Responses

to additional questions from the UN Committee Against Torture

based upon the results of studying the Second National Report

of the Republic of Tajikistan on Torture

 Article 1 and 4

**1.** By the Law of the Republic of Tajikistan of 16 April 2012, article 1431 ”Torture” according to which the “torture” is a “deliberate infliction of physical and (or) psychological suffering committed by a person who carries out an inquiry or preliminary investigation, or by other official person, or at their incitement or connivance, or with their knowledge with another person for the purpose of obtaining from the tortured or a third person an information or confession, or punishing him/her for an act done, or suspected to be done, by him/her, and also intimidating or forcing him/her or a third person, or for any other reason based on discrimination of any nature” has been introduced into the Criminal Code.

An official person who gave an order to use torture is considered an organizer of torture and is brought to responsibility together with the executors of this crime. An attempt to use torture is considered as an attempt to commit this crime and is qualified according to article 32-1431 of the CC of the Republic of Tajikistan.

With regards to the sanctions for the use of torture we note that the punishment in the form of deprivation of liberty from two to five years is provided only in the first part of article 1431 of the CC of the RT, i.e., in the absence of qualifying circumstances.

By part 2 of this article an imprisonment for the period of 5 to 8 years, with the revocation of the right to occupy certain positions or engage in certain activities for the period of 5 years, is provided for: a repeated commission of torture; commission of torture by a group of persons on previous agreement; commission of torture against a woman who is, knowingly to the guilty person, in the state of pregnancy, or against a person who is, knowingly to the guilty person, under age, or against a disabled person; commission of torture accompanied with infliction of average harm to the health.

The same actions if they are committed with the infliction of grave harm to the health, or if they have caused, indiscreetly, the death of the victim or other grave consequences according to part 3 of article 1431 of the Criminal Code, are punished by imprisonment for the period of 10 to 15 years, with the revocation of the right to occupy certain positions, or engage in certain activities for the period of up to 5 years.

**2.** The Law of the Republic of Tajikistan “On Amnesty” of 20 August 2011 contains norms which exclude impunity and commutation with respect to persons sentenced for the use of torture.

In particular, the most serious point of the amnesty “full exemption from criminal responsibility” in terms of significance and degree of coverage (article 4 of this Law) is not applicable to the grave crimes to which the crimes related to torture belong (articles 316, p.3, and 354 of the Criminal Code (CC) of the RT).

Regarding the application of amnesty to the employees of the Investigating Isolator #1 of the Main Department for the Execution of the Criminal Punishment (MDECP) of the Ministry of Justice of the RT, the employees of the agency Ibrokhimov Yu. S. and Rakhmonov R. Kh. who had been directly involved in the battery of the sentenced Bachadzhonov I. D., which caused his death, were sentenced to 8 years of imprisonment under art.art. 110, part 3, p. “c” (“Deliberate infliction of grave bodily injury which indiscreetly caused death of the victim“), and art.316, part 3, pp.(a),(b),(c) (exceeding one’s official powers with the use of special means and infliction of grave consequences) of the CC of the RT. On the basis of the Law of the RT “On Amnesty” of 20 August 2011 the terms of imprisonment for each one of them were reduced by ¼, or 2 years.

The assistant to the Head of an establishment, Davlatov L.Kh. who had not taken timely measures to prevent unlawful acts with respect to Bachadzhonov I., was sentenced to 3 years of imprisonment under art.322 (negligence) of the CC of the RT, and was indemnified from serving the sentence on the basis of the mentioned amnesty act.

With regard to the grounds on indemnification of Davlatov L. Kh. on the basis of amnesty we note that negligence, i.e., connivance is not a form of complicity in the crime. An official person who did not take a direct part in torture may be considered an accomplice to torture only in case if he/she was inciting other persons to torture, or use of torture took place with his/her knowledge or silent acquiescence.

With regard to the reduction by 2 years of the term of imprisonment of the convicted Ibrokhimov Yu.S. and Rakhmonov R. Kh. it should be noted that the provision of the law of the RT “On Amnesty” of 20 August 2011 concerning the reduction of the term of punishment to this or that extent, covers all types of crimes their gravity notwithstanding, and is applied to all the convicted (except the persons convicted to the life imprisonment). In this connection, it would be a big injustice not to apply this norm to the persons convicted for the use of torture.

**3.** In accordance with article 10 of the Constitution, international legal acts recognized by Tajikistan, constitute an integral part of the legal system of the Republic and can be directly used. In case of inconsistency of the laws of the Republic with the international legal acts norms of the international legal acts are applied.

Due to the absence of appropriate monitoring and summarization of judicial practice on cases on torture the data on the number of cases of applying the Convention’s norms by the courts, is absent.

A guiding interpretation (enactment) #1 “On Application of the Norms of Criminal and Criminal Procedural Legislation on Counteracting Torture” which is directed at the appropriate execution and application of the Convention’s norms, has been adopted by the Plenum of the Supreme Court of the RT of 25 June 2012.

**Article 2**

**4.** With a view to strengthening the legal guarantees of respecting the detainees’ rights, a new Law of the RT “On Order and Conditions for Detention of Suspects, Accused Persons and Persons on Trial” was adopted on 28 June 2011.

In accordance with this Law, a detainee has a right to meet with an attorney in private, without limitation as to the number and duration of the meetings. An order or license to carry out an attorney’s practice serves as a basis for providing a meeting with the attorney. There is no requirement to provide any permission to meet on the side of the investigator (article 18).

A permission from the investigator or judge to meet with the defender is required only in cases when another person, other than an attorney, and who has no order or a license, acts in the capacity of a defender in the proceedings.

Meetings with family members and other relatives are provided on the basis of a written permission of an official person and body under whose authority the criminal case is currently conducted. Such meetings are provided for up to two times per month, with duration of up to three hours each.

The Law also provides for a conduct of a medical examination of the detainee during his/her placement into the places of detention (article 16), access of the detainee to the medical employee and medical service (article 17).

The information on cases of violation of the mentioned guarantees and disciplinary and other measures with respect to the violators is provided when a particular case is officially publicized.

Concerning the requested information on concrete cases, the following has been communicated:

 (a) Usmonov Urunboy has been found guilty and convicted by the sentence of 14 October 2011 of the judicial panel on criminal cases of the Sogd Regional Court under p.5, article 36 and p.2., note 3, art.307 of the CC of the RT (accompliceship in the activities of an extremist organization) to 3 years of imprisonment, with serving of sentence in the correctional colony with the general regime. On the basis of article 6 of the Law of the RT “On Amnesty” of 20 August 2011 Usmonov Urunboy was indemnified from serving his sentence.

 The sentence of the court was also related to Abdukadirov A.A., Mavlonov T.A., Makhmudov I.A. and RakhmonkhodzhaevYa.F.

The sentence was left with no change by the court decision of the court board on crime cases of the Supreme Court on 30 November 2011, and appeal of convicted Usmonov U. and his lawyer was dismissed a claim.

Usmonov U. has been found guilty and sentenced for accompliceship in the activities of an extremist organization “Khizb-ut-Takhrir” the activities of which had been prohibited on the territory of the RT by the decision of the Supreme Court of the RT of 19 April 2001, and which had been acknowledged as an extremist and terrorist organization by the decision of the same court of 11 March 2008.

Usmonov U., who during his work in the capacity of a commentator of the BBC radio station on Northern Tajikistan, met with an active member (emir) of the extremist organization “Khizb-ut-Takhrir” Yokubov Sh. Kh. Nicknamed “Abdullo” approximately in February 2010, and afterwards spread, by way of radiobroadcasting, the views and opinions of the this extremist organization. Members of “Khizb-ut-Takhrir” provided Usmonov with the journal “Subkhi Khilofat” and other forbidden literature in Tajik, Uzbek and Russian languages.

In March 2011 Yokubov Sh. Kh. met with Usmonov U. and informed him on the course of judicial proceedings in respect to members of the extremist organization “Khizb-ut-Takhrir” and the latters’ having been battered by the officers of the law enforcement bodies, and also on the aims of the said organization to create an islamist state “Khilofat” by way of overthrowing the currently existing state order. Usmonov U. has broadcasted this information on the radio.

Guilt of Usmonov U. on his criminal actions fully ascertained in his adjudged indication which was afforded during prejudicial investigation, and also during the court proceeding, prejudicial evidence of convicted persons, cases of Abdukadirova A.A., Makhmudova I.A., Rakhmonkhodzhaeva, evidence of witnesses Kasimova O.K., Azizova K.A., Saymuddinova S., Dosova Kh, as well as evidences, effords of Yakubov Sh. During the prejudicial investigation and other materials of the criminal case, that was given adjective juridical rating by the court to the case.

Usmonov U. as repeatedly interrogated during prejudicial investigation, fully admitted and particularly exhibited circumstances of his consummated crimes.

Regarding the use of torture against Usmonov U., according to the materials of the case, no complaints or statements on the use of illegal methods of investigation have been introduced in the course of the investigation, either from Usmonov U. or his attorneys. During the judicial proceedings Usmonov U. has stated that impermissible methods of investigation have been used and that in the process of issuing an arrest warrant the judge of the district court had not ascertained whether illegal methods have been applied against him. A request to examine additional witnesses on this matter was filed by the attorneys of Usmonov U. This request was granted by the court and Usmonov U.’s wife Abdulazizova M., and also his colleagues, journalists Dzhamolov I. and Mustafoeva E. were examined in the capacity of additional witnesses. They clarified in the course of examination during the judicial proceedings that at the time of their meetings with Usmonov U. on 14, 17, 18 June 2011 the latter had not expressed any complaints on the use against him of any illegal methods of investigation (torture) (volume 4, personal file 246-251), and that they had not noticed any injuries on his body.

Witnesses Saymudinov S. and Dosov Kh., the investigators of the MB (*Ministry of Security*) of the RT on the Sogd region who had taken part in the conduct of the investigation in the case of Usmonov U. and who had been examined at the request of the attorney Vokhidova F., indicated that they had not used any illegal acts with respect to Usmonov U. in the course of investigation. Usmonov U. himself has confirmed the testimonies of Saymudinov S. and Dosov Kh. during the judicial proceedings (v.4, p. f. 238, 241, 244-246).

It should be noted that the case of Usmonov U. was heard in the open judicial proceedings from 16 August to 14 October 2011. As it flows out from the minutes of the judicial proceedings, all requests and applications of Usmonov U. and his attorneys have been granted. Two attorneys defended the interests of Usmonov U. over the duration of the whole preliminary investigation and trial.

It should be noted that the case of Usmonov U. and other persons convicted together with him have been repeatedly examined in the order of supervision and no violations of the law which could serve as a basis for the revocation of the sentence have been established.

(b) Ismoilov Makhmadyusuf Abduganievich has been convicted by the court of the city of Taboshar of the Sogd region on 14 October 2011 under p.1, article 135 (libel), p.2, article 136 (insult), p.1, article 250 (blackmail), points (a), (c), p.2, article 189 (incitement of parochial animosity with the use of means of mass media) of the CC of the Republic of Tajikistan, with the application of article 63 of the CC of the Republic of Tajikistan (imposing a lighter punishment than provided for a particular crime by the law), and subjected to a fine in the amount of 1500 units of account (52500 somoni), with the reduction of this fine by the amount of 17500 somoni, taking into account his time spent in custody.

