

THE COALITION OF NGOs OF TAJIKISTAN

to the

UN HUMAN RIGHTS COMMITTEE

**NGO REPORT**

**ON THE REPUBLIC OF TAJIKISTAN'S IMPLEMENTATION OF  
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**DUSHANBE – 2013**

**Prepared by the support of the International Federation for Human Rights (FIDH) and  
Open Society Institute – Assistance Foundation in Tajikistan**

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## INTRODUCTION

In 2010, the Republic of Tajikistan presented its Second Periodic Report on implementation of the International Covenant on Civil and Political Rights (CCPR/C/TJK/2). The national report summarized the main laws enacted in order to implement the ICCPR and openly discusses certain problems and difficulties the country has faced in realizing its commitments. However, many questions and problems were not addressed by the national report.

This report has been prepared by the Coalition of NGOs, whose member organizations specialize in a variety of aspects of civil and political rights:

- Tajikistan Association of Political Scientists;
- Bureau for Human Rights and the Rule of Law;
- Union of Lawyers of Sughd Province;
- Tajikistan League of Women Lawyers;
- National Association of Independent Media of Tajikistan;
- Independent Human Rights Center;
- NotaBene Public Foundation;
- Panorama Public Foundation;
- Right & Prosperity;
- Rushd;
- Equal Opportunities;
- Human Rights Center;
- Center for the Rights of the Child;
- Etibor (Dignity).

The Bureau for Human Rights and the Rule of Law coordinated the Coalition's work on the report and oversaw the writing and editing process. The International Federation for Human Rights (FIDH) coordinated and edited the English version.

Various studies, reports, and sources from governmental bodies and international and nongovernmental organizations were used in preparing the report, as well as information provided by the Danish Refugee Council in Tajikistan.

The report presents information on articles 2, 6, 12, 14, 18, 19, 22, 17, 23, and 24, as well as information on the observance of civil and political rights of specific groups (children, refugees, etc.). To avoid redundancy and in coordination with other coalitions (the Coalition of NGOs against Torture, the NGO Coalition to Protect the Rights of Migrant Workers), this report does not include information on the observance of human rights covered in the reports of other NGOs and coalitions, or in reports presented by NGOs to other UN treaty bodies for 2012-2013 (see

NGO reports on Tajikistan's implementation of conventions against torture,<sup>1</sup> on the elimination of discrimination against women,<sup>2</sup> and on protecting the rights of migrant workers<sup>3</sup>).

In working on the report we strove to present to members of the UN Human Rights Committee and all interested parties information on Tajikistan's implementation of the ICCPR that supplements the National Report. On many issues, our position differs from the official one.

In recent years, certain steps have been taken by the government of Tajikistan and its agencies to promote adherence to ICCPR standards.

- The institution of a Commissioner for Human Rights has been established;
- Judicial and legal reform has been undertaken: governmental programs for judicial and legal reforms have been adopted, reform of the bar is underway, and a new procedure code is being used by law enforcement agencies;
- Legal measures to strengthen gender equality have been developed and adopted;
- Two articles of criminal law against defamation have been removed;
- A governmental educational program in the area of human rights has been adopted.

However, the situation with certain human rights has deteriorated and laws restricting human rights are still being enacted. Meanwhile, the national institutions tasked with upholding human rights and freedoms lack independence and the necessary resources. The main human rights problems facing the country continue to be the widespread use of unlawful methods and torture during detention, a lack of equality in criminal proceedings, the weak position of defense counsels, judicial proceedings that do not meet the standards of a fair trial, and the violation of basic freedoms, such as the freedoms of movement, expression, and association.

Recommendations by the Committee on Human Rights (CCPR/CO/84/TJK) have yet to be implemented:

- On fulfillment of commitments under the Optional Protocol to the ICCPR; as of the present, not a single Committee decision has been implemented (para. 8);
- Burial places of those put to death before the moratorium against executions was implemented have not been revealed to relatives (para. 9);

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[http://www2.ohchr.org/english/bodies/cat/docs/ngos/CATI\\_Tajikistan\\_CAT49.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/CATI_Tajikistan_CAT49.pdf)

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[http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CoalitionOfNGOs\\_Tajikistan\\_PSWG\\_CEDAW56.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CoalitionOfNGOs_Tajikistan_PSWG_CEDAW56.pdf)

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[http://www2.ohchr.org/english/bodies/cmw/docs/Shadow\\_Report\\_Tajikistan\\_CMW16\\_en.pdf](http://www2.ohchr.org/english/bodies/cmw/docs/Shadow_Report_Tajikistan_CMW16_en.pdf)

- There are no mechanisms for effectively investigating allegations of torture, and torture is widely used to obtain incriminating testimony and confessions of guilt; lawyers' access to detainees and defendants is often obstructed (paras. 10-11);
- While criminal law has been significantly humanized, incarceration is the primary form of criminal penalty, and the International Red Cross and civil society are not given access to penitentiary institutions to conduct independent monitoring (para. 14);
- Recommendations concerning the equality of parties to a trial, the independence of judges, and military court reform have essentially not been implemented. For example, in 2010, the country's courts tried 5,930 criminal cases against 7,491 people. Out of this number, the Supreme Court handed down two acquittals.<sup>4</sup> In 2011, 5,973 criminal cases were tried, and 54 acquittals were handed down, and in the first half of 2012, 3,282 criminal cases against 4,153 people were tried and 27 acquittals were handed down<sup>5</sup> (paras. 16-18);
- No measures have been taken to introduce alternative military service (para. 20).

The country lacks programs offering mechanisms to implement laws aimed at improving the role of women in society. There is no continuous monitoring and evaluation of the implementation of laws and no clear system of indicators has been developed to measure the implementation of gender policies and the advancement of women.

The system whereby places of residence must be registered limits freedom of movement, and refugees and asylum-seekers are limited in their freedom of movement, access to justice, and effective legal defense.

**Tajikistan's judicial system** remains weak and ineffective. Many judges are viewed as corrupt. Executive authorities not only have the final say on most judicial appointments, but they also determine the size of the Council of Justice. Furthermore, the procedure by which judges are selected and appointed still lacks transparency.

In keeping with para. 12 of the Human Rights Committee's recommendations, Tajikistan's new Criminal Procedure Code transfers the power to authorize arrest from procurators to judges. Nevertheless, there is still **no clear mechanism for judges to decide on the lawfulness and grounds for detention**. In essentially 100 percent of cases, judges grant requests by investigative bodies to authorize remand for trial, basing this decision purely on the severity of the crime,<sup>6</sup> in contradiction to international standards of the right to freedom and the inviolability of the person. In considering the choice of measures to be used against arrestees, judges do not

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<sup>4</sup> From an interview with the Chairman of the Supreme Court of the Republic of Tajikistan, Mr. N. Abdullaev, at a press conference on 14 January 2011.

<sup>5</sup> From an interview by Asia-Plus with the Chairman of the Supreme Court of the Republic of Tajikistan, Mr. N. Abdullaev: <http://news.tj/ru/news/n-abdulloev-za-polugodie-v-tadzhikistane-vyneseno-27-opravdatelnykh-prigovorov> (in Russian).

<sup>6</sup> "Monitoring the Sanctioning of Arrest," Human Rights Center, 2010 (in Russian).

look into allegations of torture, basing this on the idea that their role is limited to questions directly related to authorization issues.

**The *advokatura*** (bar or lawyers as a group) remains decentralized in Tajikistan. The absence of a single, independent and self-governed organization prevents lawyers from lobbying for the profession's interests and protecting members. A law is currently being drafted under the title "On the *Advokatura* and Legal Practice" that, unfortunately, contains provisions undermining the independence of the legal profession by creating a Qualifying Commission that would come under the executive branch. The system by which legal aid is subsidized by the state in criminal and civil cases remains ineffective.

Tajikistan's media community is still hindered by the fact that **defamation remains a criminal offence**, seriously limiting freedom of speech in the country. Furthermore, recent years have seen an increase in lawsuits against the media by government bodies in response to criticism, as well as the illegal blocking of independent media websites.

The existing legal framework regulating freedom of association and the activities of nongovernmental organizations give the government significant powers to interfere with the functioning of nongovernmental organizations.

## **Upholding the Provisions of the ICCPR: Article 2**

### **The Lack of Transparency in the Legislative Process**

The process whereby laws relating to human rights are drafted is not consistent with principles of openness. Civil society has been allowed almost no involvement in the processes of lawmaking and subsequent discussion of draft legislation. Public hearings or participation in working groups convened to develop/discuss reform projects, programs, or laws are only possible in cases where such working groups are supported by international donor organizations or when members of civil society happen to learn that a law is being drafted. The country's laws do not require draft laws to be published. Art. 5, para. 2 of the 2009 Law on Normative-Legal Acts of the Republic of Tajikistan states that "a draft of a normative legal act **can** be published for public discussion," which gives broad authority to government agencies to decide which legislation should be brought forward for public debate. The President's National Center for Legislation, established in 2009, has a website ([www.mmk.tj](http://www.mmk.tj)), however it does not offer information about legislation being developed or other strategic documents relating to human rights.

### **Courts in the Republic of Tajikistan Do Not Apply ICCPR Norms**

Although art. 10.3 of the constitution of Tajikistan assigns precedence to international documents over national law and provides for the direct application of the provisions of international documents by Tajik courts, civil society knows of no instances where courts have directly applied the provisions of the International Covenant on Civil and Political Rights.

### **The Constitutional Court of the Republic of Tajikistan Should Review the Country's Human Rights Laws for Compliance with ICCPR Standards**

Laws governing the Constitutional Court of the Republic of Tajikistan assign it broad authority to decide whether legal provisions comply with the constitution and international human rights documents. Citizens have the right to appeal to the Constitutional Court if they believe that their constitutional rights and freedoms have been violated by the application of laws and other regulations in a specific legal relationship (art. 37, para. 6 of the Constitutional Law on the Constitutional Court of the Republic of Tajikistan). Tajikistan's Human Rights Commissioner (Ombudsman), courts, and judges also have the right to appeal to the Constitutional Court.

In considering constitutional cases alleging contradictions between provisions of national law and international standards in the area of human rights, the Constitutional Court uses a literal approach to interpreting the provisions of international documents and does not take into account precedent set by UN human rights committees.



On 3 May 2012, the Constitutional Court refused to hear a constitutional appeal submitted by Mirzoev “On the Compliance of Art. 111, Para. 1 of the Criminal Procedure Code (on the legality of using remand based solely on the severity of the crime) to Art. 9, Para. 3 of the ICCPR,” stating that it saw no inconsistency with ICCPR standards.<sup>7</sup>

On 15 May 2012, the Constitutional Court ruled on an appeal by Jumaboy Boboev, who requested a determination as to whether art. 42, para. 8.2 of the Criminal Procedure Code (which allows review of evidence in a criminal case only after the investigation has been completed) contradicted provisions of the constitution and international standards under arts. 6 and 7 in combination with art. 2.3 of the ICCPR and arts. 12 and 13 of the Convention against Torture. The court found no such contradictions and did not provide any arguments exploring the possibility of contradictions.<sup>8</sup> In its ruling, the constitutional court indicated that, “The procedure stipulated in para. 8.2 of art. 42 of the Criminal Procedure Code cannot be assessed as a provision limiting a victim’s rights to access information relating to his case. Over the course of a preliminary investigation, the familiarization by participants in legal proceedings with investigative evidence is an effective violation and weakening of the process and procedure for gathering evidence and proof of confession and the commission of a crime... [F]amiliarization with evidence after the investigation has been completed is not a prohibition or restriction of the rights of the victim to be familiarized with the investigative evidence; it is instead an assurance of the equality of the victim and other parties to a criminal trial.”

### **The Institutional Framework for Implementing and Monitoring Implementation of International Human Rights Commitments**

In accordance with its charter, the Commission on Implementing International Human Rights Commitments oversees issues involved in meeting international commitments under ICCPR. The functions of the commission’s secretariat are fulfilled by the Department of Constitutional Guarantees of Citizens’ Rights, which comes under the Executive Office of the President. In 2013, a National Action Plan was adopted to implement UPR recommendations and the practice of developing national action plans to implement the recommendations of other human rights treaty bodies and Special Procedures Based on the Results of Their Visits to the Republic of Tajikistan was established.

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<sup>7</sup> During his remand hearing, Mirzoev was remanded to custody solely based on the severity of the crime in which he had been implicated.

<sup>8</sup> Jumaboy Boboev, the father of Usman Boboev, who died in custody from presumed acts of torture, was not given access to the evidence in the criminal case stemming from the death of his son. The case has now been suspended for two years. An individual communication on this case has been registered with the HRC as No. 2173 for 2012.

