

TAJIKISTAN 2006-2010

UNIVERSAL PERIODIC REVIEW PREPARED BY PUBLIC ASSOCIATIONS OF THE REPUBLIC OF TAJIKISTAN

REPORT # 1 (CIVIL AND POLITICAL RIGHTS)

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During the reporting period the Government of the Republic of Tajikistan has adopted a number of positive measures to improve human rights situation in the country. Thus, for example, the Human Rights Commissioner has been appointed and fully operates. New Criminal Procedure Code granted judges with the competence to issue arrest warrant and significantly strengthened the role of defense in the criminal process. The governmental working group has been created to study social and economic aspects of full abolition of death penalty. Other reforms are planned and conducted in the field of human rights in Tajikistan.

Recognizing the importance of reforms undertaken by the Government to promote and protect human rights, public associations of Tajikistan prepared the current report to assist in prioritizing government's actions in the field of human rights.

The current report was prepared by a coalition of 10 public associations (PA) of Tajikistan. Seven working groups were established by the coalition each of which prepared separate thematic blocks. The report is based on the monitoring of public associations and information gathered by the authors, in particular reports of international organizations, media reports, national legislation of Tajikistan and international documents. Due to limited format each thematic block specifies problems followed by recommendations to the authorities of Tajikistan. A list of acronyms is provided in the end of the report.

Keywords: *Republic of Tajikistan, access to justice, right to life, death penalty, torture, military service, freedom of expression, access to information, freedom of religion, private and family life.*

I. GENERAL ISSUES

1. Tajikistan is a party to core human rights conventions. The state submitted initial and periodic reports to all UN treaty bodies and received recommendations. Nevertheless, treaty bodies' recommendations are neither officially published nor disseminated among the state institutions. No regular monitoring of implementation of recommendations has been conducted. At the same time, Tajikistan did not submit the following reports to the UN treaty bodies: ICCPR (2nd periodic report, due 01.08.2008), CEDAW (4th and 5th periodic reports, due 25.10.2010), CERD (6th and 7th periodic reports, due 10.02.2008).
2. There is neither follow-up on views of the Human Rights Committee as required by the Optional Protocol to ICCPR in Tajikistan, nor any regular official publication of these views.
3. Standing invitations are not issued to special procedures of the UN Human Rights Council.
4. The institute of the Human Rights Commissioner in the Republic of Tajikistan established in 2008 has no political will and guarantees of independence to promote and protect human rights. Its current activities are narrowed to consideration of citizens' complaints. It does not conduct human rights monitoring including in closed institutions, neither has it reacted against the human rights violation cases that draw a wide public response.
5. The process of development of legal acts in the field of human rights does not comply with the principle of transparency. In practice, civil society is not involved in lawmaking process and in further discussions of draft laws.

Recommendations

6. Ensure full compliance with obligations derived from ratification of international human rights conventions in accordance with principle '*pacta sunt servanda*' and submission of periodic reports to the UN in due time.
7. Develop an effective national follow-up mechanism on the implementation of views and recommendations of the UN treaty bodies at the national level. For that, establish an expert

working group under the Commission on implementation of international human rights obligations under the Government of the Republic of Tajikistan and include civil society representatives.

8. Issue standing invitations to all special procedures of the UN Human Rights Council.

9. Provide adequate guarantees of independence of the Human Rights Commissioner including legislative, financial and human resources to ensure effective work of the institution on promotion and protection of human rights.

10. All state institutions of RT must comply with principle of transparency and accountability during the lawmaking process through involvement of experts from civil society.

II. INDEPENDENCE OF JUDGES AND ACCESS TO JUSTICE

11. Justice system remains weak and ineffective. Courts are not able to cope with the workload and many judges are believed to be corrupt.¹ The judiciary is under control of the Executive. The main problems affecting the independence of the judiciary are as follows: frequent staff turnover, improper qualification exams of judges, financial dependency, influence of the prosecutor office and dominating role of the Council of Justice. Although the legislation provides for immunity of judges, pressure is exerted through forced resignation and transfer of judges to less desired, remote geographical areas. The Council of Justice, an administrative body of low level courts responsible for professional training of judges and involved in the process of appointment, qualification and imposition of disciplinary liability over judges is part of the Executive. This system contradicts the principle of independence of judiciary.

