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

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Second periodic reports of States parties due in 2008

Tajikistan*, **

[16 December 2010]

* The initial report submitted by the Government of Tajikistan is contained in document CAT/C/TJK/1; it was considered by the Committee at its 726th and 729th meetings, held on 7 and 8 November 2006, and was adopted at its 744th meeting, held on 20 November 2006 (CAT/C/SR.744). For the conclusions and recommendations, see CAT/C/TJK/CO/1.

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

Abbreviations

GKNB	State Committee on National Security
GPK	Code of Civil Procedure
EU	European Union
ITS MVD	Information Centre of the Ministry of Internal Affairs
MVD	Ministry of Internal Affairs
MINYUST	Ministry of Justice
ICCPR	International Covenant on Civil and Political Rights
MS	Migration Service
NGO	Non-governmental organization
RF	Russian Federation
SIZO	Remand centre
SMI	Media
CIS	Commonwealth of Independent States
UBOP	Authority for the Prosecution of Organized Crime
UNHCR	United Nations High Commissioner for Refugees
UK	Criminal Code
UPK	Code of Criminal Procedure
SHIZO	Disciplinary unit

Contents

I. General

A. Preliminary observations

1. This report, submitted under article 19 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, has been drawn up in accordance with the Guidelines regarding the form and contents of periodic reports to be submitted by States parties.

2. The report covers the period 2007-2010, contains information on developments since Tajikistan's initial report (CAT/C/TJK/1), submitted in 2006, and comprises two parts. The first part provides an overview of national legislation enacted in the period 2007-2010 on issues linked to preventing and countering torture and of the related legal and regulatory instruments adopted. The second part describes the measures taken in view of the conclusions and recommendations of the Committee against Torture (CAT/C/TJK/CO/1).

3. The report was prepared by the working group of the Government Commission on Ensuring Compliance with International Human Rights Obligations. This working group consisted of representatives of the Department for Constitutional Civil-Rights Guarantees in the Executive Office of the President of Tajikistan (which chaired the working group), the Supreme Court, the Office of the Human Rights Commissioner, the Ministry of Foreign Affairs, the Ministry of Justice, the Procurator General's Office, the Ministry of Internal Affairs (MVD), the National Centre for Legislation under the President of Tajikistan and two human rights NGOs.

4. During the preparation of the report, the working group held a number of consultative meetings with civil society representatives. The draft report was discussed at public meetings and was transmitted to State bodies for examination; and recommendations were received from the State bodies and civil society organizations concerned.

5. The report preparation process was widely covered in the media.

B. Legal and regulatory human-rights instruments adopted in the period of 2007-2010

6. The following legal and regulatory human-rights instruments were adopted in the period in question:

- Code of Administrative Procedure of 5 March 2007 (entry into force on 1 May 2007);
- Code of Civil Procedure of 5 January 2008 (entry into force on 1 April 2008);
- Code of Administrative Offences of 31 December 2008 (entry into force on 1 April 2009);
- Arbitration tribunals Act of 5 January 2008;
- Human Rights Commissioner Act of 20 March 2008;
- Right to access to information Act of 18 June 2008;
- Constitutional Act on the Constitutional Court of 23 July 2009;

- Code of Criminal Procedure of 3 December 2009 (entry into force on 1 April 2010);
- Code of Administrative Offences No. 1177 of 26 November 2008;
- Legal and judicial reform programme, adopted by presidential decree dated 23 June 2007;
- Anti-corruption strategy, 2008-2012, adopted by Government decision No. 34 of 26 January 2008;
- State crime-control programme, 2008-2015, adopted by Government decision No. 543 of 2 January 2007.

7. The legal and judicial reform programme adopted by presidential decree on 23 June 2007 is mainly aimed at strengthening the judiciary and the judicial system, enhancing the role of the courts in the protection of the rights, freedoms and legitimate interests of the citizens, the State, organizations and institutions; guaranteeing the judicial protection of contemporary social relations; and raising the requirements to be met by the judicial staff, while broadening the knowledge, experience and responsibilities of its members.

8. The Constitutional Court's powers and jurisdiction were significantly expanded through amendments to the Constitutional Act on the Constitutional Court, which were adopted by the Parliament on 23 July 2009.

9. The Code of Administrative Procedures, which entered into force on 1 May 2007, governs the preparation, adoption and implementation of administrative law instruments, the examination of administrative petitions and complaints, the conduct of administrative court proceedings, and the cooperation of administrative bodies. The aim of the Code is to ensure that the administrative bodies respect the rule of law, human rights, civil rights and liberties, and the interests of society, the State and legal entities.

10. The country's first Human Rights Commissioner was designated on 27 May 2009, under the Human Rights Commissioner Act, adopted in 2008. The Act aims mainly at strengthening the constitutional guarantees of the protection of human and civil rights and freedoms by the State, and helping to ensure that such rights and liberties are implemented and respected by State authorities and local government bodies in towns and villages (djamoats), their officials, and the staff of enterprises, institutions and organizations, regardless of their organizational and legal form.

11. On 20 March 2008, the following provision was added to article 62 of the Code of Criminal Procedure: "Evidence obtained in the process of interrogation and preliminary investigation by coercion, threats, torture, cruel treatment or other illegal methods is considered to be null and void."

12. A new Code of Criminal Procedure was adopted on 3 December 2009 and entered into force on 1 April 2010. Its provisions on torture and other abuse are more detailed than its predecessor's. Thus, article 10 (2) of the code reads as follows: "No party to criminal proceedings may be subjected to violence, torture or other cruel or degrading treatment." The application of this principle of criminal law is guaranteed by the code's current article 88, which refers to the responsibility of officials in the framework of interrogation and preliminary investigation more broadly than article 62 of the previous Code of Criminal Procedure by specifying that evidence obtained in the process of interrogation and preliminary investigation through recourse to force, pressure, deliberately caused suffering, inhuman treatment or other illegal methods is considered to be null and void and may not serve as the basis for charges.

Moreover, article 171 of the new code ("General rules for the conduct of investigative activities") prohibits the use of violence, threats or other illegal means in dealing with persons under investigation.

13. In his 2008 message to the Parliament, Mr. Emomali Rahmon, President of Tajikistan, proposed transferring in 2010 the power to authorize pre-trial detention from procuratorial bodies to the courts. This step has been taken through the new Code of Criminal Procedure and, since 1 April 2010, the authority in question is exercised by the courts.

14. Adopted on 18 June 2008, the right to access to information Act further contributed to the country's democratization by ensuring transparency in the activity of the authorities. Under the Act, any citizen is entitled to request State bodies to provide information, which they are obligated to make available, in the form desired by the applicant, within one week. If the reply necessitates the examination of additional material, the time limit is extended to one month. Unless the information requested is a State secret, a civil servant refusing to provide it is subject to sanction, including punishment under criminal law.

15. In order to promote discipline in the executive and upgrade the role of the media in the social, political and economic area, Presidential Decree No. 622 of 7 February 2009 on civil servants' response to specific criticism in the media provides that, when critical observations and proposals are published in the media, the civil servants concerned must urgently take concrete measures, apprise the Executive Office of the President and the appropriate media of the findings of any relevant inquiry within the legal time limits, and ensure the timely announcement of the outcome of the response through radio and television programmes and in newspapers and magazines.

16. The State crime-control programme, 2008-2015, adopted by Government decision No. 543 of 2 November 2007, is aimed at ensuring and effectively strengthening crime control through cooperation among all State entities, bodies and organizations; substantially improving the crime control system; tangibly defending human rights and freedoms; and protecting the constitutional system and the country's political, economic and social reforms.

17. A reform of State administration agencies was carried out at the end 2006. The State Financial Audit and Anti-Corruption Agency was set up by Presidential Decree No. 143 of 10 January 2007 with a view to directly countering corruption, coordinating State anti-corruption initiatives, enhancing the system for repressing corruption-related crimes and offences, ensuring transparency, improving monitoring and auditing procedures, involving the representatives of civil society, business and international organizations in that combat, and streamlining the anti-corruption activities and jurisdiction of State bodies. The agency's basic tasks consist in the prevention, detection and repression of corruption-related offences, inquiry and investigation into crimes involving corruption, and public finance monitoring.

18. Government decision No. 543 of 2 January 2007 established an anti-corruption strategy, 2008-2012, as an integral part of the State crime-control programme, 2008-2015. The strategy tasks comprise ensuring the protection of human and civil rights, civil liberties and the legitimate interests of the citizens, society and the State against corruption; improving the legal and regulatory framework for the prevention, detection and repression of corruption-related offences; optimizing procedures, methods and means for countering corruption; expanding the use of preventive measures in combating corruption; interacting with

civil society organizations; and broadening and further activating Tajikistan's international cooperation in the area of combating corruption.

19. The National Centre for Legislation under the President of Tajikistan was created by Presidential Decree No. 637 of 17 March 2009 in order to improve legislation and make the legislative activity more effective. Under the regulation governing its work, the centre's basic functions are the following:

- Conception of legislative improvements and draft Acts and their submission to the President for consideration, according to established procedures;
- Methodological organization of the preparation of draft legislation, and development, dissemination and introduction of advanced technologies for the preparation of draft legal and regulatory instruments;
- Drawing up of draft Acts, other legal and regulatory instruments and international legal instruments by order of the President or the Government or on the centre's own initiative;
- Formulation of proposals for the alignment of legal and regulatory texts with the Constitution, Acts of the State, legal instruments issued by the President and international instruments ratified by Tajikistan;
- On the orders of the President or the Government, legal review of draft Acts introduced for consideration by the Majlis-i Namoyandagon (Assembly of Representatives, the lower house of the Parliament);
- Specification of priority goals for law research related to the legislative activity;
- Analytical research on the state, trends and practice of implementation of legislation, and formulation of proposals for improvement in that area;
- Promotion of legal science and proposal of legal research topics to the organizations concerned;
- Formulation of recommendations on the application of research findings to the legislative activity, and assistance in implementing such recommendations;
- Comparative studies on Tajikistan's and other States' legislation and international legal instruments ratified by Tajikistan;
- Cooperation with State bodies, scientific organizations, other legal entities and individuals in Tajikistan, other States and international organizations on issues entrusted to the centre;
- Participation in inter-State scientific programmes and projects and international cooperation on issues entrusted to the centre;
- Systematic preparation and publication of practical commentaries on legal codes and other legal and regulatory instruments.

20. In order to ensure an adequate level and quality in the organization and provision of social, legal, medical and psychological assistance to victims of human trafficking, Government decision No. 100 of 3 March 2007 established rules for the creation of appropriate support centres designed to provide the care and assistance in question regardless of whether the transport, delivery, sale or other act related to human trafficking occurred with the victim's consent.

21. On 31 October 2008, in accordance with Government instructions, the Department for Constitutional Civil-Rights Guarantees in the Executive Office of the

President of Tajikistan, in cooperation with the Ministry of Justice, engaged in the first session of human rights dialogue between the European Union and Tajikistan. This activity, which took place in the framework of the French presidency of the European Union, with the participation of representatives of the Ministry of Internal Affairs, Foreign Affairs, Health, Culture and Education, the Procurator General's Office, the National Security Committee and the Justice Council, addressed such issues as reform and independence of the judiciary, human rights monitoring mechanisms, and national institutions for the protection of human rights and civil, political, economic, social and cultural rights. The second session of the dialogue, which took place on 23 September 2009 in the framework of the Swedish presidency of the European Union, with the participation of the Ministry of Justice and the Department for Constitutional Civil-Rights Guarantees in the Executive Office of the President of Tajikistan, addressed issues discussed in the preceding round of dialogue, particularly freedom of expression, the right to health, the right to education, democratic elections, freedom of association and the functioning of civil society. Programmes for cooperation between the European Union and Tajikistan and the country's participation in international forums related to human rights were also discussed.

22. The fifth Conference of Supreme Court Chairpersons of the member States of the Shanghai Cooperation Organization (SCO) was held in Dushanbe on 27-28 May 2010 and was attended by the chairman of the Supreme Court of Tajikistan N. A. Abdulloev, the chairman of the Supreme Court of Kazakhstan chief justice M. T. Alimbekov, the chairman of the Supreme People's Court of the People's Republic of China Wang Shengzun, the acting chairman of the Supreme Court of Kyrgyzstan K. A. Mombekov, the chairman of the Supreme Court of the Russian Federation V. M. Lebedev, and the deputy chairman of the Supreme Court of Uzbekistan Sh. R. Rahmanov. As an outcome of the discussions held during the conference on issues related to cooperation for the development of gender equality in the area of human rights and to legal mechanisms against torture in SCO member States, the participants, guided by the principles of the SCO charter, issued the following statement:

> "The principles of mutual confidence, mutual benefit, equal rights, respect for cultural diversity, and common development of the supreme courts of SCO member States are enshrined in the SCO charter and form the basis for fruitful cooperation. The supreme courts' continuous joint action contributes to maintaining and enhancing collaboration in the broad area of issues related to strengthening peace, ensuring security and stability in the region, promoting relations between SCO member States, improving the administration of justice and protecting civil rights and liberties."

Furthermore, the participants recognized the need for further development of equal rights from a gender perspective and of legal mechanisms for combating torture in accordance with domestic legislation and international instruments ratified by the SCO member States; noted the importance of information exchange on legal and regulatory instruments, judicial practices and supreme court rulings in the areas in question; concluded that cooperation between the supreme courts of SCO member States must include the exchange of experience in improving judicial systems, developing the judiciary and raising the level of training for judges and other judicial staff; and proposed organizing mutual visits, holding meetings and seminars to examine practical issues systematically, developing communication between judicial organs and carrying out training programmes aimed at building the capacities of judges and other judicial staff. The second conference of ministers of justice of Central Asia and the European Union took place in Dushanbe on 14-15 June 2010 as

part of the European Union's rule of law initiative for Central Asia. As coordinators of the initiative, France and Germany jointly organized this event within the framework of the Spanish presidency of the European Union, with financial support from the European Commission and the Tajik Government, which hosted the conference.

23. Within the framework of the rule of law initiative for Central Asia, which is a key element of the European Union's strategy for a new partnership with the region, the European Union will support the countries of Central Asia in carrying out basic reforms in the area of law, including the judicial system, and in developing effective legislation.

24. The initiative, a joint activity of the European Union and the five countries of Central Asia, was launched at the first European Union and Central Asia Ministerial Conference on the rule of law issues, held in Brussels on 27-28 November 2008, and is aimed at taking a consensus-based regional approach reflecting the national positions and needs of the individual Central Asian countries. Promoting regional exchange and focused on issues equally important to all of those countries, the initiative can contribute to reforms through transfer of knowledge, thereby creating an open region.

25. European Union participants in the conference included the Ministers of State for Justice of Spain and France and high ranking officials of other member States; high level delegations from Central Asia States, including the Minister of Justice of Tajikistan and the acting Minister of Justice of Kyrgyzstan; experts from Germany, France, Spain, Finland, Latvia and the United Kingdom; and other representatives of the countries of Central Asia.

