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促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

访问塔吉克斯坦

强迫或非自愿失踪问题工作组报告* **

概要

塔吉克斯坦尚未接受内战期间所犯的侵犯人权行为。内战结束 20 多年后，创伤仍然很深，但被故意忽视。然而，现在疗伤与和解还不算太晚。最重要的是，国家当局须与相关利益攸关方协商，制定和执行一项全面政策，以解决过去对各方的虐待，包括强迫失踪问题。还迫切需要对失踪人员的遗骸进行调查、挖掘和辨认，以便将其移交给这些人的家人。

工作组强调，不能将强迫失踪视为是一件往事。强迫失踪是一种持续不断的犯罪，一直持续到被强迫失踪的人的命运和下落得到澄清为止。缺乏司法调查和强迫失踪案件继续得不到追究，这不仅侵犯了受害者了解真相和伸张正义的权利，而且也可能成为未来侵权行为的根源。

近年来，一些反对党被归类为“极端主义”或“恐怖”组织，对其成员的骚扰和监禁升级，导致了据称的域外绑架和强迫失踪。

侵权行为的受害者、他们的家人和人权维护者，包括律师，继续因直言不讳而面临国家当局的报复。据报道，在这类群体中有一种自我审查和恐惧的气氛。需要采取紧急步骤来扭转这一极其令人担忧的趋势。

* 报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文分发。附件未经正式编辑，原文照发。

** 因提交方无法控制的情况，经协议，本报告迟于标准发布日期发布。



近年来，塔吉克斯坦在防止强迫失踪方面取得了可喜的立法改进，特别是加强了在逮捕和拘留期间的通知和登记要求。然而，还需要采取更多措施，以确保更充分地保护其免遭强迫或非自愿失踪。尤其是，新的保障措施得不到执行，在消除普遍存在的短期强迫失踪问题方面需要协调努力。

政府向工作组发出的邀请及其参与是一个积极和令人鼓舞的步骤。工作组重申愿意继续与政府进行建设性对话。它还重申声援强迫失踪受害者及其家人，以及在困难情况下继续倡导人权的民间社会代表和律师。

Annex

Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Tajikistan

I. Introduction

1. A delegation of the Working Group on Enforced or Involuntary Disappearances conducted an official visit to Tajikistan from 1 to 5 July 2019. The delegation was composed of the Chair of the Working Group, Bernard Duhaime, and a member of the Working Group, Henrikas Mickevičius.
2. The Working Group wishes to thank the Government of Tajikistan for extending an invitation to visit the country, and for the efforts made before and during the visit to facilitate its smooth undertaking, including granting most of the meetings requested.
3. The Working Group also wishes to thank the Regional Office for Central Asia of the Office of the United Nations High Commissioner for Human Rights for its continuous support during the visit.
4. The Working Group visited Dushanbe and Vahdat. It regrets that its requests to visit other regions were not accommodated. The Working Group met with, inter alia, the Minister of Justice, representatives of the Presidential Office, the Office of the Prosecutor General, the State Committee for National Security, the Medical Forensic Centre under the Ministry of Health and Social Protection, the Ministry of Defence, the Supreme Court, the Ministry of the Interior and the Ombudsman's Office. It also visited the pretrial detention centres of the Ministry of Justice and the State Committee for National Security in Dushanbe and prisons in Dushanbe and Vahdat. The Working Group regrets that it was not granted a meeting with representatives of the Ministry of Foreign Affairs at the beginning of the visit and a debriefing at the end, which is the usual practice during its official visits.
5. The Working Group also met with relatives of disappeared persons, representatives of civil society, including non-governmental organizations, human rights defenders and lawyers. It wishes to thank all the stakeholders it met and commends the civil society interlocutors and family members on their courage in pursuing those cases in difficult circumstances.
6. The present report includes reference to developments that occurred between July 2019, when the visit was conducted, and the time the report was drafted in May 2020. The Working Group thanks the Government for its extensive reply to the report, received on 10 July 2020. The Working Group welcomes the fact that several of the recommendations contained in the report are acceptable to the Government and hopes that the dialogue can continue with a view to implementing all the recommendations contained in section VII of the present report.

II. Background

7. The recent history of Tajikistan has been extensively shaped by the civil war that began shortly after Tajikistan gained independence from the Soviet Union in 1991. The war, which lasted from 1992 to 1997, devastated the country, killing an estimated 50,000 to 100,000 people from a population of 5.1 million, and displacing about one tenth of the population. During the conflict, the Government, supported by pro-government paramilitary organizations, fought the United Tajik Opposition, an alliance of several different forces, including liberal reformers and the Islamic Renaissance Party. Both sides in the conflict conscripted young men to fight and committed violations of international human rights and humanitarian law. Much of the fighting occurred in the south, particularly in the Khatlon region, whereas many soldiers were conscripted from the northern regions, particularly Khujand. United Nations sponsored peace negotiations began in 1994, leading to the signature of the General Agreement on the Establishment of Peace and National Accord in Tajikistan in 1997. The peace agreement included provision for a 30 per cent quota of opposition representatives in the Government.

8. The peace agreement and the formation of the coalition Government did not, however, eliminate tensions or sporadic conflicts, which culminated in 2015 in the Supreme Court declaring the Islamic Renaissance Party an extremist and a terrorist organization and it being banned. At the same time, Emomali Rahmon, who has been in the position of State President since 1994, consolidated his power. In 2015, he was granted the title of “Founder of Peace and National Unity, Leader of the Nation”, which gives him, inter alia, the right to run for office an unlimited number of times and the authority to overrule the executive, and exempts him from any possible prosecution for life. It is widely reported that centralization and personification of State power contributed to the suppression of any dissent elements and to serious restrictions on the enjoyment of fundamental human rights and civil liberties, including freedom of expression, freedom of conscience, religion and belief, freedom of association, freedom of peaceful assembly, the right to participate in public affairs, the right to respect for private life, the right to personal security and integrity, the right to life and the prohibition of torture and the right to a fair trial, mostly in the name of fighting extremism and terrorism. Reportedly, Tajikistan suffers from nepotism and widespread corruption (CCPR/C/TJK/CO/3, paras. 11–12).

