

REPORT №1. CIVIL AND POLITICAL RIGHTS

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Bureau on human rights and rule of law

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Rights and prosperity

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Human Rights Center

With the support of FIDH (International Federation for human rights)

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Since the adoption of recommendations on the UPR first cycle the Republic of Tajikistan took a number of positive measures such as: adoption of National Plan on implementation of the UPR recommendations for 2013 – 2015, various action plans on implementation of recommendations of the various UN Committees, continuation of judicial and legal reform. In 2013 a monitoring group under the Human Rights Ombudsman was established to visit closed and semi-closed institutions.

I. GENERAL ISSUES

1. The Republic of Tajikistan is a party to almost all key human rights treaties. It regularly submits reports. During 2010-2015 state drafted and submitted 9 periodic reports to the UN treaty bodies and adopted 4 national plans (and one action plan) on implementation of recommendations of treaty and

charter UN bodies on human rights. Unified National Action Plan on recommendations of the UN human rights bodies and Strategy of cooperation and joint actions with the UN bodies on timely implementation of recommendations and submission of national reports do not exist. Texts of recommendations are not published officially, system of their dissemination among public bodies is not established.

2. State considered issue of submission of permanent invitations to the UN Special Procedures on human rights. However, later, it was decided to refrain from permanent invitations.

3. Mechanism of implementation of communications of the Human Rights Committee in accordance with Optional Protocol to the ICCPR is not established. None of the Committee's decision was implemented. National legislation does not consider decision of the Committee as a basis for reconsideration of the case in the court and reinvestigation. Issue of official publications and translation into the official language of the decisions of the Committee is not resolved.

4. Mechanism of sharing of information and further discussion of draft laws including on human rights issues does not exist. Law making procedure is not transparent. According to article 4 of the Law "On legal acts" establish an opportunity, but not an obligation of publication of drafts of legal acts in mass media or their posting on official web-sites as well as submission of suggestions on the draft law by the stakeholders.

5. Legislation and activities of the Human Rights Ombudsman do not comply with Paris principles. Specifically, legislation on Human Rights Ombudsman does not provide function of Ombudsman on encouragement of ratification or accession to international human rights treaties; vacancy of Ombudsman is not advertised publically (openly) and procedure of selection of candidates does not imply wide consultations with civil society; Human Rights Ombudsman participates on working groups on drafting of national reports for submission to the UN treaty bodies and takes part in governmental delegations on submission of reports. Thus, his independence is questioned. Working group on drafting of proposals on amendments to the legislation on Human Rights Ombudsman was established, but amendments were not submitted.

Recommendations:

6. Adopt unified National Action Plan on recommendations of the UN human rights bodies and Strategy of cooperation and joint actions with the UN bodies on timely implementation of recommendations. Officially publish recommendations of the treaty bodies and establish a system of their dissemination among public bodies.

7. Submit open invitation to all Special Procedures of the UN Human Rights Council.

8. Establish a mechanism of implementation of the recommendations of the UN Human Rights Committee.

9. Amend the article 4 of the Law "On legal acts" to introduce mandatory posting or publication of draft laws. Ensure the principle of transparency and accountability of law making activities including through involvement of civil society in procedure of drafting and discussion of draft laws.

10. Ensure guarantees of independent activities of the Human Rights Ombudsman by adoption of required amendments to the legislation and provision of funding.

II. EQUALITY AND NON-DISCRIMINATION

11. There is no consistent and comprehensive anti-discrimination legislation in the Republic of Tajikistan. There is no Law on prohibition of discrimination, national legislation does not disability, age and sexual orientation as grounds of discrimination as well as definitions of direct and indirect discrimination. The Constitution and other laws do not include definitions of direct and indirect discrimination in public and private sectors. Practice of cases on discrimination is very limited. There is no special training course for practicing judges on discrimination and there are no lawyers focusing on discrimination. There is no National Action Plan on Fight with Discrimination.

12. Article 143 of the Criminal Code speaks about violation of equality of citizens. It is drafted in such a way that: 1) burden of proof is imposed on applicant; 2) person must prove “infliction of damage”. Its definition is not established by the criminal legislation; 3) list of grounds of discrimination is not complete (for instance, on the grounds of health, sexual orientation etc.).

