

## **BRIEFING PAPER**

### **Roundtable on Freedom from Arbitrary Detention under the International Covenant on Civil and Political Rights (ICCPR)**

**Dushanbe, Tajikistan,**

**31 July 2024**

#### **I. Introduction**

On 31 July 2024, the International Commission of Jurists (ICJ), in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for Central Asia (ROCA), the Supreme Court of the Republic of Tajikistan, and the Coalition against Torture and Impunity of Tajikistan, convened a roundtable discussion titled "Freedom from Arbitrary Detention under the ICCPR."

The event brought together a diverse group of stakeholders, including judges of the Supreme Court, representatives of the Ministry of Internal Affairs (MVD), the General Prosecutor's Office, the Centre for Forensic Medicine, international legal experts, civil society representatives, and UN staff. Discussions focused on the challenges and opportunities in strengthening legal and institutional safeguards against arbitrary detention in Tajikistan, assessing compliance with international human rights standards, and identifying practical measures for reform.

Participants examined procedural safeguards against arbitrary detention, emphasizing the importance of judicial oversight, the role of prosecutors in ensuring due process, and the necessity of effective legal representation from the earliest stages of detention. The roundtable also considered international jurisprudence and recommendations from UN human rights bodies in shaping national responses to arbitrary detention.

#### **II. Key Discussion Points**

Participants identified significant challenges in preventing arbitrary detention, including gaps in national legislation, difficulties in enforcing procedural guarantees, and limited application of alternative measures to detention, such as bail or supervised release. The lack of systematic judicial review and insufficient access to legal counsel at early stages of detention were also highlighted as areas requiring urgent reform.

Concerns were raised regarding the reliance on pre-trial detention, which is often imposed without sufficient individualized assessment. Under international human rights law, including Article 9(3) of the ICCPR, detention pending trial should be the exception rather than the rule. Pre-trial detention must be justified based on specific criteria, including the risk of flight, harm to others, or interference with judicial proceedings, and should not be automatically applied based solely on the classification of an offense.

The roundtable also discussed the role of international law and decisions of UN human rights mechanisms in influencing national policies on arbitrary detention. Participants underscored the need to enhance judicial awareness of international standards and ensure their systematic application in domestic legal proceedings.

The discussion further highlighted the link between arbitrary detention and other human rights violations, particularly ill-treatment and coerced self-incriminating statements. The importance of ensuring prompt judicial review of detention decisions, improving forensic medical assessments, and excluding evidence obtained through torture or ill-treatment were emphasized as essential safeguards against abuse.

#### **III. Recommendations**

*Integration of international standards into national law.* A primary concern was the need for greater integration of international human rights obligations into national legal framework. Participants recommended the adoption of clear legislative provisions ensuring that pre-trial detention is an exceptional measure and that detention decisions are subject to regular judicial review. Judicial training programs should incorporate international standards to ensure their effective application.

*Strengthening legal and procedural safeguards.* Ensuring effective access to legal representation was identified as a priority. Participants stressed the importance of guaranteeing detainees access to a lawyer from the moment of detention and improving legal aid services. Courts and prosecutors should apply strict scrutiny in reviewing requests for detention, and judges must require evidence-based justifications before approving pre-trial detention orders.

*Application of non-custodial measures.* Participants emphasized the need to increase the use of alternative measures to detention, such as bail, electronic monitoring, and supervised release. These measures should be systematically considered before ordering detention, in line with international best practices.

*Judicial oversight and accountability.* Judicial oversight mechanisms should be reinforced to ensure that detention decisions comply with due process guarantees. The establishment of specialized judicial bodies to review detention cases was suggested as a means to enhance impartiality and ensure adherence to legal safeguards. Strengthening prosecutorial accountability in detention cases was also highlighted as an essential component of reform efforts.

*Addressing torture and ill-treatment in detention.* The discussion underscored the need for independent medical examinations for all detainees to document potential instances of mistreatment. Mechanisms to investigate allegations of torture and ensure accountability for perpetrators should be strengthened. Participants emphasized that courts must exclude any evidence obtained through coercion, in line with Article 15 of the Convention Against Torture.

#### **IV. Conclusion**

The roundtable provided a forum for dialogue between national and international stakeholders, reinforcing the need for legal and institutional reforms to prevent arbitrary detention and promote adherence to international human rights standards. By implementing these recommendations, Tajikistan can enhance its compliance with international legal obligations and strengthen protections against arbitrary deprivation of liberty.

Concrete steps to improve legal safeguards, promote judicial accountability, and ensure the systematic application of international standards in detention-related proceedings are apparently required. Continued engagement with international human rights mechanisms and civil society will be essential in advancing these reforms and ensuring the protection of human rights.