



The Observatory
for the Protection
of Human Rights Defenders

THEIR LAST STAND? HOW HUMAN
RIGHTS DEFENDERS ARE BEING
SQUEEZED OUT IN

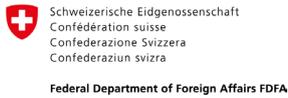
TAJIKISTAN

Mission Report

July 2019

fidh

OMCT
SOS-Torture Network



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I. INTRODUCTION

In response to alarming reports of a severe crackdown on human rights defenders in Tajikistan, and particularly concerned by the growing trend in Central Asia, including in Tajikistan, in which the authorities curtail fundamental rights and freedoms and clamp down on civil society in the name of "stability", the World Organisation Against Torture (OMCT) and FIDH, within the framework of their partnership in the Observatory for the Protection of Human Rights Defenders (the Observatory), conducted a fact-finding mission in the country in November 2015. This report presents the main findings of this mission, updated and completed through a field research in October 2018. The Observatory would like to thank all those interviewed in the context of this report.

The report aims at assessing the situation of human rights defenders in the country, and focuses on restrictions faced by human rights organisations, including funding restrictions, as well as on the working environment in which they operate. It also analyses the reasons for the shrinking space in Tajikistan.

During the initial mission, the delegation met with civil society representatives, lawyers and diplomats in Dushanbe and Khujand¹. The Observatory regrets that in spite of formal meeting requests addressed in due course, it was not able to meet with any government representatives, notably the Ombudsman, the Directorate for Human Rights Guarantees of the Executive Apparatus of the President of Tajikistan, the Ministry of Justice, the Department of Legal Entities Registration and the Tax Committee. This denial of dialogue was a worrying signal that added to the alarming information received during the mission.

In recent years, **the Tajikistani Government has increasingly limited freedom of association and expression**. In particular, **new restrictive legislation has been adopted and repressive measures taken** against groups and individuals who criticise government policies and speak up for human rights, justice and the rule of law.

Different amendments to the Law on Public Associations and other legislation - allegedly introduced to combat money laundering, terrorism and financing of terrorism - severely restricted the ability of human rights defenders and others to set up civil society organisations to develop their organisations without undue interference from different State bodies - each wielding tremendous powers to conduct frequent and intrusive inspections and to secure the necessary financial resources, including from foreign donors, in order to maintain and develop their organisations. These amendments, as well as the practice of frequent and intrusive inspections, constitute a clear violation of Tajikistan's obligations under international law, in particular the right of freedom of association.

Moreover, the *new Law on the Legal Profession*, and several amendments to the latter, failed to strengthen the independence of the lawyers' profession, as was claimed by the authorities. On the contrary, by setting unreasonably high admission criteria for the bar, and by tasking a body presided by a Deputy Minister of Justice with testing and periodically re-testing all lawyers, the authorities bear responsibility for causing an acute shortage of lawyers in the country, with grave implications for the right of access to a lawyer of one's choice and other fundamental human rights.

More broadly, the Tajikistani Government has also increasingly exerted pressure on civil society and human rights defenders, including lawyers who take on sensitive cases. Activists, lawyers and journalists have been under pressure from the Government to drop or refrain from addressing specific politically sensitive issues.

1 Names of human rights defenders interviewed in 2015 and 2018 are not mentioned in the report out of security concerns.

In particular, the **authorities have waged a relentless campaign of harassment against human rights lawyers**, including a 28 years jail sentence for one prominent human rights lawyer. All this had - and continues to have - a chilling effect on the ability of all lawyers in Tajikistan to exercise their profession.

Last but not least, recent developments pose a serious threat to the existence of a free and independent civil society and legal profession in Tajikistan, notwithstanding the sporadic positive news coming from the country. This in turn has resulted in a high sense of insecurity among affected individuals and groups and **it is to be feared that human rights defenders in Tajikistan are in the middle of the worst oppression yet.**

II. HISTORICAL AND POLITICAL BACKGROUND

Tajikistan (a country with a population of over 8,7 million, of which approx. 80% are ethnic Tajiks, 15% Uzbeks and 1% Russians) gained independence in September 1991 following the collapse of the Soviet Union. It is the smallest and the poorest of the Central Asian countries.

In May 1992, a bloody civil war erupted between the government, backed by Russia, and the United Tajik Opposition (UTO). The UTO consisted of liberals and islamists, including the Islamic Renaissance Party of Tajikistan (IRPT). Emomali Rahmon² became acting President in November 1992 and won presidential elections in December 1994, amid widespread allegations of electoral fraud and Russian meddling. At the same time, a new constitution was adopted by referendum.

The civil war, in which at least 20,000 people died, officially ended on June 27, 1997 with the signing of a UN-mediated peace agreement between the government and the UTO³. As envisaged in the peace agreement, a ban on UTO parties was lifted and amendments to the constitution of Tajikistan, adopted in a referendum, allowed the formation of religious parties. The peace agreement also reserved a certain number of senior government positions for representatives of the opposition. Even after the signing of the peace accord however tensions persisted and occasionally flared up, resulting in sporadic armed clashes⁴.

President Rahmon gradually increased his grip on power as he cracked down on his political opponents. In the March 2015 elections - which fell well short of international standards according to independent observers⁵ - IRPT lost its last seats in the parliament. Pressure on IRPT increased further after the authorities linked the party to a former Deputy Defence Minister accused of plotting a coup in September 2015. In the same month, dozens of IRPT leaders were arrested. On September 29, 2015 the Supreme Court outlawed IRPT⁶. Following secret trials IRPT leaders were given long prison sentences. Allegations that they were tortured in order to obtain confessions were not effectively and impartially investigated. In April 2018 the UN Working Group on Arbitrary Detention held that the imprisonment of Mahmatali Hayit, the Deputy Chairman of IRPT, was arbitrary⁷. Lawyers representing IRPT members were subjected to systematic harassment and several of them - most notably Buzurgmehr Yorov - were falsely implicated in the crimes of their clients and after a secret trial given long prison sentences⁸.

Under Rahmon's presidency, Tajikistan gradually moved to authoritarianism. Every year for the past ten years, Tajikistan slid backwards in the democracy ranking published by Freedom House. By 2018 Tajikistan had dropped to a spot just shy of the top ten of most unfree countries in the world⁹. The regime is marred by allegations of widespread corruption,

2 In 2007 Rahmonov dropped the Russian -ov ending of his family name as well as his patronymic Sharipovich.

3 General Agreement for the Establishment of Peace and National Accord in Tajikistan, available at <https://peacemaker.un.org/tajikistan-general-agreement97>

4 International Crisis Group, Tajikistan Early Warning: Internal Pressures, External Threats (2016) available at <https://d2071andvip0wj.cloudfront.net/b78-tajikistan-early-warning-internal-pressures-external-threats.pdf>.

5 OSCE/ODIHR, Election Observation Mission Final Report, available at <https://www.osce.org/odihr/elections/tajikistan/158081?download=true>

6 See <https://www.rferl.org/a/tajikistan-islamic-party-terrorist-organization/27277385.html> In the same year, Group 24, another prominent opposition group, was banned for extremism. On March 5, 2015 its leader Umarali Quvvatov was assassinated in Turkey.

7 The Working Group stated that "the appropriate remedy would be to release [him] immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law," see Opinion no 2/2018. para. 81, available at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_2.pdf

8 See page 24 below.

9 Freedom in the world 2018, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

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as President Rahmon has facilitated the appointment of his children and other members of his extended family to key positions in government and business. His eldest son, Rustam, is the mayor of Dushanbe and one of his daughters leads the presidential administration.

On May 22, 2016, more than 40 constitutional amendments were approved in a referendum¹⁰. Apart from the insertion of a ban on religious parties (Article 8 of the Constitution), the amendments allowed Rahmon to stay in power indefinitely by abolishing term limits (Article 65). They also lowered the minimal age for running for president from 35 to 30, allowing Rahmon's son, Rustam, to potentially stand in the 2020 presidential elections (Article 65).

In November 2016, Tajikistan's Parliament passed a constitutional law naming President Rahmon "founder of peace and national unity – leader of the nation"¹¹ (Article 2(3) of the Constitutional Law). The limit of two consecutive presidential terms no longer applied to him (Article 2(4)) and he gained wide-ranging, life-long prerogatives. Even after he were to leave the presidency, all important matters of State would continue to require his approval (Article 3(4)). He is guaranteed free airtime on national radio and TV at his convenience (Article 6(7)). He and his family enjoy life-long immunity (Article 5(1)) and their bank accounts remain secret indefinitely and cannot be confiscated (Article 5(5)). Museums in his honour are to be built in the capital and his place of birth (Article 13(3)). The law also orders statues of Rahmon to be erected but only after his death (Article 13(4)). Defamation of the leader of the nation became a crime punishable by up to five years in prison (Article 137.1 of the Criminal Code of Tajikistan).

Against this background, **Tajikistan's human rights record grew steadily worse over the last two decades, which was on several occasions criticised by international human rights bodies**. Even before the crackdown on the IRPT in 2015, the United Nations (UN) Human Rights Committee criticised the lack of political pluralism and undue restrictions on the rights to freedom of expression and to freedom of association¹². During the 2016 Universal Periodic Review (UPR), Tajikistan refused to commit itself to implementing numerous recommendations to bring limitations on the rights to freedoms of expression, peaceful assembly and association in line with international standards¹³. In its 2018 Concluding Observations on Tajikistan's third periodic report, the UN Committee Against Torture expressed concern "*that torture and ill-treatment continue to be routinely practiced*" and "*that individuals who complain of torture, members of their families, human rights defenders including lawyers representing victims of torture, and journalists reporting on allegations of torture frequently face reprisals by officials*"¹⁴. Following the latest EU-Tajikistan Human Rights Dialogue in October 2018, the European Union (EU) further reiterated concerns about "*the overall shrinking space for human rights in Tajikistan*" and the continued harassment of political opponents and human rights defenders¹⁵.