On 30 March 2010, representatives of NGOs were removed from the Commission on Implementing International Human Rights Commitments. Although it is currently the practice to involve NGOs in the process of drafting and discussing national reports, the lack of any formal requirement of NGO participation in the work of the Commission places organizations at the mercy of decision-making officials. The Commission's activities are limited to drafting and presenting reports to treaty bodies and does not include monitoring the implementation of UN treaty body recommendations. This is partly due to the fact that the Commission secretariat lacks the staff to deal directly with issues relating to the implementation of international human rights commitments or monitoring such implementation. The texts of national reports, final recommendations, and the HRC's Views on Individual Communications in regard to the Republic of Tajikistan are not published or circulated. The website of Tajikistan's human rights commissioner publishes the texts of national reports, but not the recommendations of UN bodies or the views of the HRC on individual communications.<sup>9</sup> In general, the texts of UN documents related to Tajikistan are found only on the websites of nongovernmental organizations.<sup>10</sup>

### **Human Rights Committee Decisions on Individual Communications Are Not Implemented**

The country has not developed a mechanism for implementing the views of the Human Rights Committee in accordance with commitments under the Optional Protocol to the ICCPR. The charter of the Commission on Implementing International Human Rights Commitments only provides a general outline of its role in the fulfillment of human rights commitments and of its involvement in communication with UN agencies. At the same time, there is no provision for responsibility and mechanisms for implementing individual views of the Human Rights Committee. Procedural law does not provide for the review of a case in light of HRC views. Not one of the HRC's 23 Views on Individual Communications handed down by the Committee in regard to the Republic of Tajikistan have been implemented by the government. Also not implemented is the HRC's recommendation that Tajikistan "comply fully with its obligations under the Covenant and the Optional Protocol, in accordance with the principle of *pacta sunt servanda*, and take the necessary measures to avoid similar violations in future."<sup>11</sup>

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<sup>9</sup> See [http://ombudsman.tj/ru/reports\\_and\\_publications/national\\_reports\\_rt.php](http://ombudsman.tj/ru/reports_and_publications/national_reports_rt.php).

<sup>10</sup> For details, see the Nota Bene foundation's "Implementation of International Obligations on Human Rights by Republic of Tajikistan: Legal Framework and Procedures (Results of the Research)," Dushanbe, 2011. [http://www.notabene.tj/documents/publication/03\\_Final\\_Book\\_Eng.pdf](http://www.notabene.tj/documents/publication/03_Final_Book_Eng.pdf)

<sup>11</sup> Para. 8 of "Concluding Observations of the Human Rights Committee," CCPR/CO/84/TJK, 18 July 2005.

## **The Institution of the Human Rights Commissioner (Ombudsman), Established in the Republic of Tajikistan in 2008, Lacks Political Will and Guarantees of Independence in Advancing and Defending Human Rights**

The Commissioner's staff is part of the governmental working group that drafts national UPR reports and national reports to the UN Human Rights Committee and also belongs to governmental working groups that monitor the human rights situation in various penitentiary institutions. No information is available about how the Commissioner exercises his authority to conduct independent investigations into cases of gross violations of human rights (art. 13 of the Law on the Human Rights Commissioner in the Republic of Tajikistan). The Committee against Torture's recommendations that the Commissioner undertake "regular, unannounced visits to all places of deprivation of liberty, accompanied by medical professionals, including to places of police custody, and that the findings are made available publicly" have not been implemented.<sup>12</sup> Although the Commissioner does conduct independent monitoring of human rights in places of deprivation of liberty (psychiatric and correctional institutions, orphanages), there is no public information about the results of such monitoring and visits or of measures taken as a result of them. In accordance with UPR recommendations (paras. 88.4-88.7) that the Commissioner institution undergo Paris Principle accreditation, in March 2012 a subcommittee on accreditation gave the institution a "B" status and offered recommendations concerning the mandate, selection and appointment process, and immunity of the Commissioner. Currently, no information is available on implementation of the accreditation subcommittee's recommendations. Tajikistan's annual UPR report for 2012 also does not contain such information.

### **Recommendations**

Tajikistan should comply fully with its obligations stemming from its ratification of international human rights treaties in accordance with the principle of *pacta sunt servanda*. An effective national mechanism should be developed in accordance with views and recommendations of UN treaty bodies at the national level. To this end, an expert working group should be established under the Commission on Implementing International Human Rights Commitments that includes representatives of civil society.

The Human Rights Commissioner should be given all guarantees of independent action, including the legal, financial, and staff wherewithal to effectively defend human rights and ensure that the accreditation subcommittee's recommendations are implemented. All Republic of Tajikistan governmental bodies should observe the principle of openness and

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<sup>12</sup> See para. 14 (c) of the Committee against Torture's "Concluding observations on the second periodic report of Tajikistan, adopted by the Committee at its forty-nine session (29 October - 23 November 2012)," CAT/C/TJK/CO2.

accountability in the legislative process, and civil society experts should be involved in this process at the earliest stages of lawmaking.

### **The Right to Life: Article 6**

In 2004, a law was enacted that introduced an indefinite moratorium on the handing down and execution of death sentences within the Republic of Tajikistan. Nonetheless, the constitution and Criminal Code provide for this form of punishment.<sup>13</sup> Life imprisonment is used as an alternative to the death penalty.

Currently, there is no official statistic for the overall number of people sentenced to life imprisonment. According to information from the Council of Justice, in 2011 alone, 17 people were sentenced to life imprisonment.

Despite Human Rights Committee recommendations that the state “adopt urgent measures to inform families where those executed before the moratorium are buried,” there is no statistical information on the number of people for whom death sentences were carried out in recent years or their place of burial. In accordance with the Law on the List of Information Constituting State Secrets, this information is considered to be secret.

In April 2010, a government order convened an interagency working group to study the socio-legal implications of abolishing the death penalty in the Republic of Tajikistan.<sup>14</sup> The working group is limiting its work to roundtables and seminars, and in three years it has not undertaken any steps to gradually abolish the death penalty in the country.

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<sup>13</sup> The Criminal Code stipulates that death by shooting can be used in cases of murder (art. 104, para. 2), rape (art. 138, para. 3), terrorism (art. 179, para. 3), genocide (art. 398), and biocide (art. 299).

<sup>14</sup> The working group consisted of Tajikistan’s human rights ombudsman; the chairman of the constitutional court; the chairman of the supreme court; the chairman of the council of justice; the prosecutor general; the minister of justice; the chairman of the state committee on national security, the minister of internal affairs, the deputy minister for foreign affairs, the chairman of the department for constitutional guarantees of citizens’ rights under the executive office of the president, as well as the chairman of Tajikistan National University’s School of Law. The working group was headed by Jumahon Davlatov, presidential advisor on legal policy and the president’s authorized representative to the Majilisi Oli [the Supreme Assembly].

Among the obstacles to fully doing away with the death penalty cited by the working group are the inclusion of provisions for the death penalty in the Tajik constitution and the “unreadiness” for a complete abolition of the death penalty on the part of the public. However, a survey of public opinion toward the death penalty shows that most people (61.1%) favor doing away with the death penalty. It is important to note that virtually all members of the procuratorial authorities’ investigative bodies and prosecutors (88%) favor keeping the death penalty as a form of punishment. Most other government employees and members of the police also favor the death penalty (65% and 69% respectively). The situation with members of the judicial system is quite different: 93% of surveyed court personnel and judges favor abolishing the death penalty.<sup>15</sup>

### **Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (10 CCPR/C/TJK/Q/2)**

The question of abolishing the death penalty was also discussed during the drafting of the Universal Periodic Review for submission to the UN Human Rights Committee in 2011. One of the UPR’s recommendations was to resolve whether or not the death penalty would be completely abolished and the Second Optional Protocol to the ICCPR ratified.

On 3 April 2013, the head of state approved a National Plan for the Republic of Tajikistan to Implement the UPR Recommendations, in accordance with which the government plans to conduct internal procedures to ratify the Second Optional Protocol during 2013-2014.

#### **Recommendations**

1. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, which would mean abolishing of the death penalty in the Republic of Tajikistan.
2. Remove provisions for the death penalty from the Criminal Code of the Republic of Tajikistan.
3. Remove classified statistical data on the number of executions carried out and information on where executed convicts were buried from laws on state secrets.

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More than 2000 people throughout the country were surveyed: “The Death Penalty: A Study of Public Opinion in Tajikistan,” NotaBene Foundation, Dushanbe, 2010 (in Russian).

## **The Rights of the Child: Articles 7, 8, 10, 14.4, 24<sup>16</sup>**

Despite a number of positive steps taken by the government to defend the rights of children, national law still lacks special provisions on children's freedom from torture and cruel treatment and there is no individual law devoted to protecting children's rights.

In 2008, the chairman of Tajikistan's Government Commission on the Rights of the Child approved and recommended implementing a "Policy to Defend the Rights of the Child" for custodial institutions, and in 2009 a document was drafted titled, "Procedure for Children to Submit Complaints within Custodial Institutions," but, unfortunately, this document lacks the legal force that would allow it to be enforced by the appropriate ministries and agencies and is purely advisory in nature. In 2009, some custodial institutions developed procedures for implementing the above-mentioned Policy, but they are optional, insofar as they have not been approved by the appropriate ministries and agencies, in particular the ministries of internal affairs, education, and justice, and they are not being put into practice.

## **The Use of Corporal Punishment against Children**

Corporal punishment is broadly practiced both in families and educational institutions. National law does not explicitly prohibit corporal punishment or establish liability for using it. No special procedure exists to consider complaints of such punishment. In actuality, under art. 8 of the Law on Parental Responsibility for the Upbringing and Education of Children, parents are obligated to respect the honor and dignity of children and not use cruel treatment against them. This provision is not a direct prohibition against using corporal punishment. Such an obligation has not been established for teachers, caregivers, and others responsible for children in preschool institutions and schools. Despite repeated recommendations by UN agencies, in particular by the Human Rights Committee (para. 23, CCPR/CO/84/TJK), Committee on the Rights of the Child (paras. 39-41 CRC/C/TJK/CO/2), and the Universal Periodic Review (para. 89.3 A/HRC/19/3)<sup>17</sup>, the government does not recognize the existence of this problem and believes that these recommendations have already been implemented (see para. 89, A/HRC/19/3).

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<sup>16</sup> For information prepared by the Center for Children's Rights nongovernmental association, see as well paras. 66-87 of the *NGO Report on Tajikistan's Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT/C/TJK/2). ([http://www2.ohchr.org/english/bodies/cat/docs/ngos/CATI\\_Tajikistan\\_CAT49.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/CATI_Tajikistan_CAT49.pdf))

<sup>17</sup> Para. 89.3 examines adopting a legal prohibition against corporal punishment (Brazil) and enacting legislation prohibiting corporal punishment against children in all settings, including at home and in school, as a matter of priority (Romania).

## **Children with Disabilities**

In the Republic of Tajikistan, the problem of children with disabilities has grown in urgency in recent years. Despite the existence of special institutions, virtually all children with disabilities (with locomotion or hearing disabilities, for example) do not attend school and are not able to receive an adequate education in the home. For children with disabilities, one of the main obstacles to integration into society is discrimination in education. Furthermore, children who are able to attend school experience difficulty due to architectural barriers and buildings that are not designed for people with disabilities. They are alienated from society due to a lack of special accommodations in schools, the scarcity of specialized institutions for such children, stigmatization by their peers, a lack of necessary work with parents, and parents' poor knowledge of their legal rights. Work with children with disabilities is significantly hindered by a shortage of speech pathologists, teachers specially trained to teach the deaf, speech therapists, and teachers with knowledge of sign language, etc.

## **Law on Parental Responsibility for the Upbringing and Education of Children**

In 2011, Tajikistan's parliament enacted the Law on Parental Responsibility for the Upbringing and Education of Children, which conflicts with the principles of ensuring children's best interests. The law unambiguously places on the shoulders of parents responsibilities that international and national commitments assign to the state. For example, according to provisions of the law, parents must provide preschool education to children under six, must not allow adolescent children to study outside the country without the permission of the appropriate government authorities, and must not allow adolescent children to participate in religious associations or organized religious events (with the exception of funerals). The government did not support recommendations presented during discussion of the Universal Periodic Review report, specifically "Revise its Law on the Responsibility of Parents for the Upbringing and Education of Children, which contains provisions highly endangering the freedom of religion and the aims of the CRC" (para. 91.1, A/HRC/19/3).

## **Forced Child Labor in the Cotton Fields of Tajikistan**

The use of child labor is one of Tajikistan's most urgent problems. As is well known, cotton is an important strategic commodity for Tajikistan, which is one reason that child labor is widely practiced in agriculture, primarily in cotton fields.

For the most part, children working in cotton fields range from ages 12 to 18, however, teachers in some schools report that children as young as second graders are recruited to harvest cotton. The most labor-intensive time for cotton production is usually September through December.

During the harvest, children's right to an education is infringed, as they spend entire days in the fields, where they work under punishing conditions, including extreme heat, poor quality food and water, and a lack of necessary medical supplies.

According to the Environmental Justice Foundation, children gather up to 40 percent of the cotton harvest and are paid \$20 for three or four months of work – if they are paid at all.<sup>18</sup> A survey of parents and schoolchildren showed that the harvest of “white gold” led children to miss up to 380 classroom hours per year. Some schoolchildren are absent from school a third of the academic year due to the harvest.<sup>19</sup> Children are told that if they refuse to work they will be given poor grades and be expelled from school. In 2007, law enforcement agencies found evidence that local government authorities had ordered schools to send children to work in the fields under the pretense of summer vacation.<sup>20</sup>

National laws designed to protect children from compulsory labor, assure their right to an education and protection of their health, etc., mostly accord with international law in this area, but it should be noted that Tajikistan's labor and criminal laws do not address the concept of “forced labor” and “child forced labor.” The problem is that while the laws that exist are rather well designed from the perspective of protecting children in general and schoolchildren in particular, not all of them function as they should in practice, while others are often simply ignored by persons of authority.

