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## Briefing on the situation of torture and other ill-treatment and the shrinking space for NGOs in Tajikistan

For: Deputy Assistant Secretary of State for Central Asia Daniel Rosenblum, 2 September 2015<sup>1</sup>

### TABLE OF CONTENTS:

<b>TORTURE AND OTHER ILL-TREATMENT: KEY DEVELOPMENTS AND ONGOING CONCERNS</b>	<b>2</b>
Key positive steps in 2014 and 2015	2
Torture, ill-treatment and impunity are ongoing concerns	2
Torture and ill-treatment in the armed forces	3
End incommunicado detention	3
Independent monitoring of detention and army facilities crucial	4
Failure to provide adequate and comprehensive reparation to victims of torture	4
<u>Recommendations to the authorities of Tajikistan on torture and ill-treatment</u>	5
<b>THE SHRINKING SPACE FOR NGOS</b>	<b>6</b>
NGOs under threat of liquidation	6
The Law on Public Associations	7
<b>ANNEX</b>	<b>9</b>
1) CASE EXAMPLES: TORTURE AND OTHER ILL-TREATMENT	9
2) CASE EXAMPLES: NGOS TARGETED	12

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## TORTURE AND OTHER ILL-TREATMENT: KEY DEVELOPMENTS AND ONGOING CONCERNS

This chapter summarizes **key positive steps taken by the authorities of Tajikistan in the course of 2014 and 2015**; it provides up-to-date information on the ongoing nature of torture and other forms of ill-treatment; and it highlights **four issues that we think the authorities of Tajikistan should address**: the persistent practice of **incommunicado detention** at the onset of detention, torture and ill-treatment in the **armed forces**, **independent monitoring** of detention and army facilities, and the issue of reparation for victims of torture, in particular **compensation**. We have also identified **four key recommendations** that, if implemented, would significantly reduce incidents of torture and other forms of ill-treatment in the country. In the annex you find summaries and recommendations pertaining to **four cases involving allegations of torture**.<sup>2</sup>

### ***Key positive steps in 2014 and 2015***

Noteworthy positive steps taken by the authorities of Tajikistan in 2014 and 2015 include the following:

On 1 November 2014, the Ministry of Health adopted a form reflecting the principles contained in the Istanbul Protocol for use by medical personnel when examining detainees and recording torture or other ill-treatment. Starting in March 2015, the form was forwarded to medical institutions obliging medical personnel to use it when examining detainees at the onset of detention, i.e. before police fills in the detention record.

In February 2014, a Monitoring Group established as part of the Ombudsman's Office and consisting of Ombudsman Office staff and civil society activists began visiting detention facilities, but there are concerns about their ability to conduct unlimited and unannounced visits. (Refer to the chapter "Independent monitoring of detention and army facilities crucial" below).

In 2014, the families of two men who died in custody were the first known cases involving allegations of torture to have been awarded compensation for moral damages by civil courts in Tajikistan. However, we are concerned that the compensation payments granted by civil courts in these and three subsequent cases involving allegations of torture were neither fair nor adequate. (Refer to the chapter "Failure to provide adequate and comprehensive reparation to victims of torture" below).

In November 2014, the Criminal Procedure Code (CPC) of Tajikistan was amended to the effect that extradition must be denied when there is a risk of torture in the receiving country. It is not yet possible to assess whether this legislation is adhered to in practice in all cases.

In 2015, the authorities set up a working group to elaborate a concept for reforming the penitentiary system. In May representatives of the Coalition against Torture were invited to attend the working group's meetings and provide comments and recommendations.

### ***Torture, ill-treatment and impunity are ongoing concerns***

As recently as in February 2015 the Special Rapporteur on torture raised concern about ongoing torture and ill-treatment and about impunity for the perpetrators in the follow-up report to his mission to Tajikistan.

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<sup>2</sup> For further information on recent developments and key areas of concern regarding torture and other ill-treatment in Tajikistan, refer to:

- Joint document by the NGO coalitions against torture in Kazakhstan, Kyrgyzstan and Tajikistan, Amnesty International, the Helsinki Foundation for Human Rights (Poland), International Partnership for Human Rights (Belgium) and the World Organisation against Torture (OMCT): *Tajikistan needs to do more to end torture. An overview of current concerns*, February 2015: <http://notorture.tj/en/reports/tajikistan-needs-do-more-end-torture-overview-current-concerns>