Despite its dismal human rights record, **Tajikistan ratified many core international human rights treaties**, including the International Covenant on Civil and Political Rights (CCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In 1999 Tajikistan accepted the individual complaints procedure under the Optional Protocol to the CCPR. However, Tajikistan has not ratified the Optional Protocol

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10 See <https://www.rferl.org/a/tajikistan-referenmdum-approved-rahmon-increasing-power/27751364.html>

11 Constitutional Law no. 1356 of November 14, 2016 on "the founder of peace and national unity – leader of the nation", available (in Russian) at http://base.mmktj/view_sanadhoview.php?showdetail=&sanadID=13

12 2013 Concluding Observations on Tajikistan's second periodic report, UN Doc. No. CCPR/C/TJK/CO/2, para. 22 to 24, available at

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TJK/CO/2&Lang=en

13 The matrix of recommendations can be found at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/TJindex.aspx>

14 UN Doc. CAT/C/TJK/CO/3, para. 7 & 21, available at

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTJK%2fCO%2f3&Lang=en

15 See https://eeas.europa.eu/headquarters/headquarters-homepage/52873/eu-tajikistan-human-rights-dialogue_en

to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and has not accepted the competence of the Committee Against Torture to receive communications from individuals¹⁶.

Article 10 of the Constitution of Tajikistan states that international legal acts, once 'recognized' domestically, become part of the domestic legal order. It also recognises the primacy of domestically recognized international legal acts over domestic law, other than the Constitution. The Constitution further guarantees fundamental human rights and freedoms.

However, as mentioned above, **in practice the protection of human rights is being constantly eroded, as is the situation of human rights defenders in the country**, as the present report will analyse below.

¹⁶ Tajikistan rejected recommendations calling on it to do so during its Universal Periodic Review (UPR) in 2016, see matrix of recommendations, fn 13 above

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III. SHRINKING SPACE FOR CIVIL SOCIETY: RESTRICTIONS ON THE RIGHT TO FREEDOMS OF ASSOCIATION, EXPRESSION AND PEACEFUL ASSEMBLY

A. Restrictions on the right to freedom of association

Although the right to freedom of association is theoretically protected in the Constitution and the ICCPR which Tajikistan has ratified, the testimonies collected by the Observatory during its mission in November 2015 and the field research in October 2018 reveal a very different practice. **Over the past decade, the authorities** - often invoking their international obligations to combat terrorism, extremism, money laundering and financing of terrorism - **have unrolled an arsenal of increasingly restrictive laws and regulations to dramatically narrow the space for a free and independent civil society in Tajikistan.** Even if officials have occasionally backed away from threats to shut down an organisation or jail a human rights defender or an independent journalist, **the chilling effect on a vibrant civil society living in almost constant fear of persecution can hardly be underestimated.**

1. Legal framework, including official registration

This section presents the basic domestic legal framework on how to set up a civil society organisation, in particular the procedure for State registration of civil society organisations (CSOs).

The right of freedom of association is enshrined in Article 28 of the Constitution. The 1999 Civil Code allows for different forms of non-commercial organisations, the most important ones being public associations (organizations) (Article 129 of the Civil Code) and public foundations (Article 130 of the Civil Code).

There are two legal form of CSOs in Tajikistan; most human rights organisations are registered as public associations but some are public foundations. One example of the latter is Nota Bene, OMCT SOS-Torture network member in Tajikistan¹⁷. Public associations are regulated in detail by the 2007 Law on Public Associations¹⁸. Public foundations do not fall under this law but in recent years the authorities de facto stopped registering new public foundations¹⁹. A draft law covering all forms of non-commercial organisations has been in the pipeline for years²⁰.

For non-commercial organisations to acquire legal personality they need to be formally registered with the authorities²¹. Without official registration, it is only possible for people or groups to assemble informally. For example, the Civil Society Coalition Against Torture

17 Website: www.notabene.tj

18 A coordinated version of the law in Russian (currently still without the 2019 amendments) can be found at http://base.mmktj/view_sanadhoview.php?showdetail=&sanadID=173

19 See below, page 10

20 See below, page 8

21 According to the International Center for Not-for-Profit Law, there are currently approx. 3000 CSOs registered in Tajikistan, more than 90% of them are public associations, see <http://www.icnl.org/research/monitor/tajikistan.html>. Everyone should be free to associate with or without legal personality but “the right to act collectively would have no practical meaning without the possibility of creating a legal entity in order to pursue the objectives of an organization.” See Joint Organisation for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR) and Council of Europe Venice Commission Guidelines on Freedom of Association, para. 48 in footnote 82, available at <https://www.osce.org/odihr/132371>

and Impunity in Tajikistan was established in 2011 without formal registration and brings together more than 80 human rights organizations and individuals advocating for an end to torture in Tajikistan²².

Public associations are registered with the Ministry of Justice (Article 21(2) of the Law on Public Associations). Only citizens and foreigners holding a residency permit can act as founders of a public association (Article 17(1) & (2)). Individuals who, according to a court decision, are connected with terrorist, extremist or separatist organisations cannot be included as founders (Article 17(8)).

Public foundations are registered with the local tax authorities. Registration with the tax authorities is fast and simple. Registration of public foundations is regulated by the 2009 Law on "State Registration of Legal Entities and Individual Entrepreneurs"²³. The process does not involve a legal examination of the submitted documents and information (Article 4(1) of the Law on Registration of Legal Entities and Individual Entrepreneurs) and should be completed within five working days (Article 10(1)).

On the other hand, the registration procedure for public associations with the Ministry of Justice is overly bureaucratic, including the submission of voluminous documentation. It can take up to one month after the submission of all required documents (Article 21(10) of the Law on Public Associations) and the process includes a legal examination of these documents (Article 21(4)). If a public association amends its statutes (changes its legal address or its director), it has to re-register (Article 21(8)).

The onerous registration process for public associations with the Ministry of Justice is not in accordance with international standards. For example, the Organisation for Security and Cooperation in Europe (OSCE) Guidelines on Freedom of Association state that "*where an association wishes to register to acquire legal personality, procedures for doing so should not be burdensome, but should be simple and swift to facilitate the process*"²⁴.

In its 2013 Concluding Observations on Tajikistan's second periodic report, the UN Human Rights Committee stated that the Law on Public Associations "imposes undue conditions and restrictions on the registration of public associations and endows the Ministry of Justice with excessive oversight power, resulting in major practical obstacles and delays in the registration and operation of such groups"²⁵.

Although it became practically impossible to register new public foundations as explained below, the Observatory has not heard of cases where the Ministry of Justice refused to register a public association²⁶. "*But the authorities do not let us off the hook,*" as one interlocutor stated, "*on the contrary, they have deployed a variety of other tactics to muzzle independent civil society organizations, first and foremost the practice of frequent and intrusive inspections by an ever growing number of State bodies*".

22 Website: <http://notorture.tj.org/en/about/civil-society-coalition-against-torture-tajikistan>

23 A coordinated version of the law in Russian can be found at http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=202

24 Joint OSCE/ODIHR and CoE Venice Commission Guidelines on Freedom of Association, para. 49; see also para. 155 to 157.

25 UN Doc. No. CCPR/C/TJK/CO/2, para. 23, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TJK/CO/2&Lang=En

26 Sometimes human rights organisations faced delays during re-registration, for example in early 2017, see <https://monitor.civicus.org/newsfeed/2017/04/25/persecution-dissidents-continues-worrying-new-laws-horizon/>

2. Draft Law on Non-Commercial Organisations: a sword of Damocles?

In 2015, the Ministry of Justice prepared a Draft Law on Non-Commercial Organisations. The draft has never been published but one goal of the bill would be to include all non-commercial organisations, including public associations and public foundations, under the Ministry of Justice's registration procedure. Civil society representatives were completely excluded from the bill's drafting process²⁷. In January 2017, the Ministry of Justice set up a working group to further develop the draft, again excluding civil society representatives from the process. In reply to a letter from several civil society organisations concerned about the lack of transparency and alarmed that the bill may entail further restrictions on the sector, Ministry of Justice officials promised to invite representatives from civil society for consultations. However, as of March 2019 this had still not happened.

The Draft Law on Non-Commercial Organisations is expected to soon be submitted to the Parliament²⁸. According to one human rights defender interviewed in October 2018, *"the Draft Law on Non-Commercial Organisations is unlikely to be submitted to Parliament before the submission of a new Civil Code, a process which itself has been delayed several times. However, what good can there be expected from a draft law prepared in secret, especially considering the shrinking space for civil society in Tajikistan?"*

3. Additional administrative burdens on public associations through 2019 amendments to the Law on Public Associations

On January 2, 2019, the President signed into law amendments to the Law on Public Associations introducing a number of additional administrative burdens on public associations²⁹.

Under the amendments, public associations will be required once a year to publish financial reports, containing detailed information about incomes and expenditures, on their website or on the website of the registering authority (meaning the Ministry of Justice) (Article 25(5) of the Law on Public Associations). However, the amendment neither sets (minimal) requirements for these financial reports nor specifies which State body will be responsible for setting such requirements. The new provision is completely silent on how sensitive information (names, phone numbers, private addresses) can be protected. Publication of personally identifiable data online entails an increased risk to become a victim of harassment or crime. In addition, as the overwhelming majority of public associations do not currently have a website, it is unclear if the amendment will actually require every public association to set up their own website. For most public associations the requirement to create and maintain their own website would go beyond their financial resources.

Article 25(5) of the Law on Public Associations (as amended) further requires public associations *"to store information on completed domestic and international transactions for at least five years after the end of the business relationship"* and *"store and submit to the registering authority information on the identity of persons, controlling or managing the activities of a public association, including founders, members of governing and controlling bodies"*. These obligations remain extremely vague and overly broad. The amendments fail to specify which state body will be responsible for their implementation.

