



Country File TAJIKISTAN

Last Updated: 10.07.2013

Region	Europe and Central Asia
Legal System	Civil Law
UNCAT Ratification, Accession (a), or Succession (d)	11 January 1995 (a)
Relevant Laws	<ul style="list-style-type: none">- Constitution of the Republic of Tajikistan, 1994 (with amendments of 1999 and 2003) (Constitution)- Criminal Code of the Republic of Tajikistan, 1998 (Criminal Code)- Criminal Procedure Code of the Republic of Tajikistan, 2010 (Criminal Procedure Code)
Stand-Alone Torture Law (Y/N)	No
Relevant Articles	
Definition of Torture (General), (Article 1)	- Article 143-1 of the Criminal Code
Prohibition on Torture (Article 1)	<ul style="list-style-type: none">- Article 18 of the Constitution- Article 10(2) of the Criminal Procedure Code
Crime of Torture (Article 4) <ul style="list-style-type: none">▪ Definition▪ Statute of Limitations▪ Penalties▪ Other	<ul style="list-style-type: none">- Article 143-1 of the Criminal Code- Article 143-1 of the Criminal Code- Article 143-1 of the Criminal Code- Article 354 of the Criminal Code (forced confession by torture) <p>There are 3 additional crimes related to abuse of authority in the criminal code (text not excerpted below):</p> <ul style="list-style-type: none">- Article 117 of the Criminal Code (torment)- Article 314 of the Criminal Code (abuse of authority)- Article 316 part 3 of the Criminal Code (excess of official powers)

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Universal Jurisdiction & Cooperation, (Articles 5, 9)	- Article 15 of the Criminal Code is an article of general application for “a crime prescribed by norms of international law recognized by the Republic of Tajikistan or interstate treaties and agreements”
Investigations, (Articles 12, 13)	- Articles 119-125 of the Criminal Procedure Code are articles of general application for investigation of crimes (text not excerpted below)
Remedies and Reparations, (Article 14)	None. See Committee against Torture, <i>Concluding observations on the second periodic report of Tajikistan</i> , ¶ 21, UN Doc. CAT/C/TJK/CO/2 (21 January 2013), available at http://www2.ohchr.org/english/bodies/cat/cats49.htm ; see also Special Rapporteur on torture and other cruel, inhumane and degrading treatment or punishment, <i>Report on the Mission to Tajikistan</i> , ¶ 23, UN Doc. A/HRC/22/53/Add.1 (28 January 2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf
Exclusion of Evidence (Article 15)	- Article 88(3) of the Criminal Procedure Code
Legal and Procedural Safeguards (Articles 2, 11, 16)	- Article 19 of the Constitution (access to a lawyer) - Article 22.1 and 49.2 (access to a lawyer) of the Criminal Procedure Code - Article 100 of the Criminal Procedure Code (information on reasons of arrest to relatives)
Non-Refoulement (Article 3)	None. See Committee against Torture, <i>Concluding observations on the second periodic report of Tajikistan</i> , ¶ 18, UN Doc. CAT/C/TJK/CO/2 (21 January 2013), available at http://www2.ohchr.org/english/bodies/cat/cats49.htm ; see also Special Rapporteur on torture and other cruel, inhumane and degrading treatment or punishment, <i>Report on the Mission to Tajikistan</i> , ¶ 81, UN Doc. A/HRC/22/53/Add.1 (28 January 2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf
Other	<ul style="list-style-type: none"> ▪ International Crimes (War Crimes, Crimes against Humanity, etc.) - Article 403 of the Criminal Code (war crimes) (not excerpted below) ▪ The Role of Ombudsperson - The Human Rights Commissioner Act sets out the mandate of the Human Rights Commissioner with respect to complaints of violations of rights and freedoms of individuals (text not excerpted below)
Comments	- Tajikistan was reviewed by the Committee against Torture (CAT) in November 2012. The CAT issued a number of comments and recommendations to Tajikistan:

