



**Submission by the United Nations High Commissioner for Refugees**  
**for the Office of the High Commissioner for Human Rights' Compilation Report**  
**- Universal Periodic Review:**

**TAJIKISTAN**

**REFUGEES AND ASYLUM-SEEKERS**

**I. Background information and current conditions**

The Republic of Tajikistan was the first Central Asian state to accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* and to develop its national asylum system.<sup>1</sup>

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 refugee protection and it carries out determination of refugee status. Appeals against a negative RSD decision must be lodged with the District Court in the first instance, the City Court in the second instance, and the Supreme Court in the third instance.

Tajikistan hosts approximately 4,700 refugees and asylum-seekers, mainly from Afghanistan. The majority of the refugees and asylum-seekers are residing in urban areas, such as Vakhdat, Dushanbe, and Khujand in Sughd province.

**II. Issues of Concern**

*2.1. Access to Asylum Procedure*

The 2002 Refugee Law does not fully conform to the 1951 Convention and authorities systematically give precedence to national provisions over international law.<sup>2</sup> The law provides for pre-screening procedures before an asylum claim is registered, and includes grounds for exclusion beyond those that are contained in the 1951 Convention. The access to the asylum procedure depends on various preliminary requirements, namely registration with local authorities (implying the possession of travel document and visa), medical examination,

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<sup>1</sup> The Republic of Tajikistan signed the 1951 Convention in 1993 and ratified it in 1994.

<sup>2</sup> Resolutions 323 and 235/238 are applied strictly and often result in the refusal to register asylum claims and to issue or extend documents, which may lead to detention and *refoulement*.

evidence of residence,<sup>3</sup> and preliminary interview. In addition, the law does not provide for complementary forms of protection, nor does it stipulate any terms of reference for the RSD Commission.

Several provisions of national law restrict the rights of asylum-seekers and refugees. For instance, Resolution 323 states the “safe third country” concept. According to the “safe third country” concept, a person who has transited through certain countries (e.g. Afghanistan, Uzbekistan) is considered as having found protection in those countries. Application of the concept does not conform to the international standards as formulated in the Executive Committee (EXCOM) Conclusion No. 87 (L) – 1999, that:

[T]he institution of asylum is of crucial importance to the international protection of refugees; re-emphasizes the importance of ensuring access to asylum procedures; recalls Conclusions No. 15 (XXX) of 1979 and No. 58 (XL) of 1989 on refugees without an asylum country and irregular movement of asylum-seekers; and affirms, in this regard, that notions such as "safe country of origin", "internal flight alternative" and "safe third country", should be appropriately applied, so as not to result in improper denial of access to asylum procedures, or to violations of the principle of *non-refoulement*.<sup>4</sup>

Resolutions 325 and 328 prohibit asylum-seekers and refugees from residing in urban areas, which are not in conformity with Article 26 of the 1951 Convention.<sup>5</sup> Application of the Resolutions can result in the rejection of the registration of asylum claims, refusal to issue or extend documents, and can ultimately lead to detention and *refoulement*. The Committee on Elimination of Racial Discrimination expressed their concern:

[T]hat the criteria for prohibiting refugees and asylum-seekers from living in certain settlements under the 2002 Law “On Refugees” are not clear and that, as a result, article 5 (d) (i) of the Convention may be violated.<sup>6</sup>

Despite various advocacy efforts, the above provisions remain in force.

Furthermore, the Government lacks capacity to manage migration at the border pursuant to the international standards. There is no clear obligation or procedure for the border guards to identify asylum-seekers. No referral mechanism exists and registration is only conducted by DCR upon receipt of an asylum application.

## 2.2. Continuation / Termination of the Refugee Status

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<sup>3</sup> The evidence of residence is to be reported in accordance with Resolution 325, which restricts the urban dwelling of asylum-seekers and refugees.

<sup>4</sup> UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009 (Conclusion No. 1 – 109), available at: <http://www.unhcr.org/refworld/docid/4b28bf1f2.html>.

<sup>5</sup> Article 26 of the *1951 Convention relating to the Status of Refugees* states:

[E]ach Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

<sup>6</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Report of the Committee on the Elimination of Racial Discrimination: Sixty-fourth Session (23 February-12 March 2004), Sixty-fifth Session (2-20 August 2004)*, 1 October 2004, A/59/18, para. 408, available at: <http://www.unhcr.org/refworld/docid/45c30b360.html>.