12. In spite of the fact that article 10 of the Constitution of RT provides for direct application of international conventions by national courts, there is no practice of referring to international law provisions by the courts.

13. The prosecutor office still holds wide authority and privileges which negatively impact compliance with principles of equality of arms and fair trial. Moreover, the prosecutor office has a supervisory function over the courts and legality of court decisions which is also considered as direct interference in the work of judiciary.

14. The Bar in Tajikistan remains decentralized and uncoordinated. Therefore, the Bar is considered to be a weak institution which is not able to stand up for the interests of the legal profession, protect its members and resolve common problems. New legal and judiciary reform program aimed at strengthening of justice system does not contain provisions related to the reform of the Bar.

15. The new Criminal Procedure Code (CPC), adopted in 2009 has transferred arrest authorization functions from the prosecutor office to the courts. However, no mechanism of consideration of lawfulness and validity of the arrest has been developed until now. Practically in all cases judges uphold arrest requests of investigation bodies by referring to the gravity of crimes.² Moreover, detention term as well as sanctioning of prolongation of the term is currently defined by the prosecutor office.

16. There is no precise system of free legal aid to those in need developed in Tajikistan. As a result, people are not able to protect their rights and to use legal protection mechanisms.³

¹ See: Corruption in the Republic of Tajikistan (Public pall). The Center of Strategic Research under the President of the Republic of Tajikistan, p.50, http://www.undp.tj/files/reports/pta_rus.pdf

² Monitoring of arrest authorization. Human Rights Center, 2010.

³ Access to justice in relation to free legal aid in the Republic of Tajikistan. Bureau on Human Rights and Rule of Law, Dushanbe, 2009.

Recommendations

17. Revise the principles of forming, composition and methods of work of the Council of Justice with aim of strengthening of its independence and enhancement of its role in the justice system. This shall be done through transfer of the Council of Justice from the Executive to the Judiciary.

18. The Council of Justice shall revise continuous training program for judges in order to improve quality of trainings. Trainings shall include *inter alia* issues related to the direct application of international norms by the national courts.

19. Bring functions of the prosecutor office in compliance with international fair trial standards to guarantee independence of judiciary and to ensure de jure and de facto equality of arms in the process. Particularly, the prosecutor office shall be deprived of the supervisory function over the courts and legality of court decisions.

20. Reform the Bar to ensure effectiveness of its work and enhancement of the role and prestige of the Bar in the Republic of Tajikistan.

21. Develop and adopt a special law on free legal aid services.

22. Develop a precise mechanism on consideration of lawfulness and validity of the arrest by the courts in order to guarantee full compliance with ‘*habeas corpus*’ principle. Reduce prolonged term of arrest (15 months) and develop a mechanism of periodic court revision of legality and validity of arrest term.

III. RIGHT TO LIFE AND PROHIBITION OF DEATH PENALTY

23. There is no effective mechanism of investigation of all death cases of military servants in military units and deaths in the places of detention. No official data is available on such cases. Investigations are either formal or unreasonably delayed. Relatives have no access to results of investigations. Lack of proper investigation impedes possibilities of claiming compensation.

24. In 2004 Tajikistan introduced unlimited moratorium on application and execution of death sentences. Nevertheless, this type of punishment is still retained in the Constitution and the Criminal Code.

Recommendations

25. Abolish death penalty and ratify second Optional Protocol to ICCPR.

26. Develop effective mechanisms of official and independent investigation of all death cases in places of detention, correctional facilities, military units and other closed and semi-closed institutions. Provide relatives of victims with access to results of such investigations and ensure their right to receive compensation in cases of violation of the right to life.

IV. FREEDOM FROM TORTURE

27. Torture and other types of maltreatment and punishment are used by the law enforcement against suspected, accused, defendants and those serving their sentences. Freedom from torture remains a declarative norm in the Criminal Procedure Code (CPC) which does not provide guarantees for effective investigation of allegations of torture.