Recommendations:

13. Adopt unified antidiscrimination legislation that encompasses all possible grounds which can be used for discrimination, definitions of direct and indirect discrimination. Increase capacity of judges and lawyers on handling and hearing of cases on discrimination. Adopt National Action Plan on fight with discrimination.

III. INDEPENDENCE OF JUDGES AND RIGHT TO FAIR TRIAL

14. Judiciary is not independent. Council of Justice a body of executive power responsible for training of judges, establishing funding of courts, participating in the selection of judges, defining qualification and disciplinary punishments retains control over judiciary. The Constitution establishes that appointment and dismissal of judges is done by the President upon suggestions of the Council of Justice.

15. The Law on Prosecutor establishes a possibility of appealing court decisions by the prosecutor office using procedure of supervision. It is interference to activities of judiciary.

16. The Constitutional Law “On Courts of the RT” authorises chairmen of courts to distribute cases among judges in accordance with established procedure. Clear and transparent procedure establishing rules of distribution of cases among judges taking into account complexity of cases, workload of judges and their specialisation is not developed.

17. Legislation does not establish legal right of convicted to apply directly to court to consider their request on conditional premature release. According to the article 208 of the Code of the RT on Execution of Criminal Punishments and article 392 of the Code of Criminal Procedure right to apply to court is given to institution or body in charge of execution of punishment. Restriction of right to request mitigation of punishment does not comply with provisions established by the article 14 of the Constitution of the RT (ensuring rights and freedoms of other citizens, public order, protection of constitutional regime and territorial integrity of the republic).

18. Article 111 of the Code on Criminal Procedure establishes that pretrial detention as preventive measure can be assigned only on the basis of gravity of alleged crime. Part 3 of the article 92 of the Code of Criminal Procedure establishes that detention of persons should not be longer than 72 hours since the moment of detention. But part 5 of the article 111 of the Code on Criminal Procedure authorises court to

extend the term of detention for another 72 hours in order to collect sound arguments for detention. Thus, a person can be detained for 144 hours prior to court decision.

19. Article 10 of the Constitution establishes a right of national courts to apply directly international treaties. However, this practice is not prevalent. There is no statistics on application by courts of provisions of the international treaties.

20. Decision of the international body on violation of human rights does not give a victim a right to demand review of adopted decisions and/or compensation of damage. There is no respective law.

Recommendations:

21. Bring authorities of prosecutor office in compliance with international standards in order to strengthen independence of courts and ensure de-jure and de-facto equality of arms in court proceedings. Specifically, prosecutor office shall be deprived of authority to suspend execution of pronounced sentences.

22. Exclude from the Code of the RT on criminal procedure the following grounds for application of detention as preventive measure: 1) gravity of crime; 2) charges with crimes of medium gravity; 3) authority of courts to extend detention for 72 hours for unlimited number of times as it violates principle of lawfulness and adversarial trial (part 5 of the article 111 of the Code of the RT on Criminal Procedure).

23. Develop clear and transparent procedure establishing rules of distribution of cases among judges taking into account complexity of the case, workload of judges and their specialisation.

24. Amend legislation with the provision that decision of the international body on violation of human rights can be a reason for review of adopted decisions and/or compensation of damages.

IV. JUVENILE JUSTICE

25. In October 2009 the Commission on Child Rights under the Government of the RT adopted a National Action Plan on Reform of Juvenile Justice for the period of 2010-2015. However, Plan has several drawbacks, timeframe for execution of several activities is not defined.¹ Mid-term reports on monitoring of implementation of the National Plan were not published.

