

UNCT SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF

TAJIKISTAN, MARCH 2011

This UNCT joint submission was compiled on the basis of the data and the information made available by UNDP, IOM, UNICEF, UN Women, UNHCR, ILO, UNAIDS, UNFPA and OHCHR and in this regard it does not present a comprehensive overview of the human rights situation in Tajikistan.

A. Scope of international obligation

Core universal rights treaties	Signature	Ratification or accession
International Convention on the Elimination of All Forms of Racial Discrimination	-	11 Jan 1995 (a)
International Covenant on Economic, Social and Cultural Rights	-	4 Jan 1999 (a)
International Covenant on Civil and Political Rights	-	4 Jan 1999 (a)
Optional Protocol to the International Covenant on Civil and Political Rights	-	4 Jan 1999 (a)
Convention on the Elimination of All Forms of Discrimination against Women	-	26 Oct 1993 (a)
Optional Protocol to the Convention on the Elimination of All Forms Discrimination against Women	7 Sep 2000	-
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	-	11 Jan 1995 (a)
Convention on the Rights of the Child	-	26 Oct 1993 (a)
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict	-	5 Aug 2002 (a)
Optional Protocol to the Convention on the Rights of the Child on sale of children, child Prostitution and child pornography	-	5 Aug 2002 (a)
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families	7 Sep 2000	8 Jan 2002
Other relevant international instruments		
Rome Statute of the International Criminal Court	30Nov1998	5 May 2000
ILO Conventions	See annex 1	

B. Constitutional and Legislative Framework

Shortly after independence in September 1991 Tajikistan experienced a devastating civil war that ended by signing the General Agreement of the Establishment of Peace and National Accord in 1997 under the auspices of UN. Being the poorest among the republics of the Soviet Union, in the period after the war the country had to overcome the consequences of the war destruction, cope with the limited energy resources and adjust to the sharp transition from the centralized command economy to a market economy. Despite the difficulties of the transition, in the last several years the country has enjoyed stable and strong economic growth and macroeconomic stability.

The Constitution of Tajikistan was adopted on 6 November 1994 and amended by referenda on 26 September 1999 and 22 June 2003. Amendments to the Constitution of the Republic of Tajikistan in 1999 established a new bicameral parliament and extended the President's term of office from five to seven years. The Constitution establishes ideological and political pluralism, recognizes the human rights and freedoms of individual as sacred and declares Tajikistan a social state.

Tajikistan is a presidential republic, whereby the President is both head of state and head of government. The Prime minister is appointed by the president. Assembly of Representatives (*Majlisi namoyandagon*) is the lower chamber with 63 members elected for a five year term, 22 by proportional representation and 41 by single-seat constituencies. National Assembly (*Majlisi milli*) is the upper chamber with 33 members, 25 elected for a five year term by deputies of local majlisi and 8 appointed by the president.

The structure of the judicial system provides for courts at the city, district, regional, and national levels with a separate but parallel system of military courts. National level courts include a supreme court, a constitutional court, a supreme economic court, and a military court. Regional and national level courts function in an appellate capacity to the lower courts. The establishment of extraordinary courts is forbidden.

The President appoints judges and the prosecutor general with confirmation by the legislature, and the president has the power to dismiss them. The law requires public trials except in cases involving national security or protection of minors.

C. Institutional and human rights structure

The main national bodies entrusted with the promotion and protection of human rights in Tajikistan are: the Committee on Legislation and Human Rights at the Upper and Lower Chambers of Parliament; the Department for Constitutional Guarantees of Citizens' Rights under the Executive Office of the President of Tajikistan; the Government Commission on the Rights of the Child, and the Government Commission on Implementing the International Obligations of Tajikistan in the Field of Human Rights.

In March 2008 the Parliament of the Republic of Tajikistan adopted the Law "On the Ombudsman in the Republic of Tajikistan". In 2009 the first Ombudsman of Tajikistan was appointed, the recruitment of the staff of the Institution was carried out and it started working on individual complaints. The National Human Rights Institution (NHRI) adopts annual work plans and is in process of preparing a Strategic plan for a period of five years.

II. Promotion and protection of human rights on the ground

A. Cooperation with international human rights mechanisms

The country submitted all seven initial national reports under the UN Human Rights instruments it has ratified and is now engaged in the second reporting round. Tajikistan was visited by the Special Rapporteur (SR) on Independence of Judges and Lawyers – SR IJL (2005), the SR on Freedom of Religion or Belief - SR on FR (2007) and the SR on Violence against Women, its Causes and Consequence – SR on VAW (2008). An invitation was extended to the SR on Adequate Housing, but the visit has been postponed.

