

**NGO REPORT ON TAJIKISTAN'S IMPLEMENTATION OF THE  
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS**

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This report has been prepared by a number of NGOs and individual experts in the framework of the Tajikistani NGO Coalition on promoting socio-economic rights of children and women. These include the following NGOs: Nota Bene, Panorama, the Bureau on Human Rights and Rule of Law, the Consumers Union, the Human Rights Center, the Independent Center for Human Rights Protection, Law and Prosperity, Sarchashma, the Office for Civil Freedoms and Your Choice, as well as Larisa Alexandrovna, Kahramon Sanginov and other experts.

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## 1. Brief summary

1.1. This report provides information on the observance of economic and social rights in Tajikistan in the period 2010-2014. The different sections of the report cover the following topics: the general framework of the Covenant (article 2), gender equality (article 3), the right to work and just and favourable conditions of work (articles 6 and 7), protection of families and children (article 10), trade union rights (article 8), the right to social security (article 9), the right to an adequate standard of living (article 11), the right to the highest attainable standard of physical and mental health (article 12), and the right to education (article 13 and 14).

## 2. The general framework of the Covenant (article 2)

### *Fighting discrimination*

2.1. There is no general anti-discrimination legislation, prohibiting discrimination in various areas in the country. Article 17 of the Constitution guarantees equality before the law regardless of race, sex, language, religion, political beliefs, education, social status or wealth, and article 143 of the Criminal Code penalizes violations of the equality of citizens on certain discriminatory grounds. However, this article is formulated in a way that places the burden of proof on the victim of discrimination and requires her or him to prove the “infliction of harm,” a concept that is not defined by criminal law. This legislation does not cover other types of discrimination than those spelled out, such as discrimination on the grounds of disability, sexual orientation or age. It would be crucial to transfer the burden of proof to the state in discrimination cases, as well as to widen the definition of discrimination so as to strengthen the protection of victims.

### *Discrimination on grounds of sexual orientation and occupation*

2.2. On 5 June 2014, the Minister of Interior called for intensified measures in the fight against so-called “crimes against morality,” expressing concern in particular about the growing number of individuals involved in commercial sex in the country. According to a communiqué issued by the Ministry of Interior on 12 June, as a result of raids carried out for this purpose on 6-10 June, over 500 individuals were detained, registered in a special database and required to undergo compulsory testing for sexually transmitted diseases. According to information received by NGOs,<sup>1</sup> many of those detained were targeted and subjected to registration and testing on the mere suspicion of involvement in prostitution (an administrative offense) or other sex trade related offenses without any court review of their cases. National legislation prohibits compulsory testing for HIV and other diseases, as well as compulsory fingerprinting of individuals who have not formally been determined to be criminal suspects. Moreover, the Ministry of Interior communiqué stated that three individuals suspected of “homosexual behaviour” were among those detained, although homosexuality is neither a criminal nor administrative offense under current Tajikistani legislation and the Tajikistani authorities have an obligation to refrain from discrimination on grounds of sexual orientation.

According to information received by NGOs, detentions carried out in Dushanbe also involved violations of procedural rights, such as failure to promptly register detentions and bring detainees before a judge, to grant detainees access to a lawyer from the moment of their apprehension and to ensure that

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<sup>1</sup> See open letter by a number of Tajikistani and foreign NGOs to the Ministry of Interior, 18 June 2014, available at <http://www.iphronline.org/tajikistan-open-letter-about-fight-against-so-called-crimes-against-morality-20140618.html>

detainees are not subjected to degrading or brutal treatment. Some of those detained reportedly faced insults, beatings and blackmail attempts.

#### *Raising awareness among judges about standards prohibiting discrimination*

2.3. The State party has not taken any concrete measures to implement the Committee's recommendation to raise awareness of judges and other members of the legal profession about international standards prohibiting discrimination (par. 47 in the Concluding Observations from 2006). The Judicial Training Centre operating under the state Council of Justice organizes courses for judges to improve their qualifications. The Centre devotes only two hours to human rights issues in its standard, two-week training program,<sup>2</sup> which is not sufficient to ensure adequate training on these issues. Moreover, the human rights sessions do not cover issues related to non-discrimination and equality. Throughout the existence of the Judicial Training Centre under the Council of Justice, its training courses have never been funded from the state budget. In most cases, training courses are funded through foreign grants, which makes the continuation of these activities dependent on whether new grants are allocated. Most lectures are delivered by former judges or law professors who do not specialize in human rights. Since 2007, the Training Centre has not invited human rights defenders to conduct classes on human rights for judges. The reasons for this changed practice are not known to the authors of this report.