9. Following the banning of the Islamic Renaissance Party, its leaders and their lawyers were sentenced to lengthy prison terms. Some 200 members have been arrested. Others are under house arrest with their relatives, or have fled abroad where, in some cases, they have been subject to extradition requests by the Tajik authorities and to transnational renditions (see sect. V. C below). Families of those abroad face harassment. The policy of criminal prosecution and imprisonment extends to other government critics, including social activists, journalists, human rights defenders and lawyers. The Working Group on Arbitrary Detention has found that the detention of 12 Islamic Renaissance Party members is arbitrary and requested that they be immediately released (see A/HRC/WGAD/2018/2 and A/HRC/WGAD/2019/66). That Working Group came to the same conclusion regarding the detention of Buzurgmehr Yorov, a human rights lawyer who took on representation of several Islamic Renaissance Party leaders and was detained shortly afterwards. He was charged with fraud, forgery, arousing hostility and extremism and later with contempt of court, insulting public officials and publicly insulting the President. He received a long prison sentence following trials carried out in disregard for fair trial guarantees. The Working Group on Arbitrary Detention found his detention arbitrary on several grounds and recommended his release (see A/HRC/WGAD/2019/17). That case illustrates an unacceptable practice of intimidating and, in extreme cases, criminally prosecuting lawyers who defend individuals charged with the crimes of terrorism or extremism. In addition, there is reportedly at least one example of a government critic who was found dead after having disappeared for several weeks.

10. Deaths in custody continue to be reported in Tajikistan. They include two recent incidents attributed to prison riots during which Islamic Renaissance Party members, as well as other inmates, were killed. The first occurred in Khujand in November 2018, where reportedly more than 20 prisoners were killed. A criminal investigation was conducted, but the trial was closed to the public. The second riot occurred in May 2019 in the maximum security Kirpichniy Prison in Vahdat, which the Working Group on Enforced or Involuntary Disappearances was able to visit. The Working Group was informed by the authorities that, after rioting prisoners killed three guards and three other prisoners, law enforcement officers responded with force, killing 27 inmates. The authorities have reported that both riots were instigated by members of Islamic State in Iraq and the Levant. Information available to date suggests that serious violations were committed in the operation, including excessive use of force by the prison authorities. The Working Group also notes significant contradictions in information provided by high-ranking officials on how the operation was conducted. The Working Group was particularly disturbed by comments from a senior official that the authorities did not want “wounded inmates” and that the individuals “got what they deserved”. The Working Group also obtained information indicating that vital pieces of evidence were reportedly unavailable. Those elements point to possible intentional extrajudicial killings by the authorities. There is a need for a thorough, effective, impartial and independent investigation to be conducted into both incidents, in line with international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

11. The Working Group is aware that a number of citizens of Tajikistan travelled abroad to fight with Islamic State in Iraq and the Levant. Several governmental interlocutors

referred to difficulties faced by the country in dealing with those returning citizens and the management of such detainees, as well as the Government's concern at continued radicalization and the need to address terrorism. While no specific information was received in relation to disappearances of returning fighters or their families, the Working Group is concerned that there is a risk of such violations being committed in that context. The Working Group notes that a visit from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism could help Tajikistan to address those issues in line with international standards. It encourages the Government to indicate its openness to such a visit.

III. General situation of enforced disappearance

12. The Working Group has transmitted 10 cases of enforced disappearance to the Government of Tajikistan, of which 1 is outstanding, 5 have been clarified by the Government, 2 have been clarified by the source and 2 have been discontinued. Of those cases, 6 are alleged to have occurred between late 1992 and July 1993 in the context of the escalating civil war, when pro-government forces took over the capital, Dushanbe. The alleged disappearances were attributed to the police, personnel of the Ministry of Defence, and the People's Front of Tajikistan, reportedly a paramilitary group linked to government forces. Of the remaining cases, 2 allegedly occurred in 1997, 1 in 2012, which remains outstanding, and 1 in 2013.

13. As in virtually all countries facing the issue of enforced disappearances, in Tajikistan the number of cases reported to the Working Group is not representative of the real extent of the problem; it is only a small sample. In particular, the serious violations of human rights and international humanitarian law, including enforced disappearances, which were committed during the civil war remain essentially unaddressed in the country and there is an apparent reluctance at both the political and administration levels to address them. The Working Group did not obtain official figures, despite requesting them, on the number of missing, including forcibly disappeared, from the conflict and the figures are not obtainable from publicly available sources. Although it is difficult to assess the real scale of the problem and to have exact figures on enforced disappearances, it is estimated that thousands of individuals from the different factions may still be unaccounted for.

14. In recent years, there have been several examples of opposition members allegedly disappearing abroad and reappearing some time later in detention in Tajikistan. During that process, their family members have been unaware of their fate and whereabouts. In some cases, the individuals have never reappeared (see sect. V. C below). There are also reported examples of opposition members disappearing within Tajikistan and of attempted disappearances of their relatives.

15. The practice of enforced disappearance of a short duration, particularly following initial apprehension of individuals suspected of crimes and the use of so-called administrative apprehensions and arrests, often in order to extract a confession which can then be used against the individual, appears to be widespread in Tajikistan. There are also problems related to the system of registration of detentions and transfers of detainees. Those issues are discussed in more detail in the sections below.