B. Implementation of international human rights obligations

Equality and non discrimination

The Constitution states equality of all before the law and court, irrespective of nationality, race, sex, language, belief, political convictions, education, social status and property.

Economic disparities causing inequality

Despite overall poverty decline from 53.1% in 2007 to 47.2% in 2009, certain disparities are observed across the regions. The highest level of poverty in 2009 was observed in GBAO (Mountainous Badakhshan Autonomous Region) (62%) and Khatlon (54%) which was by 15% and 7% higher than on country level and compared with 48% in Sogd, 39% in Districts of Republican Subordination (DRS) and 34% in Dushanbe.

The highest extreme poverty levels in 2009 were in GBAO (26%) and in Khatlon (21%) and the lowest one in DRS (12%) and in Dushanbe (14%), while on country level this figures is the same with the figure for the Sogd region (above 17%).

In 2009 the urban poverty (41.8%) continues to be lower than rural poverty. Decline of poverty in rural areas was slower than of urban poverty. The poverty in rural areas in 2009 was 49.2%.

Some population subgroups as households of those with low educated heads and large families (with four or more children) in fact experienced increase of poverty.¹

According to the Tajikistan Living Standard Survey (TLSS, 2009), poverty rate among Tajik children (0-5 of age) was 55.9%, while extreme poverty among children of this age amounted to 22.8%, compared to 47.2% overall poverty and 17.5% extreme poverty figures.

Discrimination of people living with HIV/AIDS (PLHIV)

For the time being two comparative studies on the identification of types and level of HIV related stigma and discrimination were conducted in Tajikistan by the Centre for Strategic Researches under the President of the Republic of Tajikistan in 2008 and 2010. The surveys enrolled a significant number of people living with HIV and was conducted by representatives of PLHIV on anonymous and confidential basis.

Despite the improving situation, the results of the last survey (2010) showed high level of stigma and discrimination towards PLHIV and vulnerable groups, such as Injection Drug Users (IDU), Sex Workers (SW), Men Who Have Sex with Men (MSM), migrants, women, youth, etc. More than 1/3 of the respondents took the view that a person may be dismissed only because of HIV-positive status. Only 64.5% of health workers reported that they would provide medical care to HIV-positive people equally with all other patients. More than 54% of religious leaders expressed their opinion that would allow HIV-positive people to pray in mosques or churches.

The most vulnerable associated with HIV stigma are children and women. Over 62.5% of respondents, of whom 41.5% were teachers, negatively responded to educate HIV-infected children in schools with other children. The results have shown that attitude towards HIV-infected women in the family is even much worse than to men. More than 1/3 of respondents called for isolation of HIV-infected from other people in the society. This high stigma, of course, leads to manifested discrimination against PLHIV. About 90% of representatives of PLHIV reported that currently in Tajikistan, there are various forms of discrimination, and more than 50% of people living with HIV, who

¹ World Bank – Europe and Central Asia: Tajikistan Poverty Update 2007-2009

participated in the survey, pointed to discrimination, they have encountered in accessing medical and other service, employment, law enforcement and educational agencies.

Children with disabilities

There are about 91,440 children with moderate and severe disabilities in Tajikistan (UNICEF estimates) although official statistics are lacking. A total of 19,471 children 0-15 are receiving disability pensions. Institutionalisation (baby homes, orphanages, special boarding schools) is the main service available to these children – there are 2,502 children living in 23 institutions. Stigma associated with disability is very strong in Tajik society and community-based and family-based care services for such children are very limited. Many times, when combined with the effects of poverty, and the stigma associated with disability, these children are either seen as a burden for the family and placed in residential care institutions, or kept at home without even seeing the daylight and lacking adequate care and development opportunities. The skills and expertise of experts in residential institutions are outdated, which doubles vulnerability of children at early ages. Many of the residential care institutions are still managed at the central level and fragmented under different Ministries. Misdiagnosis on type and severity of disability often leads some children to a life-long segregation from society.

Right to life, liberty and security of the person

Abolition of death penalty

In April 2004 the Parliament upon a proposal by the President of the country imposed a moratorium on death penalty. The capital punishment is still retained in some articles of the legislation for criminal offences, however. Life imprisonment was later introduced as a substitute.

In 2010, a Working group to analyse the legal and social grounds for the existence of the death penalty in the legislation was established.

