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لجنة حقوق الإنسان
الدورة الثانية والستون
البند ١١ (د) من جدول الأعمال المؤقت

الحقوق المدنية والسياسية، بما في ذلك مسائل استقلال القضاء، وإقامة العدل، والإفلات من العقاب

تقرير مقدم من لياندرو ديسبوي المقرر الخاص
المعني باستقلال القضاء والحامين*

إضافة

البعثة إلى طاجيكستان

* يعمم ملخص التقرير بجميع اللغات الرسمية. أما التقرير نفسه فيرد في مرفق هذه الوثيقة ويعمم باللغتين الإنكليزية والروسية فقط.

ملخص

استجابة لدعوة رسمية، قام المقرر الخاص المعني باستقلال القضاة والمحامين ببعثة إلى طاجيكستان في الفترة من ٢٣ إلى ٣٠ أيلول/سبتمبر ٢٠٠٥. وقد أجرى مناقشات متعمقة مع مسؤولين حكوميين والتقى بحرية بعدد كبير من المحاورين الذين زودوه بمعلومات مفصلة وأفكار متبصرة فيما يتصل بالجهاز القضائي. ويشعر المقرر الخاص بالامتنان لجميع من تحاور معهم.

ويبين التقرير أن طاجيكستان قامت، بعد الاستقلال، وبخاصة عقب انتهاء الحرب الأهلية، بإجراء سلسلة من الإصلاحات من بينها وقف توقيع عقوبة الإعدام، واعتماد قانون مدني وقانون جنائي جديدين، وتمديد مدد ولاية القضاة، والتصديق على جميع المعاهدات الدولية الرئيسية المتعلقة بحقوق الإنسان. وبينما ينوه المقرر الخاص بهذه الإصلاحات الهامة، فإنه ينظر بقلق إلى "الإصلاح التراجعي" فيما يتصل بدور وسلطات المدعي العام، التي تتجلى بصفة خاصة في القانون الدستوري الذي اعتمد مؤخراً بشأن مكتب المدعي العام. ويود المقرر الخاص أن يؤكد على أن الدور الشامل للمدعي العام يضع عقبات كبيرة أمام جهود الإصلاح في اتجاه إقامة سلطة قضائية فعالة ومستقلة، كما أنه يحول دون احترام مبدأ تكافؤ فرص المتخصصين في الإجراءات القضائية. وبينما يحتاج استقلال مجلس القضاء إلى مزيد من التعزيز، يوصى أيضاً بإدخال تعديلات فيما يتعلق بعملية اختيار القضاة في المستقبل. ويظل الفساد القضائي يشكل مصدراً رئيسياً للقلق وتحدياً حقيقياً ينبغي التصدي له بسرعة وبعزم. وفيما يتعلق بنقابة المحامين، من الواضح أن ثمة حاجة لإنشاء هيئة وحيدة ومستقلة تتولى شؤونها بذاتها وتعالج جميع القضايا المتعلقة بالمحامين. كما يسלט التقرير الضوء على الحاجة الملحة لتحسين مستوى التثقيف القانوني والتثقيف في مجال حقوق الإنسان لصالح جميع العاملين في المهن القانونية وذلك من خلال توفير برامج تدريبية شاملة، ولا سيما في مجال إقامة العدل. وفي هذا السياق، يدعو المقرر الخاص المجتمع الدولي إلى مواصلة وتعزيز دعمه للإصلاحات الرئيسية التي لا يزال يتعين إجراؤها.

ويعرب المقرر الخاص عن ثقته بأن هذا التقرير، الذي يتضمن تحليلاً نقدياً، سيساعد طاجيكستان، من خلال ما يتضمنه من استنتاجات وتوصيات، فيما تبذله من جهود إضافية للإصلاح من أجل إزالة العقبات الرئيسية التي تؤثر على استقلال جهازها القضائي. ويأمل المقرر الخاص أن يكون في هذه الاستنتاجات والتوصيات، مهما كانت محدودة في سياق هذا التقرير، ما يلبي ويدعم تطلعات جميع أولئك الذين يسعون جاهدين إلى إقامة جهاز قضائي مستقل يكون جديراً بثقة الشعب.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE
OF JUDGES AND LAWYERS, LEANDRO DESPOUY, ON HIS MISSION
TO TAJIKISTAN**

(23 TO 30 SEPTEMBER 2005)

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Introduction

1. Pursuant to his mandate and responding to an official invitation, the Special Rapporteur on the independence of judges and lawyers visited Tajikistan from 23 to 30 September 2005.
2. The mission was facilitated by the United Nations Tajikistan Office of Peace-building (UNTOP) and included visits to Dushanbe, Khujant and Kurgan-Tube. The Special Rapporteur met with the Minister for Foreign Affairs and the Minister of Justice. He had extensive consultations with a wide range of judicial and other officials: the President of the Constitutional Court, the President of the Supreme Court, the Prosecutor General, the Chairperson of the Prosecutor's Office in Khujant, the Head of the Department on Constitutional Guarantees of Citizen's Rights at the Presidential Office and Acting Chairman of the Government Commission on Implementing the International Human Rights Obligations of Tajikistan, the Chairperson of the Parliamentary Committee on Legislation, Constitutional Legality and Human Rights, the Chairperson of the Council of Justice, the Chairperson of the Dushanbe City Court, the Chairperson of the Khujant City Court, the Chairperson and judges of the Kurgan-Tube City Court, the Dean of the Law Faculty of the Tajikistan State National University, the Director of the Training Centre for Judges, the Chairperson of the Association of Judges and the Chairperson of the Collegium of Advocates. Moreover, he met representatives of various local non-governmental organizations (NGOs) such as the Legal Education Centre, the Bureau on Human Rights, the Association of Advocates, the League of Women Lawyers, the Human Rights Centre, the Organisations Society and Law, Law and Prosperity and Firm Contract, Legal Clinic, the Centre of Economic and Legal Reform, and the Human Rights Institute. In addition, he had consultations with the Representative of the Secretary-General to Tajikistan, the Resident Coordinator and heads and representatives of the local offices of various United Nations agencies. He met with representatives of the Organization for Security and Cooperation in Europe (OSCE), and held discussions with representatives from various international organizations and national cooperation agencies: the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), ARD/Checci and the Open Society Institute.
3. The Special Rapporteur is very grateful to the Government of Tajikistan for offering him this unique opportunity to examine with them the current status of and recent developments regarding the judiciary. He appreciated its full cooperation and the frank and open dialogue that could take place. He was able to meet all those he wanted to meet without any forms of limitations or constraints, including NGOs that perform very valuable work. He feels very indebted towards each and every person he met for the information they provided and their insight into current developments and needs for future reforms. He is hopeful that his recommendations will meet and support the main aspirations of all those within the Government, the Parliament, the judiciary and civil society who strive to achieve an independent, effective and transparent judiciary, and will provide ground for further fruitful exchanges and progress.

