajik courts is to protect the rights and freedoms of individuals, the interests of the State, organizations and institutions, due process of law, and equity, as proclaimed by the Constitution and other laws of Tajikistan, and by international legal instruments recognized by Tajikistan.

75. Any interference in the work of judges administering justice is prohibited and is punishable according to law. Under article 345 of the Criminal Code it is an offence to obstruct the workings of justice.

76. Under Tajik law, it is an offence to exert unlawful pressure on judges or lay judges administering justice in such a way as to obstruct the complete, full and objective examination of a particular case, or to seek to obtain the issuance of an unlawful judicial decision.

77. In their coverage of events, the mass media do not have the right to prejudge the outcome of proceedings in a given case.

78. A judge is not obliged to furnish any explanations regarding the merits of cases he has tried or is in the process of trying, nor shall he furnish details of such cases to any person except in the circumstances and under the procedure prescribed by law. It should be noted that judicial remedies against torture and cruel treatment are provided for by a decision of the plenum of the Tajik Supreme Court. Specifically, Decision No. 1 of the plenum of the Supreme Court dated 4 June 1992 on court verdicts states that evidence obtained in breach of the law shall be legally null and void and may not form the basis of a judgement.

79. According to law, any charge shall be considered insufficiently substantiated if it is based solely on the defendant's confession. A charge shall be considered insufficiently substantiated if the defendant refuses to confess and there is no other proof of guilt. Where a charge is insufficiently substantiated, a judgement of acquittal shall be handed down (Code of Criminal Procedure, art. 70).

80. According to the decision of the plenum of the Supreme Soviet referred to above, “a conviction shall not be based on conjecture. Accordingly, the courts must take the view that a judgement should be based on reliable evidence, all the inferences in the case having been tested and any contradictions resolved and assessed”.

81. If it is impossible to dispel all doubts regarding the validity of the charge, the defendant shall be given the benefit of the doubt.

82. The verdict of the court must be based solely on the evidence examined during the court hearings. The testimony of the defendant, victim and witnesses during the initial inquiry or pretrial investigation may be read out, and a recording of their testimony may be played subject to the provisions of articles 284 and 290 of the Code of Criminal Procedure.

83. Facts in this testimony and in other evidence may form the basis of conclusions and decisions on a given case only after they have been checked, thoroughly examined and corroborated during the trial phase.

84. Under article 59<sup>1</sup> of the Code of Criminal Procedure, a court must explain to an acquitted defendant the procedure for the restitution of his or her violated rights and take the legally prescribed steps to provide compensation for any injury suffered.

85. Pursuant to Decision No. 2 of the plenum of the Supreme Court dated 4 June 1992 on cassational proceedings before the Tajik courts, higher courts use cassation as an important instrument to supervise the work of the lower courts. By correcting errors promptly and effectively, courts of cassation help to ensure that criminal cases are examined more thoroughly, that judges adopt a more discerning attitude to the evidence uncovered in the pretrial investigation, and that due process is better served in the course of criminal proceedings.

86. In verifying the legality and validity of judgements, rulings or decisions, the courts of cassation, in accordance with their statutorily prescribed rights, must rectify any errors of substantive or procedural law committed by the trial court, regardless of whether such errors form the subject of a complaint or protest.

87. The Tajik courts of supervisory instance, by verifying the legality and validity of judicial decisions in criminal cases and acting as the guarantors of legality and protectors of citizens' rights, help to make the justice system more efficient, eliminate judicial errors and ensure that the law is correctly and uniformly applied in the examination of criminal cases.

88. Article 377 of the Code of Criminal Procedure states that no verdict, ruling or decision of a court may be reviewed under the supervisory procedure on any grounds that might aggravate a convict's situation after it has been in force for one year (Decision No. 3 of the plenum of the Supreme Court dated 4 July 1992 regarding the application by the courts of legislation on the supervisory review of verdicts, rulings or decisions in criminal cases).

89. On 28 July 1995, the Supreme Court, sitting in plenary session, discussed the courts' enforcement of legislation on the participation of victims in criminal proceedings. The Supreme Court drew the courts' attention to the fact that, if it emerges that the defendant, the defendants'

relatives or other persons have coerced the victim into giving testimony known to be false, the court must institute criminal proceedings against such persons or bring these facts to the notice of the procurator by means of an interlocutory order with a view to having them investigated.

90. In its Decision No. 7 of 13 November 1996 on appeal procedures and judicial verification of the legality and validity of remand in custody or the extension thereof, the plenum of the Supreme Court explained to the courts that, in accordance with articles 221<sup>1</sup> and 221<sup>2</sup> of the Code of Criminal Procedure, when considering complaints about the preventive measure of remand in custody imposed by a body conducting an initial inquiry, an investigator or a procurator, or complaints about the extension of remand, the judge must study the material confirming the legality and validity of the preventive measure. If necessary, the persons conducting initial inquiries, the investigator and the procurator must forward their explanations to the court.

91. The remand prisoner, his counsel or legal representative may submit to the court whatever information they consider necessary for the proper and objective settlement of the complaint. Likewise, the judge is entitled to request the necessary material of his or her own motion.

92. Decision No. 2 of the plenum of the Supreme Court dated 2 October 2003 on further improvements to judicial business in the light of amendments and additions to the Tajik Constitution emphasized in particular that international legal instruments recognized by Tajikistan form part of the national legal order and, in the event of a discrepancy between national laws and international legal instruments, the norms of the latter shall apply.

93. No exceptional circumstances of any kind, be it war, the threat of war, internal political instability or any other state of emergency, shall be invoked as a justification for torture.

94. Article 47 of the Tajik Constitution stipulates that, during a state of emergency, the rights and freedoms provided for in articles 16, 17, 18, 19, 20, 22, 25 and 28 of the Constitution cannot be restricted.

95. The legal arrangements governing states of emergency are set out in the Constitutional Act on Legal Arrangements in a State of Emergency.

96. Any person who intentionally commits an offence pursuant to an order or directive known to be unlawful shall be held criminally liable in the normal way. Such cases involve complicity and a separation of roles. Refusal to carry out an order or directive known to be unlawful shall preclude criminal liability.

### **Article 3**

97. Article 10 of the Tajik Constitution and article 4 of the International Treaties of the Republic of Tajikistan Act state that international legal instruments recognized by Tajikistan form part of the national legal order. When there is a discrepancy between national laws and international legal instruments, the norms of the latter shall apply. The norms of officially published international treaties to which Tajikistan is a party are directly applicable; they do not require the adoption of enabling legislation. Accordingly, the provisions of article 3,

paragraph 1, of the Convention form the legal basis for a refusal to extradite, expel or return a person to another State if there are grounds for believing that he or she would be in danger of being subjected to torture.

98. In accordance with the basic principles and norms of international law, the Constitution and statutes of Tajikistan specify that foreign citizens and stateless persons shall exercise the rights and freedoms proclaimed therein and shall have the same duties and responsibilities as Tajik citizens, except in such cases as are provided for by law. Article 16 of the Tajik Constitution and article 6 of the Foreign Citizens (Legal Status) Act state that Tajikistan may offer political asylum to foreign citizens who are victims of human rights violations.

99. Returns and extraditions, including of Tajik citizens, are regulated by the following texts:

- The Criminal Code;
- The Penal Enforcement Code;
- The Foreign Citizens (Legal Status) Act;
- Bilateral and multilateral international agreements to which Tajikistan is a party.

100. Article 16 of the Constitution stipulates that no Tajik citizen may be extradited to a foreign State. Tajik citizens who have committed crimes are extradited on the basis of bilateral agreements.

101. Article 33 of the Constitutional Act on Procuratorial Agencies and article 31 of the Foreign Citizens (Legal Status) Act state that a decision to deport a foreigner or stateless person from Tajikistan shall be taken by the Ministry of Security with the consent of the Procurator-General and, unless the deportee goes to court to challenge the legality of the decision within one week of its adoption, it shall be carried into effect. The court shall hand down its decision under the same procedure as applies to Tajik citizens.

102. Tajikistan has signed a series of bilateral agreements and treaties on the provision of legal assistance and extradition:

- (a) Bilateral treaties:
  - Treaty with the People's Republic of China on Legal Assistance in Civil and Criminal Matters (1996);
  - Agreement with the Republic of Turkey on Legal Cooperation in Civil, Commercial and Criminal Matters (6 May 1996);
  - Treaty with the Kyrgyz Republic on Legal Cooperation in Civil, Commercial and Criminal Matters (6 May 1998);
  - Treaty with the Republic of India on Legal Assistance in Criminal Matters (10 May 2001);

- Treaty with the Republic of Uzbekistan on Extradition (15 June 2000);
- Treaty with the Republic of India on Extradition (14 November 2003);
- Treaty with Ukraine on the Extradition and Surrender of Convicts to Serve Out Their Sentence (2 April 2004).

(b) Multilateral treaties:

Tajikistan has signed the Minsk Convention on Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993, which entered into force in Tajikistan on 20 December 1994. On the basis of article 56 of this Convention, the Contracting Parties undertake, in accordance with the provisions of the Convention, to extradite to one another upon demand persons present in their territory for the purpose of initiating criminal proceedings or enforcing a judgement.