Prisons conditions

The absence of national and/or international public monitoring of the places of detention and deprivation of liberty is a major source of concern. Despite long years of negotiations, the Ministry of Justice did not agree that the International Committee for Red Cross/Red Crescent conducts visits to penal institutions as per its mandate.

The Ombudsman of Tajikistan has the mandate to visit prisons, according to the legislation on the establishment of the institution. The implementation and effectiveness of this provision remain to be assessed as by the time of the submission he has not availed himself of this opportunity.

Violence against women (VAW), including domestic violence

In 2008 the UN SR on VAW, Ms Yakin Ertürk noted in her report: “...Violence against women and girls is accepted by men and women alike as part of everyday behaviour. Violence by husbands and other family members is particularly widespread. Women and girls are also victims to sexual violence and exploitation on the streets and to trafficking inside and outside Tajikistan. Women’s lack of awareness of their rights, and issues pertaining to residency registration and the rise of early, polygamous and unregistered marriages further aggravate their vulnerability. While some encouraging steps have been taken, responses by State bodies to protect and support victims of violence and prosecute perpetrators have so far been insufficient...”

In its Poverty Reduction Strategy (2010-2012) the Government recognized “society’s tolerance of violence against women and children” as one of “the problems that hinder the real promotion of gender equality”. The measures that the government committed within the PRS include adoption of the domestic violence law, improving the information available to the public, raising the level of gender awareness among the law enforcement personnel, and establishing a National Analytical Centre under the Ministry of Internal Affairs.² While the government has recently taken several important programmatic and practical steps including the establishment of a government funded Women’s Crisis Centre in Dushanbe, changes in the societal perceptions could be achieved if the issue is addressed on all levels – improving the legislative and institutional framework to prevent violence and ensure punishment for violators; regular assessment of prevalence of VAW; education and awareness raising for law enforcement and general population, and further strengthening of the support provided to the victims and the potential victims of domestic violence.

Trafficking, forced labour, worst forms of child labour

Tajikistan is a source country for women trafficked for the purposes of commercial sexual exploitation primarily to the United Arab Emirates (UAE) and Russia, often through Kyrgyzstan. There have been reports that women also were trafficked to Turkey. IOM reports that in the last year trafficking victims have often travelled unaccompanied from Tajikistan to destination countries.

Some men who voluntarily travelled to Russia and, to a lesser extent, Kazakhstan, were subjected to labour exploitation in these destination countries.

The government recognizes Trafficking in Persons (TIP) as an issue affecting both men and women trafficked into labour or sexual exploitation.

The Government of Tajikistan has made progress in enforcing its prohibition of children labour in the annual cotton harvest. The Inter-Ministerial Commission to Combat Trafficking in Persons disseminated a directive to local officials reiterating existing prohibitions on forced labour.

Following the blacklisting of the cotton from Tajikistan by the US State Department on Labour, citing the use of child labour as the reason, the government accredited non-governmental organization representatives to comprehensively monitor its cotton harvest through a US Government funded project implemented by IOM. These monitoring teams observed the fall cotton harvest in 15 cotton picking districts in Tajikistan from September 15 until December 15, 2010. Monitors reported that the overall use of forced labour was dramatically reduced from previous years. The final report on the cotton monitoring mission is due by the end of March 2011.

According to the Ministry of Interior, 530 crimes related to trafficking in persons were reported and solved in 2010, including seven abduction cases, ten cases of illegal deprivation of freedom, six cases of human trafficking, 16 cases of selling and buying of minors, 14 cases of recruitment of persons for exploitation.

In December 2010, the Ministry of Interior launched a 26 hour trafficking course in its Police Academy.

There is no formal victim referral system in place, but in practice Government agencies referred victims for assistance through direct contact with IOM. Most referrals come from law enforcement agencies. IOM-partnering NGOs (15 partners based in regions) also play a major role in providing referral services to victims. In December, the Inter-Agency TIP Commission established a working group to develop a formal, national

² PRS Tajikistan, p.63, <http://www.medt.tj/en/>

referral mechanism. In 2010 there were no specific budgetary allocations for victim protection.

Violence against children, corporal punishment

Corporal punishment is generally considered a means of discipline. As a result, corporal punishment is not illegal or prohibited at home, in schools, state residential institutions, or correctional institutions. Draft legislation on domestic violence has been pending for many years. Violence against children occurs in schools, religious institutions, and care and residential institutions. Recent data is lacking and the studies that have examined violence against children in institutions have focused on schools. In general, it is estimated that from 23% up to 50% of adolescents experience physical violence and/or emotional/psychological abuse at school from teachers and/or classmates (Association of Women Scientists of Tajikistan, 2003; UNICEF 2004).