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	<p>Definition of and sanctions for torture</p> <p>“While the Committee welcomes the incorporation of article 143-1 into the Criminal Code to bring the definition of torture fully in line with article 1 the Convention, it expresses concern that the sanctions envisaged of five years imprisonment or less for first-time offenders of torture are not commensurate with the gravity of the crime (arts. 1 and 4).</p> <p>The Committee recommends that the State party amend article 143-1 of the Criminal Code to ensure that sanctions for the offence of torture reflect its grave nature, as required by article 4 of the Convention.” ¶ 6</p> <p>Fundamental legal safeguards</p> <p>“The Committee takes note of the procedural safeguards introduced in the 2010 Code of Criminal Procedure (CPC), including the registration of detainees within three hours of arrival at the police station (art.94.1), the right to have a lawyer (art.22.1 and art.49.2), and the right not to be detained for more than 72 hours from the moment of arrest (art.92.3). However, the Committee expresses concern that the lack of clarity on when the person is considered to be detained under this law (article 91.1) leaves detainees without basic legal safeguards for the period between arrest and official acknowledgement of detention.</p> <p>The Committee urges the State party to take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their apprehension. In particular, the State party should:</p> <ul style="list-style-type: none"> a) Amend the CPC to ensure that arrest starts from the moment of de-facto apprehension; [...] (c) Ensure that suspects are informed of their rights at the very moment of apprehension as well as reasons for their detention; (d) Guarantee the right to access lawyers of their choice from the moment of apprehension and to hold consultations in private, including through the adoption of legal provisions in this respect; (e) Ensure that anyone arriving at a detention facility undergoes a routine medical examination, and that access to independent doctors is provided when requested by the detainee without conditioning such access on the permission or request of officials.” <p>¶8</p> <p>Allegations of torture and ill-treatment</p> <p>“As a matter of urgency, the State party should take immediate and effective steps to eradicate and prevent acts of torture and ill-treatment throughout the country, particularly in police custody and in temporary and pre-trial detention facilities run by the State Committee of National Security and the</p>
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	<p>Department for the Fight Against Organized Crime.” ¶ 9</p> <p>Investigation and impunity</p> <p>“The State Party should:</p> <ul style="list-style-type: none"> (a) Take concrete steps to establish an effective and independent criminal investigation mechanism with no connection to the body prosecuting the case against the alleged victim (b) Expedite prompt, impartial and thorough investigation into all allegations of torture and ill-treatment and bring the alleged perpetrator to justice; and (c) Revoke provisions in the CPC allowing termination of criminal proceedings and exemption of the defendant from criminal liability whenever the case concerns allegations of torture and ill-treatment.” <p>¶ 11</p> <p>Evidence obtained under torture and lack of ex-officio investigations</p> <p>“While welcoming the inclusion of article 88(3) to the Criminal Procedural Code in March 2008, which provides that evidence obtained through “physical force, pressure, cruelty, inhumanity and by other illegal methods” may not be used as evidence in a criminal case, as well as the June 2012 decree of the Supreme Court clarifying the concept of inadmissibility of evidence obtained under illegal methods, the Committee expresses concern at the lack of effective enforcement mechanisms and implementation in practice. It is also concerned by reports that judges frequently dismiss allegations of torture when raised by defendants, and that unless a formal complaint is submitted, the prosecutor will not launch an investigation (art. 15).</p> <p>The Committee urges the State party to guarantee, in practice, that statements obtained by torture are not invoked as evidence in any proceedings. The State party should ensure that in any case in which a person alleges that a confession was obtained through torture, the proceedings are suspended until the claim has been thoroughly investigated. The Committee urges the State party to review cases of convictions based solely on confessions.” ¶ 13</p> <p>Non-refoulement and extradition</p> <p>“The State party should: [...] (a) Clearly establish in law and respect its non-refoulement obligations under article 3 of the Convention, including the right to appeal the issuance of an extradition warrant, and refrain from seeking and accepting diplomatic assurances from a State where there are substantial grounds for believing that a person would be at risk of being subjected to torture. It should provide detailed information to the Committee on all cases where such assurances have been provided.” ¶ 18</p>
