



United Nations Special Rapporteur on the situation of human rights defenders, Mary Lawlor

*Preliminary observations and recommendations
Dushanbe, 9 December 2022*

I carried out an official country visit to Tajikistan from 28 November to 9 December 2022, upon the invitation of the Government. I thank the Government of Tajikistan for the invitation extended to me and the cooperation shown to enable me to carry out this official visit.

This is my second country visit since taking up my mandate. During the visit, I have met government officials from various ministries, including the Ministry of Foreign Affairs, the Office of the President, the Ministry of Justice, Ministry for Women and Family Affairs, and the Ministry of Interior. I have also met representatives of the Parliament, Supreme Court, the State Security Committee, and the Ombudsman. I was also able to visit some human rights defenders who are currently in pre-trial detention. I have met members of the UN country team, members of the diplomatic community based in Dushanbe and with regional and international human rights organizations.

I have met many enthusiastic and brave human rights defenders, including members of NGOs, human rights lawyers, journalists and bloggers and members of grassroots movements. I have come to admire their dedication and persistence, and the steadfast work aimed at creating a just and fair society, grounded in the rule of law.

I travelled to Khujand and met human rights defenders working in the Sughd region there, as well as the local representative of the Ombudsman. However, my request to visit Gorno-Badakshan Autonomous Oblast was not accommodated by the government.

Today, 9 December is Human Rights Defenders Day, when the international community celebrates the adoption of the UN Declaration of Human Rights Defenders. And tomorrow is Human Rights Day, commemorating the adoption of the Universal Declaration on Human Rights. As these are the two core documents underpinning my mandate and outlining the scope of human rights defenders' rights, in order to be able to carry out their activities free from intimidation, reprisals, harassment, criminalization or any other repercussions.

I feel it is important to mention that from my discussions I found that there is a limited understanding of the concept of human rights defenders in Tajikistan. I also heard with sadness that being considered a human rights defender often carries a negative connotation, and some members of civil society even avoid being referred to as defenders. I have discussed with the Ombudsman that the adoption of a specific Law on the Protection of Human Rights Defenders could in my view greatly contribute to raising

awareness about those who carry out legitimate and peaceful human rights work and would significantly contribute not only to their protection, but also their acceptance and recognition within society.

In view of these two very important anniversaries, I am all the more encouraged by the resilience and courage shown by members of civil society in Tajikistan. Human rights defenders in all fields, including but not limited to economic, social, cultural, civil and political rights related advocacy, environmental rights, legal aid, journalistic activities, humanitarian intervention and many more, have continued their important work despite often very challenging circumstances.

From my discussions with government officials, I have become increasingly aware of the difficult geopolitical and economic situation the country is facing currently. Pressures emanating from the situation in Afghanistan, the war in Ukraine and tensions with Kyrgyzstan all contribute to a delicate geopolitical and security situation which leaves its mark on government policies and actions.

Recent events from November 2021 onwards in Gorno-Badakhshan Autonomous Oblast (GBAO) have negatively affected the overall situation of freedom of expression, freedom of association and the right to peaceful assembly in the country. Civil society organizations working on issues such as freedom of expression and freedom from torture have faced increasing targeting by state authorities. In numerous cases, NGO representatives were summoned for interrogation and in certain cases, their phones and laptops were seized for inspections without court sanctioned warrants. The situation in the autonomous region therefore has had a broader effect on the ability of civil society to operate in the country and seems to have marked a watershed moment in the attitude of authorities towards CSOs in general. I regret that I was not able to gather first-hand information on the situation of human rights defenders in GBAO.

At the same time, I wish to stress that the above-mentioned constraints do not relieve the government of the internationally binding human rights obligations that it has voluntarily agreed to undertake. I commend the government of Tajikistan for its reporting to human rights treaty bodies and the Universal Periodic Review (UPR) process, as well as the replies provided to the communications sent by Special Procedures mandate holders.