16. In relation to ongoing violations, many victims and their families refrain from lodging complaints for fear of reprisals or because they are convinced that the perpetrators will not be brought to justice. Given that the Working Group received credible information indicating that individuals in prison received worse treatment after their relatives had complained, and that the Committee against Torture has expressed deep concern at allegations that individuals who complained of torture, members of their families, human rights defenders, lawyers representing victims of torture and journalists reporting on allegations of torture frequently faced reprisals by officials (CAT/C/TJK/CO/3, paras. 21–22), that fear is well founded.

17. The Working Group wishes to emphasize that there is a little awareness in the country of the phenomenon of enforced disappearances and even less knowledge about the concept, definition and constituent elements of enforced disappearances as a legal category, including within the legal community and among human rights defenders.

18. In order to prevent the recurrence of enforced disappearances, it is essential to properly educate current and future generations, and to provide society in general, and civil servants in particular, with adequate human rights training. The Working Group emphasizes the importance of including the necessary education and information regarding the relevant provisions of the Declaration on the Protection of All Persons from Enforced Disappearance in the training given to both civilian and military law enforcement personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of their liberty. Professional training for judges, prosecutors and lawyers is also essential. The Working Group stands ready to provide technical assistance to Tajikistan in that regard, as is planned for other States in the region.

IV. Legislative and institutional framework

19. The Working Group acknowledges the efforts made by the State to create a legislative and institutional framework for the protection of human rights. Despite noticeable progress, the framework remains unfinished and the political will to construct comprehensive legislation and a supportive institutional infrastructure to address enforced disappearances that took place in the past and to prevent and prosecute acts of enforced disappearances in the future is lacking.

20. The Constitution of Tajikistan provides for a broad catalogue of civil, political, economic, social and cultural rights, including the right to life, prohibition of torture, the inviolability of a person, prohibition of arrests and detentions without a legal basis, and the right to judicial protection. The national human rights institution, the Human Rights Ombudsman, receives complaints related to rights violations. The Office of the Ombudsman was accorded B status by the Global Alliance of National Human Rights Institutions, meaning that it complies only partially with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).¹

21. Tajikistan is a State party to eight core international human rights treaties. In accordance with article 10 of the Constitution and article 10 of the Law on Regulatory Legal Acts, those international treaties are a directly applicable part of the legal system of Tajikistan and in case of conflict, they take precedence over national law. The Code of Criminal Procedure extends that principle to criminal procedure, including rules related to the apprehension of suspects, their registration and notification of their deprivation of liberty.

22. Regretfully, the only core treaty Tajikistan has yet to ratify is the International Convention for the Protection of All Persons from Enforced Disappearance. The Working Group underlines that the Convention contains useful guidance for States on building a more solid and robust legal and institutional framework and would assist Tajikistan in that regard. The Working Group welcomes the information received during the visit that the issue of ratification of the Convention is included in the 2017–2020 national human rights action plan, among the measures to implement the recommendations from the second cycle of the universal periodic review. That is particularly welcome, given that Tajikistan did not support the recommendations to ratify the Convention at the time of the review in 2016. In particular, the Working Group was pleased by the assurance received during the visit that the ratification of the Convention is expected before the expiration of the time frame for the implementation of the human rights action plan in 2020. The Working Group also welcomes the news that ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is being considered.

23. The Working Group regrets that Tajikistan has not introduced the autonomous crime of enforced disappearance in its criminal legislation, as required under article 4 of the Declaration. Moreover, the Working Group was informed during its visit that the ongoing

¹ See chart of the accreditation status of national institutions accredited by the Global Alliance of National Human Rights Institutions, as at 27 November 2019. Available at [https://nhri.ohchr.org/EN/AboutUs/GANHRIAaccreditation/Documents/Status%20Accreditation%20-%20Chart%20\(%202027%20November%202019\).pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAaccreditation/Documents/Status%20Accreditation%20-%20Chart%20(%202027%20November%202019).pdf).

work to develop a new Criminal Code does not include consideration of that issue. In its response to the present report, the Government referred to the existence of a range of offences, such as abduction and murder, among others. The Working Group highlights the fact that reference to a range of existing offences is not sufficient to fulfil the requirement under article 4 of the Declaration, as enforced disappearance is a single complex crime that should be criminalized as such. The Working Group urges the relevant authorities and the national working group tasked by the Government with the development of the new version of the Criminal Code of Tajikistan to consider including the criminalization of enforced disappearance as defined in international law, including various modes of criminal liability, command or superior responsibility and the continuous nature of the crime. Such legislation should ensure that amnesties are not applicable for the crime.

24. The Working Group notes that ratification of the Convention and the introduction of enforced disappearance as an autonomous crime would help address the limited awareness in the country of the concept of enforced disappearance (see para. 17 above). Those initiatives should be accompanied by extensive training for members of law enforcement, legal professionals and the public on the issue.

25. As indicated above, the Working Group welcomes the amendments to the Code of Criminal Procedure adopted in 2016. It also welcomes the amendments to the Act on Procedures and Conditions for the Custody of Suspects, Accused Persons and Defendants and the inter-institutional guidelines, which strengthened the basic legal safeguards against enforced disappearances of a short duration following initial apprehension and arrest of those suspected of committing crimes. If properly implemented, the new legal provisions will serve to prevent short-term enforced disappearances.

26. The applicable legislative provisions now provide that arrest begins from the moment of actual restriction of freedom of movement and freedom of action of an apprehended person, and provide, *inter alia*, for the right to immediate notification of an adult relative and the service of a lawyer. Furthermore, they require the urgent transfer of an apprehended person from the location of his or her apprehension to, and immediate registration of his or her arrival at, the agency responsible for criminal investigations. Entry in the register should include, *inter alia*, information about the specific date and time at which the suspect's relative was notified about the arrest. In addition, there is a requirement to draw up a detention protocol within three hours of conveying a suspect and before his or her detention at the temporary detention facility. The protocol should include a range of information including the identity of the officers involved and the details of the notification of the suspect's relative.² Within 12 hours of the time of initial apprehension, the investigative officer is obliged to inform the prosecutor about the arrest.

