

HUMAN RIGHTS VIOLATIONS IN TAJIKISTAN

ALTERNATIVE REPORT TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

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In partnership with Tajik NGOs:

Bureau on Human Rights and Rule of Law

Centre for Human Rights

Collegiums of advocates of Soghd Region

"Health" Organization

Analytical consulting center of Human Rights

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General introduction

Authors of the report

The present report has been prepared by five Tajik NGOs together with the World Organization Against Torture (OMCT), namely:

- "Bureau on Human Rights and Rule of Law"
- "Centre for Human Rights"
- Collegiums of advocates of Soghd Region
- "Health" Organization
- "Analytical consulting center of Human Rights"

The report is also based on various meetings held during a preparatory mission that was undertaken by OMCT in October 2006¹. During this mission, meetings with NGOs, bilateral and multilateral agencies and Tajik authorities have been conducted.

General background

In 2005, the human rights situation in Tajikistan was greatly influenced by the February parliamentary elections, in which President Rakhmonov's People's Democratic Party confirmed its hold on power. According to OESCE, although the elections were conducted in a peaceful atmosphere, and showed several improvements in comparison to previous elections, they did not meet international standards and, in particular, serious irregularities were reported on the day of the election.

In fact, during the run-up to the parliamentary elections conditions for freedom of expression and media gradually deteriorated as the political opposition and independent media were subject to various forms of harassment. The situation remained the same after the elections took place, and new attacks on those expressing views which criticized official policies were reported throughout the year. Some examples illustrate this fact: two private printing houses were closed down, two independent TV-stations were taken off the air and a number of political opponents and journalists were criminally prosecuted on spurious grounds. The fact that presidential elections were scheduled for 6th November 2006 added further to the repressive situation in the Republic of Tajikistan.

In the context of the recent political upheavals in other countries of the region, which were formerly part of the Soviet Union, most recently in Kyrgyzstan in March 2005, authorities increased their efforts to monitor the activities of NGOs, especially those which receive funding from abroad. As a result of this policy, several NGOs were closed down, while others were denied registration for alleged violations of the Tajik law. Following a non-transparent process, the Tajik government introduced a new draft law on NGOs in late 2005, which, if adopted, would further strengthen control over NGOs. Part of the repressive policy towards Tajik NGOs was the fact that foreign embassies and international organizations were requested to inform the Tajik authorities about any existing contacts with domestic NGOs, media or political parties.

¹ Additional sources of information include meetings with and reports provided by organisations such as IOM and UNICEF, in partnership with Tajik NGOs, as well as reports by the NGOs Panorama and JAHON.

The functioning of the country's judicial system was flawed by the following reasons: limited independence of courts, excessively strong powers exercised by public prosecutors, the weak role of lawyers, the pronounced inequality of arms between the parties in judicial proceedings and the frequent admission of evidence obtained under torture or ill-treatment. For instance, the campaign against members of the banned Hizb-ut-Tahrir movement clearly shows that considerable numbers of people involved in merely peaceful religious or political activities were imprisoned following processes conducted in violations of international fair trial standards.

The moratorium on the death penalty was introduced in 2004 and remained in place; criminal code provisions establishing life imprisonment as an alternative to capital punishment entered into force. It should be noted that several protests which were organized in the Kurgan-Tyube prison in the Khatlon region in August 2005 served to attract attention to abusive treatment of prisoners.

According to the World Bank article of 12 October 2005, Tajikistan was considered as one of the poorest among the countries of the former Soviet Union, and according to this article 70 % of the Tajik population lived in poverty.

Estimates showed that more than 1 million Tajik worked abroad, and half of the country's six million inhabitants were dependent on the remittances sent home by their family members working abroad. Corruption and corrupt practices were widely spread throughout the Tajik society, which affected in a negative way both democratic and economic development.

More precisely, as many men worked abroad, women continued to carry the main responsibility for home and family and traditional rules regarding the role of the woman in the family prevailed. Such attitudes also increased the vulnerability of women to domestic violence. Although new legislation to promote equality between the sexes was passed, no significant changes took place at the end of the year. The situation of children also raised concern, and child labour and dropout of children from school were serious issues.

However, it should be noted that a number of positive steps were taken in order to combat trafficking in human beings, including the implementation of a 2004 law providing for measures to prevent trafficking and to assist trafficking victims, the creation of an interdepartmental commission to coordinate anti-trafficking activities of various state authorities and the elaboration of a government plan of action on trafficking issues for the period 2005-2010. Still, not enough efforts have been made in order to investigate trafficking cases and to prosecute the perpetrators as well as to provide protection to trafficking victims.

Human Rights Violations

General situation

Articles 1 and 4: Definition of torture and criminal legislation on torture

1. The absence of an appropriate definition of the term “torture” in the legislation of the Republic of Tajikistan.

The prohibition of torture is not adequately addressed in the Tajik Criminal Code and the sole definition is contained in a remark at the end of the Article 117 which incriminates systematic assault² and reads:

(1) The fact of causing physical or mental sufferings by systematic assault or other forcible means if it does not lead to the consequences specified in articles 110 and 111 of the present Code is punishable by up to 3 years of imprisonment.

(2) The same actions, if committed:

1. towards two or more individuals;
2. in relation to an individual or his relatives in connection with carrying out of his official, civil, or public duties;
3. in relation to a minor or individual knowingly for an offender being careless or in financial or other dependence of an offender, as well as an individual kidnapped or taken d) as a hostage;
4. in relation to a woman knowingly being pregnant;
5. by a group of individuals or in a conspiracy;
6. by hiring;
7. by torture or cruelty;
8. on the ground of national, racial, religious, locality hatred or hostility, as well as vendetta, - is punishable by imprisonment for a period of 3 to 7 years.

Remark: The notion of “torture” in this article and other articles of the present Code should be defined as the fact of causing physical or mental sufferings by systematic assault or other forcible means in order to force somebody to provide evidence or in order to force somebody to commit other actions against his own will, and also in order to punish this person, or for some other aims.

Therefore, the article does not establish torture as a crime in and of itself with autonomous sanctions.

Moreover the definition adopted in the remark in the article 117 is not consistent with the article 1 of the Convention Against Torture. Precisely, the definition omits the mention that state agent should be directly or indirectly involved in the commission of the act of torture. The presence of a state agent in this case is crucial and allows to distinguish the crime of torture from another crime where an attempt on the physical integrity of someone is being committed. Moreover, the definition contained in the article 117 is narrower than in the article 1 of CAT.

In addition to the fact, that the definition of torture provided in the note to the article 117 does not fully correspond to the norms of the CAT, it should be noted that there is an absence of

² This is not an official translation

the definition of the notion of cruel and inhuman treatment in the Criminal Code of the Tajikistan or any other national legislative acts.

2. The Tajik Criminal Code of does not contain a specific article, which provides a punishment of state agents who committed torture, and other cruel, inhuman or degrading Treatment or Punishment.

State agents who committed acts of torture can be punished in the Tajik legislation under article 316 and 354 of the Criminal Code.

The main weakness of article 316 is that it does not provide a clearly defined definition of the notion of torture. The absence of a definition limits the application of this article by judges who have no option but to interpret the offence as a dangerous attempt on one's life. Moreover, article 316 is not connected to article 117 mentioned above. As a result, practice shows that for crimes of torture and other cruel, inhuman or degrading treatment or punishment the provided sentences are the same and sometimes even less severe as for other types of crimes committed by state agents.

There are 2 limits of this article:

- 1) It can only be applied to torture committed by a state agent having the status of investigator, prosecutor or judge;
- 2) This article is applied only when the act of torture is committed in order to force the suspect, the charged, the victim and the witness to provide evidence or to force the expert to provide a conclusion.

Article 11: Arrests and condition of detention

1) Procedure of the arrest

According to Article 412 of the Code of Criminal Procedure, a person can only be detained in custody if they are suspected of committing a crime that carries with it a possible sentence of deprivation of liberty and when:

- 1) the person is caught committing the crime or directly after the crime is committed,
- 2) the eyewitnesses directly identifies the suspect, or
- 3) when evidence of the crime is found on the suspect or in his home.

Further, a person can be detained if he or she tries to escape, has no fixed place of residence, or is unable to produce identification.

However in practice, there are many problems which impede the normal functioning of the militia in the Republic of Tajikistan, which usually considers the suspect as the main source of information about a particular crime.

The investigations by the militia or the prosecutor are conducted with limited resources and in a limited time framework. Therefore the collect of information does not respect the international standards with regard to the arrested person. In this context, isolation of suspected person is common in order to obtain evidences or confession.

Moreover, persons suspected of having committed a criminal offence are denied the guarantees provided for during criminal custody by being kept in administrative detention which do not provide the same level of safeguards for their rights. This gives the investigatory bodies additional time to collect evidence against suspects without the time constraints set by the Code of Criminal Procedure.