Administration of justice, including impunity and the rule of law

Most of the conclusions and recommendations made in the 2005 report³ of the SR on IJL Mr. Leandro Despouy remain valid. As stated in the report, there is an urgent need for a reform of the judicial sector with the aim of strengthening its impartiality and independence and achieving de jure and de facto equality of arms between the parties in the judicial procedure.

Juvenile justice

The group especially vulnerable to violations of their rights are children in conflict with the law, who mostly go through the formal judicial proceedings. Despite some progress, the current criminal justice system (law, policy and practice) for those under-18 years of age does not fully comply with international standards. In this regard, the UN Committee on the Rights of the Child (CRC) has expressed its concern on lack of juvenile courts in Tajik criminal justice system, judges who specialize in juvenile justice and a separate form of criminal procedure for children in conflict with the law.

Despite the fact that the age of criminal responsibility is 14, children below 14 are frequently subjected to arrest, pre-trial detention and deprivation of liberty in closed institutions. In 2010, 224⁴ children (11 – 18 years of age) were in pre and post trial detention, out of which number, 96 (11-16 years of age) were in closed type special schools without a formal decision by a judge and 49 of them⁵ (14 – 18 years of age) were in pre-trial detention. About 400 children (14 -18 years old) went through the judicial system⁶.

While the Government has adopted a National Action Plan on Juvenile Justice Reform 2010-2015, and a revised Criminal Procedural Code with a separate section on Juveniles, practice lags behind. The majority of juvenile offences are low-level crimes including theft (74 %)⁷ or ‘anti-social behaviour’, yet the system responds with punitive measures that focus on control and deprivation of liberty, rather than rehabilitation and reintegration. Children, who are imprisoned, often for periods of up to four years, receive limited rehabilitative counselling, education or vocational training. This severely restricts their future opportunities in life, increasing susceptibility to homelessness, unemployment, re-offending and poverty when they are released.

³ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/100/54/PDF/G0610054.pdf?OpenElement>

⁴ MOJ and MOE data, 2010, including number of children in the 2 closed type special schools

⁵ Ministry of Justice data, 2010, only for the pre-trial detention center for juveniles in Dushanbe

⁶ Council of Justice data

⁷ Ministry of Interior, 2007

Right to privacy, marriage and family life

Age of Marriage

The marriage age was changed in the Family Code from 17 to 18, as of 1 January 2011. The recent change is expected to bring some positive consequences, particularly for girls, allowing more of them to complete secondary schools and in some degree reducing of birth rate in aged group 15-19. However, there is still a high rate on unregistered marriages, among them a major part could be forced and early marriages.

Birth registration

The State budgetary allocation to cover birth registration is limited, and the allocated cash covers only 50% of registration expenses. The 2009 Nutrition Survey of the Ministry of Health estimates that only 79.9% of children under five are registered. The 2009 findings raise concern that the rate of birth registration may be deteriorating. The main reasons of non-registration is a high legal illiteracy of population and especially women, high level of unregistered marriages, low capacity of the registration offices and poor access to these services for the most excluded groups (the poorest, disabled, etc.)

Freedom of religion or belief

In her report⁸ the SR on FR Ms. Asma Jahangir who visited Tajikistan in 2007 encouraged the Government to respect the right to freedom of religion or belief of all individuals and religious communities, particularly when adopting specific legislation and policies. She expressed hopes that the Government was engaged in seeking the most appropriate approach to dealing with these complex issues. The new Law on Religion adopted by the Parliament on 26 April 2010 has sparked controversy however, among some religious groups and is considered by them to contain provisions restricting the freedom of exercising religion and belief.⁹

Right to social security and to an adequate standard of living

Poverty/extreme poverty

The poverty is the main challenge for development in Tajikistan. The significant poverty reduction was due to strong growth during the 1998-2008 (in average 7.5% annually) and due to labour migrant remittances (in 2008 – US\$ 2.66 bln., US\$1.8 bln. in 2009, and US\$2.2 bln. in 2010). A reduction in growth in 2009 (3.4%) and 2010 (6.5%) and reduction of remittances follows the global financial and economic crisis. The poverty declined significantly in 2009 (47.2%) compared to 1999 (83%), while these figures were 72.4% in 2003 and 53, 5% in 2007¹⁰.

The extreme poverty in 2009 remained almost unchanged, compared to 2007 at 17.5% of the population, with no significantly difference in both urban and rural areas¹¹, but its level in rural areas was lower than in urban places.