To justify this procedure, as well as the notification procedure of foreign grants (see below, page 16), the authorities in particular refer to the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, issued by the Financial

27 OMCT, Joint NGO submission to CAT ahead of the consideration of Tajikistan's third periodic report, page 40, available at http://www.omct.org/files/2018/03/24787/cat_joint_ngo_submission.pdf

28 Id.

29 For a Russian version of Law no. 1575 of January 2, 2019, see < http://base.spininform.ru/show_doc.fwx?rgn=113495

Action Task Force (FATF)³⁰. FATF recommends countries "to review the adequacy of laws [on NGOs] which the country has identified as being vulnerable to terrorist financing abuse" and "to apply focused and proportionate measures in line with the risk based approach to such [NGOs] to protect them from terrorist finance abuse (...)"³¹. However, the interpretative note to this recommendation explicitly states that "[i]t is also important for such measures to be implemented in a manner which respects countries' obligations under the Charter of the United Nations and international human rights law"³².

The Observatory is deeply concerned that the additional administrative burdens imposed by the 2019 law amending the Law on Public Associations are insufficiently clear and are moreover unnecessary.

4. Harassment of public foundations: the attempt to shut down *Nota Bene*

Taking into account that the Law on Public Associations provides for significant additional State interference with the establishment (see above) and operation (see below) of a public association, setting up a public foundation seemed an attractive - and entirely legal - alternative.

However, **authorities progressively clamped down on this legal form of CSO and attempted to shut down one of the most prominent human rights and anti-torture organisation in Tajikistan:**

In June 2015 the tax authorities initiated court proceedings against **Nota Bene**, one of the members of the civil society coalition against torture and impunity in Tajikistan, requesting that the organisation be closed down for allegedly taking advantage of loopholes in domestic legislation when in 2009 it registered as a public foundation and not as public association. Court hearings in the case were repeatedly postponed because a State representative failed to attend. The lawsuit was eventually left without consideration in early 2016 on the grounds that the parties did not appear but the case still set a problematic precedent as the authorities might re-activate the case against *Nota Bene* or bring similar proceedings against other human rights organisations registered as public foundations.

"Although we believed we had done nothing illegal by registering Nota Bene as a public foundation, we were obviously prepared for the worse. All this happened at the height of a sustained crackdown on civil society [in mid-2015]. Of course, we were relieved when the legal challenge against Nota Bene was subsequently dropped, but you never know if the authorities might bring it up again in the future," *Nota Bene* stated to the Observatory.

The Observatory was told by several interlocutors that around the same time as the lawsuit against *Nota Bene*, the tax authorities began to informally refuse to register new public foundations, advising verbally to apply instead for registration as a public association with the Ministry of Justice.

30 Available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

31 Recommendation no. 8, *ibid.*, page 11.

32 *Ibid.*, page 52.

5. Inspections of civil society organisations

In recent years, **CSOs in Tajikistan have faced sweeping operational restrictions**, in particular **through the use of frequent and intrusive inspections** by various State bodies against independent human rights organisations.

Inspections by the Ministry of Justice

Besides the rather complex registration procedure, **the 2007 Law on Public Associations grants different State bodies intrusive powers to exercise control over public associations and their activities**. Amendments to the law adopted in 2015 and 2019 significantly widened those powers and imposed additional administrative burdens on public associations³³.

Under Article 34 of the Law on Public Associations the General Prosecutor and his subordinates (Article 34(1)), the Ministry of Justice (Article 34(2)), the tax authorities (Article 34(3) and various other State bodies (Article 34(4)) are empowered to check if public associations comply with the law. Of these different State bodies, the Ministry of Justice has the most wide-ranging powers of control.

The Ministry of Justice possesses sweeping powers to check if a public association's activities are in line with the goals stated in its charter (Article 34(2) of the Law on Public Associations). According to Article 34(2), the Ministry of Justice can request from a public association copies of administrative documents and decisions and can further ask to provide any "information", and can send its representatives to participate in events organised by the public association.

Since the 2015 amendments to the Law on Public Associations, **the Ministry's main instrument to exercise its control function is the power to carry out inspections of public associations**³⁴.

The Ministry of Justice can inspect a public association no more than once every two years unless it receives a complaint in relation to the actions of a public association or its governing bodies, from individuals, legal entities or State authorities (Article 11 of Ministerial Regulation no. 161). This provision theoretically allows for an unlimited number of inspections. In addition, Ministry Regulation no. 161 nowhere obliges the Ministry of Justice to make a preliminary assessment of the veracity of the complaint, meaning that a public association can be subjected to an intrusive inspection based on a frivolous, repetitive or otherwise manifestly unfounded complaint.

The Ministry of Justice must notify a public association at least three days prior to the inspection. (Article 12 of Ministerial Regulation no. 161) The notification must specify the aim and scale of the inspection, as well as its date and approximate length, which cannot exceed seven working days (Article 16). However, the time frame of the inspection can be changed later if for whatever reason it is impossible to carry out an inspection within the specified time (Article 14). At the end of the inspection, the Ministry of Justice delivers the public association a written report on the results of the inspection (Article 17). The public association has the right to appeal the outcome of the inspection (Article 23) but the Observatory was told that no public association has attempted to appeal the inspection report.

Whenever the Ministry of Justice finds violations of the law, it has the power to impose fines on the public association and demand rectification within one month (Article 34(2) of the Law on Public Associations). The Ministry can also temporarily suspend the activities of a public association (Article 35(2)) and ultimately seek its dissolution by court decision (Article 27(2)).

³³ See also above page 9

³⁴ The inspection procedure is described in detail in ministerial regulation no. 161 of 10 December 2015 "on the procedure for checking the statutory activities of public associations in the Republic of Tajikistan." (hereinafter Ministerial Regulation no.161) (Text of regulation no. 161 on file with the Observatory)

A less well-known way to interfere in the activities of a public associations relates to the geographical area within which public associations can deploy their programs. Article 12 of the Law on Public Associations differentiates between international, "republic wide" and local public associations. The Observatory has documented several cases where the Ministry of Justice fined local public associations for working in another province, especially in the Gorno-Badakshan Autonomous Region³⁵.

Inspections by the tax authorities

As stated above, non-commercial organisations registered as public foundations do not fall under the Law on Public Associations and therefore are not subject to the extensive powers of oversight by the Ministry of Justice. However, **public foundations can still be inspected by the Prosecutor's Office, the tax authorities, and others** (labour inspection, fire safety³⁶, anti-corruption and sanitary epidemiological agencies). Of course, all of the above State bodies also have the power to inspect public associations.

The 2012 Tax Code³⁷ grants the tax authorities broad powers to carry out inspections of public associations and public foundations. At least in theory tax inspections of organisations should strictly speaking be less intrusive than inspections by the Ministry of Justice because the tax authorities only control the organisations' compliance with the Tax Code over the five previous years.

According to the Tax Code, there are two types of inspections: documentary inspections ("документальная проверка") and raid inspections ("рейдовая проверка") (Article 28(3) of the 2012 Tax Code). Documentary inspections can be scheduled or unscheduled (Article 29(1)). Scheduled documentary inspections can be carried out no more than once every two years (Article 29(3)). Raid inspections can be carried out whenever the tax authorities deem necessary (Article 29(6)). As the Observatory found out³⁸, the initiative to conduct inspections, other than the scheduled ones, often originates in requests to the tax authorities from other State bodies, including the General Prosecutor's office and the State Committee for National Security (better known under its acronym GKNB).

The tax authorities must give at least 10 days advance notice for a scheduled documentary inspection or 24 hours for an unscheduled documentary inspection (Article 31(1) & (2) of the 2012 Tax Code). Raid inspections are conducted without any advance notice (Article 31(8)). Documentary inspections can last 30 working days (Article 30(1)). The maximum length for raid inspections is 15 working days (Article 30(4)). These limits can be extended under certain circumstances (Article 30(5)). Tax inspectors have the right to enter the premises of the organization (Article 34).

Upon conclusion of the inspection the tax inspectors must draft a report in two copies, one of which is transmitted to the representative of the non-commercial organization (Article 35(1) & (6) of the 2012 Tax Code). In case no violations of the Tax Code were discovered during the inspection, this should be explicitly mentioned in the report note (Article 35(4)). When the tax inspection finds at least one violation of tax law, the tax authorities issue a decision specifying the amount of unpaid taxes plus interest and fines and setting a deadline - which cannot be

35 Gorno-Badakshan Autonomous Region is the mountainous, sparsely populated, yet ethnically diverse eastern half of Tajikistan on the border with China and Afghanistan. See <https://www.rferl.org/a/tajikistan-unconquerable-gorno-badakshan-region/29534057.html>

36 NGOs are frequently subjected to fire safety inspections and some observers expressed concern when in early 2018 an amendment to Article 192 of the Criminal Code – violation of fire safety regulations - increased the maximum penalties for persons charged with fire safety duties in organizations.

37 A coordinated version of the law in Russian can be found at http://base.mmktj/view_sanadhoview.php?showdetail=&sanadID=341

38 See below, page 14

shorter than 10 working days from the date of notification of the decision - within which the organization has to pay the amount, unless it decides to appeal the decision (Article 36). The Observatory was not made aware of any cases where the decision was appealed.

The alleged crackdown on corruption allows for more NGO inspections

In 2017 Tajikistan adopted amendments to the Law on "the Fight against Corruption"³⁹ and the Law on "the Agency for State Financial Control and Combating Corruption of the Republic of Tajikistan"⁴⁰ (hereinafter the Anti-Corruption Agency). From 2015 to 2017 Rahmon's oldest son Rustam headed the Anti-Corruption Agency.

The Anti-Corruption Agency is tasked with combating corruption within non-commercial organisations (Article 3 of the Law on the Anti-Corruption Agency)⁴¹ and its officers can request information, conduct inspections and give instructions invoking the prevention of corruption (Article 19). The Anti-Corruption Agency "summarizes the results of the organizational and methodological foundations of the process of assessing (analysing) the risks of corruption in (...) non-commercial organisations, including public associations (...)" (Article 5(5) of the Law on the Fight Against Corruption). "The methodologies of the procedure and the methods for conducting the analysis of activity (the risks of corruption)" (Article 5(5) of the Law on the Fight Against Corruption) are established by Governmental Decree no. 253 of May 29, 2018 on "the methodology of statistical monitoring of the state of the fight against corruption." Governmental Decree no. 253 was prepared without consultation with civil society.