The suspected persons may also be notified to present themselves as a witness and be in detained as long as the interrogatory is necessary. Lawyers also report cases of the person detained in the police department in order to “*have a discussion*” with the state agent and the need for this person to “*participate in operational procedures*”. This often implies that these discussions should be undertaken on the voluntary basis of the suspected person. In practice, however, the suspect finds himself imprisoned and cannot by himself stop the discussion and is completely left to the mercy of the state agents.

2) Restriction of contacts with family and lawyers in custody

The Code of Criminal Procedure does not guarantee the right for persons in custody to immediate access to legal counsel which may lead to the prevention of torture and ill-treatment during the first hours of detention.

Indeed, the Code of Criminal Procedure does not set out any requirements which obligate the investigatory body to immediately record the reason for arrest and time of arrest. The “*Protocol of arrest*” merely requires that this information be recorded after arrest, not strictly coinciding with the precise time of arrest.

Second, the Code of Criminal Procedure does not provide the arrested person with the services of a lawyer starting from the beginning of the arrest but only once the “*Protocol of arrest*” is notified. This means that the right to be provided with the services of a lawyer depends on the time of the establishment of the “*Protocol of arrest*” by the state agents.

Third, the Code of Criminal Procedure restricts the meeting of the arrested with the lawyer, even when the protocol of arrest is established.

Fourth, the person who is arrested as a witness in a case does not have the right to receive the services of a lawyer.

It should be noted that for financial reasons, most of the arrested persons cannot afford the services of a lawyer. The Government does not have the financial means to provide free legal assistance to those arrested who need it.

3) Role of the prosecutor in the arrest process

According to the “constitutional law on the prosecutor body of the Republic of Tajikistan” adopted in July 2005, the powers of the prosecutor are reinforced. The article 33 states that “only the prosecutor can issue arrest warrant” and he remains the sole competent body to determine the lawfulness of the arrest. This is a grave subject of concern for the majority of the lawyers and Human Rights defenders as the Prosecutor office has an ambivalent role and may have an interest in the detention of those who are to be prosecuted.

Here are the main violations of the rights of the detainee during arrest and detention:

1. The Tajik law does not oblige to register the time of the factual arrest of the person. This implies that several hours and even days can pass between the factual arrest and the establishment of the protocol.
2. The Criminal Code and the Code of Criminal Procedure do not provide grounds for arrests and custody.
3. The Criminal Code and the Code of Criminal Procedure do not regulate the question of the duration of the detention during the period when the case is sent to the court and during the opening of the criminal trial.
4. The Criminal Code and the Code of Criminal Procedure do not regulate the time framework of the pre-trial detention.
5. The Criminal Code and the Code of Criminal Procedure do not provide the necessity to inform the family of the detainee about his detention.
6. In conformity with the Code of Criminal Procedure, it's the prosecutor who is competent to notify the arrest and decide its lawfulness.
7. Under the Tajik law, it's not necessary for the investigation department to thoroughly justify that the person was detained for lawful reason/s.
8. The extension of the duration of the detention actually violates the Code of Criminal Procedures, as no motivation of the prolongation of the detention is needed within the initial 15 months of pre-trial detention.
9. The Code of Criminal Procedure of contains a chapter entitled "*The appeal against the detective, investigatory official and the prosecutor*" which allows the right to appeal against the mentioned officials to everybody except a person who is detained.

4) The living conditions in detention facilities

The UN Human Rights Committee during the examination of the initial report of the Government of the Republic of Tajikistan in august 2005 expressed its concern regarding the fact that human rights defenders and members of international organizations have limited access to penitentiary institutions, and only authorized NGOS have access to corrective institutions.

Prisoners in these corrective institutions suffer from numerous diseases and from the overcrowded institutions.

Several episodes of disturbances were noted during the period 2005-2006 in 3 detention facilities all at the same time.

In June 2006, a special prosecution office charged with the monitoring of colonies and prisons was opened in the Sogdyisky and Hatlonsky districts of Tajikistan. There was also established a monitoring body of the corrective institutions of Tajikistan, under the auspices of the General prosecution office of the Republic of Tajikistan. In practice, this monitoring body cannot control all the prisons in the country but the creation in itself of such body shows an important step towards better implementation of human rights in the Republic of Tajikistan.

Article 12: Prompt investigation in case of alleged act of torture

1) How often are acts of torture and other cruel, inhuman and degrading treatment committed in the Republic of Tajikistan?

There are no official statistics / data with regard to the acts of torture committed by state agents, nor any statistics of the number of complaints for alleged acts of torture or cruel, inhuman and degrading treatment in the Republic of Tajikistan. This fact is due to the absence in the Criminal Code of a consistent prohibition of act of torture. Since there is no such article in the Criminal Code, the bodies which are charged with the establishment of statistics are not able to establish statistics on the number of cases of torture committed by state agent in the Republic of Tajikistan.

One should also note the two following facts:

The prosecution offices do not demonstrate any willingness in investigating the complaints about alleged acts of torture, which implies, that sometimes the victims of torture or ill-treatment have to wait up to several years to have their case investigated.

The absence of an effective investigation of acts of torture is due to the absence of necessary infrastructure, like, for example, the absence of special instructions regarding the reception and examination of complaints of alleged acts of torture or ill-treatment, rather than to shortcomings of the Tajik legislation.

Below are described the main problems regarding the application of the obligation to undertake an effective investigation of the acts of torture.

2) The investigation of alleged acts of torture

In most of the cases, the victims of torture or their representatives apply themselves their complaints to the prosecution bodies which initiate to process of investigation. The prosecution bodies undertake the investigation of acts of torture rarely upon their own initiative.

The law defines two phases of the process of examination of a complaint: monitoring and preliminary investigation. If the preliminary investigation confirms the existing act of torture, then an indictment will be carried out.

One of the major problems of investigating such cases of torture is that the victims do not have the possibility to undergo a medical examination precisely at the moment of torture acts, which would confirm the acts of torture. This is due to the fact that the victims do not have access to an independent medical expertise.

Besides this, the article 125 of the Code of Criminal Procedure does not provide any time frame for the examination of the petition of the victim. This has a negative impact on the investigation on alleged act of torture, since it will much more difficult to prove the fact of use of torture by an state agent without a prompt medical examination.

The Tajik legislation does not contain an obligation for the detective, investigation official or the judge to provide the arrested person with the services of a doctor in the 24 hours following the arrest, after reception of the complaint relative to committed act/s of torture, which could then be sent to the prosecutor, or the director of the SIZO (a Russian term for investigative solitary confinement). The Code of Criminal Procedure does not establish any procedure for the undertaking of an independent medical expertise, claimed by the defendant or his defender. The absence of such norms in the Code of Criminal Procedure leads to the fact that it's practically impossible for the defendant or his defender to prove the fact of use of torture.

The Tajik legislation establishes a list of bodies, which are competent to examine the complaints regarding committed acts of torture. Among them are courts, prosecution offices

and the security services of the Ministry of Internal affairs and the Ministry of security. Most of the time, the investigation of supposed acts of torture is undertaken by prosecution offices.

Practice shows that the prosecution offices collaborate closely with the militia offices in the investigation of a crime, which does not allow an independent and objective investigation to take place in the context of a complaint regarding a committed act of torture.

There are also technical reasons at the basis of the non-effective way of investigating acts of torture: the prosecution bodies do not always have the necessary material means to perform in an independent way. In addition to this fact, there are not enough workers in the prosecution offices, compared to the number of workers in the militia offices.

In order to improve this situation, one should transfer the investigation of the acts of torture or ill-treatment to an independent body.

3) The absence of effective investigation of alleged act of torture

The absence of an effective investigation of an act of torture, and also the lack of a substantiated answer given to a complaint allows the victim to file an appeal to a superior prosecution body or to a court. In most cases, the superior prosecution body or the court agree with the position of the victim, cancels the illegal decision previously notified by the victim and send the case back to the lower body for additional investigation. After some time, the lower body provides a new decision to the victim, against which the victim once again files an appeal. This reinitiates the process during which the superior body cancels the illegal decision and sends the case back to the lower body for additional investigation. This procedure can last for several years and this practice is called “ping-pong”.

The main cause of this “ping-pong” practice is the fact that, although they don’t undertake an effective investigation of acts of torture, the investigators remain unpunished.

4) An independent investigation

At the basis of the ineffectiveness of the investigation of an act of torture, undertaken by the officials of the militia, lies the fact that the prosecution office does not have the necessary degree of independence which would have allowed it to distance itself from the militia.

According the Code of Criminal Procedure, the prosecution office has two functions: 1) criminal pursuit and 2) control of the lawfulness of the investigation, inquest and the operational searching procedure.

In practice there is often a conflict between the function of criminal pursuit and the function of control of the lawfulness of the investigation, inquest and the operational searching procedure, finally resulting in not taking into account the complaint about acts of torture of the victim.

Article 13: Right to file a complaint and protection of the witness

The present legislation of the Republic of Tajikistan provides the victims of torture, as well as their families and representatives, with a possibility to file a complaint against the authors of the committed act of torture. However, the law does not establish a procedure which ensures that his / her complaint has been received by the appropriate body.