 Ismoilov M. Yu. has never made an official written refusal to use the services of a lawyer and has, from the moment of his detention, i.e., 23 November 2010, been provided with a defender, Bobodzhonov E., a lawyer from the legal advice office of the Asht region. Further, Saidov S. (advocate of the legal advice office of the city of Khodzhent) entered into the case in the capacity of the second attorney on 25 November 2010 followed in a month by Dzhuraeva M., a member of the private law bureau “Advokati Tu” who both defended the rights of Ismoilov M. Yu., during the whole stage of the preliminary investigation. In the judicial session, the interests of Ismoilov M. Yu. were defended by lawyers Dzhuraeva M. and Saidov S. (representative of the legal advice office of the city of Khodzhent).

(c) Ismonov Ilhom Ismoilovich was brought to the Department on the Fight against Organized Crime (*DFAOC*) of the Ministry of Interior for the Sogd region on 3 November 2010, under the suspicion of participation in the activities of IMU (*Islamist Movement of Uzbekistan*) and connection to the explosion of the building of this regional Department. Due to the procrastination of the time of checking the information Ismonov I. I. was contained in the building of the RDFAOC of the DI (*Department of Interior*) of the Sogd region and only on 10 November 2010 a protocol on his detention was drafted.

A separate decision on violation of the law during the process of arresting Ismonov I. I. has been taken by the Court of the city of Khodzhent during the consideration of the issue of choosing a preventive measure with respect to Ismonov I. I.

A verification check-up of the press reportings that torture was used against Ismonov I. I., was conducted by the Prosecutor’s Office of the Sogd region.

It has been established that on 12 November 2010 during a medical examination and survey in the IIC (*Isolator for Interim Containment*) of the city of Khodzhent and on 19 November 2010 in the II (*Investigative Isolator*), during the conduct of medical examination by the experts of the Center of Forensic Expertise of the Sogd region no signs of use of physical force on the body of Ismonov I. I. have been found. Also, the Consul of the Russian Federation in the city of Khodzhent, Kopnin Aleksandr Anatol’evich who had met with Ismonov I. I. on 20 November 2010 in the II, in connection with the latter’s statement on holding a Russian citizenship, has not found any trace of the use of physical force and torture.

Ismonov I. I. himself denied the use of torture during the medical examination and interrogation, and he did not complain about his state of health. Therefore, the Prosecutor’s Office of the region has turned down the request on launching a criminal case with respect to the officers of the RDFAOC, due to the absence of corpus delicti in their actions.

At the same time, based on the submissions of the Prosecutor’s Office of the region the Head of the said Department Nasimova K. N. and her colleague Kadyrov Z. N. were brought to disciplinary responsibility for the violation of the law during the time of arrest of Ismonov I. I.

By the sentence of the judicial panel on criminal cases of the Sogd Regional Court of 23 December 2011, Ismonov I. I. was found guilty under p.2, article 187 of the CC of the Republic of Tajikistan (participation in a joint criminal enterprise) and convicted to 8 years of imprisonment with the reduction of the indicated term by 1/3 on the basis of the act of amnesty.

Ismonov I. I. was provided with a defender from the moment of his detention, and had private conversations with him. During the time of arrest of the accused Ismonov I. I. in the II-2 of the city of Khodzhent he was provided with short-time meetings with his relatives.

(d) The citizen of the Republic of Kyrgyzstan Botakuziev Nematillo Mamatairovich was detained on 27 February 2010 in the city of Dushanbe by the officers of the national security bodies of Tajikistan in connection with the absence of his passport or other identity documents. With a view to identifying his person he was placed into a special custodial center of the DI of the city of Dushanbe.

On 3 April 2010 a letter from the General Prosecutor of the Kyrgyz Republic was delivered to the General Prosecutor’s Office of the Republic of Tajikistan where it was informed that a criminal case under p.4, article 156, p.2, article 174, pp.1,2,3, article 233, p.2, article 259, p.2, article 279, pp.2,3, article 299 and article 341 of the CC of the Kyrgyz Republic was launched with respect to Botakuziev N. M., a decision was taken on bringing him into the case in the capacity of the accused, a preventive measure against him in the form of detention was chosen, and his search was declared. In this connection, a request to hand him over to the law enforcement bodies of the Kyrgyz Republic for further carrying out of the criminal investigation, was made.

On the basis of the mentioned request Botakuziev N. M. was transferred on 15 April 2010 to the II of the State Committee of National Security of the RT, for the period of considering the request and receiving official documentation.

Concerning the information that Botakuziev N. M. was not permitted to have a meeting with a lawyer from the moment of his arrest, and that torture was used against him, it should be noted that Botakuziev N. M. has not committed and was not suspected in committing any crimes on the territory of the Republic of Tajikistan. No investigative actions in respect to him were carried out in Tajikistan, in which connection the law enforcement bodies of Tajikistan did not have any motive or interest in using torture against him or refuse him in meeting with a lawyer.

With a view to checking up the respecting of the rights of Botakuziev N. M., the responsible officer of the General Prosecutor’s Office of the Republic of Tajikistan Isoboev S. visited him on 21 April 2010 in the II and inquired him in this regard. Botakuziev N. M. in his written explanation has stated on the absence on his side of any complaints or claims regarding his conditions of detention, use of torture or any other ill-treatment. Concerning the non-provision of a meeting with a lawyer Botakuziev N. M. has not applied to the Prosecutor’s Office or the administration of the investigative isolator, either orally or in written.

With a view to ensuring the rights of Botakuziev N. M., written guarantees #16/1-3-10 of 25 March 2010 that the criminal prosecution of Botakuziev N. M. has a general criminal (nonpolitical) nature and he would not be subjected to any discrimination based on nationality, language, views or religious beliefs, have been received from the General Prosecutor’s Office of the Kyrgyz Republic.

In accordance with art. art. 56, 57 of the Kishinev Convention “On Legal Assistance and Legal Interactions on Civil, Family and Criminal Cases” of 7 October 2002, Botakuziev N. M. was handed over to the law enforcement bodies of the Kyrgyz Republic on 23 May 2010.

According to the existing information, Botakuziev N. M. was exempted from criminal liability based on the amnesty by the decision of the court of the city of Osh of 25 May 2010, immediately upon his delivery back to the native land.

(e) The citizens of the Republic of Tajikistan Vokhidov M. and Sharopov R. who had taken part in hostilities on the side of talibs on the territory of Afghanistan, were carried over to the prisoner-of-war camp on the island of Guantanamo, after having been captured by the NATO Coalition Forces. In March 2007 they were handed over to Tajikistan for criminal prosecution.

Vokhidov M. and Sharopov R. were convicted by the decision of the Supreme Court of the Republic of Tajikistan on 17 August 2007 under p.2, article 335 (illegal crossing of the state border) and p.3, article 401 (taking part in the hostilities as a mercenary), for 17 years of imprisonment each.

Upon the protest of the General Prosecutor of the Republic of Tajikistan the mentioned sentence was modified and the 6-year term of imprisonment of Vokhidov M. and Sharopov R. in the Guantanamo camp was included into the general term of imprisonment.

Starting from the first day after they had been brought back to Tajikistan Vokhidov M. and Sharopov R. have been provided with a defender, attorney Akramova Z. which is confirmed by the order #193 of 26 March 2007 in the criminal case. All interrogations of the accused were conducted with the participation of an attorney which is confirmed by the signatures in the minutes of interrogation. The interests of Vokhidov M. and Sharopov R. in the judicial session were defended by the attorney, Odinaev S. Kh. (order #10 of 1 August 2007).

Vokhidov M. and Sharopov R. had meetings with their relatives and they did not state on the use of torture against them during their time under investigation.

**5.** In all places of detention the logbooks for registration of detainees are maintained where the information on the person of the detainee, time and date of placement into custody, the document on the basis of which the person was placed into custody (date and number of the protocol of arrest, decision of the interrogator, investigator or the court), the date and basis for the transfer to another establishment or for the release from detention.

At the same time, the mentioned logbooks do not reflect fully adequately all the data regarding the arrest or detention. In this respect, a draft Instruction on the Order of Detention was elaborated by the General Prosecutor’s Office jointly with the American Bar Association (ABA). The mentioned Instruction regulates in detail all the requirements regarding the timely registration of detainees, the mandatory signing of the registration logbook by the persons who carried out the arrest, and also by the interrogator and investigator, access of the lawyer and the detainee himself/herself to the registration record, the timely conduct of the medical examination of the detainee, and responsibility for breaching the order of maintaining the registration. Presently, the draft text of the Instruction is being discussed in round tables with the participation of all law enforcement bodies, courts, lawyers, human rights organizations and NGOs.

For the purposes of timely finding out and preventing the containment of detainees in the offices of investigators, operative services and duty units round-the-clock surveillance video cameras have been installed.

The prosecutor bodies carry out the check-ups in the premises of the law enforcement bodies, systematically but not later that once per each five-day period.

**6.** In accordance with article 105 of the Criminal Executive Code, a medical sanitary provision of persons deprived of freedom is provided in the places of detention. In this connection, all the medical preventive assistance for the convicted persons is organized and brought into accordance with the Rules of Internal Order of the Penitentiary Institutions.

Within the last 6 months on the basis of a medical establishment a construction of the three-story building for the tubercular patients has started. In accordance with international standards telephone booths have been installed in the penitentiary institutions. In all institutions rooms for short-time meetings have been reconstructed, transparent cabins equipped with telephone equipment with the help of which the convicted persons can communicate with their relatives and close ones, have been installed. Also, in each institution additional rooms for long-time meetings have been built.

A medical examination of the arrestee or detainee who received bodily injuries is carried out immediately by a medical employee of the investigative isolator of the interim containment at the request of the lawyer of the detainee and by the decision of the Head – the physician of the medical establishment.

At the request of the lawyer of the arrestee or detainee, or on the basis of an order or enactment of judicial investigative bodies a medical forensic expertise is conducted.

The Ministry of Health in cooperation with the Ministry of Justice and international partners in the penitentiary system have realized broad measures of a legal, organizational methodical and diagnostical nature aimed at fighting against tuberculosis which enabled to ensure a full accessibility of an anti-tuberculosis assistance for the detainees.

Starting from the end of 2005 and in 2008 all institutions of the penitentiary system have been encompassed by the programme of fighting against tuberculosis. In 2005 organizational measures were completed, in 2006 4 institutions were covered in a pilot programme. Upon the analysis of the obtained results in 2007 the Programme’s implementation has expanded, and in 2008 all institutions of the penitentiary system have been encompassed.

During the finding out of HIV-infection among the detainees, a motivational consultation is carried out with them on the matter of susceptibility and preparation to the ARV therapy; besides, blood tests to determine the level of SD4-cells and hematological analysis of the blood are conducted after which an appropriate therapy is prescribed. The package of services is conducted on the free-of-charge basis.

Besides, in 2011 a pilot programme on reducing the harm (to the exchange of needles and syringes) among the persons who consume drugs by way of injection, was realized in one correctional colony with the support of the Global Fund. At present, based on the results of the pilot project an expansion of this project in other colonies is planned.