Since the changes, non-commercial organisations, political parties and even international organisations operating in Tajikistan have been required to provide a detailed annual assessment of the risks of corruption in their activities to the anti-corruption agency⁴².

Considering the amendments' nebulous wording and recalling the worsening climate for civil society organisations to operate in Tajikistan, **the Observatory is concerned that these amendments may be used to put further pressure on independent NGOs.** Ironically, in the same year (2017) as the authorities focused their anti-corruption drive towards NGOs, Tajikistan dropped to 161st place in the corruption perceptions index by Transparency International⁴³.

The chilling effect of inspections

During our research for this report, **frequent and intrusive inspections were routinely mentioned as one of the main weapons used by the authorities to muzzle civil society in Tajikistan.** It is difficult to overestimate the impact that these inspections, as well as the constant threat of more inspections, have had on staff and resources of civil society organisations over the past years. Understandably, people are very reluctant to talk about this openly. Several human rights defenders told the Observatory that "*if you mention us or our organisations by name in your report, we could be subjected to additional inspections because the authorities do not tolerate criticism and dissent*".

39 A coordinated version of the law in Russian can be found at http://base.mmkk.tj/view_sanadhoview.php?showdetail=&sanadID=141

40 A coordinated version of the law in Russian can be found at http://base.mmkk.tj/view_sanadhoview.php?showdetail=&sanadID=190

41 The text of Article 3 states "...public associations, (...) institutions and other organizations irrespective of their legal form."

42 Asia-Plus, available at <https://news.tj/ru/news/tajikistan/laworder/20170614/antikorrupsiya-nadelena-pravom-iskat-korrupsionerov-v-mezhdunarodnih-organizatsiyah-i-npo> and IPHR update, available at <https://iphronline.org/tajikistan-ngos-lawyers-journalists-pressure.html>

43 Available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table

a. Liquidation and auto-liquidation of NGOs

As a result of undue State interference, at least one highly regarded human rights organisation was dissolved by court decision and recently a number of others decided to shut down following multiple inspections and other forms of pressure⁴⁴.

On October 24, 2012, a court in Khujand ordered the closure of the **Association of Young Lawyers of Tajikistan (Amparo)**, also a member of the Civil Society Coalition Against Torture and Impunity in Tajikistan, after a Ministry of Justice inspection in June 2012 alleged multiple violations of the Law on Public Associations. At the time Amparo was the only organisation systematically monitoring torture and ill-treatment in the armed forces of Tajikistan. It regularly transmitted information about hazing, death and suicide of conscripts to international human rights organisations as well as to the UN Special Rapporteur on torture and other cruel, inhuman, and degrading treatment or punishment, who visited Tajikistan from May 10 to 18, 2012.

In its 2012 Concluding Observations on Tajikistan's second periodic report, the Committee Against Torture expressed concern at the closure of Amparo. The UN Secretary General highlighted the legal proceedings against Amparo in his report to the UN General Assembly on reprisals for cooperation with the UN representatives and mechanisms in the field of human rights.

Despite international attention, an appeal court upheld the judgment dissolving Amparo on January 15, 2013 and a subsequent complaint by Amparo to the Constitutional Court in 2014 was unsuccessful.

"The authorities decided to eliminate not hazing in the army, but us," Amparo's director commented.

Apart from dissolution by a court, the Observatory also received reports of organisations shutting down under pressure from the authorities.

In November 2017, **Rohi Zindaghi** ("Life Path"), a public association working on LGBTI rights, publicly announced that it was shutting down following a series of inspections. The association's Chair stated that they were tired of all these inspections and elaborated that local authorities had told them repeatedly to stop working on the rights of sexual minorities⁴⁵. In the last few years, the authorities considerably stepped up harassment of organisations focusing on LGBTI people or sex workers, accusing them of undermining traditional values and morals⁴⁶.

44 Joint submission by a number of NGOs on the list of issues in relation to the third periodic report of Tajikistan to the Human Rights Committee, page 12, available at

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fTJK%2f31854&Lang=en

45 <https://rus.ozodi.org/a/28835295.html>

46 OMCT, Joint NGO submission to CAT ahead of the consideration of Tajikistan's third periodic report, pages 38 & 39, http://www.omct.org/files/2018/03/24787/cat_joint_ngo_submission.pdf. Tajikistan's LGBT population continues to face discrimination and harassment. In October 2017, the Ministry of Internal Affairs and the Tajik Prosecutor General's Office announced that they had compiled a list of 367 individuals with "unconventional" sexual orientation, see <https://www.rferl.org/a/tajikistan-lgbt-registry/28800614.html>

b. Discriminatory selection process for inspections: targeting vocal human rights NGOs

Numerous NGO representatives interviewed for this report complained about the arbitrary way in which the authorities select organisations for upcoming inspections - even for the scheduled ones. In the words of one NGO representative: *"If you are a human rights organisation, the authorities will check you much more frequently"*. This was echoed by a foreign diplomat posted in Tajikistan: *"Political rights, religious freedoms and LGBTI rights are pretty much taboo nowadays and organisations focused on them have been squeezed out almost completely. Working around torture is still acceptable as long as you do not stand up for IRPT sympathizers who complain about ill-treatment"*.

Increased pressure from repeated inspections also correlates with the particular State agency involved. *"If you publish critical reports, if you participate in international meetings, expect to be scrutinized more intensely, depending on the influence wielded by the State officials you angered and the intensity of their ire,"* one human rights defender explained. **Around major events both inside the country and abroad** - for example, periodic reviews of Tajikistan by UN human rights bodies or the yearly OSCE Human Dimension Implementation Meeting in Warsaw (Poland) - **the authorities, especially the GKNB, become more active**. The authorities seldom directly interfere, like prohibiting an event or gagging someone with a travel ban.

As stated earlier, the various legal provisions covering NGO inspections fail to set any clear limits on the grounds for, and on the frequency of, inspections by different State bodies.

c. Illegal inspections and the imposition of crippling fines on NGOs

During its initial mission in November 2015 and its follow-up field research in October 2018, the Observatory heard several complaints that **numerous inspections - mostly by the tax authorities - were not conducted in accordance with the relevant legislation**, including unannounced inspections, frivolous requests for documents, including demands to present them in the Tajik language⁴⁷, threats of criminal prosecution, violation of inspection parameters, failure to issue proper inspection reports, etc.

In Spring 2015, and without prior notice, a representative of the Tax Committee entered the office of a human rights organisation in Dushanbe and presented a letter of the GKNB ordering a tax inspection. The one-month long inspection did not comply with domestic law. For example, the inspector refused to sign the inspector's registration book. The organisation had to systematically submit numerous reports and documents to the Ministry of Justice, the Tax Committee and the Committee on State Statistics.

In Summer 2015, tax inspectors checked all financial documents of another human rights organisation for the previous five years. Upon conclusion of the inspection the organisation was fined more than 6,000 EUR, payable within ten working days. A representative from the organisation told the Observatory: *"This was a huge sum for us and could easily have led to our bankruptcy. We receive money for project activities and we do not have reserves that would enable us to cover such fine. This inspection was aimed at closing us down because we are one of the most active and well-known human rights organisations in Tajikistan"*.

The tax inspection's report did not provide the organisation with a detailed list of what it regarded as violations of the Tax Code and, when its staff asked for such a list, the inspector told them they should go through their files and find the mistakes themselves or sue him in court. The organisation decided not to pursue the case in court as it believed it would not be able to successfully refute the report in the absence of a detailed list of alleged violations that it could respond to.

⁴⁷ Article 16 of law no. 553 on "the official language of the Republic of Tajikistan" requires" states that "record keeping of organizations operating in (...) Tajikistan is carried out in the official language."

Testimonies like the ones included above confirm that in general NGOs tend to be more upset with inspections from the tax authorities than by Ministry of Justice inspections. In addition, there are apparently few tax inspections that do not conclude with a fine being imposed on the NGO involved. As one human rights defender stated: "It is nearly impossible to live by the book because the applicable legislation is complex and often vague, giving the authorities carte blanche to interpret almost any ambiguity to their advantage".

A person with excellent knowledge of the matter told the Observatory that inspections by the tax inspection authorities frequently result in fines of 2,000 to 3,000 EUR but there are cases in which the tax authorities impose substantially higher penalties, ranging from 6,000 to 9,000 EUR, which is an excessively burdensome amount for NGOs in Tajikistan. He added: *"And just in case you were contemplating about disagreeing with the tax authorities, well, I know of no case where an NGO has won on appeal to the courts. The later, in turn, helps explain why NGOs are extremely reluctant to complain to the courts in the first place"*. On the contrary, inspections by the Ministry of Justice result in considerably lower fines or no fine at all, when the Ministry sets a time frame for NGOs to rectify the inconsistencies. The same interlocutor furthermore told the Observatory that NGOs are not inclined to talk publicly about any fines imposed on them and the exact amount of those fines because the NGOs believe it will damage their chances of finding new donors.

Apart from disrupting the activities of an organisation under (threat of) inspection, the systematic harassment by the State of civil society organisations have had a profound impact on the lives and well-being of their staff. One human rights defender told the Observatory: *"During the week I was busy with the inspectors and on weekends I worked. I did not have any time for myself and my family"*. Her colleague added: *"Because we work under stressful conditions year after year burnout has become a serious problem. And our workload is steadily increasing as Tajikistan's human rights record gradually worsens. There is no time to relax. There is no one to replace you. To a certain extent there is also a brain drain in the human rights community – highly qualified specialists are leaving the country. And it is definitely getting more difficult to recruit the next generation of human rights defenders"*.

d. Intrusive inspections violate international human rights standards

The pattern of burdensome reporting obligations for NGOs and the intrusive inspections of NGOs by state officials constitutes a clear violation of the right to freedom of association, enshrined in Article 22 of the CCPR. The OSCE Guidelines on Freedom of Association state that

Reporting requirements, where these exist, should not be burdensome, should be appropriate to the size of the association and the scope of its operations (...)

All regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum state interference in the operations of an association. (...) [O]versight and supervision must have a clear legal basis and be proportionate to the legitimate aims they pursue. Oversight and supervision of associations should not be invasive, nor should they be more exacting than those applicable to private businesses. Such oversight should always be carried out based on the presumption of lawfulness of the association and of its activities. Moreover, such oversight should not interfere with the internal management of associations, and should not compel associations to co-ordinate their objective and activities with government policies and administration (...)

*The bodies charged with the supervision of associations should be defined by law. Legislation should clearly indicate the scope, purpose and limits of the mandates of such bodies*⁴⁸.

The UN Special Rapporteur on the right to freedom of opinion and expression stated in his report on his visit to Tajikistan in March 2016: *"The Special Rapporteur's concerns about changes in the legal framework are heightened by the reported increase in other intrusive inspections into the work of numerous NGOs by authorities from multiple bodies (...). Various interlocutors noted that official inspections recently became more frequent and intrusive, generating a climate of fear that has a powerful chilling effect, particularly affecting human rights organizations"*⁴⁹.

The Special Rapporteur's words were echoed by the UN Assistant General for Human Rights during a visit to Tajikistan in May 2018 where he *"called for civil society space to be opened up"*⁵⁰.

6. Restrictions to access foreign funding

Access to foreign funding is essential for the survival of independent human rights NGOs in Tajikistan. NGOs do not enjoy any tax privileges in Tajikistan, even if they conduct charitable activities as defined in the 2003 Law on "Charitable Activity"⁵¹ and are registered as charitable organisations in accordance with this law. According to the Law on Charitable Activity, charitable organisations can count on financial and other support from the State. However, **in reality it is impossible for independent human rights organisations to get grants from the government or other State bodies in Tajikistan.** In view of this, the Observatory is deeply concerned by some reports that a number of foreign donors (both state and private) decided to wind down support to civil society organisations in Tajikistan and urges donors to remain and even expand their financial support.

Following a broader trend observed across the former USSR countries⁵², in 2015 Tajikistan added a new provision to the Law on Public Associations making it mandatory for all public associations to register receipt of all foreign grants before their usage.

According to Article 27(2), foreign grants are subject to "registration" in the "registry of humanitarian assistance to public associations" and "projects funded through [foreign grants] are implemented by public associations after notification of the registration authorities".

Article 27(2) of the Law on Public Associations was implemented by Governmental Decree no. 149 of 31 March 2016 on "the order of formation and introduction of a registry of humanitarian aid to public associations in the Republic of Tajikistan"⁵³. The decree was published around eight months after the amendment to Article 27(2) had been adopted. This created a long period of uncertainty during which public associations did not really know how to fulfil their obligation to notify the Ministry of Justice about foreign grants.

48 Joint OSCE/ODIHR and CoE Venice Commission Guidelines on Freedom of Association, para. 49; see also para. 225 & 228-229.

49 UN Doc. A/HRC/35/22/Add.2, para. 57, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/319/13/PDF/G1731913.pdf?OpenElement>

50 Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23091&LangID=E>

51 A coordinated version of the law in Russian can be found at http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=98

52 The example for the region was set by Russia's 2012 Foreign Agents Law (Federal Law no. 121 of July 20, 2012 "On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-Commercial Organisations Performing the Function of Foreign Agents")

53 Text on file with the Observatory.

Decree no. 146 stipulates that a public association has to *notify* the Ministry of Justice within ten (calendar) days after receiving the foreign grant (Article 3). The notification has to include detailed information on the source of the foreign grant, on the project activities for which the funding is intended, on the implementation period as well as on the beneficiaries of the project (Article 5). The Ministry of Justice can request additional information if it holds the information submitted by the public association to be insufficient (Article 7). The information submitted to the Ministry of Justice by the public association is included in the registry of humanitarian assistance and is supposed to be publicly accessible on the website of the Ministry of Justice⁵⁴ (Article 8). The Decree further states that the director of a public association bears liability for the failure to provide the notification in a timely manner (Article 11).

In November 2015 - before Decree no. 146 was issued - **several interlocutors shared their concerns with the Observatory that the new notification procedure could be used by the authorities to hinder their work and to ostracise them in the eyes of the population as "a fifth column"** - similar to what had happened in Russia. However, during its field research in October 2018 the Observatory received no complaints concerning the notification process for foreign grants. *"At least for the moment, the process consists of relatively straightforward notification and not prior authorisation. But you never know if it will remain like this,"* one interlocutor cautioned.

UN human rights bodies have repeatedly stated that the ability of NGOs to access funding, including from foreign donors, is an integral part of the right to freedom of association enshrined in Article 22 CCPR. In connection with adoption of Article 27(2) of the Law on Public Associations, the UN Special Rapporteur on the rights of freedom of peaceful assembly and of association recalled that NGOs "should have the right to seek and secure funding and resource from domestic, foreign, and international entities" and reminded the government of Tajikistan of *"its obligation to ensure that civil society, including human rights defenders, in Tajikistan can carry out their legitimate work free from undue restrictions"*⁵⁵.

In its 2015 Concluding Observations on Tajikistan's combined second and third periodic report, the Committee on Economic, Social and Cultural Rights expressed concern that *"the amendments to the Law on Public Associations of 2007, which provide for further inspection procedures for public associations, and new registration and authorization mechanisms for associations receiving foreign funding, may have an adverse impact on the activities of civil society organizations engaged in the promotion and protection of economic, social and cultural rights"*⁵⁶.

The UN Office in Tajikistan also expressed concern that the amendments *"were drafted in such broad terms that they do not provide sufficient safeguards against arbitrary or discriminatory enforcement"*⁵⁷.

The OSCE Guidelines on Freedom of Association state that *"[a]ssociations shall have the freedom to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources"*⁵⁸.

54 The Observatory was unable to locate the information on the website of the Ministry of Justice (latest attempt May 1, 2019)

55 UN Doc. No. A/HRC/29/25/Add.3, para. 459, available at <https://undocs.org/en/A/HRC/29/25/Add.3>

56 UN Doc. No. E/C.12/TJK/CO/2-3, para. 10, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTJK%2fCO%2f2-3&Lang=en

57 United Nations Country Team in Tajikistan submission for the 2016 Universal Periodic Review of Tajikistan, para. 40, available at https://www.upr-info.org/sites/default/files/document/tajikistan/session_25_-_may_2016/unct_tajikistan_upr25_tjk_e_main.pdf

58 Joint OSCE/ODIHR and CoE Venice Commission Guidelines on Freedom of Association, para. 32; see also para. 218 to 223.

B. Growing restrictions on freedom of expression and freedom of peaceful assembly

In parallel with growing restrictions on the right of freedom of association, **the authorities have gradually introduced limitations on the right to freedom of expression and the right to freedom of peaceful assembly, which shrunk the space for civil society even further.** The sustained legal crackdown on these three freedoms has created a very toxic atmosphere for human rights defenders and other representatives of the civil society.

The right of freedom of expression is enshrined in Article 30 of the Constitution but several recent developments have significantly eroded this freedom.

Although libel was decriminalised in 2012, insulting the President, a government official, and – since 2016 – the “founder of peace and national unity – leader of the nation” is still a crime. (Articles 137, 137.1 & 330 of the Criminal Code of Tajikistan). In 2017 one prominent lawyer got a three years prison sentence for insulting President Rahmon⁵⁹.

Freedom of the media is enshrined in the Constitution but not observed in practice by officials. Like NGOs, **media outlets also need registration and are subject to intrusive inspections.**

The Observatory is moreover worried by **multiple reports of harassment of independent journalists.** On December 5, 2017 the authorities arrested independent journalist **Khayrullo Mirsaidov**. On July 11, 2018, he was sentenced to 12 years in prison for fraud⁶⁰. While the Observatory welcomes Mirsaidov’s release after his sentence was reduced to a fine on appeal⁶¹, the Observatory is deeply concerned about the fresh arrest warrant that was issued against him in January 2019⁶².

In recent years, **the authorities have also increased censorship and surveillance over the internet and mobile communications**, frequently blocking websites which are critical of the government. A representative of one of the members of the civil society coalition against torture and impunity in Tajikistan testified: *“The website www.notorture.tj of the Civil Society Coalition Against Torture and Impunity in Tajikistan is permanently blocked and the mirror .org site www.notorturetj.org is regularly blocked inside Tajikistan. And all this happens without the legally required prior approval order issued by a court”*.

At the end of 2016, the authorities forced internet providers and mobile phone operators to route all traffic through a single state-controlled “switching center,” which operates without sufficient safeguards against interception of communication⁶³.

The right of freedom of assembly is recognized in Article 29 of the Constitution, but since 2014 public gatherings require a minimum 15 days advance permission and broad restrictions apply on the timing and place of a public gathering. (Article 12(1), 14 & 15 of the 2014 law on “public gatherings, meetings, demonstrations and rallies”). For example, one interlocutor told the Observatory that on April 1, 2017 police burst into an international education fair for prospective students and dispersed the attendees in a rough manner. The organisers stated that they had the necessary permits and previous editions of the fair had taken place without incidents. The Ministry of Education claimed the organisers cooperated with foreign organisations without a permit.

59 See page 24 below.

60 See <http://www.omct.org/human-rights-defenders/urgent-interventions/tajikistan/2018/07/d24964/>

61 See <http://www.omct.org/human-rights-defenders/urgent-interventions/tajikistan/2018/08/d25006/>

62 See <https://www.rferl.org/a/tajik-authorities-issue-arrest-warrant-in-absentia-for-prominent-journalist/29765348.html>

63 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan from March 3 to 9, 2016, fn. 60 above, para. 30 & 31.

IV. CRACKDOWN ON INDEPENDENT LAWYERS

This chapter first discusses the Observatory's concerns regarding the new Law on the Legal Profession. It then addresses the systematic harassment of lawyers for taking up politically sensitive cases or for just speaking out and complaining about torture and other violations of basic human rights. In their attempts to muzzle independent lawyers, the authorities have used different tactics ranging from arbitrary imprisonment over unexpected tax audits to threats of physical violence against lawyers and their family.