I am encouraged by the fact that a National Action Plan on Human Rights for the implementation of recommendations from UN human rights mechanisms had been set up, but I remain concerned at the slow pace of the implementation process, as well as at the lack of genuine, meaningful consultation with and full involvement of members of civil society. Genuine commitment to human rights should be demonstrated in concrete, tangible steps towards implementation. I would also like to further encourage the government to provide timely and substantive replies to all communications that myself and other Special Procedures mandate holders have sent.

I am also encouraged by the adoption of the Anti-Discrimination Law (Law on Equality and Elimination of All Forms of Discrimination) in July 2022, which is a significant step into the right direction. I encourage the government to continue to ensure its comprehensive implementation, with the full involvement of all concerned groups of society and other relevant stakeholders. I am also hopeful that the government will be able to heed its commitments indicated to me that other groups will be explicitly included in the Anti-Discrimination Law in the near future, as grounds to be protected from

discrimination, including women living with HIV, LGBTI persons and those who work for their rights.

I would also like to stress the need for a much more robust and meaningful involvement of civil society in the drafting of new legislation and policies in general. It is crucially important that the voices of all who are impacted are heard in decision-making, including by making draft laws publicly available for comments and engaging in transparent and meaningful consultations with all parts of civil society, including defenders working on issues that may be deemed as being ‘sensitive’ by the government.

During my discussions with various stakeholders, I have come to understand that cooperation between NGOs and the government is often ambivalent. On the one hand, the government has involved a number of NGOs in working groups on drafting new legislation and policies, such as on the above-mentioned Anti-Discrimination Law, on reforming the prison system, gender equality, in the monitoring group of the Coalition Against Torture, on disabilities etc. These are all commendable and steps in the right direction. At the same time, many of the same human rights defenders and NGOs reported feeling not consulted, under significant pressure and operating in an increasingly tightening and unpredictable environment. This includes defenders working in remote, rural and border areas as well as members of the Coalition Against Torture.

Some defenders have even been reluctant to meet with me in person, for fear of possible reprisals in the future. I would like to stress that access to and cooperation with the United Nations, including its bodies and representatives in the field of human rights should not be inhibited in any way whatsoever. Those cooperating with the UN and its various human rights bodies should be able to do so without fear of intimidation, reprisals or any other negative consequences for themselves or members of their family. Now I would like to highlight here some of the most worrying patterns I have observed during my visit.

First, as mentioned earlier, there is little understanding of the term “human rights defender”: Who are they? What do they do? How to recognize them? According to the UN Declaration on Human Rights Defenders (article 1), *“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”*

Second, human rights defenders feel their concerns are not sufficiently taken into consideration on key discussions, such as the draft Law on Non-Commercial Organizations currently under consideration.

Third, human rights defenders have in some cases been labelled as extremists, terrorists and/or foreign agents. The Law on preventing extremism, the Law on combatting terrorism, and article 307 of the Criminal Code are three pieces of legislation used to criminalize and arrest human rights defenders. While I understand the challenges faced by the government regarding security and terrorist threats; the government must recognise that human rights defenders are not the enemy, they are also working towards peaceful, just and fair societies and should not be conflated with actual extremists and terrorists.

Fourth, I have heard reports of human rights defenders being subjected to excessive number of inspections and informal questioning. While the Tax Committee can carry out inspections every two years and the Ministry of Justice every three years, the State

Security Committee may carry out inspections anytime. During my meetings with human rights defenders, I have observed that particularly those working on topics, such as the GBAO events, are being pressured by countless visits, questions, and inspection from authorities.

Fifth, human rights defenders and their NGOs are facing significantly increased administrative burdens, which may have a crippling effect especially on small, under-resourced and grassroots organizations. I have observed two worrying requirements in this regard:

- 1) First, amendments to the Law on Public Associations adopted in 2015 require all public associations to report the receipt of grants and other funding from foreign sources to the Ministry of Justice. The reporting requirement is implemented through a notification procedure, using a government-approved reporting form. This places an additional administrative burden on NGOs and it could potentially be used to accuse them of funding extremism. It may also obstruct access of NGOs to funding and may lead to ceasing their activities altogether.
- 2) Second, the Law further stipulates that, in accordance with the Law on Combatting Money Laundering and Financing of Terrorism, the registering body should report to the Financial Intelligence Agency (National Bank), in case of doubt or if there are sufficient grounds for suspicion that a public organization is a cover for the collection of funds from terrorist or extremist organizations, or acts as a conduit for the financing of terrorism or extremism. However, the wording "in case of doubt" is vague and, given the current political climate in Tajikistan, is may be used to limit the activities of organizations.