28. The lack of clear definition of ‘torture’ in the Criminal Code (CC) and consequently the lack of adequate punishment for such acts also leads to incorrect qualification, impossibility to prove acts of torture, increased impunity of those applying torture and thus, negatively impacts fairness of trial. Evidences obtained under torture are accepted by judges as a proof and allegations of torture filed by defendants do not receive adequate response.

29. Allegations of torture made before, during and after trial are not investigated effectively due to the lack of precise, independent, transparent and prompt procedure of investigation. As a rule, such investigation is not conducted if alleged victim does not file a complaint.

30. Those that are held in preliminary investigation facilities have no immediate access to a lawyer, doctor and family members from the moment of arrest.
31. Victims of torture do not receive adequate health care and psychological rehabilitation. The legislation of Tajikistan does not provide for the compensation to the victims of torture.

Recommendations

32. Include a separate article providing a definition of ‘torture’ in compliance with article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) in the CC of Tajikistan.
33. Develop a mechanism of detection as well as prompt and thorough investigation of torture or other cruel treatment at all stages of the criminal process. Cases of torture shall systematically be investigated and perpetrators punished by deprivation of liberty
34. Create an institute of independent medical expertise at the legislative level. Ensure immediate medical examination of all persons arrested by investigation bodies within first hours of arrest. Develop a mechanism of regular medical and psychological examination of persons under arrest and those held in the places of detention without involvement of law enforcement personnel and detention facilities staff.
35. Make a declaration on recognition of the competence of the UN CAT Committee to receive and consider individual communications in accordance with article 21 of CAT.
36. Resolve the issue of rehabilitation of and compensation to the victims of torture through civil law procedure and establishment of national redress fund for victims of torture.

V. RIGHTS OF PRISONERS AND DETAINEES

37. The lack of professionalism of detention facilities personnel, difficult psychological and moral conditions of work, financial problems as well as unattractiveness of the profession negatively impact the quality of work and often cause cruel treatment.
38. The penitentiary system was transferred from the Ministry of Internal Affairs to the Ministry Justice including SIZOs (preliminary investigation isolators). However, SIZOs of the State Committee of National Security as well as detention centers still remain under the jurisdiction of the Committee and are not transferred to the Ministry of Justice.
39. The penitentiary system is not transparent. Representatives of the International Committee of the Red Cross (ICRC) and NGOs have no access to the places of detention and thus not able to conduct monitoring. Although the Human Rights Commissioner in the Republic of Tajikistan has a right to visit closed institutions he had not taken advantage of this right so far.
40. Adequate logistical provision and health care guarantees of prisoners are lacking. In case of illness in preliminary investigation facilities or prisons, medical treatment is conducted at the expense of relatives.
41. Prisoners sentenced to life term are not eligible for parole.
42. Despite of DOTS strategy that is being implemented in Tajikistan since 2005 and which has covered the whole penitentiary sector in 2008, morbidity in prisons has increased 15 times in 2009 (1200 patients against 80 per 100 thousands population) and mortality has increased 33 times (240,4 deaths against 6,4 per 100 thousands population) in comparison with civilian sector⁴.

⁴ According to Abdurakhmon Shokarimov, Head of tuberculosis department of central hospital of the Correctional Institutions Department, Ministry of Justice. 7 June 2010, The Thirst Central Asian Forum on Infection Diseases and Drug Abuse in Prisons.

Recommendations

43. Improve professionalism of the personnel of closed institutions through provision of trainings on international rules of treatment of prisoners, motivate them through financial and social benefits and also provide psychological counseling.
44. Transfer remaining preliminary investigation facilities (detention centers, SIZO of the State Committee of National Security) under the jurisdiction of the Ministry of Justice.
45. Ratify Optional Protocol to CAT.
46. Establish effective, independent and accessible compliance mechanism with regard to poor detention conditions and maltreatment. Establish national preventive mechanism of monitoring of places of detention. Grant the ICRC access to closed institutions.
47. Provide the prisoners sentenced to life with the right to parole.
48. Improve cooperation of penitentiary institutions with HIV/AIDS and TB services with the aim of early detection and timely treatment of AIDS, TB and other contagious diseases.