A. Increased State interference as a result of the 2015 Law on the Legal Profession

1. Creation of the Union of Lawyers as a way to increase State control

On March 18, 2015 the President of Tajikistan signed Law no. 1182 on "the Bar and Lawyers' Activities" (hereinafter Law on the Legal Profession)⁶⁴. Law no. 1237 of November 23, 2015 made important amendments to the Law on the Legal Profession adding prohibitive entry barriers to the bar and significantly increasing State interference in the legal profession. **These developments have led to a dramatic drop in the number of lawyers and seriously eroded the fundamental right to prompt access to an independent lawyer.**

Prior to enactment of the 2015 Law on the Legal Profession, there existed two types of lawyers in Tajikistan: lawyers licensed by one of the independent advocates' collegia («КОЛЛЕГИЯ АДВОКАТОВ») and lawyer-attorneys («АДВОКАТ ПОВЕРЕННЫЙ») licensed by the Ministry of Justice. An advocates' collegia required at least 40 members but the biggest had more than 100 members. It organised its own qualification examinations for prospective candidates, adopted its own charter, determined its own professional ethics and disciplinary rules, and elected its own governing bodies. Lawyer-attorneys worked as individual entrepreneurs after receiving their licence from the Ministry of Justice. The Ministry neglected to set any professional ethics rules for lawyer-attorneys, who were often viewed as less competent and less independent-minded. However, "[t]he fact that one means of access to the profession was within the control of the profession itself ensured the independence of a significant part of the profession"⁶⁵. In 2013 the UN Human Rights Committee criticised the influence of the State in the system of lawyer-attorneys (see below page 20).

The Law on the Legal Profession created a unified bar association - the Union of Lawyers (Article 37 of the Law on the Legal Profession)⁶⁶. Every lawyer is a member of the Union of Lawyers (Article 3(1)). The Union of Lawyers has territorial branches in each province (Article 43). No other organisational structures are allowed⁶⁷ (Articles 37(8) & 44 *in fine*). As a "non-governmental, non-commercial organization" (Article 1), the Union of Lawyers needs to register with the Ministry of Justice (Article 37(4)-(5)). The Chairperson of the Union of Lawyers is elected by the Congress of Lawyers for a four-year term (Article 39(2)). No chairperson can be elected for more than two consecutive terms (Article 39(3)).

During the inaugural congress of lawyers in September 2015, delegates elected Mr. **Saidbek Nuriddinov** as Chairperson of the Union of Lawyers. This happened contrary to the wishes of the Ministry of Justice. Shortly after the congress, the Ministry of Justice hastily proposed

64 A coordinated version of the law in Russian can be found at http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=319

65 ICJ Recommendations on the independence of the legal profession, page 4, available at <https://www.icj.org/wp-content/uploads/2016/02/Tajikistan-Independence-of-legal-profession-Publications-Reports-Thematic-reports-2016-ENG.pdf>

66 See http://anko.tj/advocates/index.php?option=com_content&view=article&id=7&Itemid=834&lang=ru

67 An advocates' collegia under Article 29 of the law on the legal profession cannot be compared to the advocates' collegia existing pre 2015.

important amendments to the Law on the Legal Profession, directly targeting Mr. Nuriddinov and expanding State control of the legal profession even further⁶⁸. Members of the legal profession were not consulted on the amendments, which already entered into force in November 2015.

The Law on the Legal Profession introduced a uniform admission system to the bar (Articles 12 to 16), a single professional Ethics Code for Lawyers (Article 36) and a common disciplinary system (Article 41).

2. The Qualification Commission as an instrument of State control

The Law on the Legal Profession created a uniform examination process for prospective lawyers, administered by the Qualification Commission. The Commission is established under the authority of the Ministry of Justice (Article 13(1) of the Law on the Legal Profession). Although five out of nine commission members are appointed by the Union of Lawyers (Article 13(2)), a Deputy Minister of Justice is automatically the head of the Commission (Article 13(3)) and has the exclusive power to convene the Commission (Article 13(5)).

The Qualification Commission is responsible for developing the curricula for the examination and conducting the examination of applicants (Article 15 of the Law on the Legal Profession).

Although State involvement in the admission procedure is nothing new to Tajikistan, previously there had always existed the possibility to obtain the status of lawyer through one of the independent advocates' collegia (see above).

The composition of the Qualification Commission contradicts the UN Basic Principles on the Role of Lawyers, which stipulate that "[l]awyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference"⁶⁹.

The UN Special Rapporteur on the Independence of Judges and Lawyers has highlighted that "*the legal profession is best placed to determine admission requirements and procedures and should thus be responsible for administering examinations and granting professional certificates. This would further help in preserving its independence and self-governance (...)*"⁷⁰.

In its 2013 Concluding Observations on Tajikistan's second periodic report the Human Rights Committee expressed concern "*that lawyers are harassed for carrying out their professional duties and are subject to external interference, particularly from the Ministry of Justice*" and called on the government to "*ensure that the procedures and criteria for access to and conditions of membership of the Bar do not compromise the independence of lawyers*"⁷¹.

The Human Rights Committee's recommendation was not implemented by Tajikistan - on the contrary, involvement by the Ministry of Justice in the bar admission process was actually increased through the Law on the Legal Profession adopted in 2015. Tajikistan also rescinded on an earlier promise made by the Ministry of Justice that the Qualification Commission would only stay under the authority of the Ministry of Justice as a transitional measure⁷².

68 ICJ Recommendations on the independence of the legal profession, pages 4-5

69 Principle 24, available at <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

70 UN Doc. A/64/181, para. 34, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/64/181

71 UN Doc. CCPR/C/TJK/CO/2, para. 18, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TJK/CO/2&Lang=En

72 ICJ Recommendations on the independence of the legal profession, page 9

In its 2018 Concluding Observations on Tajikistan's third periodic report the Committee Against Torture repeated the concerns of the Human Rights Committee, stating that "*recent amendments to the [law on the legal profession] have given the Ministry of Justice undue influence over the qualifications commission responsible for licensing lawyers and have led to a dramatic drop in the number of lawyers in the country (...)*"⁷³. It recommended Tajikistan "*to amend the [law] with a view to strengthening the independence of the qualifications commission from the Ministry of Justice*" and "*[to] invite the Special Rapporteur on the independence of judges and lawyers to visit the country*"⁷⁴.

3. Additional admission criteria for lawyers

Prior to the November 2015 amendments, every citizen of Tajikistan with a law degree, at least two years of relevant professional experience and sufficient knowledge of the official language (Tajik) could participate in the examination (Article 12(1) of the law on the legal profession).

Considering that Russian is widely spoken in Tajikistan⁷⁵, legislation is often promulgated in both Russian and Tajik languages and some lawyers have only practised in Russian for many years, a strict implementation of the new language requirement, inserted in the law in March 2015, risked excluding a substantial number of prospective candidates in a country already short of lawyers. However, the Observatory was told that the authorities have so far applied sufficient leniency in order to avoid such a scenario. For example, lists of exam questions have been translated into Russian.

The amendments adopted in November 2015 disqualified from taking the bar exam individuals who have been convicted of any crime, dismissed from any public office for violation of their oath of office or corruption, or subjected to any criminal prosecution that was terminated due to the application of an amnesty or a statute of limitation (Article 12(2) of the Law on the Legal Profession). Current members of the Union of Lawyers are automatically disbarred by the Qualification Commission on the same grounds (Article 22 (1)).

The Observatory acknowledges that the legal system in many ways relies on the honesty and professional ethics of lawyers, and, therefore, understands that persons who behaved dishonestly may be prevented from becoming or remaining lawyers. However, it is particularly concerned that the disqualifying factors listed in Article 12(2) of the Law on the Legal Profession are formulated in broad and ambiguous terms. For example, it is unclear if the article's wording is broader than the provision included in the Criminal Code of Tajikistan according to which a conviction and all related negative consequences are erased from a person's criminal record after a lapse of time⁷⁶. One source stated to the Observatory that she was aware of at least one lawyer, who was recently disbarred because of a previous conviction, notwithstanding the fact that he had a clean criminal record. Secondly, the blanket disqualifier based on dismissal excludes the possibility to make an assessment taking into account the personal circumstances of a particular case. Finally, disqualification of prospective candidates who have never been convicted because criminal proceedings were stopped for reasons not related to the establishment of a suspect's guilt contravenes the presumption of innocence and the right to respect for private life.

73 UN Doc. CAT/C/TJK/CO/3, para. 19, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTJK%2fCO%2f3&Lang=en

74 Ibid., para. 20.

75 Article 2 of the Constitution of Tajikistan stipulates that "Russian is the language of interethnic communication."

76 See Article 84(3) & (7) of the Criminal Code of Tajikistan.

One local human rights defender summarised the situation as follows: *"We probably have the toughest admissibility criteria to the legal profession in the world but what is definitely true is that there exist no similar disqualifiers in Tajikistani law for applicants to any state job. This is absurd."*

One outcome of the November 2015 amendments and something the Ministry of Justice carefully planned for - according to several people who spoke to the Observatory at the time - was that the Head of the Union of Lawyers, Mr. Nuriddinov was disqualified from becoming a lawyer because almost 20 years earlier he had been dismissed as a judge for replacing a suspect's pre-trial detention with house arrest. This led to the absurd situation that the Union of Lawyers is currently headed by a person who is not allowed to practice law.

The retaliatory character of **the November 2015 amendment substantially undermined the legitimacy of the newly formed Union of Lawyers and not just its Chairperson**. It was also reported as one of the reasons why, contrary to their Russian or Kazakh counterparts, lawyers in Tajikistan still have little faith in the Union of Lawyers and its ability to robustly defend its members, in particular against threats by powerful State institutions.

The next elections for the chair of the Union of Lawyers will take place around September 2019. Some interlocutors stated to the Observatory that they were afraid the authorities will exploit the wide-ranging grounds for disqualification in order to block any candidate deemed too independent.