The Chişinău Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 7 October 2002 was ratified by Tajikistan on 1 October 2004. Under article 66 of this Convention, the Contracting Parties undertake, in accordance with the provisions of the Convention, to extradite to one another upon demand persons present in their territory for the purpose of initiating criminal proceedings or enforcing a judgement. Tajikistan is a party to the CIS Convention of 6 March 1998 on the transfer of convicted prisoners to serve out their sentences, which was ratified by the Tajik Parliament on 13 November 1998.

103. Article 82 of the Minsk Convention and article 86 of the Chişinău Convention do not affect Tajikistan's rights and obligations arising from other international treaties to which it is a party or is likely to become a party. Thus, they do not prevent Tajikistan from fulfilling its obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

104. No cases have been recorded of extradition of foreign citizens from Tajikistan to States where there is a pattern of gross, flagrant and mass violations of human rights.

105. In 1995, the Tajik courts convicted 35 foreigners for various crimes; in 2000, 41; in 2001, 48; in 2002, 30; in 2003, 26; and in 2004, 12. A number of convicts were extradited to their countries of origin on the basis of bilateral agreements. Convicted foreigners and stateless persons have the same statutory rights and obligations as Tajik citizens, subject to the restrictions that the law imposes upon convicts. Foreigners sentenced to restriction or deprivation of liberty also have the right to contact the diplomatic representatives and consular institutions of their respective countries, and citizens of countries that do not have diplomatic or consular offices in Tajikistan have the right to contact the diplomatic missions of States that have undertaken to safeguard their interests, or international bodies charged with protecting them (Penal Enforcement Code, art. 18).

#### Article 4

106. The Tajik Criminal Code contains provisions that expressly proscribe torture as a specific form of violence, namely the infliction of severe physical or mental pain or suffering. These criminal-law provisions categorize this type of unlawful act as an aggravating circumstance that manifests itself in torture and inhuman treatment, including biological and medical experiments on people. The provisions are formulated to take account of the distinction between the perpetrator and the victim of the criminal act.

Thus, article 117, paragraph 2 (g), of the Criminal Code criminalizes cruel treatment, namely the infliction of physical or mental suffering by means of systematic beating or other violence attended by torture or cruelty; article 354, paragraph 2 (a), prohibits bullying, torturing or otherwise coercing an accused person, suspect, defendant, victim or witness into giving testimony; article 403, paragraph 2 (b), prohibits intentional violations of the norms of international humanitarian law in the course of an armed conflict, manifested in torture or inhuman treatment, including biological experiments on people.

107. In addition to the provisions of the Criminal Code that directly criminalize torture, a number of other criminal-law provisions conform to the definition of torture in article 2 of the Convention against Torture, relating as they do to the infliction of physical or mental suffering on a victim. Thus, for example, it is an offence contrary to article 133, paragraph 2 (b), of the Criminal Code for a person to abuse his or her official position unlawfully to commit to a psychiatric hospital a person who does not require psychiatric treatment or unlawfully to detain a person therein; it is an offence contrary to article 143, paragraphs 2 (a) and (b), for a person to use duress, the threat of violence or official position intentionally to violate or restrict, either directly or indirectly, the rights and freedoms of citizens or to confer direct or indirect advantages on them in connection with their sex, race, ethnicity, language, social origin, personal status, wealth, official position, place of residence, attitude to religion, beliefs, or membership of political parties or voluntary organizations; it is an offence contrary to article 314, paragraph 3, for an official to use his or her powers in a way prejudicial to the interests of his or her employer and in a manner that has serious consequences; it is an offence contrary to article 316, paragraphs 3 (a) and (c), for an official to commit acts that blatantly exceed his or her powers and are attended by violence, threats of violence or which have serious consequences; it is an offence contrary to article 348, paragraph 2 (c), for a person conducting an initial inquiry, an investigator or a procurator to lay criminal charges against a person known to be innocent, if this has serious consequences; it is an offence contrary to article 353, paragraphs 2, 3 and 4, to force witnesses or victims to perjure themselves, an expert to provide a false conclusion or a court interpreter to make an incorrect translation, or to coerce such persons to avoid testifying, if such coercion is accompanied by death threats, the threat of injury to health, or violence that does not endanger the life or health of the persons threatened; and lastly, it is an offence contrary to article 358, paragraph 2, unlawfully to detain or remand a person in custody, if this has serious consequences.

108. In all, the Tajik Criminal Code makes provision for 29 *corpora delicti* directly relating to torture, i.e. the infliction of physical or mental pain or suffering, principally by State officials.

109. In addition, article 62, paragraph (j), of the Criminal Code states that the commission of a crime attended by especial cruelty, sadism, bullying or torment of the victim shall be considered

an aggravating circumstance. The use of torture (i.e. the infliction of pain and suffering) in the above-mentioned *corpora delicti* is deemed to be a circumstance aggravating the nature of the crime. For example, coercing a suspect, accused person, defendant, victim or witness to testify, if bullying, torture or other violence is used against the person undergoing interrogation, is punishable by deprivation of liberty for between 5 and 10 years and loss of the right to hold specified positions or perform specified duties for up to five years (Criminal Code, art. 354, para. 2).

110. It should be noted that, when violence (torture) is not directly used to force a person to testify, the perpetrator shall incur liability under article 354, paragraph 1, of the Criminal Code, which also includes elements of torture, namely threats of violence or other unlawful actions or blackmail that also cause mental distress.

111. Criminal liability is substantially increased for any offence connected with the use of torture (i.e. the infliction of physical or mental pain or suffering). For example, where the provisions of a particular article of the Code make no provision for torture, yet the crime has serious consequences (death, serious or lesser harm to health), the perpetrator shall incur liability for multiple offences and shall be sentenced under article 67 of the Criminal Code (Sentencing for multiple offences). In such cases, the maximum penalty may be deprivation of liberty for up to 30 years.

112. The Tajik Criminal Code thus treats all acts of torture as crimes. Military investigators who commit torture while investigating military offences are prosecuted under the Criminal Code. Thus, the use of torture by military investigators to coerce a person to testify is an offence contrary to article 354, paragraph 2, of the Criminal Code. In other cases, if a military commander abuses his authority or official position, improperly exercises his authority or fails to take appropriate action, he shall be prosecuted under article 391 of the Criminal Code.

113. The Criminal Code recognizes as crimes not only acts of torture that have already been committed and brought to completion, but also attempts to subject a victim to torture. Thus, article 32 of the Criminal Code stipulates that planning to commit torture (the intentional manufacture or adaptation of devices or weapons to commit the offence or other deliberate preparations for the offence) and attempts to commit torture (intentional acts directly intended to bring about the commission of the offence, in cases where the offence was not brought to completion owing to circumstances outside the control of the perpetrator).

114. The Criminal Code recognizes as a crime not only acts of torture committed by a specific agent, i.e. the principal perpetrator or a person who directly participated in the crime together with other persons (accomplices), but also other persons who, while not directly participating in the commission of the crime, nevertheless otherwise assisted in its commission by organizing (masterminding) the crime, or aiding or abetting the perpetrators (Criminal Code, art. 36).

115. Under the Tajik Criminal Code, the penalty for torture is deprivation of liberty for between 2 and 10 years, and up to 30 years in the case of multiple offences. Thus, Rudaki district community support officer N. Kholov exceeded his authority on 9 March 2002 by beating A. Jalilov with a truncheon and punching and kicking him, thereby causing him physical suffering while attempting to persuade him to return a debt to a certain A. Akhmedov. The court

sentenced N. Kholov to three years' deprivation of liberty under articles 314 and 316 of the Criminal Code, for abuse of authority entailing a serious violation of civil rights and interests.

B. Chavlonov, an operations officer in the Vakhdat district criminal investigation department, entered into a prior conspiracy with a group of persons and exceeded his authority by escorting K. Usmonov to a militia station, where he beat Usmonov and demanded that he confess to stealing items belonging to a certain A. Kodirov. The court found B. Chavlonov guilty and sentenced him to five years' deprivation of liberty under articles 316 and 358 of the Criminal Code.

Acting in conjunction with officers S. Nematov and K. Saifiddinov and intending to secure a confession, I.M. Zokirov, a team leader at a Ministry of Internal Affairs department, exceeded his authority on 8 July 2001 by beating M. Barotov while the latter was in temporary detention at a police lock-up in Dushanbe, as a result of which the victim sustained physical injuries. Criminal proceedings were instituted under article 316, paragraph 3, and other articles of the Criminal Code. The militia officers were convicted.

In the course of employment as a departmental chief at the Ministry of Internal Affairs, S.K. Chalishev entered into a prior conspiracy with a group of persons and used a standard-issue weapon to murder a certain E. Rajabov on 22 June 1999. He also unlawfully detained N. Sadulloev, A. Mukhammadiev and S. Nabiev and exceeded his authority by using a special device (a rubber truncheon) to extract confessions from them at his place of work. He beat his victims with particular cruelty. As a result of the beatings, the aforementioned individuals confessed to a crime that they had not committed. S. Nabiev died of his injuries, and N. Sadulloev and A. Mukhammadiev sustained bodily injuries of varying degrees of severity. The court accordingly sentenced S.K. Chalishev to 25 years' deprivation of liberty.

