

Contribution to UPR reporting for Tajikistan

I. Introduction

Through this contribution to the UPR, the Tajikistan's office of UN Women hopes to start and continue a constructive human rights dialogue that will initiate respect for and help with implementing gender equality commitments identified by human rights treaties Tajikistan is a party to, and eradicate the deep-rooted culture of impunity the country has embraced.

Main international human rights treaties Tajikistan is party to include the Convention on Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture (CAT), the Convention on the Rights of Migrant Workers, and the Convention on Elimination of all Forms of Racial Discrimination (CERD). Of these, four treaties allow women to bring complaints: CEDAW - about sex discrimination, CAT - about torture and cruel or inhuman treatment, CERD - racial discrimination, and ICCPR - about civil and political rights. Of these, only CEDAW and CAT (or rather Optional Protocols to these Conventions) have inquiry procedures allowing initiating 'a confidential investigation by one or more of its members where it has received reliable information of grave or systematic violations by a State Party of rights established in the Convention'¹. This is why ratifying OP-CEDAW is has become even more pressing. This issue is discussed further below.

The 2008 Gender Equality Index for Tajikistan demonstrates a serious regress (-8.9%) in comparison with 2004 on all key directions - education, economic activity and political empowerment of women. In 2010, Tajikistan ranked 89th in the Gender Equality Index out of 134 countries (a fall from the 86th position in 2009, and from the 79th in 2007).

Tajikistan has failed in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'². According to an annual Amnesty International report released in May 2010, Violence Against Women (VAW) is one of the main human rights issues facing the country, which means that the response of the government to protect its citizens is inappropriate.

The issues UN Women focuses on in this submission are **domestic violence (DV)** in Tajikistan - a complex issue cross-cutting with **labour migration, poverty, the ratification of OP-CEDAW, early marriages** and **education**, and finally **land rights**.

¹ OP-CEDAW Art.8

² UN Charter, Art. (1) (3)

II. Legal base:

Article 10 of The Constitution of Tajikistan provides that '[i]nternational legal documents recognized by Tajikistan are a constituent part of the legal system of the republic. If republican laws do not conform to the recognized international legal documents, the norms of the international documents apply'. In the meantime, Tajikistan Progress Report on the Millennium Development Goals, recommends that CEDAW be applied in the judicial practice³ before the draft bill on domestic violence is finally signed. When domestic violence is finally criminalized, it will provide grounds to litigation⁴.

Comment 8 of the **Concluding Comments of the Committee on the Elimination of Discrimination against Women: Tajikistan (CEDAW/C/TJK/CO/3)** formed at the Committee's thirty-seventh session and dated February 2, 2001 (the Comments) praises Tajikistan on decrees and programmatic decisions that provide a basis for the implementation of international human rights obligations in Tajikistan. These include the Presidential Decree of 3 December 1999 on enhancing the role of Women in society, the State Programme (the Programme) the 'Guidelines for a State policy to ensure equal rights and equal opportunities for men and women of the Republic of Tajikistan for the period 2001 – 2010', the programme 'State programme on human rights education in the republic of Tajikistan' (2001); and the past National Plan of Action for Enhancing the Status and Role of Women for the period 1998 – 2005.

Also in place are the State Programme on development of female leaders for 2007-2016 (funded by the state budget that is, however, not realistic enough to reach its goals), and the National Development Strategy (NDS) for 2005-2015 developed to reach the MDGs and reconfirming objectives of the Programme (above, no. 2)⁵.

Coalition of NGOs From Equality *de jure* to Equality *de facto* issued a Progress Report on the State Programme on equal rights and opportunities for 2010-2011, in which it expressed concerns that many of the targets set in the Programme have not been achieved. The Progress Report notes that despite the recent developments, there remains an acute inequality of arms between men and women when it comes to women's access to resources, power and property relations. As the main obstacles in implementing gender policies, the Progress Report mentions inadequacy of the legislative base, and limited and weak institutional mechanisms for gender policy. The Progress Report recommends coordination of all the national strategies⁶.

The NGO Panorama and Coalition Karat have been monitoring the progress on implementing the Concluding Comments and have found that out of the 29 recommendations included in the Concluding Comments made in 2007, only one has been fully fulfilled (the minimum marriage age has been raised to 18), 14 have been partly fulfilled, and 10 have not been fulfilled. It is not possible to assess the remaining four, as the next periodic report has not been submitted.

³ Goal 3: Promote gender equality and empowerment of women; p.67

⁴ At the same time, the draft bill on domestic violence is far from perfect: for instance, it does not include a clause on marital rape

⁵ The NDS focuses on implementation of gender policies as a part of public administration report, ensuring equal access for men and women in business, elimination of gender inequality in the development of human potential, e.g. access to education or information.

⁶ Basic Directions of State Policy to Ensure Equal Rights and Opportunities for Men and Women in the Republic of Tajikistan for 2001-2011.

Comments on the Report of the then Special Rapporteur on Violence Against Women, its causes and consequences - Yakin Ertürk after her visit to Tajikistan in May 2008

Ms Ertürk supports the works on domestic violence law and recommended that ‘other measures ... to enhance women's access to justice’⁷ should be in place, along with promotion and support to the nationwide research on women’s status including domestic violence.