C. Projects developed in the area of human rights

26. A draft Act on State protection of parties to criminal proceedings is currently under preparation and has been transmitted to the country's judicial bodies, ministries and departments for final observations. The bill provides for a series of measures, including security and social support arrangements, aimed at the protection of victims, witnesses, suspects, indictees, defendants, convicted offenders, exculpated suspects, their defenders and legal representatives, civil claimants and defendants, experts, specialists and other participants in criminal proceedings; and lays down a framework and procedures for the provision of such assistance. The forms of security provided comprise personal protection, protection of residence and property, provision of means for personal protection and communication, secrecy of personal information on the protected individuals, temporary change of residence, alteration of documents, change of appearance and relocation to a new place of work or study.

27. In connection with the adoption of the new Code of Criminal Procedure and other procedural legislation, amendments and additions to the Constitutional Act on procuratorial bodies have been drawn up to harmonize legislation and comply with recommendations formulated by the Special Rapporteur on the Independence of Judges and Lawyers, the Human Rights Committee and the Committee against Torture. The relevant bill contains safeguards related to human rights and fundamental freedoms in the area of criminal and civil justice.

28. In connection with the adoption of the Human Rights Commissioner Act, a package of draft amendments and additions to domestic law has been drawn up with a view to the harmonization of legislation; and the Commissioner's legal role has

been defined. In particular, draft amendments and additions to the Code of Criminal Procedure and to the criminal sentences enforcement Act provide for the Commissioner's free access to pre-trial detention centres and other deprivation of liberty establishments and for discussions with detainees and convicts in private and without any limitations as to the duration of the interviews.

29. A working group on amendments and additions to family legislation has been created in connection with the introduction of the new institution of judicial chambers or "collegiums" for family affairs in the regular courts. The issues to be considered will in particular relate to the jurisdiction of such chambers and of family courts.

30. In accordance with Tajikistan's international obligation to incorporate the provisions of the Convention into national legislation, a working group on amendments and additions to the Criminal Code, created by presidential decree in May 2009, has proposed inserting in the Criminal Code a separate article on torture, fully meeting the requirements of article 1 of the Convention. Such a step would obviate the need for future legislation on responsibility for recourse to torture as part of law enforcement, and would enable all actors to seek effectively the prevention of torture in the country.

31. In April 2010, the President created a working group to study the social and legal issues related to a possible abolition of capital punishment in the country. The working group, which includes various ministers and deputy ministers, representatives of the Supreme Court, the Procurator General's Office and the Human Rights Commissioner, is considering the question of removing capital punishment from the Criminal Code and the possibility of ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty. A draft Act on social and legal protection against domestic violence is being prepared and is currently with the Executive Office of the President of Tajikistan for examination and revisions.

II. Measures implementing recommendations made by the Committee after consideration of the initial report of Tajikistan

A. Definition of torture

32. The definition of torture is enshrined in article 18 of the Constitution, which states that no one may be subjected to torture or cruel or inhuman treatment.

33. Under article 10 (2) of the Code of Criminal Procedure, "no party to criminal proceedings may be subjected to violence, torture or other cruel or degrading treatment".

34. The Criminal Code contains a number of articles, which directly refer to the concept of torture in accordance with article 1 of the Convention. Thus, article 117 provides for responsibility for torture. By "torture" is understood "causing physical or mental suffering by the deliberate use of beating or in another forcible manner" as distinguished from inflicting "major or minor harm to health, death, full loss of the capacity for professional work, mental illness or affliction through drug dependence or addiction". According to a note to article 117, the concept of torture is relevant not only to that article, but also to other Criminal Code articles and consists in causing physical or moral suffering aimed at obtaining testimony or other acts

performed against the will of the victim, or inflicting punishment. Article 109 provides for criminal responsibility for driving a person to suicide or attempted suicide through threats, cruel treatment or deliberate degrading treatment. Articles 314 and 315 provide for responsibility for the exercise of official functions in a manner contrary to the interest of the service or for non-fulfilment of duties by a civil servant, if such act or omission is motivated by financial interest on the part of the person or group concerned and violates the rights and legitimate interests of citizens. In a note to article 314, an official is defined as a person who, on a permanent or temporary basis or by special authorization, carries out the duties of a public agent or fulfils organizational, managerial, administrative or operational functions in a State body or office, a local government authority, the armed forces or other troops or military formations. Persons fulfilling State functions include individuals occupying posts established under the Constitution and the law for the exercise of State power or political or administrative posts in services lawfully established to ensure such exercise by authorized office holders and the fulfilment of the role of State bodies. Article 316 provides for criminal responsibility for the commission by an official of acts clearly constituting abuse of power and substantially violating the rights and legitimate interests of citizens, whereby the actual or threatened use of violence, the use of weapons or special means and the causing of grave consequences constitute aggravating circumstances. Article 354 provides for the criminal responsibility of any person conducting a preliminary investigation or administering justice who compels a suspect, indictee, defendant, victim or witness to provide testimony, or an expert to express an opinion, by means of threats, blackmail or other unlawful acts, whereby recourse to insults, torture or other violence and the causing of grave consequences constitute aggravating circumstances. Article 391 provides for criminal responsibility in the case of commanders or officials for excessive use of power or authority or failure to use their authority, resulting in substantial damage to the armed forces or to the rights and legitimate interests of servicemen and other citizens, whereby causing death or other grave consequences is an aggravating circumstance.

35. The offences listed above carry criminal sentences of 5 to 15 years' deprivation of liberty, forfeiture of the right to exercise the specific activity or to occupy the specific post concerned, community or punitive work or reductions in military entitlements.

36. In addition to the Criminal Code, provisions related to the observance and protection of human rights, including the prohibition of torture and other abuse, are contained in the Constitutional Acts on the courts, on procuratorial officials, and on the legal regime during a state of emergency; the Acts on the militia, on police operations, on criminal penalties, on psychiatric care, on citizens' communications, on the legal status of foreign citizens, on refugees, on migration, and on State guarantees of equal rights for men and women and equal opportunities for their enjoyment; the Civil Code; the Civil Procedure Code; the Penal Enforcement Code; and the Administrative Offences Code.

37. Timely establishment of the facts and of the offenders' responsibility and effective departmental control and procuratorial oversight of criminal inquiry and investigation are crucial to the prevention of the use of torture by State officials in the performance of their duties. Analysis of the work of law enforcement agencies and the courts has shown that the main cause of recourse to prohibited methods of inquiry and investigation is the unwarranted certainty that the crime will thereby be solved.

38. Under article 3 of the Militia Act, the protection of the citizens' life, health, human and civil rights and freedoms against illegal acts is a key goal of militia activity. Article 4 of the Act lays down the principles governing such activity, particularly the principles of legality and respect for and observance of human and civil rights and freedoms. A militia officer may use physical force, special means and firearms depending on the situation, and must first give warning of the intention to proceed with such use. In all cases, when such use is unavoidable, the user must endeavour to cause the least possible mental, material and bodily damage and report any resulting bodily injuries to his or her immediate superior for subsequent notification of the procurator. Use of physical force, special means and firearms which constitutes abuse of authority is punishable under the law. Articles 14 (on use of special means) and 15 (on use of firearms) of the Militia Act specify exhaustively the circumstances which justify such use. The Ministry of Internal Affairs has drawn up and issued to internal affairs staff a checklist for ensuring legitimate use of firearms and compliance with the rules and safeguards applicable to carrying, storing and handling such weapons.

39. Under article 15 of Act No. 917 of 28 December 1993 on the internal troops of the Ministry of Internal Affairs, where members of such troops violate citizens' rights and legitimate interests, the commanders must take measures to restore the rights violated, call the offenders to account and redress the damage caused.

40. Under Ministry of Internal Affairs order No. 1 of 1 January 2006 on the courteous and considerate attitude of the members of internal affairs bodies and internal troops towards the citizens, a militia officer must work professionally and irreproachably in the interest of the people, comply strictly with the law and endeavour to protect the rights and interests of citizens, such behaviour being crucial to enhancing the authority of internal affairs bodies. Under that order, any irresponsible, biased, tactless, rough or excessive fault-finding attitude towards the people is considered as a professional shortcoming calling for an official investigation, strict disciplinary measures and even dismissal.

41. Based on an analysis of citizens' complaints and statements filed with the Ministry of Internal Affairs staff administration and on work with Ministry of Internal Affairs personnel on the issue of unlawful acts by militia officers, the number of such communications involving rights violations by militia decreased from 60 in 2007 to 53 in 2008, 40 in 2009 and 23 in the first five months of 2010; while of the 176 such communications filed since 2007, 50 led to confirmation of the allegations and to appropriate disciplinary measures against the offenders.

42. According to data provided by the Information Centre of the Ministry of Internal Affairs (ITS MVD), criminal proceedings were initiated under various articles of the Criminal Code as follows:

	Number of accused persons				
Article of the Criminal Code	*Total*	*2007*	*2008*	*2009*	*2010 6 months*
314 – Abuse of authority	42	2	15	22	3
315 – Failure to take official action	5	4	0	1	0
316 – Excess of authority	18	4	8	2	4
322 – Negligence	31	0	6	24	1
391 – Abuse of power or official position	1	0	0	1	0
Total	**97**	**10**	**29**	**50**	**8**

43. According to data supplied by the Procurator General's Office for the period 2007-2009, excess of authority was the grounds for criminal proceedings against 174 persons and for disciplinary proceedings against 709 members of law enforcement bodies (courts, procuratorial offices, the National Security Committee, the Ministry of Internal Affairs, customs and military units). All offenders were punished under the Criminal Code or other legislation, and in accordance with the gravity and consequences of the offence or official misconduct.

44. Although the Criminal Code provides for capital punishment, on 15 July 2004 the President signed an Act suspending and declaring a moratorium on the application of the death penalty. Article 58[1], inserted in the Criminal Code in 2005, reads as follows: "Deprivation of liberty for life is imposed only as an alternative to capital punishment for the commission of particularly violent crimes provided for in this code." On 9 April 2010, a working group was created by order of the President to study the social and legal issues related to a possible abolition of capital punishment in the country. The group includes various ministers and deputy ministers, representatives of the Supreme Court, the Procurator General's Office and the Commissioner for Human Rights. The working group's planned activities include a survey of relevant practices in the world, a study of the legislation of countries having abolished the death penalty, an analysis of the crime situation before and after the declaration of the moratorium and sociological research on various social strata.

B. Remand in custody

45. During the period considered, Tajikistan adopted a series of legislative measures designed to safeguard the right to freedom and the inviolability of the person. In accordance with the new Code of Criminal Procedure, the authority to decide on arrest and remand in custody was transferred from the procuratorial bodies to the courts.

46. According to criminal procedure provisions, no one may be arrested or detained without legal grounds. A person's apprehension and confinement in a medical establishment or a reformatory are allowed only on the basis of a decision taken by a court or judge. An order by a court or judge to release a detained person is immediately enforceable (article 11 of the Code of Criminal Procedure).

47. According to criminal procedure provisions, "remand in custody of a person consists in the delivery of the person to a criminal prosecution authority and a brief confinement in places specified by the law". Under article 92 (1) of the Code of Criminal Procedure, a person arrested by a criminal prosecution authority, acting within the limits of its powers, may be considered a suspect for the commission of a crime if:

(a) The arrest took place during or immediately after the commission of the crime;

(b) Eyewitnesses, including any crime victim, directly identify the person as the perpetrator of an offence characterized in criminal law;

(c) The person's body, clothes, personal, residence, workplace or vehicle bear traces clearly suggesting his or her participation in the commission of the crime;

(d) There are other grounds for suspecting the person for the commission of the crime, such as attempting to escape from the scene of the crime or from the criminal prosecution authority, having no permanent place of residence, residing in a different locality, or lacking proper identity.

Remand in custody on the grounds laid down in the above article may last until criminal proceedings are initiated. The decision to bring charges must be taken by the criminal prosecution authority within 12 hours from the arrest. In the event of renunciation or failure to decide on bringing charges within that period, the detainee must be released. Remand in custody on the above grounds may not last more than 72 hours from the arrest. Unless subject to another measure of restraint, the detainee must be released at that time limit. Only the following persons may be remanded in custody:

(a) A suspect for an offence punishable with deprivation of liberty or confinement in a disciplinary military unit;

(b) An indictee or defendant in breach of conditions securing his or her appearance;

(c) A convicted offender, pending appeal by a competent body against a judgement providing for conditional non-enforcement of a sentence (Criminal Code article 71), conditional early release from serving a sentence (Criminal Code article 76) or suspension of a sentence (Criminal Code article 78).

48. Remand in custody may take place only on the basis of:

(a) Suspicion of commission of a crime;

(b) A decision by the criminal prosecution authority;

(c) A decision (pronouncement) by a court or judge to detain a convicted offender pending appeal against a conditional sentence or non-enforcement or suspension of a sentence, or conditional early release from serving a sentence.

49. Once an arrested person is brought to the criminal prosecution authority, an official within three hours draws up a report indicating the grounds, place and time (day, hour and minute) of the actual arrest, the outcome of personal search and the time of drafting of the report. The report is read to the arrested person, who is informed of his or her rights, including the right to defence; and the rights to provide or withhold explanations or testimony and be informed of that right before interrogation; know of what he or she is suspected; receive a copy of the detention report or of the decision to impose a measure of restraint; testify in his or her native language or a language of which he or she has mastery; use the services of a translator free of charge; present evidence; file complaints; have knowledge of reports concerning any pre-trial proceedings in which he or she will have participated, or of the material transmitted to the court in support of detention as a measure of restraint; raise objections; and challenge the acts and decisions of the court, the procurator, the investigator and the person conducting the interrogation recorded in the report. The report is signed by the official and by the person arrested.

50. The interrogating officer or investigator must submit a written report on the detention within 24 hours.

51. The suspect must be interrogated immediately, and in any event no later than 24 hours after the actual arrest.

52. The criminal prosecution authority is entitled to issue a warrant for the arrest of an indictee who is in a different or an unknown locality. The warrant must be executed by the investigating authority. The criminal prosecution authority having issued the warrant is informed immediately of its execution, and the detention may not last longer than 72 hours from the moment of the actual arrest.

53. The agency conducting criminal proceedings and enforcing detention must, within 12 hours from the moment of the actual arrest, notify the detention and the detainee's location, or allow the detainee to provide such information, to an adult member of the family or a close relative of the detainee.

54. Where a foreign citizen is detained, the agency conducting criminal legal proceedings and enforcing detention transmits a report to the Ministry of Foreign Affairs with a view to informing the embassy or consulate of the State concerned.

55. The right to defence is guaranteed by the Code of Criminal Procedure, which provides that "the defence counsel is allowed to participate in criminal proceedings as soon as a decision is made to bring charges and even as soon as the suspect is actually arrested".