4. Re-qualification for all existing lawyers, followed by periodic re-attestation

In addition to adding grounds for excluding new applicants from sitting the bar exam, **the November 2015 amendments made it compulsory for all existing lawyers to re-qualify within 15 months** from the entry into force of the new law⁷⁷ or be stripped of their lawyer status (Article 45(1) of the Law on the Legal Profession). They also needed to comply with the above-mentioned controversial admissibility criteria stated in Article 12(2) and pass the exam organised by the Qualification Commission (id.). These requirements apply to all lawyers irrespectively of the number of years they previously worked as lawyers.

Although some irregularities were reported in relation to the examination process and some lawyers were arbitrarily prevented from re-qualifying⁷⁸, a higher number of experienced lawyers simply refused to go through the re-qualification out of principle and retired from the legal profession. In addition, the Observatory was informed that a number of other factors, enumerated in the following two parts of this chapter, probably played an even bigger role in recent years in reducing the total number of lawyers in Tajikistan.

The Law on the Legal Profession further calls for each lawyer to be re-attested every five years (Article 35(1) of the Law on the Legal Profession). If the lawyer fails to pass re-attestation, her (his) licence to practice law is not prolonged. The re-attestation is administered by the Qualification Commission, which determines the exact procedure (id.). As the first lawyers will be up for re-attestation in 2020 some interlocutors expressed concern that the authorities could use the re-attestation process to stifle lawyers' independence.

⁷⁷ The 12 months transition period was retroactively extended to 15 months by Law no. 1311 of May 14, 2016 because only about 100 lawyers had re-qualified within the initial deadline, see ICJ Recommendations on the independence of the legal profession, page 10.

⁷⁸ Report of the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan from March 3 to 9, 2016, para 53, UN Doc. A/HRC/35/22/Add.2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/319/13/PDF/G1731913.pdf?OpenElement>. ICJ Recommendations on the independence of the legal profession, page 6. Decisions of the qualification commission can be appealed to a court (Article 13(7)). However, the Observatory was not made aware of any instance where this happened.

The UN Special Rapporteur on the Independence of Judges and Lawyers has condemned legislation requiring re-qualification because it *"significantly restricts the independent functioning of lawyers and undermines their independence"*⁷⁹. In a country like Tajikistan, where the re-qualification of all lawyers followed by periodic attestation is managed by a body headed by the Deputy Minister of Justice, the threat to the independence of the legal profession becomes particularly acute.

5. Severe shortage of lawyers

According to the Union of Lawyers, there are currently around 800 lawyers in Tajikistan. This is less than half the number of lawyers admitted prior to the 2015 reforms. This means that Tajikistan counts less than one lawyer per 12,000 inhabitants. In comparison, in most EU countries there is roughly one lawyer per 500 inhabitants and in the United States of America there is approximately one lawyer per 300 people. Even in other Central Asian countries, except for Turkmenistan, the ratio of lawyer per inhabitant is more than double that of Tajikistan.

In its 2018 Concluding Observations on Tajikistan's third periodic report the Committee Against Torture remarked that the shortage *"is impeding the State party's ability to ensure that all people deprived of their liberty are able to access fundamental legal safeguards against torture and ill-treatment - including prompt access to an independent lawyer - in practice"*⁸⁰.

A representative of the Union of Lawyers stated to the Observatory that the shortage of lawyers is one reason for the continuing prevalence of torture in Tajikistan. Another consequence of the deficit of lawyers is that the State-subsidised legal aid system is barely operating outside of the capital and a few major cities⁸¹.

"I feel like Don Quixote tilting at windmills"

During interviews conducted by the Observatory, interlocutors raised additional grounds for the shortage of lawyers, apart from the overly restrictive admissibility criteria and the re-qualification process provided in the 2015 law on the legal profession.

Several people interviewed for this report complained that lawyers pay higher taxes compared to other professions. Depending on how they incorporate, lawyers are subject to a 7%, 39% or even 46% tax rate. There exists a lot of uncertainty about how the tax rate is applied in practice. "If a lawyer does not pay the top rate voluntarily, she might be audited by the tax authorities upon request of the prosecutor who happens to be her opponent in a court case," one source stated.

Another source pointed out that the bar exam is centralized in the capital Dushanbe. Candidates need to travel there four times and have to bear all travel and accommodation costs themselves. This might also help to explain why there are very few lawyers in remote corners of the country.

According to a representative from the Union of Lawyers, an important contributing factor is the poor level of legal education in Tajikistan in general. "Unfortunately, the Union of Lawyers has not enough resources to provide a comprehensive training program for young

79 Fn. 75 above, para. 38.

80 Fn 78 above, para. 19.

81 Joint submission by Tajikistani NGOs on the list of issues for consideration of Tajikistan's 4th periodic report, page 11, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCO%2fTJK%2f31854&Lang=en

lawyers as well as opportunities for continuous professional learning for all lawyers. Neither our government nor international donors have so far shown a willingness to fund such initiatives," he added.

However, one Tajikistani human rights defender cautioned that *"it is not only the quantity of lawyers that matters but the quality of the legal services they provide. Both under the old dual system as well as post 2015 you have quite a substantial number of poorly performing lawyers and so-called 'pocket lawyers,' who - for various corrupt motives – act against their clients' interests and in the best interests of the prosecution. The real problem is that most lawyers do not know how to react when, for example, their client complains about torture. Or they simply do not want to take on such cases, often out of fear for repercussions for themselves, their families and their other cases"*.

One lawyer, reflecting on the low level of trust and prestige he and his fellow lawyers enjoyed in society, stated *"I would not want my children to become lawyers, not because it is dangerous, not because it is not very well paid, but because lawyers are powerless. We cannot defend our clients, we cannot defend ourselves. There is no equality of arms with the prosecutor's office. The way the whole legal system works in practice is grossly unfair. Often, I feel like Don Quixote tilting at windmills"*.

Asked about solidarity among lawyers when the authorities put pressure on one of their colleagues, a representative of the Union of Lawyers told the Observatory in October 2018 that the Union of Lawyers created a special commission to defend the professional rights of lawyers in December 2017. However, several lawyers interviewed by the Observatory stated that they had never heard of this new body and, more generally, complained that since it was formed more than four years earlier, the Union of Lawyers has failed to provide any support when they had been threatened. Lawyers who provide legal assistance to victims of torture often collaborate with the Civil Society Coalition Against Torture and Impunity in Tajikistan. *"We rely on the anti-torture coalition for protection when we are threatened, not on the union of lawyers,"* one source told the Observatory. These testimonies confirm that the law on the legal profession failed to create an independent body because of the absence of strong safeguards against state interference.

B. Harassment of lawyers

In recent years, the authorities have systematically harassed lawyers for taking up politically sensitive cases or for just speaking out and complaining about torture and other violations of basic human rights. A few examples follow:

In March 2014, the authorities arrested Mr. **Fakhriddin Zokirov**, the lawyer of Mr. Zaid Saidov, a former minister turned opposition politician who was jailed for 26 years in a politically motivated trial⁸². Following his release after spending eight months in pre-trial detention, Mr. Zokirov publicly stated that he would no longer act as a lawyer for Mr. Saidov.

⁸² On April 4, 2018 the Human Rights Committee found that Saidov had been arbitrarily detained and subsequently convicted after a secret and unfair trial and that his rights to freedom of expression and freedom of association had been violated, communication no. 2680/2015, available at <https://undocs.org/CCPR/C/122/D/2680/2015>

In July 2014, Mr. **Shukhrat Kudratov**, who had earlier represented prominent independent Tajikistani news agency Asia-Plus and was also one of Mr. Saidov's lawyers, was arrested on fabricated fraud charges⁸³. In January 2015 he was sentenced to nine years imprisonment.⁸⁴ His sentence was reduced on appeal and he was released on August 24, 2018 after spending more than 4 years in jail⁸⁵.

The third lawyer of Saidov, Mr. **Iskhok Tabarov**, did not face criminal charges himself but both of his sons were jailed on trumped up charges⁸⁶.

The harshest repression was aimed at the lawyers who defended the leaders of the IRPT who had been arrested in September 2015.

On September 29, 2015 the authorities arrested Mr. **Buzurgmehr Yorov**, shortly after the latter had publicly complained about the ill-treatment of his client. On October 22, 2015, Mr. Yorov's colleague, Mr. **Nuriddin Makhkamov**, was arrested. In October 2016 a court sentenced Messrs. Yorov and Makhkamov to respectively 23 and 21 years in prison for extremism and other crimes. Apart from the first hearing, the trial was held behind closed doors⁸⁷.

In March 2017, Mr. Yorov received an additional two years prison sentence for contempt of court and insulting a state official for reading aloud an 11th century poem during his first trial⁸⁸. In August 2017 he got three more years for defamation of "*the founder of peace and national unity – the leader of the nation*," bringing the total length of his prison sentence to 28 years⁸⁹. After a rare visit to her son in prison in September 2017, Mr. Yorov's mother stated that he had been tortured – a claim denied by the authorities⁹⁰. During the CAT review of Tajikistan in May 2018 the Tajikistani Ombudsperson for Human Rights alleged that Mr. Yorov himself wrote a note that he had not been tortured⁹¹. However, no independent observers have been given permission to visit him in detention.

In 2017, Ms. **Muazzama Qodirova**, who acted as a lawyer for Buzurgmehr Yorov, fled the country out of fear to be arrested⁹².

Several other lawyers who legally represented detained IRPT members also faced harassment.

In October 2015, Ms. **Dilbar Dodadzhonova**, was arrested on fraud charges⁹³. The charges were later dropped. Ms. **Fayziniso Vakhidova** received dead threats⁹⁴. On August 25, 2016, Mr. Yorov's brother Jamshed was arrested for divulging state secrets but on September 30, 2016 he was released under a general amnesty act⁹⁵. Fearing re-arrest he subsequently left the country.