Article 11 of the Tajik Refugee Law establishes that refugee status should be granted and extended for a period of up to three years.<sup>7</sup> However, the validity of refugee status should not be strictly limited in time, because refugee protection should continue for as long as the refugee needs such protection, which would normally be until the refugee can avail himself/herself again of the protection of the country of origin or acquire a new nationality. Furthermore, in practice refugee status is granted and extended for only twelve months, and re-registration with the local authorities is required. A refugee's status should not in principle be subjected to frequent review to the detriment of his sense of security, which international protection is intended to provide.<sup>8</sup> The short duration of the refugee identity document makes it difficult for refugees to secure stable employment and be economically self-reliant.

In addition, there were instances where refugees were denied their request to extend their refugee status without proper safeguards or procedure of cancellation, revocation, or cessation. When it is considered that circumstances have changed for individual refugees, however, the Government should apply internationally accepted principles and procedures pursuant to the cessation clause of Article 1C of the 1951 Convention.<sup>9</sup>

### 2.3. Freedom of Movement

Travel documents are not issued to refugees, impeding the refugees' freedom of movement outside the country. As stipulated in Article 28 of the 1951 Convention, issuance of travel documents to refugees lawfully staying in the country, for the purpose of travel outside the country, helps refugees find durable solutions.<sup>10</sup>

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<sup>7</sup> Article 9 of the Law on Refugees, No.590, as of 12 January 2010, provides the following:

“An asylum-seeker shall be recognized as a refugee for the period of up to three years. If the circumstances, due to which he became a victim of persecution, continue to exist in the country of his citizenship (former habitual residence), the validity of refugee status and registration with the interior organs of this person shall be extended by internal affairs agencies for another period of three years.”

<sup>8</sup> UN High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, para. 135, available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>.

<sup>9</sup> *Article 1C of the 1951 Convention relating to the Status of Refugees* states:

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or (2) Having lost his nationality, he has voluntarily re-acquired it; or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality; (6) Being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

<sup>10</sup> *Article 28(1) of the 1951 Convention relating to the Status of Refugees* states:

[T]he Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel

#### 2.4. *The Right to Social Welfare and the Right to Work*

Although refugees and asylum-seekers are entitled to social assistance from the State, in reality, the Government is not able to cover the needs of vulnerable asylum-seekers and refugees. Among persons receiving regular assistance from UNHCR and partners are 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 healthcare 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.

Tajik Refugee Law allows refugee children to attend local schools, but newly arriving refugee children require special courses in Cyrillic script to be able to study in local schools.

With regards to the right to work, Resolutions 325 and 328, as mentioned in paragraph 2.1., can obstruct refugees' access to employment. Refugee women also reported that their community does not welcome them to work, as it goes against their traditions.

#### 2.5. *Naturalization*

There are about 800 refugees who have been living for a long period of time in Tajikistan, in some cases up to 18 years. The majority of them are of Tajik ethnicity, speak the language, and have already *de facto* integrated into the local community. The Law on Citizenship provides for a reduced minimum period of stay in the country (half of the 5-year period required for a foreigner) for refugees to be eligible to apply for the Tajik citizenship. Also, the Government expressed its readiness to consider their individual applications for residence or citizenship. However, so far no refugee has been granted Tajik nationality, and 8 cases that UNHCR submitted to the authorities on behalf of refugees in 2010 have still not been decided by the Government.

### **III. Recommendations**

- UNHCR recommends the Government to revise its national legislation on refugees and the national Refugee Status Determination procedure to bring them into conformity with the 1951 Convention. In particular, UNHCR recommends introducing provisions that would assure unobstructed access to the asylum procedure and ensure full respect to the principle of *non-refoulement*. The Government should also be encouraged to remove provisions limiting the freedom of movement of asylum-seekers and refugees.
- UNHCR encourages the Government to consider the issuance of travel documents to refugees in Tajikistan.
- UNHCR recommends the Government to extend the period of validity of the refugee identity documents up to three years, as stipulated in the law.
- UNHCR recommends that refugees in Tajikistan who meet the legal requirements have access to the Tajikistani nationality, if they apply for it.