56. If the detainee, suspect, indictee or defendant or their legal representatives or others on their behalf do not appoint a defence counsel, the interrogating officer, investigator, procurator, judge or court are obliged to ensure a defence counsel's participation in the criminal proceedings. This decision of the criminal prosecution bodies or the court regarding the participation of a defence counsel is binding on the Bar and the mandated attorney. The defence counsel has the right to private discussions with the client without any limitation of their number or duration.

57. According to article 111 (1) of the Code of Criminal Procedure, "remand in custody as a measure of restraint is applied by decision of a judge or of a court to a person suspected, indicted or accused of the commission of a crime which, under criminal law, carries deprivation of liberty for more than three years. In the case of a serious or grievous crime, the gravity of the deed may constitute sufficient grounds for the above measure".

58. An appeal or protest against the decision of a judge or court to order or desist from ordering remand in custody as a measure of restraint may be taken to a higher court within three days from the issue of the decision in accordance with the procedure for setting aside a judgement. The court of appeal rules on the complaint or protest no later than three days after receipt of the file.

59. As a measure of restraint, remand in custody during preliminary investigation in a criminal case may not exceed two months. It lasts from the moment of placement of the suspect or indictee under custody until the criminal case is brought to court by the procurator. This period includes any period spent in deprivation of liberty facilities (temporary detention facilities and other confinement units within internal affairs and other bodies engaged in pre-trial proceedings) and any forced stay in a hospital or psychiatric clinic; and may be extended by a judge up to 6 months or, in the case of persons accused of serious or grievous crimes, longer; and, exceptionally, beyond 12 months, subject to an 18-month limit. Further prolongation of the remand in custody period is prohibited and the suspect is subject to immediate release. In the Conclusions and recommendations of the Committee (CAT/C/TJK/CO/1), recommendation 7 (d) refers to the need to "take steps to shorten the current pre-trial detention period". The new Code of Criminal Procedure also provides for an 18-month maximum duration of remand in custody. However, such extended periods apply only to exceptional cases on the basis of a judge's decision, and protection from unlawful deprivation of liberty is thereby guaranteed.

60. Persons held in temporary detention facilities are recorded in chronological order on dates in special registers, which are duly numbered, bound and sealed.

61. Illegal detention or remand in custody is punishable under criminal law.

62. In the case of death of an arrested, detained or convicted person, the procurator responsible for monitoring compliance with the law in correctional colonies carries out an inquiry in accordance with the appropriate procedures and issues a pronouncement, which is notified to the relatives of the deceased and against which they are entitled to appeal.

C. Combating trafficking in women and children

63. According to article 35 of the Constitution, "no one may be subjected to forced labour, except in cases provided for by law". This constitutional provision and other legal instruments, in particular the Labour Code and the Criminal Code, safeguard the prohibition of slavery, slave trade, serfdom and other related phenomena.

64. The trafficking in persons Act, adopted in July 2004, aims at the implementation of Government policy, the regulation of social relations and the fulfilment of international obligations in the area of combating human trafficking; and at reducing the number of potential victims of such practice. The Act seeks the prevention, detection, repression and minimization of the consequences of human trafficking, and the physical, mental, social and legal rehabilitation of human trafficking victims.

65. Government decision No. 5 of 4 January 2005 created an inter-agency commission to combat trafficking in persons as a permanent advisory interdepartmental body tasked with coordinating the activity of ministries, State committees, departments and local executive authorities of the State, enterprises, establishments and organizations for the implementation of the country's legislation and international legal obligations related to human trafficking. This commission includes senior officials of the Procurator General's Office; the Ministry of Internal Affairs; the National Security Committee; the Government Customs Committee; the Government Taxation Committee; the Ministries of Labour and Social Security, Foreign Affairs, Education, Health, and Economic Development and Trade; and the local executive authorities of the State of the Gorno-Badakhshan Autonomous Province, the provinces and the city of Dushanbe.

66. In connection with the accession of Tajikistan to the United Nations Convention against Transnational Organized Crime and the two protocols supplementing the convention, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air their provisions were incorporated into the criminal legislation of Tajikistan. Under article 130 Criminal Code, abduction is a criminal offence consisting in the unlawful capture of a person in secret, in the open, by deception or abuse of trust, or through the use or threat of force or other forms of coercion. Aggravating circumstances exist where the crime is committed: (a) by a group of persons having conspired; (b) in repetition or by a person having earlier committed a crime under articles 130 (1), 131 or 181 of the Criminal Code; (c) with actual or threatened use of violence endangering life or health; (d) using a weapon or objects employed as weapons; (e) against a person whom the perpetrator knows to be a minor; (f) against a woman whom the perpetrator knows to be pregnant; (g) against two or more persons; or (h) for financial gain. Further aggravating circumstances exist where the acts in question: (a) are perpetrated by an organized group; (b) are aimed at the sexual or other exploitation of the abducted person; (c) are aimed at extracting from the victim organs or tissues for transplant;

(d) constitute particularly dangerous recidivism; or (e) cause by negligence the death of the victim or other serious consequences.

Article 130 (1) (on trafficking in persons) of the Criminal Code provides as follows:

> "1. Trafficking in persons is a criminal offence aimed at the exploitation (exploitation of the prostitution of others, or other forms of sexual operation, forced labour or provision of services, slavery or similar conditions, serfdom or extraction of organs or tissues) or the recruitment, transport, delivery, concealment or collection of persons through the use or threat of force or other forms of coercion, abduction, deceit, fraud, abuse of authority or condition of vulnerability, or bribery with money or advantages to obtain the consent of an individual having control over another person.
>
> 2. Aggravating circumstances exist where the crime is committed: (a) in repetition; (b) by a group of persons having conspired; (c) against two or more persons; (d) with actual or threatened use of violence; (e) in order to extract from the victim organs or tissues for transplant; (f) by a civil servant or representative of the authorities who uses his or her official position, or another person with administrative responsibilities in a business or other organization; or (g) in a manner involving transport of the victim across a State border.
>
> 3. Further aggravating circumstances exist where the acts in question: (a) cause by negligence the death of an under-age trafficking victim or other serious consequences; (b) are perpetrated by an organized group; or (c) constitute particularly dangerous recidivism."

Article 131 (on unlawful deprivation of liberty) of the Criminal Code provides as follows:

> "1. Unlawful deprivation of liberty unrelated to abduction or taking of hostages is a criminal offence.
>
> 2. Aggravating circumstances exist where the crime is committed: (a) by a group of persons having conspired; (b) in repetition or by a person having earlier committed a crime under articles 130, 131 (1) or 181 of the Criminal Code; (c) with use of a method endangering life or health; (d) using a weapon or objects employed as weapons; (e) against a person whom the perpetrator knows to be a minor; (f) against a woman whom the perpetrator knows to be pregnant; or (g) against two or more persons. Further aggravating circumstances exist where the acts in question: (a) are perpetrated by an organized group; (b) are aimed at the sexual or other exploitation of the person unlawfully deprived of liberty; (c) cause by negligence the death of the victim or other serious consequences."

Article 132 (on recruiting persons with a view to their exploitation) of the Criminal Code provides as follows:

> "1. Recruiting persons with a view to their sexual or other exploitation is a criminal offence.
>
> 2. Aggravating circumstances exist where the crime is committed: (a) by a group of persons having conspired; (b) against a person whom the perpetrator knows to be a minor; (c) in repetition.
>
> 3. Further aggravating circumstances exist where the acts in question: (a) are perpetrated by an organized group; (b) are committed with the intent to

transport the persons in question across a State border; (c) constitute particularly dangerous recidivism."

67. Article 167 (on trafficking in minors) provides as follows:

"1. Trafficking in minors is a criminal offence consisting in the purchase or sale of persons whom the perpetrator knows to be minors, regardless of the means and forms of coercion used.

2. Aggravating circumstances exist where the crime is committed: (a) in repetition; (b) by a group of persons having conspired; (c) against two or more minor; (d) with actual or threatened use of violence; (e) in order to extract from the victim organs or tissues for transplant; (f) by a civil servant or representative of the authorities who uses his or her official position, or another person with administrative responsibilities in a business or other organization; or (g) in a manner involving transport of the victim across a State border.

3. Further aggravating circumstances exist where the acts in question: (a) cause the death of the minor who is a victim of trafficking or other serious consequences; (b) are perpetrated by an organized group; (c) constitute particularly dangerous recidivism.

Note: A perpetrator of the acts referred to in paragraphs 1 and 2 of this article who voluntarily informs the competent bodies and releases the minor who is a victim of trafficking is exculpated, unless his acts entail another offence."

68. A racketeering and human trafficking division was established in the Ministry of Internal Affairs on 27 April 2004. In 2007, 35 human trafficking victims were returned to Tajikistan from other States. On 1 April 2009, a human trafficking squad was set up in the Directorate for organized crime repression by order of the Minister of Internal Affairs.

69. On 22 December 2009, the Minister of Justice adopted the 2010 workplan of the national advisory board for citizens' education and training in legal matters. Paragraph 4 of the workplan provides for the study of methods for preventing human trafficking, particularly in women and girls. The board, chaired by the Minister of Justice, also includes the Chair of the State Committee on National Security, the Minister of Internal Affairs, the Minister of Foreign Affairs, the Procurator General, the Chairperson of the Supreme Court, the Chairperson of the Superior Economic Court, the Chairperson of Government Committee on Radio and Television, and the President of the Academy of Sciences.

70. The Government's national action plan for combating human trafficking, developed in the period 2005-2010, includes organizational and legal measures for the psychological and social rehabilitation of the victims of human trafficking and a series of other provisions based on relevant international instruments.

71. A comprehensive programme for combating human trafficking in the period 2006-2010 was adopted by Government decision No. 213 of 6 June 2006.

72. A programme for strengthening the legal framework for investigating and prosecuting crimes related to human trafficking and protecting trafficking victims is implemented in cooperation with the International Organization for Migration. The programme includes the development of a unit for training law enforcement staff in the investigation and prevention of the offences in question.

73. As part of bilateral cooperation with the United Arab Emirates, steps are taken for the creation of a legal framework for combating human trafficking. A Tajik

consulate general has been opened in Dubai with a view to implementation of relevant agreements.

74. In January 2009, the Government Committee on Women's and Family Affairs concluded a memorandum of understanding and cooperation with the Children's Legal Centre (CLC) of the United Kingdom and the NGO "Child Rights Centre Tajikistan". The Girls' Support Service project, developed on the basis of the memorandum to help girls who have been victims of violence, seeks to prevent exploitation, abuse, violence and trafficking in the case of vulnerable girls, to promote and assist in the rehabilitation of child victims and, where possible, to ensure their successful reintegration into their families. The Girls' Support Service works with girls aged 10-18, who receive individualized assistance by social workers in overcoming their traumas. The centre currently hosts 11 girls aged 16-18.

75. As the foreign partner of the above NGO, CLC has provided funding in the amount of € 500,000 for the establishment of the Girls' Support Service, attached to the said committee as a training centre for girls, including orphans.

76. The Government Committee on Women's and Family Affairs has set up a working group to develop a strategy for the activities of Girls' Support Service. The working group includes representatives of the Ministries of Justice, Education, Internal Affairs, Finance, Labour and Social Security, Economic Development and Trade, and Culture, the Procurator General's Office, the Justice Board, the Committee for Young Persons' Affairs and the Bar.

77. The number of girls held in deprivation of liberty facilities is currently on the decrease. That development has been reinforced by the 2007 and 2009 amnesty Acts, under which, according to data of UID in the Ministry of Justice, 499 and 299 girls and women were amnestied, respectively, in 2007 and 2009. Moreover, women and minors released from prison numbered, respectively, 306 and 73 in 2007, 42 and 27 in 2008, 275 and 27 in 2009, and 2 and 3 in the first half of 2010. According to data from the Information Centre of the Ministry of Internal Affairs, the number of criminal sentences under various articles of the Criminal Code developed as follows:

Article of the Criminal Code	*Total*	*2007*	*2008*	*2009*	*2010 6 months*
130 – Abduction	25	7	7	9	2
130' – Trafficking in human beings	11			1	10
131 – Unlawful deprivation of liberty	35	16	11	7	1
132 – Recruitment with a view to exploitation	21	13	6		2
167 – Trafficking in minors	41	17	10	9	5
Total	**126**	**53**	**34**	**26**	**13**

78. Ministry of Labour and Social Welfare units set up for the social protection of vulnerable population groups include a welfare office responsible for family and child protection measures, and corresponding local units. The responsibilities of the Division for social services and family and child welfare, which has been created in ministry headquarters, include the:

(a) Formulation of policies on the social protection of families and children in need of support;

(b) Development of children's rights protection mechanisms, and coordination of the activities of social welfare bodies in the area of organization of social services;

(c) Social reintegration and prevention of the exploitation of children.

Moreover, the Division monitors the activities of social establishments and NGOs in respect of the quality of the social services provided.

D. Juvenile justice system

79. In order to ensure compliance with the country's international legal obligations in the area of human rights, Government decision No. 423 of 7 September 2001 created the Government Commission on Children's Rights. Government decision No. 377 of 1 August 2008 on safeguarding the rights of children was adopted in order to further improve the Government's family- and child-support policy, reform the system for monitoring the protection of children's rights and interests, create appropriate conditions for the mental and physical development of socially vulnerable or disadvantaged children and adolescents, and meet the country's legal obligations under the United Nations Convention on the Rights of the Child. The latest national report under that convention was presented by the Government in 2010.

80. The Code of Criminal Procedure contains a special section on offences committed by a minor, namely a person up to the age of 18.

81. In conducting a preliminary inquiry or judicial proceedings in the case of a crime committed by a minor, it is necessary to determine:

(a) The age (day, month and year of birth) of the minor;

(b) The minor's living conditions; education; level of mental, volitional and psychological development; special traits of character and temperament; needs; and interests;

(c) The influence exerted on the minor by adults or other minors.

82. Where a minor may have participated in the commission of a crime with adults, the preliminary inquiry regarding the minor is conducted separately.

83. In taking a measure of restraint with respect to a minor, the possibility of choosing a measure not involving deprivation of liberty must always be examined. Remand in custody or detention may be imposed on a minor as a measure of restraint only in exceptional cases for the commission of a serious or grievous crime. The duration of remand in custody as a measure of restraint during preliminary inquiry may be extended only up to six months. A minor's detention or remand in custody or the extension of such a measure is notified to the minor's parents or other legal representatives.

84. An under-age suspect, indictee or defendant is summoned before the investigator or the court through the minor's parents or other legal representatives if the minor is not in custody, or, if the minor is held in a special facility for children, through the administration of the facility.

85. The interrogation of an under-age suspect or indictee may not last uninterruptedly for more than two hours or exceed four hours per day.