I. MAIN FINDINGS

A. General political and legal background

4. Independence in 1991 was followed by a six-year civil war. In 1997, a peace accord was concluded between the Government and the United Tajik Opposition under the auspices of the United Nations, which was implemented by 2000. Under the peace agreement, 30 per cent of the government positions had to be allocated to the Tajik Opposition.

5. Mr. Emomali Rakhmonov was elected President of Tajikistan in 1994 and re-elected in 1999. In 2003, a referendum was passed that allowed Mr. Rakhmonov to run for two more consecutive seven-year terms after his present term expires in 2006. Consequently, Mr. Rakhmonov could serve as President until 2020, which would make a total term of 25 years. This must be seen as contrary to article 65, paragraph 42, of the Constitution which provides for only two consecutive terms of seven years.

6. From 1994 to 1997, the United Nations Mission of Observers in Tajikistan (UNMOT) monitored the ceasefire agreement between the Government of Tajikistan and the United Tajik Opposition. Following the signing of the peace agreement in 1997, the UNMOT mandate was expanded to help monitor its implementation. Following the withdrawal of UNMOT, in May 2000, UNTOP was established, with the mandate, inter alia, to strengthen democratic institutions and conflict prevention mechanisms, promote the rule of law and contribute to building national capacities in the area of human rights. Thus, Tajikistan has a long-standing and positive relationship with the United Nations.

7. The Constitution enshrines that the Republic of Tajikistan is a sovereign, democratic, law-governed, secular and unitary State that recognizes the inviolability of human rights and freedoms. Article 19 states that every person is guaranteed judicial protection and the right to demand the review of his or her case by a competent and impartial court established by law.

8. Since independence, Tajikistan has ratified all seven core international human rights instruments: the Convention on the Rights of the Child (ratified in 1993); the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1993); the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1994); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 1994); the International Covenant on Economic, Social and Cultural Rights (ratified in 1998); the International Covenant on Civil and Political Rights and its Optional Protocol (ratified in 1998); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ratified in 2002). According to article 10, paragraph 3, of the Constitution, international legal instruments ratified by Tajikistan form an integral part of the national legal system. In case of a contradiction, the norms contained in the international legal instruments shall apply.

B. The court system

Constitutional Court

9. The Constitutional Court was established in 1995 as the judicial organ protecting provisions enshrined in the Constitution. The list of competencies outlined in the Constitution (art. 89) is not exhaustive and is complemented by articles 14 and 15 of the Constitutional Law on the Constitutional Court. The Court mainly considers the constitutionality of legal acts and disputes between State organs relating to their competencies. Importantly, the Court is also competent to deal with individual complaints of citizens on alleged violations of their constitutional rights and freedoms resulting from the implementation of a law deemed unconstitutional (article 37, paragraph 5, of the Constitutional Law on the Constitutional Court). However, this remedy is not enshrined in the Constitution and appears to have been used only rarely. Decisions of the Constitutional Court are final.

The ordinary court system

10. In 2001, the Constitutional Law on the Courts of Tajikistan was adopted, consolidating and systematizing previous laws on the status of judges, court proceedings, the Supreme Court, the military courts, the economic courts and the Council of Justice Act. Rayon and city courts act as courts of first instance in civil cases, criminal cases and administrative cases. Their chairpersons and deputies (art. 85, para. 2) and the judges (art. 14, para. 2) are appointed by the President according to the Constitutional Law on Courts. Rayon and city courts can refer a request to the Constitutional Court related to the question of constitutionality of a law in an individual case. Oblast courts, the court of the Badakshan Mountainous Autonomous Region and the City Court of Dushanbe may act either as courts of cassation or first instance of civil, criminal and administrative cases. They act as courts of first instance in cases stipulated in article 32 of the amended Criminal Procedural Code. The Presidium of each of these courts exercises supervision over their activities. Judges are appointed by the President upon the proposal of the Council of Justice. The Supreme Court is the highest judicial body and exercises supervision over the activities of the military courts at garrison level, the court of the Badakshan Mountainous Autonomous Region, regional courts, the Dushanbe City Court, city courts and district courts in civil, criminal, administrative and other cases (article 22 of the Constitutional Law on the Courts). The Supreme Court acts as court of first instance in criminal cases stipulated in article 33 of the Criminal Procedural Code. The chairperson and the judges of the Court are elected by the National Assembly (upper chamber of the Parliament) upon the proposal of the President. The court includes three divisions (collegia) addressing, respectively, civil cases, criminal cases and cases related to the military jurisdiction.

Economic courts

11. In Tajikistan, there is a special system of economic courts, as described in articles 45 to 60 and 91 to 94 of the Constitutional Law on the Courts. The Higher Economic Court is the highest judicial body for economic disputes and other cases within the jurisdiction of economic courts, and exercises supervision over their activities and provides clarifications on judicial practice (art. 45).

Military jurisdiction

12. Pursuant to the Constitutional Law on the Courts, military courts at the garrison level functioning as courts of first instance and the Military Chamber of the Supreme Court form part of the ordinary court system. The jurisdiction of military courts and the procedures governing their establishment and operation are set out in the Constitutional Law on the Courts. According to article 67 of this law, military courts consider civil and criminal cases. Article 63 stipulates the jurisdiction of military courts over civil cases, provided one of the parties is a member of the military. Military courts have jurisdiction to examine criminal cases concerning both military and civil persons provided that at least one of the crimes (in case of several crimes committed) or one of the accused (in case of several accused) falls within the jurisdiction of military courts (art. 62).

C. Other relevant institutions

The Council of Justice

13. Until 1999, the Ministry of Justice was the competent body for the administration of the judiciary. In an attempt to grant the judiciary more independence, the Council of Justice of Tajikistan was established by presidential decree of 14 December 1999, which was later confirmed by the Law on the Council of Justice adopted on 6 June 2000 and the Constitutional Law on the Courts adopted on 6 August 2001. Section 4 of this law stipulates that the Council of Justice is a collegiate body with the task of organizing the work of the courts (except the Constitutional Court, the Supreme Court and the Higher Economic Court) as regards human resources, finance and logistics. In conformity with presidential decree of 14 March 2003, the Council of Justice is composed of seven members, of whom only one is a judge (the Chairperson of the Supreme Court). Other members include the respective chairpersons of the lower chamber (Assembly of Representatives, or Majilis Namoyanandagon) and of the upper chamber (National Assembly or Majilis Milliy) of the Supreme Assembly (Majilis Oli), the State Adviser of the President for human resources policy and the Chairperson, the First Deputy Chairperson and the Deputy Chairperson (Secretary) of the Council of Justice. The latter three are appointed by presidential decree (article 99 of the Constitutional Law on the Courts as amended). This composition renders the Council of Justice, and with it the entire judiciary, dependent on the President and his administration.