In the case when the filed complaint does not contain sufficient element, the prosecution office can request additional investigation. According to the law, the duration of the investigation is of 3 days and in exceptional cases it could be extended to 10 days. But the legislation does not establish neither any methodical indication regarding the investigation to determine if an act of torture has been committed.

In conformity with the existing legislation, the prosecution office should provide a substantiated response to the statement, complaint and other inquiry of the victim (including inquiries relative to committed acts of torture). Practice shows that in general the answers of the prosecution office are far from being substantiated and do not describe the different steps of monitoring of the victim's complaint that were undertaken in order to reach the final decision.

The present Tajik legislation guarantees the right to file a complaint against a committed act of torture also to the persons who are held in the SIZOs (Investigation detention centers) and in other places where they serve their sentences. Thus, the sentenced persons have the right to file a complaint addressed to the administration of the institution or body, where the sentence is carried out, or to their superior bodies, to court, prosecution bodies or other governmental bodies. By law, the administration of the institution where the sentence is carried out doesn't have the right to censure the complaints of the detainees which are addressed to the prosecutor, to the court or other governmental bodies which control effectively the places of deprivation of freedom. However in practice, this rule is often not respected.

The detainees also have the right to send their correspondence to their lawyer. In this case, under the Tajik law, the administration of the institution where the sentence is carried out has the right to apply censorship to this correspondence.

It should be added that the complaints which are addressed to the bodies which are not competent to examine them are simply not sent by the administration of the institution where the sentence is being carried out.

1) The practical possibilities to address a complaint against committed acts of torture and ill-treatment and the existing difficulties

The persons who are detained in the SIZOs will encounter a major difficulty while addressing their complaint against alleged acts of torture by a state agent of the SIZO or by a militia official– the fact that both the SIZO and the militia belong to the same department. Therefore, their work is often intertwined.

In general, acts of torture and other cruel, inhuman and degrading treatment are undertaken during the first hours of the arrest, in the cameras of preliminary detention (CPD) and in the isolators of temporary detention (ITD). At this point, the arrested person finds himself in complete isolation from the rest of the world and thus it's practically impossible for him to file a complaint.

It should be noted that NGOs don't have access to the places of preliminary detention (ITD, SIZOs) and only a limited number of NGOs are allowed to access the detention facilities. Thus, it is impossible to obtain information regarding the true procedures of filing complaints about acts of torture by the detainees who have life sentences.

It should be noted that the systemic monitoring procedures undertaken by the prosecution office at the places of life imprisonment aim mostly to increase the quality of the documents of the penitentiary institution and not the condition of the prisoners, thus not increasing the respect of the rights of the detainees.

2) The examination of complaints regarding acts of torture and cruel treatment and the unexplained rate of rejection of complaints regarding acts of torture and cruel treatment

Human rights defenders and national NGOs note that often the workers of the prosecution office refuse to open a criminal case, notwithstanding the fact that all the elements are present in the complaint, and explain this by saying that there elements of a crime which confirm the guilt of the militia officials.

When the lawyer's client files a complaint regarding a committed act of torture, the lawyer himself asks for an independent medical expertise. In most cases this claim is not fulfilled (see above).

3) Does the author of the complaint regarding acts of torture have any access to the procedure of the investigation?

The Code of Criminal Procedure provides the right to have access to the case records on an exclusive basis to those who undertake the legal proceedings and the injured party. This limits greatly the possibility of the victim of torture to get informed with the material of the investigation if the opening of a criminal case regarding the complaint has been rejected and the victim is not recognized as being an injured party. In practice, the victims of torture are often informed too late of the decisions of the prosecution office regarding their complaint and then it's too late for the victims of torture to file an appeal against the decision of the prosecution office.

4) Guarantee of security to victims and witnesses

The present Code of Criminal Procedure does not contain any measures which guarantee the security of the victims of torture, their families and witnesses. As a result, the persons who have filed complaints relative to acts of torture to the prosecution office find themselves victims of psychological violence and sometimes even physical violence.

The absence of guarantees of their security implies that following the violence brought upon them, the victims prefer to abandon their complaint and thus the investigation of the complaint of torture acts is not effective.

5) The possibility of using by the court the evidence obtained by means of torture for establishing the court's decision.

Article 15 of the Code of Criminal Procedure prohibits obtaining evidence from an accused by means of violence, threats and other illegal means. However, the code does not contain any provision which stipulates that evidence obtained by means of violence and threats should not be taken into account during the legal proceedings and for pronouncing a sentence by the court.

Practice shows that the evidence obtained under torture is taken into consideration by the court. If the defendant refuses the evidence explaining that it was obtained under torture, then according to the Tajik legislation the judge should establish the reasons for the refusal of evidence obtained during the preliminary investigation and examine whether such act of torture did take place. But very often the judge simply refuses the refusal of the defendant, arguing that the defendant does not have any proof of the commission of the act of torture.

Violence against Women

Specific institutions to promote and protect women's rights

The Committee on Women and Family under the Government of Tajikistan has been established as a permanent body to address issues related to violence against women. It has promoted the Law on Gender Equality and the hotline for women victims of violence. It also has regional branches and relies on financial support from international donors.

Criminal legislation (Article 4 CAT)

1) Criminal legislation on violence against women

The previous Criminal Code of Tajikistan provided punishment for wrongful and/or harmful “*traditional*” practices such as paying a dowry for the future bride, bride kidnapping, etc., by the future husband. However, the new Criminal Code of Tajikistan does not criminalize explicitly this type of behaviour.

There is no provision in domestic law regarding *domestic violence* and several Tajik NGOs are lobbying for a draft law on the eradication, prevention and punishment of such violence, as well as assistance and protection of victims.

With regard to *human trafficking*, a draft law has been enacted. NGOs and the International Organisation for Migration have reached a common position that article 130 of the Criminal Code should be amended so as to include a comment in order to put it in conformity with the Palermo Protocol. More details are provided below.

2) Criminal legislation with regard to human trafficking

On 1st August 2003, the Criminal Code of the Republic of Tajikistan was complemented with article 130 on “Human trafficking”, which officially establishes that human trafficking is a criminal offence in the criminal justice system of Tajikistan.

On 15 June 2004, for the first time in the Central Asian region, was adopted a separate law entitled “The fight against human trafficking”, which establishes legal and organizational bases of the system to combat human trafficking. It also sets out state bodies and institutions which are competent to deal with cases of human trafficking, as well as to establish the legal status of the victim of human trafficking.

In order to implement the law described above and to coordinate the activity of different bodies and actors involved in the fight against human trafficking, a governmental decree of 4 January 2005 n° 5 established an “Inter-Departmental Commission Fighting Human Trafficking”. On the same day, a governmental decree n° 123 approved a regulation on the functioning of this commission. It is composed by 15 ministries, NGOs, OSCE and IOM.

Therefore, as a result of all the reforms undertaken by the government in the judicial system of Tajikistan, the judicial and penal system of Tajikistan were provided with judicial instruments aimed at fighting human trafficking.

But there are some limitations in the provisions adopted, in particular article 130 of the Criminal Code, which hinder the implementation of the law to punish those responsible for human trafficking.

Although at the basis of the correspondent Law N 47 dated 15.07.2004 and article 130 lies the UN Palermo Protocol and in spite of constitutional article 10, which guarantees compliance of national norms with international legal norms, the Tajik Legislator has coined a definition of the term “trafficking in human beings”, which contradicts the relevant international legal norm (the Palermo Protocol).

Thus, article 130, unlike the Protocol, defines the notion of “trafficking in human beings” as follows:

“ Trafficking in human beings is buying or selling human being with or without consent by means of deceit, recruitment, concealment, handing over, transportation, kidnapping, swindling, abuse of dependent position of the other, bribery to get the consent of a person controlling the other person, and other forms of coercion aimed at further selling, involvement into sexual or criminal activity, usage in military conflicts, in porno graphical business, in forced labour, servitude or similar customs, debt servitude or child adoption for commercial purposes, etc.”

The notion of trade with actual buying or selling of a human being which has to be proven is one of the major obstacles to its application.

Moreover, notwithstanding the progress that has been made regarding the adoption of legislation aimed at fighting human trafficking, and beyond the inadequacy of the definition of the crime, some other weaknesses still remain in the Tajik judicial system so as to apply the law³:

1. The lack of a normative-instructive basis in Tajikistan and training of judges on the existence and applicability of the new law: in general, judges are badly prepared and badly equipped to deal with the cases of human trafficking (absence of instructions, comments on the work of judges).
2. The punishment of the crimes related to human trafficking is not severe enough: some experts consider that the punishment for the crime of human trafficking does not reflect the high degree of the seriousness of the crime and the harm caused. The majority of convicted human traffickers are women who have minor children and very often they have a conditional liberation and they serve a short sentence.
3. The sentenced traffickers have the possibility to keep their revenues from human trafficking: there are currently no sanctions in Tajikistan which provide for the confiscation of revenues of human traffickers. The legislation of Tajikistan should be reformed in order to provide for the confiscation of propriety of those who are involved in human trafficking.
4. The punishment of the crimes related to the loss and falsification of documents is not severe enough: because the punishment for this type of crimes is not severe enough, they were widespread starting from 2002. At present, the still existing corruption of governmental officials favours the propagation of falsified documents. There should be more accountability on the behalf of state judicial officials on this issue.