### **Article 5**

116. The Republic of Tajikistan adopted a new Criminal Code in 1998. Significant amendments and additions were made in 2004, when Tajikistan established more extensive jurisdiction over crimes committed in its territory, including the crime of torture.

117. Article 14, paragraph 1, of the Criminal Code states that any citizen, including a Tajik citizen, shall be subject to prosecution under the Code for crimes that he or she commits in Tajik territory, unless specified otherwise by international legal instruments recognized by Tajikistan.

118. Article 14, paragraph 2, of the Criminal Code states that a crime shall be deemed to have been committed in Tajik territory in the following circumstances:

- (a) If it was initiated, continued or completed in Tajik territory;
- (b) If it was committed outside Tajikistan, but the effects of the crime ensued in Tajik territory;
- (c) If it was committed in Tajik territory, but the effects of the crime ensued outside Tajikistan;

(d) If it was committed in conspiracy with persons carrying on criminal activity in the territory of another State.

119. Where a crime is committed aboard a vessel or aircraft lawfully proceeding through open water or airspace outside Tajikistan and displaying the Tajik flag or Tajik identification markings, it shall also be deemed to have been committed in Tajik territory. A person who commits a crime aboard a Tajik warship or military aircraft, irrespective of its position, shall also be deemed to have committed a crime in Tajik territory and shall face prosecution under the Tajik Criminal Code (Criminal Code, art. 14).

120. The question of the criminal prosecution of foreign diplomatic representatives and other persons enjoying immunity who commit crimes in Tajik territory shall be settled on the basis of the norms of international law (Criminal Code, art. 14).

121. Article 15, paragraph 1, of the Criminal Code states that a Tajik citizen may be prosecuted under the Tajik Criminal Code for an offence committed abroad if the offence is considered a crime in the State where the act was committed and if the perpetrator has not been convicted of this crime in the foreign State. The same provision applies to stateless persons permanently residing in Tajik territory.

122. The Tajik authorities believe it is reasonable to establish Tajik jurisdiction over crimes committed outside the country if the victims are Tajik citizens. Since torture and other crimes referred to in the Convention are recognized as international crimes, Tajikistan, guided by the principle of universal jurisdiction, has determined that foreigners and stateless persons not permanently residing in Tajikistan may be prosecuted under the Tajik Criminal Code for crimes against Tajik citizens, even if these crimes were committed outside the country (Criminal Code, art. 15).

Furthermore, under national law, Tajikistan has determined that Tajik citizens and stateless persons permanently residing in the country shall be prosecuted under the Tajik Criminal Code for offences committed abroad if their action is deemed to be an offence in the State where it was committed and if the perpetrator has not been convicted of a crime in that State. When such persons are convicted, their punishment must not exceed the maximum penalty stipulated by the law of the foreign State where the crime was committed (Criminal Code, art. 15).

## **Article 6**

123. No one shall be subjected to torture or cruel and inhuman treatment. It is prohibited to force a person to take part in medical or scientific experiments (Constitution, art. 18).

124. Depending on the nature of the offence falling within the definition of cruel, inhuman or degrading treatment or punishment, the offender may be subject to criminal, administrative or disciplinary sanctions. Criminal prosecutions are conducted by the internal affairs agencies, the procuratorial system and the courts, which hand down the final judgement.

125. Criminal proceedings are conducted in accordance with the Tajik Code of Criminal Procedure, irrespective of where the offence was committed in Tajik territory. Tajik and foreign citizens (except persons with diplomatic immunity) and stateless persons are subject to Tajik procedural jurisdiction (Code of Criminal Procedure, arts. 1 and 14-16).

126. A court, procurator, investigator or body conducting an initial inquiry shall, within their terms of reference, institute criminal proceedings if evidence indicates that a crime has been committed and shall take all legal steps to establish the circumstances of the crime and to identify and punish the perpetrators (Code of Criminal Procedure, art. 3). The referral of criminal prosecutions to the appropriate jurisdiction is regulated by article 122 of the Code of Criminal Procedure. In each case, the investigating bodies are under certain obligations as outlined in article 6 of the Code of Criminal Procedure. These obligations include the duty to remand an accused person in custody with the consent of the procurator (Code of Criminal Procedure, art. 90) or to take other preventive measures to ensure that the accused cannot hide from the investigation and the courts (Code of Criminal Procedure, art. 82).

127. No one shall be remanded in custody except on the basis of a judicial decision or with the consent of a procurator (Code of Criminal Procedure, art. 6). The preventive measure of remand in custody is applied in cases involving crimes for which the statutorily prescribed penalty is deprivation of liberty for more than one year (Code of Criminal Procedure, art. 90).

128. In deciding whether to authorize remand in custody, a procurator must carefully weigh all the grounds for pretrial detention and, where necessary, personally question the suspect or the accused. Juvenile suspects and accused juveniles must be questioned in all cases (Code of Criminal Procedure, art. 90).

129. All matters pertaining to the preventive measure of pretrial detention and remand in custody (i.e. determining whether this measure is necessary); verifying the accused's protestations of innocence, allegations of coercion or violations of the right to a legal remedy; ensuring the participation of counsel; excluding unlawfully obtained evidence from the work of investigative agencies and bodies conducting initial inquiries; and checking the validity and objectivity of requests to extend pretrial detention, are provided for and regulated by Order No. 40 of the Procurator-General dated 18 September 2000 on procuratorial supervision of pretrial investigations and initial inquiries and Directive No. 16-1 of the Procurator-General dated 1 August 2000 on measures to ensure strict observance of due process during detention, remand in custody and criminal prosecution, and observance of the statutorily prescribed time limits for the investigation and remand of accused persons. The latter interdepartmental instrument has been signed by the Minister of Internal Affairs, the Minister of Security and the Director of the Narcotics Control Agency reporting to the President, and is jointly and severally binding on all these departments.

130. Thus, the principles and rules reflected in the Constitution, the Criminal Code and the Code of Criminal Procedure concerning the treatment of accused persons subject to criminal prosecution, defendants and convicts are regarded, in national practice, as safeguards against unlawful actions directed against them in the course of criminal proceedings.

131. On 11 March 1996, Tajikistan ratified the Vienna Convention on Diplomatic Relations of 18 April 1961 and the Vienna Convention on Consular Relations of 24 April 1963. According to article 36 of the Vienna Convention on Consular Relations of 24 April 1963, the competent authorities of the Republic of Tajikistan shall, without delay, inform the consular post of the sending State if a national of that State is arrested or committed to custody pending trial. Consular officers have the right to visit a national of the sending State who is in custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention. Tajikistan also signed a consular convention with the Russian Federation on 17 October 1996.

### **Article 7**

132. In recent years, Tajikistan has ratified a number of international human rights treaties and committed itself simultaneously to developing and protecting a range of human rights.

In addition, Tajikistan has institutional arrangements to protect human rights.

133. Under article 16 of the Tajik Constitution, a criminal may be extradited to a foreign State on the basis of a bilateral agreement.

134. The Tajik Criminal Code treats all acts of torture as criminal offences. The Code recognizes as a crime not only acts of torture committed by a specific agent, i.e. the principal perpetrator or a person who directly participated in the crime together with other persons (accomplices), but also other persons who, while not directly participating in the commission of the crime, nevertheless otherwise assisted in its commission by organizing (masterminding) the crime, or aiding or abetting the perpetrators (Criminal Code, art. 36).

135. Article 6, paragraph 1, of the Treaty on Extradition between the Republic of Tajikistan and the Republic of India of 14 November 2003 states that, if the requested Party refuses to grant extradition, it shall refer the case to its competent bodies to initiate a criminal prosecution.

136. Pursuant to article 7 of the same Treaty, if extradition is refused in accordance with the Treaty, the requested Party shall institute criminal proceedings against the individual concerned under its law.

137. Under article 5 of the Treaty between the Republic of Tajikistan and the Republic of Uzbekistan of 15 June 2000, either Contracting Party may request the other to prosecute any person suspected of having committed an offence contrary to the law of the requested Contracting Party when there are no grounds for extraditing the person, if warranted by the interests of justice.

138. Article 5 of this Treaty also states that either Contracting Party may, at the other's request, prosecute its citizens or other persons permanently residing in its territory if they are suspected of having committed an offence contrary to the law of the requested Contracting Party, and there are no grounds for extraditing the person.

139. Article 59 of the Treaty between the Republic of Tajikistan and the Kyrgyz Republic on Legal Cooperation in Civil, Commercial and Criminal Matters of 6 May 1996 establishes that, if extradition is refused under the terms of the Treaty, the requested Contracting Party may, upon instructions from the requesting Contracting Party, bring criminal proceedings against the individual concerned under its law.

140. Article 35, paragraph 2, of the Agreement between the Republic of Tajikistan and the Republic of Turkey on Legal Cooperation in Civil, Commercial and Criminal Matters states that if extradition is refused, the requested Contracting Party may, upon instructions from the requesting Contracting Party, bring criminal proceedings against the individual concerned under its law.