Qualification Collegium of the Council of Justice

14. The Council of Justice is the State body in charge of the selection of the judicial candidates. To this end, a collegium was established within the Council, which is composed of judges only.

Training Centre for Judges under the Council of Justice

15. The Training Centre for Judges was established by presidential decree of 14 March 2003 as an institution of the Council of Justice. The Training Centre started to develop and implement its activities following the appointment of its director in March 2004. The costs for three posts (director and two deputies) are covered by the State budget. A library and a computer centre

have been set up with the support of ARD/Checci, USAID and the Open Society Institute. Since September 2004, a new 14-day training programme is being implemented, which contains four hours of studies on international obligations of Tajikistan. A special programme on international law is currently being developed, which will last 3 days, and is supposed to be added to the 14-day basic training. More recently, a pilot “Sunday school” was set up, which covers 25 hours of study on international standards. At present, 40 judges and future judges attend this school. These programmes are almost exclusively conducted on the basis of support by international donors. Furthermore, distance learning programmes are now being developed. At the Training Centre, the idea of a single academy for all legal professions is being discussed. It should also be noted that a strong need for training of law enforcement officials was underlined by many interlocutors.

Department on Constitutional Guarantees of Citizen’s Rights

16. In 1997, the Department on Constitutional Guarantees of Citizen’s Rights was established in the Executive Apparatus of the President. The Department is tasked to assist the President and the Government in monitoring the situation of rights and freedoms of individuals and citizens. Furthermore, the Department provides the President and the Government with advice in the development and implementation of policies affecting human rights and contributes to the legislative drafting process on issues related to the Department’s competencies. The Department is competent to receive citizens’ complaints. However, the Department remains dependent on the Presidential Administration under which it was established. Furthermore, the Department has additional administrative functions along with those related to human rights, which prevents it from concentrating its efforts on this area.

Commission on implementing international obligations of Tajikistan in the field of human rights under the Government

17. Established by the Government in March 2002, the Commission is a body on the level of vice-ministers; it is chaired by the Deputy Prime Minister and includes two NGO representatives. It is convened on an ad hoc basis and is tasked to further the coordination of the activities of different ministries and other State institutions in the implementation of international human rights obligations. The Commission has a final say on the drafts of State reports to be submitted to United Nations human rights treaty bodies. Since December 2004, the Commission has no chairperson and is ad interim headed by the Deputy Chairperson, who is the Head of the Department on Constitutional Guarantees of Citizen’s Rights.

Governmental Commission on the Rights of the Child

18. Established on 7 September 2001, the Commission includes vice-ministers, representatives of the Executive Apparatus of the President and two representatives of civil society. Its mandate is, inter alia, to coordinate the activities of ministries, State committees and other State bodies in the implementation of national legislation and international instruments related to the rights of the child and to assist in the preparation of State reports to be submitted to the Committee on the Rights of the Child.

The National Ombudsman

19. Tajikistan does not have an Ombudsman. However, the idea of establishing such an institution is being discussed.

D. Main recent reforms and developments affecting the judicial system

Adoption of new codes

20. Since independence, and in particular following the end of the civil war, Tajikistan has adopted a number of new laws and has amended legislation: the 1997 Labour Code, the 1998 Criminal Code, the 1998 Family Code, the 1999 Civil Code (parts I and II) and the 2001 Penal Enforcement Code.

Tenure of judges

21. Pursuant to article 84, paragraph 4, of the Constitution as amended in 2003 and Constitutional Law No. 36 of 17 May 2004, the tenure of judges was increased from 5 to 10 years.

Moratorium on the death penalty

22. In April 2004, the President announced the introduction of a moratorium on the death penalty and signed a law to that effect on 15 July 2004. The moratorium applies to death sentences pronounced prior to 30 April 2004, which as a consequence are commuted to 25 years' imprisonment, as are those pronounced after that date. Moreover, the Criminal Code as amended on 1 March 2005 establishes life imprisonment as an alternative to the death penalty. In addition, pursuant to the amendments, life imprisonment shall not be imposed on women and persons who committed a crime at an age below 18 years.

Ratification of international human rights treaties

23. Tajikistan ratified all seven major human instruments and the Optional Protocol to the International Covenant on Civil and Political Rights (see above).

Prison system under the Ministry of Justice

24. Pursuant to Presidential Decree No. 855 of 26 July 2002, the administration of the prison system has been transferred from the Ministry for Internal Affairs to the Ministry of Justice. The prisons appear to remain inaccessible for independent monitoring, as very few NGOs and international organizations are able to implement their projects in prisons. The administration of pretrial detention facilities remains under the Ministry for Internal Affairs.

Trafficking of women and girls and criminalization of violence against them

25. As a country of transit and origin Tajikistan has taken action to tackle the problem of trafficking in persons by amending the Criminal Code (arts. 130.1 and 132). Jurisprudence is now being developed by the courts on this issue. A draft law on domestic violence is currently being prepared.

Gender law

26. The Law on Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights was adopted in March 2005. The law represents a very important step towards guaranteeing women's equality in the country. Nonetheless, mechanisms for effective implementation of the law need to be developed at the governmental level.

Legal education

27. After independence, the number of law faculties has significantly grown. Whereas in Soviet Times there was only one law faculty on the territory of the former Soviet Republic (the Tajik State University located in Dushanbe), to the Rapporteur's knowledge there are at present eight law faculties throughout Tajikistan, and an estimated number of 12,000-13,000 law students enrolled. The Tajik State National University has a department of international law, and in addition, envisages the establishment of a human rights sub-department. However, the quality of legal education suffers from the shortage of qualified professors and an overly theoretical approach. In August 2005, several educators from law faculties attended a training on the methodology of human rights education conducted by UNTOP and the OSCE Office in Tajikistan.

Procedural codes

28. A review of the Civil Procedural, Criminal Procedural and Economic Procedural Codes is ongoing, in addition to the continuing work on a draft of part III of the Civil Code.

Administrative codex

29. The Rapporteur noted with appreciation that the development of an administrative codex is being pursued in Tajikistan. The codex would most importantly set up binding administrative procedures that would provide the citizens with a tool against arbitrary decisions of officials.

E. Conduct of judicial proceedings

Powers of arrest

30. According to article 412, paragraph 5, of the Criminal Procedural Code, the police may arrest and detain a suspect without an arrest warrant for up to three days. Within 24 hours, the investigating officer is required to submit a written report on any case of arrest to the prosecutor's office, and within a maximum of 48 hours the prosecutor is required to decide whether to keep the arrested person in detention or order his/her release.