**7.** The 72-hour period of the initial detention established by the law is counted starting from the moment of the actual arrest. According to article 94 of the Criminal Procedural Code of the RT the precise time of the actual arrest to within one minute is indicated in the protocol of the arrest which is drawn up within three hours from the moment when the person is brought to the criminal prosecution body.

The observance of the timing of initial detention is constantly controlled by the Prosecutor’s Office, and also by the court during the consideration of the question of issuing an arrest warrant.

As it was already noted, on the matter of violation of terms of initial detention of Ismonov Ilhom a separate decision has been taken by the Court of the city of Khodzhent.

Based upon the submissions of the Prosecutor’s Office of the region the officers of the DFAOC Nasimova K. N. and Kadyrov Z. N. were brought to disciplinary responsibility.

 **8.** In accordance with art. 112 of the CC of the RT the preventive measure in the form of detention during the preliminary investigation may not exceed two months. The period of detention may be extended to the period of up to 6 months only in case of impossibility of completing the preliminary investigation in time for up to 2 months and in the absence of another type of preventive measure to apply with respect to the accused. Further extension of the detention period beyond 6 months may be applied only in respect to the persons accused in the commission of grave or particularly grave crimes, and also with respect to the persons who committed the crime on the territory of the Republic of Tajikistan without having a permanent residence place in the RT and if there are sufficient grounds to believe that they would be hiding from investigation and trial outside of the territory of the RT. In this case, the extension of the detention period is applied for the period of up to 12 months.

The period of detention of over 12 months may be extended only in exceptional cases for the period of up to 18 months. Further extension of the detention period is not permitted, and the Prosecutor’s Office carries out the supervision over the immediate release of the accused form detention.

Judicial control, independent of the Prosecutor’s Office, over the observance of the terms and conditions of the pretrial detention including the detention carried out by the security bodies, is conducted within the framework of considering by the court of complaints and applications from the detainees on this matter, the right to which is established for them by articles 17 and 21 of the Law of the RT “On the Order and Conditions for Detention of Suspects, Accused Persons, and Persons on Trial”, and also by the Criminal Procedural Code of the RT.

**9.** According to art.art. 49 and 51 of the CPC of the Republic of Tajikistan the participation of the legal counsel in the criminal proceedings against a juvenile is mandatory. The counsel is admitted to the participation in the criminal case starting from the moment of initiating the criminal case, and also from the moment of actual arrest of the suspect. The legal counsel is chosen by the suspect, accused, defendant themselves, their lawful representatives, and also by other persons at their instruction or with their consent. The criminal investigative body is not entitled to recommend anybody to invite a certain legal counsel.

According to article 433 of the CPC of the RT, if a lawful representative of a juvenile offender is discharged by the court from participation in the judicial proceedings, then another lawful representative of the juvenile defendant is admitted instead. Non-appearance of a lawful representative of the juvenile defendant in the court does not suspend the consideration of the case, except if the court finds his/her participation necessary. It appears that in such a case a juvenile defendant is entitled to conduct meetings with his/her counsel in private.

**10.** In accordance with an internal directive (Order of the General Prosecutor of the RT #30 of 10 July 2011), the bodies of the Prosecutor’s Office conduct regular check-ups in isolators of interim containment, distributing cells (centers), guardrooms, and also if there are credible operative data – in the office rooms of the law enforcement officers no less than once in every five days. Check-ups in penalty premises (penalty and disciplinary isolators, cell-type premises, punishment cells (*kartsers*) and solitary cells) are carried out no less than once in every ten days, and in the investigative isolators – no less than once per month.

**11**. The Authorized Person on Human Rights has been given sufficient human, material and financial potential in order to fulfill his/her mandate within the entire country. In accordance with the Law of the Republic of Tajikistan “On the Authorized Person on Human Rights in the Republic of Tajikistan”, the Apparatus of the Authorized Person on Human Rights was established to provide for his/her activities and for carrying out his/her mandate. The employees of the Apparatus are hired based on the results competitive selection by way of placing the information on the conduct of selection in official means of mass media. The selection is conducted by a collegial body of the Apparatus and certifying commission which ensures equal access of the citizens of the Republic of Tajikistan to the state service. Thus, 21 state officials and 15 service personnel are presently working in the structure of the Apparatus.

A separate building in the center of the capital which is convenient for systematic and successful realization of his/her mandate, has been specifically assigned for the Authorized Person.

All employees of the Apparatus of the Authorized Person are provided with necessary technical means.

The institute of the Authorized Person on Human Rights works based on the state budget, and also on the funds attracted from international organizations. The institute is financially independent; it has its own settlement account and allocates its budget at its own discretion. The budget is planned by the institute itself and is submitted to the Ministry of Finance of the Republic of Tajikistan; it goes as a separate line in the overall state budget.

In order to render assistance in the realization of the mandate of the Authorized Person on Human Rights and to strengthen his/her role in the promotion and protection of the rights and freedoms of citizens, 7 Public reception offices of the Authorized Person are currently opened in various regions of the country, with the financial support of the Ministry of International Development of the Great Britain (DFID) and the Open Society Institute – Assistance Fund in Tajikistan and the Danish Institute on Human Rights. A creation of two more Public reception offices of the Authorized Person is planned in the mountainous regions which are difficult to access.

The Authorized Person on Human Rights sent an application to the Accreditation Sub-Committee of the International Coordination Committee on National Institutions of Human Rights, on the matter of correspondence of the national human rights organization to the Paris Principles. This issue was considered in March this year and as a result the institute of the Authorized Person on Human Rights in the RT has become the first institute among the Ombudsmen of the Central Asia which was accorded a “B” status.

The Authorized Person on Human Rights does not experience any difficulties in visiting closed establishments. In accordance with article 12 of the Law “On the Authorized Person on Human Rights in the Republic of Tajikistan” the Authorized Person is also entitled to visit the penitentiary institutions.

According to the Law of 29 December 2010, the Criminal Executive Code was supplemented by a norm in accordance with which the Authorized Person, in the course of his/her duties, has a right to visit penitentiary institutions without a special permission.

New modifications were introduced into the Criminal Executive Code in June 2011. According to these amendments, the Authorized Person is entitled to, independently or jointly with the authorized state bodies, carry out a check-up of the activities of the penitentiary institutions and conduct meetings with the convicted persons in private, with a view to check a complaint at his/her own initiative, or upon receiving an information on the mass and gross violations of human rights.

**12.** In 2008, 10 complaints and allegations on the use of torture and other impermissible methods were lodged with the Prosecutor’s Office. Based on those complaints, 4 criminal cases were launched with respect to 6 officers of the law enforcement bodies (5 officers of the penitentiary institutions and 1 officer of the militsia). Out of them, 3 criminal cases with respect to 4 persons were sent to the court upon the completion of investigation, and 1 case was closed in the course of investigation, in connection with the change of situation.

In the cases sent to the court, 3 persons were convicted to imprisonment (two of them to 5 years and one to 1 year and 6 months) and 1 person was subjected to a fine.

5 male persons, out of them 1 juvenile and 4 – middle-aged persons, were victims in the indicated cases. In 3 cases torture or other forms of cruel treatment took place in the penitentiary institutions and in one case in the office room of the officer of the militsia. In geographical terms 3 cases (among the initiated cases) were conducted in the city of Dushanbe and 1 case in a region under the republican subordination.

The reasons (motives) for their application in 1 case were coercion to admit the guilt, and in 3 cases it was an unauthorized punishment for disobedience.

In 2009 29 complaints and allegations on the use of torture and other impermissible methods were lodged with the Prosecutor’s Office. Based on those complaints, 3 criminal cases were launched with respect to 4 persons (3 officers of the militsia and 1 officer of a penitentiary institution), the rest of the complaints were denied to initiate a criminal case on the grounds provided by the law.

Out of the 3 cases forwarded to the court with respect to 4 persons 1 person was convicted to imprisonment (to 5 years), 1 person was subjected to a fine and with respect to 2 persons the cases were terminated on the basis of amnesty. 4 male middle-aged persons were victims in the indicated criminal cases. In 2 cases torture or other forms of cruel treatment took place in the office rooms of the officers of the militsia and in one case in penitentiary institutions. In geographical terms 1 case (among the initiated cases) was conducted in the city of Dushanbe and 2 cases in the Khatlon region.

The reasons (motives) for their application in 1 case were coercion to admit the guilt, and in 2 cases it was an unauthorized punishment for disobedience.

In 2010 the Prosecutor’s Office received 48 such complaints and allegations. Based on the results of their consideration, 13 criminal cases were launched with respect to 17 officers of the militsia (the rest of the complaints were denied to initiate a criminal case for the reasons of unconfirmed allegations of the complainants or on other grounds). Based on the results of investigation, 3 criminal cases were closed (1 on the amnesty, 1 in connection with the change of situation, and 1 due to the absence of corpus delicti), 2 cases were suspended in connection with non-established guilty persons. 8 cases with respect to 12 officers of the militsia were sent to the court. The court has found guilty and convicted 11 persons, out of whom 4 persons were sentenced to imprisonment (out of them 1 person to 3 years of imprisonment, 2 persons to 2 years and 6 months, and 1 person to 1 year and 6 months) and 7 persons were imposed a fine. One case was terminated by the court in view of the active repentance of the guilty person.

17 persons, including 3 women, were victims in the initiated cases. Out of these 17, 2 persons are under-aged, and 15 are persons of middle-age. In 2 cases torture or other forms of cruel treatment took place in the isolators of interim containment, in 7 cases in the office rooms of the officers of the militsia, in 2 cases in other service premises, and in 2 cases in public places.

In geographical terms 3 cases of torture were taking place in the city of Dushanbe, 3 cases in the Khatlon region, 4 cases in the Sogd region, 1 case in GBAO (*Gorno-Badakhshan Autonomous Oblast*), and 2 cases in the regions under republican subordination.

The reasons (motives) for the use of torture and other forms of cruel treatment in 2 cases were coercion to admit the guilt, in 5 cases it was an unauthorized punishment for disobedience, and in 6 cases the guilty persons did not have a defined motive.

In 2011 the Prosecutor’s Office received 26 such complaints and allegations. Based on those complaints, 12 criminal cases were launched with respect to 15 officers of the law enforcement bodies (12 officer of the militsia and 3 officers of the penitentiary institutions). All indicated cases were sent to the court upon the completion of the preliminary investigation. To the present moment the court has considered 11 cases with respect 14 persons who were found guilty. The courts set the punishments in the form of imprisonment with respect to 10 persons (including for 1 person – up to 3 years, for 5 persons – 5 years, for 4 persons up to 8 years) and imposition of a fine with respect to 4 persons.

17 persons, including 1 woman, were victims in the initiated cases. Out of these 17, 5 persons are under-aged, 15 are persons of middle-age and 1 is an elderly person. In 4 cases torture or other forms of cruel treatment took place in the office rooms of the officers of the militsia, in 1 case in an isolator of interim containment, in 1 case in an investigative isolator, in 2 cases in other service premises, and in 4 cases in public places (in the street, on the market, and so on).