- Joint document by the Coalition against Torture in Tajikistan, Amnesty International, Helsinki Foundation for Human Rights and International Partnership for Human Rights: *Tajikistan: Second joint follow-up submission to the Concluding Observations of the United Nations Committee against Torture*, May 2015: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fTJK%2f20451&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGS%2fTJK%2f20451&Lang=en)

The authorities do not publish comprehensive statistics on complaints, investigations, prosecutions, convictions and means of redress relating to cases involving allegations of torture and ill-treatment. From 2011 to the end of 2014, members of the NGO Coalition against Torture in Tajikistan documented more than two dozen cases each year of men, women and children who were allegedly subjected to torture or ill-treatment in pre- and post-trial facilities and in the armed forces. By the middle of August the NGO Coalition registered 25 new cases in 2015.

In its Concluding Observations issued to Tajikistan in 2012, the Committee against Torture expressed concern about the small number of convictions for violations of the Convention against Torture, despite numerous allegations of torture. In the period under review official investigations continued to be opened only in a small number of cases, and in many cases – whilst the incidence of torture or ill-treatment would appear to have been confirmed, at least partly – only disciplinary proceedings have been imposed. Many victims of torture did not file complaints for fear of reprisals.

### ***Torture and ill-treatment in the armed forces***

Since the beginning of 2014, the NGO Coalition against Torture in Tajikistan has documented 12 cases of torture and ill-treatment, including hazing, in the armed forces, both under the authority of the Ministry of Defence and the State Committee for National Security of Tajikistan (in particular, the Border Guards).<sup>3</sup> In six of these cases soldiers died (five of them were serving in the Border Guards). In one case a soldier serving in the Border Guards was injured so severely that he was left paralyzed (refer to the case of Shakhbol Mirzoev in the annex).

Hazing of new recruits by fellow soldiers is routine in the army of Tajikistan, although it is prohibited in domestic legislation. Reportedly, such abuse frequently takes place with the consent, acquiescence or approval of officers or other military personnel. In some cases officers themselves engage in abusing young soldiers.

During research for a study on the protection of human rights in the army conducted jointly by several Tajikistani human rights groups in 2011 and 2012, numerous soldiers reported that complaining about abuse was strongly discouraged by peers and commanding officers in military units and that anybody who complains would be labelled as a “traitor” and risked further abuse. Complaints submitted to senior officers were usually not investigated. Most soldiers questioned by the NGOs saw beatings, kicking and other abuse as a normal feature of everyday army life.

There are several cases where victims of abuse in the army or their families decided not to keep silent. In some particularly severe cases the Military Prosecutor’s Office instigated an investigation and perpetrators were brought to justice. The Office informed human rights groups in 2012 that it did not publish statistics on complaints, investigations, prosecutions and convictions relating to abuse in the army because such information was considered a state secret. The lack of transparency persists.

### ***End incommunicado detention***

Torture in Tajikistan ordinarily takes place during the first hours of detention, before the person’s detention is formally registered. During this period detainees are in many cases de facto held incommunicado, without access to lawyers, doctors or their family.

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

In June 2012, the Plenum of the Supreme Court of Tajikistan issued a decision on *The implementation of norms included in criminal and criminal-procedural legislation regarding torture prevention* that, among others, clarified that a person is considered a detainee as soon as he or she is deprived of his

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<sup>3</sup> For case examples, refer to:

- *Open Letter to Lieutenant-General Radjabali Rahmonali, Commander-in-Chief of Border Guards under the State Committee for National Security of Tajikistan calls for an end to the hazing of conscripts*, 29 May 2014 [www.iphronline.org/tajikistan-open-letter-about-hazing-20140529.html](http://www.iphronline.org/tajikistan-open-letter-about-hazing-20140529.html);

- *Open Letter to Major-General Emomali Sobirzoda, Commander of the Ground Forces of Tajikistan, on cases of hazing in military units under his authority*, 23 June 2015 [www.iphronline.org/uploads/9/0/2/7/9027585/tajikistan\\_open\\_letter\\_on\\_hazing\\_june\\_2015.pdf](http://www.iphronline.org/uploads/9/0/2/7/9027585/tajikistan_open_letter_on_hazing_june_2015.pdf).

or her liberty and entitled to all relevant legal safeguards.<sup>4</sup> However, this decision was principally directed at judges rather than law enforcement officials and is regarded as a recommendation rather than binding law.

In practice, law enforcement agencies and courts typically consider a person a detainee when the detention record is drawn up. Article 94 of the CPC requires officers to draw up a detention record within three hours of the detainee's arrival at the police station. In practice, it is often drawn up several hours, sometimes even days after the de facto apprehension.