### **Minors and the Justice System**

In 2008, the Ministry of Internal Affairs' Inspectorate for Minors' Affairs, which comes under the ministry's criminal investigation department, was reorganized into a separate entity under the Ministry and renamed the Juvenile and Youth Crime Prevention Service. The primary task of the Service is to prevent crimes and offences by children and adolescents. Practice has shown, however, that the members of this service do not fulfill all of their duties and they, as in the past, are involved in investigative work, and during major public events this Service performs public safety functions (they are placed on high alert during holidays, concerts, visits by foreign dignitaries to the capital, etc.).

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<sup>18</sup> Environmental Justice Foundation, report “The Children behind Our Cotton”: [http://ejfoundation.org/children\\_behind\\_our\\_cotton](http://ejfoundation.org/children_behind_our_cotton)

<sup>19</sup> “The Human Rights Situation in Tajikistan, 2007,” prepared by the Bureau for Human Rights and the Rule of Law, Dushanbe, 2008.

<sup>20</sup> [http://ejfoundation.org/children\\_behind\\_our\\_cotton](http://ejfoundation.org/children_behind_our_cotton)



In 2008, the Commission on Minors' Affairs was reformed. This commission came under the executive branch and dealt with issues involved in assigning children who had committed crimes or offences but were not yet 14 (the age at which children are considered criminally liable) to special custodial institutions, such as special schools and special vocational technical colleges. Children who had been convicted by a court but not sentenced to prison could also be sent to such facilities. Both types of facility come under the jurisdiction of the Ministry of Education. Now this commission has been renamed the Department of Child Rights, but its duties have not changed.

Additionally, during the reorganization process, the Department of Child Rights was assigned to take over the duties of the agency responsible for the care and guardianship of children in need of parental care. Despite the fact that this structure had been abolished, this change was not reflected in the law, which created many practical difficulties in deciding how parentless children would be cared for.

The country still lacks a separate system of justice for minors. Although the Criminal Procedure Code that was adopted in 2009 contains a separate section enumerating rules and procedures for dealing with crimes committed by minors, children are still channeled through the general system along with adults, a system that is primarily punitive in nature. Despite a ruling by the Supreme Court that requires cases involving minors to be heard by the chairman of the court, the deputy chairman, or an experienced judge, this practice is not followed. There have been recent instances where cases involving minors were heard by recently appointed and inexperienced judges. The country also lacks an investigator dedicated to cases involving minors and a juvenile lawyer (an expert in children's rights), as well as other specialists.

In October 2009, a government commission on children's rights adopted a National Plan of Action to Reform the Juvenile Justice System during 2010-2015. However, in 2010-2011, the practical implementation of this plan was weak, the resources needed to implement it were not calculated, no timeline was set for individual actions, and coordinating mechanisms remain ineffective.

Under art. 144 of the Correctional Code, minors who break certain rules in juvenile correctional facilities are subject to such measures as removal to an isolation ward for up to seven days, from which they are released only to attend classes. While in isolation wards, a number of their rights are suspended: the right to lengthy meetings with visitors, to talk on the telephone, to receive food or basic necessities, to receive packages or parcels, to watch movies or television, or to play board games.

Under art. 145 of the Correctional Code, prisoners being held in isolation wards have the right to daily two-hour outings. This provision conflicts with art. 7 of the Covenant of Civil and Political Rights, art. 37 of the Convention on the Rights of the Child, and para. 67 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.

### **Recommendations**

1. Adopt a special law on the protection of child rights that would establish a comprehensive system for defending child rights in Tajikistan.
2. Create a unified body dedicated to protecting the rights and interests of the child that would monitor all issues related to the defense of children in the country.
3. Ratify the UN Convention on the Rights of Persons with Disabilities.
4. Continue to introduce an inclusive education program.
5. Develop and introduce a package of social services for children with disabilities (a social package) that includes medical services.
6. Bring the Law on Parental Responsibility for the Upbringing and Education of Children into accord with international and national commitments and consider renaming it “The Responsibility of the State, Educational Institutions, and Appropriate State Institutions, Parents, and Parental Surrogates for the Education and Upbringing of Children,” and changing the content accordingly.
7. Amend the Labor Code to clearly define “forced labor” and introduce into the Criminal Code an explicit prohibition and criminal penalties for using and abetting the use of forced labor.
8. Develop a system of provisions to ban all forms of child labor designed to identify and investigate the worst cases of child labor and set up protection mechanisms in cases of forced and other forms of child labor.
9. Commit the Ministry of Internal Affairs’ Juvenile and Youth Crime Prevention Service to fulfill its duties and monitor its performance.
10. Enact a law transferring authority to decide on the assignment of children to special institutions to the court and Government Commission on the Rights of the Child.
11. Create a separate child-friendly justice system for minors in the country.
12. Review the National Plan of Action to Reform the Juvenile Justice System for 2010-2015 and determine the resources necessary to implement it and a timeframe and mechanisms for its realization.
13. Abolish the isolation ward in the juvenile penal colony.

## **The Right to Equality and the Prohibition against Discrimination: Articles 9, 17, and 26 (Including LGBT<sup>21</sup> and Sex Workers)**

Sex workers – women, men, and transgender people – suffer extreme stigmatization and are subjected to systematic discrimination in the Republic of Tajikistan. They are frequent targets of violence by members of law enforcement, clients, and hostile segments of society under the pretext of religious values.<sup>22</sup>

Article 130 of the Code of Administrative Offences stipulates penalties for sex work in the form of fines. In actual practice, this article is used as a means of extorting money, blackmail, and threatening to publicize the victim's livelihood.

Another article used by law enforcement to extort money is art. 469, Living without a Passport or without Registration, since many sex workers come to the capital from outlying areas and have no means of legally registering.

Extortion by law enforcement, as well as violence – including sexual violence – stems from the stigmatization of sex workers and impunity for unlawful actions toward them, as well as their reluctance to stand up for their rights. Often members of law enforcement force sex workers and members of the LGBT community to serve as informants and provide information enabling extortion of wealthy clients. If sex workers refuse to cooperate, they are subjected to violence or threats that their families will be told about their professions or sexual identity. If they do agree, sex workers can be targeted by the clients on whom they informed. During 2010-2012, the nongovernmental organization Equal Opportunities documented more than 40 cases where the rights of LGBT people were violated.

Law enforcement agencies conduct routine raids to round up sex workers. After being brought to police stations or temporary detention facilities, sex workers are subjected to forced testing for

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<sup>21</sup> LGBT is an initialism used to refer to sexual and gender minorities and designate the community of lesbian, gay, bisexual, and transgender people in its efforts to pursue its common interests, problems, and goals.

<sup>22</sup> Here and below, the description of persecution of sex workers and the stigmas and discrimination they experience were voiced and recorded during a series of consultations in Tajikistan aimed at preparing a Regional Consultation on HIV and Sex Work in 2013. The first stage of the country-wide consultation was conducted in collaboration with the UN and the community of sex workers, including women and transgender persons, on 4 October 2012 in Dushanbe, Tajikistan.

HIV. Often the test results are disclosed in front of other detainees and members of the police, in violation of confidentiality guarantees under art. 17 of the ICCPR.

There is no legal mechanism for listing the sex of transgender people on identity papers, since no mechanisms have been provided for to replace documents after sex reassignment surgery. Due to the lack of doctors specializing in sex reassignment surgery, transgender people are forced to go abroad to have the surgery performed and undergo post-operative hormone therapy. Because they are unable to replace their documents, transgender people are forced to conceal the details of their private lives when they cross state borders and are subjected to searches and various forms of humiliating treatment. We know of at least nine transgender people who are regularly subjected to such treatment.

Programs generally aimed at eliminating violence against women pay little attention to violence against sex workers and LGBT people. Furthermore, programs aimed at eliminating domestic violence do not protect sex workers and people from the LGBT community.

#### **Recommendations:**

1. Enact measures making it illegal to discriminate based on sexual orientation and gender identity.
2. Enact laws creating mechanisms and procedures for replacing documents for transgender people.
3. Develop and adopt a national program to raise awareness among members of law enforcement, medical personnel, and the population in regard to LGBT issues and the goals of eliminating stigmas and discrimination.

#### **The Right to the Freedom of Movement: Article 12**

##### **Residence Registration and Permits**

The institution of the *propiska* or residence registration in the Republic of Tajikistan is a legacy of the Soviet era whereby citizens are obligated to register their permanent address or their temporary residence. This registration is conducted by local Internal Affairs departments.

Those subject to residence registration include:

- Citizens of the Republic of Tajikistan permanently residing within it;
- Citizens of the Republic of Tajikistan permanently residing abroad who are visiting the republic for more than six months;
- Citizens of the Republic of Tajikistan who have come from one place to another within the republic for a visit of more than six months;
- Foreign citizens and stateless persons permanently residing in the Republic of Tajikistan;
- Military personnel residing outside of military barracks.

Residence permits can be revoked by the Internal Affairs department that issued it, by a superior Internal Affairs entity, or by a court if such registration involved a violation of national law.<sup>23</sup>

Individuals can be charged with an administrative infraction and fined for failing to register their place of residence or living without a *propiska* (art. 469 of the Code of Administrative Offences). For example, in early 2011, **in Dushanbe, the Order Preventative Operation, lasting an entire month**, was conducted in early 2011. During this operation, police personnel checked 361,424 people, including 1,296 foreign citizens. A total of 24 foreign citizens living in the capital illegally were brought to Internal Affairs departments for violating passport or visa rules, 581 people were expelled from the capital (including citizens of Tajikistan who had residence permits, but not for Dushanbe), and 254 homeless people were identified.<sup>24</sup>

Documents establishing the legal status of stateless persons and giving them the right to reside in the Republic of Tajikistan are known as **residence permits and stateless person identification**. Residence permits for foreign citizens and stateless persons and identification for stateless persons are issued by Tajikistan's Migration Service and its local departments (hereafter, Migration Services).

In order to obtain a residence permit, a person must present a temporary residence registration and permission from relatives or friends to register at their address.

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<sup>23</sup> Passport System of the Republic of Tajikistan Rules No. 302 dated 15 July 1997, as revised by Government Order No 414, 16 October 1998.

<sup>24</sup> See "MVD RT [Ministry of Internal Affairs of the Republic of Tajikistan]: There Must Be Order in Dushanbe," Asia-Plus, 24 February 2011: <http://news.tj/ru/newspaper/interview/mvd-rt-v-dushanbe-dolzhen-byt-poryadok> (in Russian).

## **Travel Documents**

Foreign citizens and stateless persons must apply for permission to leave the Republic of Tajikistan. Tajik law does not state the grounds and purpose of exit visas for foreigners.

This restriction has been abolished for citizens of the Republic of Tajikistan as unconstitutional and a violation of the freedom of movement, so the requirement that foreign citizens and stateless persons apply for permission to leave the country is discriminatory and violates the freedom of movement provided for under paras. 1 and 2 of art. 12 of the ICCPR.

## **Freedom of Movement for Foreign Citizens and Stateless Persons**

Foreign citizens temporarily residing in the Republic of Tajikistan can move freely within the parts of the country from which foreigners are not restricted. Foreign citizens residing permanently in Tajikistan who desire to change their place of residence or temporarily visit another area must apply for permission to do so with their local Internal Affairs department. Areas closed to foreigners can be visited or traveled through by them only with the permission of Internal Affairs authorities. Permission for foreigner citizens and stateless persons to enter and stay in border zones is issued by the Ministry of Internal Affairs, the Ministry of Foreign Affairs, and Tajik diplomatic and consular offices abroad within one day after the required documents are submitted, after which the Ministry of Security must be notified within 24 hours. The list of such closed areas is determined by the government of the Republic of Tajikistan.

## **Expulsion and Deportation**

Some provisions of law of the Republic of Tajikistan are in contradiction to international standards. For example, the Law on the Legal Situation of Foreign Citizens in the RT stipulates that the decision to deport is taken by the Ministry of National Security in coordination with the republic's Prosecutor General and can be appealed in the courts. According to procedural law, a decision to expel a foreigner or stateless person is taken by the courts.

Procedures for the administrative deportation of a foreign citizen or stateless person have not been fully worked out. The law stipulates that "the person must be deported to a place outside the Republic of Tajikistan," however it does not specify to which country (for a stateless person, the country of birth, the country of last residence and/or some other country). Stateless persons are deported, in essence, to nowhere, to any country the Internal Affairs service chooses. This can create the risk of a "ping pong effect," whereby a person is expelled to one country, which in turn rejects him and returns him, only to repeat the cycle indefinitely.

The country's laws provide for a Center for Temporary Housing for People Seeking Asylum, as well as special facilities at guarded entry points for foreign citizens and stateless persons entering the Republic of Tajikistan without entry visas or in violation of entry rules. In actuality, such specialized facilities for the temporary housing of foreigners do not exist.