In geographical terms 5 cases of torture were taking place in the Sogd region, 4 cases in the city of Dushanbe, 1 case in the Khatlon region, 1 case in the GBAO, and 1 case in a region under republican subordination.

The reasons (motives) for their use in 2 cases were coercion to admit the guilt, in 8 cases it was an unauthorized punishment for disobedience, and in 2 cases there were other motives.

During the first half of 2012 the Prosecutor’s Office received 17 complaints and allegations of such a nature. Based on those complaints, 7 criminal cases were launched with respect to 7 officers of the law enforcement bodies (militsia). To the present moment 3 cases with respect to 3 persons have been sent to the court. A punishment in the form of a fine was imposed by the court with respect to all 3 persons. Investigation continues on 4 cases. The rest of the complaints were denied to initiate a criminal case, due to unconfirmed allegations of the complainants and based on other grounds provided by the law. 8 male persons, including 1 under-aged person and 7 middle-aged, were victims in the initiated cases. In 6 cases torture or other forms of cruel treatment took place in the office rooms of the officers of the militsia, and in 1 case in a public place.

In geographical terms 2 cases of torture were taking place in the city of Dushanbe, 2 cases in the region under republican subordination, 1 case in the Sogd region, 1 case in the Khatlon region, and 1 case in GBAO.

The reasons (motives) for their use in 3 cases were coercion to admit the guilt, in 2 cases it was an unauthorized punishment for a disorderly behavior, and in 2 cases there were other motives.

Concerning the ethnic composition of the parties in torture cases we inform that during the reported period (2007-2012) in all criminal cases the guilty persons and victims belong to the same ethnic group. There has not been any complaint with regard to the use of torture based on discrimination on this or that grounds.

Concerning articles of the Criminal Code under which the charges were brought against the guilty persons, we inform that until the introduction into the Criminal Code of the new article 1431 titled “Torture” (of 16 April 2012) torture was qualified under articles 314, p.3, 316 and 358 of this Code.

After the introduction of article 1431 into the Criminal Code, one criminal case has been initiated under this provision; it is currently at the stage of preliminary investigation.

As for the reasons of leaving some complaints without a judicial hearing, we note that article 27 of the CPC of the Republic of Tajikistan allows for the bodies which conduct criminal proceedings, to deny the initiation of a criminal case before bringing the case to the court, based on a range of rehabilitating (for example, absence of the criminal event or corpus delicti) and non-rehabilitating (for example, application of amnesty or expiry of statute of limitations) grounds.

**13.** On 22 June 2010 a Working Group consisting of the Senior Adviser to the President of the Republic of Tajikistan, Chief Specialist of the Executive Apparatus of the President of the Republic of Tajikistan, the representatives of the concerned ministries and agencies, and also the representatives of the civil society. Upon reviewing the draft Law “On Protection against Domestic Violence” the Working Group found it necessary to introduce amendments and additions into a number of normative legal acts of the Republic of Tajikistan.

A group of deputies of the Madjlisi Namoyandagon Oli of the Republic of Tajikistan (the Lower Chamber of the Parliament) has prepared draft laws on introducing amendments and additions into the Criminal Code of the Republic of Tajikistan (tormenting), including an additional point which establishes an increased responsibility for the infliction of physical and psychological suffering by way of systematically battering or by any other violent way in the family, into the Administrative Code and the Law of the Republic of Tajikistan “On Militsia”. The draft texts of those normative legal acts are currently under the discussion of the committees of the Parliament.

At present, the draft Law of the RT “On Prevention and Protection of Domestic Violence” is aimed at the definition of concepts of “domestic violence”, “victim of domestic violence”, other key concepts, forms and methods of prevention of domestic violence and securing the rights of violence victims, distribution of the competences between the bodies of interior, education, health, social security, other state bodies and public organizations in this sphere, order of creation and activities of the assistance centers, sources of financing the activities in the sphere of prevention of domestic violence and so on.

**14.** With a view to realization of the points of the Governmental Decree of the Republic of Tajikistan #113 of 3 March 2011 “On Approval of the Programme on Fighting against Human Trafficking in the Republic of Tajikistan for 2011-2013” a plan of conducting raid measures in the DI (*Departments of Interior*) and city-, district-bodies involved in the activities on the protection of law and order.

In the course of conduct of the said measures, explanatory and propaganda work among local residence population, and also in the higher educational establishments, lyceums and professional technical colleges, in particular, among women and girls who are departing abroad as labor migrants, is carried out within the administrative districts by the district militsia officers.

During 6 months of 2012, 168 public addresses, conversations and meetings with the population on the issues of human trafficking with a view to exploitation, have been organized and conducted by the forces of the district inspectors of the militsia and officers of subdivisions for the protection of public order.

According to the data from the Main Information Analytical Center of the MoI (*Ministry of Interior*) of the Republic of Tajikistan during the period of 2011 to 6 months of 2012 the following crimes related to the trafficking in children, child prostitution and child pornography have been registered and investigated:

|  |  |  |  |
| --- | --- | --- | --- |
| № п\п | Article of the CC of the Republic of Tajikistan | 2011 | 6 months of 2012 |
| 1. | Art. 141 – sexual act, intercourse and other actions of sexual nature with an under-age person | 81 | 49 |
| 2. | Art. 167 – trafficking in minors | 24 | 14 |
| 3. | Art. 168 – arranging for marriage of a girl who has not reached nubility age |  | 0 |
| 4. | Art. 169 – marrying a person who has not reached nubility age |  | 0 |
| 5. | Art. 238 – involving one in prostitution activities | 0 | 2 |
| 6. | Art. 241 – illegal production and distribution of pornographic materials or items | 56 | 45 |

The study and analysis of the crimes related to the trafficking in minors show that these crimes are mostly committed on the part of the women who are not married, or who had divorced, with a view to concealing an undesirable pregnancy and children born outside of marriage, from their relatives.

All revealed crimes related to the trafficking in minors, are latent crimes and they are solved by the law enforcement bodies by way of conducting operative search activities.

The analysis indicate that women who are not married or who are divorced commit crimes with a view to selling the children, and families who do not have children and do not know the legislative bases in the sphere of adopting children, buy them.

It should be noted that during the past period of 2011 and 6 months of 2012 no facts of committing the crimes related to trafficking in minors with a view to extracting human organs for transplantation, or labor and sexual exploitation, were registered.

On the basis of the legislation of the Republic of Tajikistan and international legal acts ratified by the Republic a special attention is being paid to the women and children who became victims of human trafficking, and a comprehensive psychological assistance is rendered for them, and for their return to normal life. Depending on their wish, special courses on teaching various specialties are conducted for the women victims of human trafficking.

Children victims of human trafficking are provided, in a mandatory order, with further education and with assistance in further studying in the secondary specialized and higher educational establishments.

Victims of human trafficking are given help at the stage of establishing the crimes (facts) and they are given the possibility to decide on further cooperation with the law enforcement bodies, and in case of cooperation they receive legal assistance until the completion of judicial proceedings.

There is a support service under the UN Committee where the assistance to the victims of violence, exploitation and human trafficking, as well as services on providing free legal assistance including accommodation, legal, psychological, social and medical support, are rendered.

With regards to issues of accusing for the alleged use of forced child labor in the cotton harvest we inform that in 2011-2012 no cases of criminal prosecution of the employees of schools, teachers and lecturers have been registered.

In connection with the reorganization of the state and collective agricultural enterprises (dekhkan farms) over the recent years the practice of the forced involvement of pupils to the cotton harvest has ceased. A Decree of the President which prohibited involving students in the agricultural work during the study process was issued in January 2006.

Starting from 2010 even isolated instances of involving children in the cotton harvest have been excluded. Due to this fact, there were no cases of criminal prosecution of the school staff for the alleged use of forced child labor in the cotton harvest.

**15.** A lot of attention is being paid to increasing the familiarity of the officers of the law enforcement bodies with the issues of prevention of torture. Issues of prevention of torture have been included into the study curricula of the Institutes and Centers on In-Service Training of judges and officers of all law enforcement bodies.

In May 2011 a seven-day thematic seminar for prosecutors on the topic “Prevention of Torture: National Legislation and International Standards” was conducted in the Center of In-Service Training of officers of the Prosecutor’s Office bodies, with the support of the OSCE.

Starting from 2010, in all regions of the country seminars dedicated to “International and National Mechanisms for the Prevention of Torture” for judges, prosecutors and officers of other law enforcement bodies and penitentiary institutions are being conducted by the Working Group composed of representatives of the Executive Apparatus of the President of the country, the General Prosecutor’s Office, the Authorized Person on Human Rights, Office of the UN High Commissioner for Human Rights and NGOs.

In 2010 60 officers of the law enforcement bodies have undergone a training course on the protection of human rights at the Helsinki Fund on Human Rights, with the support of the Embassy of the USA in Tajikistan.

A study programme to train prosecutors and officers of the law enforcement bodies on the issues of counteracting torture is being currently planned to be elaborated.

In order to improve the skills of the prosecutors, a Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhumane and Degrading Treatment and Punishment is being presently worked out by the General Prosecutor’s Office jointly with the OSCE and local NGOs.

An analogous study manual for judges on the issues of torture is being elaborated by the Council of Justice of the Republic of Tajikistan.

**16.** Issues of strengthening the discipline in the military units, suppression of non-proscribed relationships, in particular “dedovshhina”, have been repeatedly discussed on the level of the Government.

The bodies of the military management and the Military Prosecutor’s Office have established a strict control over the respect for the order in military units, hotline phones have been installed in the accessible places, permanently acting mobile groups on the repression of violations of the law have been created, and regular prophylactic meetings with the military servicemen are being held.

For the period of 2007 to the first half of 2012 the bodies of the Military Prosecutor’s Office have initiated and investigated 231 criminal cases with respect to 259 military servicemen for the commission of various forms of non-proscribed relationships, including “dedovshhina”.

Unfortunately, the presently acting type of provision of statistical information within the bodies of the Military Prosecutor’s Office does not allow answering, without special investigations, all the asked questions with regards to the number of complaints on “dedovshhina”, the results of consideration of each one of them, measures of disciplinary and criminal nature taken in their wake, and official positions and ranks of the punished persons. In the future, measures on the improvement of the mechanism of collection and treatment of the information in this sphere will be taken, to the extent possible.

**17.** At present, a Governmental Working Group composed of representatives of the appropriate ministries and agencies of the Republic is created with a view to studying the mechanism of implementation of the Optional Protocol to the Convention against Torture.

The elaboration of the Instructions “On Measures on Preventing, Uncovering and Investigating Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment” which is aimed to serve as an effective mechanism to prevent torture and cruel treatment, is being complete by the General Prosecutor’s Office jointly with the OSCE and the NGO “The Independent Center on Human Rights”. The discussion of the draft Instructions with the specialists from international organizations and civil society is planned for October 2012.

At the same time, the study of the issue of the adoption of the aforesaid Optional Protocol is included into the National Plan of Action on the realization of recommendations of the UN Human Rights Council under the Universal Periodic Review of the Republic of Tajikistan which is being worked out by the Governmental Commission jointly with the NGO coalition and representatives of international organizations.