Access to legal counsel

31. According to article 19, paragraph 2, of the Constitution of Tajikistan, everyone is entitled to the assistance of a legal counsel from the moment of his or her arrest, however, it should be noted that in practice:

- Article 49 of the Criminal Procedural Code delays this constitutional guarantee from the moment of arrest to 24 hours after the arrest. Moreover, it appears that in practice

the right to legal counsel is only ensured once the arrest of a person is registered. Several cases have been brought to the attention of the Special Rapporteur in which up to several days elapsed before the arrest was registered. During this period, the arrested person remains without any means to defend her/his rights;

- Access to independent legal counsel also seems to be obstructed by the requirement for the lawyer to receive permission by the official investigating the case and, in some cases, by the head of the respective remand centre (SIZO - *sledstvenniy izolator*) to visit the arrested person;
- Many detainees are said to be unaware of their right to legal assistance. Cases have also been brought to the attention of the Special Rapporteur in which the arrested persons or detainees were persuaded or forced to sign a declaration that they renounced the assistance of a lawyer.

Right to be promptly informed of the reasons of arrest and the charges

32. Pursuant to article 412, paragraph 11, of the Criminal Procedural Code, an arrested person has the right to be informed of the charges brought against him/her. However, the article does not indicate any time frame in which the charges need to be brought. Cases were brought to the attention of the Special Rapporteur in which the accused persons found out about the charges brought against him/her only at the beginning of the trial.

Notification of family members

33. Article 412, paragraph 6, of the Criminal Procedural Code specifies the requirement to notify the family of the arrested person of the arrest. Notification in a criminal case against a minor is mandatory. However, no time delay is provided for, and in practice, this right often appears to be disregarded.

Remand in custody

34. Pursuant to articles 6, 90, 413 and 415 of the Criminal Procedural Code, remand in custody may be imposed as a preventive measure by the prosecutor or a court in general only with respect to offences for which the law prescribes punishment in the form of deprivation of liberty for a period of more than one year. Though the law prescribes remand in custody as an exception, it appears to be frequently used in practice and often not to be sufficiently justified by the prosecutor. According to article 221.1 of the Criminal Procedural Code, persons remanded in custody have the right to appeal to the court against their detention or the extension of its duration. In practice, however, this remedy appears to be rarely used. An explanation for this may be that as reported to the Special Rapporteur, the courts do not examine such appeals in detail and tend not to challenge a decision taken by the prosecutor.

Length of pretrial detention

35. Pursuant to article 92, paragraph 1, of the Criminal Procedural Code, pretrial detention shall not exceed two months. In exceptional circumstances, pretrial detention can be extended by a district prosecutor or equivalent for up to three months, then by a regional prosecutor, the

prosecutor of Badakhshan Mountainous Autonomous Region or equivalent for up to six months, and by the General Prosecutor and the Senior Military Prosecutor for up to nine months. A further extension of the pretrial detention for up to one year and three months is only possible in exceptional circumstances and if the accused is suspected to have committed a grave crime (art. 92, para. 2).

Presumption of innocence

36. While the guarantee of the presumption of innocence is enshrined in article 20 of the Constitution and article 8, paragraph 2, of the Criminal Procedural Code, in practice, however, this principle appears to be frequently undermined by the overarching power of the prosecutor with regard to the conduct of judicial proceedings and his excessive powers to arrest suspects and hold them in remand. Cases have been brought to the Special Rapporteur's attention in which representatives of the prosecutor's office, in declarations to the media, called suspected persons "criminals" even though no court had yet passed a sentence. This runs against the principle of presumption of innocence as outlined in general comment No. 13 (1984) of the Human Rights Committee, stressing the duty of all public authorities to refrain from prejudging the outcome of a trial. Courtrooms in which criminal trials are conducted continue to be equipped with a metal cage in which the defendants are held, which goes against the principle of presumption of innocence. The law provides for the possibility to refuse the registration as candidates for election of individuals against whom criminal proceedings are pending, despite the fact that their guilt has not been established. Wherever the defendant's guilt cannot be established based on the evidence brought by the prosecutor during the trial, there is a practice by the courts based on article 233 of the Criminal Procedural Code to return the case for complementary investigation, instead of ordering the release of the defendant.

Exercise of defence rights

37. Article 19, paragraph 2, of the Constitution sets out the right to legal assistance. The legal counsel has the right to meet freely with the client in detention, in person, in confidence and without restriction as to time; this is provided for in articles 53, 203, paragraph 1, and 412, paragraph 18, of the Criminal Procedural Code and article 10 of the Law on Advocacy. In practice, however, access to legal independent counsel often appears to be obstructed by the requirement for the lawyer to obtain a one-time permission to visit the arrested or accused person and the often reported restricted possibility to meet in private with him/her. In the recent case of Mr. Mahmadrusi Iskandarov, who was sentenced to 23 years' imprisonment for corruption, terrorism, illegal possession of weapons and non-authorized body guards, the Rapporteur was provided with information that his lawyer was repeatedly denied access to him and was not able to meet his client in private.

Principle of equalities of arms

38. The adversarial principle and the principle of equality of parties in court proceedings are enshrined in article 88, paragraph 2, of the Constitution. Furthermore, various provisions in the Criminal Procedural Code provide for the access of lawyers to information relevant to the representation of their clients. However, this principle does not always seem to be requested, in particular:

- In ongoing investigations, it appears that the access to case files and the ability of the advocate to influence the course of an investigation is limited. This is mostly due to the de facto power of the prosecutor or the investigating officer to grant access to evidence only after an investigation is completed;
- The right to legal defence often appears to be curtailed by the de facto limitations for the advocate to present evidence on behalf of the accused or to challenge evidence brought by the prosecution. In this respect, cases have been reported where requests by the defence lawyer to summon witnesses to testify other than those already included in the list of the prosecutor were rejected, although they were important or even decisive for the case;
- The Law on Advocacy has recently been downgraded from a constitutional law to an ordinary law, suggesting an inferior position of the lawyer vis-à-vis the prosecutor whose competencies, structures and functions are set out in the Constitutional Law on the Prosecutor's Office.

Confessional evidence and allegations of torture

39. It appears that evidence obtained in violation of the law, including through torture, cruel, inhuman or degrading treatment or punishment or duress, in particular during police custody and in the absence of a lawyer, is still used as evidence in court despite decisions to the contrary made by the Constitutional Court and the Supreme Court. It should be noted that both the Criminal Code and the Criminal Procedural Code do not provide sufficient guarantees in this respect. Officials of the Prosecutor's Office informed the Special Rapporteur that evidence obtained through torture or cruel, inhuman or degrading treatment is used in the trial if there is other evidence supporting the fact proven by the evidence obtained in this way. Judges often seem to base their judgements on confessions obtained during police custody or pretrial detention, even if the defendant withdraws his or her confession, or if the defendant or a witness makes a testimony about the use of torture. Moreover, there is no legal provision that would oblige the investigator, prosecutor or judge to provide the arrested person with an independent medical examination at the earliest possible time.