VI. RIGHTS OF MILITARY SERVANTS AND CONSCRIPTS

49. Due to the unpopularity of the military service, unlawful and forced captives (raids) are used by military commissariats in cooperation with law enforcement during the draft campaigns. In violation of law, no access to detained persons held in mobilization facilities (conscription centers) for several days is provided. These facilities are not suitable for living: there are no showers, beds (or not enough), toilets are outside and are in a very bad condition.
50. Court appeals against actions of draft commissions do not suspend execution of the commissions' decision and conscripts are sent to military units. This makes appeal procedure ineffective. Although draft commissions are civilian institutions, appeals against their actions are considered by the military courts.
51. Poor technical supply of medical commissions does not allow conducting additional and thorough examination of conscripts in order to decide on fitness for the military service. As a result, those who are not suitable for the military service are mobilized. The burden of proof of a sickness leading to exemption from the service lies upon conscript.
52. Cases of assault, battery, other forms of maltreatment and violence (hazing) against younger conscripts in the army by elder associates and commanding officers are observed. These results in abandonment of post without permission, suicide cases among military, disappearances and deaths of soldiers.
53. There are cases when family members of military servants who lost their lives on duty including during the civil war in Tajikistan, until now did not receive compensations, social benefits, allowances and pensions.
54. Military servants are often involved in works not related to military service.

Recommendations

55. Eliminate practice of unlawful and arbitrary capture and sending persons of military age to military units by strictly complying with procedure and terms of handing over of the call-up papers and by calling officials allowing such unlawful detention to liability.
56. Develop precise, accessible and effective compliance mechanism against decisions of draft commissions through consideration of complaints by civilian courts, compulsory handover of a copy of the decision to the conscripts, and by means of compliance with the legislation in terms of suspension of execution of draft commission's decision until resolution by the court.
57. Organize medical examination commissions under the state health institutions. At that, a proper medical examination shall be ensured through mandatory involvement of specialized doctors, improvement of technical supply, strict observance of examination procedure, thorough study of all illness statements leading to exemption from the service, and allowing independent

medical examination where conscripts may apply to in case of disagreement with the draft commission's decision.

58. Ensure practical realization of the rights of military servants and their family members to benefits, allowances and other guarantees in accordance with legislation.

VII. FREEDOM OF RELIGION

59. The Law on freedom of conscience and religious organizations as of 2009 limits the number of mosques, introduces the procedure of appointments of imams by the state bodies, enhances censorship over religious literature, prohibits religious education and religious rituals in public places, and also extends competences of the government over the religious activities. In accordance with the law, all religious organizations should have been re-registered by January 1, 2010. Many mosques and non Islamic religious communities have reported about obstacles including threatening of members by local authorities. Some groups, such as Jehovah's Witnesses, could not complete the process of re-registration since their activity was prohibited and members are persecuted.

60. Some restrictions were imposed with regard to religious dressing such as *hijab* (headscarf). Women wearing *hijab* have no access to educational institutions. There were cases when young women were dismissed from the university or job for wearing *hijab*.

61. After the official statement by the President of Tajikistan in 2010 about inadmissibility of receiving religious education abroad, hundreds of young Tajiks were forced to return home from Islamic countries in the Middle East in order to avoid criminal persecution for obtaining illegal religious education.

62. Due to the absence of the law on alternative military service, failure to serve military service due to religious beliefs is regarded as a conscription dodging and thus leads to either administrative or criminal liability.

Recommendations

63. Bring the Law on freedom of conscience and religious organizations in compliance with international norms taking into account recommendations of the UN Special Rapporteur on freedom of religion.

64. Encourage constructive dialog between relevant stakeholders involving government, political parties, formal and informal religious leaders, religious groups, civil society with the aim of creation of an atmosphere of religious tolerance and resolution of religion based conflicts.