### **Article 8**

141. The Republic of Tajikistan has signed the following extradition treaties:

- Treaty with the Republic of Uzbekistan on Extradition (15 June 2000);
- Treaty with the Republic of India on Extradition (14 November 2003);
- Treaty with Ukraine on the Extradition and Surrender of Convicts to Serve Out Their Sentence (2 April 2004).

142. Under the Treaty on Extradition between the Republic of Tajikistan and the Republic of India dated 14 November 2003, persons who have committed the crimes listed in article 4 of the Convention may be extradited (art. 2).

In addition, the Parties have included a separate article on the possibility of refusal to extradite: “If the person whose extradition is being sought might be sentenced to death for the extraditable crime under the law of the requesting Party, but the law of the requested Party does not prescribe the death penalty for this crime, extradition may be refused if, in the view of the requested Party, the requesting Party cannot give sufficient assurances that the death penalty will not be applied” (art. 14).

143. Under article 5 of the Treaty between the Republic of Tajikistan and the Republic of Uzbekistan dated 15 June 2000, either Contracting Party may request the other to prosecute any person suspected of committing an offence contrary to the law of the requested Contracting Party when there are no grounds for extraditing the person, if warranted by the interests of justice.

144. Article 5 of this Treaty also states that either Contracting Party may, at the other’s request, prosecute its citizens or other persons permanently residing in its territory if they are suspected of having committed an offence contrary to the law of the requested Contracting Party, and there are no grounds for extraditing the person.

145. Pursuant to article 34.2 of the Agreement between the Republic of Tajikistan and the Republic of Turkey on Legal Cooperation in Civil, Commercial and Criminal Matters, persons who have committed the crimes listed in article 4 of the Convention may be extradited. Article 51 of the Agreement states that only persons whose actions are deemed to be crimes in the requesting Party may be extradited.

146. Article 66, paragraph 2, of the Chişinău Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 7 October 2002 states that persons who have committed the crimes listed in article 4 of the Convention may be extradited. According to article 81 of the Convention, “the death penalty shall not be applied by the requesting Contracting Party in respect of a person extradited under the provisions of this Convention if this punishment is not applied by the requested Party”.

147. Article 57, paragraph 2, of the Treaty between the Republic of Tajikistan and the Kyrgyz Republic specifies extradition for the crimes listed in article 4 of the Convention.

148. Tajikistan recognizes the following actions as a basis for extradition:

- Crimes against humanity, as specified in articles II and III of the Convention on the Suppression and Punishment of the Crime of Apartheid (1973) and articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- Offences specified in article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977) and articles 1 and 4 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977);
- Offences specified in the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988), supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- Serious offences specified in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);
- Offences specified in the International Convention against the Taking of Hostages (1979);
- Offences specified in the Convention on the Physical Protection of Nuclear Material (1980);
- Offences specified in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988);

- Offences specified in the Statute of the International Criminal Court (1998);
- Offences specified in the Convention for the Suppression of the Traffic in Persons and of the Exploitation and Prostitution of Others of 2 December 1949;
- Offences specified in the United Nations Convention against Transnational Organized Crime of 15 December 2000;
- Offences specified in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 15 December 2000;
- Offences specified in the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime of 15 December 2000;
- Offences specified in the Optional Protocols to the United Nations Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography of 26 June 2000;
- Other offences specified in international treaties.

149. Since 13 January 1993, Tajikistan has been a party to the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. Their provisions are reflected in the Defence Act and the Tajik Criminal Code (Section XV, “Crimes against the peace and security of humanity”). Offences contrary to these instruments also provide grounds for extradition.

#### **Article 9**

150. Tajikistan has signed treaties on legal assistance with the following countries:

- Treaty with the People’s Republic of China on Legal Assistance in Civil and Criminal Matters (1996);
- Agreement with the Republic of Turkey on Legal Cooperation in Civil, Commercial and Criminal Matters (6 May 1996);
- Treaty with the Kyrgyz Republic on Legal Cooperation in Civil, Commercial and Criminal Matters (6 May 1996);
- Treaty with the Republic of India on Legal Assistance in Criminal Matters (10 May 2001).

151. Under the legal assistance agreements referred to above, the States parties have agreed to afford one another the fullest possible assistance in matters of criminal procedure with respect to acts of torture. They shall ensure that specialist literature and information about the prohibition

of torture is fully incorporated into training programmes for law enforcement, civilian, military and medical personnel, State officials and other persons involved in the remand in custody, questioning and treatment of persons subject to any form of custody, detention or imprisonment.

152. Citizens from either Contracting Party and persons residing in their respective territories shall enjoy the same legal protection of their personal and property rights in the territory of the other Contracting Party as the citizens of that Contracting Party.

153. Citizens from either Contracting Party and persons residing in their respective territories have the right freely and without impediment to refer civil, family and criminal matters to the courts, procuratorial bodies, internal affairs agencies and other institutions of the Contracting Parties (the institutions of justice), to appear before these institutions, lodge petitions, file lawsuits and perform other procedural acts on the same footing as citizens of the other Contracting Party.

154. Under these treaties, the institutions of justice of the Contracting Parties are competent to examine issues relating to legal assistance in civil, family and criminal matters.

155. These treaties also stipulate the extent of the legal assistance that the Contracting Parties shall provide to one another when carrying out procedural and other actions envisaged by the law of the requested Contracting Party, namely preparing and forwarding documents; conducting inspections and searches; carrying out seizures; transferring material evidence; organizing expert examinations; interrogating parties to proceedings and third parties, suspects, accused persons, victims, witnesses and experts; searching for persons; launching criminal prosecutions; extraditing persons with a view to criminal prosecution or enforcing a judgement; and recognizing and enforcing judicial decisions in civil cases, judgements in civil proceedings, writs of execution, and service of documents.

#### **Article 10**

156. Outreach work and provision of information about prohibition of the use of torture are priorities for the Tajik Government.

The Government has adopted a number of decisions in this sphere, including No. 383 of 22 August 1997 on arrangements to improve citizens' legal education and legal work in Tajikistan; No. 79 of 4 March 2002 establishing the Government Commission to oversee implementation of international human rights commitments; and No. 272 of 12 June 2003 ratifying the programme on the State system of human rights education in Tajikistan. Efforts are being made to ensure better training of law enforcement and penal enforcement officers and to familiarize them with developments in Western Europe.

157. Since 1998, within the framework of country programmes for Tajikistan, the Government and international organizations have jointly promoted human rights advocacy, trained judges and coached officials at different levels.

158. In order to expand the theoretical basis of practical skills and make a careful study of the international legal instruments ratified by Tajikistan, Tajik law enforcement agencies organize

regular advanced training sessions at the Procuratorial Staff Development Centre, the Ministry of Internal Affairs Academy and the Judicial Training Centre, and organize study groups attended by national and international human rights experts.

159. Tajikistan's treaty obligations to prevent torture are reflected in a range of subjects studied at law schools, for example "Criminal Law", "Criminal Procedure" and "Crime Detection Techniques", and the special subjects "Police Operations", "Initial Inquiries in Internal Affairs Agencies" and "International Humanitarian Law" that are taught at non-military law schools and specialized educational establishments under the jurisdiction of the Ministry of Internal Affairs, the Ministry of Security and the Ministry of Defence.

It should also be noted that, in the course of their training at various educational establishments (the law faculty of Tajik National State University, the Tax and Law Institute, the Tajik-Russian Slavonic University, the Ministry of Internal Affairs Academy, and the Ministry of Security College), law enforcement officers are instructed in a number of disciplines and crime detection skills that exclude prohibited techniques of torture.

Human rights, and specifically the prohibition and prevention of torture, are also taught at educational institutions other than law schools as part of the "Basic Rights" module, for example at medical colleges. This tuition forms part of regular courses designed to improve legal and vocational education. Faculty and staff, legal experts, and human rights specialists and advocates from voluntary organizations are involved in these courses.

160. Training and awareness-raising within the framework of educational programmes for military personnel and law enforcement officers is offered through existing arrangements for the professional and legal training of judges, law enforcement officers and military personnel, and also through seminars, short courses and briefings with human rights specialists, for example those organized by the Procuratorial Staff Development Centre, the Centre for Legal Education, the Judicial Training Centre administered by the Council of Justice, and the League of Women Lawyers.

161. As part of international cooperation under the programme "Reform of the Tajik penal correction system", jointly implemented by the Department of Corrections of the Ministry of Justice and international organizations, several seminars and conferences are being held on the theme of penal corrections and respect for human rights.

On a number of occasions, the Swiss Cooperation and Development Agency has directly organized staff development courses, seminars and workshops in Dushanbe for law enforcement personnel and staff of the Department of Corrections of the Ministry of Justice. In the course of these events, participants learn about the penal corrections resources and experience of foreign countries. More than 100 penal corrections personnel have upgraded their skills by attending these courses.

162. Interactive forms of training are extensively used in reforming the penal corrections system, for example role-playing exercises in seminars and workshops designed to develop creative thinking.