86. A teacher and a psychologist must participate in the interrogation of an under-age suspect or indictee who is under 16 or mentally retarded. Where the under-age

suspect or indictee is over 16, a teacher or psychologist participates in the interrogation at the investigator's or procurator's initiative or at the legal counsel's request. The teacher or psychologist are entitled to ask the suspect or indictee questions with the investigator's permission and, at the end of the interrogation, to be informed of the content of the interrogation report and formulate written observations as to the exactitude and completeness of the statements in the report. At the time of interrogation, the investigator explains these rights to the teacher or psychologist and that fact is recorded in the interrogation report. A teacher or psychologist participates in the examination of an under-age defendant in court according to the same rules. From the moment of the minor's first interrogation as a suspect or indictee, the minor's legal representative may participate in the proceedings by decision of the investigator. Upon admission to the proceedings, the legal representative is informed of his or her rights, and in particular the right to:

- Know of what the minor is suspected or with what the minor is charged;
- Be present when charges are brought, and participate in the interrogation of the minor and, with the investigator's permission, in any other investigative activities in which the under-age suspect or indictee and his or her counsel take part;
- Have knowledge of reports on investigative activities, in which he or she participates, and formulate written observations as to the exactitude and completeness of the statements in the reports;
- File petitions and formulate objections;
- Challenge the acts and decisions of the investigator and the procurator;
- Present evidence;
- At the end of the investigation, have knowledge of any material in the file and retrieve from it any information of any scope.

87. At the end of the preliminary inquiry, the investigator may issue a reasoned decision to withhold from the minor any material which may have a negative effect on him or her and bring such material to the attention of the minor's legal representative. A further legal representative of the minor may be allowed to participate in the proceedings.

88. If in the course of preliminary investigation into an offence of lesser gravity it is established that the offence was committed by an under-age first-time offender who may be reformed without initiating criminal proceedings, the procurator and, with the procurator's consent, the investigator may close the case, imposing on the minor compulsory educational measures unless the accused minor or the minor's legal representative object to that procedure. A copy of the relevant decision is transmitted to the Government Commission on Children's Rights. If the minor repeatedly fails to comply with the requirements of the above measures, the procurator, on the commission's recommendation, may, within a year from the decision to close the case, revoke that decision, whereby, after an inquiry, the case, as a rule, is transmitted with the indictment to the court. The legal representatives of an under-age defendant must be summoned to attend the judicial proceedings. They have the right to participate in the examination of evidence in the judicial inquiry, testify, present evidence, file petitions and formulate objections, challenge the acts and decisions of the court, participate in the ensuing appeal proceedings, and provide explanations regarding the complaints. These rights must be stated in the preparatory stage of judicial proceedings. The legal representatives are present in the court room throughout these proceedings and, with their consent, may be interrogated by the

court as witnesses. By a reasoned decision or pronouncement of the court or the judge, a legal representative may be barred from such participation, if there are grounds for considering that his or her acts are prejudicial to the under-age defendant or prevent an objective examination of the case. In that event, another legal representative of the under-age defendant is admitted. If the court does not deem his or her participation necessary, a legal representative's failure to appear does not hinder the continuation of the hearing. If called upon to participate in the case as defender or civil defendant, an under-age defendant's legal representative has the rights and bears the responsibilities concomitant with such roles.

89. At the request of the legal counsel, the legal representative or the procurator, or, on its own initiative, the court, taking into account the views of the parties, may decide to have the minor removed from the court room during the examination of circumstances which may have a negative effect on the minor. After the minor's return, the president, in appropriate detail and manner, informs the minor of the content of the proceedings having occurred during his or her absence, and allows the minor to put questions to the persons interrogated without his or her participation.

90. If, in a case involving an offence of lesser gravity, it is recognized that the under-age offender may be reformed without the imposition of a criminal punishment, the court may, after his or her conviction, release the offender from the obligation to serve the sentence and impose on him or her compulsory educational measures. A copy of the relevant decision is transmitted to the Government Commission on Children's Rights.

91. If, in hearing a case involving an offence of lesser or medium gravity, it is recognized that the aim of the punishment can be achieved through the placement of the under-age offender in a special educational or medical-educational establishment for minors, the court may, after his or her conviction, release the offender from the obligation to serve the sentence and send him or her to such an establishment. Placement in the establishment may be terminated at majority, if the minor has been reformed and no longer needs to be subjected to such a measure. Extension of the stay in such an establishment beyond the age of 18 is possible solely in order to allow the minor to finish a general education or vocational training programme. The question of terminating or extending the placement must be considered and resolved, on the recommendation of the Government Commission on Children's Rights, by a judge of the court which handed down the sentence or of the convicted minor's place of residence, at the judge's discretion, within 10 days from the submission of the recommendation. The convicted minor, the legal representative, the counsel, the procurator and the representative of the Government Commission on Children's Rights are summoned to participate in the court proceedings, in which the said commission's recommendation is examined and the opinions of the other participants are heard. After examining the case, the judge announces in the deliberations room the decision, which must be pronounced at the court session. A copy of the decision is transmitted within five days to the legal representative of the convicted minor, the commission, the procurator and the court which handed down the sentence. The decision is not subject to challenge or appeal.

92. Section 5 of the Criminal Code details the criminal charges that may be brought and the respective penalties in the case of a minor. Criminal proceedings may be initiated against a person having reached the age of 16 by the time of commission of the offence. Under article 87 of the Criminal Code, the perpetrator of a serious or grievous crime may be sentenced to deprivation of liberty for a period of up to 7 years if up to 16 years of age, and of up to 10 years if aged 16-18.

93. According to the Criminal Code, persons having attained the age of 14 by the time of commission of a crime are criminally liable only for homicide (article 104), deliberate major bodily injury (article 110), deliberate minor bodily injury (article 111), abduction (article 130), rape (article 138), a forcible sexual act (article 139), terrorism (article 179), hostage taking (article 181), theft of weapons, ammunition or explosives (article 199), trafficking in drugs or psychotropic substances (article 200), illegal handling of drugs or psychotropic substances (article 201), theft of drugs or precursors (article 202), illegal cultivation of plants containing narcotic substances (article 204), trafficking in drastic or toxic substances (article 206), destruction of means of transport or communication (article 214), hooliganism with aggravating circumstances (article 237 (2) and (3)), larceny (article 244), robbery (article 248), assault with intent to rob (article 249), extortion (article 250), hijacking of a vehicle or other transport without the intent to steal (article 252) and deliberate property damage or destruction under aggravating circumstances (article 255 (2)).

94. A minor who, as a result of retarded mental development unrelated to any mental disorder and while committing an act dangerous to others, fails to control or fully realize the actual nature of his or her action (or omission) as a public hazard bears no criminal responsibility.

95. Participation of a legal counsel in proceedings related to a criminal case is obligatory where the suspect, indictee or defendant is a minor.

96. According to Supreme Court Plenum decision No. 6 of 12 December 2002 on judicial practice in hearing cases involving offences committed by a minor, as revised and completed on 22 December 2006, in order to ensure strict compliance with criminal procedure law, including special provisions on cases concerning minors, the most experienced judges must preside over the hearings in question. An appropriate response is necessary where, if there is sufficient evidence to indict a minor, the authorities conducting the preliminary inquiry fail to take the decision called for and carry out, in relation to the case, various investigative acts, in which the minor participates as a witness.

97. Under article 19 of the Code of Criminal Procedure, all court hearings are public, save for cases in which proceedings in private are allowed by reasoned decision of the court with regard to offences committed by persons under 16.

98. Save under exceptional circumstances, indicted minors are held separately from adult prisoners, are subject to a special regime and are brought before the court in the shortest possible time. The main goal of the rules governing the treatment of prisoners in the prison system consists in their re-education and social rehabilitation. Under-age offenders are held separately from adults and are subject to a special regime reflecting their age and legal status. Steps have been taken to make necessary medical assistance available to under-age inmates in a timely manner. In practically all detention facilities for minors who have been convicted or, especially, who are under investigation, all necessary measures are taken to ensure access to timely medical attention. With support from the Government and international organizations and NGOs (UNICEF, Caritas Luxembourg, and non-profit cultural and educational centres), renovation and repair work to improve living conditions is carried out in the country's model detention facility for convicted boys. Such improvements include appropriate beds, linen and washing machines; and equipment for computer and sewing training classes. The juvenile correctional facility and remand centre in question is provided with the facilities necessary for personal hygiene and decent appearance, including hot running water, baths and showers.

99. With UNICEF support, the Government takes measures to improve conditions for children, namely persons up to 18 years of age, held in closed institutions, and for training the staff concerned to work more effectively with children. With a view to implementing Government decision No. 377 of 1 August 2008 on safeguarding the rights of children, the Government Commission on Children's Rights ensures the defence of the rights and interests of children in all closed establishments, and in particular the protection of such children from violence and cruel treatment, by obliging the establishments to develop procedures aligned with the said decision.

100. There are no separate temporary-detention centres for minors. They are held in separate sections within centres for adult offenders. In the last five years, considerable efforts were made to improve detention conditions for and relations with children in such establishments. The youngsters spend up to 22 hours in small cells, in which they eat, take showers and go to the toilet. In 2007, the Ministry of Justice requested UNICEF to provide assistance for the reconstruction of a separate wing for under-age offenders within the Dushanbe pre-trial remand centre. The Children's Legal Centre, in cooperation with UNICEF, earmarked funds for repairing and outfitting the building, which is reserved for minors. UNICEF also concluded with the Ministry of Justice a memorandum of understanding for an extensive reform process designed to improve detention conditions for and relations with children. Currently, the remand centre provides support for the development of the detention regime for adolescents and enlarges the scope of organized activities available to the minors concerned. In accordance with the memorandum of understanding, the Ministry of Justice decided to implement in Dushanbe a legal assistance programme enabling all children to have access to such services, provided by jurists trained in proceedings involving minors.

101. The juvenile correctional facility and remand centre is a closed establishment for the detention of criminal offenders aged 14-18, and the country's sole detention facility for minors. Only courts are authorized to have children placed in that establishment. During the last five years, the Ministry of Justice has cooperated with international organizations to improve detention conditions in the facility.

102. In 2007, the Ministry of Justice signed a memorandum of understanding with UNICEF for assistance to improve detention conditions and care for minors in the juvenile correctional facility and remand centre. In that framework, the Ministry undertook to carry out a pilot programme for the reintegration of children. Under the programme, a social worker and a jurist work with the youngsters during the month preceding their release to prepare them for life outside the institution and further their social reintegration. This assistance includes legal, practical and psychological support. The NGO conducting the programme will continue to provide such support after the youngsters' release.

103. Under the amnesty Act of 4 November 2009, 42 convicted minors have been released from deprivation of liberty facilities. Currently, approximately 50 under-age inmates remain incarcerated.

104. In recent years, conditions also improved in the correctional facility for women, where girls up to 18 years of age are detained. The number of girls held in the facility has been reduced. There is currently no detention centre specifically for girls. Accordingly, detained female minors are held in a separate section of the correctional facility for women.

105. In recent years, issues related to juvenile justice reform were addressed for the first time since independence, along with attempts to organize a system fulfilling the requirements of the United Nations Convention on the Rights of the Child. As a

result, a national action plan for juvenile justice reform, 2010-2015, was adopted at the latest session of the Government Commission on Children's Rights on 9 October 2009. The plan provides for measures to reduce the use of imprisonment and administrative confinement, designate juvenile judges in the various areas of the country, and draw the Government's attention to the potential of innovative juvenile-justice incentives, particularly recent projects and services providing alternatives to committing children to reformatories or closed educational establishments.

106. The Ministry of Justice and UNICEF have agreed on a two-year workplan providing for the creation of a children's rights and juvenile justice branch within that ministry.

E. Independence of the judiciary

107. Under article 84 of the Constitution, judicial power is independent and is exercised by the judges on behalf of the State. Article 5 of the Constitutional Act on the courts lists the safeguards which ensure the independence of judges. In particular, the judges' inviolability is guaranteed by, inter alia, the legal procedures for their selection, designation, dismissal, and recall; the administration of justice; the secrecy of judges' deliberations in handing down judgements; the prohibition, under threat of proceedings, of interference in the administration of justice; and the right of a judge to resign. Under the law, the above guarantees of the independence of the judiciary, including measures for the legal defence and material and social welfare of judges, may not be abolished or reduced by other regulatory instruments.

108. Domestic law provides for penalties for contempt of court or interference in the activity of a judge or for seeking to influence a judge or the people's assessors participating in a case. The media may not anticipate in their reports the outcome of any specific proceedings.

109. A judge has no obligation to explain or provide information on the substance of examined or pending issues otherwise than in the cases and the manner provided by law.

110. A judge is entitled to inviolability, which covers his or her residence, official premises, means of transport and communication, correspondence, personal effects and documents.

111. Only the Procurator General may initiate criminal proceedings against a judge. No judge of the Constitutional Court, the Supreme Court or the Superior Economic Court may be the object of criminal proceedings or detained without authorization from the Majlis-i Milli of the Majlis-i Oli (National Assembly, the upper house of Parliament). No judge of a military court, a Gorno-Badakhshan Autonomous Province court, a provincial court, a Dushanbe court, an urban or district court, a Gorno-Badakhshan Autonomous Province economic court or a Dushanbe Economic Court may be the object of criminal proceedings or detained without authorization by the President of Tajikistan.

112. A judge may not be detained unless arrested in flagrante delicto. Upon establishment of his or her identity, a judge who has been arrested or delivered to an internal affairs or other State body in the course of judicial proceedings for administrative offences must be released immediately.

113. Judges, the members of their family and their property enjoy special protection by the State.

114. The recently enacted Code of Criminal Procedure and Code of Economic Legal Procedure, which entered into force on 1 April 2008, limited the right of procurators to appeal court decisions and introduced the adversarial principle in court hearings, thereby ensuring equal rights for all parties to judicial proceedings.

115. Measures are consistently taken to upgrade the material and social standing of judges. In the last two years, judges and judicial employees received salary raises twice (under Presidential Decrees No. 1716 of 20 March 2006 and No. 219 of 16 March 2007).

116. In his 20 April 2006 message on the main directions of domestic and foreign policy, the President of Tajikistan, referring to the reinforcement of the branches of Government, in particular the judiciary, encouraged the appropriate State bodies to prepare and present for examination a programme of judicial and legal reform reflecting and aligned with current requirements and present conditions. Presidential Decree No. 271 of 23 June 2007 introduced the judicial and legal reform programme, 2007-2010, aimed at further strengthening the judiciary; enhancing its role and status in society; promoting the protection of human and civil rights, civil liberties and the interests of the State, organizations and institutions; and comprehensively safeguarding legality and equity. A key task of the reform consists in the consistent improvement of the material, technical, social and living conditions for the activity of judges and judicial workers.