The practice of using arrest for a purported administrative offence as an excuse to remand someone for the purpose of a criminal investigation until they are officially arrested as a criminal suspect continues in Tajikistan and there have been no legislative or other changes to address this issue. In Tajikistani legislation the safeguards pertaining to those detained on criminal charges are stronger, and do not apply fully to those detained on administrative charges.

### ***Independent monitoring of detention and army facilities crucial***

Tajikistan has not yet ratified the Optional Protocol to the Convention against Torture (OPCAT) and has thus not committed itself to setting up a National Preventive Mechanism (NPM), often citing financial limitations. According to the document *Government Information on the Implementation of UPR Recommendations* that was sent to the NGO Coalition against Torture by the Department on Human Rights Guarantees of the Presidential Administration of Tajikistan in March 2015, a Justice Ministry working group studied the question of ratifying OPCAT and establishing an NPM and concluded that "further analysis of all aspects" is needed and that the experience of other state parties to OPCAT should be studied.

The International Committee of the Red Cross (ICRC) has not had access to detention facilities in Tajikistan for the purpose of monitoring since 2004.

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

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

### ***Failure to provide adequate and comprehensive reparation to victims of torture***

We are aware of five cases of torture and/or deaths in custody where compensation was awarded by civil courts in Tajikistan for moral damages, but we believe that the amounts are neither fair nor adequate. In two of these cases, the victims (Safarali Sangov and Bahromiddin Shodiev) died in custody in 2011 and their families received 46,500 Somoni (approx. 6,640 EUR) and 14,579.30 Somoni (approx. 2,015 EUR) respectively in 2014. In 2015, civil courts awarded compensation for moral damages in three further cases. Shakhbol Mirzoev, who was tortured so severely that he was left paralyzed, was granted 20,000 Somoni (approx. 2,900 EUR) by a court in May 2015. On 6 August, the Military Collegium of the Supreme Court cancelled the decision and returned the case to the Military Court of Dushanbe for a new review. Torture victim Khushvakht Kayumov was granted a compensation of 16,000 Somoni (approx. 2,300 EUR) and the parents of Nazomiddin Khomidov, who died in custody in 2014, was granted 5,000 Somoni (approx. 710 EUR).

To our knowledge, other forms of reparation such as measures of satisfaction and guarantees of non-repetition have not been made available to torture victims in Tajikistan and legislation does not provide for such measures. Rehabilitation programmes are offered by NGOs, using their own financial resources.

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<sup>4</sup> International human rights law clearly states that a person is considered a detainee as soon as he or she is "depriv(ed) of liberty (...) in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority" (e.g. Art. 4(2) of the OPCAT).

### **Recommendations to the authorities of Tajikistan on torture and ill-treatment**

The UN Human Rights Committee, the Committee against Torture and the UN Special Rapporteur on torture have issued recommendations to the authorities of Tajikistan in recent years in order to address ongoing torture and other ill-treatment and further recommendations have been issued under the UN's Universal Periodic Review. We call on the authorities to implement all these recommendations in order to end torture and other forms of ill-treatment in the country.

**We believe that by implementing the following recommendations as a matter of priority Tajikistan would make significant progress toward eradication of torture.**

- The **President of Tajikistan and/or other senior government officials should publicly state that torture and ill-treatment are strictly prohibited** in all contexts including in **detention and in the armed forces** and that law enforcement agents and military personnel responsible for such crimes will be brought to justice.
- **Clarify in domestic legislation that a person is considered a detainee as soon as he or she is deprived of liberty and amend the CPC to ensure that it explicitly provides, from the moment of deprivation of liberty, for the right to notify a third person, for access to a lawyer of their choice and ensure detainees are informed of these rights at the moment of de facto apprehension.** This would be in line with recommendations issued to Tajikistan by the Committee against Torture in November 2012 (Paragraph 8) and the Special Rapporteur on torture in January 2013 (Paragraph 99(e)) and in February 2015 (Paragraph 12) respectively.
- Ratify the **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)** and establish an effective **National Preventive Mechanism**. In the meantime, grant **unimpeded access to the International Committee of the Red Cross (ICRC) and expert independent NGOs** working to prevent torture in Tajikistan, to **all places of detention as well as to conscription commissions and military units**.
- **Ensure that there are clear provisions in the legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture.**

## THE SHRINKING SPACE FOR NGOS

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

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

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

### ***NGOs under threat of liquidation***

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

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

NGOs usually do not know which government agency will inspect them, when the inspection will take place, and what documents and information will be required. In recent years NGOs have in many cases learnt of upcoming inspections through a phone call from the Ministry of Justice, the Labour Inspection or the Prosecutor’s Office one or two days before the inspection commenced. During this phone call the NGOs were given a list of documents they were expected to prepare for the inspectors. By law the tax authorities are entitled to conduct a so-called planned inspection of any organization once every four years and, in practice, they notify NGOs of such inspections in writing in advance. However, in order to conduct an audit, the Tax authorities are not legally required to provide advance notification.