163. The penal corrections system does not provide any special training for medical officers to enable them to deal with prisoners and suspects. However, agreements have been signed with several international and non-governmental organizations (NGOs) to assist in initiatives of this kind. Thus, under the programme "Support for initiatives to reform the Tajik penal corrections system" run by the Swiss Cooperation and Development Agency, medical officers are trained to interact with prisoners, provide appropriate medical treatment, comply with health and hygiene standards and ensure that prisoners' health is protected. Eight seminars on such matters have been organized.

164. Pursuant to Presidential Decree No. 691 of 9 April 1997 on legal policy and the legal education of Tajik citizens, and with the aim of ensuring the supremacy of the law, raising public awareness of the law and preventing delinquency, extensive use is made of the media to keep the public better informed of legal matters, for example through the periodicals *Khukuk va khaet* (Law and life), *Gosudarstvo i pravo* (State and law) and *Pravovedenie* (Legal science); *Trudy Akademii* (Papers of the Academy), the yearbook of papers published by members of the Ministry of Internal Affairs Academy; *Sipar*, the weekly political analysis bulletin of the Ministry of Internal Affairs; the newsletter of the Association of Judges; *Zakonnost* (Rule of law), the journal of the Office of the Procurator-General, which discusses theoretical and applied problems; the bulletin of the Supreme Court; the weekly television programme *VKD khabar medikhad* (Ministry of Internal Affairs announcements); the crimewatch programme *Iztirob*; the radio programme *02 reports*, broadcast four times a week; the weekly newspaper supplement *Crime Info*; instructions of the plenum of the Supreme Court; and other items intended to develop public knowledge of the law.

165. The Ministry of Internal Affairs has adopted a number of regulations to prevent militia officers from practising torture in the performance of their duties, for example Order No. 403 of 2 October 1995 regarding the entry into force of Presidential Decree No. 341 of 23 September 1995 on reinforcing crime control and law and order; Order No. 538 of 12 October 1995 on measures to reinforce law and order and discipline in the internal affairs agencies; and Order No. 362 of 10 October 1997 on politeness and civility on the part of internal affairs officers towards members of the public.

166. Pursuant to the Government's Decision No. 79 of 4 March 2002 establishing the Government Commission to oversee implementation of international human rights commitments, the following persons were appointed to the Commission:

- The Deputy Prime Minister in charge of law enforcement and military bodies (Chairman);
- The Head of the Department for Constitutional Guarantees of Civil Rights in the Executive Office of the President (Vice-Chairman);
- First Deputy Ministers of Internal Affairs, Security, Foreign Affairs, Culture, Education, Labour and Social Welfare, Justice, Economics and Trade, Finance and Public Revenue and Taxation (members of the Commission);
- First Deputy Chairman of the State Statistical Committee;

- First Deputy Chairmen of the Government Committee for the Protection of the State Frontier, the Government Committee for Women and Family Affairs, and the Government Committee for Youth Affairs;
- First Deputy President of the Supreme Court;
- First Deputy Procurator-General;
- The Executive Secretary of the Commission;
- Two representatives of voluntary associations.

## **PART II**

### **Article 11**

167. The law requires that the State should keep under systematic review the rules, instructions, methods and practices governing interrogations, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture.

168. In carrying out interrogations, it is important to maintain a trusting and professional relationship between the person being interrogated and the interrogator, to take account of the place and situation in which the interrogation is held, and to be patient and methodical.

Interrogations must be conducted impartially and professionally in accordance with the Code of Criminal Procedure.

169. Tajik laws and regulations govern the procedure for the physical examination of detainees and remand prisoners in temporary holding facilities and remand centres with regard to their health and signs of bodily injury, especially where a detainee, suspect, accused person or convict claims to have been subjected to violence. In such cases, medical staff at a temporary holding facility or remand centre must carry out an examination immediately.

170. Procedures for detention and other restrictions on liberty are legally regulated by the Code of Criminal Procedure and the Code of Administrative Offences.

171. Article 257 of the Code of Administrative Offences states that, in cases directly provided for by Tajik legislation, in order to prevent administrative offences and when all other means of influencing a person, establishing his or her identity or recording an administrative offence have been exhausted, where it is impossible to book a person at the place where the offence was committed, and if these particulars are required to ensure the timely and proper examination of cases and the enforcement of decisions on administrative offences, a person may be placed under administrative arrest, examined to determine whether he is drunk, a search may be conducted of his person and belongings, his belongings and documents may be confiscated, and he may be prevented from operating a vehicle or his vehicle may be impounded at a designated facility.

The procedure for making administrative arrests, determining whether a person is drunk, carrying out personal searches and searches of belongings, confiscating belongings and documents, preventing a person from operating a vehicle, or impounding a vehicle at a designated facility for the purposes envisaged by this article are set out in this Code of Administrative Offences and other Tajik statutes.

172. Article 3 of the Penal Enforcement Code provides for legal assistance to convicts, which is one of the aims and purposes of Tajik penal corrections law. Under this article, the objectives of Tajik penal corrections law are to regulate the procedures and conditions for the enforcement and serving of criminal sentences; define methods of correction; protect the rights, freedoms and legitimate interests of convicts; and facilitate their social reintegration.

173. To comply with these aims and objectives, the Penal Enforcement Code establishes general provisions and principles on the enforcement of sentences and other criminal-law arrangements specified in the Criminal Code. These relate to the procedure and conditions for the enforcement and serving of criminal sentences and the application of measures of correction; the legal status of convicts and arrangements for safeguarding their rights, freedoms and legitimate interests; the procedures governing the work of penal enforcement institutions and bodies; the involvement of the central and local authorities, other organizations, voluntary associations and private citizens in the correction of convicts; and the procedures governing the release and provision of assistance to convicts (art. 3).

174. According to article 15 of the Penal Enforcement Code, the Tajik authorities respect and protect the rights, freedoms and legitimate interests of convicts, observe the statutorily prescribed conditions in which they serve their sentences, and guarantee social justice and the legal protection and personal security of convicts.

It is permitted to place a person under administrative arrest, examine him to determine whether he is drunk, search his person and belongings, confiscate his belongings and documents, prevent him from operating a vehicle or impound his vehicle at a designated facility.

175. Among the laws and regulations that regulate the penitentiary system are the Tajik Constitution, the Penal Enforcement Code, the Penal Correction System Act, the Criminal Code, the Code of Criminal Procedure, the Labour Code, the Family Code, and the Reproductive Health and Reproductive Rights Act.

176. The Tajik penitentiary system operates on the principles proclaimed in the International Covenant on Civil and Political Rights. Article 105 of the Penal Enforcement Code stipulates that persons deprived of their liberty shall be provided with health care at places of detention. All preventive medical and health treatment for convicts at places of detention is organized and made available in accordance with Tajik law and the internal regulations of correctional facilities.

177. One of the aims of Tajik legislation on the enforcement of sentences is to protect the rights, freedoms and legitimate interests of convicts and to facilitate their social reintegration.

178. The procedures for providing medical care to persons deprived of liberty, arrangements for monitoring hygiene and the use of the medical and health facilities in the public health system are established by the Ministry of Justice and the Ministry of Public Health.

The Psychiatric Care Act regulates medical and social care for Tajik citizens with mental disorders. It also seeks to improve their living and working conditions, prevent mental illness and protect the mental health of the population at large. The Act aims to protect the rights and legitimate interests of the mentally ill and to define how and for what reason psychiatric assistance shall be made available.

179. Under the Act, psychiatric and neuropsychiatric hospitals, clinics and health centres are classified as psychiatric institutions in Tajikistan.

180. Mentally ill people have all the civil rights and freedoms provided for in the Tajik Constitution. Restrictions on these rights and freedoms as a result of mental illness are permitted only if a person has been pronounced mentally ill by a court (Psychiatric Care Act, arts. 5 and 6).

181. The mentally ill are guaranteed the following rights:

- The right to obtain information about their rights;
- The right to respectful, humane and non-degrading treatment;
- The right to hospitalization only for as long as is necessary for observation and treatment;
- The right to therapy and social care in conditions that satisfy health and hygiene requirements and are not degrading to the individual;
- The right to assistance from counsel, a legal representative or other authorized person.

182. Foreign citizens and stateless persons present in Tajik territory are guaranteed the same psychiatric care as that available to Tajik citizens.

183. A mentally ill person or his or her legal representative has the right to refuse the treatment offered, with the exception of coercive measures prescribed by the courts.

184. The reasons for hospitalization at a psychiatric facility must be explained to an inpatient by the administration of the hospital. The patient's relatives and legal representatives must be officially notified in writing that the patient has been hospitalized (Psychiatric Care Act, art. 32).

185. The administration and medical staff of psychiatric hospitals must ensure that patients, their relatives and legal representatives are free to exercise their rights (Psychiatric Care Act, art. 35).

186. The Procurator-General and his subordinates ensure due process of law in the course of psychiatric treatment (Psychiatric Care Act, art. 44).