#### *Free legal assistance*

2.4. Access to justice is an essential element of the right to a fair trial. Most suspects and victims cannot afford to use legal services due to the high lawyer fees and court costs. The existing system of free legal aid provided by the State party is inefficient for a number of reasons, including: the lack of a single legal act governing the provision and payment of legal aid; the lack of a separate state budget covering the costs of such assistance; unclear criteria for selection of those eligible for legal aid; and lack of effective administration of the provision of legal aid. In February 2013, a working group was established to elaborate a new law on legal aid, including free legal aid. The working group started by developing a draft concept on free legal aid, which subsequently will form the basis for the draft law. The draft concept discusses, among others, different types and procedures for the provision of free legal aid; entities providing free legal assistance; persons eligible for free legal aid; the mechanism for implementing and funding the concept; and pilot models of free legal assistance. The concept is proposed to be implemented over a period of eight years, and its pilot projects during the first three years. The concept is expected to be adopted at the beginning of 2015, and the law on legal aid after the concept is in place.

#### *Independence and transparency of the judicial system*

2.5. Despite ongoing reforms, compliance with international standards and principles of judicial independence has yet to be ensured within Tajikistan's judicial system. The Council of Justice, a body within the executive branch is responsible for conducting qualifying exams for judge candidates and proposing candidates for appointment as judges.<sup>3</sup> An analysis of the procedures of the Council's Qualification Commission, which oversees exams, shows that they are not independent or impartial. The Commission's chairman, who also chairs the Council of Justice, plays a significant role in the procedures, while other members have little say in final decisions. The 2013-2015 National Action Plan on the implementation of recommendations from the Universal Periodic Review of Tajikistan foresees the removal of the Council of Justice from the executive branch with a view to strengthening the independence of the judiciary. However, this has yet to be realized.

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<sup>2</sup> Information from report of the Judicial Training Center.

<sup>3</sup> Article 3 of the Law on Courts of the Republic of Tajikistan.

2.6. According to 2012 amendments and additions to Tajikistan's Law on Courts, court chairs are authorized "to allocate cases to judges in the prescribed manner."<sup>4</sup> In practice, there are no clear and transparent procedures or rules for the allocation of cases among judges, which would take account of the level of complexity of cases, the expertise and workload of judges etc. As a result, court chairs enjoy wide discretion in allocating cases.

2.7. An analysis of the websites of judicial bodies shows that most sites are not fully operational or up-to-date. In addition, virtually none of these websites contains statistical information on cases considered or information on decisions that have been adopted or opportunities for online appeals. A new, revised Code of Honour for judges was adopted at a conference of judges in November 2013, but it has not been widely disseminated among lawyers or the public.

## **Recommendations**

*The authorities of Tajikistan should:*

*2.1. Adopt comprehensive legislation safeguarding the basic principles of equality and non-discrimination, in accordance with the requirements of the Covenant as set out by the Committee in its General Comment No20 and the Declaration of Principles on Equality elaborated by a group of international experts in 2008.*

*2.2. Implement coherent policies to ensure adequate measures to counteract sexual exploitation by law enforcement agencies, upholding the rule of law, protection against discrimination and basic principles of equality.*

*2.3. Conduct periodic trainings for judges and other representatives of the legal profession on the basics of human rights, allocating adequate time for this purpose and engaging experts on international standards prohibiting discrimination as teachers.*

*2.4. Adopt a law guaranteeing access to free legal aid.*

*2.5. Revise the principles governing the formation, membership and operation of the Council of Justice, in particular by removing it from the executive branch and instead placing it under the judicial branch in order to enhance its independence and strengthen its role. Also, revise the procedures for appointing judges to ensure that decisions are independently made.*

*2.6. Develop and adopt clear procedures (rules) for distribution of cases to judges.*

*2.7. Adopt measures for improving the content of Internet sites of the judiciary bodies in order to ensure transparency and information accessibility.*

*2.8. Widely disseminate the Judges Code of Honour in the new edition among the legal professions and the public.*