The role of judges

40. Judges tend to base their judgements mainly on arguments brought forward by the prosecutor. This derives from the greater authority of the prosecutor who has the power to exercise supervision for and exact compliance with the laws, pursuant to article 93 of the Constitution, in addition to prosecuting defendants on behalf of the State. Cases have been brought to the Special Rapporteur's attention in which judges were not in a position to independently pronounce judgements for fear of possible retaliation, since a judge acquitting a person charged of a criminal offence may be suspected of having been bribed and is exposed to being arrested and charged with corruption. The Special Rapporteur received information that this happened to a judge of the Khujant City Court, Murtazo Aliev, who had acquitted Mr. Dekhkonboi Soliev and three other persons. Mr. Aliev was sentenced to one year in prison for deliberate pronouncement of an illegal ruling (article 349 of the Criminal Code). Another disquieting factor is that judges often base their decisions on confessions obtained from an arrested person during pretrial investigation in the absence of an independent legal counsel.

The role of witnesses

41. Due to the overwhelming authority of the prosecutor in the trial, witnesses are said to be reluctant to give testimony on behalf of the accused. There is no witness protection scheme.

Acquittal rate

42. The position of judges described above provides an explanation to why the acquittal rate is very low, even though it has slightly increased in the past years. Out of a total of 4,209 criminal cases considered between January and June 2005 by all instances, 3,835 persons were found guilty, and 72 persons were acquitted, which represents an acquittal rate of 1.7. Yet, this represents an increase by 44 acquittals over the same period in 2004.

Rehabilitation and compensation in case of acquittal

43. Article 85 of the Criminal Code provides for restoration of the rights of a person who has been prosecuted without justification and who has been unlawfully convicted. The article also provides for full compensation. However, the Special Rapporteur was not able to obtain information on the number of cases in which compensation was actually provided.

Appellate review

44. There is no provision for the judicial appellate review of judicial decisions. The cassation procedures review contested procedural issues of a case. Discussions on the introduction of an appellate review are ongoing.

Suspension of the judicial decision

45. According to article 41 of the Constitutional Law on the Prosecutor's Office, the prosecutor can temporarily suspend the execution of the judicial decision.

F. Equal access to the courts

Free legal assistance

46. Articles 21 and 92 of the Constitution stipulate that the State shall guarantee judicial protection. However, there is no explicit constitutional provision guaranteeing free legal assistance provided by the State if a citizen does not have financial resources to hire a lawyer. In practice, free legal assistance is provided by members of the two collegia of advocates and NGOs such as the League of Women Lawyers, the Bureau on Human Rights and Rule of Law and the Human Rights Centre. Advocates providing free State legal assistance are either not paid at all, or only partially or very late for their services through the local State executive authorities. There appears to be an arrear for unpaid legal services of about US\$ 330,000.

Refugees and asylum-seekers

47. There have been several cases in which persons, mainly of Afghan origin, were deported from Tajikistan while their appeals against a negative decision by the Refugee Status

Determination Commission under the State Migration Service in the Ministry of Labour on their application for registration of the asylum claim or for granting or extending refugee status were being considered before national courts.

G. Judges

The historical legacy

48. During the Soviet era, judges were not regarded as fulfilling the function of protecting the rights of the citizen in court, but rather as an extended arm of the Communist Party dominating the executive branch.

Qualifications

49. The requirements to qualify as a judge are spelt out in the Constitution. Pursuant to article 85, paragraph 2, of the Constitution, to become a judge, one must be 25 years old and have at least 3 years' experience in the legal profession. In order to become a judge at the oblast level or the Supreme Court, one must be 30 years old with 5 years of experience (art. 85, para. 1) and for the Constitutional Court, the minimum age is 30 years with at least 10 years of experience in the legal profession (art. 89, para. 2). The 2001 Constitutional Law on Courts sets out the organization and operating procedures of the courts.

Appointment and tenure

50. The judges of the Constitutional Court, the Supreme Court and the Higher Economic Court are elected by the National Assembly (upper chamber of the Parliament) upon the proposal of the President (article 14, paragraph 1, of the Constitutional Law on Courts). All other judges are appointed by presidential decree upon the proposal of the Council of Justice (art. 14, para. 2). For the latter, individuals have to pass an oral examination before the Qualification Collegium of the Council of Justice. Whereas there is only one judge among the members of the Council, the Qualification Collegium is composed of judges only. Since the candidates have to answer different questions, no objective and direct comparison is possible among the candidates. Moreover, the possibility of the executive branch interfering with the independence of the judiciary with regard to the selection process is significantly high since the decision as to whether a recommendation by the Council of Justice will be supported is made by the presidential administration. As already referred to above, the tenure of judges has been increased to 10 years for judges at all instances (article 84, paragraph 4, of the Constitution). At present, 286 judges are sitting at the oblast, rayon and city courts.

Removal and disciplinary measures

51. According to article 18 of the Constitutional Law on Courts, judges of the Constitutional Court, the Supreme Court and the Higher Economic Court can only be removed by the National Assembly upon the proposal of the President; all other judges can be removed by the President upon the proposal of the Council of Justice. In the latter case, any violation of judicial conduct is examined by the Qualification Collegium of the Council of Justice. In case the Collegium confirms the alleged violation, it addresses a request for removal to the Council of Justice. The Council refers its decision to the President who issues a decree on the removal.

Judicial immunity

52. According to article 91 of the Constitution, judges enjoy immunity. The immunity can be lifted by the National Assembly for judges at the Constitutional Court, the Supreme Court and the Higher Economic Court and for all other judges by the President (article 9 of the Constitutional Law on the Courts). Criminal investigations against judges can be initiated by the General Prosecutor. In criminal cases, judges can be tried by the Supreme Court only.

Salaries

53. Depending on the length of service, their qualification class, academic expertise and obtained gratifications, salaries of judges are around US\$ 40 for judges of rayon, city and oblast courts and around US\$ 70 to 80 for judges of the Supreme Court and Constitutional Court.

H. The procuracy

The historical legacy

54. In Tajikistan, the powers and competencies of the procuracy (*Prokuratura*) do not merely entail the prosecution of defendants on behalf of the State, but also to control the exact observance and uniform execution of laws within the framework of their authority, which is enshrined in article 93 of the Constitution as its primary responsibility. This special feature, which is still widespread throughout the Central Asian region and other CIS countries, has its origins in the Soviet legal system.