27. While those developments are positive and important, further improvements are necessary. In particular, the procedural guarantees described above should be extended to all acts of apprehension, including administrative apprehensions and arrests, which are apparently widely used. Furthermore, breaching notification and registration requirements should be subject to an appropriate sanction and violations should be systematically punished. Most importantly, those rules and procedures should be implemented in practice; information received indicates that practical implementation is lacking (see sect. V. B below).

28. The Working Group recalls that, in order to prevent secret detention – a form of enforced disappearance – article 10 of the Declaration requires that any person deprived of their liberty should be held in an officially recognized place of detention and, in conformity with national law, should be brought before a judicial authority promptly after detention. Accurate information on the detention of such persons and their place or places of detention, including transfers, should be made available promptly to their family members and their lawyer. An official up-to-date register of all persons deprived of their liberty should be maintained in every place of detention and all States should take steps to maintain centralized registers. However, the Code on the Implementation of Criminal Punishment has not been amended and continues to provide that family members must be notified

² Code of Criminal Procedure, arts. 6 and 94, and inter-institutional guidelines, paras. 7–8, 10–14 and 17.

within 10 days of an individual being moved to a penitentiary or of any other transfer. Reportedly, even that provision is not always upheld.

29. The Working Group's visits to a number of places of deprivation of liberty demonstrated that registration systems in those facilities are run manually and are otherwise outdated. The Working Group also learned that there is no national system of detention registration. The Government of Tajikistan should introduce legislative and regulatory measures to address that systemic problem. The introduction of a centralized and digitalized system and improvements to current practices locally in all facilities will ensure the traceability of any person deprived of their liberty and therefore contribute to the prevention of enforced disappearances of persons detained in pretrial facilities and in the penitentiary system.

30. The Working Group regrets to conclude that there has been a complete lack of effort to embark on developing legislation and supporting institutions to address the painful consequences of the civil war. Such institutions and legislation should be in place to secure the rights of both society and the families of forcibly disappeared persons to know the truth about what happened; the right of families to have the remains of their loved ones found, identified and returned to them; their right to reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition; and the right to memory, as well as the right to access to justice. The Working Group believes that in order to come to terms with the painful legacy of the civil war, Tajikistan could benefit from the experience of other post-conflict States that have successfully employed mechanisms developed within the concept of transitional justice. Tajikistan could also benefit from a visit from the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

V. Assessment of the situation

A. Enforced disappearances as the legacy of civil war

1. Truth and justice

31. While official figures are not publicly available, it is estimated that thousands of individuals may still be unaccounted for from the armed conflict. During the Working Group's visit, officials were reluctant to discuss the issue of enforced disappearances from that period, or the civil war generally. Some officials noted that individuals might have been abducted and killed by the "other side", and several specifically referred to killings at a farm in the Vahdat district in 1992, where the remains of individuals were exhumed by the authorities. References were also made to a special investigative brigade that investigated some cases of enforced disappearance during the conflict and to the fact that, following the conflict, individuals could apply to the Ministry of the Interior for assistance in searching for their relatives. The Working Group was also informed that the Ministry of Defence has lists of soldiers who have not been accounted for and those who were killed during that period, and that the Ministry of the Interior has similar lists of civilians. However, despite multiple requests, none of the lists or any details of their contents were provided to the Working Group.

32. Despite the lack of official information, there are credible reports from the conflict period regarding patterns of disappearances, particularly in the early stages of the civil war, including disappearances that took place with the involvement or acquiescence of the authorities. There are also credible reports of the existence of "informal prisons" or clandestine detention centres, of which the authorities were aware, including one allegedly located in the village of Varzob.

33. The Working Group also received reports of the existence of a number of unopened mass graves, including five mass graves containing 2,600 bodies discovered in Shakhrinau near Dushanbe in 1998.³ Very little information is available on those graves and there are no indications that they have been properly investigated or preserved or that any exhumations have been carried out.

³ See www.icmp.int/the-missing/where-are-the-missing/tajikistan/.

34. The Working Group received information that some individuals may have disappeared in Afghanistan, to where at least 60,000 people fled during the conflict,⁴ and where captured soldiers of the government forces were sometimes taken. After the signing of the truce in 1997, the sides exchanged prisoners, but some members of the government forces were allegedly disappeared inside Afghan territory. As far the Working Group is aware, there have been no full investigations regarding the fate and whereabouts of those individuals.

35. The Working Group was told repeatedly by officials that everyone in the country wanted to move on from the civil war period and not reopen that chapter of history, and indeed, it received some information indicating that part of Tajik society agreed with that approach. Nevertheless, the Working Group received reports of many families that would like to receive information about the fate and whereabouts of their disappeared relatives, but were fearful to come forward. It also received reports of the existence of some groups of relatives who continued trying to find information about those who remained unaccounted for and had requested exhumations of mass graves. In some cases, such groups had reportedly faced pressure from the authorities to stop their search. The Working Group received reports of one incident in which individuals had themselves tried to dig up remains in one of the alleged burial sites. The Working Group had asked to travel to Khatlon region to discuss those issues with the regional authorities and other stakeholders, but its request for those meetings was not granted. It did not seek to engage with the groups of relatives owing to the risk of reprisals and the atmosphere of fear surrounding disappearances from that period.

36. The Working Group regrets to conclude that there have been no efforts to ensure that the relatives are able to know the truth about the fate and whereabouts of the disappeared. The Working Group reminds the Government of its obligation to investigate allegations of enforced disappearances, both under human rights law, including article 23 of the Declaration, and customary international humanitarian law.⁵ Each victim, including affected family members of a disappeared person, has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society as a “vital safeguard against the recurrence of violations” (A/HRC/16/48, p. 13). The right to truth means the right to know about the progress in and the results of an investigation, the fate or whereabouts of disappeared persons, the circumstances of the disappearance, and the identity of the perpetrator or perpetrators. The right of the relatives to know the truth about the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. No legitimate aim or exceptional circumstances may be invoked by the State to restrict that right. Furthermore, the Working Group emphasizes that the anguish and sorrow caused to the families reaches the threshold of torture. The blanket inaction and State-led efforts to enforce collective silence and forgetting are clearly in flagrant breach of the families’ right to the truth.