187. The conditions of detention of women and minors are specified in articles 74, 78, 82, 123, 137 and 138 of the Penal Enforcement Code, according to which men are segregated from women, and minors from adults, in correctional institutions.
188. Additional amenities and medical services are provided for in articles 61, 74, 104 and 196 of the Penal Enforcement Code, which state that essential amenities and sanitation shall be provided to convicts whenever they are transferred.
189. Under Presidential Decree No. 855 of 26 July 2002 on reforming the penal correction system and Government Decision No. 505-23 of 31 December 2002 on various matters relating to the penal correction system, Tajik penitentiaries were transferred from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice, whereupon a process of phased reforms was initiated. Unlike in some CIS countries, all the components of the penal correction system have been transferred to the jurisdiction of the Ministry of Justice. For example, the Ministry of Justice now oversees not only colonies but also remand prisons and the prisoner escort division.
190. In seeking to improve the penal correction system and redraft the laws that regulate it, Tajikistan also takes account of international minimum standards for the treatment of prisoners developed by the United Nations.
191. Upon arrival at a remand prison, detainees undergo a medical examination and sanitary processing. Prior to sanitary processing and medical examination, they are temporarily housed in general holding cells.
192. Remand prisoners and convicts admitted to hospitals and medical units attached to remand prisons are segregated according to the nature of their illness.
193. Juveniles are held in separate cells, buildings, wings or floors, normally in groups of four to six inmates, and segregated depending on their age and degree of physical development.
194. The procedure for receiving complaints, petitions, suggestions and letters from remand prisoners, registering them and forwarding them to the addressees, and the procedure for communicating the replies to the respective authors, is regulated by the Penal Enforcement Code and the Instructions on the work of special units, remand centres and prisons.
195. Remand prisoners may receive an unlimited number of parcels, hand-delivered packages and packets.
196. Prisoners are permitted to exercise for one hour a day, or two hours in the case of pregnant women and minors. They may visit the bathhouse once a week. Visits are allowed with the permission of the investigative and judicial bodies.
197. The Tajik correction system includes 61 disciplinary units, 31 punishment cells and 1 disciplinary unit in a young offenders' institution.
198. Every convicted prisoner must work at his or her place of detention, as directed by the prison authorities. The administration of the correctional institution shall recruit convicts to work at enterprises managed by the correctional facility itself, State enterprises or enterprises

under other forms of ownership, while ensuring proper protection for and segregation of convicts on grounds of sex, age, capacity for work, state of health and, where possible, specialist skills. Prisoners shall be paid for any work they perform. They are permitted to spend a portion of their earnings, remit money to their families or place money in savings accounts.

199. A policy of transparency has been inaugurated with a view to reforming and reorganizing penal institutions, and ongoing efforts are being made to overcome the practical difficulties that prevent compliance with standard rules for the treatment of prisoners under international legal instruments recognized by Tajikistan.

200. Following the transfer of the penitentiary system from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice, a completely new approach to transparency has been adopted as regards civil society and international organizations such as the International Committee of the Red Cross (ICRC), whose representatives have visited practically all the penitentiaries in Tajikistan and familiarized themselves with conditions of detention therein.

201. Article 14 of the Penal Enforcement Code states that the principal forms of correction applied to convicts are the prescribed arrangements for the enforcement and serving of sentences (the prison regime), encouragement of a change in attitude, employment, general education, vocational training and community-based sanctions. The methods of correction applied to convicts vary with the nature and degree of social danger of their offence, and the character and behaviour of the convict.

202. The Code of Criminal Procedure specifies that remand in custody is a preventive measure applicable to accused persons, defendants and persons suspected of having committed a crime for which the statutory punishment may be deprivation of liberty for more than one year. A person may be held in pretrial detention pursuant to the decision of an investigator or person conducting an initial inquiry, if authorized by a procurator, or on the basis of a court decision to remand an individual in custody as a preventive measure (Code of Criminal Procedure, arts. 90, 413 and 415). Under articles 221<sup>1</sup> and 221<sup>2</sup> of the Code of Criminal Procedure, a remand prisoner may challenge his detention or any extension thereof directly or through his counsel (see article 6 above for more details).

203. In practical terms, compliance with article 11 of the Convention is ensured by procurators, who see to it that the law is obeyed by bodies conducting police investigations, initial inquiries and pretrial investigations and who monitor due process of law in police lock-ups and remand units and the enforcement of sentences and coercive measures specified by the courts (Constitutional Act on Procuratorial Agencies).

204. Pursuant to Order No. 2 of the Procurator-General of 10 August 2000 on reinforcing procuratorial supervision of strict observance of due process in the course of arrest, detention, prosecution, trial and sentencing of convicts, Tajik procuratorial agencies must biannually audit and prepare general statistics in strict compliance with and uniform application of the provisions of the Criminal Code and the Code of Criminal Procedure, and the instructions handed down by the plenum of the Supreme Court regarding the institution and investigation of criminal cases, criminal prosecutions and trials leading to appropriate judgements.

Thus, an audit of these procedures in the relevant law enforcement agencies revealed the following numbers of persons unlawfully detained in temporary holding facilities throughout Tajikistan: in 2000, 34; in 2001, 63; in 2002, 41; in 2003, 48; and in 2004, 36. The numbers of persons subjected to unlawful criminal prosecution nationwide were: in 2000, 25; in 2001, 31; in 2002, 13; in 2003, 19; and in 2004, 15.

205. On the basis of article 412<sup>1</sup> of the Code of Criminal Procedure, the Procurator-General has issued an order obliging procurators at provincial, city and district levels and the military procurator's office to conduct regular (at least monthly) inspections of remand prisons to ensure the legality and validity of detention and imprisonment, and to release prisoners in respect of whom the statutorily prescribed period of custody has expired or has not been extended.

206. It is categorically prohibited to subject convicts to torture or cruel, inhuman or degrading treatment or punishment, or to medical or any other scientific experiments - even with their consent - that might endanger their lives or health (Penal Enforcement Code, art. 10, para. 2).

207. An important additional safeguard as regards procuratorial oversight of compliance with the Convention is the existence of specialized procurator's offices overseeing enforcement of the law in correctional institutions. The Office of the Procurator-General has drafted Regulations on procuratorial supervision of legal compliance in correctional institutions.

208. The purpose of legislation on pretrial detention is to establish rules for detaining persons remanded in custody as a preventive measure, thus preventing them from hiding from investigation and trial, obstructing efforts to establish the truth or engaging in criminal activity, and allowing the sentence to be enforced. Pretrial detainees in Tajikistan are held in remand centres. In certain circumstances, remand prisoners may be detained in prisons, police lock-ups and guardhouses.

Remand prisoners may be detained in a police lock-up for no longer than three days. If they cannot be escorted to a remand centre because of distance or unreliable transport, they may be held for a longer period, but for no more than 20 days. In such cases, and also in the event of remand prisoners being detained in a prison, the detention arrangements specified in articles 413 to 431 of the Code of Criminal Procedure shall apply.

209. Remand in custody in order to investigate a criminal case may not be extended for more than two months. An extension of up to three months may be granted by a district or city procurator, or the military procurator of a garrison or a procurator of equivalent rank, if it is not possible to complete the investigation and there are no grounds for reconsidering the preventive measure. A further extension of up to six months is possible only if the case presents special difficulty, and must be authorized by a provincial procurator, the procurator of the Gorny Badakhshan Autonomous Region, the Dushanbe procurator or a procurator of equivalent rank. The Deputy Procurator-General and the Chief Military Procurator may authorize an extension of up to nine months from the date of remand in custody (Code of Criminal Procedure, art. 92, para. 1).

210. Extension of remand in custody for more than nine months is permissible in exceptional circumstances, and only if a person stands accused of a serious crime. Such extensions - for up to 15 months - must be approved by the Procurator-General. The issue of whether to remand an accused person for more than one year must be discussed beforehand by the central administrative board of the Office of the Procurator-General (Code of Criminal Procedure, art. 92, para. 2).

211. No further extensions of remand in custody are permitted. An accused person on remand must be released forthwith.

The definitive version of the case-file regarding the investigation must be made available for the inspection of the accused and his counsel at least 30 days before the deadline for the expiry of remand in custody (Code of Criminal Procedure, art. 92, para. 3).

212. The time taken by the accused and his counsel to familiarize themselves with the case-file shall not be taken into account in calculating the duration of remand in custody (Code of Criminal Procedure, art. 92, para. 5).

213. In order to increase the liability of law enforcement officers and ensure that their work conforms to the provisions of the Constitutional Act on Procuratorial Agencies, the Regulations on the performance appraisal of procuratorial officials and the Civil Service Act, the performance of law enforcement officers is appraised on a regular basis. Among other things, the performance review focuses on international human rights standards (specifically in the area of arrest, detention and remand in custody).

## **Article 12**

214. The following bodies are entitled to conduct initial inquiries:

- The militia;
- State security agencies;
- Commanding officers of military units and formations and commandants of military facilities;
- Governors of corrective labour institutions and remand prisons;
- Agencies of the National Fire Inspectorate;
- Frontier police agencies;
- Chief officers of winter quarters in the absence of transport links;
- Customs agencies;
- Tax police units;
- The Narcotics Control Agency reporting to the President of Tajikistan.

215. Pretrial investigations of criminal offences are conducted by investigators from the procurator's office, the Ministry of Security, the Ministry of Internal Affairs and the Narcotics Control Agency reporting to the President, according to the nature of the case (Code of Criminal Procedure, art. 122).