117. A working group is currently created to develop the new judicial and legal reform programme. Focusing on reform in the area of legal procedure, the President of Tajikistan, in his 24 April 2010 message on the main directions of domestic and foreign policy, noted that the judiciary had been upgraded through the constitutional reforms of recent years. In order to strengthen the legal foundations of judicial authority, a judicial and legal reform programme, a key to the development and enhancement of the judiciary as an independent branch of Government, was adopted in 2007. The judiciary has been strengthened through the adoption of a number of legal instruments, including the Civil Procedure Code; the Code of Economic Legal Procedure; the Criminal Code; the Code of Administrative Offences; and the Acts on sentence enforcement, on arbitration courts, and on the Human Rights Commissioner; and through amendments and additions to the Constitutional Act on the Constitutional Court. Under the new Code of Criminal Procedure, many of the regulatory powers relating to the conduct of criminal proceedings, including inter alia those concerning arrest, house arrest, searches, seizure of property and temporary suspension, were transferred to the courts as from 1 April 2010. These changes broaden the courts' area of competence and double their responsibility. It is therefore necessary to take special measures to raise the requirements for the selection of judges and to upgrade their professional capabilities. In order to implement the judicial and legal reform programme, it is indispensable, as the President had noted in his 2009 message to the Parliament, to continue the reform of the courts and to develop and present a new programme in that area for the coming years. Consequently, the Constitutional Court, the Supreme Court, the Arbitration Court, the Ministry of Justice, the Justice Council and the General Prosecutor's Office, must as soon as possible develop and present for consideration a relevant project, taking into account the following issues:

(a) Appointing for an unlimited period judges who have occupied their post for more than 10 years and have proven themselves to be professionally, operationally and ethically irreproachable;

(b) Through the use of existing units, forming administrative and family chambers within the regular courts, and introducing amendments and additions to the Acts concerned;

(c) With a view to enhancing judicial authority, taking measures to increase the judges' responsibility in making legal and fundamental decisions and to prevent factors conducive to corruption from affecting their activities;

(d) Drawing up and presenting the Code of Administrative Offences.

According to information provided by the Justice Council, disciplinary penalties were imposed on 15 judges in 2007, 11 judges in 2008, 29 judges in 2009 and 9 judges in the first six months of 2010. With a view to the implementation of the judicial and legal reform programme and according to the courts Act, 15 persons were admitted to train as judges in 2008, 55 in 2009 and 55 in 2010.

118. In accordance with the recommendations of the United Nations Special Rapporteur on the Independence of Judges, Human Rights Committee and Committee against Torture, the new Code of Criminal Procedure no longer contains earlier provisions, which empowered the procuracy to prevent implementation of court decisions (CAT/C/TJK/CO/1, paragraph 10).

119. The Human Rights Commissioner Act was adopted on 20 March 2008 in order to strengthen the constitutional guarantees for State protection of human and civil rights and freedoms, and help to ensure that such rights and liberties are implemented and respected by State authorities and local government bodies in towns and villages (djamoats), their officials, and the staff of enterprises, institutions and organizations, regardless of their organizational and legal form. The Human Rights Commissioner's role consists mainly in helping to ensure: respect for human and civil rights and freedoms; the restoration of violated human and civil rights; improvement of domestic legislation on human and civil rights and freedoms; the citizens' legal awareness of issues related to the protection of human and civil rights and freedoms, the forms of such protection and related methods; cooperation among State bodies in protecting human and civil rights and freedoms; and the development and coordination of international cooperation in the area of protection of human and civil rights and freedoms. In order to fulfil his or her role, the Human Rights Commissioner must collect and analyze information received from Government authorities; local government bodies in towns and villages; institutions, organizations and enterprises regardless of their organizational and legal form; individuals; and the media. In examining a complaint, the Human Rights Commissioner may: (a) visit freely all Government authorities, local government bodies in towns and villages, and institutions, organizations and enterprises regardless of their organizational and legal form, and all military units, sentence enforcement facilities or prisons, and military units in the national territory; (b) request and receive necessary information, documents and material from the heads and staff of Government authorities, local government bodies in towns and villages, and institutions, organizations and enterprises regardless of their organizational and legal form; (c) receive from such entity heads and staff explanations regarding issues requiring clarification, but not from judges regarding court decisions; (d) examine on his own or jointly with competent State bodies, officials or civil servants the activity of State bodies, local government bodies in towns and villages, and organizations or enterprises, regardless of their organizational and legal form, and penal enforcement facilities in respect of their compliance with human rights; and (e) commission competent State bodies and scientific institutions to conduct expert research on issues arising in the course of examination of a complaint. On matters within his or her competence, the Human Rights Commissioner is entitled to have immediate

access to heads and other staff of State bodies, local government bodies in towns and villages, institutions, organizations and enterprises, regardless of their organizational and legal form, and public associations; military commanders; and heads of the administration of pre-trial detention centres, and deprivation of liberty facilities, within the national territory. The Human Rights Commissioner may participate in the sessions of the Upper and Lower House of the Parliament, Government meetings, and meetings of State bodies.

F. Expansion of the scope of the Constitutional Court

120. Amendments and additions introduced to the Constitutional Act on 20 March 2008 expanded significantly the scope of the Constitutional Court. As a result, more issues fall within the competence of the Constitutional Court, more persons are entitled to have recourse to the Constitutional Court, and there are more possibilities to do so.

121. The Constitutional Court determines the constitutionality of draft amendments and additions to the Constitution, draft Acts and questions formulated in national referendums; resolves issues related to the constitutionality of: (a) Acts; joint decisions of the Upper and Lower Houses of the Parliament; decisions of the Upper House of the Parliament, the Lower House of the Parliament, the President, the Government, the Supreme Court, the Superior Economic Court, other State bodies and public entities; and international agreements of Tajikistan, which have not entered into force; (b) Legal instruments of local representative and executive State bodies, and agreements concluded by provinces, regions and cities; (c) Agreements between the Government and the local authorities; and (d) Elections and referendums; and fulfils other functions laid down in the Constitution and the law. Moreover, the Constitutional Court resolves disputes between: (a) State bodies; (b) national and local authorities; (c) local State bodies and local government bodies.

122. The Constitutional Court examines questions related to violations of the citizens' constitutional rights and freedoms through the actual or possible implementation of Acts or other legal instruments from a specific legal perspective, and determines the constitutionality of Acts, other legal instruments and guiding explanations of the Plenums of the Supreme Court and the Superior Economic Court as applied by a court in specific cases, according to the procedures stipulated in the Constitutional Act on the Constitutional Court.

123. Under article 37 of the Constitutional Act on the Constitutional Court, the following persons or bodies are entitled to have recourse to the Constitutional Court:

(a) The President of Tajikistan, and the Upper and Lower Houses of the Parliament, regarding the constitutionality of amendments and additions to the Constitution, draft Acts and questions formulated in national referenda;

(b) The President of Tajikistan, the joint session of the Upper and Lower Houses of the Parliament, the Upper House of the Parliament, the Lower House of the Parliament, the Government, the members of the Parliament, the Supreme Court, the Superior Economic Court, the Procurator General, and the Council of Deputies of the Gorno-Badakhshan Autonomous Province, the provinces and Dushanbe regarding the constitutionality of Acts; joint decisions of the Upper and Lower Houses of the Parliament; decisions of the Upper House of the Parliament, the Lower House of the Parliament, the President, the Government, the Supreme Court, the Superior Economic Court, other State bodies and public entities; and international agreements of Tajikistan, which have not entered into force;

(c) The Procurator General, the Council of Deputies of the Gorno-Badakhshan Autonomous Province, the provinces and Dushanbe and the Presidents of the Gorno-Badakhshan Autonomous Province, the provinces and Dushanbe regarding the constitutionality of decisions of ministries, State committees and other State administration bodies, and local State bodies;

(d) The Government, the ministries, State committees, Government departments, the Council of Deputies and the Presidents of the Gorno-Badakhshan Autonomous Province, the provinces, Dushanbe, other cities and the regions regarding disputes between them with respect to their jurisdiction;

(e) The Human Rights Commissioner regarding violations of the constitutional rights and freedoms of applicants, under the Constitution, Acts or other legal instruments;

(f) The citizens regarding violations of constitutional rights and freedoms in view of the actual or possible implementation of Acts or other legal instruments from a specific legal perspective, and the constitutionality of Acts, other legal instruments and guiding explanations of the Plenums of the Supreme Court and the Superior Economic Court as applied by a court in specific cases;

(g) Legal entities regarding violations of constitutional rights and interests in view of the implementation of Acts or other legal instruments from a specific legal perspective, and regarding the constitutionality of Acts, other legal instruments and guiding explanations of the Plenums of the Supreme Court and the Superior Economic Court as applied by a court in specific cases;

(h) The three judges of the Constitutional Court regarding issues related to the jurisdiction of the Constitutional Court;

(i) Other courts and judges regarding the constitutionality of Acts, other legal instruments and guiding explanations of the Plenums of the Supreme Court and the Superior Economic Court as applied by a court in specific cases.

Any interested person may obtain, in Russian, Tajik or English, full information on Constitutional Court activities at the official web site of the Constitutional Court (www.constcourt.tj), launched on 4 November 2009.

G. Applicability of the Convention

124. Under article 10 of the Constitution, international legal instruments ratified by Tajikistan are part of the country's legal system. Where such international legal instruments are at variance with domestic legislation, the provisions of the international legal instruments prevail. Accordingly, the Constitution gives priority to ratified international legal statements. The Training Centre for Judges attached to the Justice Council pays particular attention to the judges' knowledge of international legal instruments on, inter alia, human rights, gender issues, human trafficking and corruption, incorporating such issues into the curriculum of the programme which judges attend during the last three years of three-stage general education. Each of the courses concerned addresses questions on the implementation of international law provisions in the framework of national legislation. Although the direct application of Convention provisions is not frequent in judicial practice, there have been cases in which reference was made to international human rights instruments. Since the adoption of amendments and additions to the Constitutional Act on the Constitutional Court, courts and judges have access to the Constitutional Court regarding the constitutionality of Acts, other legal instruments and guiding

explanations of the Plenums of the Supreme Court and the Superior Economic Court as applied by a court in specific cases. In 2009, for the first time, Sh. Shodiev, judge of a Shohmansur province court, presented to the Constitutional Court a claim of incompatibility between the Family Code, the Constitution and ratified international human rights instruments regarding the prohibition of gender discrimination. Although the Constitutional Court ruled that there is no discrimination and that Family Code provisions violate neither the Constitution nor any international instruments, such precedents show that the judges have begun, in their professional practice, to analyze legislation and compare it with international human rights provisions.

H. Non-refoulement and extraditions

125. The Procurator General's Office is the State body with jurisdiction over issues related to extradition. The Procurator General or his or her deputy examines requests to hand over a foreign citizen accused of committing a crime or sentenced in another State. Should various States request such extradition, the Procurator General decides to which State the person is to be extradited. Extradition conditions and procedure are determined in accordance with chapter 49 of Code of Criminal Procedure and bilateral agreements with the foreign State concerned. If the person whose extradition is requested is serving a sentence in Tajikistan for another crime, extradition may be postponed until the sentence has been served or the offender is released on any legal grounds. If the person whose extradition is requested has been indicted, extradition may be postponed until a verdict is issued, the sentence has been served or the offender is exculpated or released on any legal grounds. If postponement of extradition may lead to extinction or impede criminal investigation, temporary extradition may be granted. Extradition is prohibited if:

(a) Tajikistan has granted political asylum to the person concerned;

(b) The act cited as grounds for the extradition request is not considered as a crime by Tajikistan;

(c) A sentence has taken effect or a case has been dismissed in relation to the commission of the same offence by the person concerned;

(d) Under Tajik legislation, charges may not be brought or the sentence may not be enforced, on the grounds of extinction or other legal considerations.

126. In view of an extradition request in due form from the competent authority of the foreign State and valid legal grounds for such extradition, the person concerned may be arrested and remanded in custody as a measure of restraint. Thereupon, the requesting foreign authority is immediately informed of the detention, and a time and place of delivery are proposed. If such delivery does not take place within thirty days, the person detained may be released by court order. A second arrest is possible only on the basis of an examination of a new extradition request. Of the 304 persons extradited in the period 2007 – mid-2010, 65 were extradited in 2007, 115 in 2008, 85 in 2009 and 39 in the first six months of 2010.

127. Tajikistan cooperates with CIS countries on the basis of the Conventions on legal assistance and legal relations on civil, family and criminal matters signed in Minsk on 22 January 1993 and Chişinău on 7 October 2002, and of bilateral inter-State agreements. For instance, Kyrgyz citizen N. M. Botakozuev was arrested by law enforcement officers on 27 February 2010 and held at the temporary detention centre of the Internal Affairs Directorate in Dushanbe. It was verified that the Kyrgyz Procurator General's Office had initiated criminal proceedings against that

person under Kyrgyz Criminal Code articles 156 (4) (involvement of a minor in the commission of a crime), 174 (2) (deliberate destruction or damage of property), 233 (1-3) (mass disturbances), 259 (2) (organization of an association infringing the personality and rights of citizens), 279 (2) (illegal felling of trees and bushes), 299 (2) and (3) (incitement to national, racial or religious enmity) and 341 (use of violence against a representative of the State). Moreover, a court in the city of Osh, Kyrgyzstan, had issued an order dated 11 March 2010 for that person's detention as a measure of restraint. He was therefore detained on the basis of the Chişinău Convention. As no additional communication (for instance, requesting his release or dropping the charges against him) was received, he was extradited to Kyrgyzstan on 23 May 2010, on the basis of the same convention.

128. Tajikistan has concluded the following bilateral agreements:

1.	Between the Governments of Tajikistan and Kazakhstan on legal information exchange	Dushanbe, 22.02.01
2.	Between Tajikistan and the People's Republic of China on legal assistance on civil and criminal matters	Peking, 16.09.96
3.	Between the Governments of Tajikistan and Kyrgyzstan on legal information exchange	Bishkek, 06.05.98
4.	Between Tajikistan and Kyrgyzstan on mutual legal assistance on civil, family and criminal matters	Bishkek, 06.05.98
5.	Between the Governments of Tajikistan and the Russian Federation on questions of jurisdiction and mutual legal assistance on matters related to the presence of Russian Federation military units in Tajik territory	Moscow, 21.01.97
6.	Between Tajikistan and Turkey on legal cooperation on civil, trade and criminal matters	Ankara, 06.05.95
7.	Between the Procurator General's Offices of Tajikistan and Ukraine on legal assistance and cooperation	Kiev, 14.11.95
8.	Between the Governments of Tajikistan and Uzbekistan on legal information exchange	Dushanbe, 15.06.00
9.	Between the Governments of Tajikistan and the United Arab Emirates on legal assistance on criminal matters	Abu Dhabi, 09.04.07
10.	Between the Governments of Tajikistan and the United Arab Emirates on legal assistance on extradition	Abu Dhabi, 09.04.07
11.	Between the Governments of Tajikistan and the United Arab Emirates on legal assistance on civil and trade matters	Abu Dhabi, 09.04.07
12.	Between the Governments of Tajikistan and Afghanistan on the extradition of detainees	Dushanbe, 26.07.06
13.	Between Tajikistan and the Islamic republic of Iran on extradition	Dushanbe, 04.01.10
14.	Between the Governments of Tajikistan and Afghanistan on the extradition of detainees	Dushanbe, 27.07.06

129. Sentenced offenders may be transferred in accordance with the CIS Convention of 6 March 1998 on the transfer of convicted prisoners to serve out their sentences, which was ratified by the Tajik Parliament on 13 November 1998.