³ IOM and SHARK Report, 2006, p. 72.

Practice of torture

1) The profile of authors of violence against women

According to a recent survey carried out by the NGO Panorama on the basis of cases registered by law-enforcement agencies, 27% of perpetrators of violence against women are members of the victims' family and in 22.3% they are their neighbours. Moreover, 73% of the aggressors were unemployed at the time of the crime.

2) Patterns of violence against women

According to the Department of Internal affairs of the city of Khujand, it regularly receives women who seek help for facts of physical violence, humiliation, insults, blackmail. Approximately 55-60% of the registered cases in the Department of Internal affairs are acts of domestic violence. Here are some examples⁴:

- In April 2004, the body of Mrs. Elena Mousaeva, living on 34 Street, apartment building n° 7, City of Khujand, was discovered with signs of violent death on it. The investigation revealed that it's the neighbor of Mrs. Mousaeva, Mr. A. V. Kim who has committed the murder: in fact, he came to her apartment, raped her and then strangled her. The trial has not taken place yet.

- In April 2005, approximately at 8 p.m., Mr. G. A. Moullojjanov went to see his bride Ms. N. N. Poulatova, and on the basis of strong jealous feelings, suspecting that the future bride had cheated on him, committed several corporal bruises on Ms. Poulatova. Consequently to these bruises, the future bride died right there in her apartment. Mr. Moullojjanov was sentenced to 17 years of imprisonment.

3) Domestic violence and suicide of women

There has been a multiplication of NGOs' crisis centres for women victims of violence throughout the country. They provide mainly social and psychological assistance to victims. Few centres seem to have the capacity to provide legal assistance to battered women and there are only a few shelters. So most women end up returning to their homes and virtually never file complaints.

The majority of cases documented by these centres relate to psychological violence. According to the women's rights NGO "Najoti Kudakon", these amount to 80% of the total of cases, whereas 18% of cases concern physical violence and 2% result in suicide by the victim.

Arguably only in some of the very few cases of domestic violence with physical evidence the victims are likely to file a complaint against their aggressor (most often the husband).

The lack of response and support within the family to women victims of violence has resulted in a large number of suicides. This phenomenon has been documented in particular in the Khatlon district. A survey concluded in the following causes: very low quality of life; the feeling of helplessness and depression of the victim; violence in the family; the fact that the victim is not informed about her rights; humiliation and lack of respect of the woman in the

⁴ Report of the international conference "Cooperation between women crisis centres and German police workers: ways to implement their collaboration in Central Asia", Dushanbe, 2006, p. 130.

family; the fact that there are no governmental structures or institutions which provide social assistance to families in crisis; un-punishment of criminals and other people who violate systematically the Tajik law; very high level of unemployment; prejudice; heartbreak⁵.

4) Torture and ill-treatment of women in police custody

Most women prosecuted and detained in Tajikistan have been accused of involvement in drug trafficking. These are mainly young and poor.

According to an account by a lawyer in Khujand⁶, a woman accused of selling drugs was arrested in June 2006. She admitted at first to selling 120g of drugs, which was only one of the seven charges against her. The lawyer informed she has been intimidated by the interrogating officers from the Department of Struggle against Drug Trafficking, threatened with the imprisonment of her daughter, and she has been forced to stand up and lay down successively for about 30 minutes. Four witnesses have allegedly made false statements concerning the charges she has denied and which have allegedly been fabricated by two agents of the above-mentioned department. So after denying three times the other charges under interrogation, she eventually claimed she had committed all crimes she has been accused of. Her lawyer is suing the two agents but fears the outcome may not be positive. The Department of Struggle against Drug Trafficking is under pressure by the government to arrest major drug traffickers hence the need to increase the charges against the defendant.

5) Trafficking and sale of women and children

According to information gathered by the International Organization for Migration (IOM), in 2002, 646 Tajik women were sold to local criminal groups. For the period 2004-2005, IOM registered 133 cases of human trafficking. According to experts, each year not less than 300 Tajik women are trafficked abroad with the aim of sexual exploitation.

The countries of destination of the trafficking and sale of women, children and teenagers are mainly Russia, Kazakhstan, Kyrgyzstan and Uzbekistan. The scenario of such exploitation is the following: a person (in this case a woman or a minor) is proposed to go to work in one of the countries mentioned above as a house aid, or an agricultural worker. In reality, the individual does work as it was convened but s/he is also forced to provide sexual favours to the supervisor and the guardians. After the individual finishes his or her work, s/he is very often chased from the house without the paid salary and without enough money to buy a ticket home. So, the person in order to survive is forced to beg.

Another trend registered is the so-called "sale of virgins" to men in the Persian Gulf and Russia through deception of young women who seek a better life abroad and are promised marriage. In many cases these women are raped while unconscious and then left on their own.

It is important to note that in many cases human trafficking occurs through regular channels of labour migration and disguised tourism or family visits (in the case of ethnic Uzbeks, from Northern Tajikistan to Uzbekistan). In many instances documents are falsified with connivance and corruption of state officials.

⁵ Report of the international conference "Cooperation between women crisis centres and German police workers: ways to implement their collaboration in Central Asia", Dushanbe, 2006, p. 37.

⁶ Lawyer from the Legal Aid Office # 1 of Khujand city, interviewed by OMCT on 12 October 2006.

6) Forced prostitution

Forced prostitution is most currently used in the Sughd district and in Dushanbe. This type of trafficking is undertaken with the means of deviousness or falsified marriages. According to IOM, until 2002 young girls were essentially sent to countries in the Persian Gulf, but during the last years trafficking of women for sexual exploitation is undertaken towards Russia. In many cases, these women-victims are in fact employed in order to satisfy the sexual needs of Tajik male labor immigrants, who do not have enough contacts with the local population and who cannot afford the sexual services provided by the local Russian prostitutes.

Measures to prevent acts of torture (Articles 2 and 10 CAT)

1) Effective legislative, administrative, judicial and other measures to prevent acts of torture (Article 2.1)

A Coordination Council has been established in 2006 in order to address women's rights and the implementation of the State's Policy for 2001-2010 with regard to women. It includes the Ministry of Internal Affairs, the State Committee on Women and the Family, NGOs, Prosecutor's Offices, among others. Prevention of violence against women is part of its mandate.

This Council is currently discussing the draft law on domestic violence and its outcome should be made public during the first quarter of 2007.

2) Education and information (Article 10)

Information has been provided on the existence of a new programme to train medical workers and to include in the police academy's curriculum information on how to deal with women victims of violence⁷.

According to NGOs interviewed in Dushanbe, gender-sensitive training of law enforcement agents has not shown much result⁸. There is a need to inform and sensitise the population at large to ensure adequate prevention of violence against women.

Arrest, detention or imprisonment (Article 11 CAT)

There is only one prison for women in Tajikistan. It was previously located in Khujand and has been transferred to Norak, southeast of Dushanbe, in 2004.

According to accounts by the very few institutions allowed to visit these facilities, there are some teenagers from 16 years of age held with women. Most inmates are held for involvement in drug trafficking (8 to 25 years imprisonment) and most of them come from the south, near the border with Afghanistan. New-born children can stay with their mothers in jail, and there are reports that children up to the age of 7 who have been born in the prison stay there with their mothers while the latter serve their sentences.

⁷ Interview with the Swiss Agency for Development Cooperation in Dushanbe, 13 October 2006.

⁸ OMCT and BHR workshop in Dushanbe, 14 October 2006.

From a number of 501 inmates, the number of women imprisonment should be now of 250 following a recent Presidential amnesty.

Investigation, remedy and redress (Articles 12 to 14 CAT)

1) Victims of domestic violence

In absence of a specific law on domestic violence, the Ministry of Internal Affairs issued in May 2006 a decree compelling state bodies to react to the information provided by crisis centres. Persons working in such centres have even claimed that in some cases the police themselves inform victims about the existence of such centres when they require assistance. However, its enforcement is insufficient.

The failure to give an accurate response to cases of domestic violence against women is due in part to the lack of sensibility of law-enforcement agents. The latter, just as the majority of the Tajik population, consider violence in the family as a private matter. So very few complaints are filed: according to some sources, 60-70% of victims of domestic violence do not address themselves to state bodies⁹.

Among the wrongful practices of state agents who deal with complaints from women victims of violence are: the unwillingness to file the complaint; impolite attitude towards the victim; frightening of the victim; unnecessary questioning of the victim; inadequate timing of the medical expertise of the victim; absence of protection of the victim. Another factor that plays a role in the woman-victim's reluctance to file a complaint against her husband-perpetrator is the fact that the woman is afraid to lose her unique source of financing. Besides, if the act is punished by a fine, it is needless to say that the money to pay the fine comes from the family budget¹⁰.