Constitutional Law on the Prosecutor's Office

55. In July 2005, the Parliament adopted the Constitutional Law on the Prosecutor's Office. The law provides inter alia that the Office is competent to issue arrest warrants (art. 33), oversee a significant number of laws and by-laws adopted by a great number of central and local State bodies (art. 23), have the indirect right to initiate legislation (art. 11), to "protest" against a judicial decision (art. 39), and to defer temporarily the execution of judicial decisions (art. 41).

Power to "protest" against an already enforced legal decision

56. Pursuant to article 39 of the Law on the Prosecutor's Office, this right already entered into force. In exceptional cases, this power can also be exercised with regard to decisions of the Plenum of the Supreme Court. The law provides neither for preconditions or time frames to exercise this power and this entails significant legal uncertainty with regard to judicial decisions already enforced.

Temporary suspension of court decisions

57. Pursuant to article 41 of the Constitutional Law on Prosecutor's Office, the General Prosecutor and his deputies have the competency to temporarily suspend the enforcement of a pronounced sentence. This implies that in case a person is acquitted by the judge, he/she cannot be released if the prosecutor exercises this right.

Revision of the Criminal Procedure Code and the Constitutional Law on the Prosecutor's Office

58. Important work is being undertaken to finalize the comprehensive reform of the Criminal Procedural Code. However, given the fact that the Law on the Prosecutor's Office is a constitutional law, with supremacy with regard to ordinary laws, the guarantees of a newly adopted or amended Criminal Procedural Code in compliance with international standards will remain inapplicable until such time as the Constitutional Law on the Prosecutor's Office is itself amended in line with international guarantees of fair trial.

I. The bar*Legal professional organizations*

59. The Law on the Advocacy provides for the possibility of establishing collegia of at least 40 lawyers. These are independent associations of professional lawyers providing qualified legal assistance to individuals and legal entities. At present, there is the Collegium of Advocates of the Republic of Tajikistan (Republican Collegium) with a membership of about 260, and a collegium of advocates of the Sogd oblast, which has about 130 members. No other collegia have been established so far. In an effort to unite the members of the collegia and private advocates, the Association of Advocates was established in March 2003, bringing together some 120 advocates of the Republican Collegium, 100 from the Sogd Collegium and 20 private advocates. Unfortunately, this association appears to be rather inactive.

Access to the profession

60. At present, there is a level of uncertainty with regard to the implementation of the rules regulating admission to the profession. Until 2004, in order to represent a party in a criminal case, an advocate had either to be a member of one of the two existing collegia or to have a licence granted by the Ministry of Justice. Admission to a collegium was granted by its presidium upon recommendation of the qualification commission of the collegium. In order to receive a licence from the Ministry of Justice, a candidate had to pass an oral examination organized by the Qualification Commission of the Ministry. In order to renew this licence, advocates had to pass another examination. A total of 112 licences were granted by the Ministry of Justice under this procedure. In civil cases, there was no requirement to be a qualified advocate or a jurist in order to represent parties.

New rules for access to the profession

61. In May 2004, the Law on Licensing for some 104 activities and professions, including the provision of paid legal services, was adopted by the Parliament. The law stipulates that all advocates providing paid legal services are henceforth required to apply for a licence granted by the Ministry of Justice. The regulation on licensing of separate types of activities was approved by the Government on 1 September 2005. To the Special Rapporteur's knowledge, 32 licences have been issued after the adoption of the law. The new law transfers the authority to regulate admission to the profession to the executive branch. Furthermore, it is not yet clear what will happen with the established collegia once the unified system of licensing will be implemented.

Continuing legal education

62. In 1997, an institute was established by presidential decree under the Ministry of Justice to provide continuing legal education for all legal professions. It took several years until a suitable building was found, which subsequently needed to be renovated. Therefore, the institute has only recently started its training activities, which are at present also carried out in the regions.

Ethical rules

63. Ethical rules applicable to all advocates are contained in the Law on the Advocacy, in particular articles 8, 9, 11, 49, 52 and 53. Rules of Professional Conduct of the Advocates of the Republic of Tajikistan were adopted by the Republican Collegium in 1999. The Sogd Collegium has drafted its own rules of professional conduct, which have not yet been adopted, and in the meantime refers to the Professional Conduct Rules of the Republican Collegium. Since the new Law on Licensing has created a unified system under the Ministry of Justice, it is not yet clear whether new unified rules of conduct will be drawn up which will be applicable to all advocates.

Disciplinary measures

64. According to a 1994 instruction of the Republican Collegium, a complaint on an advocate's misconduct should be addressed to the Chairperson of the Presidium. After a preliminary assessment, proceedings are instituted before the Presidium. The Presidium decides about a disciplinary measure by a simple majority vote; an expulsion from the profession requires a two-third vote of the membership of the respective branch of the Republican Collegium. The advocate has the right to appeal the decision before the Republican Collegium and then to appeal in court. In the Sogd Collegium, investigations are conducted by the Qualification Commission and the decision is taken by the Presidium. This decision can be appealed before the general meeting of the Collegium. Advocates with a licence granted by the Ministry of Justice are subject to disciplinary measures by the Ministry, in compliance with the Law on Advocacy. The decision of the Ministry can be appealed to the Supreme Court. It remains to be seen how the Ministry of Justice will implement the provisions of the new Law on Licensing with regard to disciplinary procedures and sanctions.

Number of lawyers

65. There are some 500 advocates practising throughout the country but their geographical distribution is uneven. In the capital, there are 135 advocates for a population of 620,000 whereas in the Gorno-Badakhshan Autonomous Oblast, there are two advocates for a population of 216,000.

Access to legal information

66. Advocates in the collegia appear to have access to basic legal information and material. Yet it is said that many of them practising in the regions do not have access to all up-to-date basic legal texts, taking into account that legislation is regularly amended.

J. Proportion of women and ethnic minorities in the legal professions

Women

67. Equality between men and women is guaranteed in article 17 of the Constitution. In both the Republican Collegium for Advocates and the Sogd Oblast Collegium, women represent slightly over 30 per cent of membership. Of the 334 judges, 66 are women (17 per cent). It is estimated that women account for only 10 per cent of prosecutors.

Ethnic minorities

68. The 6.6 million population of Tajikistan is composed of 80 per cent Tajiks, 15.3 per cent Uzbeks, 1.1 per cent Russians, and other minorities together make up 3.6 per cent. The official language is Tajik; Russian is used as the language of international communication. In the two collegia of advocates, the percentage of ethnic minorities varies between 16 and 19 per cent. For the Prosecutor's Office, the percentage of representatives of ethnic minorities is 5 per cent. The Special Rapporteur was not able to obtain official statistics on the representation of ethnic minorities among judges.