130. A commission for the examination of applications for refugee status functioned in the Ministry of Labour and Social Welfare until October 2009, when the activities related to work with refugees and asylum seekers was transferred from that ministry to the Ministry of Internal Affairs. In implementation of Government decision No. 503-23 of 31 December 2002 on the reform of the criminal sentences system, a division for citizenship affairs and work with refugees was set up in that ministry under Ministry of Internal Affairs order No. 292 of 6 May 2009.

131. The Refugee Status Commission created in October 2009 includes the head of the Migration Service of the Ministry of Internal Affairs (MS MVD); representatives of the National Security Committee, the Ministry of Health and the Executive Office of the President of Tajikistan; and an observer of the Office of the United Nations High Commissioner for Refugees (UNHCR), who is authorized to make recommendations on status determination procedures and other issues related to the protection of refugees and asylum seekers.

132. Work is currently carried out to improve legislation on issues related to the protection of the rights of refugees. The Refugee Status Commission regulation has been drawn up and adopted. It contains basic refugee protection provisions and reflects the experience gained in other countries.

133. Of the 2,447 refugees and asylum seekers currently in the country, 2,047 have been granted refugee status and 400 have filed applications (as asylum seekers) which are currently pending; 2,442 are Afghan and 5 Iranian; and 630 reside in Dushanbe, 1,429 in the city of Vahdat, 110 in the Rudaki region, 75 in Gissar, 29 in Shahrinau, 137 in Sughd province and 37 in Khatlon province.

134. The work of the Migration Service of the Ministry of Internal Affairs with regard to asylum seekers is seriously hampered by a lack of temporary shelter facilities for that group.

135. Article 14 of the refugees Act provides for guarantees of the rights of asylum seekers and acknowledged refugees. Asylum seekers, acknowledged refugees and persons having forfeited or lost their refugee status may not, against their will, be returned or sent to a State where their life or freedom will be at risk as a result of persecution on racial or religious grounds or because of their citizenship, membership of a social group or political views. Such provisions do not apply to refugees validly considered to be a national security threat or definitively convicted for the commission of a grievous crime and representing a public danger in the host country. Information on asylum seekers and refugees may not be provided to the authorities or public organizations of the State of which they are citizens or former residents, without their written consent. The decisions and acts (or omissions) of State administration bodies and officials may be challenged at a higher echelon or in a court. The time limit for filing such a complaint is one month from the date of receipt of a written notification concerning the rejection of an application for refugee status, or the forfeiture or loss of such status. Filing a complaint at a higher echelon does not preclude filing a judicial complaint. If a complaint is filed at a higher echelon within the one-month time limit but no written reply is received, the person concerned may address a court. Until a decision is made regarding the complaint, the applicant and the members of his or her family enjoy rights and are expected to meet obligations specified in the refugees Act. The temporary certification of receipt of an application for asylum or the refugee status certification is extended until a decision

is made at the higher echelon or by the court. Simultaneously, the internal affairs body extends the residence permit of the persons concerned. A person who is notified of the rejection of the application for refugee status or of the forfeiture or loss of such status and has exhausted the right to appeal such decision must leave the country with the members of his or her family within one month from such notification unless his or her stay may be extended on other legal grounds.

136. Under article 483 of the Code of Criminal Procedure, "on the basis of an international convention with another State or a written reciprocity agreement between the Tajik Procurator General and the competent authorities or civil servants of such State, a citizen of that State sentenced by a Tajik court, or a Tajik citizen sentenced in that State, to deprivation of liberty may be transferred to their country of citizenship to serve out their sentence".

137. Tajik citizens sentenced by Tajik courts may under no circumstances be extradited to another country. It is categorically prohibited to subject a convicted offender to torture or cruel, inhuman or degrading treatment or punishment or, even with his or her consent, to medical or other scientific experiments which may endanger his or her life and health. A foreign citizen may be expelled from Tajikistan if:

(a) His or her acts undermine national security or the rule of law;

(b) Such expulsion is necessary in order to protect the citizens' health, morals, rights or legitimate interests;

(c) He or she blatantly violates Tajik law on, inter alia, the legal status of foreign citizens, customs or currency.

Deportation from the country is decided by the National Security Committee in agreement with the Procurator General. Unless the deportee challenges its legality before a court, the deportation decision becomes enforceable. No later than one month before the end of the sentence served by a foreign citizen subject to deportation, the Ministry of Justice notifies his or her forthcoming release to the regional migration, internal affairs and security authorities of the area of the establishment or body ensuring the enforcement of the sentence. In the case of Tajik citizens, court decisions are implemented according to established procedure. Where the appropriate State body decides to terminate a foreign citizen's permit of residence, his or her visa is cancelled, stamped to that effect and replaced with a permit of exit with a seven-day period of validity. Where a decision is made to proceed with the administrative expulsion or deportation of a foreign citizen, his or her visa is cancelled by the consular directorate of the Ministry of Foreign Affairs and stamped accordingly. The expulsion or deportation of a foreign citizen is conducted according to the procedure laid down in paragraph 7 (2) of procedural regulation No. 122 of 27 February 2009 on the formulation and issue of visas to foreign citizens and stateless persons. Administrative expulsion of foreign citizens and stateless persons is an administrative penalty imposed if:

(a) Their acts or omissions undermine national security or the rule of law;

(b) Such expulsion is necessary in order to protect the health, morals, rights or legitimate interests of Tajik citizens or other persons;

(c) They violate Tajik law.

Administrative expulsion of foreign citizens and stateless persons from the country consists in escorting them across the State border for violating the legal provisions concerning their stay in Tajikistan, and, in cases specifically stipulated by law, in

ensuring that they leave on their own. As an administrative penalty, the administrative expulsion of foreign citizens and stateless persons is imposed by a judge or, where the persons in question have committed an administrative offence when entering the country, by an authorized State body or civil servant. Provisions related to the expulsion of foreign citizens and stateless persons are also contained in the United Nations Convention against Transnational Organized Crime and the Rome Statute of the International Criminal Court, to which Tajikistan is a party. Of the 461 offenders (mainly Uzbek and Afghan citizens) expelled from the country in the period 2007 – mid-2010, 170 were expelled in 2007, 139 in 2008, 119 in 2009 and 33 in the first six months of 2010.

I. Training

Building the capacities of judges

138. The Training Centre for Judges attached to the Justice Council was created on 31 March 2003 in order to enhance the independence of judges by enriching their theoretical and practical knowledge; and began to operate in September 2004. In the period 2006-2008, the judges of the provincial, district, urban, military and economic courts attended in that centre, twice a week, advanced training and capacity building sessions. A noticeable reduction in the number of unfounded court decisions in criminal cases attests to the effectiveness of the training received by judges in the area of human rights. The Training Centre for Judges attached to the Justice Council pays particular attention to the judges' familiarization with international legal instruments on, inter alia, human rights, gender issues, human trafficking and corruption, incorporating such issues into the curriculum of the programme which judges attend during the last three years of three-stage general education. Each course addresses questions on the implementation of international law provisions in the framework of national legislation, including in particular the following:

- Implementation of international and national human rights provisions as part of judicial practice;
- Use of international legal instruments and treaties in the courts;
- Implementation of human rights standards in judicial work;
- International legal mechanisms for human rights protection monitoring and oversight;
- International legal obligations in the area of human rights and freedoms;
- Judicial protection of human rights and freedoms in criminal, civil and administrative procedure;
- The Minsk and Chişinău conventions and other related international agreements;
- Substance and procedure of the implementation of international agreement provisions in court practice.

The Justice Council and the courts take all necessary measures for implementing international legal instruments, including in particular the Convention, as part of judicial practice.

Building the capacities of procuratorial staff

An integrated ongoing training and capacity building system is implemented in the procuratorial services. The most accessible form of capacity building consists in

independent training based on individual plans under the supervision of senior staff and without detachment from the service. Such independent training includes:

(a) The study of new legislation, specific prosecutorial investigation issues of interest to the procuratorial staff in a particular city or region, methodology handbooks and regulatory instruments of the Procurator General's Office, and decisions and explanations of the Constitutional Court and of the Plenums of the Supreme Court and the Superior Arbitration Court;

(b) Regular familiarization with legal journals;

(c) The study of law enforcement methods, best practices, surveys, information circulars and systematic practical commentaries;

(d) An examination of the specific tasks of higher procuratorial offices.

As a rule, an independent training plan is drawn up by the procurator (or investigator) on a semi-annual basis. The plan includes the study of work organization and scheduling in the procuratorial office, law implementation monitoring procedures, and investigation into the various types of offences. To that end, the studies focus on surveys and information circulars on best practices, relevant legal literature, and examples of effective procuratorial action. The procurator in charge assists every subordinate in working on the subjects studied and selecting relevant literature and legal and regulatory instruments, and approves the training plan. The procurators or immediate superiors, who are aware of the professional qualities of their personnel, must include in the plan exercises and correct them, identifying the sources of errors. A city or region procurator must periodically hold meetings to review and evaluate independent training results. City or region and higher-level procurators conduct seminars on training methods. Inter-agency thematic seminars for procuratorial, internal affairs, fiscal and customs staff are effective. Investigation and prosecution workers attend seminar-type training exercises organized on appropriately selected subjects with the involvement of qualified instructors and field staff. In the seminars, emphasis is placed on each participant's active work on the individual subjects with a focus on the mastery of prosecutorial monitoring procedures and methods, the investigation of the various types of crime, the use of scientific and technical equipment and investigation methodology, and the consolidation of theoretical knowledge through lectures, reports and independent training. Inter-agency seminars for procuratorial and other law enforcement staff are frequent in cities and regions with a relatively small number of law enforcement operational staff. Court, judicial body and legal service workers may also participate in connection with certain issues. Such seminars include discussions on current regional problems, related to the prevention of crime and violations of the law, from the perspective of the individual sections of the various law enforcement agencies. The specific topics are formulated in cooperation with local law enforcement representatives, taking into account the recommendations of higher-level procuratorial units and the particular requirements of work in the region. Course-type thematic seminars are organized on an educational basis at city and regional level, with the participation of the staff of neighbouring city or regional procuratorial offices, directors and heads of units of procuratorial services of a higher rank, procurators and criminal law experts. Compared to departmental seminars, course-type seminars cover a wider range of subjects, including theoretical and practical legal questions concerning the drafting and consideration of procedural documents. Such seminars are organized by the city or regional procurator, if necessary in cooperation with the representatives of higher-level procuratorial units and other law enforcement agencies. Capacity building is frequently organized in the form of research and application conferences for procurators, investigators,

researchers and trainers in the area of law, and representatives of other law enforcement agencies and State bodies. Prosecutorial and investigative best practices are presented and disseminated for capacity building purposes through, inter alia, information circulars, digests and bulletins using local material. Internships in urban, district and higher-level procuratorial offices and in other departments has proven to be a particularly effective capacity building method. Such internships are designed for young specialists recently transferred to procurator's offices from other law enforcement agencies and legal services, and for persons assigned or promoted to a new post, with a view to enhancing or acquiring knowledge, habits, skills and practical experience for the new or proposed post or specialization. During an internship, the identification of shortcomings to overcome enable senior procuratorial civil servants to consider more effectively the interns' professional and personal qualities and to determine further ways of developing their prospects in the service.

The capacity building centre of the procuratorial services is governed by a regulation and constitutes the only institution specialized in relevant organizational and procedural training based on the latest achievements of legal theory and criminological technique and on best prosecutorial and investigative practices related to monitoring compliance with the law. The centre performs the following basic tasks:

(a) Enhancement of the general and professional knowledge of procurators and investigators through the study of the Constitution, the Constitutional Act on procuratorial bodies and other legislation, with a view to strengthening the rule of law; reinforcing crime prevention; building a democratic, secular, and unitary State based on law; and improving the population's standard of living; and through the study of international human rights instruments to which Tajikistan is a party;

(b) Preparation and issue of training plans, programmes and methodology handbooks; and organization of research and application conferences, seminars and sessions using extensively technical equipment, specialized experience, multidisciplinary expertise, and the services of procuratorial capacity building specialists;

(c) Development of networks among provincial, city and regional procurator's offices, comprehensive dissemination of best practices through the plans and programmes of training initiatives and practical assistance in the organization and conduct of capacity building conferences, seminars and other events;

(d) Participation in the development of research-based recommendations for improving the activity of procuratorial bodies;

(e) Examination of international law enforcement practice.

Building the capacities of justice system workers

The Ministry of Justice takes all necessary measures to enhance training. To that end, at the Institute for capacity building for the staff of law enforcement agencies, judicial bodies and legal services of enterprises, institutions and organizations, 60 UID staff members attend every year short term 10-hour courses on questions related to the prohibition of the use of torture. These courses address inter alia issues connected with the exercise of human rights and fundamental freedoms. The Ministry of Justice annual plan of activities for the personnel and inmates of UID detention facilities includes two-hour special lectures organized on a fortnightly basis. In 2008, 143 members of the personnel in question attended the above courses. Moreover, in cooperation with international organizations, training by international

experts on issues related to the exercise of human rights and the prohibition of the use of torture is provided to detention facility workers. In 2008, a number of bilateral agreements for cooperation in the area of education were concluded between Tajikistan and Kazakhstan. In particular, the Ministries of Justice of the two countries signed an agreement on mutual understanding and development of cooperation in the area of training and capacity building for the staff of judicial bodies and establishments; and the Ministry of Justice of Tajikistan signed a memorandum of understanding with the penal enforcement committee of the Ministry of Justice of Kazakhstan. On the basis of the agreement and memorandum of understanding in question, 20 Tajik citizens, namely 10 in 2009 and 10 in 2010, have had the opportunity to attend free of charge the Kostanay Academy of the said committee in Kazakhstan. Some of the key objectives of the legal training and citizenship education programme, 2009-2019, adopted through Government decision No. 253 of 29 April 2009, are the following:

- Involving citizens in law-related activities;
- Enhancing the population's understanding of legal concepts;
- In cooperation with the Human Rights Commissioner, assisting the population in protecting its legitimate rights and interests;
- Promoting the citizens' awareness of their rights, freedoms and obligations;
- Enhancing the population's legal literacy, taking national traditions into consideration.

On 22 December 2009, the Ministry of Justice adopted the workplan of the National organizational board for legal training and citizens' education, 2010. The board, chaired by the Minister of Justice, also includes the Minister of Foreign Affairs, the Procurator General, and the chairpersons of the Supreme Court, the Superior Economic Court, the National Security Committee and the Government Committee on Radio and Television, and the President of the Academy of Sciences.