**Article 3**

**18.** Tajikistan carries out an international cooperation with the CIS (*Commonwealth of Independent States*) countries on the basis of the Minsk and Kishinev Conventions on Legal Assistance and Legal Interactions on Civil, Family and Criminal Cases of, respectively, 22 January 1993 and 7 October 2002, and also on the basis of interstate bilateral agreements.

In deciding the issue of extradition a requirement of article 3 of the Convention against Torture on impermissibility of extraditing a person to another State where there are substantial grounds to believe that the person would be in danger of being subjected to torture, is taken into account. Hence, the extradition is carried out only after obtaining written guarantees from a requesting State that with respect to the person under question torture and other forms of cruel, inhumane or degrading treatment and punishment would not be used. No standards for the minimum requirements of the States to such obligations and guarantees are established in the abovementioned agreements.

In 2007 35 persons, in 2008 – 25 persons, in 2009 – 61 persons, in 2010 – 60 persons, in 2011 – 62 persons and in the first half of 2012 – 16 persons have been extradited into the Republic of Tajikistan from other States.

In 2007 1 person (to Kyrgyzstan), in 2008 – 2 persons (1 to Turkmenia and 1 to Uzbekistan), in 2009 – 4 persons (1 to the Russian Federation and 3 to Uzbekistan), in 2010 – 4 persons (2 to the RF and 2 to Uzbekistan), in 2011 – 5 persons (1 to the RF, 1 to Uzbekistan, 2 to Kyrgyzstan, and 1 to Turkey) and in the first half of 2012 5 detained persons (1 to the RF, 1 to Uzbekistan, 2 to Kyrgyzstan and 1 to other countries) have been extradited from the Republic of Tajikistan to other States.

**19.** In the evaluation of convincingness of the diplomatic assurances on extradition Tajikistan relies upon the presumption of fidelity of the requesting States to their obligations before the international community and upon the trust based on longstanding cooperation for many years in this sphere, and also upon the fact that the competent bodies of the Republic of Tajikistan has not so far received any complaints or information regarding use of torture with respect to the extradited persons in the countries where their criminal prosecution is carried out.

As for the handing over (*extradition*) of Botakuziev N.M., as it was already noted above, with a view to ensuring his rights written guarantees that he would not be subjected to any discriminating measures were received from the General Prosecutor’s Office of the Kyrgyz Republic.

Those guarantees were fulfilled and Botakuziev N. M. was released from detention and exempted from criminal liability based on the amnesty by the decision of the court of the city of Osh of 25 May 2010, immediately upon his delivery back to the native land.

**20.** During the period of 2006 to 2012 no requests for political asylum have been received.

**21.** During the period of 2006 to 2012 no requests for political asylum have been received.

**22.** … … … .

**23.** The Law of the Republic of Tajikistan “On Refugees” of 10 May 2002 provides the following definition: “refugee is a person who is not a citizen of the Republic of Tajikistan and is on its territory by virtue of quite well-grounded fears of becoming a victim of persecution in the State of its citizenship based on race, religion, citizenship, nationality, affiliation with a certain social group or political beliefs, and who cannot, or does not want, owing to such fears, to use the protection of that State, or a person who does not have a fixed citizenship, is present on the territory of the Republic of Tajikistan, and owing to such circumstances cannot, or does not want to return to the State of its permanent residence by virtue of such fears”.

This Law does not apply to the persons who have left the State of their citizenship (their previous residence) for economic reasons as a result of starvation, epidemic, or emergency situations of natural and technogenic character.

The main reasons and motives of the requesting persons for seeking asylum are clarified in the process of questionnaire inquiry and preparing the interview where the person seeking asylum states the circumstances which forced him/her to seek asylum on the territory of Tajikistan. All the data and information indicated in the application are verified by way of sending inquiry requests to the SCNS (*State Committee of the National Security*) of the RT, and they in turn make inquiries to the states from which the person seeking asylum came from.

Thus, a person who seeks asylum is differentiated at the stage of checking the information, depending on the reasons for seeking the asylum. In case if the person seeking asylum has left the territory of his/her State for political motives, then the political asylum will be granted to him/her by the consent of the President of the Republic of Tajikistan.

**Article 5 and 9**

**24.** No requests for extradition of persons suspected in the use of torture have been received in Tajikistan.

**25.** There have been no cases of extradition from Tajikistan of the persons who committed the crime of torture or who were suspected in the use of torture.

**26.** The judicial and law enforcement bodies of Tajikistan and neighboring countries have not applied to each other on the matter of rendering judicial assistance in connection with criminal proceedings, related to the crimes referred to in article 4 of the Convention

**Article 10**

**27.** The response on the question concerning measures to educate and train with a view to prevention of the use of torture and ill-treatment for state officials, in particular, on issues of the Optional Protocol to the Convention against Torture is contained in para.15.

**28.** The Ministry of Interior has adopted a number of normative legal acts aimed at prohibition of torture during the discharge of their official duties by the officers of the militsia, in particular, the Order of the MoI of the RT #403 of 2 October 1995 “On Announcing the Decree of the President of the Republic of Tajikistan #341 of 23 September 1995 “On Measures to Reinforcing the Fight against Criminality, Strengthening the Law and Order””; the Order of the MoI of the RT #538 of 12 October 1995 “On Measures on Strengthening the Law and Official Discipline in the Bodies of Interior of the Republic of Tajikistan”; the Order of the MoI of the RT #1 of 1 January 2006 “On the Polite and Attentive Attitude of the Officers of the Bodies of Interior Towards the Citizens”.

Trainings, seminars, conferences, and round tables dedicated to the problems related with torture are systematically conducted. In particular, on 15 March 2012 a Republican Scientific Practical Conference was held in the Ministry of Interior on the “Topical Problems of the Operative Searching Activities and Their Role in Strengthening Human Rights” where deputies of the Parliament of the Republic, heads of all law enforcement and judicial bodies, Prosecutor’s Office bodies, representatives of the embassies of Germany, USA, Russia, China, Great Britain, France, and representatives of the OSCE, Council of Europe, UNDP, IOM, ILO, and NGOs took part.

For the purposes of preventing torture in the activities of the militsia video surveillance cameras have been installed in the majority of the territorial bodies of the militsia at the initiative of the Minister of Interior. The work in this direction is continuing on.

**29.** In May 2011 in the Center of In-Service Training of the Officers of the Prosecutor’s Office Bodies seven-day seminars for prosecutors and investigators were conducted, with the support of the OSCE and with the use of the Manual on Effective Investigation and Documentation of Torture (Istanbul Protocol) of 9 August 1999. Also, the conduct of several seminars on the same topics is planned for 2012.

At present, the General Prosecutor’s Office is developing the Methodical Manual on the Effective Investigation and Documentation of Torture which will be based on the norms of the Istanbul Protocol.

**Article 11**

**30.** The investigation of cases of death in custody is carried out by the Prosecutor’s Office bodies. The relatives of the deceased are admitted to take part in the criminal cases in the capacity of victims and they are entitled to file applications, submit evidence, get familiarized with the minutes of the investigative activities, and get familiarized with all materials of the case upon the completion of investigation.

During the last five years 8 instances of death in custody have been registered in the premises of the law enforcement bodies and places of pre-trial detention. Criminal cases were launched in all of these instances. Based upon the results of investigation, 1 case is closed (on the death of Khurshed Bobokalonov), 1 case is suspended (on the death of Boboev Usmonboy) and in two cases (on the deaths of Sangov Safarali and Shodiev Bakhromiddin) the investigation is ongoing.

Based on 4 facts the criminal cases have been sent to the court upon the completion of preliminary investigation. By the present moment 2 cases have been considered by the courts. In one case the guilty persons were sentenced to imprisonment (on the death of Bachadzhonov I.) and in one case they were imposed a fine (on the self-hanging of the suspect Tagoev M.N in the IIC of the DI of the Gafurov district of the Sogd region, due to negligence of the militsia officer on duty Otaboev S.A.).

In response to the questions with regard to concrete cases, we inform of the following:

(a) Shodiev Bakhromiddin was brought to the DI of Shohmansur region on 19 October 2011 at 18:00 under the

suspicion of larceny. From 18:10 to 19:20 he was interrogated by investigator of the DI Dodov A.V., in his office room located on the second floor. Upon finishing the interrogation the investigator drew up the minutes of arrest of the suspect. After that at 19:30 Shodiev B., with the permission of the investigator Dodov A.V., approached the window and using the opportunity jumped out of the window. As a result of falling down he incurred grave bodily injuries dangerous for life and was brought to the National Medical Center. On 30 October 2011 Shodiev died in the hospital from the received bodily injuries.

In the course of investigation on this fact no use of torture with respect to Shodiev B. was established. At the same time, 3 officers of the DI of the Shokhmansur district were dismissed from the bodies of interior, and the Deputy Head of the DI lieutenant colonel of the militsia Karimov I. was dismissed from his position, by the order of the MoI of the RT. With respect to investigator Dodov A.V., on 4 November 2011 the District Prosecutor’s Office has initiated a criminal case under p.2, article 322 of the Criminal Code of the RT, i.e., for “negligence”. Upon the completion of the investigation the case was handed over to the court. However, on 29 February 2012 the court has returned the case for additional investigation. At present time, the investigation on the case is ongoing.

The relatives of Shodiev B. took part in the case in the capacity of victims and familiarized themselves with all materials of the criminal case.

The issues of compensation to the family of Shodiev B. will be considered within the context of the final results of the investigation and trial on this case.

(b) Safarali Sangov was arrested and brought on 1 March 2011 into the DI-1 of the Sino

district of the city of Dushanbe under the suspicion of illegal circulation of drugs.

During the bringing of Sangov S. into the DI-1 the measures of precaution established by the relevant normative acts, have not been taken by the operative officers of the DI-1 of Sino. Taking advantage of this, Sangov S. threw himself on the back during his ascent onto the second floor, due to which he sustained a head injury. Further on, while staying in the office room of the DI officer Yakubov A. A. he deliberately hit his head against the wall. Due to the sustained injuries Sangov S. was urgently brought to the National Medical Center where he died on 5 March.

The investigation has not established use of torture against Sangov S. Therefore, the two operative officers of the DI-1 of the Sino district Yakubov A. A. and Khasanov K. S. were charged with negligence under p.2, article 322 of the CC of the RT. Upon the completion of the investigation the case was forwarded to the court. On 14 September 2011 the case was returned by the court for an additional investigation due to an incomplete investigation. Presently, the additional investigation is being carried out on the case.

The relatives of Sangov S. took part in the case in the capacity of victims and familiarized themselves with all materials of the criminal case. The issues of compensation to his family will be considered within the context of the final results of the investigation and trial on this case.

(c) Concerning the circumstances and place of death of the leader of international terrorist

group Davlatov Alovuddin Muzaffarovich guilty of attacking the column of the governmental troops on 19 September 2010 resulting in 25 dead and 15 wounded military servicemen we inform that on 4 January 2011 the indicated group after being encircled by the sub-units of security forces at the Runov kishlak (*village*) of the Rasht region, has refused to lay down arms, and made a fierce resistance. In the course of the operation Davlatov A. M. himself and 7 members of his group were killed on the spot, and 1 member surrendered to the authorities.