Indeed, impunity is a major problem as exemplified in the case below:

*In July 2005, a 13-year-old girl was raped, became pregnant and subsequently aborted. According to the information received, her parents were invalids and her brother was in Russia at the time. In September 2005, when the brother returned home, a complaint was filed. As the aggressor is a relative of the prosecutor, no court proceeding was initiated in this case.*¹¹

One of the main issues of concern of women's rights NGOs in Tajikistan is the sustainability of the crisis centres and the lack of shelters for women victims of violence. They rely on foreign donors and no support is given from the government as no resource from the state budget is allocated to this. The draft law on domestic violence and its enforcement should ensure that protection as well as legal and psychological assistance are provided to victims.

Another major issue of concern is the lack of shelters (there is only one in the whole city of Khujand, for instance), so most victims have no safe haven and have to return to their homes.

⁹ Report of the international conference "Cooperation between women crisis centres and German police workers: ways to implement their collaboration in Central Asia", Dushanbe, 2006, p. 141.

¹⁰ Report of the international conference "Cooperation between women crisis centres and German police workers: ways to implement their collaboration in Central Asia", Dushanbe, 2006, p. 130.

¹¹ Information provided by a crisis centre in Khujand, 12 October 2006, which supports the victim with rehabilitation and legal counselling.

2) Human trafficking

Investigation and legal remedies

Since the adoption of new legislation aimed at fighting human trafficking, the General prosecution office of the Republic of Tajikistan has investigated 20 criminal cases related to human trafficking¹². In 2006, a special operational-investigative group aimed at investigating cases of human trafficking for the purpose of sexual exploitation was created as a section of the Prosecution office of the Sughd region. From the beginning of its work (March 2005) until the end of 2005 the group had opened 35 criminal cases against 50 individuals in application of article 132 of the Criminal Code of the Republic of Tajikistan ("Recruitment of persons for exploitation"). Cases filed against 30 accused persons were sent to Court and 20 of those indicted are being searched by the police.

However article 130 of the Criminal Code, which defines and deals specifically with human trafficking, still awaits application:

Out of statistics for 2005 and 2006 presented by the General Prosecutor's office it can be seen that not a single case was directed to court with the accusation of "human trafficking" corresponding to article 130. Instead, all such criminal cases have been qualified as "recruitment with aim to exploit" (article 132), which does not correspond to the State's obligation to fight trafficking in humans¹³.

Redress and protection of victims

Until 2005, there existed no institution, no special centre for the protection of victims of human trafficking in Tajikistan. This fact is the weakest point in the fight against human trafficking. Usually, the victims of human trafficking do not want to seek aid and assistance from State bodies because they are afraid of being persecuted. It is also due to the lack of mechanisms that defend the rights of witnesses and plaintiffs in Tajikistan.

The IOM programme for fighting human trafficking has recently opened 2 specialized centres (shelters) providing help and assistance to victims of human trafficking. In these shelters, victims are provided with protection, rehabilitation and re-integration in society. At present, the IOM office in Tajikistan provides aid and assistance to more than 40 victims of human trafficking.

IOM is also working to facilitate the return of trafficked women to the country. Until now 50 women victims of trafficking have been returned from Arab countries, 20 of them in 2006 alone (according to the IOM office in Dushanbe¹⁴).

However these programmes still do not address systematically the situation of trafficked children and forced labour workers. According to the same sources, they outnumber the cases of women victims of trafficking.

¹² IOM and SHARK 2006 report, p. 71.

¹³ Report of the "International Conference on Prevention and Combating Human Trafficking – Exchange of Experience, Development of Strategic Approaches and Strengthening of Cooperation" held on 15-16 September 2006 in Dushanbe, presentation by Mr. A.Urunov, Chief Aide to the Prosecutor of Sogdyisk oblast.

¹⁴ Information from an IOM representative interviewed on 11 October 2006 in Dushanbe.

Recommendations

The State of Tajikistan should take the following measures in order to comply with its international obligations under the Convention Against Torture:

- 1) Make the necessary annotations to article 130 of the Criminal Code on “Human Trafficking” to ensure interpretation in conformity with the Palermo Protocol and carry out training activities for judges and prosecutors.
- 2) Adopt the draft law on domestic violence in consultation with civil society and ensure its application in all areas (prevention; investigation, prosecution, trial of authors; protection and redress of victims).
- 3) Allocate the adequate state budget for measures aiming at the protection and rehabilitation of women victims of violence, including shelters, and their accessibility to legal remedies.
- 4) Inform and sensitise the population, in particular at schools, in order to inform them about violence against women and domestic violence in general, and so as to change mind sets with regard to stereotypes on the role of women in society.

Violence against children

General background: Children's rights situation in Tajikistan

Almost half of the population is under 18 in Tajikistan.¹⁵ Many children living in Tajikistan have to face actual difficulties such as:

- limited access to health infrastructures and workers;
- low school attendance rate;
- insufficient cooperation between the criminal justice process and the social welfare process leading to deprivation of liberty and inappropriate solutions for juveniles who are really in need of social welfare protection. This is exacerbated by the lack of social diversion and alternative programmes for 15-18 year-old children;
- high number of orphans as a consequence of the civil war during the 90's (60'000 children became orphans)¹⁶ and their poor living conditions: "Children, who are being in the establishments, lose the right to education in family, because they become practically isolated. The inadequate state maintenance of establishments do not provide to children of a worthy life and free development. Recently, efficiency of a premise of the child in orphan's establishment is put under doubt. The Commission on the children rights together with UNICEF in Tajikistan conducts the project on de-institutionalization children's establishments, but despite of this premise of the child in establishment remains in the priority way of rendering assistance to poverty and large families."¹⁷

Specific governmental department, agencies and programmes promoting and protecting children's rights and needs

- Various Ministries deal with children in their activities: ministry of health, ministry of education, ministry of labour and social protection as well as Ministries of Justice and Internal affairs in a certain way. There is also a Committee on affairs of youth.
- In the Parliament, Committee on Social Issues, Health, Science, Culture, Women and Youth of the Upper Chamber and the Committee on Science, Education and Youth of the Lower Chamber debate with questions related to children.
- The National Commission on the Rights of the Child is in charge of the drafting of the State party report to the UN Committee on the Rights of the Child (CRC) and of the follow-up of the recommendations drawn up by CRC members. There is no other specialised entity of that kind for other UN Committees in Tajikistan.

¹⁵ See UNICEF website : <http://www.unicef.org/french/infobycountry/Tajikistan.html> and 2006 figures from the US State department: 37.9% of the Tajik population is between 0 and 14 years old (male 1,396,349/female 1,375,168); median age is 20 years old.

¹⁶ Derevenchenko Galina, Observance of the child rights in orphanages, boarding schools and other specialised establishments for children in the Republic of Tajikistan. The report on monitoring, 2006, by the Tajik Bureau on Human Rights and two local NGOs: "Health" and Saodat".

¹⁷ Derevenchenko Galina, Observance of the child rights in orphanages, boarding schools and other specialised establishments for children in the Republic of Tajikistan. The report on monitoring, 2006, by the Tajik Bureau on Human Rights and two local NGOs: "Health" and Saodat".

- The National plan of action on protection of the child rights and interests has been accepted to implement the recommendations of the CRC following the Tajik initial report to that Committee.¹⁸
- At local level, there are Child rights departments or committees. A reform in 2007 should enable them to get jurisdiction to deal with individual cases of violence against children and receive complaints of such matters.

- Residential institutions for children run by the State at national level:

Ministry	Type	Type of children	Age	Number of institutions
Ministry of Health	Infant Homes	Deprived of parental care	0-6	5
Ministry of Education	Boarding schools	Deprived of parental care	7-14	9
	Special school	Conflict with the law	7-14	1
	Boarding schools	Disability – hearing or sight	7-14	4
Ministry of Labour and Social Protection	Boarding schools	Disability	7-14	3
	Vocational School	Disability	14-18	2
	Special Vocational School	Conflict with the law	14-18	1
Ministry of Justice	Youth Detention Centre	Conflict with the law (post-trial)	14-18	2 (one for girls, one for boys)
Ministry of Interior	Child welfare centre replacing the temporary isolation centre receiving children in conflict with the law in pre-trial detention	Child victims	7-18	1

The Government of Tajikistan Country Report for the 2nd International Conference “Children and Residential Care” in Stockholm (May 2003) included the following table, which shows the residential institutions run by the State for children. The table does not include the institutions for children run at the local level. Nor does the table include adult institutions, which also accommodate children.

List of closed institutions:

- Special School
- Special Vocational School
- Juvenile Colonies

There is also a Children’s Rehabilitation Centre “Oasis” that works with homeless and street children, children in conflict with the law and dispenses educational activities to children. It has no status of general educational establishment like those mentioned in the above table but provides additional skills. It also exists an Open Centre for children which is an educational institution currently receiving around 50 children.