Building the capacities of internal affairs personnel

Minister of Internal Affairs Order No. 1 of 1 January 2008 on the consolidated system of training was issued with a view to enhancing training and discipline among the personnel of internal affairs bodies. Various training incentives undertaken within the framework of activities of the Ministry of Internal Affairs Academy are aimed at raising the population's awareness of the area in question. Ministry of Internal Affairs Academy instructors participate in various activities in the area of human rights, such as training in human rights education for law enforcement personnel, in human rights teaching procedures and methods (2007) and in "issues related to vulnerable groups (migrants, refugees and children) in the work of law enforcement personnel" (February 2008). Moreover, Ministry of Internal Affairs Academy instructors organize various training events in educational establishments, such as seminars on the rights of detainees and children's rights in general secondary education schools in Dushanbe; and meetings with the students of the S. Ayni teachers' college in Dushanbe on "human rights protection as a basic function and responsibility of the militia" (2007-2008). Furthermore, Ministry of Internal Affairs Academy instructors actively participate in international and regional conferences on promoting and protecting human rights and in related national round tables and conferences, such as the round tables entitled "Tajikistan and the United Nations Committee of against Torture – A year later: achievement and future problems" (2008), and "Respect for human rights during preliminary investigation" (2008). Ministry of Internal Affairs Academy instructors also offer service training

for various entities of the Ministry of Internal Affairs system, for instance on "Safeguarding human rights in the activity of internal affairs bodies" in the Migration Service of the Ministry of Internal Affairs (2008); on "Human rights in civil and family law" in the Ministry of Internal Affairs Secretariat (2008); and on "The study of international legislation in the area of human rights", "Protection of human rights" and "Use of firearms and human rights" in the Ministry of Internal Affairs (2010). Lastly, Ministry of Internal Affairs Academy instructors offer training on an educational basis for Ministry of Internal Affairs Academy cadets on "Domestic violence" (2008), "International and national human rights legislation and protection of refugees" (2008), and "Prevention of domestic violence against women" (2008). A compilation of international documents and Tajik legislation on human rights (for law enforcement staff) and a book entitled *Human rights protection as a basic function and responsibility of the militia* were published in 2005, while in February 2009 Ministry of Internal Affairs Academy instructors released a pamphlet entitled "Legal aspects and prospects of ratification by Tajikistan of the Second Optional Protocol to ICCPR and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment". A series of meetings with Ministry of Internal Affairs Academy participation on "Ensuring the protection of human rights" was broadcast on the first national television channel (2010). An information centre on human rights functions in the Ministry of Internal Affairs Academy since 2008.

J. Interrogation

139. According to the provisions of criminal procedure law, interrogation is carried out at the place where preliminary inquiry is conducted. If he or she considers it necessary, the investigator may interrogate the person questioned wherever that person happens to be.

140. Witnesses, victims and suspects or indictees not in detention are summoned to the interrogation by an order to appear, which must state the name and capacity of the person who summons, the name and address of the person summoned, the required time of appearance for interrogation, and the consequences of failure to appear without a valid reason. The order to appear is delivered to the person summoned against receipt. In the absence of that person, the letter of convocation is entrusted, against receipt, for transmission to that person, to an adult family member or, if none is available, to the appropriate housing management organization, local government authority or workplace administration, which must transmit the order to appear to the person summoned. Other means of communication may be used to summon persons. The persons summoned are obligated to appear for the interrogation. They are subject to procedural coercive measures only if they fail to appear without a valid reason.

141. Detainees are summoned to interrogation through the administration of the detention facility.

142. A witness or victim under 16 is summoned through that person's parents or legal representatives. A minor may be summoned by a different procedure only under exigent circumstances.

143. During the interrogation, the investigator must clarify details regarding the identity and personality of the person interrogated, who may reply in his or her native language or a language of which he or she has mastery. He or she is informed in what capacity and in connection with what criminal act he or she will be interrogated, and of his or her rights and obligations. These formalities are noted in

the report. No charges may be brought against persons summoned for interrogation as witnesses or victims for failure or refusal to provide information or for deliberately providing information that is inaccurate.

144. Under article 51 of the Code of Criminal Procedure, a person summoned for interrogation as a suspect, indictee, defendant or convicted offender is entitled to use the services of a lawyer.

145. At the beginning of the interrogation, the person interrogated provides an account of the circumstances of the case which are known to him or her. Any lack of clear relevance of the circumstances exposed to the case must be brought to his or her attention. After freely exposing the circumstances, the person interrogated may be asked questions aimed at refining and completing the information provided. Suggestive questions are prohibited. If the information involves figures or other data difficult to memorize, the person interrogated may, at his or her request or on the investigator's initiative and with the interrogated person's consent, use relevant documents and records.

146. The interrogation may not last uninterruptedly for more than four hours or exceed eight hours per day.

147. The course and outcome of the interrogation are recorded in the report. The information is written down in the first person and, if possible, verbatim. Questions and replies are recorded in the order in which they occurred during the interrogation. The report must include any questions asked by participants in the interrogation and excluded by the investigator or to which the person interrogated refused to reply, with an indication of the grounds for the exclusion or refusal. The presentation of material evidence and documents, the reading of written records and the playing of sound recordings or viewing of video recordings or films of investigative acts must be noted in the report along with the related information provided by the person questioned. In the course of the investigative act, he or she may prepare sketches, drawings, figures, or diagrams, which are attached to and noted in the report. After the free exposition, the person interrogated may write up the information in his or her own handwriting. After the information is thus exposed and signed by the person interrogated, the investigator may ask supplementary and more detailed questions. At the end of the interrogation, the report is shown to the person interrogated, or read at his or her request. Any request by the person interrogated to enter an addition or further details in the report must be honoured. By affixing his or her signature at the end and on each page of the report, the person questioned ascertains having read the information and that it is accurate. Moreover, the report, as a whole and on each page, and the translation of any handwritten information provided by the person interrogated, must be signed by any translator who participated in the interrogation. All participants in the interrogation sign the report.

148. By decision of the investigator or at the request of an indictee, suspect, witness or victim a sound- or video-recording may be made during the interrogation of such a person. The investigator decides at the beginning of the interrogation whether such a recording will be made, and informs the person interrogated accordingly. At the end of the interrogation, the recording is replayed in its entirety for the person interrogated. After the replay, the person interrogated is asked whether he or she wishes to add any elements or details to the recording and whether he or she attests to its exactitude. Any such additions are immediately recorded. The recording is finalized with his or her statement and assertion of the exactitude of its content. The information thus recorded is entered in the interrogation report, which must also contain:

(a) A note that a sound- or video-recording was made, bringing that fact to the notice of the person interrogated;

(b) Information regarding the sound- or video-recording equipment and conditions;

(c) A statement of the person interrogated regarding the sound- or video-recording;

(d) A certification of the exactitude of the report and the sound- or video-recording by the person interrogated and the investigator.

K. Systematic review of all places of detention

149. Under chapter 6 of the Constitutional Act on procuratorial bodies and article 26 of the Penal Enforcement Code, the Procurator General and his or her subordinate procurators monitor the enforcement and serving of sentences to ensure strict and uniform compliance with the law. Such monitoring is intended to ensure, inter alia:

- The legality of the confinement of persons in detention facilities, custodial reception centres, pre-trial detention units, sentence enforcement agencies and establishments and other bodies implementing court-ordered coercive measures;
- The fulfilment of the legal rights and obligations of the persons detained, remanded in custody, sentenced or subject to other coercive measures; and compliance with detention procedures and conditions.
- The procurator conducting such monitoring may:
- Visit, without inspecting, the places of confinement of persons detained, remanded in custody, sentenced or subject to other coercive measures;
- Interrogate any persons detained, remanded in custody, sentenced or subject to other coercive measures;
- Have knowledge of the documents and police material, on the basis of which these persons are detained, remanded in custody, sentenced or subject to other coercive measures;
- Require strict and uniform compliance with domestic law and ratified international legal instruments related to human rights and the humane treatment of detainees and sentenced offenders;
- Demand of the administration of the above facilities and bodies to create conditions ensuring the rights of the persons detained, remanded in custody, sentenced or subject to other coercive measures; verify the compatibility of orders, regulations and decisions of the administration with the law; require explanations from officials; file challenges and protests; and bring criminal charges or initiate proceedings for administrative, disciplinary or property-related offences;
- Cancel disciplinary penalties imposed illegally for regulation violations on persons remanded in custody or sentenced; and decide their immediate release from any isolation ward or cell, dungeon, solitary confinement room or disciplinary unit;
- Decide the immediate release, according to procedures specified by the law, of persons unlawfully held in deprivation of liberty or coercive measure

enforcement establishments or unlawfully detained, forcibly secluded or placed in a forensic psychiatric establishment.

The administration has an obligation to comply with the procurator's decisions and demands concerning the observance of detention procedures and conditions in relation to the persons arrested, detained, sentenced to deprivation of liberty or other types of punishment, subject to other coercive measures or placed in forensic psychiatric establishments.

150. Under Procurator General orders No. 17 and No. 18 of 10 November 2008, aimed at strengthening procuratorial monitoring, procurators every ten days visit, for purposes of verification, temporary detention facilities, detention centres, correctional colonies, custodial reception centres, pre-trial detention units, sentence enforcement agencies and establishments and other bodies implementing court-ordered coercive measures. According to Procurator General's Office data, three correctional labour colony workers in 2008, two in 2009 and three in the first six months of 2010 were convicted for abuse of power (article 314 of the Criminal Code) and excess of authority (article 316 of the Criminal Code) in the form of battery, insult and use of indecent expressions.

L. Right to complain and obtain redress

151. The right to challenge any acts of law enforcement agency staff or officers which infringe human rights and freedoms is enshrined in domestic legislation, and in particular in the Code of Criminal Procedure.

152. Under article of 105 of the Code of Criminal Procedure, a procurator, investigator, interrogating officer or judge must admit statements or communications regarding any committed or planned offence and take a decision in that connection within 3 or, in exceptional cases, 10 days from the receipt of such statement or communication.

153. In accordance with criminal procedural legislation, parties to criminal proceedings and other persons whose interests are adversely affected may challenge acts (or omissions) and decisions of an interrogating officer, investigator, procurator, court or judge by appealing to a State body or official responsible for initiating criminal proceedings.

154. Under article 219 of the Code of Criminal Procedure, complaints regarding acts of an interrogating officer or investigator are transmitted to the procurator directly or through the interrogating officer or investigator in question. Under article 221 of the Code of Criminal Procedure, complaints regarding acts and decisions of a procurator are filed with a higher ranking procurator.

155. Complaints may be oral or written. Oral complaints are recorded in a report signed by the person filing and the official receiving the complaint.

156. The examination of a complaint may not be assigned to the procurator or judge whose act is challenged or to the official whose decision is challenged.

157. The examination of a complaint may lead to a decision to provide full or partial satisfaction of the person complaining through the cancellation or modification of the challenged decision or to deny such satisfaction. In that case, the decision previously issued may not be modified, if the modification would entail worsening the situation of the person complaining or of the person benefiting from that decision.

158. Under article 5 of the investigative and search operations Act, a person who considers that the actions of the officials carrying out the activities in question have violated his or her rights and freedoms may file a complaint with a higher-level body conducting investigative and search operations, a procurator or a court. If his or her guilt in relation to the commission of a crime is not proven by due process of law, namely if the charges against him or her are rejected or the relevant criminal case is closed on the grounds that no crime was committed or that his or her acts contained no criminal element, and if he or she can factually show having been the object of investigative and search operations and considers that in that connection his or her rights were violated, a person is entitled to demand of the body having conducted the said operations to apprise him or her of the information collected about him or her, within the limits established by the requirements of confidentiality and State secret protection. If the provision of such information is denied or he or she considers that the information provided is incomplete, the person in question may file an appeal according to the procedure established by law. In the process of examining the issue, the burden of proof that the refusal to provide information or provide it fully is justified lies with the body having conducted the investigative and search operations.

159. The Human Rights Commissioner is the authority entitled to receive and examine complaints of violations of human rights and fundamental freedoms. Since the beginning of the activity of the Human Rights Commissioner, namely between August 2009 and June 2010, the Human Rights Commissioner received 10 communications by citizens alleging use of torture against them or close relatives of theirs. All such communications were transmitted to the procuratorial authorities for inquiry. The cases concerned are monitored by the Human Rights Commissioner.

160. Article 85 of the Criminal Code provides for the rehabilitation of a person who has not committed an offence but has been unjustly the object of criminal charges or is illegally convicted. The rehabilitated person is fully reinstated in his or her rights, and an apology to that person or his or her relatives on behalf of the State is published in the press at the rehabilitated person's place of residence, unless the person or the relatives object to such publication. The State provides full compensation for any damage caused to a citizen through illegal criminal charges or an illegal conviction.

161. Under article 461 of the Code of Criminal Procedure, the State provides full compensation for any damage caused by illegal detention, remand in custody, house arrest, suspension from a post, committal to a medical institution, conviction or adoption of coercive measures of a medical character, regardless of the guilt of any interrogating officer, investigator, procurator or court.

162. The right to damages arises on the occasion of:

- Release of an arrested or detained person when suspicions of commission of a crime are not borne out;
- Closing of a criminal case on the grounds laid down in articles 27 (1) and 234 (1) of the Code of Criminal Procedure;
- Acquittal;
- An amendment to the characterization of the offence in the relevant article, including the definition of a less serious crime and a concomitant provision for a less severe penalty; or exclusion of part of the charges from the conviction and a concomitant sentence reduction;
- Cancellation of an illegal court decision to apply coercive measures of a medical character.

163. Damage is not subject to compensation where, during the inquiry, preliminary investigation or court hearing, the citizen concerned contributed to the consequences in question through self-incrimination, unless such a confession was brought about through violence, threats or other illegal means, whose use must be corroborated by an investigative authority, procurator or court.

164. Upon deciding a citizen's full or partial rehabilitation, the court, procurator, investigator or interrogating officer must recognize his or her right to damages. A copy of the exculpating judicial pronouncement or decision to close the criminal case or to cancel or revise other illegal decisions is given or mailed to the interested person. At the same time, he or she is informed of the procedure for claiming compensation for property-related damage and for being reinstated in other rights (article 463 of the Code of Criminal Procedure).

165. Claims for monetary compensation for moral damage are filed under civil procedures. Where information regarding detention, remand in custody, suspension from a post, committal to a medical establishment, conviction or other illegal acts affecting a person was published in the press or broadcast on radio or television or disseminated by other means, the media concerned must, at the request of that person or, in the event of his or her death, at the request of his or her relatives or at the instructions of a court, procurator, investigator or interrogating officer, proceed with an appropriate announcement within one month (article 466 of the Code of Criminal Procedure).