With respect to a video recording distributed in the Internet where supposedly alive Davlatov A.M. is being interrogated by some people in military uniform after the operation, a separate investigation was carried out. It was correspondingly established that this video recording was forged.

(d) Boboev Usmonboy was arrested in the city of Isfara on 19 February 2010 under the suspicion of being affiliated with a religious extremist organization “Khizb-Ut-Takhrir” and brought to the UFAOC of the DFAOC of the MoI of the RT for the Sogd region (city of Khodzhent). On the same day he died under un-clarified circumstances. A forensic examination set up by the Prosecutor’s Office of the region confirmed the death of Boboev U. as a result of the use of electricity. Based on this fact a criminal case was launched under p.1, art. 104, and p.3, art.316 of the Criminal Code of the RT.

At present, the legal proceedings on this case are suspended in connection with unestablished persons who could be brought into the case in the capacity of the accused. The operative officers Akbarov M. and Shokirov F. involved in the bringing of Boboev U. into the UFAOC were dismissed from the occupied positions based upon the results of the service investigation.

The refusal to the relatives of Boboev U. and their lawyer Romanov S. in familiarizing themselves with the materials of the case on the fact of Boboev’s death, is based on the provisions of articles 42 and 53 of the CPC of the Republic of Tajikistan that the victims and lawyers have a right to familiarize themselves with all materials of the case only after the completion of investigation.

(e) The investigation into the fact of death of Bobokalonov Khurshed has established that on 27 June 2009 at 23:00 during the passing of the Governmental procession in the city of Dushanbe along the protocol route (Rudaki Street) guarded by the forces of state bodies of interior and security Bobokalonov Kh. has appeared in a state of alcoholic intoxication and breaching the public order started speaking in an obscene manner against the guardsmen. With a view to establishing his identity and motives for his behavior Bobokalonov Kh. was sent in a special automobile to the DI of the I. Somoni district. Upon the arrival to the DI it was determined that Bobokalonov Kh. has died along the route.

On 28 June 2009 it was established by a forensic expertise that the cause of death of Bobokalonov Kh. was a mechanical asphyxia as a result of obstruction of his respiratory tract by vomit masses. Nevertheless, in order to clear out all the circumstances of the case a criminal case was initiated on 6 July 2009 by the Prosecutor’s Office of the district based on this fact and under p.2., article 108 of the CC of the Republic of Tajikistan (infliction of death by imprudence).

From this point on, the case was repeatedly suspended in connection with the non-establishment of the persons who could be brought into the case in the capacity of the accused. In November 2011 the General Prosecutor’s Office has resumed the proceedings of the case, and a commissioner forensic expertise was assigned to it. According to the conclusions of the commissioner expertise of 30 April 2012, the cause of death of Bobokalonov Kh. was a life-threatening arrhythmia of the heart (painless myocardial ischemia). According to the data of the research Bobokalonov Kh. had suffered from a heart disease during his lifetime. The conditions which contributed to exacerbation of the life-threatening arrhythmia were the following:

(a) excessive increase of the volume of blood in his blood vessels because of the consumption of big amounts of liquid right before death (there is evidence suggesting that on that day Bobokalonov Kh. drank more than 30 glasses of bear, together with his fellows);

(b) physical exhaustion (that evening Bobokalonov Kh. had been training in a sports gym for a long time after which he drank bear and competed with 6-7 officers of militsia who tried to place him in a special automobile);

(c) stress;

(d) remaining for 5-6 minutes in a compact and tight space (he was brought from the place of the incident to the DI in a salon of the special automobile).

The commissioner forensic expertise could come to an unambiguous conclusion on which one of those factors became the cause of death of Bobokalonov Kh. The revealed external bodily injuries in the form of abrasions are not related to his death.

In this connection, on 25 July 2012 the criminal case based on the fact of death of Bobokalonov Kh. was closed for the absence of corpus delicti.

**31.** In accordance with acting legislation the Authorized Person has a right to unlimited access to places of detention. For the purpose of carrying out his/her activities on assisting the protection of the rights of persons held in the closed and semi-closed institutions a Practical Manual on Conducting the Monitoring of the Rights of Persons Deprived of Freedom has been developed. By the present time, the Authorized Person and the officers of the Apparatus of the Authorized Person has visited the majority of the closed institutions (II, correctional facilities). The Authorized Person on Human Rights also systematically conducts the monitoring of respecting the rights of the persons held in the closed and semi-closed institutions. Thus, in 2011 the Authorized Person and the officers of the Apparatus of the Authorized Person have visited 7 closed and semi-closed institutions (correctional facilities, psychiatric hospitals).

In 2012 the Authorized Person on Human Rights and employees of the Apparatus have visited 17 closed institutions 6 of which are correctional facilities (3/1, 3/3, 3/5, 3/7, 3/2, 3/8, 3/6 of the Main Department for the Execution of Criminal Punishment under the Ministry of Justice of the Republic of Tajikistan (MDECP under the MoJ of the RT)), 1 educational colony (3/12 of the MDECP under the MoJ of the RT), 2 investigative isolators (9/1, 9/2, 9/5), 1 prison (9/7), 2 settlement colonies (3/10, 3/9, 3/11) and 1 medical institution (3/10). In the course of the visits some violations of the rights of the persons held in those institutions were revealed, in particular, untimely provision of meetings with relatives, which were removed after the intervention from the Authorized Person.

The monitoring of the closed and semi-closed institutions is also conducted jointly with the representatives of the civil society. The Authorized person has jointly with the NGOs conducted a monitoring of the respect for the rights of the persons held in the psychiatric institutions, a monitoring of the health centers, the forensic expertise on the matter of the accuracy of documentation of the facts of torture, a monitoring of the respect for the right of the child to be free from torture in the juvenile justice system.

**32.** In accordance with the Law of the Republic of Tajikistan, the information on the number, location, capacity and the number of detainees in the penitentiary institutions in the country is secret information. At the same time, positive processes that take place in the criminal executive system, are conducted within the framework of humanization of the criminal policy. With a view to determining the conditions of detention of the convicted persons, improvement of their situation, and also bringing the norms for detaining the convicted persons under international standards, the Criminal Executive Code, the Criminal Procedural Code, the Laws “On System of Execution of Criminal Punishments”, “On Authorized Person on Human Rights”, “On State Defense of the Participants of the Criminal Proceedings”, “On Order and Conditions of Detention of the Suspected Persons, the Accused Persons and the Defendants” have been adopted, and also the work was carried out to correct the normative legal acts of the state agencies towards humanization. At present, the institutions for the execution of criminal punishment have been brought into accordance with international norms and standards on the detention of the convicted persons, windows in the punishment isolator cells are expanded for a sufficient lighting of the premises, wooden floors are laid, and communal general services have been improved.

At present, the number of detainees in the institutions for the minors has decreased by more than two times, and in the investigative isolators by more than one and a half time. Further decrease of the prison population will require a change from the punitive nature of the criminal policy to the rehabilitative one, and creation of a system of social and rehabilitative assistance to the groups under prison risk.

In accordance with article 105 of the Criminal Executive Code a medical sanitary provision of the people deprived of freedom have been foreseen in the places of detention. In this connection, the whole medical preventive assistance to the convicted persons is being organized and brought into accordance with the Regulations of Internal Order of the Penitentiary Institutions.

Within the last 6 months on the basis of a medical establishment a construction of the three-story building for the tubercular patients has started. In accordance with international standards telephone booths have been installed in the penitentiary institutions. In all institutions rooms for short-time meetings have been reconstructed, transparent cabins equipped with telephone equipment with the help of which the convicted persons can communicate with their relatives and close ones, have been installed. Also, in each institution additional rooms for long-time meetings have been built.

Articles12 and 13

**33.** A specialized mechanism to work on complaints outside the scope of the General Prosecutor’s Office for the detained persons has not been yet created. At the same time, such complaints may be forwarded directly to the Authorized Person on Human Rights. There are no any legislative constraints to register complaints on the use of torture.

**34.** The Law of the RT #720 “On Order and Conditions of Detention of the Suspected Persons, the Accused Persons and the Defendants” of 28 June 2011 substantially reinforces the guarantees of confidentiality of complaints on the use of torture and other ill-treatment. If the previous legislation provided for uncensored delivery of only those complaints and allegations which were addressed to a Prosecutor, article 21 of the new Law included into the circle of the complaints and allegations which are not be censored also those complaints and allegations of the detainees that are addressed to the court, the Authorized Person on Human Rights and other bodies competent to undertake a supervision over the places of detention.

During the reported period no facts of threatening, intimidating, and retaliating against victims of torture, members of their families and attorneys have been registered.

**35.** The draft Manual “On Effective Investigation and Documentation of Torture and Other Cruel, Inhumane and Degrading Treatment and Punishment” and draft Manual “On the Order of Detention” currently being elaborated by the General Prosecutor’s Office of the Republic of Tajikistan jointly with the OSCE, American Bar Association (ABA) and a number of NGOs, are aimed at the improvement of the mechanism of filing complaints by the victims of torture and ill-treatment, and ensuring a timely medical examination of detainees in support of their complaints.

At present, in all penitentiary institutions the boxes for complaints and allegations which remain under the constant close attention of the Prosecutor bodies have been placed. On the legislative level, the competencies of the Authorized Person on Human Rights have been expanded with a view to repressing and revealing the facts of the use of torture in the places of detention of the convicted persons. Besides, trainings, in-service training courses, and also seminars on the issues of prevention of torture are systematically conducted among the officers of the penitentiary system.

**36.** Taking into account the analysis of the general situation with human rights in the Republic of Tajikistan and the existing capacities of the institute, the Authorized Person on Human Rights has worked out the priority directions of the activities of the institute one of which consists in the promotion of protection of the right to life, freedom from torture, right to freedom and personal integrity. In this connection, he/she undertakes corresponding measures on the prevention of torture. The activities of the Authorized Person on Human Rights in the prevention of torture is carried out within the framework of his/her main functions provided by the Law of the RT “On Authorized Person on Human Rights in the RT” which are the promotion of the respect for human rights and freedoms, restoration of violated rights, improvement of legislation, legal education of citizens, interaction between state bodies, development and coordination of international cooperation.

For the purposes of prevention of use of torture by the investigative bodies the Authorized Person carries out, jointly with the Prosecutor’s Office, the check-ups of the citizens’ appeals regarding the use of torture received by the Authorized Person.

During the whole time of activities of the Authorized Person 26 complaints on the use of torture were received. Based on one complaint and consequently on the results of a check-up thereof a criminal cased was initiated with respect to the guilty persons.

**37.** On all cases where there is a possibility of the use of torture timely, impartial and thorough investigations are carried out. The statistical data on the number of judicial prosecutions based upon the facts of torture is provided under point 12 of the present report.

In December 2011 the responses on the results of investigations on all complaints on the use of torture in the past years raised in the Committee, were sent to the UN Human Rights Committee. The Tajik delegation provided detailed responses during the 17th and 18th sessions of the Human Rights Committee, with respect to 6 complaints of the convicted persons which were discussed during those sessions.