26. In Tajikistan application of solitary confinement as a disciplinary measure towards children was removed in 2020, but then adopted again in 2010. Placement in solitary confinement for violation of

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Objectives 2, activities 6 and 9.

regime can last from 5 to 7 days.² There were cases of placement to disciplinary isolation ward of juveniles who did not violate regime.³

27. Code of the RT on Criminal Procedure does not establish provisions on separate detention of children from adults. The Law of the RT “On Procedure and conditions of detention” authorises in exceptional cases and upon consent of the prosecutor to place juveniles with adults if they are characterized positively and were brought to criminal responsibility for the first time and for crimes that are not related to grave crimes. It must be noted that provision of the Law “On Procedure and conditions of detention” contradict to the Law “On Protection of Rights of Children” as it prohibits placement of a child in one cell with adult detainees and convicts. The Law does not establish exhaustive and clear list of these cases. According to various sources, out of Dushanbe juveniles are kept in detention together with adults in pre-trial detention centers or centers of temporary detention.

28. Article 273 of Code of the RT on Criminal Procedure (CCP) authorises to hold closed hearing in relation to children under 16 years of age and in certain cases upon reasoned ruling of court. This provision does not comply with the Convention as prescribed by the UN Committee on the Rights of a Child.

29. According to article 11 of the CCP placement to education institution is only allowed upon decision of the court. Commission on the rights of a child (a body of executive power) does not make decisions on placement of child to special educational institution, but it can request court to place underage to special educational institution (p. 15 of the Regulations on the Commission on the rights of a child). However, in practice this provision is violated. Commission still makes decisions on referral of children to special educational institutions even upon request of parents who are not able to educate children. Besides, the Commission makes decisions on extension of duration of stay of child in the institution. At the beginning of 2015 68 boys stayed in the special school and only few of them were placed there upon court decision.

30. Up to date, there were no targeted actions taken on establishment of child friendly procedures for child victims and witnesses of crimes. There are no statistical data on children witnesses of crimes and children victims of crimes disaggregated by sex and age. There are no specialised investigators on handling these cases. National legislation does not establish mandatory participation of lawyer and psychologist in cases where children were victims and witnesses of the crimes.

31. CCP of the RT does not establish a requirement of immediate notification of parents of a child about his arrest (article 100 establish only a general rule about notification within 12 hours). At the same time, article 31 of the Law of the RT “On Protection of Rights of Children” states that parents or other lawful representatives of a child shall be notified immediately about arrest and detention of child.

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Article 144 of the Code of the RT on Execution of Criminal Punishments.

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“Torture and cruel treatment of children in the context of juvenile justice in Tajikistan”, Public Association “Child’s Rights Center”, page 33

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Recommendations:

32. Monitor implementation of the National Action Plan on reform of juvenile justice system for 2010 – 2015 and publish findings.
33. Amend the Code of the RT on Execution of Criminal Punishments in order to eliminate application of such disciplinary measure as placement to disciplinary isolation ward, because it contradicts to the international standards on the rights of a child.
34. Introduce legislation that will unambiguously require separate detention of children and adults at all stages of detention (including transportation in court/other institutions). Introduce to the Code on Criminal Procedure a requirement on separate detention of children and adults. Bring article 34 of the Law “On procedure and conditions of detention” (that permits detention of children with adults in exceptional cases) in compliance with the Law of the RT “On Protection of the Rights of a Child” (article 31) that prohibits joint detention of a child in one cell with detained or convicted adults.
35. Amend the CCP of the RT to establish a procedure of immediate notification of parents and lawful representatives of juvenile about arrest. Bring the CCP in compliance with the Law of the RT “On protection of rights of a child” in terms of immediate notification of parents (representatives) on arrest of a child.
36. Conduct comprehensive analysis of the national legislation on protection of children victims and witnesses, develop required recommendations to introduce amendments to current legislation.

V. RIGHT TO LIFE AND ABOLITION OF DEATH PENALTY

37. In 2004 moratorium on assignment and execution of death penalty was introduced. Working group tasked with study of legal and social aspects of death penalty in the legislation of the RT was established. Death penalty was not abolished. The Constitution and Criminal Code establish this kind of punishment.

Recommendations:

38. Remove from the Constitution and Criminal Code punishment by death penalty and ratify second Optional Protocol to ICCPR.

VI. PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT

39. Use of torture and other kinds of maltreatment and punishment by personnel of the law enforcement bodies, staff of the penitentiary system and military units remains. Only in 2014 Coalition against torture documented 26 applications on use of torture and cruel treatment. One case, presumably, took place in relation to a woman and two cases in relations to juvenile boys. 4 cases resulted in death (2 of them took place in the military units and 2 other cases took place in the bodies of the Ministry of Interior).