## **The Rights of Refugees, Asylum-Seekers, and Stateless Persons**

### **Legislation and Law Enforcement Practice**

As of 1 December 2012, Tajikistan had 2,248 refugees and 2,139 asylum-seekers, most of whom are citizens of Afghanistan. Almost 90 percent of refugees and asylum-seekers are ethnic Tajiks. Tajikistan recognizes most people seeking asylum and para. 9 of art. 11 of the Republic of Tajikistan's Law on Refugees provides for refugee status for up to three years, with a requirement that refugee certification be renewed annually.<sup>25</sup> Tajikistan has no specially created places of detention under guard for foreign citizens or special camps to settle refugees; they live among the local population. As a rule, citizens of the Islamic Republic of Afghanistan, who comprise most of those seeking asylum in Tajikistan, can obtain tourist visas at the Tajik embassy or consulates in Afghanistan, enter the country legally, and seek refugee status. Tajikistan's Law on Refugees also allows them to petition for refugee status at Tajikistan's consular offices within their country of citizenship.<sup>26</sup>

In 2012 a working group was formed to improve the Law on Refugees and eliminate inconsistencies from it. The group took into account civil society's main proposals and recommendations. The law will be presented in Parliament in 2013.<sup>27</sup>

Government of Tajikistan Resolution No. 325 (2000),<sup>28</sup> as amended by Government of Tajikistan Resolution No. 328 (2004),<sup>29</sup> contains a list of places where asylum-seekers and

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<sup>25</sup> Republic of Tajikistan Law on Refugees dated 10 May 2002 as amended by enactment No. 590 (2010), art. 11, para. 9 and art. 12, para. 2.7.

<sup>26</sup> Adopted 10 May 2002 with amendments under No. 590 (2010).

<sup>27</sup> Report on the Analysis of Gaps and Weak Aspects: Overview of Laws and Practices in Granting Asylum in the Republic of Tajikistan, June 2012.

<sup>28</sup> The relevant portion of Resolution No. 325 reads, "With a view to ensure security and public order in settlements of the Republic of Tajikistan, ... the Government of the Republic of Tajikistan orders: ... temporary residence of asylum-seekers and refugees is prohibited in the attached list of Tajik settlements...." The list of settlements from which asylum seekers and refugees were barred included 31 districts,

refugees are not permitted to live, including the capital, Dushanbe, the country's second-largest city, Khujand, and most border areas. Foreign citizens who are not refugees are not placed under this restriction. This restriction makes it difficult to access the labor market, health care, education, and other services. It should be noted that the outlying regions of Tajikistan have poorly developed infrastructure, a flawed system for providing social services, and inadequate government services are accessible via a non-transparent system. Furthermore, the low standard of living and high level of unemployment, widespread poverty, and limited means of subsistence all impact both local residents and refugees. The cities of Dushanbe and Khujand stand out as places offering greater job opportunities and access to higher quality health services, etc.

This resolution also creates problems for refugees married to Tajik citizens. It limits where such families can live and forces them to live only where refugees and asylum-seekers are permitted. Citizens of Tajikistan therefore also wind up having their right to choose their place of residence impinged due to marriage to someone with refugee status or seeking asylum.

In practice, for a variety of reasons – such as illness and the need for ongoing treatment in Dushanbe or Khujand, where higher quality health care services are available, or due to marriage to a Tajik citizen, visits to relatives, or access to a job or an educational program – many refugees are forced to seek ways to live in the cities of Dushanbe and Khujand, thereby violating the resolution.

Resolutions Nos. 325 and 328 single out asylum-seekers and refugees for special, discriminatory treatment and thereby contradict Articles 2 and 12 of the ICCPR.<sup>30</sup>

Article 2(1) of the ICCPR forbids governmental discrimination on a variety of grounds, including due to an individual's "other status". Refugees and asylum seekers are being expressly discriminated against by these resolutions because of their status as displaced persons and discrimination against asylum seekers and refugees in this way is a type of impermissible discrimination against individuals with "other status", which is prohibited by Article 2 of the ICCPR. As the HRC has stated: "the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or

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and encompassed, among other areas, the three largest cities in Tajikistan (Dushanbe, Khujand, and Kulab) as well as most border regions.

<sup>29</sup>

Resolution No. 328 permitted asylum seekers and refugees to live in the following districts that had previously been closed to their residence: Darband, Faizabad, Gharm, Kofarnihon, Tavildara, Tojikobod, and Yovon.

<sup>30</sup>

Resolutions Nos. 325 and 328 also directly contradict Article 26 of the 1951 Convention on the Status of Refugees, which requires Contracting States, such as Tajikistan, to respect the freedom of movement of refugees at least to the same extent as other foreigners in the country.



statelessness, such as asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the State Party.”<sup>31</sup>

Article 12(1) of the ICCPR specifies that every person lawfully within the territory of a State Party, such as Tajikistan, has the right to “liberty of movement and freedom to choose his residence.” The GOT itself has recognized the importance of Article 12’s protection of freedom of to choose one’s residence in Paragraph 149 of its most recent State Report to the HRC: “The right to freedom of movement and to choose a place of residence has always been one of the fundamental personal rights and freedoms of the individual.” The same paragraph references the fact that the Constitution of Tajikistan guarantees freedom of movement and right to choose a place of residence to all citizens.<sup>32</sup> Paragraphs 150 and 151 of the State Report goes on to say that foreign nationals have freedom of movement and ability to choose a place of residence as well.<sup>33</sup> Notwithstanding these expressions of support for the ability to freely choose one’s residence in Tajikistan’s State Report, however, Resolutions Nos. 325 and 328 explicitly abridge the freedom to choose a residence of asylum seekers and refugees. No specific reason for the restrictions is given in the text of either of the resolutions, nor is there any appropriate justification for keeping displaced persons who are officially recognized as asylum seekers or refugees in Tajikistan from living where they wish.

It is not an abstract concern that Resolutions Nos. 325 and 328 violate these provisions of the ICCPR, as the restrictions encompassed in these resolutions cause a variety of real problems for refugees and asylum seekers in Tajikistan. For example, finding appropriate housing can be a particular problem for asylum seekers and refugees due in large part to the restrictions of Resolutions Nos. 325 and 328 that stop recognized displaced persons from searching for places to live in the locales with the most available housing units, the cities of Dushanbe and Khujand. Further, the constricted market for housing in other parts of Tajikistan means that refugees and asylum seekers are often subject to pressure from landlords who know that they have few or no other options for places to live.

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<sup>31</sup> U.N. Human Rights Cmte., General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, p. 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004).

<sup>32</sup> U.N. Human Rights Cmte., Second Periodic Report of Tajikistan on Implementation of Obligations under the International Covenant on Civil and Political Rights, p. 149, U.N. Doc. CCPR/C/TJK/2 (22 Sept. 2011).

<sup>33</sup> *Id.*, p. 150-51.

During law enforcement agency raids to verify legal residence, refugees and asylum-seekers are often detained for several hours. These checks can be used as grounds for stripping someone of refugee status, resulting in deportation. For example, in 2012, Right & Prosperity recorded seven cases in which refugees were deprived of their status for violating Resolution No. 325 and 36 cases where people were not allowed to petition for refugee status due to a violation of the resolution. For the first three months of 2013 alone, four cases of a refugee being stripped of this status and four cases where petitions were refused based on such violations were recorded.

A failure to comply with the resolution often leads to refusals to register petitions for asylum or renew or issue documents and the deprivation of refugee status. Such decisions are appealed in the courts, however the courts generally issue rulings requiring the payment of administrative fees and subsequent deportation.<sup>34</sup> Under the law, a foreign citizen or stateless person has 24 hours to appeal a ruling of deportation.<sup>35</sup> However, in practice, lawyers often do not have time to appeal such decisions due to the limited timeframe, the creation of artificial barriers, and the red tape associated with the issuance of the deportation decision, as well as pressure on the lawyers.

The safeguards in Tajikistan's Law on Refugees and other associated national legal instruments are not sufficient to protect asylum-seekers' actual access to the refugee status determination (RSD) procedure as indigent asylum-seekers are not appointed legal representation and most asylum-seekers are not able to take legal steps to challenge denials of refugee status in the administrative first-instance process through appeals to the Tajik court system. These denials of due process in the RSD process contravene the protections that are part of Article 14(1) of the ICCPR.

### **The Idea of a "Safe Third Country"**

Tajikistan's 2000 Executive Resolution No. 323 lists so-called "safe third countries," which include: Afghanistan, Belarus, China, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Russia, Turkmenistan, and Uzbekistan. Temporary residence in these countries constitutes grounds for refusing to register a foreigner's petition to be recognized as a refugee and for refusing to grant refugee status.<sup>36</sup> The order does not specify length of stay or address the issue of forced temporary residence for the purposes of applying the rule. In practice, asylum-seekers and those

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<sup>34</sup> Republic of Tajikistan Code of Administrative Violations, Dushanbe, 31 December 2008, art. 499, para. 3.

<sup>35</sup> *Ibid.*, art. 813, para. 3.

<sup>36</sup> Republic of Tajikistan Executive Order No. 323 "List of States Temporary Residence in Which before Arriving in the RT Is Grounds for Refusing to Register a Foreigner's Petition for Refugee Status or Refusing to Grant Refugee Status," dated 26 July 2000, Dushanbe.

arriving in Tajikistan via countries included on this list, as a rule, are not allowed to register or receive a formal refusal of refugee status and are then deported.

According to art. 3 of the Law on Refugees, members of “narcomafia structures” can be refused refugee status without specifying the severity of their crimes and without specifying whether or not they were found guilty of committing crimes, as required under art. 1 F(b) of the 1951 Refugee Convention.<sup>37</sup> This last reason for refusing to grant refugee status can be applied to almost anyone seeking it and the literal application of this rule can essentially lead to a failure to uphold all rights and create the potential risk of the forced return of asylum-seekers.<sup>38</sup>

In reviewing refugee cases, both the judicial system and government agencies that deal with refugee matters are guided by national law and do not consider the Republic of Tajikistan’s international commitments. This runs counter to art. 10 of the Tajik constitution, which states that international legal instruments to which Tajikistan is a party take precedence over Tajik law when the two are in conflict. The precedence of certain enactments over legal norms that have a higher status can also be observed – specifically, the priority of executive orders over national law.

### **Gaining Access to Tajikistan**

The Government of Tajikistan has approved a National Strategy for Managing the Borders and a plan to realize it that clearly specifies that refugees have the right to enter the country and seek asylum, including at border crossing points, and that they should not be returned by force.<sup>39</sup>

Foreign citizens and asylum-seekers who cross the border into the Republic of Tajikistan in order to exercise the right of political asylum are not subject to laws governing the illegal entry into the country, according to the Criminal Code of Tajikistan.<sup>40</sup> An analogous provision is spelled out in art. 6, subparagraph 2 of the first paragraph of the Law on Refugees.

However in practice, such individuals fall into the hands of the Tajik State Committee for National Security and are held until the circumstances of their illegal border crossing are clarified. As a rule, they have difficulty gaining access to a lawyer. We know of four cases over

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<sup>37</sup> Report on the Analysis of Gaps and Weak Aspects: Overview of Laws and Practices in Granting Asylum in the Republic of Tajikistan, June 2012.

<sup>38</sup> Ibid.

<sup>39</sup> National Strategy for Managing the Borders of the Republic of Tajikistan, approved by Executive Order No. 202, 29 April 2010.

<sup>40</sup> Criminal Code of the Republic of Tajikistan dated 21 May 1998, Article 335 (as amended by Law No. 35 dated 17 May 2004).

the course of 2012 and the first four months of 2013 of people applying for refugee status being deported or imprisoned after an investigation by state security.

For security reasons, the UNHCR and other international and civic organizations are not usually allowed in border areas and international airports and do not possess information about what happens to asylum-seekers at border crossing points.

### **Travel Documents**

People with refugee status are unable to obtain travel documents that would allow them to travel outside Tajikistan. Refugees are compelled to use their national passports when they leave Tajikistan, and complications arise for refugees who do not have national passports for one reason or another. In practice, the Afghan Embassy in Dushanbe helps Afghan refugees and asylum-seekers obtain Afghan passports or renew existing Afghan passports, since the vast majority of Afghan refugees come to Tajikistan with current visas in their Afghan travel documents, thereby enabling them to travel abroad. In such cases, recognized refugees would inform the Ministry of Internal Affairs of their intention to leave Tajikistan and obtain “approval,” after which Internal Affairs prepares a letter to the Ministry of Foreign Affairs with a request that a visa be issued.

### **Recommendations**

1. Revoke Resolutions Nos. 325 and 328, which contradicts art. 12 of the ICCPR and the 1951 Refugee Convention.
2. If it proves impossible to revoke Resolutions Nos. 325 and 328, amend it to mandate a transparent process for issuing temporary permission for asylum-seekers and refugees to stay in currently prohibited parts of Tajikistan if needed. List conditions under which permission for such temporary residence can be granted.
3. Positively resolve the issue of mixed marriages between citizens of Tajikistan and refugees by providing for a transparent process for obtaining citizenship or a residence permit as one long-term solution for refugees.
4. Remove expulsion as an additional sanction from art. 499 of the Code of Administrative Offences, as it does not accord with art. 33 of the 1951 Refugee Convention and art. 14 of the Law on Refugees.
5. In order to implement and fulfill the requirements of art. 28 of the 1951 Refugee Convention, conduct additional research into the costs that would be incurred by the government of Tajikistan if it begins issuing travel documents to refugees and begin issuing travel documents to refugees and stateless persons.
6. Open a temporary housing center for vulnerable categories of asylum-seekers in Tajikistan.