K. Working conditions of the judiciary

Budget

69. According to the Constitutional Law on the Courts, the judicial system is financed from the State budget. The Government decides on budgetary levels, for Supreme Court and the Higher Economic Court upon proposal of their chairpersons, and for all other courts upon proposal of the Council of Justice. These budgets are administered by the Government through the Ministry of Finance.

Human and material resources

70. The Special Rapporteur visited court buildings, courtrooms and offices of judges in three different places. He noted that there are significant discrepancies in terms of material resources. Some judges have computers whereas others do not even dispose of a typewriter. These differences seem to stem from the degree of willingness of the respective local authorities to support the functioning of the judiciary with material resources. Some judges renovated their offices at their own expense. In 2005, USAID funded a court modernization programme for the Supreme Court and the Higher Economic Court. The programme provided these courts with modern computers and office equipment, respective logistics supplies and a database containing all the laws of Tajikistan. In addition, it provided computer training courses for judges, administrative staff and IT specialists working at the courts.

Courtrooms

71. A serious problem seems to be the shortage of courtrooms in relation to the caseload. Furthermore, some courtrooms are in a dire condition. The Special Rapporteur was informed

that most of the civil proceedings and a significant number of criminal trials are held in the offices of the judges. This excludes the relatives and friends of the parties, and the public at large, including journalists, from following the proceedings.

Security

72. Although protection is granted under article 10 of the Constitutional Law on Courts, no practical measures seem to be taken in this respect. Most court buildings and judges' offices appear to be accessible without any security check.

Availability of existing legislation

73. With the support of ARD/Checci, judges at all courts have been provided with copies of the basic codes. It should be noted that there is a lack of commentary on Tajik legislation and a significant number of judges do not have texts of legal decisions. Furthermore, judges appear to be very rarely equipped with information material on international standards relating to the administration of justice. The transfer of a database of Tajik legislation established by ARD/Checci and available on the Internet is being discussed with the Ministry of Justice. While this is very much to be commended, the limited access to it, and the cost of Internet services are likely to hamper the success of this undertaking.

L. Transparency and accountability

Filing and tracking of cases

74. The Special Rapporteur was not able to obtain information on whether a uniform set of court forms to facilitate court filings has been introduced, and how courts are tracking the progress of cases.

Availability of judgements and jurisprudence

75. Judgements of the Constitutional Court are published in the *Akhbori Majlisi Oli (News of the Parliament)* and those of the Supreme Court are published in the Bulletin of the Supreme Court every three months. Judgements of oblast, city and rayon courts are not published anywhere. The Special Rapporteur was shown a publication issued in 2002, containing a collection of legislative acts on the Constitutional Court as well as a selection of its decisions and was told that a new edition was currently in preparation.

Access to judicial statistical data

76. Such statistics are not easily accessible, and the Special Rapporteur experienced difficulties in obtaining data.

Public and media access to proceedings and observation of judicial proceedings

77. As already mentioned, in practice, of the public and the media access to proceedings, in particular in criminal cases, is rarely granted, although it is guaranteed by the Constitution in article 88, paragraph 3.

Public access to trial records

78. Public access to trial records is not protected by law and can therefore be denied by the chair of the court.

Ethical norms of judicial conduct

79. In October 2004, the Codex of Honour of Judges was adopted by the Conference of Judges. It stipulates that disciplinary measures can be taken against a judge for the violation of the ethical principles contained therein.

Corruption and bribery

80. Corruption appears to be one of the most serious impediments to the effective functioning of the judicial system. In July 2005, a law on corruption was adopted to fight this problem. It is however regrettable that the Prosecutor's Office was tasked to lead this endeavour, and the Special Rapporteur is concerned that it is within the Prosecutor's Office that a department on the fight against corruption was set up. This concern stems from the fact that there have been cases, in which judges were accused by the procuracy of taking bribes when they pronounced sentences that did not concur with the sentence the prosecutor asked for. It is thus to be feared that the new institution will increase the imbalance between the parties in the judicial proceedings and the inferior position of the judge vis-à-vis the prosecutor. The fight against corruption should therefore be entrusted to an impartial organ without infringing upon the independence of the judiciary. In the context of corruption, the low salaries of judges are another important factor. Many interlocutors drew the Special Rapporteur's attention to the fact that corruption and bribery is not a phenomenon limited to the judiciary, but significantly affects the Government, the police, the procuracy, other legal professions, educational institutions and the health sector.

M. The judiciary and political opposition

81. Freedom of expression (art. 30), freedom of association (art. 28) and the right to take part in political life (art. 27) are enshrined in the Constitution. The trial against Mr. Mahmadrusi Iskandarov, Chairperson of the Democratic Party of Tajikistan, was ongoing while the Special Rapporteur was visiting the country. On 5 October 2005, Mr. Iskandarov was sentenced to 23 years' imprisonment. While the Special Rapporteur does not wish to judge about the adequacy of the sentence, he is nonetheless concerned about information obtained from different sources indicating that Mr. Iskandarov had been illegally transferred from the Russian Federation to Tajikistan and that allegedly evidence used during the trial had been exerted by torture.

N. Juvenile justice

82. In Tajikistan, 52 per cent of the population is under 19 years of age. In this context, the fact that the country does not have a separate juvenile justice system is of great concern. At present, there are two specific guarantees for minors in Tajik legislation: firstly, the mandatory presence of a defence lawyer at trials, and secondly, the mandatory presence of a pedagogue during any investigative action. The Special Rapporteur was informed that the crime rate for

children and adolescents is low, and that a significant number of children continue to be convicted to imprisonment in the absence of alternative sentences. Another serious problem brought to the Special Rapporteur's attention is the frequent detention of children found on the streets. This implies that children who are not suspected of any particular criminal offence are being put into detention facilities, which amounts to unlawful detention and infringes upon the guarantee enshrined in article 19, paragraph 2, of the Constitution and in article 37 of the Convention on the Rights of the Child, to which Tajikistan is a party.

II. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

83. Two transitions have marked Tajikistan in the recent past: the transition from being a part of an authoritarian system to an independent State attempting to establish more democratic institutions, and the transition from a nation torn by civil war to a stable country providing the population with an optimistic vision for the future. Both processes are still under way.

84. At the same time, there has been a positive experience of cooperation between Tajikistan and the United Nations in the area of peacemaking during the civil war and the peacebuilding process following it. The United Nations have assisted the Government for a significant period of time in its efforts towards democratization and improved governance, and this was facilitated by the overall openness of the Government.