¹⁸ Derevenchenko Galina, Observance of the child rights in orphanages, boarding schools and other specialised establishments for children in the Republic of Tajikistan. The report on monitoring, 2006, by the Tajik Bureau on Human Rights and two local NGOs: “Health” and Saodat”.

The system is such that there is no possibility for adoption for children placed in orphanages and alternative guardianship remains insufficiently developed.

The access to closed institution for independent monitoring by NGOs for example is very difficult. As an exception, UNICEF can regularly visits children in the special school.

Relevant legal background: Legislation focusing on children

1) Legislation on child protection and guaranteeing the rights of the child

International law

The Tajikistan has ratified the UN Convention on the Rights of the Child on 26 October 1993. It also ratified both Optional Protocols to the CRC on 5 August 2002.

National law focussing on children

- **Constitution:**

- art. 34: "A mother and child are entitled to special care and protection by the state. Parents are responsible for the upbringing of children, and adult children of working age are responsible for care and provision of parents. The state cares for the protection, upbringing, and education of orphaned children."

- art. 35: "Every person has the right to work, to choose their profession or job, and to have work protection. Wages for work cannot be less than the minimum wage. Any limitation is prohibited in labour relations. Equal wages shall be paid for the same work. Forced labour is not permitted, except in cases defined by law. Using women and child labour is prohibited in heavy and underground works and in harmful conditions."

- **Other:**

- no global law on childhood or protection of children
- Regulations about a boarding school in the Republic of Tajikistan
- Law about education

2) Provisions restricting the rights of the child

Despite the interpretation of corporal punishment as part of the prohibition of torture and other cruel, inhuman and degrading treatment by several UN Committees,¹⁹ it is not entirely banned in Tajik law.

For instance, the Law about education, permits, as an exception, that a child having reached the age of 15 years old is punished "for regular illegal actions and rough infringements of the

¹⁹ In 1982, the Human Rights Committee, already considered in its General Comment n°7 on article 7 of the International Covenant on Civil and Political Rights prohibiting torture or other cruel, inhuman or degrading treatment or punishment, that "the prohibition must extend to corporal punishment, including the excessive chastisement as an educational or disciplinary measure" and that "the article clearly protects not only persons arrested or imprisoned, but also pupils and patients in educational and medical institutions".

More recently, the Committee on the Rights of the Child decided that "corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading" in its General Comment n°8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.

educational institution's charter", without précising the limit of the punishment. Punishment is also allowed by Regulation on comprehensive schools when a child frequently breaks the order and rules of activity of the collectiveness and damages the school material. Moreover establishments' charters are not prohibited to authorize punishment that can be reprimand and strict reprimand but also exception. There is no exhaustive list of cases when such punishments can be applied, and, even though exception should be defined by the board of school, that can theoretically leave wide interpretation for the staff to use punishment, even degrading and cruel forms.²⁰

Moreover, disciplinary sanctions are not totally prohibited in the Tajik law. As a result, that kind of punishment is used in closed institutions, with acceptance by managements and hierarchy.

Criminal legislation: Child aspects

1) Specific criminalisation of torture and other cruel, inhuman or degrading treatment or punishment when the victim is a child

Regarding the crime of rape, more severe penalties are provided for in case the victim is a "minor woman" (the penalty is aggravated from a period of 3 to 7 years to a period of 7 to 10 years) and when the victim is "a girl at the age under 14 years old" (the penalty is aggravated until a period of 15 to 20 or even death penalty).²¹

2) Other violent offences (criminalisation of acts specifically when the victims is a child or more severe penalties when the victim is a child)

Strengthening of penalties when the child is the victim

Several offences are more severely punished when the victim is a child:

- recruitment of people for exploitation: "towards a minor" (art. 132 of the Criminal Code)
- sexual intercourse and other actions of sexual character with an individual under 16 years of age: "committed by a parent, teacher or other person who is imposed responsibilities for upbringing" – which generally concerns children (art. 141 of the Criminal Code)
- debauched actions: "committed by a parent, teacher or other person who is imposed responsibilities for upbringing" and "committed against juveniles" (art. 142 of the Criminal Code)

Corporal punishment

At present, in the Tajik legislation, only corporal punishment as a sentence for crime is prohibited. There is no explicit prohibition of corporal punishment in the home, in schools or as a disciplinary measure in penal institutions or in alternative care.²²

Corporal punishment is unlawful as sentence for crime. Indeed, it is not among the sanctions mentioned in art. 87 of the Criminal Code for children under the age of 18 years. Art. 9 of the Criminal Code affirms that punishment and other criminal law measures shall not be intended

²⁰ Derevenchenko Galina, Observance of the child rights in orphanages, boarding schools and other specialised establishments for children in the Republic of Tajikistan. The report on monitoring, 2006, by the Tajik Bureau on Human Rights and two local NGOs: "Health" and Saodat".

²¹ www.legislationline.org/legislation.php?tid=192&lid=3700&less=false .

²² Ending legalised violence against children, Global Initiative to End All Corporal Punishment of Children, 2006, London, p. 44.

to cause physical suffering or to demean a person. Art. 14 of the Penal Enforcement Code states that the principal ways of correction applicable to persons convicted of offences are imprisonment, encouragement of a change in attitude, employment, general education, vocational training and community-based sanctions.

Moreover, abuses of official position and improper exercise of authority are considered as offences under articles 314 and 316 of the Criminal Code and art. 10 expressly prohibits torture or cruel, inhuman or degrading treatment or punishment.

It should be noted that corporal punishment is lawful as a disciplinary measure in penal institutions. Practice shows that boys are often subjected to corporal punishment and periods in isolation at the juvenile colonies.

Also should be emphasized the following fact: there is no explicit prohibition of corporal punishment in other institutions and forms of childcare except schools.

OMCT is concerned that corporal punishment shall be prohibited in all situations and settings.

Practice of violence against children

1) Practice of torture against children

Mr. Romeo Kamilov, a trainer at the internet center "Online" at the Public school n°10 of the I. Somony region recalls the two following cases: one committed against himself by his own parents when he was a child and another one that he witnessed himself as a teacher in school.²³

a- "When I was a small child and until I turned 17, my parents beat me on a regular basis. They beat me whenever I had an argument with somebody, or whenever I broke something. Very often, they beat me so hard that I wanted to commit suicide straight after the beatings. Then, when I turned 17, they stopped beating me. Still, I carry a feeling of hatred towards my parents and in general towards people who humiliated me morally and physically when I was a child."

b- "I recall of a particular case of corporal punishment which took place in the school where I was teaching. It took place in winter 2003. I was teaching a seminar when one of the students went out of the classroom. He came back to the classroom in about an hour and straight after him came in the teacher with the vice-director of the school. Then the vice-director of the school asks the teacher if it was the boy who went out of the classroom earlier who broke the window of the school. The teacher said yes. At this moment, the vice-director started to beat the poor boy in front of all students on the face; the face became all red and swollen from the beatings. I was so struck by the scene that I couldn't move. Then, after the class ended I decided immediately to file a complaint to the Director of the school against such horrendous teachers. I don't know what became of the teachers in question; I only know that after what happened to him, the poor boy changed school."

2) Practice of other acts of violence amounting to cruel, inhuman or degrading treatment or punishment against children

Punishment including corporal punishment and cruel, inhuman or degrading treatment exist in institutions receiving and caring of children. Following is a list of such punishment that can be applied against children:

²³ This testimony is extracted from the popular forum, dated of November 5 2004 on www.connectuz.net/

- public reprimand,
- temporary prohibit a child to visit relatives and friends,
- put a child in a corner,
- put a child in a corner and force him/her to hold a stool above his/her head for several minutes,
- limit the food,
- collective punishment,
- additional tasks and duties such as wash toilets, erase linen,
- etc.

Here are several **cases** of particular humiliating punishments:²⁴

- ✓ In one of the boarding schools of Sughd region (in the North), pupils of an institutions reported that, as a punishment for infringement of the order and default of duties, the director beat the pupils with sticks all over their bodies, especially legs that resulted in multiple bruises. Latter, the establishment had been visited by the Public prosecutor office which met pupils complaining on cruel treatment and the director was fired.
- ✓ To punish a first grader that had stolen the pen of another pupil, the tutor decided to write the word “thief” on the forehead of the boy and forced other pupils to read it loudly.
- ✓ After a tutor lost the equivalent of 0.45 US\$, he forced all the pupils (boys) to remove all their clothes and go out outside whilst it was snowing for 20 minutes.
- ✓ In reaction to numerous escapes of a pupil aged 16 years old from a summer house, a nurse tied him with a cord to a crossbeam of the house.

A consequence of those frequent cruel and degrading treatments is the escape of children from the institutions (this is the main cause of runaways). However this remains a vicious circle since the child who has run way is perceived as an infringer of the discipline and can be punished for that. In one establishment, tutors do not hide that they sometimes severely punish runaway children through beatings on the hands, the head or verbal humiliation.²⁵

Moreover, no procedure exists in the child institutions enabling children to complain when they suffer such punishment.