## **3. Gender equality (article 3)**

*Gender based expertise of draft laws and programs*

3.1. During the reporting period, Tajikistan has developed and approved numerous gender equality programs. However, existing legislation does not provide for gender-based expertise of draft laws, strategies and policy documents, as a result of which laws and programs that are adopted often do not meet current challenges in the field of gender equality. One example of the lack of a gender-sensitive

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<sup>4</sup> Articles 68, 82, 88 and 93 of the Law on Courts of the Republic of Tajikistan.

approach can be found in the Labour Code. The Labour Code does not provide any differentiation in social benefits foreseen for men and women who combine work with education. On one hand, this can be seen as a gender-neutral approach. On the other hand, provisions regulating benefits for young people who combine work with education fail to pay any particular attention to the situation of young married women, who typically carry a heavy burden in the household given the continuing high level of inequality in terms of the division of household labour in Tajikistan. This undermines the ability of young women to continue their careers and even more so to combine work with education. Thus, the current approach creates conditions for indirect discrimination against women in employment and education.

#### *Lack of economic and financial framework for the implementation of adopted laws and programs*

3.2. Lack of sufficient economic and financial sources is also a major reason for the ineffectiveness of laws and programs adopted in the area of gender equality. The government sets unattainable criteria for monitoring and evaluation, which proves the declarative nature of laws and programs.

#### *Residence registration (“propiska”)*

3.3. Another major problem in the area of gender equality is the contradiction between new laws and programs aimed at ensuring gender equality and pre-existing normative acts and regulations, which obstructs the implementation of the former. An example is the regime of registration at the place of residence (*propiska*). A legacy of the Soviet era, this regime requires citizens to be registered at the address of their permanent or temporary residence, while registration is a pre-requisite for having access to social benefits, education, and health services. The regime violates the right to freedom of movement and choice of residence of citizens and undermines access of women and children to quality health care and education. According to paragraph 3 of the Regulation on the delivery of health services to citizens by public agencies, the basic condition for providing free health care is that citizens present a referral from a family doctor, a local general health practitioner, a paediatrician, obstetrician-gynaecologist or a territorial health body, and conclusions from a local medical control commission. All these documents are issued at citizens’ place of residence. Without registration, doctors do not issue the required referrals and patients cannot receive free primary health care. Similar requirements exist e.g. in terms of education. While widespread poverty and male labour migration abroad force many women to migrate internally in search of work, the registration regime provides an obstacle for such women (who include the wives of labour migrants abroad, women who have been abandoned by such husbands or whose migrant husbands have divorced them and single mothers) and their children from accessing medical care, education, and other services and benefits.

#### *Gender equality in the economy*

3.4. The level of occupation of men is twice higher than that of women. According to 2009 figures from Tajikistan’s Statistics Agency, the level of occupation of men amounted to 72% (compared to 78% in 2004) and of women to 39% (55% in 2004). Households run by women are at higher risk of poverty than households headed by men. Of the total number of households in the country, an estimated 19% are headed by women.<sup>5</sup> Gender differences in positions held in the labour market largely reflects sectorial gender segregation. The number of highly qualified male specialists is 1.5 times higher than that of female specialists; the number of male managers almost 4 times higher at all levels; and the number of skilled industry workers up to 7 times higher.<sup>6</sup> Gender inequality in the field of employment is also reflected in a

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<sup>5</sup> According to statistics from 2010.

<sup>6</sup> Analysis of the situation in the labour market in the Republic of Tajikistan published by the Statistical Agency under the President in 2010 (page 96).

significant gender gap in retirement pensions, to the detriment of women. The transition to a new pension system that combines the provision of state pensions and the accumulation of pensions based on income could further increase the gender gap in pensions due to the high level of gender inequality in employment and the labour market.<sup>7</sup>

## **Recommendations**

The authorities of Tajikistan should:

- 3.1. Make it mandatory to carry out gender analysis of draft laws, policies and policy instruments.*
- 3.2. Consider the availability of funds for the implementation of planned activities prior to the adoption of new legislation and programs aimed at enhancing gender equality. Set out achievable criteria for monitoring and evaluating the implementation of laws and policy documents.*
- 3.3. Revoke the regime of residence registration in its current format, as an unconstitutional legacy of the Soviet Union.*
- 3.4. Take measures to promote gender equality in the labour market, including by providing for the issuance of preferential government loans for small business development among women.*

## **4. The right to work (article 6)**

### *Employment of vulnerable categories of the population*

4.1. The authorities have not adopted any specific policies or legislation to promote employment of vulnerable categories of the population who have a reduced level of competitiveness in the labour market, such as persons with disabilities, mothers of large families, the heads of single-parent families, abandoned wives of migrant workers and others.