The rural households—receivers of labour migrant remittances experienced a large decrease in poverty. Poverty in rural areas within the households with labour migrant decreased by 15.5% in 2009 compared to 2007, while this figure in a rural household with

⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/149/86/PDF/G0714986.pdf?OpenElement>

⁹ <http://www.unhcr.org/refworld/country...COUNTRYNEWS,TJK,4562d8cf2,4a5304e019,0.html>

¹⁰ The poverty is defined in terms of per capita consumption. Poverty lines were constructed using the cost-of-basic needs approach whereby the poverty line depends on the cost of buying a diet of 2,250 calories per capita per day and an allowance for non-food consumption.

¹¹ Extreme poverty reflects those who cannot afford to purchase a food basket satisfying basic dietary needs.

no migrant declined by 5.6%. There are no significant differences in urban places between the households with some and no labour migrant.

Right to health

Total government expenditure on the healthcare fell from 4.5% of GDP in 1991 to 1.6% in 2010, indicating that healthcare is increasingly dependent on out-of-pocket payments for medical services and on foreign aid. Surveys indicate that through formal user fees and informal out-of-pocket payments, households contribute about 72.4% of total health expenditure.¹² In 2010, 61% of total public health expenditures were spent on hospitals, and the rest was distributed to polyclinics, public health, and miscellaneous categories. This has created an under-resourced and poor-quality primary health care system, with about 80% of patients bypassing primary health care centres to seek care at the next level.

Despite the economic and social challenges faced by the country, Tajikistan has made some advances in reducing infant mortality rate (IMR) from 75 per 1,000 live births in 2000 to 51.8 in 2009, and child mortality from 93 to 61.2 in the same period¹³. Prenatal conditions and respiratory infections continue to be the leading causes of child death. More than 40% of infant deaths occur in the first week despite the fact that 62% of births take place in institutions and 83% are delivered by a skilled attendant.

Results from the 2009 National Micronutrient Survey indicate improvements in some of the nutritional indicators particularly in acute malnutrition and stunting. However, the recurring emergency disruptions and migration continue to take a toll on child health and nutrition. Almost third of children under-five (29%) are stunted and more than half are iodine deficient¹⁴.

In 2010 the country experienced an outbreak of wild poliovirus (Type 1) with 458 confirmed cases with 29 deaths¹⁵. This was the biggest outbreak in 2010 globally. The vast majority of the cases occurred in children. During the polio campaign, low levels of knowledge and skills of immunisation personnel were observed in cold chain management, administration, safe immunisation practices, surveillance and case definition and management.

There are severe problems with low quality of health care including the relevant evidence-based skills of health workers, adequate infrastructure, essential equipment, supplies and drugs. Worsening access to health care has particularly severely affected women and their access to all components of reproductive health (RH) care¹⁶.

Pregnancy, delivery and the postpartum period remain hazardous for most Tajik women. The true magnitude of maternal mortality is not reflected in official figures due to their inadequate coverage and unreliability. While the Republican Center of Medical Statistics reported a maternal mortality ratio for 2006 of 43.4 per 100,000 live births and the Ministry of Health for 2007 of 33.9, limited other available data suggest far higher levels ranging from 123 to over 1,000 maternal deaths per 100,000 live births¹⁷. The MDG Needs Assessment team and the Government Working Group on Health have decided that the most likely baseline maternal mortality figure is 120 per 100,000 live

¹² Ensor T. Informal payments for health care in transition economies. *Social Science and Medicine* 2004; 58: 237-246.

¹³ Child Mortality Database, <http://www.childmortality.org>

¹⁴ Tajikistan National Micronutrient Status Survey, MoH/UNICEF, 2009.

¹⁵ Joint WHO/UNICEF Polio Situation report #61, 21 January 2011

¹⁶ See: Falkingham J. Inequality and changes in Women's use of maternal health-care services in Tajikistan. *Studies in Family Planning* 2003; 34: 32-43; Falkingham J. Poverty, out-of-pocket payments and access to health care: evidence from Tajikistan. *Social Science and Medicine* 2004; 58: 247-258

¹⁷ See: UN and Government of Tajikistan. Investing in Sustainable Development: Millennium Development Goals needs assessment. Full Report. Dushanbe: 2005; and Ministry of Health. Tajikistan National Reproductive Health Strategic Plan, 2005-2014. Tajikistan: April, 2005

births and the target for 2015 is 30¹⁸. The Government recognizes that official indicators are unreliable due to outdated definitions and methods of collection, underreporting and incomplete registration of vital statistics.