Ms Ertürk noted that ‘patriarchal discourses and practices perpetuating women’s subordinate position in the family and society have resurfaced visibly, leading to women’s increased vulnerability to violence and exploitation’, and that ‘violence against women and girls is accepted by men and women alike’. Indeed, already in 2005, Multiple Indicator Cluster Survey (MICS) found that 75 per cent of Tajik women think that men have the right to beat or hit them. Although there has not been new MICS since, practice shows that little has changed since.

Ms Ertürk also stressed the necessity of cooperation with religious leaders with regard to marriage practices: religious marriage can only be accepted if a proof of civic marriage is available.

III. Thematic issues:

OP-CEDAW:

The state should take steps to raise women’s awareness on existing international and internal protection mechanisms, and be in position to handle and adequately respond to cases submitted by women through these mechanisms. However, due to existing social norms and a poor legal education of Tajik women and the society as the whole, the women are reluctant to demand protection of their rights, and there is a high risk that even in case of the ratification of the OP-CEDAW, this instrument will not be sufficiently applied by women.

However, the need for ratification of OP-CEDAW signed by Tajikistan in 2000 remains⁸. The Concluding Comments recommended that Tajikistan ratify CEDAW’s Optional Protocol (OP). So did Mr Ertürk in her report on Mission to Tajikistan. If Tajikistan did ratify the OP, it would become the 100th country to have done so. The OP does not allow reservations⁹, which reflects the relatively small number of states that have ratified it: as of today, CEDAW boasts 186 States Parties¹⁰, while the OP - only 99¹¹.

Domestic Violence:

The Concluding Comment 22 urged Tajikistan to prioritize eliminating all forms of violence against women, particularly domestic violence, and signing the draft bill on domestic violence. This recommendation has been fulfilled partly: the DV training programme has been implemented in the law enforcement structures, and with the OSCE support adequate support to DV victims has been provided.

The draft bill on DV has not been signed. It is worth noting though that signing the bill will not sort the problem on domestic violence in Tajikistan. Efficient implementation mechanisms alongside awareness-raising sessions are needed for the law to function properly. The widespread tolerance for domestic violence must decrease and domestic violence incidents must start getting reported.

⁷ Human Rights Watch: <http://www.hrw.org/en/node/79352>

⁸ OP-CAT, under which women could bring complaints about torture and cruel or inhuman treatment has not even been signed yet.

⁹ OP-CEDAW Art.17

¹⁰ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

¹¹ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en

In a gesture of the government's recognition of the problem of DV, on November 30, 2010 the State Crisis Center for Women opened. In theory, by opening and allowing the center to run, the state has demonstrated that it recognizes its responsibility towards its citizens. In practice, the Center has only two rooms for 10 staff with the budget of 84 thousand somoni (roughly 19 thousand US dollars).

Gender Equality and political participation of women:

Although the Tajik Constitution and legislation fall short on the domestic violence issue, they do secure equality for men and women in all walks of life. Article 17 of the Constitution expressly states that 'all are equal before the law and court ... irrespective of nationality, race, sex, language, belief, political convictions, education, social and material status'.

The Constitution and the election law provide for equal participation of men and women in the electoral process too (please also see the point below – gender, migration and poverty). The requirement of the law that electoral candidates must have a higher education seriously hinders women's participation in the electoral process. According to a State Statistics Committee publication Women and Men of the Tajik Republic in 2010, the percentage of women studying at universities was 29 for the academic year 2008/2009¹².

The March 2005 Law on State Guarantees of Equality of Men and Women and Equal Possibilities on their Realisation' expressly prohibits discrimination of the rights of men and women (Art.3). Article 5 guarantees 'equal representation of men and women in legislative, executive and judicial authorities', and Article 17 provides for continuous monitoring of securing equal possibilities to men and women in the social and economic spheres.

The Concluding Comment 12 recommended that the 2005's Law on State Guarantees be amended in order to clarify its operational aspects. It was also recommended that Tajikistan strengthen its complaints and implementation mechanisms. This recommendation has not been fulfilled. Monitoring policies are limited by the perpetual lack of funding, which results in the lack of consistency in successful implementation of women's rights. There are concerns about the limited implementation of the above law and the ongoing *de facto* discrimination. To ensure *de facto* equality, while calling for general equality for men and women, the authorities should focus on the equality of outcome rather the equality of opportunity.

The Concluding Comments 26 requested Tajikistan to undertake national awareness-raising campaigns about the importance of women's participation in public and political life, especially about the obstacles that women encounter in rural areas, and urged it to increase women's representation in political and public life, especially in the rural areas and at the grassroots levels¹³. The state and non-state actors should be more involved in facilitating women's involvement in political life. This recommendation has been fulfilled partly - family voting has been banned. The recommendation has not been fulfilled with regards to undertaking national awareness-raising campaigns about the importance of women's participation in public and political life, reviewing the use of temporary special measures¹⁴ to increase women's political representation including the establishment of benchmarks and quotas, and waiving the registration fee for women candidates.