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document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

## STATELESSNESS

### I. Background information and current conditions

Based on the last census in 2000, there are about 2,300 stateless persons identified by the Government and about 300 stateless persons officially registered with the Government. Results of the 2010 census are not yet published. On the basis of available information, it appears that important protection concerns might arise with respect to access to naturalization procedures, lack of legal documents, and access to other rights.<sup>11</sup>

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. The review is expected to be finalized in 2011, with the adoption of the necessary amendments.

### II. Issues of Concern

The Republic of Tajikistan is not a State party to the *1954 Convention relating to the Status of Stateless persons* and the *1961 Convention on Reduction of Statelessness*. It is, however, a party to other international instruments,<sup>12</sup> which establish obligations relating to the right to nationality and enjoyment of rights by stateless persons.

While the current national legislation of Tajikistan represents a good basis for the protection, prevention and reduction of statelessness, more efforts need to be placed on aligning domestic standards with their international law equivalents.

The laws of Tajikistan provide a number of tools for prevention and reduction of statelessness in the country. Thus, along with acquisition of nationality at birth by children whose parents are nationals of Tajikistan, it provides for acquisition of nationality by almost

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<sup>11</sup> One of the conclusions of a **draft analysis** on statelessness in Tajikistan is the following:

“The laws of Tajikistan provide for a large number of rights and freedoms that can be enjoyed by stateless persons. Basic human rights and freedoms such as, for example, rights related to access of legal remedies, education, healthcare, housing, social security, gainful employment and self-employment, etc., are envisaged for stateless persons under the laws of Tajikistan. However, there are two concerns which may hamper stateless persons from fully exercising their rights and freedoms. Firstly, although rights may be exercised by both temporarily and permanently residing stateless persons, not all of them can be exercised by temporarily residing stateless persons; yet at the same time, permanently residing stateless persons enjoy a majority of rights equal to nationals of the country. Secondly, the enjoyment of rights and freedoms granted to stateless persons depends on the possession of valid documents that identify a person as stateless; otherwise stateless persons face difficulty in exercising their rights and freedoms. International standards require that all stateless persons be properly documented and have the opportunity to exercise their rights and freedoms on the possession of valid documents that identify a person as stateless; otherwise stateless persons face difficulty in exercising their rights and freedoms. International standards require that all stateless persons be properly documented and have the opportunity to exercise their rights and freedoms irrespective of their residence status in the country, whether they stay temporarily in the country or arrived as permanent residents.”

<sup>12</sup> Tajikistan is party to *the International Covenant on Civil and Political Rights*; *the Convention on the Rights of the Child*; *the Convention on the Elimination of All Forms of Discrimination Against Women*; *the International Convention on the Elimination of All Forms of Racial Discrimination*; *the International Covenant on Economic, Social and Cultural Rights* *the Convention Against Torture*.

all children who would otherwise be stateless. The national laws address some situations of statelessness of former USSR citizens who are not nationals of Tajikistan and offer them the opportunity to apply for the Tajik nationality. More generally, Article 28 permits any Tajik national to renounce his or her nationality without having acquired or having been assured of obtaining another nationality.

However, according to Article 29 of the 1995 Constitutional Law on Nationality, Tajik citizens residing abroad for a period of more than five years who fail to register at a consulate in effect lose their nationality, which can render them stateless.<sup>13</sup> In addition, there is a risk of a child born abroad becoming stateless at birth under Article 17 of the nationality law, if the parent with a foreign nationality and the one with a Tajik nationality disagree on the citizenship of their child.

Accession to the *1954 Convention relating to the Status of Stateless Persons* would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

### **III. Recommendations**

- UNHCR recommends that the problem of statelessness in Tajikistan be further studied at all levels of government. Efforts should be made to coordinate the activities of state agencies on mapping, identifying, and documenting all stateless persons in the country.
- UNHCR recommends that the remaining gaps in the nationality legislation be amended to prevent statelessness in all cases.
- UNHCR recommends that the Government of Tajikistan accedes to both the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

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<sup>13</sup> Not registering at the consulate while residing abroad does not necessarily mean that their intention was to renounce citizenship. It could be that he/she was simply not aware of the requirement to register at the consulate.