37. The Working Group calls on the Government to acknowledge the suffering of families who have no information on the fate and whereabouts of their disappeared relatives more than 20 years on. The Government should adopt a truth-seeking State policy and develop specific mechanisms, supported by dedicated resources, for dealing with disappearances caused by and related to the civil war. That should include the creation of a national register to collect information on disappeared persons, the search for, mapping and conservation of burial sites, and the exhumation, identification and return to families of identified remains. The Government should guarantee that there will be no reprisals against or harassment of families that come forward with information about the disappeared. That process should include collaboration with independent partners who could provide the relevant and specialized expertise required to build trust and help prevent and monitor reprisals. The Working Group emphasizes that such processes should begin as a matter of urgency as, with the passage of time, memories are fading, individuals, places and events are more difficult to identify, and evidence is at risk of being lost. The Working Group welcomes the indications from the Government that it supports the recommendations concerning the creation of a national register to collect information on disappeared persons,

⁴ See www.unhcr.org/research/evalreports/3bd420b54/review-unhcr-activities-tajikistan.html.

⁵ See International Committee of the Red Cross study on customary international humanitarian law, rules 98 and 117.

and hopes that the other recommendations concerning exhumations and burial sites can also be implemented.

38. With regard to the exhumation of burial sites and identification of remains, the Working Group notes that Tajikistan has limited forensic capabilities, and only one small facility for DNA analysis in Sughd province. The Working Group welcomes the news that there are plans to open a DNA laboratory in Dushanbe and hopes that those plans can be promptly operationalized and that the country's forensic capabilities can be further strengthened. Following that, a DNA bank of affected families should be established, with appropriate guarantees on reprisals and confidentiality for families coming forward and with external assistance if required. Training for forensic officials on international standards, such as the Minnesota Protocol on the Investigation of Potentially Unlawful Death, should also be strengthened. The Working Group welcomes the indications from the Government that efforts are ongoing to strengthen the country's DNA analysis capacity and that it supports the recommendations concerning the strengthening of forensic capacity, training and the establishment of a DNA bank for families.

39. The Working Group is also aware of a policy, enforced until 2004 when a moratorium on the death penalty was declared, of not returning to the families the bodies of those who were executed in accordance with court sentences. Families were also not informed about the burial places of the executed persons. The Working Group wishes to highlight the families' right to have the remains of the executed persons returned to them and to dispose of those remains according to their own tradition, religion or culture. In cases where that proves impossible, families should be informed about places of burial.

40. The Working Group was informed that certificates of absence are granted only pursuant to a court decision. One government official recalled that a member of his own family had accepted a death certificate for a missing family member in order to be able to proceed with administrative procedures. The Working Group recalls that States should provide families of victims of disappeared persons with the means to regularize their legal status in relation to the disappeared persons after an appropriate period of time, but that relatives should not be required to declare them dead in order to do so.⁶ The Working Group encourages Tajikistan to ensure that certificates of absence, which allow individuals to complete all necessary administrative procedures, are available in cases where an enforced disappearance is recorded.

41. The Working Group also observes that following the prison riot in Vahdat, while the authorities provided assurances that family members of those killed were able to see the bodies, confirm the identity of the individual and perform funeral rites, information from other sources indicates that that was not the case. The Working Group was informed that some families were unable to identify the bodies of their relatives or inspect the coffins before they were interred. Furthermore, allegedly in one case, an individual whose family believed he had been killed and buried, reappeared alive after being held in solitary confinement, which would in itself constitute a period of enforced disappearance. The Working Group is also concerned by contradictory information provided to families of individuals suspected of having participated in the riot. The Working Group was informed by the authorities that the 20 surviving prisoners were, at the time of the visit, being held in the punishment block of the prison. However, it was not clear whether the families of those arrested had been promptly notified of their location.

42. The Working Group refers to article 13 of the Declaration, as the Government is obligated to ensure that complaints of alleged enforced disappearances are dealt with by a competent and independent State authority that has the power and resources necessary to conduct the investigation effectively, and that such investigations are carried out promptly, thoroughly and impartially. While the Working Group was informed of some examples of officials being prosecuted for torture, it appears there is total impunity for acts of enforced disappearance that occurred during the conflict or at any other time.

⁶ Human Rights Committee, general comment No. 36 (2018) on the right to life.

2. Reparation and memory

43. All victims of enforced disappearance and their relatives have the right to full reparation, which includes compensation, satisfaction, restitution, rehabilitation and guarantees of non-repetition, as provided for in article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance.

44. The Working Group observes that very little has been done to address issues of reparation. While a trivial amount of compensation was granted to the families of soldiers, it is not available to the families of other unaccounted for individuals. The Working Group is also aware that in many cases in Tajikistan, it was the male breadwinner of the family that disappeared, and female family members are continuing to suffer economic hardship resulting from the disappearance of their loved ones. That illustrates the gendered dimension of the phenomenon of enforced disappearance. Women as family members, particularly where they become household heads due to an enforced disappearance, are in specific material, financial, psychological and legal need (A/HRC/WGEID/98/2, para. 44). Furthermore, the Working Group recalls that States should grant adequate compensation, including in relation to any damage resulting from the enforced disappearance such as physical or mental harm, lost opportunities, material damages and loss of earnings, harm to reputation and costs required for legal or expert assistance (E/CN.4/1998/43, para. 73). The Working Group welcomes the fact that some psychosocial support for some relatives has been coordinated by the International Committee of the Red Cross through its accompaniment programme. That entails extensive consultation and cooperation with psychologists, lawyers and family associations in an effort to help the families deal with their anguish and the resulting psychological and social consequences of the disappearance. The Working Group calls on the Government to create a programme to provide full reparation to all families of victims of enforced disappearance and consider requesting international support in that regard.