40. Bullying in army remains a significant problem. Дедовщина в армии продолжает оставаться значительной проблемой. This is so-called harassment, when new conscripts are physically abused by

order soldiers, extort money from them and so on. In only June – July 2015 5 soldiers died as a result of bullying.⁴

41. Operational, rigorous and impartial investigation of all cases on use of torture and cruel treatment regardless of whether official complaint was submitted or not, are not conducted. Complaints are often rapidly dismissed and investigations are terminated or suspended. During 2011 – 2013 137 complaints on use of torture and other cruel treatment were documented, and 26 complaints were documented in 2014, but less than ten of these complaints on use of torture and other kinds of cruel treatment were duly investigated.⁵ Independent mechanism of investigation of torture in accordance with Istanbul protocol is not established.

42. In 2012 Criminal Code of the RT was amended to introduce to the article 143.1 a definition “torture”. Punishment imposed for the crime of torture is incompatible with gravity of this crime. Though article 143.1 includes several aggravated circumstances of torture that can be punished by more than fifteen years of imprisonment, in practice only punishments of imprisonment for not more than 2 to 5 years are imposed and even in these cases, these punishments are often reduced or imposed conditionally.

43. There is lack of legislation on rehabilitation of victims of torture, including health care assistance and psychological rehabilitation.

44. Victims of torture and cruel treatment often do not receive fair and adequate compensation for inflicted damage. There is lack of legal procedure on payment of compensation to victims of torture.

Recommendations:

45. In the legislation increase the term of criminal punishment for use of torture and remove measures of punishment not related to imprisonment.

46. Establish independent mechanism of investigation and persecution for use of torture.

47. Adopt a law on health care, social and psychological rehabilitation of victims of torture.

48. Define procedure of payment of compensation to victims of torture.

49. Make a statement on acknowledgement of authority of the Committee against torture to admit and review individual communications in accordance with article 21 of the CAT.

VII. RIGHTS OF PERSONS IN CLOSED AND SEMI-CLOSED INSTITUTIONS

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<http://notorture.tj/news/pyataya-smert-v-tadzhikskih-pogranvoyskah>

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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishments, Juan E. Mendes, February 2015. Document: A/HRC/28/68/Add.2

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50. Penitentiary system is not transparent. Representatives of the International Committee of Red Cross (ICRC) do not have access to pre-trial detention centers and prisons. There is lack of mechanism of public control over respect of human rights in closed institutions. Monitoring group was established under the Human Rights Ombudsman to exercise control over detention places. Since 2014 it visits closed institutions. However, unannounced visits are rarely practiced and confidential communication of members of the monitoring group with persons detained in closed or semi-closed institutions is not ensured.

51. Legislation does not establish mandatory medical check-up of children admitted to remand houses, special school, special vocational lyceum and correctional institutions to detect use of torture or cruel treatment.

52. Code on execution of criminal punishment adopted in 2001 permits placement of juveniles to solitary cells as a disciplinary measure. The Law “On procedure and conditions of detention” establishes that in case of violation of execution of duties the following disciplinary measures may be applied to juveniles: reprimand and placement to isolation cell or solitary cell for up to seven nights. These provisions of the legislation don't comply with international human rights standards.

53. There are contradictions between the law “On psychiatric health” and Civil Procedural Code of the RT in terms of procedure and duration of forced hospitalisation. There is no mechanism of regular independent control in all cases of forced hospitalization and treatment of patients in psychiatric clinics. Judicial control over every case of forced placement to closed institutions is not ensured.⁶

Recommendations:

54. Introduce a mechanism of unplanned visits of monitoring group under the Human Rights Ombudsman of the Republic of Tajikistan to closed and semi-closed institutions without prior notification.

55. Establish a mechanism of public control on respect of human rights in closed and semi-closed institutions.

56. Amend the Law of the RT “On procedure of detention of detained, accused and persons under trial” and Code of the RT on Execution of Criminal Punishments to introduce mandatory medical check-up of juveniles, including by independent health care workers to detect traces of violence and use of torture and cruel treatment of juveniles.