The question of the establishment of a fully independent body for investigation of all the received complaints on the use of torture including for acts of torture that occurred during the period of 1995 to 1999, is currently not being considered due to the absence of an objective necessity, and also lack of material, technical and financial resources.

During the reported period a number of legislative and judicial measures in order to strengthen the counteraction against torture have been adopted. In particular, as already noted before, the Law of the RT of 16 April 2012 introduced into the Criminal Code a new article 1431 “Torture” which fully corresponds to article 1 of the Convention against Torture.

On 25 June 2012 the Plenum of the Supreme Court of the Republic of Tajikistan has adopted a guiding interpretation (enactment) #1 “On Application of the Norms of Criminal and Criminal Procedural Legislation on Counteracting Torture”.

The elaboration of the draft Laws of the RT “On Legal Assistance” and “On Advocacy” is being completed.

During the conduct of preliminary investigation on criminal cases with respect to use of torture there have been no cases of removal of the suspects from the course of official duty. Where necessary and when there was a need to neutralize threats against victims the suspects (the accused) were taken into custody.

For the purposes of expanding the practice of applying the institute of removal from the course of duty the General Prosecutor’s Office has worked out and approved the Instruction of 31 August “On participation of the Prosecutor in the Application of Preventive Coercion Measures in the Form of Temporary Removal from the Course of Duty” (article 114 of the CPC of the Republic of Tajikistan).

Concerning the questions on concrete cases we inform on the following:

(a) Information with regard to the investigation into the use of torture and other forms of cruel and inhumane treatment against Urunboy Usmonov, Ilhom Usmonov, Nematillo Botakuziev, Vokhidov A. and Sharopov R. is provided in point 4 of the present letter of response.

(b) Regarding the bringing of Siyavushi Akhmad and Bobodzhon Dostiev to militsia we inform that on 6 June 2011, after the finishing of the football match between the teams “Ravshan-Kulyab” and “Energetic” which took place in the city of Nurek, the fans of the team “Ravshan” inspired by the victory of their team and during the return to the city of Kulyab in 100-150 automobile cars, blocked the roadway, sidewalks, entry drives to the market, and disturbed the peaceful resting of the citizens till late at night. In this connection, all officers of the DI were engaged in restoring order in the city. Several of malicious violators including Siyavushi Akhmad and Bobodzhon Dostiev were brought at 23:30 to the DI where after having a prophylactic conversation they were let back home at 24:10.

At the request of the officer of the militsia they underwent a forensic medical examination during the same day. Based on the words of the examinee himself, it is noted in the conclusion of the forensic medical examination #803 of 7 June 2011 with respect to Siyavushi Akhmad that he had been brought to the DI of the city of Kulyab for the breach of public order, and no battery or any other ill-treatment was used against him. The examination has not revealed any bodily injuries on his body. According to analogous act of examination #804 of 7 June 2011 some lighter bodily injuries which had not caused any harm to his health, were found on the body of Dostiev Giyosiddin.

Siyavushi Akhmad, Bobodzhon Dostiev or their relatives did not complain either to the DI or the Prosecutor’s Office.

Article 14

**38.** According to article 461 of the CPC of the RT the harm inflicted as a result of illegal arrest, detention or house arrest, temporary removal from the course of official duty, placement into a medical establishment, conviction, application of preventive measures of medical nature, is compensated by the state in full volume, irrespective of the guilt of the interrogator of an interrogative body, the investigator, the prosecutor and the court.

The right to compensation for the harm arises upon the following conditions:

- release of the detainee or arrestee due to non-confirmation of the suspicion in committing the crime;

- termination of the criminal case under the basis provided by the Criminal Procedural Code of the RT (part 1 of article 27 and part 1 of article 234);

- passing of a sentence of acquittal;

- change in the qualification of the perpetration to an article of the law which provides for a crime of a lesser gravity, accompanied by imposing, based on this article of a new and lighter punishment, or exclusion of a part of accusation from the sentence and commutation of the punishment in this connection;

- revocation of an unlawful ruling of the court on applying compulsory measures of medical nature.

The harm is not to be compensated in case if the citizen contributed to the ensuing of the mentioned consequences during the process of interrogation, preliminary investigation and judicial hearings by way of false confession. However, a false confession which is a result of the use of violence, threats and other illegal measures against the citizen, does not prevent the compensation of the harm. At that, the fact of the use of illegal measures must be established by investigative bodies, the prosecutor or the court.

After taking the decision on full or partial rehabilitation of the citizen, the court, the prosecutor, investigator, or interrogating body should recognize his/her right to compensation of the harm. A copy of the acquittal sentence or ruling (enactment) on the termination of the criminal case, on abrogation or changing of other illegal decisions is handed over or sent to the person concerned by mail. Simultaneously, a notification with clarification of the order of compensation of material harm and restoration of other rights is sent to him/her (art.463 of the CPC of the RT).

 Within six months from the moment of receiving the copies of documents indicated in article 463 of the present Code with a notification on the order of compensation of harm, a person is entitled to apply with a claim to redress material harm to a body that passed a sentence of acquittal, decision (enactment) on termination of the case, on revocation or modification of other illegal decisions. If the case is terminated or the sentence is changed by a higher court, the claim to compensate the harm shall be sent to the court that passed the sentence.

No later than one month from the day of receiving the claim the judge, the prosecutor, the investigator, or interrogating body shall determine the size of the harm, requesting when necessary the calculations from financial bodies and bodies of social security upon which they shall issue an enactment on the execution of payments to compensate for the harm.

A certified copy of the enactment is handed over or sent to the citizen in order to submit to the bodies obliged to make the payment (article 464 of the CPC of the RT).

Claims on compensation in a monetary form for the inflicted moral harm are submitted in the order of civil judicial procedure.

Torture, according to the legislation of Tajikistan is a criminally punished offence in which connection a person may be acknowledged as a victim of torture and thus obtain a right to compensation only in case when the fact of the use of torture against him/her was established in the order of criminal legal proceedings (by a guilty verdict of the court or by a decision to terminate the criminal case with respect to a violator upon non-rehabilitating grounds). At that, the presence of a criminal punishment of the persons guilty of torture is not necessary.

For the period of 2008 to the present time the investigative bodies have terminated upon non-rehabilitating grounds only 3 criminal cases based on the facts of use of torture (2 cases due to the change of the situation and 1 case based on the amnesty). In connection with the absence of claims from the side of the victims in the mentioned criminal cases the investigative bodies have not considered claims to pay compensations.

To request further from the Council of Justice with regard to judicial bodies.

At present, no state programmes on rehabilitation of victims of torture and ill-treatment have been elaborated and realized. Those issues will be considered within the framework of realization of the recommendations of the Human Rights Council under the Universal Periodic Review of Tajikistan.

Concerning the criminal case with respect to Karimov Mirzokhon we inform that on 13 June 2009 he was detained by the officers of the DI of the city of Nurek under the suspicion of illegal circulation of drugs (830 grams of the narcotic substance “hashish” was found in his car’s salon). Based on this fact, the investigator of the DI of the city of Nurek Kodirgulomov U. has initiated on 14 June 2009 a criminal case under part 3, article 201 of the CC of the RT. On 19 June 2009 Karimov M. was officially detained and on 22 June 2009 a preventive measure in the form of detention was used against him under the sanction of the Prosecutor of the city of Nurek.

During the review of this criminal case the Prosecutor’s Office of the Khatlon region suspected a falsification of evidence in this case. In this connection, a prosecutorial check-up was conducted which revealed that indeed the Head of the Department for Fighting against Illegal Circulation of Drugs of the DI of the Khatlon region, lieutenant colonel Soliev S. D. had drawn up forged operative documents on the connection of Karimov M. with the narcotic trade and submitted them to the investigative department of the DI of the city of Nurek. In the course of the check-up the spouse of Karimov M., Karimova S. Kh. alleged on the use of torture against Karimov M. by the officers of the DI of the city of Nurek.

In this connection the Prosecutor’s Office of the region initiated on 24 July 2009 a criminal case with respect to Soliev S. D. and officers of the DI of the city of Nurek under p. (a), part 3, article 359 (falsification of evidence on the grave or particularly grave crime), p. (a), part 3, article 316 (exceeding of one’s official powers with the use of violence), part 2, article 354 (compelling to testify combined with humiliation of dignity, use of torture or other violence) and part 1, article 358 (illegal detention) of the CC of the Republic of Tajikistan.

For the time of conduct of the investigation the suspects Soliev S. D. and Toshev I. B., the officers of the DI of the Khatlon region were temporarily removed from the course of their duty by the decisions of 9 October 2009 of the investigator on particularly important affairs of the Prosecutor’s Office of the Khatlon region Kuvvatov R. A.

On 2 July 2009 Karimov M. was released from detention (upon 13 days) and on 13 September 2009 part of the materials of the criminal case in his respect was terminated by the investigator of the DI of the city of Nurek due to non-confirmation of his participation in the illegal circulation of drugs.

In the course of investigation of this criminal case the use of torture and other impermissible methods of interrogation and investigation against Karimov M. was not confirmed.

In particular, officers of the DI of the city of Nurek Toshev A. S. (Head of the DI), Izatullaev S.G. (Deputy Head of the DI), Khabibov B. Kh. (Head of the DSAI (*Department of State Motor Vehicle Inspectorate*) of the DI), Kodirgulomov U. (investigator of the DI) and other witnesses of Karimov’s stay in the DI of the city of Nurek, Yatimov A.R., Ismatov S.S., Merganov Kh. A., and Aliev R.K. all denied the fact of illegal detention of Karimov during 2 days and use of impermissible methods against him.

Karimov M. himself in his initial testimony stated that he had been illegally held for two days in the DI and torture was used against him with a view to compelling him to confess. In subsequent interrogations he changed his position and indicated that from 13 to 15 June 2009 he was not detained and used to come home at night. No one has tortured him or compelled to confess, and he was giving accusative testimony in order to speedily rid himself from interrogations and return back home (volume 1, personal case-file 183-191).

In the course of preliminary investigation a forensic medical expertise to determine presence of bodily injuries on the body of Karimov M. was fixed. According to the conclusion of the said expertise #3740 of 16 June 2009 the bodily injuries sustained by Karimov M. were connected with infliction of light harm to the health and might have been received on 16 June 2009 (volume 3, personal case-file 161-165).

Karimov M. himself in his initial testimony and during the medical examination stated that he had been beaten up by the officers of the DI of the city of Nurek on 13 June 2009. In the course of investigation it was determined that on 15 June 2009 Karimov B. left the DI of the city of Nurek to the city of Dushanbe and remained there until 19 June 2009 (up to the moment of his official detention) in which connection the officers of the DI of the city of Nurek could not have used any impermissible methods against him on 16 June 2009.

Thus, the initial testimony of Karimov M. alleging the use of torture and ill-treatment against him was not confirmed. In this connection, on 1 October 2009 the investigator on particularly important affairs of the Prosecutor’s Office of the Khatlon region Kuvvatov R. A. terminated part of the materials of the case with respect to officers of the DI of the city of Nurek Toshev A. S., Izatullaev S.G., Khabibov B. Kh., Sharipov M., Kodirgulomov U., Yatimov A.R., Ismatov S.S., Merganov Kh. A., and Aliev R.K. due to the absence of corpus delicti in their actions.