65. Remove unjustified restrictions imposed over religious education, activities of religious organizations, religious dressing and other symbolic manifestations of religion.

66. Adopt the law on alternative military service and ensure the right to exemption from military service due to religious beliefs.

VIII. FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

67. CC of Tajikistan contains articles instituting criminal liability for defamation (art. 135 Slander, art. 136 Insult, art. 137 Insult in public against the President of RT, art.330 Contempt). Thus, the legislation of Tajikistan provides a special protection to the state authorities against criticism.

68. A number of lawsuits by the state bodies against mass media increasing. Thus, six cases with a total charge of 1 million 845 thousands USD against eight mass media agencies were filed during 2010 and January 2011. Two claims were satisfied against two mass media organizations with a total charge of 67 thousands USD as of February 2011. Other cases are under consideration of courts. Such situation threatens existence of independent mass media.

69. The Law on access to information adopted in 2008 is ineffective since it establishes long terms for provision of information of public interest to mass media (up to 45 days) which is unacceptable taking into account specifics of the profession. A fee introduced in 2009 for obtaining information from state bodies is also an impediment against the enjoyment of the access to information right.

70. Access to information is seriously obstructed by extrajudicial blocking of independent media websites, which particularly have taken place in September-October 2010, and by the pressure on mass media organizations through tax and other inspections. A number of unfounded refusal by state and private printing houses to publish independent press also increased.

71. Requirement to obtain a license for the production of audio and video materials, lack of transparency and complicity of licensing procedure established by the Committee on TV and radio under the Government of RT place activities of some mass media organizations subject to permission of state body. Such situation creates conditions when the state media dominate independent media and deprives citizens of access to alternative information.

Recommendations

72. Decriminalize defamation through allowing consideration of such cases within civil procedure only.

73. Legislation on mass media and the Civil Code of Tajikistan shall include provisions according to which state officials, when participating as claimants in defamation cases, shall have the right to disclaim corrupt information but not moral damage compensation.

74. Reduce the term of providing information upon the request of journalists.

75. Stop extrajudicial blocking of websites and cease pressure over independent media through toughening of punishment for such acts.

76. Simplify licensing of TV and radio broadcasting and abolish licensing of audio and video production.

IX. RIGHT TO THE PROTECTION OF PRIVACY AND FAMILY LIFE

77. The Law on traditions, celebrations and rituals as of 2007 regulates the order and duration of weddings, funerals and other celebrations. It also establishes allowed number of guests. Introduction of such limitations is a direct interference in private and family life.

78. The family Code of RT prohibits international adoption. As a result, foreigners married to citizens of Tajikistan have no possibility to adopt a child from a previous marriage of their spouses.

79. There is no mechanism of identification of trans-gender since there is no procedure of change of identification documents due to change of sex established in Tajikistan. Due to the absence of medical specialists in this field, trans-genders are forced to travel abroad for surgery and post procedural hormonal therapy. Because they are not able to change their identification documents, trans-genders have to expose their private life particularly at the points of border control. As a rule they are subject to personal search and different types of degrading treatment. There are at least nine trans-genders who are subject to such treatment systematically.

Recommendations

80. Abolish the Law on regulation of traditions, celebrations and rituals as it violates the right to privacy and family life.

81. Introduce amendments to the Family Code of Tajikistan allowing international adoption. At the same time develop monitoring mechanisms of such adoptions. Ratify the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption.

82. Adopt a law on the procedures to change identification documents of trans-genders.

LIST OF ACRONYMS

HIV	Human Immunodeficiency Virus
DOTS	Direct Observation Treatment
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
MIA	Ministry of Internal Affairs
ICRC	International Committee of the Red Cross
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-governmental Organization
PA	Public Association
UN	United Nations
DC	Draft Commission
RT	Republic of Tajikistan
SIZO	Preliminary Investigation Isolator
AIDS	Acquired Immune Deficiency Syndrome
CID	Correctional Institutions Department
CC	Criminal Code
CPC	Criminal Procedure Code
TB	Tuberculosis