Right to housing

The SR on Adequate Housing¹⁹ in his 2008 Summary of Communications Sent and Replies Received from Governments and Other Actors (A/HRC/7/16/Add.1), p.p.123-124 noted the absence of reply by the Government to his communication sent in 2007. The SR expressed further concern over the evictions taking place in Dushanbe and hopes that public consultations will be carried out with regard to the draft General City Reconstruction Plan, according to which the many buildings in the centre could be demolished.

Up to now the city's reconstruction plan has not been officially published for public discussion. Given that it will inevitably affect the interests of many people and the legitimate public concern over the country's architectural and historic heritage, undoubtedly such important document need to be broadly discussed in the society.

Right to education

After falling to roughly 80% in 1993, the primary net enrolment (grades 1-4) has recovered up to 98% with almost 100% completion rate achieved. The net primary school attendance is 89% however the rate drops to 82% at grades 5-11. The attendance rates are particularly worrying for girls, at 73% at grade 9 and at 45% at grade 11. About 85% of schools operate in 2 to 3 shifts due to chronic lack of school infrastructure. Some 200,000 children (age 5-14) involved in child labour are prone to irregular attendance and risk dropping out. The ongoing expansion of compulsory education from 9 to 12 years, together with the current demographic trends, implies emerging challenges in access associated with a rapid increase of school age population by 20% by 2016.

According to the Multi-Cluster Indicator Survey (MICS, 2005), the enrolment rate of girls in the higher grades is much lower among the poor. For instance, girls' enrolment at the lower secondary level was at 70% (88% for boys) among the poorest quintile, compared to 84% (94% for boys) among the wealthiest quintile. The data also indicate urban-rural differences: primary enrolment among girls is 87% in rural areas against 91% urban areas. Furthermore, the two regions in the country where girls are least enrolled are Dushanbe (capital) and Khatlon, where the enrolment rate at age 15 years (grade 9) was 64% and 66% respectively, much lower than the national average. Evidence over time shows that this situation may be deteriorating.

The major factors contributing to the girls' low enrolment and attendance are: low standard of living; increased direct cost of education; low prestige of education and the deterioration in the quality of schooling; revival of traditional ideas about the role of women in family and society and an associated tendency to value the education of boys over girls; absence in many schools of gender-sensitive sanitation facilities; and remoteness of villages from schools. The current Government policy has only a general reference to the equitable access to education, without specifying targeted actions to improve the situation of girls' education. Insufficient allocation of funds (3.8% of GDP in 2009) and poor allocative efficiency (60% of all expenditures spent on salaries) hampers quality education for all children. Informal payments by parents (school maintenance,

¹⁸ See: UN and Government of Tajikistan. Investing in Sustainable Development: Millennium Development Goals needs assessment. Full Report. Dushanbe: 2005; and Ministry of Health. Tajikistan National Reproductive Health Strategic Plan, 2005-2014. Tajikistan: April, 2005; page 89

¹⁹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/113/38/PDF/G0811338.pdf?OpenElement>

basic equipments, subsidy for teachers' salary etc.) further affect access to and demand for education, especially among vulnerable groups.

It should be noted that Tajikistan has been steadily improving its capacity in education infrastructure. Annual public capital spending in education rose from USD 22.9 million in 2000 to 176.5 million in 2008. However, children's learning conditions remain poor, with negative effects on children's learning – 50% of schools require major repairing; 50% lack of safe drinking water; 35% don't have functioning toilets; many don't have heating facilities; about 30% students have no adequate place at a desk.

Other factors decreasing the quality of education are the insufficient training of teachers, especially in minority languages and lack of school textbooks and materials in minority languages. Low teacher remuneration (monthly average \$33) remains a key factor for the shortage in number and high turnover (5% of teachers or 4,740 out of 98,262 left in 2009/2010)

Refugees and asylum seekers

Tajikistan hosts some 4700 refugees and asylum seekers, mainly from Afghanistan. The refugees and asylum-seekers in Tajikistan are urban-oriented residing the majority in Vakhdat, Dushanbe, and Khujand in Sughd province.

Legal framework

The Republic of Tajikistan was the first among Central Asian states to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (1994) and developed its national asylum system. The 2002 Refugee Law, however, does not fully conform to the Refugee Convention. It provides for prescreening procedures before an asylum claim is registered, and includes grounds for exclusion which are not foreseen in the 1951 Convention. The law does not provide for complementary forms of protection. National law does not stipulate any terms of reference for the Refugees Status Determination (RSD) Commission.