Arrest, detention and imprisonment: Children in conflict with the law

1) Absence of juvenile justice system:

No juvenile justice system as such exists in Tajikistan: “There is no separate legislation governing juveniles in conflict with the law, no separate procedures for juveniles, no specific and specialised judicial authority to hear cases against juveniles, and no specific, separate and comprehensive set of sentences that can be applied to juveniles.”²⁶ Only some

²⁴ Cases taken from : Derevenchenko Galina, Observance of the child rights in orphanages, boarding schools and other specialised establishments for children in the Republic of Tajikistan. The report on monitoring, 2006, by the Tajik Bureau on Human Rights and two local NGOs: “Health” and Saodat”.

²⁵ Derevenchenko Galina, Observance of the child rights in orphanages, boarding schools and other specialised establishments for children in the Republic of Tajikistan. The report on monitoring, 2006, by the Tajik Bureau on Human Rights and two local NGOs: “Health” and Saodat”.

²⁶ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

dispersed provisions are dealing with children in conflict with the law in the Criminal Code and the Criminal Procedural Code.

Some improvements are however engaged since UNICEF provides training on children's rights to police officers and a project (it is now at draft stage) on the training of judges on children's rights is currently discussed.

2) Age of criminal responsibility:

Article 23(1) of the Criminal Code sets 16 years old as the legal age for criminal responsibility. However there is an exception according to which the age of criminal responsibility is lowered to 14 years old in case of the commission of a serious offence.²⁷ Cases of children aged between 14 and 16 who commit a minor offence are dealt with by the Commission of Minors.

According to OMCT, those age limits are artificial. "In reality, the age of criminal responsibility in Tajikistan is much lower, as children who commit offences under the age of 14 can be sanctioned for having committed criminal acts by the Commission on Minors. It is a matter of concern that there is no minimum age below which a child can be taken to have no ability to commit an offence. Thus, children as young as 7 can be removed from their family and sent to a special school".²⁸

3) Children over the age of criminal responsibility

Arrest

There is no police officer specialised in child protection and only a minority have been trained to deal with children suspected of having infringed the penal law.

During the arrest, if the child tries to escape or become violent, the police officer(s) can use handcuffs and straight jackets but not guns.²⁹ Once arrested, there is no special procedure. The officers have to determine the age of the minor and will transfer the case to the Commission on Minors if s/he is under 14 or under 16 but has committed only a petty offence. If the minor is over 16 or if s/he has been arrested for a serious crime, the ordinary procedure, that is to say the one applied for adults, is applied. Thus, the child can be kept in police custody for many hours, precisely for a maximum of 24 hours and even 72 hours with the consent of the prosecutor (for instance when the parents cannot be found immediately or do not live locally). A lack of facilities dedicated to minors in police stations in addition to a lack of child specialists lead the police officers to send arrested children to pre-trial detention premises (it used to be the temporary isolation centre before its closing in 2005) for 3 days.

²⁷ Article 23(2) of the Criminal Code gives a list of those serious offences: Homicide (Art 104), intentional major bodily injury (Art 110), intentional minor bodily injury (Art 111), kidnapping (Art 130), rape (Art 138), forcible act of sexual character (Art 139), terrorism (Art 179), capture of hostage (Art 181), theft of weapons, ammunition and explosives (Art 199), illegal trafficking of narcotics (Art 200), theft of drugs and precursors (Art 202), illegal cultivating of plants containing narcotic substances (Art 204), destruction of transport or ways of communication (Art 214), hooliganism under aggravating circumstances (Art 237, p.2 and 3), larceny (Art 244), robbery (Art 248), extortion (Art 250), robbery with extreme violence (Art 249), hi-jacking of a vehicle or other means of transportation without the purpose of stealing (Art 252), intentional damaging or destruction of property under aggravating circumstances (Art 255).

²⁸ See The Government of Tajikistan Country Report for the 2nd International Conference "Children and Residential Care", Stockholm, May 2003. Extract from Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

²⁹ Art. 429 of the Criminal Procedural Code.

At the end of three days, a decision is made whether to charge the child and undertake a preliminary investigation. At that stage, the child is either released or sent to pre-trial detention.

According to OMCT, police custody of children is over-used and too long.

Pre-trial detention

Juveniles charged with more serious offences (i.e. attracting more than one year's deprivation of liberty) and if exceptional circumstances have been determined (such as the need for investigations or the very seriousness of the offence or the obstruction of justice by the minor)³⁰ can be held in pre-trial detention. The time period for pre-trial detention shall not exceed two months and three months if the prosecutor considers that more time is needed to investigate. However, for grave crimes and in exceptional circumstances, minors can be held in pre-trial detention for up to one year and three months.³¹

As a rule, children should be kept separately from adults in pre-trial detention. However, in exceptional cases, with the prosecutor's agreement, children can be placed in the same cell with an adult.³² In practice, children and adults are reportedly generally mixed in pre-trial detention. This is the case for instance at the Nurek prison receiving both girls from 16 (officially, but they may be younger in practice) and women.

OMCT is particularly worried about the fact that, contrary to international standards, pre-trial detention of minors is far from being used as a measure of last resort by Tajik prosecutors and that it exists pre-trial detention centres that receive both adults and children. Moreover, although the Criminal Procedural Code provides for alternatives to pre-trial detention, such as the supervision of parents, guardians or trustees of the administration of the closed establishment, who guarantee the appearance of the juvenile in court or before the investigator, this appears not being frequently used in practice.

Proceedings during the trial and possible sentences

“The Tajikistan criminal justice system does not have juvenile courts, specialist juvenile judges or a separate form of criminal procedure for children. There are no professionals within the criminal justice system dedicated to dealing specifically with children, whether as offenders, victims or witnesses. Judicial hearings for juveniles do not differ from those for adults, except to the extent that there are additional safeguards accorded to them due to their age. In addition, there is no system of specialized teaching and training for professionals working in the law enforcement agencies and bodies administering justice.”³³ The additional safeguards for minors are for instance reduced sentences or consideration by the Court of all the circumstances of the case and the living conditions of the child or the obligation to be provided with a defence counsel. Except those few rules, children in conflict with the law are dealt with adult criminal justice system and are tried in adult courts.

During both the preliminary investigation and trial involving a juvenile, his/her age, his/her living conditions, the causes of his/her criminal act and the influence of adults or other participants in the crime must be taken into consideration.³⁴ Those aspects are also taken into account with the child's upbringing, the degree of her/his mental development, his/her health and other relevant circumstances, to decide the sentence. However, the practice has

³⁰ Art. 91 of the Criminal Code.

³¹ Art. 92 of the Criminal Code.

³² Art. 412 and 420 of the Criminal Procedural Code.

³³ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

³⁴ Art. 61 of the Criminal Procedure Code.

shown that the courts do not fully examine all the circumstances of the case and the child's background.³⁵

The court may impose the following sentences to children over 16 and between 14 and 16 who have committed a serious crime:³⁶

- Fines: a fine is applied only to minors who have independent incomes or property. An amount up to one hundred times the minimum wage can be imposed.
- Deprivation of the right to be engaged in a specific activity for a period of one to two years.
- Correctional labour³⁷ for a period of two months to one year. 5-15 % can be deducted from wages of the child offenders to the state revenue. However, correctional labour cannot be imposed on persons less than 16 years.³⁸
- Confinement³⁹ for one to four months. (Adults can be placed in confinement for up to 6 months.) Confinement is only imposed on minors who have reached the age of 16 years at the time a sentence is passed.
- Imprisonment⁴⁰ of periods of one year for a petty misdemeanour;⁴¹ 3 years for a misdemeanour; 7 years for a felony or an especially grievous crime at the age under 16 years old; and 10 years for a felony or an especially grievous crime at the age of 16 to 18 years old.
- Imprisonment can be replaced by a placement in a special educational or medical institution for minors if it is deemed that the purposes of punishment can only be achieved in this way.⁴²
- Cumulative sentences can be passed for crimes where at least one crime is grave or especially grave if the minor is aged 14-16 years but these must not exceed 10 years deprivation of liberty; must not exceed 12 years in the same circumstance if the minor is aged 16-18 years; and the final sentence for cumulative crimes in total must not exceed 15 years imprisonment. It is not clear whether the age thresholds specified refer to when the crime was committed or refers to the point at which the sentence is passed.

In 2004, the Criminal Code was amended to ban deprivation of liberty for petty crimes committed by minors.

Moreover, educational measures can be decided in case of less serious offences and when it is the first time the minor commits an offence:

- warning;
- placing minors under the supervision of a responsible adult or a juvenile body;
- obligation to pay the damages;

³⁵ According to the Association of Lawyers 'Open Doors', it appears for instance that psychiatrists are not involved in the proceedings, and therefore, the Association asserts that the character and mental capacity of the children cannot be fully appreciated by the Court; see Final Report submitted to UNICEF for the period January – May 2000 regarding the "Juvenile Defender" project, Association of Lawyers "Open Doors".