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	<p>Redress, including compensation and rehabilitation</p> <p>“The State party should ensure that there are clear provisions in the domestic legislation on the right of torture victims to redress, including fair and adequate compensation and rehabilitation for damages caused by torture. It should, in practice, provide all victims of torture or ill-treatment with redress, including fair and adequate compensation, and as full rehabilitation as possible regardless of whether perpetrators of such acts have been brought to justice, including victims of trafficking, victims of torture and/or ill-treatment during the period of 1995 to 1999, and family members in cases of deaths in custody.” ¶ 21</p> <p>See Committee against Torture, <i>Concluding observations on the second periodic report of Tajikistan</i>, UN Doc. CAT/C/TJK/CO/2 (21 January 2013), available at http://www2.ohchr.org/english/bodies/cat/cats49.htm</p> <p>- Tajikistan was visited by the Special Rapporteur on torture and other cruel, inhumane and degrading treatment or punishment from 10 to 18 May 2012. In his report he provides the following comments and recommendations:</p> <p>Constitution and legal provisions</p> <p>“While the Special Rapporteur welcomes the incorporation of article 143-1 into the Criminal Code, he is concerned that the penalties of five years of imprisonment or less envisaged are not commensurate with the gravity of the crime of torture, as required by article 4 of the Convention. A relatively minor penalty is not a strong disincentive to commit torture. First-time offenders may benefit from conditional sentencing or a non-custodial penalty and be released under the amnesty laws, which grant Parliament a rather broad degree of discretion to decide which sentences can be commuted, reduced or suspended. The Special Rapporteur recalls that legal provisions granting exemptions from criminal responsibility for torturers, such as amnesty laws and indemnity, should be abrogated.” ¶ 13</p> <p>Safeguards during arrest and detention</p> <p>“Article 88 (3) of the Code of Criminal Procedure provides that evidence obtained through force, intimidation, torment, inhumane treatment or other unlawful means is invalid and may not be used as evidence in a criminal case. The Special Rapporteur notes that the term “invalid” should necessarily imply “inadmissible,” but it would be best if the law determined that such evidence cannot be used in court under any other guise, such as indicia or as supporting information. In addition, there is no mechanism in place by which evidence may be declared inadmissible. Although article 88 renders any confession obtained under duress null and void, it does not prescribe measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment, nor does it envisage prosecution of those responsible for acts leading to such conditions.” ¶ 18</p>
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	<p>Redress, including compensation and rehabilitation</p> <p>“The Code of Criminal Procedure makes no reference to compensation following acts of torture, nor does it refer to fair and adequate compensation for damage caused, including the means for as full rehabilitation as possible, in accordance with article 14 of the Convention against Torture.” ¶ 23</p> <p>Complaints and investigation of acts of torture and ill-treatment</p> <p>“The Special Rapporteur notes with concern that, under article 28(1) of the Code of Criminal Procedure, a court, judge, prosecutor or investigator may terminate criminal proceedings and exempt the person in question from criminal liability by reason of repentance, conciliation with the victim, a change in circumstances or expiration of the period of statute of limitations for criminal prosecution. Furthermore, article 32 of the Code states that any request to institute criminal proceedings or to terminate criminal proceedings once the statute of limitations has expired must be rejected.” ¶ 26</p> <p>Safeguards and prevention</p> <p>“Despite the newly introduced Code of Criminal Procedure providing for procedural safeguards, in practice there is a serious lack of effective safeguards afforded to persons deprived of their liberty during the first hours of detention.” ¶ 35</p> <p>Recommendations</p> <p>“With regard to legislation, the Special Rapporteur recommends that the Government of Tajikistan:</p> <p>(a) Amend article 143 1 of the Criminal Code to ensure that torture is defined as a serious crime in accordance with article 1 of the Convention against Torture [...];</p> <p>(b) Ensure that article 88 (3) is brought into line with the provisions of article 15 of the Convention against Torture [...]</p> <p>(d) Revoke the legal provisions of the Code of Criminal Procedure allowing the termination of criminal proceedings and exempting defendants from criminal liability by reason of repentance, conciliation with the victim, change in circumstances or expiration of the statute of limitations for criminal prosecution</p> <p>(e) Amend the Code of Criminal Procedure to ensure that the time of arrest starts from de facto apprehension and delivery to a police station, that arrest is scrupulously recorded, reflecting the name of the arresting officer and the detainee’s state of health upon arrival at the detention center [...];</p> <p>(f) Establish appropriate enforcement mechanisms in legislation to ensure that victims obtain redress and fair and adequate compensation, including the means for the fullest rehabilitation possible; and ensure that there are effective mechanisms in practice to protect complainants from reprisal;</p>
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	<p>(g) Amend the Code of Criminal Procedure to ensure that it takes into account the principle of non-refoulement contained in article 3 of the Convention against Torture.” ¶ 99</p> <p>See Special Rapporteur on torture and other cruel, inhumane and degrading treatment or punishment <i>Report on the Mission to Tajikistan</i>, UN Doc. A/HRC/22/53/Add.1 (28 January 2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf</p>
Languages Available	Tajik, Russian, English
Links & Sources	<p>- Constitution of the Republic of Tajikistan, 1994 (with amendments of 1999 and 2003) (WIPO website) available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=237283</p> <p>- Criminal Code of the Republic of Tajikistan, 1998 (OSCE website) available at: http://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm/preview</p> <p>- Criminal Procedure Code of the Republic of Tajikistan, 2010 available at: http://mmk.tj/ru/legislation/legislation-base/codecs/</p> <p>- Law of the Republic of Tajikistan On the Human Rights Commissioner for Human Rights in the Republic of Tajikistan, 2008 (OSCE website) available at: http://legislationline.org/topics/country/49/topic/82</p>