57. Amend the Code of the RT on Execution of Criminal Punishments to remove placement to disciplinary isolation cell of juveniles as a disciplinary measure, because it is in contradiction with international standards on rights of a child.

VIII. FREEDOM OF CONSCIENCE AND RELIGION

58. The Law “On freedom of conscience and religious associations” does not comply with international standards on freedom of religion. It foresees unreasonably complicated procedure of registration of religious association as legal entity, mandatory examination of religious literature, prohibition of religious rites and rituals in public places as well as prohibition of preaching activities by unregistered organisations. Proselytism in houses and apartments of citizens is prohibited. Since 2009 none of the non-Islamic organisation was registered.

59. The Law establishes that receipt of religious education is possible only upon receipt of written consent of the Committee on religious affairs. As most of non-Islamic religious organisations do not have educational institutions in Tajikistan, access to education abroad is restricted.

60. Cases of forced shaving of beards were documented in Tajikistan. There was information about special verbal directives to staff of law enforcement bodies on check of documents among men wearing beards and women wearing hijabs.⁷ Victims of violations in several cases complained on illegal actions of law enforcement bodies, but without any results.⁸

61. Restriction to wear religious cloth such as hijab in educational institutions of countries was not abolished. There were cases of dismissals and withdrawals of women from universities in view of wearing hijabs.

62. The Law on alternative service does not exist. In this regard, refusal of mandatory military service based on conscience convictions is considered as evasion of military service and results in administrative or criminal charges.

Recommendations:

63. Bring the Law on freedom of conscience and religious organisations in compliance with international provisions based on recommendations of the UN Special Rapporteur on freedom of conscience, Human Rights Committee and Human Rights Council in the framework of the Universal Periodic Review.

64. Hold permanent constructive dialogue (including inter-confessional) to establish an atmosphere of religious tolerance and settlement of conflicts between stakeholders representing state, political parties, religious leaders, religious groups and civil society organisations.

65. Withhold unreasonable restrictions of religious education, activities of religious associations as well as wearing of religious cloth and other symbolic expressions of religion.

66. Adopt the Law on alternative military service.

IX. FREEDOM OF EXPRESSIONS AND ACCESS TO INFORMATION

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http://poistine.org/boroda-i-hidzhab-priznaki-radikalizma-v-tadzhikistane?fb_action_ids=1604790469793231&fb_action_types=og.likes&fb_ref=.VVNPAoQXAsM.like#.VWWW4M_tmkp

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<http://www.dialog.tj/news/blogger-rustam-gulov>

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67. Criminal Code (CC) of the RT includes articles establishing criminal responsibility for insult of representative of power (article 330) and public insult of a president of the RT (article 137). Thus, representatives of bodies of power are provided with special protection from criticism. Articles on defamation and insult (135, 136) were transferred from the CC of the RT to the Civil Code of the RT.

68. Recent challenges for mass media in Tajikistan show that breaking of e-mails and accounts of journalists and activists of civil society in social networks, wiretapping of phone calls and other types of cybercrimes become traditional means in fights with freedom of speech and information. Thefts of personal data of users of digital technologies (personal data, documents) and physical detection of persons (geo-positioning, IP addresses and so on) expose to risks.

69. In Tajikistan practice of suing mass media by public bodies for criticism in the framework of civil legislation continues. It raises serious fears among journalists community of Tajikistan. Only in 2013-2015 according to NANSMIT number of civil and administrative cases with participation of mass media and journalists reached 14 and there was one case of criminal persecution detected. Unreasonable fines put under threat existence of independent mass media in the country. Regardless of result of cases with participation of mass media, they negatively affect situation with freedom of speech and expression of opinion of the country.