Independence of the judiciary, human rights lawyers

The independence of the judiciary is crucially important for a democratic society and for the rule of law. While the independence of the judiciary is formally prescribed in the Constitution and other relevant legal instruments, I have heard a lot of concerns about the lack of independence of the judiciary both as a result of certain aspects of legislation, and due to interference from other branches of the government, especially the executive, and also of other private and partisan interests. This has a direct impact on the ability of human rights defenders to receive a fair trial and to adequately represent clients.

I have heard many concerns about judges not being able to decide independently in the cases before them, but being subject to pressure by the security apparatus and also local business interests. The case of one judge was brought to my attention. He is currently facing criminalization because of his independent stance.

Judges are appointed by the President for fixed terms of office which significantly impacts on their independence. Prosecutors are directly under the supervision of the Ministry of Justice. Lawyers intending to practice as attorneys are required to pass the attestation process of the Ministry of Justice, through its Qualification Committee. The bar association (the Union of Lawyers) only reviews the initial documents but has little to no role in the accreditation and quality control of attorneys, which makes them vulnerable and at dependent on the executive branch, in particular the Ministry of Justice. The attestations are only valid for 5 years, after which they have to be renewed through passing another exam. I am encouraged that there are discussions ongoing at the moment

between the Union of Lawyers and the Ministry of Justice on the reform of the qualification process of lawyers. I strongly urge the government to move the functions currently carried out by the Qualification Committee to under the auspices of the Bar Association (Union of Lawyers). These restrictions dissuade people from becoming human rights lawyers.

I have also heard with great concern that since the adoption of the Law on Lawyers in 2015, the number of attorneys in the country has decreased significantly and that there are several districts where there are no lawyers practicing at the moment. The lack of sufficient amount of lawyers, compounded by the pressures exerted on them, especially those who are taking up cases of human rights defenders or persons accused of terrorism or extremism, in practice results in an environment where it is very difficult, and often impossible, to find attorneys ready to represent human rights defenders.

I have heard of several reports where lawyers were associated with the clients in whose cases they provided legal assistance. I would like to remind the government that under the Basic Principles on the Role of Lawyers, they should not be identified with their clients or their clients' causes as a result of discharging their functions.

Some lawyers have been charged under article 307 of the Criminal Code for extremism-related offences. Once criminally charged, lawyers are no longer able to practice as attorneys, even if the charges are subsequently dropped and the persons are acquitted.

I have also heard reports of unfair trials for human rights defenders. Under international human rights law, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and public may be excluded from observing trials only for a limited number of reasons and only to the extent strictly necessary. Trials which are held in places of detention, thereby *de facto* excluding the public or the press but without a formal decision by the court to order a closed trial, do by definition not meet the standards for a fair and public hearing under international law.

Freedom of expression/situation of journalists working on human rights

I am deeply troubled by the apparent clampdown on dissenting voices, including those seen as not respectful, nor in accordance with the country values, traditions, and interests. My meetings during these past two weeks indicated that the crackdown on independent journalists working on human rights defenders started in 2016, and has reached its lowest point in 2021, following the GBAO events. According to those I have met, working during the civil war was easier than now. As of today, the number of existing independent media is less than 10 outlets. There is generally a limited access to internet and information, letting state media in control of the information shared with the citizens of Tajikistan.