Relevant Articles – TAJIKISTAN

➤ Конститутсияи (сарқонуни) ҷумҳурии тоҷикистон

БОБИ ДУЮМ. ҲУҚУҚ, ОЗОДИ, ВАЗИФАҶОИ АСОСИИ ИНСОН ВА ШАҲРВАНД

Моддаи 18.

Ҳар кас ҳаққи зиндаги дорад.

Ҳеч кас аз ҳаёт маҳрум карда намешавад, ба истиснои ҳукми суд барои ҷинояти махсусан вазнин.

Дахлнопазирии шахсро давлат кафолат медиҳад. Ба ҳеч кас шиканча, ҷазо ва муносибати ғайриинсонӣ раво дида намешавад. Мавриди озмоиши маҷбурии тиббӣ ва илмӣ қарор додани инсон манъ аст.

Моддаи 19.

Ҳар кас кафолати ҳифзи судӣ дорад. Ҳар шахс Ҳуқуқ дорад талаб намояд, ки парвандаи ӯро судӣ босалоҳият, мустақил ва беғараз, ки тибқи қонун таъсис ёфтааст, баррасӣ намояд. Ҳеч касро бе асоси қонунӣ дастгир, ҳабс кардан мумкин нест. Ҳар шахс аз лаҳзаи дастгир шудан метавонад аз ёрии адвокат истифода кунад.

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➤ Constitution of the Republic of Tajikistan, 1994 (with amendments of 1999 and 2003)

CHAPTER TWO- RIGHTS, LIBERTIES, BASIC DUTIES OF INDIVIDUALS AND CITIZENS

Article 18

Everyone shall have the right to life. No one shall be deprived of life except by order of the court for especially grave crimes. The state shall guarantee the inviolability of a person. No one shall be subjected to torture, punishment, and inhuman treatment. It shall be prohibited to subject a person to forced medical or scientific experiments.

Article 19.

Every person is guaranteed judicial protection. Every person is entitled to demand that his case be considered by a competent and impartial court. No one can be arrested, kept in custody, and exiled without a legal basis. Every person is entitled to legal assistance from the moment of his arrest.

➤ Criminal Code of the Republic of Tajikistan, 1998

Article 15 Application of the Criminal Law in Regard to Persons who Committed Crimes outside the Republic of Tajikistan

(1) Citizens of the Republic Tajikistan and permanent residents without citizenship are liable to criminal responsibility for crimes committed outside the Republic Tajikistan in conformity with this Code in case if they were not punished under the court verdict of any other state.

(2) Foreign citizens and persons without citizenship not living constantly in the Republic Tajikistan are liable to criminal proceedings for crimes committed outside the Republic Tajikistan according to the present Code in the following cases:

- a) if they committed a crime prescribed by norms of International law recognized by the Republic of Tajikistan or interstate treaties and agreements;
- b) if they committed a felony or an especially grievous crime against citizens of Tajikistan or interests of the Republic Tajikistan.

(3) These rules shall be applied if foreign citizens and persons without citizenship, who are not permanent residents, were not convicted in any other state.

Article 143-1 Torture

(Definition of torture)

“Intentional infliction of physical and/or mental suffering committed by a person conducting an inquiry or pretrial investigation, or any other officials or with their instigation or with the acquiescence or with their knowledge of another person with the purpose to obtain from the tortured or a third person an information or a confession, or

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punish him/her for the committed or suspected acts or intimidating or coercing him/her or a third party and for any other reasons based on discrimination of any kind”

(Penalty)

“Fine, deprivation of the right to occupy certain positions or to engage in certain activities, imprisonment for a period of two to five years when the crime has been committed for the first time. Part 2 of article 143-1 provides for imprisonment for the period of five to eight years, with the revocation of the right to occupy certain positions or engage in certain activities for the period of five years, in the cases of repeated commission of torture, commission of torture by a group of persons on previous agreement, commission of torture of a pregnant woman, a person who is under age or disabled. The same actions, if committed with the infliction of grave harm to health, or if they have caused either the death of the victim or other grave consequences, are punishable by imprisonment for the period of 10 to 15 years, with the revocation of the right to occupy certain positions or to engage in certain activities for a period of up to five years”.