### *Unemployment and promotion of employment among the population*

4.2. Tajikistan has a high natural increase of population and labour force, while there is a relatively slow growth of newly created jobs. It remains a challenge for the authorities to meet the needs of the population with respect to employment. The officially registered unemployment rate is currently slightly more than 2%.<sup>8</sup> However, experts argue that the actual figure may be up to 9% and, taking into consideration labour migrants, as high as 25%. Research on the workforce has showed that the total number of unemployed people as measured according to ILO methodology is 5-6 times higher than the number of officially registered unemployed people and it has no tendency to decrease.<sup>9</sup>

The modern model of the Tajik economy is largely based on the export of labour. Thus, in 2013 remittances from migrant workers amounted to almost half (47%) of Tajikistan's GDP, which is one of the highest rates in the world. The government has not taken effective steps to reduce labour migration flows and dependence on labour migration remittances, or to prepare for a possible mass return of migrant workers in the event of changing economic and political conditions in receiving countries, which could result in social tensions. The government has attempted to create new jobs in the country for the stated purpose of reducing labour migration and it is expected that employment will increase by an average of

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<sup>7</sup> UN Women, *Legislation and policy in the field of social protection in Tajikistan*, gender analysis, 2012.

<sup>8</sup> The official unemployment rate (%) is calculated as the ratio of the number of officially registered unemployed to the economically active population.

<sup>9</sup> Analysis of the labour market situation in the Republic of Tajikistan by the Statistical Agency under the President, 2009.



5-6 % per year as a result of such measures. However, the new jobs are not attractive to migrant workers because of low wages.

Most of the some 8000 jobs (including jobs created through government employment programs) that were announced in the online national database of job vacancies<sup>10</sup> in October 2014 were very low paid. For example, monthly salaries ranged between \$70 and 120 for positions offered in the education sector, and between \$60 and 170 for jobs in the health care sector.

No comprehensive analysis has been made of the direct and indirect contribution of migrant workers to the country's economy. This makes it difficult to elaborate concrete measures for addressing issues related to labour migration in this area.<sup>11</sup>

#### *Measures taken to ensure the reintegration of returning migrant workers or migrants who have been denied entry into the country of employment*

4.3. A growing number of Tajikistani migrant workers have been deported and expelled from the Russian Federation and currently about 200 000 migrant workers are banned from entering Russia due to violations of migration rules or other.<sup>12</sup> Foreign citizens may be banned from entering the Russian Federation for three or more years.

The government of Tajikistan has not presented any assessment of the current situation for the purpose of elaborating measures to promote the re-integration of migrant workers. The 2011-2015 National Strategy for Foreign Labour Migration of Tajikistani Citizens sets out that a mechanism for the reintegration of returned migrants into the country's economy will be established. However, the strategy does not spell out any specific measures for achieving this result or provide any details on how reintegration will be ensured. In addition, adequate funding for the realization of the strategy has not been provided. Currently the government continues to promote the return of migrant workers to the Russian labour market.

In 2010, several centres were established in Tajikistan to promote professional and social reintegration of returning migrant workers. The centres were supposed to provide consultations to returning migrants and facilitate their training, retraining and job placement and support them in starting their own businesses. However, due to lack of funding and qualified staff, the centres have failed to implement such activities and become fully operational.

## **Recommendations**

*The authorities of Tajikistan should:*

*4.1. Promote the employment of vulnerable groups of the population who have a reduced level of competitiveness (disabled, mothers of large families, heads of single-parent families, abandoned wives of migrant workers and others), including by adopting measures to encourage employers to hire members of disadvantaged groups.*

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<sup>10</sup> Available at [www.kor.tj](http://www.kor.tj)

<sup>11</sup> Information from the Human Rights Centre.