70. On 30 June 2015 President of Tajikistan signed protocol of the session of the Government of the RT. According to it all state bodies must communicate their information and press-releases through the National information agency “Khovar”. Other mass media can use official information only with reference to this media outlet that creates serious restrictions of access to public information by independent mass media and state monopoly for official information.⁹

71. Access to information is also hindered by the ongoing practice of extrajudicial blocking of web-sites of independent mass media and social networks. Thus, blocking of Internet resources took place in June 2014, October 2014 – during this period there was large-scale blocking of sites. As a result more than hundred sites and social networks were blocked.¹⁰ In May and August 2015 Facebook, YouTube were blocked again without any reasons.

72. In 2014 amendments were introduced to the Law “On legal regime of emergency” authorising the government in case of announcement of emergency situation to instruct companies of mobile communication to deprive access of their clients to telephone connection. The Government also has a right to restrict access to Internet and prevent access of citizens to sites “for the purpose of ensuring tranquility of population”. The Law does not establish clear instructions on relations with mass media during emergency situations, there are not requirements of public announcement, on restrictions or prohibition of access to Internet or mobile connection¹¹.

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<http://nm.tj/society/32153-vlasti-vveli-monopoliyu-na-oficialnuyu-informaciyu.html>

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<http://rus.azattyq.org/archive/news/20141013/360/360.html?id=26634440>

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http://nansmit.tj/wp-content/uploads/Article_19_Analiz_zakona_russkiy.pdf

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73. Concept of state policy of the Republic of Tajikistan in the field of TV and radiobroadcasting for 2010-2015 and State programme on development of digital television in the RT for 2010-2015 were adopted. The State programme does not include mechanism of transition to digital broadcasting. Information about ways, conditions and process of transition to digital broadcasting of independent TV stations is not foreseen in the programme. The Government still did not duly inform population about transition, but state channels through social ads recommend to purchase TV receivers with already built-in receivers which average cost is USD 1'000. At the same time, embargo on import of analog technology was not introduced¹².

Recommendations:

74. De-criminalise other articles of defamation violations in the Criminal Code of the RT.

75. Do not use possibilities of information and communication technologies (ICT) for the purpose of restriction of freedoms of expression of opinion as well as right of citizens for access to information, specifically, eliminate illegal use of system of operational and detection measures against journalists and activists of civil society.

76. Abolish Protocol signed by the President of the RT on 30 June 2015 as it contradicts to constitutional rights of citizens and provisions of national legislation.

77. In the legislation on mass media and civil code of the RT establish provisions authorising bodies of state power and representatives of power bodies suing for protection of honour, dignity and business reputation to claim only refutation of unreliable information, but not recovery of moral damage.

78. Ensure access to information by means of establishment in the law a procedure of blocking web-sites. Amend the Law “On legal regime of emergency”.

79. Ensure transparency of the transition to digital broadcasting through amendments to current Concept and State programme of transition to digital broadcasting to ensure respect of rights of non-state TV and radio broadcasting companies.

X. RIGHT TO RESPECT OF PRIVATE AND FAMILY LIFE

80. In 2011 amendments were introduced to the Family Code. They legalised discriminatory procedure of marriage between nationals of the RT and foreign nationals/stateless persons. According to amendments (articles 12 and 41 of the Family Code of the RT) marriage with foreign nationals or stateless persons can be permitted only under condition of residence of foreign national in the RT for not less than one year and mandatory marriage contract which should be concluded prior to registration of marriage. Marriage contract should include the following compulsory provisions: property rights of

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<http://bhr.tj/public/userfiles/Analytika/Obzori/%D0%95%D0%B6%D0%B5%D0%B3%D0%BE%D0%B4%D0%BD%D1%8B%D0%B9%20%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%BE%20%D1%81%D0%B8%D1%82%D1%83%D0%B0%D1%86%D0%B8%D0%B8%20%D1%81%20%D0%9F%D0%A7%20%D0%B2%202013%20%D0%B3%2014%20%D0%B3..pdf>

parties, their rights and duties in relation to property; duties of parties for maintenance of children; provision of spouse and children with private housing (at the same time, foreign national according to housing legislation does not have a right to purchase housing); maintenance of disabled spouse in need of care.