45. Memory should be a key component following the end of conflicts as a fundamental element of reparation and a way to prevent further violations. The Working Group was informed that 27 June is National Reconciliation Day, but found no evidence of genuine efforts towards reconciliation. Similarly, there are no memorials for all victims of the civil war, rather in the words of one interlocutor “there are monuments, but to the perpetrators – they continue to have streets named after them”. The Working Group understands that some family groups have requested memorials, but their requests have never been granted, and requests to hold a Memorial Day specifically for victims have similarly been ignored. Those requests are an indication of the private convictions among some families of victims, given the sensitivities of the topic and the risks entailed with raising those issues. The Working Group welcomes the Government’s indication that it supports the recommendations to provide full reparation to the families of victims of enforced disappearance and to establishing a day of remembrance for all victims. The Working Group hopes that those and other recommendations can be promptly implemented.

B. Registration and notification in the criminal justice system

46. Despite the improvements in the legislative framework for preventing short-term disappearances at the initial stages of the criminal procedure (see paras. 26–27 above), allegations persist of the disappearance of apprehended suspects before their formal registration, notification of the relatives and placement in temporary detention facilities. According to several sources, transportation of apprehended suspects to the investigative agencies is intentionally delayed and/or they are held for hours and sometimes days in cars, apartment buildings, police station cells known as “katalazhki” and/or offices. Those practices often amount to short-term enforced disappearances of apprehended suspects and it is during that time that there is a heightened risk of torture and other forms of ill-treatment, often aiming at extracting confessions that are then used against the individual. The time of actual arrest, that is, the time at which the freedom of movement and freedom of action of a suspect is restricted, is then commonly falsified. The Working Group was informed by several interlocutors that delayed registration is seen as entirely normal, and that short-term enforced disappearance is the rule rather than the exception.

47. Reportedly, in contradiction to international human rights law, including article 10 of the Declaration, and amended national legislation allowing for unrestricted access of

lawyers to their arrested or detained clients, the practice of obstructing access to a lawyer upon initial apprehension of suspects persists. Lawyers' visits to their clients in both temporary detention and pretrial detention facilities continue to be subject to permission by either the investigator or the judge. It was reported that contracted lawyers are typically prevented from visiting clients held in a pretrial detention facility of the State Committee for National Security. In addition, judges approve or reject the prosecutor's petition to remand the person in custody only after expiration of his or her temporary arrest for up to 72 hours. Moreover, they do not review whether the person was subjected to human rights violations during and immediately after his or her apprehension and temporary arrest, whether a person has been forcibly disappeared and whether he or she was tortured or otherwise ill-treated.

48. According to several sources, there is also a practice of eluding procedural guarantees through employment of administrative apprehensions, which are temporary restrictions of liberty for certain procedural purposes, and administrative arrests – a form of penalty for misdemeanours, which may follow administrative apprehensions. The Code of Procedure on Administrative Offences provides for certain procedural safeguards – a report should, for example, be drawn up and a detained person's relative and a lawyer should be notified about the place where the apprehended person is located. As a rule, administrative apprehension cannot exceed three hours, but in exceptional cases, if a person does not have a permanent place of residence and with the court's approval, the period may be extended for up to 10 days. Apprehended individuals may spend that time anywhere from police stations to national security offices, anti-corruption agencies, customs authorities, forestry and hunting authorities, among others, and without notification, as national legislation does not specify the time period within which relatives and lawyers should be notified of the person's whereabouts.

49. In addition, unlike in criminal procedure, there is no requirement to record and count the time between actual restriction of liberty and the time of bringing the apprehended person to one of the above-mentioned agencies. That practice may amount to short-term enforced disappearances during which, reportedly, abuses are widespread. It is during those times that apprehended individuals are threatened and ill-treated, or even tortured, in order to obtain confessions and otherwise to build a criminal case. Those abuses often continue after an apprehended person is penalized for misdemeanour and serves administrative arrest for up to 15 days. There are reported instances of individuals being called to appear before the authorities as witnesses and subjected to abuse for that same purpose.

50. The Working Group received reports of isolation cells being used in detention facilities where detainees are held incommunicado. Allegedly, in some cases, they are held for prolonged periods ranging from six months to three years without their families being officially notified; they receive information on the whereabouts of their detained relatives only through unofficial sources. That is a reflection of the inadequate system of registration and notification in places of deprivation of liberty (see paras. 26–29 above). The Working Group visited two disciplinary cells in a detention facility and was disturbed by the inhumane conditions of detention. The cell consisted of a small room with no natural light, and the authorities indicated that individuals could be held in it for up to 15 days.

51. The Working Group was informed that there is limited monitoring and investigation of complaints related to torture and ill-treatment, falsification of arrest protocols or unlawful arrest. The International Committee of the Red Cross does not have access to places of detention in Tajikistan. The Working Group notes positively the establishment of a joint non-governmental organization and Office of the Ombudsman monitoring group which reportedly, since February 2014, has been conducting up to 16 visits a year to closed and semi-closed detention facilities. While the existence of the joint monitoring group is welcome, it apparently does not have access to some facilities, particularly the temporary detention facility of the State National Security Committee. The Working Group's request to visit that facility located in the capital city was not granted. The Working Group understands that the monitoring group is also unable to carry out special visits following specific complaints. The Working Group notes the information received from the Government that no complaints related to enforced disappearance have been made in the past five years. However, the Working Group highlights the fact that that may be linked to the lack of an autonomous crime of enforced disappearance in the State's legislation, to underreporting, to a lack of awareness of the fact that non-compliance with procedural

guarantees in detention can amount to enforced disappearance in some situations, and to the widespread acceptance of the practice.