7. Revoke Executive Resolution No. 323 regarding safe third countries in that it does not conform to art. 33 of the Convention Relating to the Status of Refugees, which has been recognized by Tajikistan.
8. Arrange for continuing education on matters related to refugees and asylum-seekers and the issue of free access into the country for border guards working at crossing points along the border with Afghanistan and, in the future, at other entry points into the country where personnel is frequently rotated.
9. Ensure access enabling civic and independent international organizations to monitor the border.
10. Arrange for unfettered access to the services of lawyers for asylum-seekers in short-term detention for illegally crossing the border into Tajikistan.

### **The Right to a Fair Trial: Article 14**

Despite judicial and legal reforms,<sup>41</sup> the judicial system in Tajikistan remains weak and ineffective. Courts are overwhelmed by the large number of cases, and many judges are believed to be corrupt.<sup>42</sup> The executive branch holds judicial power firmly in its hands. The president not only has been endowed with the right to make final decisions on the appointment of most judges, but determines the structure and size of the Council of Justice.<sup>43</sup> Furthermore, the procedure by which judges are selected and appointed still lacks transparency.<sup>44</sup> This reporting period saw the Republic of Tajikistan's enactment of a new Civil Procedure Code (2008), the Law on Executive Procedure (2008), the Criminal Procedure Code (2010), the Law on State Protection for Those Involved in Legal Procedure (2010), the Economic Procedure Code (2011), the Law on the Procedures and Conditions for Imprisonment of Suspects, the Accused, and Defendants (2011).

### **Corruption in the Judicial System and the Independence of Judges**

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<sup>41</sup> The latest program to reform the judicial and legal system was approved by Presidential Decree No. 976 on 3 January 2011.

<sup>42</sup> See: *Corruption in Tajikistan: Public Opinion*, Center for Strategic Studies under the President of the Republic of Tajikistan and UNDP Tajikistan (2006), p. 50 [http://www.undp.tj/files/reports/pta\\_rus.pdf](http://www.undp.tj/files/reports/pta_rus.pdf) (in Russian).

<sup>43</sup> *Judicial Reform Index for Tajikistan*, American Bar Association, 2008.

<sup>44</sup> Ibid.

The level of corruption in the judiciary remains a serious problem impacting not only the quality of judges' work but also undermining the authority of the government. The low salaries paid to judges, the excessive control exercised by the executive branch, interference by the Prosecutor's office and other national and local branches of government, and judges' fear that they could lose their seats are the primary causes of corruption.<sup>45</sup>

According to Tajik law, prosecutors have the right to stay any sentence handed down by a court.<sup>46</sup> The Prosecutor General also has the right to apply to the Plenum of the Supreme Court and the plenum of the Supreme Economic Court with recommendations concerning the giving of guiding explanations on issues of judicial practice in criminal, civil, economic, and administrative cases. This situation undermines the independence of the judiciary.

### **Criminal Justice**

Despite the fact that the laws of the Republic of Tajikistan call for detained persons to have access to a lawyer, in practice, such access is not given, especially immediately after detention. It is still up to the agency or official (investigator) in charge of a criminal case to decide whether or not the detainee will be given access to a lawyer. Tajikistan's Criminal Procedure Code does not oblige a lawyer to obtain an investigator's permission to meet with a defendant each time a meeting is necessary, however this practice has become the norm in all regions of republic.

Transferring the authority to sanction arrests to courts has not significantly altered the situation, and remanding suspects/accused in custody continues to be the preferred approach. Investigative agencies often charge detainees with felonies and serious crimes. Courts then grant requests by prosecuting agencies to incarcerate suspects, citing art. 111 of the criminal code, which states that "measures of suppression in the form of imprisonment can be used based *solely on the severity of the crime.*"<sup>47</sup>

National law calculates the time limit on procedural actions to authorize remand *in hours*. Para. 3 of art. 92 of the Criminal Procedure Code states that unauthorized detention is limited to 72 hours. According to art. 111, requests to remand suspects must be submitted to a court at least

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<sup>45</sup> *Corruption in Tajikistan: Public Opinion.*

<sup>46</sup> Art. 41 of the Republic of Tajikistan's Constitutional Law on Prosecutorial Bodies of the Republic of Tajikistan.

<sup>47</sup> *Monitoring criminal trials in Tajikistan in 2011*, Center for Human Rights, Dushanbe.

eight hours before this term of detention expires. This means that investigative bodies have 64 hours to submit their requests, along with the necessary materials, to a judge to resolve the question of authorizing the arrest. In practice, when investigative bodies detain a suspect, they put only the date of detention in their paperwork, not the exact time. In deciding the appropriateness of remand, judges, as a rule, do not determine the time of detention, thereby enabling violations of the rights of detainees.

Prosecutors are required to take part in hearings on requests to authorize imprisonment, however the participation of defense counsels depends on whether or not they are involved in the criminal case. There is no mechanism for informing defense counsels of the time and place of such hearings. Of serious concern is para. 5 of art. 111, which permits judges to extend the time-limit for submitting the main grounds for detaining a suspect for an additional 72 hours.

Art. 88 of the Criminal Procedure Code prohibits the use of testimony obtained by illegal means, including under duress. In practice, judges tend to ignore defendants' claims that their testimony was extracted using unlawful methods and torture. In rare cases, judges interrogate law enforcement personnel, but they do not conduct extensive inquiries into the veracity of defendants' claims that unlawful methods were used to extract their testimony.<sup>48</sup>

Tajik law does not provide for the principle of the equality of parties in criminal trials. In accordance with art. 279, para. 1 of the Tajik Criminal Procedure Code, the prosecutor must be present at the trial except in cases of private prosecution where the aggrieved supports the charge. There are only five circumstances that would require the defense counsel to appear in criminal trials: when the suspect or defendant has petitioned for it; when the suspect or defendant is a minor; when the suspect or defendant is deemed physically or mentally incompetent and unable to independently exercise the right to a defense; when the suspect or defendant does not speak the language in which the trial is being conducted; when an individual is charged with a crime that carries life imprisonment or the death penalty.

The Criminal Procedure Code requires the prosecutor to take part in appeals of criminal cases. In cases being considered by a court of cassation, prosecutors participate in the trial and present their opinion. The law states that the defense counsel "may be permitted" into the proceedings of a court of cassation. Lawyers essentially are not appointed to take part in court of cassation

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Monitoring of criminal trials in Tajikistan conducted in 2009, 2010, 2011,  
Center for Human Rights, Dushanbe.

cases, since courts do not send requests for this category of case.<sup>49</sup> The law also spells out in detail the participation and authority of the prosecutor in courts of supervisory instance. In regard to the defense counsel, the law states that they “may be invited in case of necessity to a session of a court of supervision considering a criminal case.”

In Tajikistan, there is risk of dual conviction. A review of a conviction, ruling, or adjudication by a supervisory court in connection with a need to apply a law covering a more serious crime, due to the laxness of the penalty or on some other grounds that exacerbate the situation of the defendant, as well as the review of an acquittal or ruling or adjudication on dismissing a criminal case, *is allowed within one year from the time it enters into legal force.*<sup>50</sup> Thus, whether someone is convicted or acquitted, for a year they are under the threat that a court decision that has already entered into legal force could be annulled, thereby worsening their situation.

### **The Independence of the Legal Profession**

In Tajikistan, the *advokatura* (the bar or lawyers as a group) lack a central, coordinating body, and the weak structure of this institution deprives lawyers of any way to fight for the common interests of their profession or come to the defense of its members. A program of judicial and legal reform aimed at strengthening the judicial system did not incorporate any provisions to reform the system whereby lawyers practice. The president of Tajikistan raised the need to reform this institution in a message to the legislature. This led to the 2012 creation of a working group to draft a Law on the *Advokatura* and the Practice of Law. The draft was presented for debate in March 2013. Unfortunately, although the draft calls for the creation of a unified, self-governing organization of lawyers, it also endangers the independence of the institution. The draft states that the decision to award or revoke the status of lawyer should be made by a qualifying commission under the Ministry of Justice, and this commission should be chaired by a deputy minister of justice, despite the fact that the *advokatura* is an independent professional association and is not part of the government system.<sup>51</sup> The draft also stipulates that anyone who has been convicted of a willful offence cannot qualify as a lawyer. Art. 84 of the Criminal Code states that the cancellation and removal of a criminal record annuls the legal ramifications of criminal liability, however the draft does not take this into account.

### **Legal Aid**

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<sup>49</sup> *Monitoring Observance of the Right to Free Legal Aid*, Human Rights Bureau, 2011, Tajikistan (in Russian).

<sup>50</sup> Art. 405 of the Criminal Procedure Code of the Republic of Tajikistan.

<sup>51</sup> Arts. 12 and 13 of the draft law.



The system of state-subsidized legal aid in criminal and civil cases remains ineffective. The draft Law on the Bar and the Practice of Law does not stipulate the participation of appointed lawyers in civil cases.<sup>52</sup> Appointed lawyers must put up with late payment or no payment at all for their work on criminal cases due to local government budgetary shortfalls.<sup>53</sup> While this report was being written, a separate working group was formed in Tajikistan to develop a separate draft Law on Legal Aid.

### **Recommendations:**

1. Refine the principles governing the Council of Justice's formation, membership, and functioning in order to enhance its independence and strengthen its role within the judicial system by removing it from the executive branch and placing it under judicial authority.
2. Select judges from a sufficiently large pool of candidates using clear and precise criteria.
3. Revise prosecutorial authority to comply with international standards in order to enhance the independence of courts and ensure de jure and de facto equality between the parties in a trial. In particular, the Prosecutor's office should be relieved of its authority to stay court-issued judgments.
4. Ensure that Tajikistan's Criminal Procedure Code, the Law on the *Advokatura*, and the Law on the Procedures and Conditions for Imprisonment of Suspects, the Accused, and Defendants are realized in practice in regard to lawyers' unhindered access to detainees, without the requirement of special permission for a meeting only after a lawyer has been given an order or license.
5. Enforce deadlines for submitting materials used to decide on a sentence of imprisonment.
6. Inform defense counsels in a timely manner of the time and place remand hearings will occur.
7. In accordance with international standards, do not base remand solely on the severity of the crime.
8. Remove from art. 111, para. 5 of the Criminal Procedure Code the provision allowing judges to extend the deadline for deciding on a request to sanction imprisonment for up to 72 hours in order to present substantiated grounds for detention.
9. Stop the practice of courts using evidence based on witness testimony obtained unlawfully.

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Art. 31, para. 8 of the draft law.

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*Monitoring Observance of the Right to Free Legal Aid.*

10. Conduct careful investigation into all claims that witness testimony was obtained unlawfully.
11. Amend art. 51 of the Criminal Procedure Code to include a provision requiring defense counsels to participate in any case in which a state prosecutor is participating (as provided for under the 1961 Criminal Procedure Code).
12. Amend the Criminal Procedure Code to include a provision requiring a defense counsel to participate in any hearing of a request to sanction imprisonment.
13. Bring art. 405 of the Criminal Procedure Code into accord with art. 14 of the ICCPR to eliminate the risk of double conviction.
14. Ensure the independence of the *advokatura* by eliminating interference and halting the creation of a qualifying commission under the executive branch, specifically, the Ministry of Justice.
15. Take political and economic steps to create an effective system for providing state-funded legal aid in criminal, civil, and administrative cases.

## **Family and Privacy Rights: Articles 17, 23, and 24**

### **The Absence of the Concept of Family in National Law<sup>54</sup>**

The Constitution and Family Code of the Republic of Tajikistan establish the range of family relationships subject to the protection of the state and governed by family law. However they do not provide a clear definition of the key terms “family,” “family members,” and “other family members.” In defining the family, family law in the Republic of Tajikistan is guided by a conservative approach and equates family and marriage. Therefore, the existing reality of changing family models – the common phenomena of polygamy and cohabitation by men and women who have not legally married – is not duly reflected in family law, thereby potentially putting the members of such families in vulnerable positions. This situation is inconsistent with the obligations Tajikistan has taken on within the framework of the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women, which, while they do not require their signatories to introduce the concept of the family into law, they do enjoin states to legally define all forms of family relationships within their particular society and ensure the protection of all forms of families.

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See the Human Rights Center’s “Study of Laws Governing Family Relationships in Tajikistan: Analysis and Recommendations,” Dushanbe, 2010 (in Russian).