216. In the period 2000-2004, procuratorial agencies submitted and addressed more than 70 recommendations to law enforcement officers concerning violations of the law in the arrest and detention of Tajik citizens.

217. Specifically, in the period 2000-2004, of the 65 criminal cases involving abuse of authority instituted by the military procurator's office, 24 criminal cases concerned the infliction of bodily injury. In 23 criminal cases, the military courts handed down convictions.

218. There are guardhouses in the Dushanbe and Sogd garrisons, which are regulated by the Statute of the garrison and sentry service of the Tajik Armed Forces, as ratified by Decision No. 469 of the Tajik Parliament (Majlisi Oli) dated 5 December 2001.

219. The duration of pretrial investigations and the procedures for carrying them out are described in detail under article 11 above.

### **Article 13**

220. Under the Citizens' Communications Act, all State bodies must allow citizens to exercise their right under the Constitution and laws of Tajikistan to make written and oral submissions to State, voluntary and other bodies, enterprises, organizations and institutions on improving the work of these bodies, and petitions and appeals against the actions of officials. Acting within their terms of reference, State, voluntary and other bodies, enterprises, organizations and institutions, their leaders and other officials must duly accept and review such proposals, petitions and complaints from citizens, reply to them and take any necessary measures.

An important safeguard should be noted, namely the right of persons deprived in any way of their liberty to challenge any unlawful actions against them, as indicated in the law stating that complaints, petitions and letters from such persons addressed to a procurator shall not be vetted and must be forwarded to the addressee within 24 hours (Penal Enforcement Code, art. 19; Criminal Code, art. 425). It must also be stressed that, where there is evidence of actions that fall within the definition of torture, criminal proceedings shall be instituted by the relevant agencies irrespective of whether the victim makes a complaint.

221. The procedure for filing complaints and communications from persons in pretrial detention is regulated by the Code of Criminal Procedure and the Citizens' Communications Act, which place no restrictions on the filing of complaints and specify the obligations of the relevant officials regarding review of complaints and notification to the sender of the outcome of the review.

222. The investigation of cases of torture and review of complaints and reports from citizens, organizations, officials and the media regarding the use of torture lies within the jurisdiction of the appropriate agencies.

Under article 219 of the Code of Criminal Procedure, complaints regarding the actions of bodies conducting initial inquiries or investigators shall be submitted to a procurator directly or through the person conducting the initial inquiry or the investigator whose actions form the subject of the complaint.

223. Complaints may be made orally or in writing. Oral complaints shall be set down in a record that must be signed by the complainant and the person taking cognizance of the complaint.

224. Until such time as the matter is resolved, the filing of the complaint shall not suspend the effect of the action subject to challenge, unless this is deemed necessary by the person conducting the initial inquiry, the investigator or the procurator.

225. Pursuant to article 6 of the Constitutional Act on Procuratorial Agencies, Tajik procuratorial bodies shall take timely action to detect and suppress any breaches of the law, from whatever quarter, restore violated rights and prosecute the guilty parties according to law.

226. Procuratorial agencies shall review complaints and media reports of torture, cruel, inhuman or degrading treatment or punishment, conduct routine audits of law enforcement agencies and institutions to reveal any instances of torture or cruel, inhuman or degrading treatment or punishment, and lodge protests against convictions on the grounds that the evidence used to convict the defendant was obtained through torture.

227. Pursuant to article 425 of the Code of Criminal Procedure, complaints, petitions and letters unconnected with the investigation of a case shall be considered, as appropriate, by the administration of the pretrial detention facility or forwarded to the relevant authority under the statutory procedure.

228. Article 76 of the Chişinău Convention on Legal Assistance in Civil, Family and Criminal Matters of 7 October 2002 provides for the right to a judicial remedy. The Convention stipulates that persons taken into custody (detainees) have the right to a judicial remedy in the territory of any of the Contracting Parties in accordance with their legislation. Complaints from persons in custody, their counsel or legal representatives regarding the use of remand as a preventive measure, or the extension of remand in custody, shall be referred to a court or any other competent institution of justice of the requesting Contracting Party.

229. According to article 221<sup>1</sup> of the Code of Criminal Procedure:

- Complaints about the use of remand in custody as a preventive measure by a body conducting an initial inquiry, an investigator or a procurator, or the extension of such custody, shall be submitted to a court by the person in custody, his or her counsel or legal representative either directly or through the person conducting the initial inquiry, the investigator or the procurator;

- Upon receipt of a complaint addressed to a court concerning remand in custody or the extension thereof, the administration of the remand centre shall forward the complaint to the appropriate court and notify a procurator without delay, or in any event within 24 hours of receiving the complaint;
- The person conducting the initial inquiry, the investigator or the procurator must forward a complaint to a court within 24 hours, together with evidence of the legality and validity of remand in custody as a preventive measure or the extension thereof and, where appropriate, their explanations. If the complaint was submitted through the administration of the remand centre, the procurator must forward the said material, with explanations, to a court within 24 hours of being notified by the administration of the remand centre that a complaint has been filed;
- Until such time as the matter is resolved, the filing of the complaint shall not suspend the decision to remand a person in custody as a preventive measure and shall not result in the detainee's release, unless this is deemed necessary by the person conducting the initial inquiry, the investigator or the procurator.

230. The deadlines for challenging or appealing against judgements are laid down in article 332 of the Code of Criminal Procedure:

- Complaints and appeals against trial court judgements must be submitted within seven days of the proclamation of the judgement; likewise, a convict remanded in custody must complain or appeal within seven days of receiving a copy of the judgement;
- A case may not be retrieved from the court before the deadline for lodging an appeal against a judgement. The procurator, the person convicted or acquitted, their counsel and legal representatives, the victim, the civil claimant, the civil defendant and their representatives may familiarize themselves with proceedings in the case and any complaints or appeals directly with the court;
- A complaint or appeal lodged after the deadline shall be returned to the complainant or appellant;
- Additional cassational appeals or protests and written rebuttals thereof must be filed with the relevant court of cassation prior to the hearing of the case.

231. Article 333 of the Code specifies the procedure for restoring the deadline for lodging complaints and appeals.

232. If a person who is entitled to file a cassational complaint or protest can show good cause for missing the deadline to challenge or appeal a judgement, he or she may petition the court that handed down the judgement to restore the missed deadline. This matter shall be decided upon by an administrative session of the court, which has the right to summon and examine the petitioner.

233. A refusal by a court to restore a missed deadline may be challenged or appealed to a higher court under the normal procedure; the higher court has the right to restore the missed deadline and examine the complaint or protest on its merits.

234. Pursuant to article 4 of the Citizens' Communications Act, a complaint or petition may be submitted by citizens whose rights have been violated, their attorneys and any other person or organizations involved in the protection of human rights. Complaints or petitions on behalf of minors or persons with no legal capacity must be lodged by their legal representatives.

235. A complaint or petition to a hierarchically superior body, official or to a court must be lodged at the seat of the body or the place of work of the official whose actions are being challenged or whose unlawful actions are being reported.

236. Under the provisions of Order No. 90 of the Procurator-General dated 25 October 2000 on strengthening procuratorial supervision of strict compliance with due process of law in reviewing communications from citizens:

- A petition to extend the deadline for allowing complaints must be drawn up at least five days before the expiry of the deadline;
- Communications due to be forwarded to other bodies must be passed on to the appropriate addressees within five days, and the author must be notified of this fact.

237. At least twice a year, procuratorial bodies undertake a detailed study of how they receive and process communications from citizens and investigate the reasons why people contact the procurator's office. From time to time, they must make a digest of communications on the most topical issues, and review outcomes at meetings of the central administrative boards of the Procurator-General's office, provincial procurator's offices, the Tajik Transport Procurator's Office, procurator's offices overseeing enforcement of the law in correctional institutions, military procurators and interdepartmental meetings between law enforcement agencies.

238. It is an offence under article 163 of the Tajik Criminal Code unlawfully to refuse to review communications from citizens, to disregard deadlines for processing communications without good cause, to take unwarranted and unlawful decisions and to breach the law regarding communications from citizens in a way that significantly prejudices their rights and statutorily protected interests, or the interests of society and the State.

#### **Article 14**

239. The Tajik Government is taking legislative measures to ensure that victims of torture receive fair and adequate compensation, including the means for as full rehabilitation as possible.

240. The law protects the rights of the victim. The State guarantees the victim a judicial remedy and restitution for injury suffered (Constitution, art. 21).

Material and moral harm suffered by an individual as a result of unlawful actions by State bodies, voluntary associations, political parties or individuals shall be compensated according to law at the wrongdoer's expense (Constitution, art. 32). Pursuant to this constitutional provision and in accordance with current legislation, article 56 of the Code of Criminal Procedure, articles 5 and 116 of the Code of Civil Procedure and other provisions, the infliction of material harm to a person during the commission of a crime shall be compensated in all cases.

241. Under article 54 of the Code of Criminal Procedure, a victim is deemed to be any person, irrespective of age or physical and mental state, who has suffered moral, physical or economic harm, or any person whose rights and interests have been directly threatened by an attempted crime.