Tajikistan is a signatory to a number of international human rights instruments, in practice, however authorities systematically give precedence to national provisions over international law.

Several provisions of national law are problematic for the rights of refugees, namely Resolution 323 that enshrines the "safe third country" concept, and Resolutions 325 and 328 that prohibit asylum seekers and refugees from living in urban areas. These provisions are detrimental to their interests and their strict application can result in the rejection of asylum applications and even *refoulement*. They remain in force despite advocacy efforts.

While the Law on Refugees establishes that refugee status should be granted for a period of up to three years and extended for three year periods, in practice it is granted and extended for twelve months only. The short duration of refugee identity documents makes it difficult for refugees to secure employment. Freedom of movement outside the country is also impeded as Convention Travel Documents are not provided to refugees.

The Department for Citizenship and Refugees (DCR) of the Department for Public Order of the Ministry of Internal Affairs is the main body responsible for the asylum system. It carries out the Refugee Status Determination procedure while appeal against the negative RSD decision must be lodged with the District Court in first instance, the City Court in second instance and the Supreme Court in third instance.

Current capacity of the Government to manage migration in accordance with international principles is limited. So far, there are no clear obligations and procedures for

border guards for the identification of asylum seekers and no referral mechanism established. Registration is conducted by DCR upon receipt of asylum application.

The Border Management Programme in Central Asia (BOMCA) and the OSCE Border Management Staff College based in Tajikistan are conducting a series of trainings and seminars for border management staff. These trainings incorporate elements of human rights and refugee protection. The recently drafted Border Management Strategy and its Implementation Plan of the Republic of Tajikistan²⁰ offers a good example of cooperation between a government and regional and international organizations. This strategy notably prescribes important safeguards relating to human rights and the protection of refugees and asylum-seekers.

Self-reliance and livelihoods

The employment situation is very difficult for both nationals and refugees, and prevents refugees from becoming economically self-reliant. Problems specific for refugees are the short validity of their refugee documents and government resolutions which oblige refugees to reside outside urban areas that can obstruct their access to employment. Refugee women also reported that their community does not welcome them to work as it goes against their traditions. Tajik Refugee Law allows refugee children to attend local schools, but newly arriving refugee children require special course in Cyrillic script to be able to study in local schools. Refugees and asylum seekers are entitled to social assistance from the state. In reality, the Government of Tajikistan is not able to cover the needs of vulnerable asylum seekers and refugees. Among persons receiving regular assistance from UNHCR and partners are many single headed households, mainly with small children, for whom it is particularly difficult to find employment to sustain the family. Recognized refugees have access to health services on the same terms as nationals. Nevertheless, general economic hardship means that many persons of concern struggle to pay the official and unofficial fees for medical services.

Naturalization

A group of approximately 800 refugees has been living in Tajikistan in some cases up to 18 years. Majority is of Tajik ethnicity, speaks the language and has already de facto integrated into local community while still lacking legal integration. In 2004, the UN Committee for the Elimination of Discrimination recommended that refugees in Tajikistan who meet requirements set out in the pertinent law are enabled to acquire Tajikistani citizenship if they opt for it. The Law on Citizenship provides for reduced minimum period of stay in the country (half of the 5 years required for a foreigner) for refugees to be eligible to apply for Tajik citizenship and the Government expressed its readiness to consider their individual applications for residence or citizenship. However, so far no refugee was granted citizenship of Tajikistan, and cases that UNHCR submitted to the authorities on behalf of refugees in 2010 are still pending a reply.

Statelessness

There are some 2300 stateless persons identified by the government during last 2000 census and some 300 stateless persons officially registered as stateless. Results of the 2010 census are not yet published. Preliminary analysis show that important protection concerns that this group could be faced with is related to access to naturalization procedures, lack of documents and access to other rights. While provisions of the national

²⁰ Drafted by the Government of Tajikistan with input from international organizations, including UNHCR.

citizenship law contain a number of safeguards against the creation of statelessness, there are also provisions that may lead to situation of statelessness.

The National Plan of Action on statelessness was presented by the Tajik government at the UNHCR-OSCE sponsored regional conference on Statelessness held in Ashgabat, Turkmenistan in December 2009. The Inter-ministerial Working Group on amending the Law on Citizenship was formed in 2010 and is reviewing the law on citizenship to bring it in line with international standards. It is expected that the review will be finalized and amendments adopted in 2011.