## **Discrimination Based on Citizenship**

In March 2011, the Family Code was amended to allow marriage to a foreign citizen or a stateless person so long as the foreigner had resided in the Republic of Tajikistan no less than one year but requiring the signing of a marriage agreement, to be concluded before the wedding.<sup>55</sup> The changes to the code also require that marriage agreements between Tajik citizens and foreign citizens or stateless persons specify the following: the respective property rights of the parties and their rights and obligations in regard to property; the obligations of the parties in regard to child support; a provision that the spouse and children own the family home (as foreign citizens, according to housing law, do not have the right to own housing); and the support of a disabled spouse requiring care. Making changes to a marriage agreement is prohibited by law.<sup>56</sup> These provisions underscore the discriminatory nature of the legal preconditions for marriage and the joint ownership of property between a citizen and non-citizen of Tajikistan.<sup>57</sup>

## **The Absence of Mechanisms for Informing Future Spouses of Their Rights and Obligations as Spouses and Prospective Parents**

Family law does not offer any mechanism for informing future spouses of their rights and obligations as spouses and prospective parents. The civil registrars that register marriages only handle the formalities and paperwork associated with marriage.

## **Early Marriages**

The fact that so many men leave the country to find work combined with the rekindling of national traditions and religion has led to an increase in early marriage in Tajikistan. Despite the fact that the age of marriage in Tajikistan was raised in 2010,<sup>58</sup> in 2012 the country was among those with the highest rates of early marriage.<sup>59</sup>

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<sup>55</sup> Art. 12, para. 3 and art. 41, para. 2 of the Family Code of the Republic of Tajikistan.

<sup>56</sup> Art. 43, para. 4 of the Family Code.

<sup>57</sup> “Preliminary version of the Second Shadow Report on Realization of the Convention on the Elimination of All Forms of Discrimination against Women By Public Organizations of Tajikistan,” Paras. 59-60, produced by the De-Jure Equality to De-Facto Equality Coalition, 2010.

<sup>58</sup> Art. 13 of the Family Code sets the age of marriage at 18 (Republic of Tajikistan Law No. 613 dated 21 July 2010).

<sup>59</sup> Based on a study by the European Office of the WHO:  
<http://www.euro.who.int/en/what-we-do/health-topics/Life-stages/child-and-adolescent-health/news/news/2012/12/child-marriage-a-threat-to-health>.

Child marriage has a harmful impact on the physical and mental health of adolescent girls. Studies have found that early marriage increases the risk of suicide for young girls, endangers young brides with the threat of domestic violence by husbands and their relatives, is associated with health problems (anemia, anxiety, and psychological disorders), and contributes to a rise in maternal and child mortality. Furthermore, early marriage increases the risk of marital breakdown and violations of the economic and social rights of young girls.<sup>60</sup>

### **The Absence of Legal Recognition of Actual Relationships**

During the reporting period, the establishment of family relations and the birth of children without formal registration of marriage has become a mass phenomenon. In addition to polygamous family units, it is now common for monogamous couples to live together without registering their marriage. Such relationships are formalized through religious ritual, but are not officially and legally documented.

The fact that Tajik family law has no provision for recognizing cohabitation is a clear shortcoming. A failure to recognize existing unions places women and children in a vulnerable position and also increases the chance that responsibility for supporting children will be shifted from the parents' shoulders to the state (through an increase to the number of subsidies to single mothers). This lack of recognition also makes it harder to settle property disputes arising out of long-term cohabitation. As a result, when such relationships break down, women who have been fulfilling the traditional childrearing and housekeeping roles simultaneously lose housing and financial support.

### **The Criminalization of Polygamy**

Polygamous unions deserve particular attention. Tajikistan's constitution and Family Code prohibit polygamy. However the Criminal Code (art. 170) provides for criminal penalties not for polygamy – knowingly entering into a new marriage while already being married – but for having two wives or many wives, which under the Criminal Code is described as cohabiting with two or several women and maintaining a common household, a description that is discriminatory in nature.

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“The Connection between Labor Migration to Russia and Child Marriages in the Countries of Central Asia,” Center for Migration Studies, Moscow, 2013 (in Russian).

The criminalization of polygamy does not achieve its intended purpose and often occasions the violation of women's and children's rights. The main penalties prescribed by courts against men are fines, which go into state coffers. Meanwhile, no procedural actions are stipulated to protect the property rights of women (the second or subsequent wives) who have been living in a factual union with the man or to protect the interests of children produced by such unions (by addressing child support or childrearing issues). This places women and children in a vulnerable position and increases the likelihood that support for children born in such unions will be shifted from the parents to the state, i.e., that single mothers will receive governmental benefits.

### **Limitations on Court-Designated Reconciliation in Divorce Proceedings and the Lack of a Mechanism for Promoting Reconciliation in the Court**

The Family Code provides for a court-designated period for attempting reconciliation only in cases where one spouse does not consent to divorce. If both spouses consent to divorce but children are involved, the court cannot designate a reconciliation period, which could be used by the parties – if not to preserve the family – at least to agree on an arrangement for supporting and raising the children. Furthermore, after a reconciliation period is designated, the court is not required to promote reconciliation or conduct a hearing with the spouses on reconciliation, nor does it have a mechanism for doing so.

### **Courts' Lack of Responsibility in Divorce Proceedings for Taking Special Temporary Measures**

Court cases can extend up to six months, and during this period spouses who have already decided to divorce and, most importantly, their children, can find themselves in a difficult position. The Family Code does not oblige courts to decide questions of child support, residence, and childrearing after the divorce, or of spousal support in some cases.

### **The Ban on International Adoption**

Despite the Committee on the Rights of the Child's concluding recommendations (paras. 46-47, CRC/C/TJK/CO/2), Tajikistan's laws on adoption have not changed. Information on adoption is not available, due to laws on adoption confidentiality. The current adoption system does not provide for the screening or monitoring of prospective adoptive parents.

In April 2006, a prohibition on foreign adoptions was added to the Family Code, thereby limiting children's chances of being adopted by a well-functioning family. This prohibition also extends to second marriages where one spouse is not a citizen of Tajikistan. Spouses who are not citizens of Tajikistan are deprived of the right to adopt the children from their spouse's previous marriage, a violation of the right to respect for family life. In cases where such a union produces

a child, the status of the child who has not been adopted by the second spouse differs significantly from the status of the child of both parents.

### **Recommendations:**

1. Pass legislation including a definition of “family” that covers both families established through marriage and family relationships between men and women that have not been formally registered.
2. Amend art. 170 of the Criminal Code of Tajikistan in order to bring it into accord with the Tajik constitution and prohibit polygamy.
3. Develop a mechanism to prevent early and forced marriages, including by raising parents’ and young people’s awareness of penalties for forced and child marriages and of the detrimental consequences of early marriage for adolescent health.
4. Remove discriminatory limitations on marriages between Tajik and foreign citizens or stateless persons from Tajik family law.
5. Ratify the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; enact new legislation on adoption that accords with art. 21 of the Hague Convention and the procedures it stipulates; create screening and monitoring mechanisms to assure the suitability of prospective adoptive parents and protect the best interests of the child.

### **Freedom of Religion: Article 18**

In recent years, a trend has been observed toward restricting freedom of religion through the enactment of new laws and policies. Despite the fact that the special rapporteur on freedom of religion or belief, Heiner Bielefeldt, has stated that governments do not need to assign a special status to a specific religion for the purposes of national identity politics, the government of Tajikistan continues to promote the Hanafi school of Sunni Islam.<sup>61</sup> This variety of Islam is practiced by the majority of Tajiks and is assigned a special role in the development of national culture and the spiritual life of the country. The head of state proclaimed 2009 to be the year of Imam Abu Hanifa, the founder of the Hanafi school.

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“State religions’ should never be used for national identity politics – UN expert,” 6 June 2012, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11911&LangID=E>.

## Legal Framework

Matters of freedom of religion and belief are addressed by the 2009 Law on Freedom of Conscience and Religious Associations. The draft law was the target of repeated criticism by human rights organizations and many religious communities of Tajikistan, as well as the international community. Despite broad-based discussion of the draft law that took into consideration the recommendations of the OSCE's Office for Democratic Institutions and Human Rights, many provisions of the law remained unchanged. For example, the new law assigns excessive power to the government in overseeing the activities of religious associations. Certain provisions of the law provide for more stringent censorship of religious literature, prohibit performance of religious rituals outside of officially approved houses of worship, place restrictions on religious activities and the teaching of children, require government permission before contacting believers from other countries, and create conditions for political interference in the appointment of imams and the activities of mosques.

The year 2011 saw the enactment of the Law on Parental Responsibility for the Upbringing and Education of Children, under which all persons under the age of 18 are prohibited from belonging to religious organizations, visiting mosques, and studying in religious schools abroad, which represents a serious violation of religious freedom.

In July 2012, amendments to the Code of Administrative Offences came into effect that stipulated penalties for studying religion in a foreign country and also making it illegal for religious communities to establish ties with foreign religious associations without appropriate permission from an authorizing government body (the Religious Affairs Committee or the Ministry of Education). Furthermore, the code was amended to establish significant fines for "unsanctioned" religious activity, increase penalties for distributing religious literature without obtaining the appropriate licenses, and also make praying or performing religious ceremonies in non-approved places an offence. The changes strictly prohibit proselytizing in institutions of preschool, middle, or vocational education, as well as homes.<sup>62</sup>

All these issues were discussed in Tajikistan's Universal Periodic Review report. Recommendations in regard to freedom of religion (paras. 90.43-90.47 and 91) were not adopted by Tajikistan, and in its responses the government completely denied the existence of problems in regard to laws and law enforcement practice in the area of religious freedom. For example, in response to para. 90.43, which calls upon the government to "Bring the Law on freedom of

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<sup>62</sup>

Republic of Tajikistan Law No. 843 On Introducing Changes and Amendments into the Code of Administrative Offences, 3 July 2012.

conscience and religious organizations in compliance with international norms, promote religious tolerance and remove restrictions imposed on religious education, activities of religious organizations and religious dressing (Canada),” the government claimed that “The Law on Freedom of Conscience and Religious Associations was enacted in accordance with the requirements of international law and in comparison with prior law largely relaxes the process of registering religious associations, the struggle against unlawful proselytizing, and the realization of the right to a religious education and freedom of religion. In Tajikistan there has been no tightening of restrictions on religion, and there is a process underway of regulating the activities of religious associations within the framework of international legal standards and laws,” and also that “in regard to recommendation No. 91.1, the Law on Parental Responsibility for the Upbringing and Education of Children is in accordance with Tajikistan’s international commitments; it expresses the will of the people of Tajikistan and is designed to protect the interests of children.”

### **Restrictions on Religious Institutions (22 CCPR/C/TJK/Q/2, Question 22)**

Provisions in the new law on religion limit the number of mosques, introduce a procedure whereby specific government bodies appoint imams, tighten censorship of religious literature, prohibit the performance of religious rituals in public places, and expand the government’s authority to regulate religious communities and require reregistration of all religious organizations active within Tajikistan before 1 January 2010. According to official figures, there are 3,882 religious associations active in the country.<sup>63</sup>

The law on religion puts in place specific rules in regard to mosques and limits the number of mosques within a particular area. It permits only one central congregational mosque per district; other mosques in a district will be subordinate to this central mosque. The law also limits the places where Muslims have the right to pray: in a mosque, in a graveyard, at home, and at shrines.

In March 2010, a presidential order moved the Committee on Religious Affairs from the purview of the Ministry of Culture to that of the presidential administration in order to strengthen its role. In September 2010, the Committee announced the reform of the country’s main religious institution, the Ulema Council, a move that gives the state greater control over the religious life of its citizens.

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<sup>63</sup> “Approximately 4,000 Religious Associations Are Active in the RT,” Khovar National Information Agency of Tajikistan, 16 February 2012 <http://khovar.tj/rus/society/31782-v-strane-deystvuyut-okolo-4-tys-religioznych-obedineniy.html> (in Russian).



By introducing a new article (728<sup>1</sup>) into the Code of Administrative Offences in 2012, the government expanded the authority of the Religious Affairs Committee, which is currently empowered to hear administrative offence cases that come under the first part of art. 474 and art. 474<sup>2</sup> (violation of procedures for Tajik citizens to obtain a religious education outside the country), art. 474<sup>3</sup> (proselytizing and educational activities by religious associations in institutions of preschool, general high school, basic vocational, intermediate vocational, and advanced professional education, as well as in homes), and 474<sup>4</sup> (establishing international ties by religious communities, including international religious ties with foreign organizations) and to take disciplinary action for the violation of these provisions.<sup>64</sup>

### **Religious Education (CCPR/C/TJK/Q/2, Questions 20 and 21)**

After the head of state's official declaration that it was impermissible for young Tajiks to receive a religious education abroad, hundreds of students were forced to return home to avoid criminal prosecution for unlawful studies in a number of Islamic countries of the Middle East. Addressing parents, the head of state said, "You think they will become mullahs? No, they will become extremists, terrorists, and enemies of the nation."<sup>65</sup> A series of television programs were broadcast on national television about the danger posed by these institutions, where students were presented as potential terrorists "needing special training." There is currently no reliable information on how many of these students have returned to Tajikistan and whether they have been subjected to arrest and persecution or how many of them are under constant surveillance by Tajikistan's secret police.

Despite the government's efforts, a growing number of people within the country want to study religion. According to official sources, there are currently seven active madrasas in the country, two secular-religious schools, one Islamic high school, and one Islamic university.<sup>66</sup> This is clearly insufficient considering the large number of people wishing to study the Islamic canon. Furthermore, experts point to the unsuitable quality of education in these institutions, a deficiency that compels young people wanting to obtain profound and up-to-date knowledge to turn to foreign Islamic educational institutions.<sup>67</sup>

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<sup>64</sup> Republic of Tajikistan Law No. 843.