My country visit has sadly shown that journalist and blogger human rights defenders are being targeted through various means. Within the past 6 months, about 20 journalists and bloggers have reported to be arrested and detained. I was able meet some of them in pre-trial detention this week and I am concerned that they have been charged with little reliable evidence, following inadequate investigations, and trials taking place in closed settings. Laws on preventing extremism and combatting terrorism are being used to target and criminalize human rights defenders who are independent journalists, citizen bloggers and other media workers. Some of those covering the GBAO events have been physically

attacked, and their equipment confiscated. Cyber-attacks, bullying, smear campaigns and harassment are also common online practices used against women human rights defenders on social media. Fake and/or intimate content is being sometimes shared online with the aim of destroying or undermining their reputation and legitimacy. Journalists who are also human rights defenders have reported surveillance, their personal devices being hacked and copied.

I also note that the frequent renewal of the accreditation of journalists working on human rights by the Ministry of Foreign Affairs does not allow journalists to conduct their work consistently and independently. Currently no accreditation is provided to new journalists or media outlets.

Young human rights defenders

I also heard that young people interested in human rights cannot easily access information or materials to encourage their peaceful human right work. While in my meetings with the Ombudsman's Office and the Ministry of the Interior, officials mentioned progress in the field of human rights education, human rights defenders reported that there is very little educational material available in schools on human rights, especially in Tajik language. This is further compounded by the provision from the Ministry of Education preventing students from participating in NGO activities during school time.

Lack of engagement by the international community

I have also met with and heard of human rights defenders, who, for their own protection, considered leaving Tajikistan, at least temporarily, for the safety of themselves and their families. Reaching safe havens is often dangerous, and according to reports, some have been forcibly returned to Tajikistan. This phenomenon appears to have worsened since the events in GBAO. The relevant authorities have informed me that they are working with the UN Working Group on Enforced and Involuntary Disappearances on this issue. Those who need to flee often need a visa to reach a safe place. But they report increased difficulties in obtaining emergency visas, and that it can be even challenging to find information on the designated focal point for human rights defenders at an embassy. Many defenders complained of a lack of meaningful engagement from embassies and international agencies. They told me they feel abandoned and have to rely on each other for support. One said they felt left alone with their problems.

I wish to remind, UK and US embassies in Tajikistan that they are expected to implement guidelines issued by their own governments on protecting and supporting human rights defenders, and EU Member States should abide by the EU guidelines on human rights defenders, which spell out the steps they should take to do so. Yet disappointing reports from defenders I have spoken to here suggest that these guidelines are being inconsistently applied, or in some cases simply ignored.

Preliminary recommendations:

- I strongly recommend the adoption of a comprehensive law on the protection of human rights defenders, in accordance with applicable human rights standards.
- The independence of the judiciary needs to be significantly enhanced. Trials should be conducted in a fair, open and transparent manner, allowing access for national and international observers, in accordance with international standards.

- All human rights defenders currently facing criminal proceedings or convictions, should be immediately released.
- Independent media and journalists should be able to work and investigate any matters relating to human rights issues without being subjected to any pressure, intimidation or criminalization. Authorities should support independent media. It contributes to the international credibility of the government's messaging in a way that State-controlled media does not.
- Civil society, including human rights defenders, should be able to operate freely without undue restrictions, excessive administrative burdens, threats, or any other form of prosecution. Human rights defenders are key allies in building just and fair societies, and have tremendous expertise to offer that all segments of Tajik society can benefit from.
- If the Tajik government does not engage meaningfully with the 70% of the diverse and open-minded population under 30 years old, and allow it free access to independent information, including materials on human rights, it will foster ignorance and extremism.
- The Embassies, the EU Delegation and international organizations including the UN and OSCE, should further demonstrate solidarity and build trust with human rights defenders, including by meeting them in private or public, inviting them to their events, visiting them in their offices, raising awareness about their role and observing trials. Building the necessary trust with defenders will not happen overnight, but embassies and international agencies should continuously strive for it.

I will submit my report, containing my full observations and recommendations on my visit to Tajikistan to the Human Rights Council in March 2024. I count on the continued cooperation of relevant authorities in the meantime.

Thank you.