242. Pursuant to article 59<sup>1</sup> of the Code of Criminal Procedure, where criminal proceedings are discontinued because no crime has been committed, because the act in question reveals no evidence of a crime, because it cannot be proved that an individual took part in the commission of a crime, or in the event of an acquittal, the body conducting the initial inquiry, the investigator, the procurator or the court must inform the victim of the procedure whereby his violated rights may be restored, and take measures stipulated by law to indemnify the victim for loss (Decision of the plenum of the Supreme Court on court verdicts).

243. Indemnification may include reinstatement to a previous job, the payment of average monthly remuneration for the period that the victim was absent from work, compensation for pain and suffering and restitution of housing rights.

244. Evidence of unlawful conviction or unlawful criminal prosecution may be furnished by an acquittal, a decision by a body conducting an initial inquiry, an investigator, a procurator or a ruling by the administrative session of a court, or a ruling by a court of cassation or court of supervisory instance to discontinue criminal proceedings because no crime has been committed, because the act in question reveals no evidence of a crime, or because it cannot be proved that an individual took part in the commission of a crime.

245. Harm caused to citizens as a result of unlawful conviction, unlawful criminal prosecution, unlawful preventive measures such as remand in custody or travel restraints, and imposition of unlawful administrative penalties such as detention or punitive deduction of earnings, shall be compensated in full, regardless of the fault of officials of bodies conducting initial inquiries, pretrial investigators, the procurator's office or the courts, under the statutorily prescribed procedure (Civil Code, art. 1086, para. 1).

246. If a citizen suffers moral harm (physical and mental suffering) through actions that violate his personal non-material rights or encroach upon other non-material advantages enjoyed by a citizen, as stipulated by law, a court may require the wrongdoer to pay compensation for harm caused.

247. In determining the amount of damages for moral harm, the court shall take into account the degree of fault on the part of the wrongdoer and other circumstances worthy of note. The court must also take account of the degree of physical and moral suffering connected with the individual circumstances of the injured party (Civil Code, art. 1086).

248. Moral harm shall be compensated by the person responsible for inflicting harm if this person is at fault, except in the cases stipulated in article 171, paragraph 2, of the Civil Code.

249. Moral harm shall be compensated regardless of the fault of the person responsible for inflicting harm in the following circumstances:

- When harm was caused to the life and health of a citizen by a source of extreme danger;
- When harm was caused to a citizen as a result of his or her unlawful conviction, unlawful criminal prosecution, unlawful preventive measures such as remand in custody or travel restraints, or unlawful administrative penalties such as detention or punitive deduction of earnings;
- When harm was caused as a result of the dissemination of defamatory information discrediting honour, dignity and business reputation, and in other instances specified by law.

250. Compensation for moral harm shall be in pecuniary form (Civil Code, art. 1116).

251. The amount of compensation for moral harm shall be determined by the court in accordance with the nature of the physical and moral suffering inflicted on the victim, as well as the degree of fault of the person responsible for inflicting the harm in cases where fault constitutes the grounds for compensation. When determining the amount of compensation for harm, the requirements of reasonableness and fairness shall be taken into account (Civil Code, art. 1116).

252. Compensation shall be made for moral harm irrespective of whether or not material harm is subject to compensation (Criminal Code, art. 1116).

253. R. Djalilov, a Tajik citizen, sued Rudaki district militia officer Makhmadsho Zaripov for material and moral damages on the grounds that the latter improperly exercised his authority by filing a report alleging that Djalilov had not paid a land tax. While in detention, Djalilov was beaten. Criminal proceedings were brought against militia officer Makhmadsho Zapiro in connection with an offence contrary to article 316, paragraph 1, of the Criminal Code (Improper exercise of authority), and he was subsequently sentenced to one year's deprivation of liberty. Pursuant to a decision handed down by Rudaki district court on 26 July 2004, Djalilov's claims were partially upheld.

254. Civil cases are heard in accordance with the provisions of the Code of Civil Procedure.

255. In cases involving crimes that have resulted in the death of the victim, the statutory right to compensation for harm falls to the deceased's next of kin (Code of Criminal Procedure, art. 54, para. 4).

256. In line with the decision of the plenum of the Supreme Court dated 28 July 1995 on the application by the courts of legislation on the participation of victims in criminal proceedings, it was made clear to the lower courts that, in cases involving crimes that have resulted in the death of the victim, the rights provided for in article 54, paragraph 4, of the Code of Criminal Procedure shall fall to the next of kin, one of whom shall be designated the victim by mutual agreement. If several persons among the deceased's next of kin insist on being granted the right to be considered the victim, they too may be accorded the status of victims.

257. Foreign citizens and stateless persons have the right to petition the Tajik courts and avail themselves of their civil procedural rights on the same footing as Tajik citizens (Code of Civil Procedure, art. 453).

258. Where there is sufficient information to indicate that the victim, witness or other parties to proceedings, or members of their families or next of kin, are being threatened with murder, violence, destruction of or damage to property or any other unlawful actions, the body conducting the initial inquiry, the investigator, the procurator or the court must take steps as prescribed by law to protect the life, health, honour, dignity and property of such persons, and to identify and prosecute the guilty parties (Code of Criminal Procedure, art. 59.2).

### **Article 15**

259. Under article 15 of the Code of Criminal Procedure, it is prohibited to obtain evidence from an accused or other party to proceedings through violence, threats or other unlawful means.

260. The court, procurator, investigator or person conducting the initial inquiry must take all steps stipulated by law to examine a case in a detailed, complete and impartial manner, to uncover all facts that either incriminate or exonerate the accused, and any circumstances that tend to mitigate or aggravate his or her liability.

261. The court, procurator, investigator or person conducting the initial inquiry must not shift the burden of proof on to the accused.

262. In accordance with article 70, paragraph 2, of the Code of Criminal Procedure, a confession of guilt by the accused may form the basis of an indictment only if corroborated by all the available evidence in the case.

263. Pursuant to article 19, paragraph 2, of the Tajik Constitution and article 49 of the Code of Criminal Procedure, a detainee or remand prisoner has the right to be assisted by a lawyer (counsel) as soon as he is placed under arrest. If this constitutional right is violated, all testimony obtained from the detainee, remand prisoner or the accused and the outcome of investigative actions in which he or she is involved shall be discounted by the court as unlawfully obtained evidence.

264. In characterizing certain evidence as having been obtained in breach of the law, the court must state its reasons for excluding it from the body of evidence in the case, indicating the nature of the legal violation.

265. The testimony of an accused person or suspect obtained in the course of pretrial proceedings in the absence of counsel and uncorroborated by subsequent statements of the defendant in court shall be legally null and void, both when the involvement of counsel in the case or in the interrogation was mandatory, and when the accused or the suspect of his or her own volition refused the assistance of counsel during the pretrial investigation.

266. According to paragraph 3 of Decision No. 15 of the plenum of the Supreme Court dated 2 October 2003 on further improvements to judicial business in the light of amendments and additions to the Tajik Constitution, evidence shall be considered to have been obtained in breach of the law if, in the process of gathering and securing such evidence, the proper formalities established by the law of criminal procedure were disregarded, if the evidence was gathered or secured by a person or body not authorized to do so, or if recourse was had to methods not provided for by procedural norms. Evidence obtained in this way shall be legally null and void and may not be used as evidence.

Article 64, paragraph 2, of the Code of Criminal Procedure states that no evidence shall be established as fact by a court, procurator, investigator or person conducting an initial inquiry until it has been checked.

267. According to paragraph 5 of Decision No. 1 of the plenum of the Supreme Court dated 4 July 1992 on court verdicts, where a defendant changes the testimony he gave in the course of the pretrial investigation or initial inquiry, the court must carefully review that and other testimony, ascertain why the testimony was changed and, as a result of this careful review in combination with other testimony, evaluate it appropriately.

268. Any statement made under torture falls within the scope of article 354 of the Tajik Criminal Code (Use of coercion by a person conducting an initial inquiry or pretrial investigation or persons administering justice, with a view to obtaining testimony).

### **Article 16**

269. Having acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Tajikistan has undertaken to prohibit and criminalize acts of torture. This position is reflected in national legislation, including in laws, regulations and instructions and in law enforcement and educational practice.

270. Abuse of official position unlawfully to commit a person to a psychiatric hospital is an offence contrary to article 133 of the Criminal Code. Under article 134 of the Code, it is an offence to coerce a person into performing or not performing an action by threatening that person or his or her relatives, or by using violence, destroying or damaging property, or threatening to encroach upon the rights or legitimate interests of such persons.

271. It is an offence contrary to paragraph 143 of the Criminal Code to violate citizens' equality on grounds of sex, race, ethnicity, language, social or personal status, wealth, official position, place of residence, attitude to religion, beliefs, or membership of political parties or voluntary associations, if attended by violence, the threat of violence or abuse of official position.

272. Various handbooks, including "International human rights standards for law enforcement agencies", "Instruments to combat torture" and a human rights manual for staff of penitentiary institutions, available in Russian and Tajik, have been published in Tajikistan during the period 1999-2003 with help from the United Nations Development Programme and the Swiss Cooperation and Development Agency.

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