<sup>65</sup> "Rahmon: return youth from foreign religious institutions". Radio Ozodi, 25 September 2010 <http://www.ozodi.org/content/article/2137369.html?s=1&page=2> (in Tajik).

<sup>66</sup> "In Dushanbe, the Problems of Religious Education Are Being Discussed," Islamnews.tj, 26 February 2013 <http://islamnews.tj/tajikistan/612-v-dushanbe-obsuzhdayut-problemy-religioznogo-obrazovaniya-v-tadzhikistane.html> (in Russian).

<sup>67</sup> "E. Rahmon: 'They Must Be Returned...'," Asia-Plus, 2 September 2010: <http://old.news.tj/ru/newspaper/article/e-rakhmon-ikh-neobkhodimo-vernute> (in Russian).

According to Tajik law, the religious education of children between the ages of 7 and 18 is permitted during their free time outside of state secular schools and requires a state license and the written permission of parents.

In 2011, the Law on Freedom of Conscience and Religious Associations was amended to allow studying in religious educational institutions abroad only after obtaining a religious education in Tajikistan and permission from the government's Religious Affairs Committee.<sup>68</sup> These changes significantly limit the ability of religious organizations to conduct educational programs. This issue is a particularly difficult one for members of religious minorities, for whom there are no educational institutions within Tajikistan. For example, in 2012, members of the Union of Evangelical Christian Baptist Churches, which adopted a decision to open a Christian institute in Tajikistan, encountered serious problems when submitting registration documents. Fifteen additional documents not provided for by law were added to the list of those needed for registration, including a letter from the district chairman, findings of an expert commission, a document from local offices of the central government certifying the existence of adherents of the religious organization within its jurisdiction for at least the past five years, and a finding by the country's chief architect.

By amending the Code of Administrative Offences in 2012, in particular art. 474<sup>2</sup>, which enumerates the rules regarding the study of religion abroad, the government significantly tightened its control over the activities of religious associations and the population in general. The updated provisions provide for a fine of between 15 and 100 monetary units for citizens of Tajikistan who study religion abroad without obtaining permission from the Ministry of Education and the Religious Affairs Committee.<sup>69</sup>

Educational groups in the republic continue to be shut down, and religious teachers continue to be charged with offences. For example, in 2010, the Ministry of Internal Affairs conducted

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<sup>68</sup> On 28 June 2011, art. 8 of the Law on Freedom of Conscience and Religious Associations was amended. Paragraph 6 reads: "Obtaining a religious education abroad, including in institutions of higher religious education, is permitted only after receiving a religious education within the Republic of Tajikistan and with the written permission of an authorized state religious affairs and educational body." Paragraph 7 reads: "The procedure by which citizens of the Republic of Tajikistan obtain a religious education abroad shall be determined by the Government of the Republic of Tajikistan."

<sup>69</sup> "In Tajikistan, Tighter State Control over Believers," Voice of Freedom Central Asia, 17 September 2012: <http://vof.kg/?p=6542> (in Russian).

“Operation Madrasa” designed to combat unlawful religious education.<sup>70</sup> Recently, several imam khatibs have been charged for conducting religious education in homes without proper permission from the Religious Affairs Committee, which oversees matters of religious education jointly with the Ministry of Education.<sup>71</sup>

The government has also restricted certain forms of religious clothing, such as hijabs, scarves that cover women’s hair and neck. Women who wear a hijab are barred from educational institutions, and there are known instances of women being fired from a job for wearing a hijab.

### **Legal Persecution**

Government policy reflects its concern over the growth of Islamic extremism in the country. The authorities use this concern to justify their actions toward people suspected of participating in particular religious organizations. The prohibition against so-called “extremist groups” marked the beginning of a wave of intimidation, detentions, arrests, and harsh sentences for supposed members of these groups often just for their beliefs rather than the commission of a crime.

The republic has banned the Islamic Movement of Uzbekistan, the Tablighi Jamaat, the Salafi movement, and Hizb ut-Tahrir. On 3 May 2012, the Supreme Court of Tajikistan officially banned the Jamaat Ansar al-Sunna, labeling it an extremist and terrorist organization. According to Tajikistan’s Prosecutor General, 144 people were detained in the country in 2012 for involvement in terrorism and extremism. Out of this number, 36 were suspected members of the banned religious and extremist Hizb ut-Tahrir party, 11 were members of the Tablighi Jamaat, 76 belonged to the Islamic Movement of Turkistan, and 15 were members of Jamaat Ansar al-Sunna.<sup>72</sup>

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<sup>70</sup> “Operation Madrasa Has Concluded in Northern Tajikistan,” Asia-Plus, 16 June 2011: <http://news.tj/ru/news/na-severe-tadzhikistana-zavershilas-operatsiya-medrese> (in Russian).

<sup>71</sup> “Foreign Religious Influence over Tajik Society,” 25 May 2012: <http://maxala.org/tajikistan/print:page,1,14592-zarubezhnoe-religioznoe-vliyanie-na-tadzhikskoe-obschestvo.html> (in Russian).

<sup>72</sup> “Two Presumed Terrorists Have Been Neutralized in Northern Tajikistan,” Asia-Plus, 10 January 2013 (in Russian).

Almost no information about the prohibition of these movements has been shared with ordinary citizens, and law enforcement agencies have not conducted any educational efforts among the public to avoid the further spread of these religious movements within the republic.

### **Jehovah's Witnesses**

In May 2007, on instructions from the State Committee for National Security and the Ministry of Culture, the customs committee seized two shipments of Bibles and religious literature imported by Jehovah's Witnesses. On 11 October 2007, the Ministry of Culture, of which the Religious Affairs Committee was a part at the time, made the decision to close down this religious organization on the grounds that followers of this movement were violating national law "by distributing...propagandistic books about religion in public places and in citizens' homes, thereby upsetting people."<sup>73</sup>

Appeals by the Jehovah's Witnesses were rejected at various levels of the court system, including the Supreme Court, on the grounds that the Ministry of Culture, based on the law on religion in effect at the time, had the right to unilaterally close down any religious organization.

After the 2009 introduction of the Law on Freedom of Conscience and Religious Associations, members of the Jehovah's Witnesses made yet another attempt to legalize their activities within Tajikistan. However, the Religious Affairs Committee refused to register them, on the grounds that the organization was prohibited in the country.

In March 2013, it became known that members of the Jehovah's Witnesses in Tajikistan had appealed to the Constitutional Court to defend their constitution right to freedom of religion. However, according to organization representatives, on 29 March 2012 the Constitutional Court officially refused their petition for a hearing, ruling that "there are no grounds for initiating constitutional proceedings."

### **Recommendations**

1. Bring the Law on Freedom of Conscience and Religious Associations into accord with international norms, guided by recommendations by the UN Special Rapporteur for Freedom of Religion or Belief, the Human Rights Committee, and the Human

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"Tajikistan: 'Religious Extremism' in Dushanbe Takes the Most Varied Forms," Eurasianet, 12 August 2011 <http://russian.eurasianet.org/node/58816> (in Russian).

Rights Council within the framework of the Universal Periodic Review.

2. Eliminate unjustified limitations on religious education, the activities of religious associations, and the wearing of religious clothing and other symbolic expressions of religion.

### **The Right to Freedom of Expression: Article 19**

As of 2011, there were 286 newspapers registered in Tajikistan (102 state-run and 184 not state-run), 152 magazines and journals (72 state-run and 80 private), 10 news agencies (one state-run and 9 private).<sup>74</sup>

#### **The Law**

The new Law on the Periodical Press and Other Media (12 December 2012) significantly shortens the time within which inquiries by journalists must be answered from one month to three days. The law also requires media organizations to undergo state registration as legal entities and also register with the Ministry of Culture, which constitutes dual registration. A serious problem is the provision stated in art. 7, para. 4, whereby media organizations can be subdivisions of other legal entities, in which case further registration should not be necessary, however para. 1 of art. 10 of the law requires media organizations to register as independent legal entities.

#### **The Blocking of Internet Resources**

In Tajikistan, it has become common practice for the government's Communications Service to put pressure on the media in response to criticism by blocking internet resources. The situation took a turn for the worse in the latter part of 2010. After events that took place in September in the Rasht District, where an attack on a Tajik Army convoy by militants left 25 officers and soldiers dead, a number of independent print and internet publications voiced harsh criticism of the Tajik Ministry of Defense, calling into question the professionalism of the army's leadership. Immediately afterwards, several independent news sites were blocked: Avesta.tj, Fergana.ru, Centrasia.ru, Tjknews.com and Tojnews.tj.

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Response by the Tajik Ministry of Culture to a 1 November 2011 query by the Bureau for Human Rights and the Rule of Law.

In 2012, the repeated blocking of the most active news sites was observed, in particular the Asia-Plus news agency and Tojnews.tj, depriving the public of timely and reliable alternative information. During June through September of 2012, Asia-Plus was blocked three times by the government's Communications Service without explanation. Similarly, access was blocked to such sites as RIA-Novosti, YouTube, Lenta.ru, and Vesti-ru, as well as Ferghananews.com and Centrasia.ru, thereby artificially raising tensions and spawning various rumors among the public.

In September 2012, the head of the Communications Service, Beg Zuhurov, reported that their service had initiated the creation of an inspection commission engaged in tracing the source of internet materials featuring "libelous" and "insulting" content.<sup>75</sup>

### **The Decriminalization of Libel and Insult**

One positive step taken by the government in recent years is the removal of defamation articles from the Criminal Code, 135 (libel) and 136 (insult). However Tajikistan's Criminal Code still includes provisions that seriously limit freedom of expression: art. 137 (libel and insult against the president) and art. 330, para. 2 (insult against government representatives).

Nevertheless, harassment of the media and the use of law suits by government officials raise serious concerns within Tajikistan's community of journalists.

In 2009-2011, prosecutors, based on complaints by government officials, have made journalists and members of the media targets of criminal charges and the country's courts continue to consider civil suits against them. According to the Association of Independent Media of Tajikistan, in 2010 and 2011 alone, six law suits against eight media organizations were filed claiming damages totaling US \$1.845 million, thereby threatening the very existence of an independent media. In February 2011, law suits were won against two media organizations with awards totaling US \$67,000. Other suits were settled out of court. From the beginning of 2012 to the present, suits have been filed against ten media organizations.

#### **a) The Civil Suit against the Newspaper *Paikon***

In October 2010, the court in Dushanbe's Firdavsi District considered a suit by the government agency Tajikstandart against the newspaper *Paikon* in defense of its honor, dignity, and business reputation and gave the newspaper 15 days to pay a 300,000 somoni fine (approximately US

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\$61,000) and publish a retraction in the newspaper. The grounds for the suit was the publication of a letter by a businessman charging that Tajikstandart's actions had negatively impacted his business.

As part of the implementation of the court decision, Ministry of Justice executors came to confiscate property belonging to *Paikon*. The newspaper claimed that the confiscated property belonged not to the newspaper itself, but to its founder, the Bureau of Legal Advice, Linguistic Expertise, and Journalistic Investigations. In early May 2011, the Bureau ceased its activities based on a complaint from the Ministry of Justice that it had failed to reregister after changing its legal address (an incident further described in the section of this report on art. 22).

The *Paikon* weekly, well-known for its articles critical of Tajikistan's government agencies, existed for little more than two years. After the lawsuit, its circulation dropped from 7,000 to 2,000 copies per week.

#### **b) The Criminal Case against a Freelance Reporter for *Nuri Zindagi***

On 23 November 2010, Sughd Province law enforcement agents arrested Mahmadyusuf Ismoilov, a journalist who worked closely with the newspapers *Nuri Zindagi* and *Istiklol* in the Asht District of Sughd Province. He was charged under four articles of Tajikistan's Criminal Code: libel (art. 135, para. 2), insulting a person's honor and dignity (art. 136, para. 1), inciting national racial, parochial, or religious strife (art. 189) and extortion (art. 25).

*Nuri Zindagi's* editor-in-chief Juma Mirzo believes that the journalist's arrest was motivated by articles Ismoilov published in *Nuri Zindagi* and *Istiklol* (Independence), which generated broad interest and were often critical of government officials and members of law enforcement.

On 14 October 2011, a court acquitted Ismoilov of extortion (art. 250) and released him from custody. Other charges were upheld and resulted in a fine of 50,000 somoni, reduced to 35,000 somoni (approximately US \$7,300) in light of the eleven months of jail time served.<sup>76</sup> The journalist spent that entire time in jail. Somewhat later, thanks to the efforts of leading media and human rights organizations, an appeals court relieved Ismoilov of further penalties.

### **c) The Criminal Case against a Correspondent for the BBC's Central Asia Service**

On 13 June 2011, a reporter for the BBC's Central Asia Service, Urunboy Usmonov, was unlawfully detained and subjected to torture based on allegations that he belonged to the extremist party Hizb ut-Tahrir, which is banned in Tajikistan.