Republic of Tajikistan is not a party to the 1954 Convention relating to the Status of Stateless persons and 1961 Convention on Reduction of Statelessness. It is, however, a party to other international instruments, which establish obligations relating to the right to nationality and enjoyment of rights by stateless persons

III. Achievements, best practices, challenges and constraints

One of the achievements of Tajikistan was the adoption in 2001 of the government program “State System of Human Rights Education in Tajikistan 2001-2010” within the framework of the UN Decade on HR Education (1996-2004). Under the Government program, in cooperation with the Ministry of Education and international support, a series of trainings were held involving staff of the Ministry of Education, teachers, university educators and NGOs aimed at building national capacities in HR education. In the course of implementation of the Program, Human Rights were introduced as subject in 10 and 11 grades of the secondary school, a human rights curriculum was adopted and textbooks for students and manuals for teachers in Tajik and Russian languages developed. Further, a Human Rights Chair was set up at the Law Faculty of the Tajik State National University in 2007.

Despite the huge amount of work done in implementing the State program on Human Rights Education still a lot remains to be done with regard to improving the pedagogical methods and school environment and expanding the human rights education further involving other layers of the society. A new Program on Human Rights Education is being currently drafted with the active involvement of the Ombudsman institution, which will take into account the lessons learned from the achievements and the shortcomings of the previous program.

Another achievement of the country is the relatively high level of ratification of UN human rights instruments and the two Government commissions on the level of Vice-prime ministers established with the aim to monitor the implementation of its international obligations in the field of human rights and child’s rights.

Recent positive development is the establishment of Ombudsman institution which has received sufficient in kind and financial support from the state at the initial stage of its work.

The government is generally open to cooperation with civil society and invites its representatives on a regular basis when important policy documents and draft legislation are publicly discussed.

The level of compliance with the Treaty Bodies and Special Procedures recommendations remains insufficient however. The two Government commissions dealing with implementation of the international human rights obligations need to become more operative in order to be able to fulfill the functions entrusted to them by the relevant government decrees.

The guarantees of the independence of the Ombudsman institution needs to be further strengthened and the state should increase its financial support to provide for full implementation of its mandate and expanding its functions on regional level.

Government cooperation with civil society should continue. Civil society organizations should be involved as partners at the early stages of drafting of Government policy documents and draft legislation.

IV. Recommendations

In addition to the recommendations featured throughout the text, there is an additional list of recommendations pertaining to some of the thematic areas covered by this submission

Build on the achievements of the Government program on HR education 2001-2010 and expand the HR educational activities further focussing on law enforcement, civil servants and vulnerable groups;

Initiate the adoption of the necessary legislation to strengthen the implementation of the mandate of the NHRI; provide necessary financial support to expand its territorial coverage so it could fully carry out its functions;

Revitalize and strengthen the existing treaty bodies' recommendations implementation mechanism of the two Government commissions and regularly review of the status of implementation of the TB and SP recommendations;

Address the issues related to the existing stigma on HIV/AIDS, increase awareness in society on HIV transmission and develop a National HIV/AIDS policy in the work place;

Increase legal awareness, restore the population's motivation to comply with registration and give local government bodies the ownership and more significant role in recording of demographic events;

Strengthen the capacities of the staff of the Agency on Statistics, improve the quality of record-keeping and introduce contemporary forms of entering, storing, and data processing;

Institutionalization and family separation of children with disabilities should be used only as a last resort; community-based care services should be developed, including day-care, after-school care, rehabilitation centre and the guardianship system to both prevent institutionalization and provide support to children who are leaving institutions;

The current residential care standards need to be reviewed by the Government to ensure that they are in accord with international norms and applied in all institutions and staff at institutions should be specifically trained on these standards;

Children in detention should be always kept separately from adults and should remain in regular contact with their families while in the juvenile justice system; a restorative juvenile justice system should be established;

Criminalise domestic violence and provide for effective protection and implementation mechanism;

Raise awareness and closely monitor the implementation of the newly adopted procedure banning early marriage to prevent this wide spread practice;

Consider ratification of the second Optional Protocol to the ICCPR regarding the abolition of death penalty; the Optional protocol to CEDAW and the Convention on Disabled;

Undertake revision of the national legislation on refugees and its implementation into conformity with international standards, in particular by introducing provisions that would assure unhindered access to the asylum procedure and respect of the principle of *non-refoulement*, and removing provisions that put limitations on freedom of movement and residence of asylum-seekers and refugees;

As stipulated in the Article 28 of the 1951 Convention, the Government is encouraged to consider the issuance of travel documents to refugees;

Consider the accession to and implementation of the 1954 Convention relating to the Status of Stateless persons and 1961 Convention on Reduction of Statelessness.