¹² Accordingly, in 2009/2009, 48% of girls received primary school education, and 43% - secondary school education.

¹³ On the one hand, the problem of women's low political participation is not unique to Tajikistan: it currently stands at 19.04% (12 women for 63 seats). On the other, the problem in Tajikistan is that women simply do not get elected, and even if they do, they do not represent the most vulnerable strata of the society: disabled women and their families, women living in extreme poverty or abandoned/divorced women.

¹⁴ As per CEDAW Art 4 (1) about accelerating *de facto* gender equality

Gender, migration and poverty:

There is a strong correlation between these three factors. The International Organisation for Migration (IOM) estimated in 2009 that there were around 800,000 Tajik migrants, out of which 95 per cent are men, and nearly 80% - married. The mass labour migration of the male population (currently at 12%¹⁵) creates the circumstances of aggravated democratic asymmetry and increases the number of women-headed households and households with uneducated head (mainly women). The divorce rate among labour migrants is high and it is often the case that labour migrants choose to start a new life in the recipient countries – Russia or Kazakhstan, leaving their former families without income. Subsequently, abandoned wives of migrant workers – often uneducated and lacking any vocational skills – are forced to become breadwinners. Children in such families, especially girls, are often forced to help, which reduces their chance to receive an education and find a well-paid job in the future.

Early Marriage:

The Q’ran does not define the minimum marriage age, merely mentioning puberty as the minimum. The marriage age has indeed been raised to 18¹⁶. Theoretically, according to Tajikistan’s Criminal Code those in breach with the new law are now guilty of violating articles 168¹⁷ and 169¹⁸ - crimes that carry a prison sentence of up to six months each. Religious marriage (**nikokh**) is still widespread and despite the new law, early marriages are still not uncommon. According to LSST for 2007, 15.5% of girls aged 18 were married. In that same year, 4.7% 17-year-old girls got married, and 0.8% of the 16-year old girls¹⁹.

Through the new draft law on Parents’ Responsibilities for Children’s Upbringing, the state should specify and adhere to the commitments on prevention of early marriages and strengthen the accountability and responsibility of parents and the society for overcoming this practice.

Land Rights:

The Committee urged Tajikistan (Concluding Comment 34) to ensure that the rights of - especially rural - women are protected, including single women-headed households, land ownership and management of land. Another point that the Committee urged Tajikistan to was to include in its next report sex-disaggregated data and information on the de facto situation of rural women. Such report has not been submitted yet. This recommendation was fulfilled partly: the decision on developing a national programme on social development of the countryside²⁰ has been approved but it has not been published yet and no further information has been available. Further, gender issues hardly get a mention in the programme.

Regarding gender-related amendments to the land reform, the following amendments have been proposed: men and women should have equal rights to land; a broad-based annual review of whether women had equal access to land should be undertaken, women should be treated equally with men in any dispute involving land use rights, and an anti-discrimination provision that prohibits the allocation of land by reference to and due to gender, race or religion should be included in the law.

15 UNDAF Plan for Engagement 2008

16 This is in line with the Special Rapporteur’s recommendations to amend the Family Code and increase the minimum marriage age for men and women to 18, and in line with the Convention on the Rights of the Child, and General Recommendation 21 of the Committee on the Elimination of Discrimination Against Women.

17 Giving in Marriage a Girl Who Has Not Reached Marriage Age

18 Contracting a Marriage in Relation to a Person Who Has Not Reached Marriage Age; Article 170 treats of polygamy.

Source: <http://www.legislationline.org/documents/section/criminal-codes/country/49> accessed January 7, 2011

19 UNDP Country Report 2009. The data only reflects legal marriage. The numbers of girls married in traditional marriage (nikokh) are higher.

20 This includes protection of rights of the rural women including single women heads of households, land rights, management of land and marketing of products by providing them with legal, management and business training and by simplifying the process of registration of private farms.

IV. Conclusions:

Even if CEDAW's Committee's recommendations are implemented, as is the case with the increased minimum marriage age from 17 to 18, this process becomes more of a tick-box exercise rather than a mechanism for appropriately handling genuine concerns about the situation of Tajik women and girls. Even if human rights law and relevant legislation is in place, women are often not in the position to access and claim their rights and seek help to avail of it because of fear of reprisal. There is a widening gap between legislation and law enforcement: for instance, even if the law bans early marriage, this practice still continues unabated on a massive scale. General human rights illiteracy of women as rights holders is another challenge not adequately addressed yet.

The issue of DV is the public/private distinction, which shifts such issues like domestic violence to the public sphere but is conveniently disregarded by the State. The fact that criminalising DV has been taking so long (since 2003), and that the levels of under-reporting of DV incidents are high, creates an impression for the government that the problem does not exist.

Despite the obligations that human rights law imposes, Tajikistan's traditions and customs foster sexist and patriarchal attitude towards women, which reflects and perpetuates the conflict of tradition and human rights. The recent Islamic upsurge has set the tone for the dialogue with religious/community leaders with the view to achieve the balance in the society.