52. The Working Group calls on Tajikistan to close the practical gaps that exist, in an effort to prevent those abuses. That includes establishing a simple, accessible and effective mechanism for families to be quickly notified of the individual's location after deprivation of their liberty, to prosecute officials who falsify arrest protocols, to ensure that confessions made under torture or duress are inadmissible in practice – which would help remove the incentive for enforced disappearances of short duration, to implement the concluding observations of the Committee against Torture, particularly in relation to fundamental legal safeguards (CAT/C/TJK/CO/3, para. 18) and to become a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Transnational arrests and non-refoulement

53. According to the information received by the Working Group during the visit, there have been a number of cases, recently and in the past, of Tajik individuals, reportedly political opponents, notably members of the Islamic Renaissance Party and of Group 24, who were residing abroad and were forcibly returned to Tajikistan. In some cases, those individuals have appeared in detention in Tajikistan after short periods of enforced disappearance, while in a few instances their whereabouts remain unknown. The authorities claim that they returned voluntarily or indicate that extraditions were carried out in accordance with the law and relevant extradition treaties or security cooperation agreements. Relatives were unaware of the whereabouts of their family members for a few days or months and the authorities provided contradictory information on the modalities for informing relatives of the whereabouts of individuals in such contexts. The Working Group is aware of alleged cases from 2015, 2018 and 2019 concerning at least four States. The Working Group is also aware of cases where individuals were allegedly threatened or subjected to ill-treatment to prevent them from speaking out about their forcible repatriation.

54. An example of such a case of transnational capture is that of the Tajik former opposition leader, which was brought before the European Court of Human Rights, in *Iskandarov v. Russia*.⁷ The petitioner was accused in Tajikistan, in his absence, of terrorism and other crimes, and his name was placed on an international list of wanted persons. In December 2004, the Prosecutor General of the Russian Federation received a request for his extradition. He was then arrested, but the extradition was refused because he had filed an asylum application in the Russian Federation, which was still pending. He was then kidnapped on 15 April 2005 by several men wearing traffic police uniforms who handcuffed him, placed him in a car and drove off. He was beaten and detained overnight in an unknown location. He was taken, blindfolded, to an airport, where he was put on a plane. After landing at Dushanbe airport, he was handed over to the Tajik law enforcement agencies. He was then held in a cell where he was tortured and kept in poor living conditions. The European Court of Human Rights found that his removal to Tajikistan was in breach of the obligation of the authorities of the Russian Federation to protect him against the risk of ill-treatment. The Working Group recalls that compliance with security cooperation or extradition agreements does not relieve Tajikistan of its obligation to prevent and eradicate enforced disappearances and ensure that relatives are informed of the fate and whereabouts of individuals.

55. Article 8 of the Declaration prohibits expulsion, return or extradition of a person to another State where there are substantial grounds to believe that he or she may be at risk of enforced disappearance. Under international human rights law, the principle of non-refoulement is of an absolute nature, which means, inter alia, that States cannot transfer or remove foreign nationals from their jurisdiction when the individuals risk being subjected to enforced disappearance, regardless of whether they entered the State regularly, whether they are asylum seekers, refugees, stateless persons, migrant workers or have another status, and whether they maintain or have lost their status. Tajikistan has failed to reflect that

⁷ European Court of Human Rights, *Iskandarov v. Russia*, application No. 17185/05, judgment of 23 September 2010.

obligation in its legislation and may have allowed individuals to be returned to States where they face a risk of enforced disappearance.

56. The Working Group welcomes amendments to the Code of Criminal Procedure prohibiting the extradition of a person if there is information to suggest that he or she may be tortured in the country of destination. The extreme seriousness of the crime of enforced disappearance and its absolute prohibition in international human rights law requires that the prohibition of extradition is extended to cases of persons who are at risk of enforced disappearance. The Working Group notes and welcomes the willingness of the Tajik authorities, expressed during the visit, to consider an appropriate amendment to the Code of Criminal Procedure.

57. The Working Group notes with concern that, while Law No. 1124 of 2014 on refugees includes clauses preventing a person seeking asylum from being penalized for illegal border crossing and prohibits refoulement on that basis, information received indicates that, in practice, those who arrive irregularly in the country are not able to submit an asylum application and may be prosecuted under the Criminal Code for illegal entry. The Working Group encourages Tajikistan to ensure that illegal entry by individuals seeking asylum is not criminally prosecuted and that such individuals are able to submit an asylum application.

VI. Conclusion

58. **Tajikistan has yet to come to terms with the violations of human rights committed during the civil war. More than 20 years after it ended, the wounds remain deep, and seem to be deliberately ignored. However, it is not too late for healing and reconciliation.**

59. **The continued refusal to look back at the past and the vilification of anyone linked to the opposition, or indeed anyone who tries to break the silence and speak about the past, will hinder the capacity of Tajikistan to move forward. It is of utmost importance that the State authorities, in consultation with relevant stakeholders, develop, propose and implement a comprehensive policy to address past abuses on all sides, including enforced disappearances. That policy should encompass the rights of all victims to truth, justice, reparation and remembrance.**

60. **There is an urgent need to engage in a process of search, exhumation and identification of the remains of missing persons, including those who were forcibly disappeared, so that they can be handed over to their families. That will require mapping of the places thought to have contained the remains, preservation of sites, improving capabilities and planning and conducting exhumations.**

61. **The Working Group believes that in order to come to terms with the painful legacy of the civil war, Tajikistan could benefit from the experiences of other post-conflict States that have successfully employed mechanisms developed within the concept of transitional justice.**

62. **The Working Group stresses that enforced disappearance cannot be considered as an issue of the past. It is a continuous crime which persists until the fate and whereabouts of a forcibly disappeared person are clarified. The lack of judicial enquiries and continuing impunity for cases of enforced disappearance are not only a violation of the victims' rights to truth and justice, but may also be a source of new violations in the future.**

63. **Indeed, the classification of some opposition parties as "extremist" and "terrorist" and escalating harassment and imprisonment of their members has already led to alleged extraterritorial abductions and enforced disappearances in recent years.**

64. **The invitation extended by the Government to the Working Group and its engagement is a positive and encouraging step. Recent legislative changes, including improving the notification and registration requirements during arrest and detention, are also very welcome developments.**

65. However, in practice, short-term enforced disappearance following initial apprehension continues to be the norm and a robust course of action to counter acts of enforced disappearances and torture is still lacking. A concerted effort is needed to eradicate that practice and to raise awareness of enforced disappearance among all stakeholders, including in the different branches and at the different levels of Government and among legal professionals.