85. Against this background and as indicated above, a number of significant and far-reaching reforms affecting the judiciary have been introduced. The Special Rapporteur welcomes this development. At the same time however, he finds the recent strengthening of the role of the prosecutor quite disquieting. Clearly, this represents a step backwards and a development towards forms of authoritarianism that should have become a feature of the past. This is all the more disturbing as Tajikistan is a country exposed to major geopolitical challenges and is struggling with a high percentage of people living in poverty and a high level of endemic corruption that affects almost all spheres of public and private life.

86. The role of the procuracy as it stands today radically contradicts article 9 of the Constitution, which stipulates that the power will be exercised on the basis of the separation of powers of the legislative, the executive and the judiciary. Furthermore, in practice, it may not fully respect article 94 of the Constitution, which provides that the Prosecutor-General is accountable to both the National Assembly and the President. The role currently attributed to the prosecutor, both by law and in practice, represents a major risk for the democratization process and creates serious obstacles to important additional reform efforts that lie ahead. The dominant position of the prosecutor also hampers reform efforts aiming to achieve respect of the principle of equality of arms and the right to defence. One disquieting symptom in this respect is the very low number of acquittals, and the fact that sentences continue to rely heavily on the prosecutor's arguments.

87. The executive branch remains very influential in the selection and appointment procedures for judges. Another important problem is the vulnerable position of lawyers,

related to difficulties in the exercise of their profession, in particular to freely provide legal counsel to their clients. The lack of a single, self-governed and independent body administering all issues related to the lawyer's profession becomes all too evident. Finally, the lack of appropriate training on international standards governing the independence of the judiciary for all legal professions also needs to be overcome.

B. Recommendations

88. The Special Rapporteur trusts that Tajikistan should pursue its efforts towards democratization and improved governance and that it should, more especially, draw on its achievements reached in the peace agreement and rigorously allow for freedom of expression and opinion. The Special Rapporteur trusts that a sustained support by the international community is still important for the country to achieve these aims.

89. In order to assist Tajikistan to pursue and accelerate efforts in the judicial reform process leading to a fully independent judiciary in the country, the Special Rapporteur proposes the following recommendations.

90. Concentrated efforts need to be made to bring the national legal system in compliance with international standards governing the independence of the judiciary. The Special Rapporteur therefore encourages the Government to effectively pursue work on the amendments to the procedural codes and the development of an administrative codex. However, most urgently, amendments should be introduced to the newly adopted Constitutional Law on the Prosecutor's Office and the Criminal Procedural Code.

91. The following areas should be given priority:

- The powers of the Prosecutor's Office must be brought into compliance with international standards in order to strengthen the independence of the courts and to achieve de jure and de facto equality of arms between the parties in judicial proceedings. This implies, most importantly, to transfer power to issue arrest and search warrants to the courts, to guarantee independent legal counsel from the moment of arrest both de jure and de facto, and to grant unhindered access of the defence counsel to the files of the case and the possibility of the defence counsel to effectively present evidence at the trial. Reforms are also needed to reduce the period of prolonged pretrial detention that is currently determined by the Prosecutor's Office and to ensure judicial review of the determination of continued pretrial detention. Thought should also be given to the elaboration of a witness protection scheme;**
- Adequate legal amendments should be introduced to ensure that confessions and other evidence obtained through torture or cruel, inhuman or degrading treatment or duress should under no circumstances be admissible in trials. The Special Rapporteur encourages the introduction of the principle of direct**

evidence against the background of today's frequent use of confessions exhorted by illegal means during police custody. Moreover, a provision should be introduced that renunciation of the right to legal assistance by an arrested person requires the presence of an independent counsel who explains to him or her the consequences of such action. Guarantees providing for the presumption of innocence need to be strengthened, which includes the banning of metal cages from courtrooms;

- Tajikistan urgently needs to develop a juvenile justice system that complies to the relevant provisions of the Convention on the Rights of the Child, as well as of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);
- Military courts should not have jurisdiction over cases other than those related to military crimes, nor should they be competent to conduct proceedings in which one of the parties is a civilian.

92. In order to strengthen the institutional structures and mechanisms guaranteeing the independence of the judiciary, the Special Rapporteur recommends:

- To strengthen the independence of the Council of Justice by, inter alia, increasing the number of well-trained judges in its composition;
- To entrust the judiciary with the administration of its own budget;
- To conduct objectively assessed written examinations as part of the selection procedure leading to the recommendation of judges;
- To progressively extend the tenure of judges;
- To better support judges in terms of office equipment and relevant information materials;
- To review judges' salaries for their progressive increase.

93. In order to address the problem of the weak role of lawyers, the Special Rapporteur suggests:

- The establishment of a single, self-governed body with compulsory membership, which would administer issues related to the bar such as access to the profession, removal from the profession, disciplinary measures, respect for ethical rules and continuing legal education. This body should be independent from the executive branch;

- **A reform of examination procedures granting access to the lawyer’s profession. Thought should be given to the introduction of a written examination in order to ensure objectivity, and of a right for candidates to appeal examination results;**
- **The introduction of a mandatory training period prior to being admitted to the profession, in order to strengthen the quality of lawyers’ services.**

94. **National institutions and mechanisms for the protection of human rights must be strengthened. To that effect:**

- **Serious thought should be given to the establishment of an Ombudsman office in line with the Paris Principles;**
- **The competency of the Constitutional Court to consider individual complaints should be enshrined in the Constitution. Furthermore, the individual complaints procedures should be extended to all violations of constitutional rights by acts of public authority, including laws, by-laws, administrative decisions of authorities and judicial decisions;**
- **An effective structure for the provision of free legal assistance should be elaborated by the State, which would also provide for prompt payment to lawyers for such services.**

95. **The Special Rapporteur holds the view that more efforts have to be made in the area of training, continuing legal education and the availability of legal information material. In this regard, he recommends that:**

- **Training on international standards, in particular related to the principles of fair trial, should be made mandatory prior to assuming duties as a judge;**
- **Serious thought should be given to the idea of creating a single academy for all legal professions;**
- **Legislation, including laws and any kind of by-laws, as well as judicial decisions should be made easily accessible;**
- **The publication of a newsletter should be supported, in which all legal professions can express their opinions about legal and judicial reform needs and processes;**
- **Officials in various ministries, in particular the Ministry of Justice and the Ministry for Internal Affairs, should be trained on international standards, in particular those related to the principle of fair trial.**

96. While acknowledging that there are no simple solutions to the problem of corruption, the Special Rapporteur encourages Tajikistan:

- To entrust the overall responsibility for the fight against corruption to an independent body. The Council of Justice, once strengthened as suggested above, could be considered a suitable body for this task;
- To ensure that any acts of corruption are duly sanctioned as required by law.

97. Finally, the Special Rapporteur, while acknowledging progress already made, emphasizes the urgent need to speed up the reform process in the judicial sector. To that end, he calls on the international community, in particular the United Nations, to support Tajikistan in the important work that lies ahead.