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

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

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

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

### ***The Law on Public Associations***

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

The draft amendments evoked broad criticism by civil society in Tajikistan and the international community who accused the authorities of lack of transparency in the process of elaborating the draft amendments and failure to consult with NGOs. In a statement entitled *Tajikistan: Drop draft legislation restricting access to NGO funding*, that was jointly issued by 92 local and international organizations on 25 November 2014, NGOs expressed concern about attempts by the government of Tajikistan to unduly limit access of NGOs to funding.<sup>5</sup> They pointed out that in their view the draft amendments are in contravention of international standards protecting the right to freedom of association and pose a serious threat to NGO activities in the country.

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

However, on 21 January 2015, the Tajik news agency Avesta reported the Justice Minister as saying that “we have nothing against civil society organizations, but questions about what political views they support, what political activities they engage in, all this has to be monitored by the government.”<sup>6</sup>

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

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

Article 27, part 2 of the Law on Public Associations stipulates that the Ministry of Justice must enter donations, grants and property that public organizations receive from foreign governments, foreign legal entities or international organizations and NGOs into the Special Register of Humanitarian Aid for Public Associations in Tajikistan. It also requires the registration of funds received “through other physical and legal entities,” an ambiguous provision leaving it unclear whether the registration requirement also

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<sup>5</sup> The statement can be found on: <http://www.iphronline.org/tajikistan-ngo-law-appeal-20141125.html>

<sup>6</sup> News article by the news agency Avesta, entitled “The Minister of Justice explained the amendments of the Law ‘On Public Organizations’”, 21 January 2015 (in Russian): <http://www.avesta.tj/sociaty/30257-glava-minyusta-razyasnil-sut-popravok-v-zakon-ob-obschestvennyh-obedineniyah.html>

pertains to funds received from local sources. The law does not specify whether the registration requirement applies to all funds originating from these sources, irrespective of size. Additionally, the Law states that “public associations can carry out the programs that are funded by the above mentioned (entities or organizations) when the (Ministry of Justice) has been informed.” The Law provides no information about the procedure of registering funds, stating that the procedure will be defined by the Ministry of Justice.

## ANNEX

### 1) CASE EXAMPLES: TORTURE AND OTHER ILL-TREATMENT

#### **Lack of an effective investigation into Nazomiddin Khomidov's death in custody**

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

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

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

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

#### **Key recommendations:**

- Express concern that no effective investigation was conducted into the circumstances of Nazomiddin Khomidov's death in custody and urge that a thorough, impartial and independent examination be promptly instigated.
- Express concern at the low amount of compensation granted to Nazomiddin Khomidov's parents as moral compensation for her son's death in custody.

#### **Twenty-five-year old Shamsiddin Zaydullov died in police custody in suspicious circumstances in April 2015**

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

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

Tajikistan) and that he needed a lawyer. Then the investigator took the receiver and confirmed the information.

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

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

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

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

#### **Key recommendations:**

- Seek assurances that the investigation into the circumstances of Shamsiddin Zaydullov's death is conducted thoroughly, impartially and independently.
- Seek assurances that anyone suspected to be responsible of causing Shamsiddin Zaydullov's death is brought to justice without delay.

#### **Prison sentence of policeman who tortured 17-year old Khushvakht Kayumov reduced under prisoner amnesty and civil court grants inadequate amount of compensation to the victim**

On 27 April 2012, Mashraf Aliev, then officer of Yavan district police in the southern Khatlon region, summoned Khushvakht Kayumov from the village of Kulobod to the district police station, where he beat and kicked the young man and threatened to torture him with electric shock unless he confessed to a theft. Khushvakht Kayumov insisted he was innocent. Mashraf Aliev let him go home in the evening, but demanded that he return the next day. On 28 April, the beatings continued and Khushvakht Kayumov eventually signed a "confession" in order to avoid further abuse. Mashraf Aliev threatened that Khushvakht Kayumov would be beaten by 200 policemen if he later retracted his confession. Devastated by the experience of abuse, Khushvakht Kayumov decided to commit suicide. On 29 April, his relatives found him hanging from the ceiling of the family's barn in an unconscious state. They were able to save his life by quickly arranging for him to be taken to the local hospital.