83 Joint statement of Tajik CSOs, available at <http://notorture.tj.org/en/statements/joint-statement-tajik-civil-society-organizations-connection-detention-lawyer-shuhrat>

84 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan from March 3 to 9, 2016, fn. 83 above, para. 51

85 See <https://www.news.tj/ru/news/tajikistan/laworder/20180824/advokat-shuhrat-kudratov-vishel-na-svobodu>

86 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan from March 3 to 9, 2016, fn. 83 above, para. 52.

87 Ibid., para. 49.

88 Ibid., para. 50.

89 Available at <https://www.news.tj/ru/node/243761>

90 Available at <https://rus.ozodi.org/a/28761917.html>

91 Summary record of the 1636th meeting of the Committee Against Torture, UN Doc. CAT/C/SR1636, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSR.1636&Lang=en

92 Available at <https://www.rferl.org/a/lawyer-jailed-tajikistan-human-rights-attorney-flees-germany/28399757.html>

93 Available at <https://news.tj/ru/news/tajikistan/laworder/20151102/zaderzhan-eshche-odin-advokat-kollegii-sipar>

94 Tajikistan: Free Human Rights Lawyers, Human Rights Watch, available at <https://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>. Vakhidova died from illness in January 2019, see <https://www.rferl.org/a/faizinisovohidova-tajik-lawyer-who-defended-dissidents-for-decades-dies-at-55/29691242.html>

95 Available at <https://news.tj/ru/news/tajikistan/society/20160930/advokat-dzhamshed-yorov-na-svobode>

The Observatory is deeply concerned that the arrest and criminal prosecution of lawyers defending IRPT members was politically motivated. Their right to fair trial was not respected and some alleged that they were subjected to ill-treatment, including torture, while in detention. During the latest EU-Tajikistan Human Rights Dialogue in October 2018, the EU again called on Tajikistan *"to review [Yorov's] case, as well as to authorise and facilitate a meeting in prison with Yorov for the EU Ambassadors residing in Dushanbe"*⁹⁶.

The relentless harassment of these high-profile lawyers has a chilling effect on other lawyers as well. Several lawyers told the Observatory that law enforcement officials repeatedly threatened them for being - in the officials' opinion - too intransigent, explicitly referring to Mr. Buzurgmehr Yorov's case: *"Do you think you are cooler than Yorov?"* Another lawyer testified: *"After Yorov was locked up for more than 20 years a police investigator asked me if I worked in the same law firm as Yorov."*

The deterring effect of the politically motivated prosecution of Mr. Yorov and others has also been felt by civil society organisations who rely on lawyers to get access to torture victims in detention. A representative of Right and Prosperity, a member of the civil society coalition against torture and impunity in Tajikistan, complained to the Observatory that *"it has become nearly impossible to find lawyers in Tajikistan, especially outside of the capital, who are willing to take up cases involving human rights abuses like torture, for fear of reprisals against themselves and their families or because it may have an adverse effect on other cases they work on"*.

The repeated prosecution and other forms of harassment of lawyers constitutes a clear violation of several international standards. For example, the UN Basic Principles on the Role of Lawyers state that *"governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference"* (Principle 16) and *"[l]awyers shall not be identified with their clients or their clients' causes as a result of discharging their functions"* (Principle 18). Messrs. Yorov and Makhamov were - at least in part - jailed on the same charges as their clients.

Already in its 2013 Concluding Observations on Tajikistan's second periodic report the Human Rights Committee expressed concern *"that lawyers are harassed for carrying out their professional duties..."*⁹⁷.

In its 2018 Concluding Observations on Tajikistan's third periodic report, the Committee Against Torture expressed its deep concern *"at the absence of response to requests for information regarding its efforts to investigate allegations that several human rights lawyers in the country appear to have been subjected to arrest after agreeing to represent high-profile clients in detention, who seemed to face a particularly acute risk of torture. The Committee regrets that in response to requests for information regarding its efforts to investigate these allegations, the State party denied that any such claims of reprisal had been received by the authorities and stated that any such allegations involving lawyers engaged in high-profile cases were unfounded"*⁹⁸.

⁹⁶ See https://eeas.europa.eu/headquarters/headquarters-homepage/52873/eu-tajikistan-human-rights-dialogue_en

⁹⁷ UN Doc. CCPR/C/TJK/CO/2, para. 18, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TJK/CO/2&Lang=En

⁹⁸ Fn 78 above, para. 21.

V. RECOMMENDATIONS

In light of the situation described in this report, the Observatory makes the following recommendations aimed at strengthening the protection of human rights defenders, including human rights lawyers, in Tajikistan:

A. Recommendations to the Government of Tajikistan

Regarding shrinking space for civil society, in particular the legal crackdown on the right to freedom of association

- End restrictions on freedoms of expression, association and peaceful assembly of human rights defenders in Tajikistan
- Simplify the registration process for public associations in accordance with international standards, in particular the OSCE Guidelines on Freedom of Association
- Immediately publish the new Draft Law on Non-Commercial Organisations and fully consult representatives from civil society on all of its aspects
- Bring the broad powers of the Ministry of Justice in Article 34 of the Law on Public Associations in line with international standards
- Limit the frequency and intensity of inspections by the Ministry of Justice and other State bodies in accordance with international standards
- Set out clear criteria for selection of organizations for inspection, using a risk-based approach recommended by the FATF
- Stop discriminatory selection processes/practices for inspections
- Reduce the excessively high fines for NGOs in the Tax Code
- Reduce the amount of reporting to various state bodies in accordance with best practices under international law
- Stop the harassment of organisations that work on LGBTI issues
- Abolish the requirement of registration/notification of foreign grants by public associations or at the very least reduce the scope of this requirement in accordance with international standards
- Allow relevant Special Procedures of the United Nations Human Rights Council access to the country, including the Special Rapporteurs on the freedom of peaceful assembly and association, on the Situation of Human Rights Defenders, and on the Independence of Judges and Lawyers
- Abolish the additional burdens imposed on public associations by the Law of January 2, 2019
- Abolish Articles 137, 137.1 and 330 of the Criminal Code
- Implement all recommendations made by CCPR, CAT, UPR as well as UN Special Procedures mechanisms

-
- Comply with the provisions of the UN Declaration on Human Rights Defenders, adopted by the United Nations General Assembly on 9 December 1998, in particular Articles 1 and 12.2.

Regarding State control over the legal profession:

- Remove the Qualification Commission from under the authority of the Ministry of Justice and place it under the Union of Lawyers
- Remove the requirement for experienced lawyers to re-qualify and for all lawyers to undergo periodic re-attestation
- Abolish the additional criteria for admission introduced by the November 2015 amendments
- Undertake measures to raise the number of lawyers

Regarding harassment of independent lawyers:

- Ensure that lawyers can exercise their professional duties free from any obstruction, intimidation or pressure
- End all forms of judicial harassment against human rights defenders in Tajikistan, including human rights lawyers
- Immediately release all lawyers imprisoned and detained on politically motivated charges, including B. Yorov and N. Makhkamov
- Ensure that all lawyers are able to conduct their work without fear of reprisals, including arbitrary arrest or prosecution.
- Initiate prompt, effective, independent and impartial investigations into all allegations of torture and other ill-treatment.

B. Recommendations to the United Nations

To Special Procedures of the United Nations Human Rights Council, including the Special Rapporteurs on the Situation of Human Rights Defenders, on the Independence of Judges and Lawyers, on the Rights to Freedom of Peaceful Assembly and of Association and on the Promotion and Protection of the Right to Freedom of Opinion and Expression:

- Call upon the authorities of Tajikistan to ensure in all circumstances that human rights defenders and CSOs in the country are able to carry out their legitimate activities without any hindrance or fear of reprisals.
- Ensure follow-up, in cooperation with other relevant Special Procedures, on individual cases of human rights defenders and lawyers who have suffered harassment on the basis of their human rights activities in Tajikistan.
- Pay particular attention to the situation and protection of human rights defenders and organisations in Tajikistan, in accordance with the UN Declaration on Human Rights Defenders, and monitor the implementation of the recommendations addressed to Tajikistan.

C. Recommendations to the European Union and its Member States and other States:

- Pay particular attention to the situation and protection of human rights defenders and organisations in Tajikistan, in accordance with the UN Declaration on Human Rights Defenders as well as the European Union, the Swiss, the French, the Irish, the Dutch, the Finnish, the Norwegian and the Canadian Guidelines on Human Rights Defenders.
- Take all protective, preventive and response measures necessary, in particular by:
 - engaging with human rights defenders on a regular basis and providing visibility to the activities of independent civil society;
 - increasing financial support to civil society organisations in Tajikistan
 - meeting, as and when possible, human rights defenders who have been harassed and criminalised;
 - attending all public hearings in proceedings against human rights defenders, including human rights lawyers
 - systematically and publicly condemn any act of harassment carried out against them
- Continue to monitor the implementation of recommendations addressed to the authorities of Tajikistan.

D. Recommendations to the Organisation for Security and Cooperation in Europe (OSCE) and in particular:

To the OSCE Office for Democratic Institutions and Human Rights (ODIHR)

- Continue monitoring the situation of human rights defenders in Tajikistan, including human rights lawyers, and systematically and publicly condemn any act of harassment carried out against them.
- Monitor proceedings against human rights defenders and lawyers subject to judicial, administrative and/ or disciplinary harassment in Tajikistan.

To Member States of the OSCE

- Implement the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Guidelines on human rights defenders, including by taking all protective, preventive and response measures necessary, in particular:
 - by meeting human rights defenders on a regular basis and providing visibility to the activities of independent civil society;
 - by meeting, as and when possible, human rights defenders who have been harassed and criminalised;
 - by attending all public hearings in proceedings against human rights defenders, including human rights lawyers.



Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS-Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world and fighting for the protection of human rights defenders.

Assisting and supporting victims

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility.

Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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The Observatory
for the Protection
of Human Rights Defenders

The Observatory for the Protection of Human Rights Defenders, a partnership of OMCT and FIDH

Created in 1997, the Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

.....

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail: Appeals@fidh-omct.org

OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29

FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80