Use of statements made as a result of torture

166. Under article 21 of the Code of Criminal Procedure, all circumstances related to a case which are subject to verification must be investigated thoroughly, fully and objectively.

167. Under article 88 (3) of the Code of Criminal Procedure, evidence obtained in the process of interrogation and preliminary investigation through recourse to force, pressure, deliberately caused suffering, inhuman treatment or other illegal methods is considered to be null and void, may not serve as the basis for charges and is not part of evidence subject to verification in a criminal case.

M. Prison conditions

168. The implementation of the Government programme for the humanization of the country's criminal policy encourages progress within the penal enforcement system. The Head of State took the political decision to support the transfer of that system from the Ministry of Internal Affairs to the Ministry of Justice. The ensuing functioning of the sentence enforcement system within the Ministry of Justice since December 2002 constitutes a step towards separating criminal prosecution authorities from sentence enforcement authorities. Prison administration was transferred to the Ministry of Justice. To that end, legal and regulatory texts were developed or revised in order to promote the system's humanization. Modifications were introduced in 12 orders and guidelines on sentence enforcement conditions, removing excessive restrictions and prohibitions. For instance, the range of foodstuffs and objects accessible to the inmates has expanded, the establishments have been aligned with international norms and standards in respect of detention, windows in disciplinary unit and punishment cells have been enlarged to let in more sunlight, timber floors have been laid, and communication and living conditions have improved.

169. Priority legal and regulatory instruments developed with regard to the penal enforcement system within the Ministry of Justice include a draft regulation on the career programme for officers and senior staff of the penal enforcement system, establishing relevant principles, objectives, tasks and special legal considerations.

170. Further development of the penal enforcement system requires a review of current legislation with a view to the humanization of the implementation of penalties through the adoption of new legal and regulatory instruments in line with the relevant international norms and standards.

171. The development of the penal enforcement system presupposes organizational and structural improvements. The system currently includes 19 correctional facilities and inspectorates handling every year approximately one thousand persons serving sentences not involving isolation from society. Currently, the system is based on a single centralized structure with vertical lines of command extending to the regional bodies. The structure is governed by appropriate legal and regulatory instruments. The regional bodies are independent and report only to a central body in the Ministry of Justice. This organizational scheme, based on experience acquired in neighbouring and other countries, allows solving all operational issues related to detention facilities. The design of the system allows for optimal operation under a maximal number of 500 to 950 places per facility, while the current minimum level exceeds one thousand persons. Ways of reducing the number of inmates are under consideration and a start has been made. The Government has adopted a programme for improving material and operational conditions in the detention facilities and, on the basis of existing facilities, has provided for the construction of a medical institution (put in operation in December 2005), a remand centre in Khudjand, Sughd province (put in operation in September 2008), and a remand centre in Kulyab, Khatlon province. Facilities whose operation began in the last two years include penal colonies under a strict and a reinforced regime in Sughd province, a penal colony for former law enforcement staff, a medical institution and a facility for women. In a number of non-residential facilities reconstructed (inter alia, a colony for children and one for women), buildings were erected to house under-age detainees and persons serving a life sentence.

172. Detention conditions for convicted offenders are laid down in the Penal Enforcement Code, in accordance with which a prison comprises separate sections for men, women, minors and adults. Pregnant women are held in women's facilities, where they receive supplementary rations of milk, cream cheese, sour cream and butter. Women with children up to 3 years of age are held in a women's facility with a nursery, to which they have free access. The nursery was built with the help of the Open Society Institute Assistance Foundation, Tajikistan. The cell area of the Dushanbe remand centre No. 1 has been renovated with UNICEF support, merging two adjoining cells to meet the minimum standard accommodation requirements for prisoners and improving ventilation and use of daylight.

173. Further development of the penal enforcement system is impossible without a prison personnel adequately trained in line with modern standards. It is crucial to bring gradually the authorized workforce of the system into line with international standards, from a current level of one staff member for eight inmates (according to calculations based on international norms), a ratio which certainly affects the quality of work with the detainees. When the system was transferred to the Ministry of Justice, the Ministry of Internal Affairs retained the advanced training institutions, whose absence from the penitentiary system makes it difficult to provide specialized training.

174. In view of the particular working conditions and constant psychological pressure faced by detention facility personnel, medical rehabilitation services are developed in order to prevent occupational deformations of personality and provide psychological relief in specialized centres. With the transfer of the Correctional Affairs Department from the Ministry of Internal Affairs to the Ministry of Justice, problems related to staff medical support were solved, and a staff medical unit was set up in view of actual requirements.

175. Measures are taken to raise the social status and prestige of system personnel and provide a legal and material basis for ensuring its stability. Draft legislation prepared to that effect provides for, inter alia, adequate housing and preferential terms of credit, especially in remote areas with an unfavourable climate.

176. As part of the transfer, internal troop inspectors were assigned to the penal enforcement system for inmate monitoring. However, in view of their inadequate number, namely 140 for 10,000 inmates, such monitoring takes the form of patrolling the areas housing the detainees.

177. The Ministry of Justice takes measures to change the concept of sentence enforcement. The principle underlying the new perception is that the inmates must, from their first day in the facility, start to prepare for life after their release. In that context, priorities consist in humanizing sentence enforcement, preventing the desocialization of the inmates and ensuring their social rehabilitation. To that end, the approach to educational work with the inmates has shifted away from group to individual programmes of activity. Such programmes include measures for creating an environment conducive to the development of the inmates' personality so that after their release they may find employment through the education, vocational training and skills acquired during their deprivation of liberty. In other words, the goal is the active introduction of resocialization and normalization methods in the activities promoted in deprivation of liberty establishments. However, this policy runs into certain problems, including shortages in qualified staff, security personnel and trainers. Retraining of officials responsible for the enforcement of sentences not involving deprivation of liberty is crucial. In view of the proposed expansion of recourse to measures alternative to imprisonment, the number of persons monitored by penal enforcement inspectorates is expected to increase by approximately 10-15 thousand. Currently, the services enforcing sentences not involving deprivation of liberty is part of the penal enforcement system and are financed under the State budget. The regional inspection staff consists of one or two persons for 140 sentenced offenders, a level clearly too low to ensure the enforcement of sentences not involving deprivation of liberty. Accordingly, the senior staff of the Ministry of Justice has drawn up a draft Government decision increasing the authorized personnel of inspectorates to the ratio of one inspector for 50 sentenced offenders, thereby making it possible to establish provincial penal enforcement inspectorates with a staff of four or five. Moreover, financing the regional inspectorates under the local budget would allow for greater flexibly in responding to the changing number of convictions not involving deprivation of liberty, since the convicted offenders concerned would be local residents. This would make it possible to broaden the function of the inspectorates by also entrusting them with monitoring persons released on probation or parole.

178. Under article 105 of the Penal Enforcement Code, medical and health care is provided for the inmates of deprivation of liberty establishments. The provision of such medical treatment and preventive and sanitary care is organized in accordance with the rules and regulations of the penitentiary institutions and with domestic legislation. The medical and health care in question needs improvement. The

challenges encountered in that area include tuberculosis, HIV/AIDS, addiction and alcoholism. The establishments concerned must be enabled to resolve these problems through an enhanced material and technical hospital infrastructure, including for the detention or out-patient treatment of convicted offenders, such as victims of an active form of tuberculosis; and through the development of a system for the strict isolation of patients suffering from contagious diseases. Upgrading medical support for convicted offenders requires creating, within the provincial penal enforcement departments, medical sections or health services which contain a sanitary and epidemiological unit and bacteriological laboratory.

179. Special attention must be paid to HIV-infected detainees, who are currently held in isolated sections of the facilities. This situation generates dissatisfaction and animosity among the majority of inmates and the infected detainees, whose number is increasing.

180. The approach to the employment of inmates must be reviewed. Work at the places of deprivation of liberty must provide the means of subsistence in the early stage after release. Accordingly, the enterprises of the penal enforcement system should receive State support. Currently, such enterprises are indiscriminately equated with regular firms. This practice has led to serious weaknesses in the organization of production. Recent amendments to Act No. 168 of 3 March 2006 on the public procurement of goods, work and services and to Act No. 10 of 28 February 2004 on State enterprises placed the enterprises of the penal enforcement system in a particularly disadvantageous situation vis-à-vis private firms, inasmuch as system enterprises are obligated to purchase raw materials through a tender procedure lasting at least one and a half to two months.

181. Under article 27 of the Penal Enforcement Code, the activities of penal enforcement institutions are monitored by high-level administration bodies, the prisoner labour units of the Ministry of Justice and the civil servants of such bodies and units.

182. Article 29 of the Penal Enforcement Code lays down the procedure for visits to sentence enforcement institutions. The following persons may visit such institutions in the course of duty without need for any special authorization:

(a) The President of Tajikistan, the Prime Minister, members of the Parliament and judges.

(b) The Procurator General, public procurators authorized by him or her and public procurators who directly monitor sentence enforcement on a given area;

(c) Heads of high-level authorities monitoring penal enforcement institutions and bodies.

(d) Deputies and members of commissions monitoring penal enforcement institutions and bodies in their respective areas.

Mass media representatives and other persons may visit penal enforcement institutions and bodies subject to special authorization by the administration of entities or their supervising authorities. Cinematographic filming, photographing, video filming and interviewing inmates, including by means of sound and video equipment, is permitted with the inmates' written consent and with the written permission of the administration of the penal enforcement institution concerned.

183. Under article 12 of the Human Rights Commissioner Act, in examining a complaint the Human Rights Commissioner may freely visit penal enforcement institutions in the country. Between August 2009 and June 2010, the office of the

Human Rights Commissioner received five communications from detention facilities, and in particular from inmates requesting a review of their sentences or complaining against the use of prohibited preliminary inquiry methods. These communications were transmitted to the procuratorial authorities. No further information has been received with regard to these cases.

184. Within the framework of its workplan, the Department for Constitutional Civil-Rights Guarantees in the Executive Office of the President of Tajikistan systematically checks deprivation of liberty facilities, mainly to monitor respect for the rights of persons deprived of liberty, and the detention conditions (inter alia, separate detention of first-time offenders and recidivists; nutrition; communication with the outside world; and possibility to file complaints). Since the department deals with, inter alia, petitions seeking pardon, its staff explains to the persons deprived of liberty the procedure for addressing such petitions to the President of Tajikistan.

Response to prisoners' petitions for pardon, 2007 – middle of 2010

Action on petition	*2007*	*2008*	*2009*	*2010 (6 mois)*
Petitions received	175	108	87	107
Petitions examined	123	193	149	69
Petitions given satisfaction	7	3	16	12
Of which, exemptions from remaining sentence	4	3	6	8
Of which, exemptions of women	2	-	-	-
Sentence reductions:	-	-	10	4
– By 2/3 of the remaining sentence	-	-	1	1
– By 1/2 of the remaining sentence	-	-	2	-
– By 1/3 of the remaining sentence	3	-	3	2
Of which, reductions for women	1	-	-	-
– By 1/4 of the remaining sentence	-	-	4	1
Petitions denied	116	190	133	57
Of which, women's petitions	3	12	4	1

185. There are plans for establishing, within the Ministry of Justice, a special inspectorate for monitoring the acts of prison administration in order to protect the legal status and examine related complaints of inmates. The inspectorate would replace the division for the legal protection of prisoners, and have broader powers. The inspectorate would include respected personalities who would be accountable to the Minister of Justice and whose main task would be to exercise ministerial monitoring over the exercise of the rights of inmates and examine complaints and statements filed by them.

186. Complaints filed by prisoners are received by the prison administration, higher bodies of the sentence enforcement system and procurators monitoring the implementation of the places of deprivation of liberty Act. The number of prisoners' complaints received by procuratorial officers was 7 in 2007, 6 in 2008, 10 in 2009 and 4 in the first six months of 2010.

187. The Ministry of Justice has signed a number of agreements and memoranda of understanding with various international organizations and NGOs regarding

assistance in bringing places of deprivation of liberty into line with minimum international standards, including: through legal training for penitentiary personnel; through AIDS, tuberculosis and malaria prevention programmes; and through direct support by such organizations for improving the relevant legal framework with a view to further reforming the prison system.

188. In cooperation with international NGOs, namely the Organization for Security and Cooperation in Europe (OSCE), the International Centre for Prison Studies (ICPS) and Penal Reform International, extensive ongoing work takes place on training the personnel of detention facilities in international human rights standards, while numerous regional and local seminars are carried out in that area. Relevant projects implemented include "Penal reform and human rights in the context of international norms and standards", "Educational programme for penitentiary services" and "Assistance for prison system reform: legal training and protection of the prisoners' right to qualified legal counsel". UID cooperates and interacts with various international organizations and domestic NGOs, and in particularly with the following entities:

- KADAP programme: Creation of a rehabilitation centre for persons addicted to chemical substances in the framework of the "Prevention and reform in prisons" project;
- Local UNICEF office: Cooperation on improving the life of children and on progressive policy development as part of the implementation of children's rights;
- Open Society Institute Assistance Foundation, Tajikistan: Anti-retroviral (ARV) therapy support;
- Dutch humanitarian organization "AIDS Foundation East-West (AFEW)": Work in the area of reduction of demand for narcotics, health protection and preventive care in relation to HIV/AIDS in the penal enforcement system of the Ministry of Justice and on the "Social Support" project, since 2005;
- United Nations Office on Drugs and Crime (UNODC): Cooperation in the area of reduction of demand for narcotics, health protection and preventive care in relation to HIV/AIDS in the penal enforcement system of Tajikistan;
- The Global Fund to Fight AIDS, Tuberculosis and Malaria: Assistance in the implementation of the programme of tuberculosis prevention in the prison system;
- University of Central Asia (UCA): Construction of a new building, as part the "Relocation of the YAT-9/3 remand centre, Khorog".
- "Penal Reform International" (PRI), Central Asia: Cooperation in and contribution to further improvement of penal enforcement system activities and implementation of the project entitled "Development of probation and other alternatives to imprisonment in Tajikistan".
- Cultural and educational non-profit centre;
- European office of the International Prison Service Association;
- Caritas Luxembourg: Tuberculosis prevention programme;
- KARKHAP, Central Asia Project: HIV/AIDS prevention programme;
- "Inspiration" NGO;
- League of women of jurists for legal assistance to women and girls;

- "Child Rights Centre Tajikistan" public association;
- "Marvorid" NGO;
- "Spin-plus" NGO;
- Analytical and Advisory Centre for Human Rights.

189. In view of the economic crisis, Tajikistan lacks the resources necessary for ensuring that detention conditions in prisons are fully in line with international standards. However, within its financial possibilities, the Government makes every effort to improve those conditions.

190. The Ministry of Justice endeavours to revise the agreement between the Government and the International Committee of the Red Cross (ICRC) on humanitarian action for detainees and prisoners. In accordance with Government instruction No. 14784 (25-6) of 4 February 2009, a working group composed of specialists of the ministries and departments concerned has been set up to rework that agreement.