On 30 April 2012, the Prosecutor's Office of Yavan district opened a criminal case against Mashraf Aliev for "torture" (Article 143-1, part 2 of the Criminal Code of Tajikistan) and "exceeding official responsibility" (Article 316, part 1 of the Criminal Code). On 7 September 2012, Yavan district court found the officer guilty of committing these crimes and sentenced him to seven years' imprisonment.

On the initiative of the Chairman of the Supreme Court of Tajikistan, the case was sent for additional investigation on 19 February 2013. On 11 December 2013, Kurgan Tyube city court found Mashraf Aliev guilty of the crime of "torture" under Article 143-1, part 3 of the Criminal Code of Tajikistan, which

punishes torture that has severe consequences including to a person's health. It sentenced Mashraf Aliev to seven years' imprisonment, to be served in a strict prison colony (in Russian: колония усиленного режима).

In October 2014, a claim for 300,000 Somoni (approx. 43,500 EUR) was lodged against the Ministry of Internal Affairs of Tajikistan to compensate for moral damages suffered by Khushvakht Kayumov as a result of torture. On 10 July 2015, Ismoili Somoni district court granted Khushvakht Kayumov a compensation of only 16,000 Somoni (approx. 2,300 EUR). A complaint lodged by his lawyers against the amount granted is currently pending with the court.

Earlier this year the Coalition against Torture in Tajikistan learnt that Mashraf Aliev's prison sentence was reduced to three years at the beginning of 2015 as a result of applying amnesty laws. On 30 April 2015, Sino district court in Dushanbe ordered that he be transferred to a settlement colony (in Russian: колония-поселение), a less strict type of colony than where he was held before. to serve the rest of his sentence. In practice, however, he was released early for good conduct, lives at home and reports to the authorities once a week.

#### Key recommendations:

- Express concern that the seven-year prison sentence of police officer Mashraf Aliev, who was convicted in 2013 for torturing Khushvakht Kayumov from the village of Kulobod in Khatlon region, was reduced to three years in 2015 based on the application of amnesty laws.
- Highlight that the United Nations Committee against Torture recommended Tajikistan to "ensure that the Law on Amnesty contain clear provisions stipulating that no person convicted for the crime of torture will be entitled to benefit from amnesties, and that such prohibition is strictly complied with in practice" (Paragraph 7) and urge the authorities to implement this recommendation as a matter of priority.
- Express concern that the compensation awarded to Khushvakht Kayumov for moral harm suffered as a result of torture is neither fair nor adequate.
- Tajikistan should also ensure, in line with Paragraph 21 of the November 2012 Concluding Observations of the Committee against Torture, "that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture".

#### Torture compensation given to Shakhbol Mirzoev not commensurate with the harm suffered

Shakhbol Mirzoev, who voluntarily enrolled for service in the Border Guards of Tajikistan in October 2013 after having finished his Commercial Law studies, was subjected to torture by medical and military personnel serving at a border guards unit, on 6 March 2014. Usmon Gayratov, a serviceman and medical attendant, harassed and attempted to humiliate the 22-year old Shakhbol. When the young man ignored the provocation, the medical

attendant grabbed and threw him on his back on the floor. As a result of the fall, he suddenly lost all sensation in his extremities. When others noticed that Shakhbol Mirzoev was not moving they lifted him up three times, tried to stand him up on his feet, but the young man fell down and hit his head on the floor. Then soldiers reportedly cut the soles of his feet with razor blades, pricked different parts of his body with needles, and poured boiling water over his back. When they understood that Shakhbol Mirzoev was really unable to feel his extremities, they left him alone in the clinic.



Doctors of the National Medical Centre later diagnosed him with a fracture to the fifth spinal disk, damage to various organs, and the loss of sensitivity in his arms and legs. Shakhbol Mirzoev had to be flown to Moscow because there are no specialists in Tajikistan for the operation he required. In order to cover the expenses, his family sold their house. Although the administration of the Border Guards of Tajikistan promised to cover all

Shakhbol Mirzoev was tortured by military and medical personnel at a Border Guards unit in March 2014. As a result, he is able to sit in a wheel chair a maximum of two hours per day. The rest of the time he has to lie down.

medical expenses, it only covered expenses incurred during his hospitalization at the National Medical Center in Tajikistan. Shakhbol Mirzoev is now seriously disabled. He is able to sit in a wheel chair a maximum of two hours per day. The rest of the time he has to lie down.