81. According to the Family Code of the RT, only nationals of Tajikistan above 18 years can adopt children. There are cases when persons with foreign nationality, most often national of Russian Federation were not able to adopt their nephews or other close relatives in Tajikistan without parents.¹³ This prohibition is also extended to families where spouses had second marriages, and one of the spouses is not a national of the RT. A spouse, foreign national, is deprived of right to adopt a child of second spouse. It is a violation of right to respect of family life. In cases when in this family common child is born, status of non-adopted child is very difference from status of common child born in this marriage.

82. Legal mechanism of identification of sex of transgender persons is not established. It results in lack of mechanism of exchange of identification documents after sex reassignment surgery.

Recommendations:

83. Bring provision of the Family Code (article 12, 24 and 41.2) in compliance with international obligations of Tajikistan and recommendations of UN treaty bodies.

84. Amend the Family Code to grant close relatives of foreign nationality right to adopt children who were left without parents support or became orphans.

85. Establish legal mechanism and procedure of exchange of documents for transgender persons.

XI. RIGHT TO FREEDOM OF ASSOCIATION

86. On 10 June 2015, members of lower chamber of the Parliament of the RT adopted amendments to the law “On Public associations”. The amendments concern the registration of grants of non-governmental organisations and their inclusion into a special register. The amendments are discriminatory, because they concern a narrow circle of non-governmental organisations and do not relate to all institutions of civil society. It is not clear yet whether registration will be made through notification or authorisation. The vaguely-worded amendments are evidence of a lack of transparency in the lawmaking process. New mechanisms of registration and authorisation for activities of associations receiving funding from abroad, may negatively affect activities of civil society organisations.

87. Lately, NGOs have been subject to inspections by various public bodies such as the Tax Committee, the Ministry of Justice, the Prosecutor's office, the State Service on oversight in the field of labour, employment and social protection of population. Human rights defenders have been subject to pressure in the form of visits of state security to organisations' premises, requests of constitutive documents, threats of bringing to criminal responsibility, pressure through invitation to the office of security bodies to have a “preventive” talk. Cases of violations of the law by inspection bodies were also reported: in some instances, the latter requested information that do not fall under authority of a public body, violated

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Report on findings of analysis “International provisions and national legislation of the Republic of Tajikistan in the field of ensuring rights and interests of orphans and children left without parental support”, Association of Young Lawyers “Amparo”, Khudjand, 2012.

the terms of notifications in the field of inspection, and failed to submit documents regarding the findings of inspections.

88. In addition, non-commercial organisations such as Public Funds face problems of legal nature. Indeed, as they don't fall under the Law “On public associations”, the latter are registered by tax authorities. Lately, the Tax Committee started to refuse in registration of Public Funds and refer to the Ministry of Justice for registration. At the same time, according to the law the Ministry of Justice has no relation to Public Funds.

Recommendations:

89. Carry out inspections of civil society organisations' premises in compliance with the law and international standards.

90. Ensure a non-discriminatory procedure for the registration of grants of all civil society organisations, in a manner that does not preclude the implementation of the activities of such organisations.

91. Establish in the law a status of Public Funds in the system of non-commercial public associations.

92. More generally, ensure and facilitate access to funds, including from foreign sources, for the purpose of defending human rights, and refrain from restricting the use of funds as long as they comply with the purposes expressly established in the United Nations Declaration on Human Rights Defenders.

XII. RIGHTS TO PEACEFUL ASSEMBLY

93. In 2014 the Law of the RT “On assembly, meetings, demonstrations and street rallies” was adopted. Holding of meetings and demonstrations is subject to authorisation. Persons wishing to hold gathering should exercise their freedom of assembly only after receipt of respective permission from public body. Application on holding public event should be submitted by organisers not less than fifteen days prior to date of holding an event. The law established a prohibition of holding public events near residence of President of the RT, court buildings, territories and buildings of institutions executing such punishment as imprisonment. Restrictions were introduced on holding public events near buildings of bodies of state power. Admissible distances between mentioned buildings and places for holding public events are not specified in the Law (they should be defined by respective Majlis of people’s representatives) and, respectively, can be interpreted arbitrarily.

Recommendations:

94. Bring the Law “On assemblies, meetings, demonstrations and street rallies” in compliance with international standards on right to peaceful assembly.

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