The text of Article 143-1 in English is available in Special Rapporteur on torture and other cruel, inhumane and degrading treatment or punishment, *Report on the Mission to Tajikistan*, ¶ 11-23, UN Doc. A/HRC/22/53/Add.1 (28 January 2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf.

Статья 143¹. пытки

1) Умышленное причинение физических и (или) психических страданий, совершенное лицом, производящим дознание или предварительное следствие или иным должностным лицом либо с их подстрекательства или с молчаливого согласия либо с их ведома другим лицом с целью получить от пытаемого или третьего лица сведения или признания или наказать его за действие, которое совершило оно или в совершении которого оно подозревается, а также запугать или принудить его или третье лицо или по другой причине, основанной на дискриминации любого характера, -

наказывается штрафом в размере от трехсот шестидесяти пяти до девятисот двенадцати показателей для расчетов или лишением права занимать определенные должности или заниматься определенной деятельностью сроком до пяти лет или лишением свободы на срок от двух до пяти лет с лишением права занимать определенные должности или заниматься определенной деятельностью на срок до трех лет.

2) То же деяние, если оно совершено:

а) повторно;

б) группой лиц по предварительному сговору;

в) в отношении женщины, заведомо для виновного находящейся в состоянии беременности, или лица, заведомо несовершеннолетнего, либо инвалида;

г) с причинением средней тяжести вреда здоровью,

- наказывается лишением свободы на срок от пяти до восьми лет с лишением права занимать определенные должности или заниматься определенной деятельностью сроком до пяти лет.

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3) Деяния, предусмотренные частями первой и второй настоящей статьи, если они:

а) совершены с причинением тяжкого вреда здоровью;

б) повлекли по неосторожности смерть потерпевшего или иные тяжкие последствия,-

на называются лишением свободы на срок от десяти до пятнадцати лет с лишением права занимать определенные должности или заниматься определенной деятельностью сроком до пяти лет. (ЗРТ от 16.04.2012г., №808)

Article 354 Enforcing the Duty to Testify by a Person Conducting Preliminary Investigation or Implementing Justice

(1) Forcing a suspect, accused, victim, witness, expert to give testimony and opinion by means of threats, blackmail or other unlawful acts by a person who conducts preliminary investigation or implements justice, is punishable by limitation of freedom for a period of 1 to 2 years, correctional labor for up to 2 years or by up to 3 years of imprisonment.

(2) The same actions:

a) supplemented with insulting, torture or any other violence;

b) causing grave consequences,-

are punishable by imprisonment for a period of 3 to 10 years with deprivation of the right to hold certain positions or be engaged in certain activities for up to 3 years or without it.

➤ Criminal Procedure Code of the Republic of Tajikistan, 2010

Article 10 Respect of honor and human dignity (APT translation)

Статья 10. Уважение чести и достоинства личности

2. Никто из участников уголовного судопроизводства не может подвергаться насилию, пыткам и другому жестокому или унижающему человеческое достоинство обращению.

Article 22. Right to legal aid of suspect, accused, convicted (APT translation)

Статья 22. Обеспечение подозреваемому, обвиняемому, подсудимому и осужденному права на защиту

1. Каждый с момента задержания может пользоваться услугами защитника.

Article 88. Assessment of evidence (APT translation)

Статья 88. Оценка доказательств

3. Доказательства, полученные в процессе дознания и предварительного следствия путем применения силы, давления, причинения страданий, бесчеловечного обращения или другими незаконными способами, признаются недействительными и не могут являться основанием для обвинения, а также не применяются при доказывании обстоятельств, указанных в статье 85 настоящего Кодекса.

Article 100. Notification about detention (APT translation)

Статья 100. Уведомление о задержании

О задержании лица и месте нахождения задержанного орган, ведущий уголовное судопроизводство и осуществивший задержание, обязан в течение 12 часов с момента фактического задержания уведомить кого-либо из совершеннолетних членов его семьи или близких родственников либо предоставить возможность такого уведомления самому задержанному.

О задержании гражданина иностранного государства орган, ведущий уголовное судопроизводство и осуществивший задержание, в срок, указанный в части 1 настоящей статьи, сообщает в Министерство иностранных дел Республики Таджикистан для уведомления посольства или консульства этого государства