On 19 June 2014, the Military Court of Dushanbe sentenced Usmon Gayratov to nine years' imprisonment for "violating the code of military conduct" (Article 373, part 2 of the Criminal Code of Tajikistan) and "leaving somebody in a dangerous situation" (Article 127, part 1) and ordered him to pay 570,000 Somoni (approx. 83,000 EUR) to cover expenses incurred by the Administration of Border Guards for Shakhbol Mirzoev's medical treatment. It also sentenced Gulrukhsor Shirinova, a servicewoman and medical attendant, to 18 months' corrective labour for "negligent attitude to service" (Article 392 of the Criminal Code) and "violating the code of military conduct" (Article 373). Additionally, it ordered that she pay 15 per cent of her salary to the government. Gulrukhsor Shirinova was scheduled to be on duty in the medical unit the day Shakhbol Mirzoev was tortured, but she left the premises and put Usmon Gayratov in charge of the unit although she was aware that Shakhbol Mirzoev was not safe.

The authorities did not conduct a thorough, impartial and independent investigation into whether the commanding officer of the Border Guards unit committed the crime of "negligence" by not preventing the torture of Shakhbol Mirzoev.

In November 2014, Shakhbol Mirzoev applied to the Military Court of Dushanbe seeking compensation for material and moral damages. On 25 May 2015, the Court decided to award Shakhbol Mirzoev 97,265 Somoni (approx. 14,200 EUR) for material damages and 20,000 Somoni (approx. 2,900 EUR) for moral damages. We believe that the amount of damages granted to Shakhbol Mirzoev for moral harm was incommensurate with the harm suffered and is not in line with Tajikistan's obligations under international human rights law. On 6 August, the Military Collegium of the Supreme Court cancelled the decision and returned the case to the Military Court of Dushanbe for a new review.

#### **Key recommendations:**

- Express concern that the amount of compensation granted to Shakhbol Mirzoev by the Military Court of Dushanbe on 25 May 2015 for moral damages resulting from torture appears to be incommensurate with the harm suffered. Acknowledge that the Military Collegium of the Supreme Court cancelled the decision and returned the case to the Military Court of Dushanbe for a new review.
- Express concern that the authorities have not provided Shakhbol Mirzoev with the means for the fullest rehabilitation possible.
- Highlight that the United Nations Special Rapporteur on torture urged the authorities of Tajikistan in his February 2015 follow-up report to his mission to Tajikistan to "ensure that victims obtain redress and fair and adequate compensation, including the means for the fullest rehabilitation possible" (Paragraph 43). Seek assurances that this recommendation is implemented as a matter of priority.

## **2) CASE EXAMPLES: NGOS TARGETED**

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

Representatives of the Public Organization "Equal Opportunities", which supports and defends the rights and interests of LGBT people and a range of other groups in Tajikistan, have been subjected to several inspections in recent years by officers of the Interior Ministry's Department dealing with so-called "moral crimes". The NGO's representatives reported that during the inspections it became clear that senior representatives of the Ministry of Internal Affairs were concerned about "propaganda of homosexuality" in Tajikistan and intended to stop "the influence of Western countries" in this regard. During another inspection police officers urged representatives of the NGO to give them the names and contact details of people the NGO works with, as well as information about locations where LGBT people meet. They also urged NGO activists to refrain from supporting the LGBT community in Tajikistan and from carrying out "propaganda of homosexuality". Instead, they called on them to promote "traditional" values.

### **The Public Organization "Rushd": Liquidated in June 2015**

Another example is the case of the Public Organization "Rushd", which promotes education and participation in elections and works towards strengthening civil society in the Southern Khatlon region. In early February 2015, officers inspecting the NGO accused the group of violating the law as NGO

representatives were unable to present a document confirming re-registration after moving the NGO office into the flat of an NGO member. The NGO's director reported that they had to move offices for financial reasons and had informed the Ministry of Justice of this move in writing. During the inspection the NGO was told that unless it was able to rectify this and other violations of the law by 9 March 2015, the case would be passed to court and the organization would be liquidated. The NGO submitted a report on how it had addressed the authorities' concerns, but as there were public holidays from 7 to 9 March, the authorities only received the document on 10 March. Since the authorities received the NGO's report one day past the given deadline, they passed the case to court and on 17 June the court ruled to liquidate the group.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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