³⁶ Art. 87 of the Criminal Code. Under art. 59(2) of the Criminal Code persons under the age of 18 years are not subject to the death penalty

³⁷ Article 52 was amended by the Law of the Republic of Tajikistan "On Amending the Criminal Code of the Republic of Tajikistan" so that 'correctional labour' was renamed 'labour'. It is unclear whether such this amendment also applies to Article 87.

³⁸ Article 52(4)(b) Criminal Code

³⁹ Confinement is defined in article 55 as keeping an individual in conditions of strict isolation.

⁴⁰ Under art. 58(1) of the Criminal Code, imprisonment is defined as isolation of a convicted person by keeping him in a correctional colony under general, strict, especially strict regimes or in prison.

⁴¹ Reduced from two years by the Law of the Republic of Tajikistan "On Amending the Criminal Code of the Republic of Tajikistan"

⁴² Art. 90 (2) of the Criminal Code.

- limitation of leisure and special demands on the minor's conduct.

"However, it must be noted that as minors aged between 14 and 16 only appear before the Court for serious crimes, it follows that the Court is less likely to order these more educational measures with respect to them."⁴³

The report of an expert group on children in conflict with the law shows that "in many instances, minors are judged harshly and the sanctions imposed are heavier than that merited by the crime."⁴⁴

There are also cases of children that have been convicted to a fine but, because they or their family cannot afford to pay it, they should remain in detention. However, there are examples where the fine has been paid by the NGO Saodate to make the children go out of their prison.

Legal representation

Juveniles must be provided with a defence counsel from the moment the juvenile is arrested or charged (within 24 hours from the moment of arrest or detention) and during the investigation of their case and their trial.⁴⁵ In a study of 180 cases carried out by the Association of Lawyers "Open Doors" in 2000,⁴⁶ it was found that 43% of juveniles did not have legal representation during their hearing. Further, in practice it is rare for a child to be provided with either legal representation or other appropriate assistance during the three days when the child is held in an isolation cell. It also appears that even fewer juveniles have legal representation during investigation of their case. Moreover, there is currently no organised state free representation unit for children operating in Dushanbe even though children may receive assistance from NGOs.⁴⁷ OMCT deplors that the present model does not ensure effective legal representation for children in conflict with the law.

2) Children under the age of criminal responsibility

The problem is: How are treated children who commit a criminal offence but are not criminally responsible for that, i.e. children under 14 and children between 14 and 16 who commit a less serious offence? How are they treated by the Commission on Minors? Are they treated with sufficient guarantees according to their age, status and vulnerability?

Status offences that is to say offences that may only be committed by children, such as failure to attend school, disobedience, staying in the street after a certain hour, etc. does not exist in Tajik criminal law. However, such behaviours, generally qualified as anti-social, can lead children before Commission of Minors that can decide deprivation of liberty.

Arrest and police custody

There are cases where after arrest, children under 14 can be transferred to a centre (difficult to know which one since the Temporary Isolation Centre has been closed in 2005) and put in an isolation cell for up to 3 days.

⁴³ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

⁴⁴ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

⁴⁵ Art. 51 of the Criminal Procedural Code.

⁴⁶ Final Report submitted to UNICEF for the period January – May 2000 regarding the "Juvenile Defender" project, Association of Lawyers "Open Doors".

⁴⁷ For example, the NGO Saogat is offering such a service to juveniles in Khujand centre.

Commission on Minors⁴⁸

Children under the age of criminal responsibility who infringe the penal law and those who behave in a so called anti-social manner are dealt with administratively by the Commission on Minors whose the role is to hear cases involving those children. Following is the ordinary proceedings when a Commission on Minors is referred on a case by the police or educational authorities for instance:

- When the Commission is informed of a case, it has to consider the transfer of the case within one month after the receipt of relevant documents.
- Prior to the hearing, the Chairman or the Deputy chairman of the Commission decide whether the case should be considered at a Commission meeting; at this stage, it may already be decided to apply educational measures or supervision or deprivation of liberty in a reception centre for 15 days.
- During the hearing, the Commission has to hear and consider the evidence. It can decide 1) to withdraw the case, 2) to postpone the case until the receipt of additional materials, 3) to hand over the case to other investigating agencies, or 4) to apply punishment(s).

At each stage of the procedure, the Commission should take into consideration the framework of the situation of the child, i.e. his/her age, his/her activity, living conditions and social background, the circumstances of the law infringement, an possible recidivism, the seriousness of the offence, etc.⁴⁹

During the hearing, although the presence of the child and his/her parents is required, it appears that some children reported that they did not attend the hearing. Moreover, legal assistance and representation is not provided for in the Regulations and despite the Commission on Minors informally encouraged it, in practice children are rarely represented and advised by professionals.

The punishments that may be decided by the Commission are:⁵⁰

- a 'warning' or a rebuke; the warning remains in place for one year unless revoked by the Commission;
- to require the minor to make an apology to the victim and make reparation;
- to place the minor under parental control or the control of official representatives who are then responsible for the minor's behaviour. This measure can be brought to an end by the Commission as soon as the parents or other official representatives present their case to the Commission that the minor is behaving well;
- the Commission can also ask the court to restrict the spending of the minor or to impose a fine;
- to send a minor who has committed a socially dangerous act to a closed institution. The child can be sent to a Special School if s/he is aged from 11 to 14, or to the Special Vocational School, if s/he is aged 15-18.

In practice, the Commission most generally decide to reprimand the child or the parents or to send the child to a closed institution. The grounds for sending a child in closed institutions (that is to say to deprive them of their liberty to speak frankly) are various:

⁴⁸ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

⁴⁹ Order n° 178 of the President of the Republic of Tajikistan of 23 February 1995, Regulations on the Commission on Minors.

⁵⁰ Art. 18 of the Regulations on the Commission on Minors.

- failure to attend school,
- disobedience to parents or teachers,
- sale of goods at the market,
- anti-social behaviour,
- infringement of the penal law (petty offences).⁵¹

Under Regulations on the Commission on Minors, children can be kept in a Special School until the age of 15, and in exceptional circumstances until 16 years old, and can remain in a Special Vocational School until they are 18 years. It also limits the minor's stay in these institutions to three years, but if children do not show an improvement in their behaviour, their deprivation of liberty can be prolonged.⁵² In practice, the time spent in closed institutions varies from several weeks to years, even six years.

After deprivation of liberty the only existing rehabilitation and social reinsertion mechanisms and assistance are provided for by NGOs.

Deprivation of liberty of children in need of care and protection

Despite the construction of a dozen children's homes in Tajikistan between 1997 and 2000,⁵³ it is not rare to have children in need of care or protection such as abandoned children or children deprived of family environment or even child victims of violence living in closed institutions and thus deprived of their liberty. In parallel, alternative solutions like foster care, adoption, etc. are not enough developed. This should not be considered as an adequate and appropriate answer to those children's situation.⁵⁴

3) Living conditions and treatment in closed institutions for children

Reports show that several institutions receive children younger than the minimum age officially required to enter. This is the case in temporary isolation centre and special vocational school that are inappropriate premises to receive young children (under 14). For many NGOs including OMCT, that constitutes illegal detentions.⁵⁵ However, the Temporary isolation centre has been replaced in 2005 by a Child welfare centre for child victims in order to protect them and finally bring them back to their family (except children with disabilities). There is no more information on how the living conditions and treatment of those children have been concretely improved.

In vocational school, the conditions of life are very poor. In juvenile colonies, the situation is worst since boys are also malnourished and suffer from corporal punishment and can be subjected to periods of isolation cell/solitary confinement.^{56 57}

⁵¹ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

⁵² Their placement in these institutions should be reviewed by the Commission on Minors not less than once a year.

⁵³ CRC/C/SR.654, para.7, Summary records, Committee on the Rights of the Child.

⁵⁴ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

⁵⁵ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

⁵⁶ "The isolation cell in the Vocational School is a locked cell, with very little light and no heating. The smell in the cell is overpowering due to its position next to the toilets."

⁵⁷ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.

Moreover, in general children are put together whatever their age and the reason why they are kept in the institution (waiting for a hearing, after conviction, in need of protection, etc.)

Generally, children are detained far from their family: for instance boys kept in pre-trial detention in an institution at Khojand (North of the country) are transferred after their conviction to a closed institution in Dushanbe far from their family members in the North.

Specific remedy and redress for child victims

Existing specific complaint procedures

In Tajikistan, there is an absence of effective complaint procedure for children placed in closed institutions victims of ill-treatments. Moreover, they do not have access to external assistance like NGOs or legal counsels or social workers in case they are victim of ill-treatment because those entities and persons are mostly denied access to such institutions.⁵⁸

There is no free hotline or help-desk to receive complaints from children themselves or their entourage. However, it has been planned that in 2007, Child rights departments will be able to receive cases of violence against children and to consider the complaints about such matters.

⁵⁸ Expert group on juvenile justice, Children who are in conflict with the law: Report of the expert group. Summary, 2004.