According to Amnesty International, no forensic medical evaluation was conducted to investigate the use of torture, although apparently signs of bodily injuries were evident during a court appearance on 15 June 2011. On 16 June, the international and local media reported allegations of torture. In response to the international outcry, on 14 July Urunboy Usmonov was freed on bail.<sup>77</sup>

On 14 October 2011, a court pronounced Urunboy Usmonov guilty of failing to report a crime and was sentenced to three years imprisonment, although he was released under an amnesty. Usmonov's criminal case was tried in conjunction with those of four other defendants charged with belonging to Hizb ut-Tahrir. An investigation led to Usmonov being acquitted of this charge.<sup>78</sup>

### **d) The Civil Case against *Imruz News***

On 28 January 2013, Rustam Hukumov, the son of one of Tajikistan's most influential officials, railroad chief Amonullo Hukumov, filed a suit against the only daily newspaper in Tajikistan, *Imruz News*. Hukumov estimated moral damages to him at 50,000 somoni (approximately US \$10,000).

Rustam Hukumov's ire was raised by a story that appeared in the newspaper in October 2011 concerning his release from a Russian prison following the arrest of Russian pilots. The railroad official's son had been found guilty by a Russian court of organizing a criminal enterprise that smuggled narcotics into Russia using trains.

On 25 February 2013, a court ruled that *Imruz News* had to pay Rustam Hukumov monetary compensation for moral damages inflicted through one of its publications. The ruling required the newspaper to pay Hukumov US \$10,000 and publish an official retraction. However,

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apparently procedures for pretrial settlement used for charges filed with civil courts were not followed. The claimant never appealed to the newspaper to ask for a retraction of its reporting.<sup>79</sup>

Without explanation, the judge refused a request on the part of *Imruz News*' defense to conduct a linguistic analysis of whether or not insulting words were applied to the claimant. At the time of this writing, the newspaper was awaiting the results of an appeal submitted to the court of cassation in Dushanbe.

### **Attacks against Journalists**

Between 2005 and 2012, journalism organizations in Tajikistan identified a number of attacks against journalists working both within the country and outside it. During 2011 and 2012, at least three journalists who have voiced criticism have been forced to seek medical help after such attacks.

On the morning of 7 February 2011, Hikmatullo Saifullozoda, the editor-in-chief of the newspaper of the Islamic Renaissance Party of Tajikistan, *Nachot*, was attacked and beaten by unknown assailants. Neighbors say that they had seen the young assailants, who had been following Saifullozoda's movements, in the days leading up to the attack. This fact convinces the leadership of the party that this was a planned attack and that it may have been provoked by Saifullozoda's recent statements in regard to events in Egypt and their possible impact on the situation in Tajikistan. Saifullozoda was brought to the neurosurgery department of the Republic Clinical Hospital. He was diagnosed with traumatic brain injury and numerous contusions.

Despite the fact that the investigation into this attack has been handled by the Ministry of Internal Affairs of Tajikistan, the crime has not been solved and the guilty have not been punished.

In May 2012, strangers brutally beat Daler Sharifov, a journalist from the Safin state television channel. The journalist told Asia-Plus that he received threats before the attack. Earlier, Sharifov hosted a talk show dedicated to social and economic problems in Tajikistan.

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Journalism organizations have demanded that the republic's law enforcement agencies carefully investigate every incident in order to expose violations of the law and inform society of the results of their work in strengthening law and order in the country.

### **Restrictions of Journalists' Access to Information**

The monitoring service of the Association of Independent Media of Tajikistan has identified 304 violations of the rights of members of the media and journalists between 2005 and 2010 involving access to information. Over this period, the number of cases in which members of the media and journalists had their access to information restricted gradually diminished, however it would be premature to conclude that the government became more open and transparent during this period.

Journalists in Tajikistan continue to experience restricted access to information of civic importance. The situation is made more difficult by an order issued by Tajik president Emomalii Rahmon in late 2011 that reduced the number of press conferences held by senior officials. These events gave journalist opportunities at least once per quarter to meet with highly placed officials and ask questions of interest to society. Now these press conferences are held only twice per year.

A lack of access to official information could also be observed during special operations conducted by law enforcement in the city of Khorog in Gorno-Badakhshan Province to capture the suspected killers of the province's intelligence chief, General Abdullo Nazarov, who was murdered on 21 July 2012.

During the events that unfolded in July 2012, neither journalists nor the public had access to official information. The authorities barred a member of the media from taking part in the Group-20, which mediated the crisis. The situation was made worse by the fact that during these events a number of websites were blocked and communication lines within the republic were also cut, which prevented those originating from the troubled province, in particular the city of Khorog, from getting in touch with their loved ones who remained there, causing panic and spawning sinister rumors.

### **Tajikistan's Transition to Digital Broadcasting**

In 2006, Tajikistan signed the Geneva 2006 treaty agreement, which committed the Republic of Tajikistan and more than 100 countries to switch to digital broadcasting by 2015.

A Framework for Republic of Tajikistan State Policy in the area of Television and Radio Broadcasting for 2010-2025 and a State Program to Develop Digital Television in the Republic of Tajikistan for 2010-2015 have been adopted. These documents were adopted without any discussion with the country's civil society and private electronic media. The Framework and Program do not offer a mechanism for transitioning to digital broadcasting, and there is no information about the means, conditions, and process by which independent television stations will make the switch. The government has yet to properly inform the public of the transition, however public service announcements on state channels are recommending that people acquire digital-ready television sets, which cost, on average, US \$1000. Meanwhile, no embargo against the import of analog sets has been put in place.

**Recommendations:**

1. Bring Tajikistan's laws relating to the media in line with the standards set in art. 19 of the ICCPR.
2. Bring laws related to television and radio broadcasting into accord with existing laws mandating the transition to digital broadcasting.
3. Amend the current Framework and Program for switching to digital broadcasting to ensure transparency in regard to the transition to digital broadcasting.
4. Eliminate remaining articles of law making defamation a criminal offence, in particular arts. 137 and 330.
5. Revise Tajik laws and Civil Code articles relating to the media so that officials and government agencies filing suit in defense of their honor, dignity, and business reputation are only able to demand a retraction of questionable information, not compensation for moral damages.
6. Put an end to the practice of unlawful blocking of websites by government regulators.
7. Put an end to persecution of journalists stemming from the practice of their profession, conduct thorough investigations into attacks against them, and disclose the results of such investigations to the public at large.
8. Ensure journalists unhindered access to socially significant information.

## **The Right to Freedom of Association: Article 22**

Article 4 of the Republic of Tajikistan Law on Nongovernmental Associations (hereafter, the Law) guarantees citizens' right to form associations and specify the forms such associations can take, as well as the authority of government agencies to monitor associations' adherence to laws and statutory purpose. At the same time, the Law creates extensive opportunities for registering authorities (i.e., the implementation arm of the Ministry of Justice) to interfere in the activities of nongovernmental organizations and to interpret its provisions in a manner detrimental to civil society organizations.

Since 12 May 2007, according to the Ministry of Justice of Tajikistan, 2,657 organizations had been registered, and 2,545 of them are currently in operation. In connection with the enactment of the Law on Nongovernmental Associations in 2007, all organizations were required to reregister. As a result, 948 out of 3,130 nongovernmental associations reregistered and 2,182 ceased operations. Between 2007 and 2013 alone, 340 nongovernmental organizations have been subjected to inspections and 31 have been shut down based on court decisions.

### **The Law**

The law requires nongovernmental associations that change their legal address to undergo mandatory reregistration.<sup>80</sup> Citing this provision, registering authorities ask the courts to shut down nongovernmental associations based solely on the fact that they changed their legal address without entering this change into their statutes and going through the process of reregistration. In practice, virtually all nongovernmental organizations rely on grant funding. Organizations that are between grants and temporarily lack the money to pay rent on their offices also face the risk of being shut down. The process of undergoing reregistration is cumbersome and time-consuming and differs from the original registration process only in that the fee is half as much. According to art. 21 of the Law, nongovernmental organizations must submit the following documents to register: an application signed by members of the organization's governing body that lists their full names, home addresses, and telephone numbers; two copies of the organization's statutes written in official language; a transcript of the minutes of a general or founding meeting that contains information about the nongovernmental association's founding, approval of the statutes, and the formation of governing bodies; information about the founders of the nongovernmental association, including full name, year of birth, home address, citizenship (their signatures must be witnessed) and copies of their passports or other identity papers; a receipt showing payment of the government fee; and a document with the address (location) of the nongovernmental association's permanent governing body.

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Art. 12 of the law states that nongovernmental organizations can be granted the status of international, republic (with the right to operate throughout the Republic of Tajikistan), and local (with the right to operate within a particular area, such as a province). An organization can also be shut down if it operates outside the area for which it is registered.

The Law also requires that an association annually submit information regarding its location, the makeup of its leadership, and its activities.<sup>81</sup>

### **Oversight of Nongovernmental Associations**

The Ministry of Justice, in its capacity as a registering authority, is also endowed with the authority to monitor whether a nongovernmental association's activities accord with its statutory purpose. According to art. 34 of the Law, the registering body has the right to: 1) ask nongovernmental associations' governing bodies to supply instructions, decisions, and information; 2) to send representatives to take part in large-scale events; and 3) if violations of the law or actions that do not accord with the association's statutory purpose are identified, to issue the association's governing body a warning citing specific grounds.

In practice, Ministry of Justice representatives conduct routine inspections of nongovernmental organizations, sometimes without warning. Considering the fact that the procedure, frequency, and scope of such inspection authority are not enumerated in law, this leads to groundless restrictions of the freedom of association and court actions to shut down organizations.

During inspections, justice ministry representatives demand that the heads of nongovernmental associations present the association's constituent documents, including internal documents: orders, schedules, correspondence, reports, meeting minutes, decision protocols, employment contracts, and more, the inspection of which does not come under the authority of the Ministry of Justice under the Law on Nongovernmental Associations and the Civil Code of the Republic of Tajikistan. According to art. 34 of the Law, if any violation by a nongovernmental association or action that conflicts with its statutory purpose is identified, the justice authorities must issue the governing body of the association a *written warning citing specific grounds*. The nongovernmental association has **one month** to consider a written warning issued by a registering body. In practice, however, such inspections can come with threats to shut the association down that are not accompanied by the proper formalities, such as the drafting of acts

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or protocols listing the deficiencies and violations identified. We know of cases where organizations learned that violations were identified only when they received official notification of court action by the Ministry of Justice.

### **The Closing of the Amparo Association of Young Lawyers NGO**

The Amparo Association of Young Lawyers was founded in 2005. Its activities centered on “defending the rights of conscripts and military service members and the strengthening of civilian control over the armed forces.”

On 28 June 2012, an unannounced inspection of Amparo’s offices was conducted by the Ministry of Justice and provincial authorities. The following day, the local authorities filed a court motion in the city of Khujand (the administrative center of Sughd Province) to shut down Amparo.

The motion listed the following violations: creating a website without special authorization or the approval of a resolution by a general meeting of members; holding human rights training without an appropriate license; conducting activities outside the territory for which the organization was registered; and failing to reregister after a change of legal address.

The organization’s leadership was not informed of the planned inspection. During the inspection, despite the urging of organization representatives that the results of the inspection be documented, inspectors did not wish to draft a protocol or act summarizing the inspection and provide a copy to Amparo representatives. After the inspection, Ministry of Justice representatives did not send a written warning providing specific grounds for identifying violations, which would have been subject to mandatory consideration within one month by the nongovernmental association under art. 34 of the Law.

On 24 October 2012, two days after proceedings to consider the motion by the Provincial Administration of the Ministry of Justice and the hearing of arguments, the court ruled to close the Amparo Association of Young Lawyers.

Amparo is a member of the Coalition against Torture, which works with other Tajik NGOs to compile allegations of torture and promote the rule of law, and the human rights community believes that the organization was shut down for its active efforts to defend the human rights of

those of conscription age and those serving in the military and to promote public discussion of the problems of violence and hazing in the Tajik army.

### **The Closing of the Civil Society NGO**

On 10 January 2013, the Khujand Municipal Court ruled to close the Civil Society nongovernmental organization, which works to promote political rights and the population's involvement in politics in Sughd Province, where it actively collaborates with local political parties.

The motion to close the organization was submitted by the Sughd Province office of the Ministry of Justice without prior written warning citing specific grounds. No inspection, as such, of the organization's activities was conducted. A representative of the local justice administration telephoned the director of the organization to report that he was coming to the organization's office to "inspect" its activities. However, at the time of the phone call, the organization's director was not in Sughd Province and therefore requested that the visit be rescheduled. The director added that, due to the lack of continuous funding, the organization's office was temporarily closed and he offered to come to the offices of the justice administration and bring the necessary constituent documents. The justice representative replied that because the organization's office was closed and it had no clear legal address, the justice administration intended to file a motion with the court to have the organization shut down.

The day after this telephone conversation, the organization's director gathered its constituent documents and went to the offices of the Sughd Province justice administration, however the Ministry of Justice representative refused to see the director or look at the documents, stating that a decision had already been made to file a motion to have the organization closed.

### **Recommendation**

1. Bring the law on nongovernmental associations into accordance with art. 22 of the International Covenant on Civil and Political Rights.