The criminal case initiated upon the indictment of the officers of the DI of the Khatlon region Soliev S. D. and Toshev I. B. under p. 1, article 316 (exceeding of one’s official powers) and article 323 (official forgery) of the CC of the RT was sent to the court. By the decision of the Court of the city of Kurgan-Tyube of 17 November 2009 the criminal case against the mentioned persons was closed in connection with the application of the Law of the RT #560 “On Amnesty” of 3 November 2009.

Thus, no fact of the use of torture against Karimov M. was established and he was not a victim of torture.

No claims on the part of Mirzokhon Karimov to pay compensations have been received by the General Prosecutor’s Office.

**39.** According to article 23 of the Law of the RT “On Amnesty” of 20 August 2011, the persons to whom amnesty was applied are not exempt from redressing the harm caused by their criminal actions.

However, it should not be noted that issues of compensation to the victims of torture have no relation to the Law “On Amnesty” as such compensation is paid at the expense of the state budget.

**40.** During the reporting period no confirmed facts of the death of conscripts as a result of torture and consequently no cases of paying compensations based on those facts have taken place.

**Article 15**

**41.** The acting system of judicial statistics does not provide for a separate roster of criminal cases depending on the extent of proof of guilt of the accused persons. Besides, according to the legislation of the Republic of Tajikistan the sole self-confession of the defendant, in the absence of any other evidence, may not serve as a basis for a guilty verdict.

Nevertheless, the bodies of the prosecutor’s office, both at their own initiative and on the basis of the claims received during prosecutorial supervision check-ups, study criminal cases where there are grounds to doubt the extent of proof of guilt of the convicts. There have been no known cases of conviction of persons based solely on those persons’ testimony.

Concerning the information on application of part 3, article 88 of the CPC of the CPC of the Republic of Tajikistan on finding as invalid the evidence obtained through the use of torture we inform that due to the absence of monitoring of judicial decisions and summarization of the judicial practice on torture cases data on the number of cases where courts applied this particular article is absent.

For the purpose of ensuring the application in practice of part 3, article 88 of the CPC of the RT the Plenum of the Supreme Court of the Republic of Tajikistan of 25 June 2012 adopted a guiding interpretation (enactment) #1 “On Application of the Norms of Criminal and Criminal Procedural Legislation on Counteracting Torture” which explains the conditions and order of finding as invalid the evidence obtained through torture.

Also, the Council of Justice and the Supreme Court are developing a Manual for judges on issues of torture which explains the order of application of part 3, article 88 of the CPC of the Republic of Tajikistan.

The information that on 12 November 2010 during the first judicial hearing of the case of Ilhom Ismonov the judge allegedly ignored the wish of the latter to show the evidence of use of torture on his body and that it was recommended to his attorney to apply to militsia, does not correspond to reality. Such allegation on the side of Ismonov I. or request on the part of his attorney is not indicated in the minutes of the judicial session.

**Article 16**

**42.** In accordance with article 42 of the CPC of the Republic of Tajikistan, in case of the initiation by the Military Prosecutor’s Office of a criminal case based upon the fact of death of a conscript one of the family members or another close relative is acknowledged a victim. The victim has a right to enter requests, submit evidence, and get familiarized with the minutes of investigative actions and, upon the completion of investigation, with all materials of the case.

The State takes measures to ensure legality of conscription to military service. The President of the Republic of Tajikistan points out to the strict observation of the provisions of the Law of the RT “On Universal Military Duty and Military Service” when issuing his Decrees on the each next conscription.

Before the beginning of conscription, a Coordination Council of the law enforcement bodies and military structures is gathered where issues of respecting the law during the preparation and conduct of conscription are discussed, with participation of heads of military agencies and commanders of military units.

During conscription, the bodies of the Military Prosecutor’s Office carry out constant prosecutorial supervision over its conduct. They conduct check-ups of the work of the military commissariats, conscription commissions and districts, and accept complaints on illegal actions during conscription.

Based on the results of each conscription (spring and autumn conscription) the Main Military Prosecutor’s Office submits a report to the General Prosecutor and the Government of the Republic of Tajikistan on the results of conscription and respect for legality during its conduct.

For the period of 2006 to 2011 the bodies of the prosecutor’s office have initiated 16 criminal cases based on the facts of inappropriate conscription of citizens with respect to 22 official persons of the military commissariats.

Based on the results of investigation into 8 criminal cases with respect to 10 accused persons the guilty verdicts have been delivered.

8 criminal cases in respect to 12 accused have been terminated by the proceedings upon non-rehabilitating grounds provided in the Criminal Procedural Code (act of amnesty, repentance, change of situation and so on).

Concerning questions on concrete files and cases we inform on the following:

 (a) The military serviceman of the military unit of the Ministry of Defense of the RT, private Mamadzhonov Akhrordhzon Anvarovich, born in 1991 in the city of Isfara of the Sogd region, was engaged on 27 June 2010 in the repair works on the territory of the joint-stock company “Humo” of the city of Dushanbe, together with his fellow servicemen privates Mirgiyoev G. Ch. and Khidirov A. Sh. During the night-time break at 22:00 Mamadzhonov A. A., with a purpose of stealing non-ferrous metals, entered the territory of the substation #10-15, where during an attempt to extract non-ferrous parts of a transformer died as a result of being hit by electric high-voltage current.

 Based on this fact an exhaustive and comprehensive check-up was carried out in the course of which no facts of non-proscribed relationships, other violent acts or ill-treatment against Mamadzhonov A. were established. Correspondingly, on 6 August 2010 the initiation of a criminal case based on this fact was denied. The relatives of the deceased were notified thereof in written.

 (b) With regard to compulsory detention of the citizen Kholov Dzhurabek in the military commissariat for 5 days, no allegations, complaints or information were brought to the law-enforcement bodies.

 **43.** All allegations and notifications on violence, harassment and arbitrary arrest, torture, cruel, inhumane and degrading treatment against journalists, human rights activists and any other persons in Tajikistan are timely and objectively investigated.

 In response to the questions concerning concrete facts we inform on the following:

 (a) The information that a criminal case has been launched by the Supreme Court against the journalist Khayrullo Mirsaidov in March 2012, at the allegation of a state representative from the bodies of interior of the city of Isfara, and related with publication by Mr. Mirsaidov of a journalist investigation based upon the fact of use of torture by the employees of detention places does not correspond to the reality.

 According to the information #534/1-6 from the Supreme Court of the Republic of Tajikistan of 6 August 2012, no allegation was received and correspondingly no criminal case was initiated with respect to Kh. Mirsaidov.

 Also, no criminal case against Kh. Mirsaidov is contained among the ongoing proceedings in the law-enforcement bodies of the city of Isfara.

According to the information #4008/23 from the court of the Firdavsi district of the city of Dushanbe of 7 August 2012, indeed, on 22 May 2012 a complaint was received in the private order on behalf of the Head of the Company “Renaissance Capital” Radhzabov Ismoil against Mirsaidov Khayrullo Khabibulloevich and Khusaynov Khayrullo Farmonovich under article 135 of the CC of the RT (libel). The complaint was accepted by the court for consideration. However, on 24 July 2012 the proceedings on this particular case have been terminated, due to the adoption of the Law of the RT #844 “On Introducing Amendments and Additions into the Criminal Code of the Republic of Tajikistan” of 3 July 2012 which decriminalized libel.

(b) The information with regard to torture against the journalist Urunboy Usmonov is laid out in point 4(a) of the present letter.

(c) The Editor-In-Chief of the newspaper “Nadzhot” of the Islamist Party for the Renaissance of Tajikistan Khikmatullo Sayfullozoda was beaten at 07:40 on 7 February 2011 in the courtyard of the house #10/1 in the Gafurova Street of the city of Dushanbe by unknown persons. According to the conclusion #859 of the forensic medical examination of 24 February 2011 Kh. Sayfullozoda has incurred minor bodily injuries.

Based on this fact, on 11 February 2011 the Prosecutor’s Office of the Sino district of the city of Dushanbe has initiated a criminal case under article 112 of the CC of the Republic of Tajikistan (deliberate infliction of minor harm to the health).

Sayfullozoda Kh. himself does not know anything about the attackers’ motives; he has no suspicion against anyone, and he cannot describe the external appearance of the attackers since he had been attacked from behind. The neighbors and residents from the nearest houses, who were inquired, had not noticed this event.

Nevertheless, the work on securing the witnesses and establishing the identities of the attacking persons continues. The investigation of the case is under the control of the Prosecutor’s Office of the city of Dushanbe.

(d) The information concerning the actions incriminated to Makhmadyusuf Ismoilov is laid out in point 4(b) of the present letter.

**44.** Starting from 2004 a moratorium was introduced in Tajikistan on carrying out the death penalty and it is not used in practice. A Governmental working group is currently studying the social legal aspects of the possibility of the total abolition of the death penalty.

**45.** Within the framework of implementing the recommendations of the Committee on the Rights of the Child, measures are being taken in the Republic of Tajikistan to improve domestic legislation, with a view to excluding the use of corporal punishment as a method of maintaining discipline in the family, schools and other educational establishments.

In particular, on 1 August 2011 the Law of the Republic of Tajikistan “On Responsibility of Parents for Education and Raising Their Children” entered into force where the parents are obliged, in article 8, to exclude cruel treatment as a method of education and maintaining discipline in the family.

The same obligations in article 12 of the same Law are established for teachers, educators and other persons responsible for the education of children in educational establishments.

Various measures of punishment are provided for violation of those obligations including also a criminal responsibility.

Thus, article 174 of the Criminal Code of the Republic of Tajikistan provides for a criminal responsibility for non-fulfillment or improper fulfillment of the obligations on educating the minor by his/her parents or other persons who are entrusted with this obligation by the law, and also by pedagogues or other employees of an educational establishment if this is combined with cruel treatment of the minor.

**Other issues**

**46.** Concerning measures undertaken with respect to issues of concern for the Committee and which are laid out in paragraphs 7, 16, 17 and 19 of the concluding observations to the previous report of the Republic of Tajikistan we inform on the following:

(a) on paragraph 7, with regard to the problems in the registration of detainees the responses are provided in point 5 of the present letter of response;

(b) on paragraph 16, with regard to the access of national and international monitors to the closed institutions we note that the functions of the national monitor on issues of torture in Tajikistan are carried out by the bodies of the Prosecutor’s Office and the Authorized Person on Human Rights which both have access to the closed instructions without a preliminary permission.

Tajikistan also proposes to the ICRC to visit penitentiary institutions and places of detention according to the planned and regulated order, and in accordance with legislation of the Republic of Tajikistan.

The Republic is also planning to join the Optional Protocol to the Convention against Torture.

(c) on paragraph 17, concerning the creation of an independent body on investigation of torture-related crimes including those used in 1995-1999, the response is provided in point 37 of the present letter of response;

(d) on paragraph 19, concerning the practice of finding as invalid the evidence obtained through torture, the response is provided in point 41.

**47.** The issue of making declarations by Tajikistan under articles 21 and 22 of the Convention against Torture will be studied in parallel with the issue of joining the Optional Protocol to this Convention.