66. Victims of violations, their family members and human rights defenders, including lawyers, continue to face reprisals from State authorities for speaking out. The Working Group observed extensive self-censorship and fear. Urgent steps are needed to reverse that extremely concerning trend.

67. The Working Group reiterates its willingness to continue a constructive dialogue with the Government and offers support for the full implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.

68. The Working Group reaffirms its solidarity with the victims of enforced disappearance and their families, as well as with civil society and lawyers who continue to advocate for human rights in difficult circumstances.

VII. Recommendations

69. In light of the above, the Working Group makes the following recommendations to the Government of Tajikistan.

70. Concerning enforced disappearances as the legacy of civil war, the Government should:

(a) Adopt, as a matter of urgency, a truth-seeking State policy and develop specific mechanisms, supported by dedicated resources, for dealing with disappearances caused by and related to the civil war. That should include the creation of a national register to collect information on, and the search for, forcibly disappeared persons, the mapping and conservation of burial sites, and the exhumation, identification and return to families of identified remains;

(b) Ensure full access to the register by relatives of the disappeared, lawyers, human rights defenders and any other concerned person;

(c) Promptly complete the planned DNA laboratory in Dushanbe and further strengthen forensic capacities and training for staff on international standards, such as the Minnesota Protocol on the Investigation of Potentially Unlawful Death;

(d) Establish a DNA bank of affected families with appropriate guarantees on reprisals and confidentiality for families coming forward, with external assistance if required;

(e) Introduce certificates of absence that enable family members to complete the necessary administrative procedures;

(f) Create a programme to provide full reparation to all families of enforced disappearance and consider requesting international support in that regard;

(g) Create a memorial day specifically for all victims of the civil war and other violent incidents and erect national local monuments to remember disappeared persons, in consultation with the victims' families and other stakeholders;

(h) Consider starting exchanges with other post-conflict States that have successfully employed mechanisms developed within the concept of transitional justice.

71. Concerning the legislative and institutional framework, the Government should:

(a) Introduce a specific prohibition against enforced disappearance in the Criminal Code, punishable by appropriate penalties that take into account its extreme seriousness. That should include:

(i) Various modes of criminal liability, including in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(ii) The application of command or superior individual criminal responsibility for such crimes;

(iii) Explicit provisions indicating that enforced disappearance is a continuous crime to which amnesties or immunities or a statute of limitations cannot be applied;

(b) Ratify the International Convention for the Protection of All Persons from Enforced Disappearances as soon as possible, with the express recognition of the competence of the Committee on Enforced Disappearances, according to articles 31 and 32 of the Convention.

72. Concerning transnational arrests and non-refoulement, the Government should:

(a) Ensure that any extradition requests are dealt with in full compliance with international human rights law;

(b) Ensure that refoulement of individuals to countries where there are substantial grounds to believe those individuals may be at risk of enforced disappearance is prohibited;

(c) Ensure that illegal entry by individuals seeking asylum is not criminally prosecuted and the individuals are able to submit an asylum application;

(d) Conduct training and awareness-raising among government officials on the principle of non-refoulement.

73. Concerning registration and notification in the criminal justice system, the Government should:

(a) Ensure that families are promptly notified of the arrests of suspects from the moment of actual restriction of freedom of movement and freedom of action of an apprehended person, and ensure that the new legal guarantees on notification and registration following initial apprehension are systematically implemented in practice including through:

(i) Extending procedural protections related to notification and registration to administrative apprehensions and arrests and when individuals are de facto deprived of their liberty when being called and interviewed as witnesses;

(ii) Establishing a centralized digital registration system for all places of detention;

(iii) Reducing the notification period for individuals moved to penitentiary facilities or transferred;

(iv) Conducting extensive training and awareness-raising on the guarantees among legal professionals, law enforcement officials and the public;

(v) Informing all law enforcement officials that delayed notification and falsification of records are prohibited and will not be tolerated, ensure that such practices are subject to an appropriate sanction and systematically punish persons who breach the requirements;

(vi) Systematically investigating all alleged cases of torture and ill-treatment, cases where families are not notified of detention or registration records are falsified, and sanctioning perpetrators;

(b) Grant the existing monitoring groups, the International Committee of the Red Cross and other independent monitors access to all facilities, including those run by the State National Security Committee;

(c) Fully implement the recommendations made by the Committee against Torture (CAT/C/TJK/CO/3) and become a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

74. In general, the Government should:

(a) Take decisive action and give clear orders at the highest level to prohibit any surveillance, threats, intimidation and harassment of human rights lawyers, civil

society and families of disappeared persons, and create an enabling environment for their work;

(b) Guarantee the safety of those who met with the Working Group and those engaging with any other international human rights mechanism and protect them from any form of reprisals, threat or intimidation;

(c) Instruct all public officials that any such actions will not be tolerated and will be punished accordingly;

(d) Include enforced disappearances in the training provided to law enforcement personnel, civil or military, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, as well as judges, prosecutors and lawyers;

(e) Continue to engage with special procedure mandate holders and consider extending invitations to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to visit the country.