<sup>12</sup> For example, foreign citizens may be banned from entering the Russian Federation if they have exceeded the allowed length of their stay or if they have twice or more been found guilty of administrative violations within a period of three years (including for minor ones such as parking violations). See article 26 of Law on the Regime of Entering or Exiting the Russian Federation, <http://base.garant.ru/10135803/5/>.

4.2. *With a view to reducing labour migration flows and promoting the employment of returning/deported migrant workers, take measures to create favourable conditions for the development of small and medium enterprises in Tajikistan, e.g. by reducing the administrative and tax burden for them.*

4.3. *Given the continuing increase in the number of returning migrant workers, urgently elaborate a mechanism for the reintegration of returning migrant workers and ensure that they have access to relevant services.*

## **5. The right to just and favourable conditions of work (article 7)**

### *Forced labour*

5.1. Article 8 of Tajikistan's Labour Code prohibits forced labour, except for: 1) work required under the laws on military service; 2) work required in an emergency situation that endangers the life, personal safety or health of the population; and 3) work required as a result of an enforceable court judgment. Work under the last category is performed under the supervision of public authorities responsible for the enforcement of judicial decisions. An individual carrying out court-ordered labour cannot be placed at the disposal of private employers and firms. The Labour Code does not define "forced labour" and the country's criminal legislation does not provide liability for forced labour. Existing Criminal Code provisions on trafficking (article 130.1 of the Criminal Code) and coercion (article 134 of the Criminal Code) do not cover involuntary forced labour or services generally.

### *Labour protection*

5.2. The Labour Code contains provisions guaranteeing favourable working conditions. According to Part 6, article 109 of the Code, favourable working conditions are considered "safe and healthy working conditions (compliance with rules and safety regulations, such as required lighting, heating, ventilation, elimination of the harmful effects of noise, radiation, vibration, and other factors that adversely affect the health of workers)," which are mostly relevant to work in the production sector. There are no specific laws or regulations on health and safety in agriculture. The most intense time for agricultural activity falls under the hottest period of the year, when temperatures can reach up to 50 degrees Celsius. However, there are no requirements in the legislation limiting work outdoors and existing Soviet health standards do not cover all areas and climate conditions in Tajikistan.

5.3. According to official data, the average amount spent on labour protection was 21 Somoni (about \$4) per person in 2013. These funds were used to ensure a comfortable working environment, comply with regulations regarding temperature in the work place and provide workers with protective garments. According to national legislation, every five years workplaces are required to pass a certification of working conditions aimed at assessing conditions in the light of applicable requirements, identifying hazardous factors and remedying shortcomings. The certification is carried out by medical, health and safety specialists, with the costs paid by the employers. Many enterprises operating on a seasonal basis do not conduct such certification, although they are required to do so, since they consider it extra spending. Employers also often ignore recommendations received during certification. Moreover, due to lack of qualified staff, the supervision and control bodies are not able to keep up with the demand for conducting certifications and many small and medium-sized businesses have never gone through any check even if they have existed for five years or more. This contributes to disregard for requirements regarding working conditions by employers.

### *Decent pay*

5.4. In spite of the recommendations made by the Committee in its previous Concluding Observations (Par. 53), no measures have been taken to introduce labour law provisions on minimum wage, which would conform with international standards and requirements (the minimum wage must cover the minimum needs of the employee and his/her family, including subsistence costs and social protection and reflect the level of productivity in accordance with national economic and social conditions). According to presidential decree № 1493 “On measures to enhance the level of social protection of the population, an increase in the current salaries of civil servants, employees of budgetary institutions and organizations, pensions and scholarships” from 14 August 2013, the minimum monthly wage in all sectors of the economy was to be increased by 25 percent as of 1 September 2013, and thus set at 250 Tajikistani Somoni (approximately USD 50 at the current exchange rate). However, in practice, this provision has not been enforced due to lack of funds.

### *Wage arrears*

5.5. According to the Agency for Statistics under the President of the Republic of Tajikistan, the total amount of arrears in wages for work performed in previous years amounted to more than 14.5 million Somoni (more than 3 million USD) at the beginning of July 2013. Only in the first half of 2013, the level of arrears grew by 9.1 million Somoni, or 63%. Wage arrears in the real sector of the economy increased by 1.5 million Somoni (17%), and amounted to more than 11 million Somoni as of the beginning of July 2013. Growing levels of arrears in wages were registered in almost all areas of the real sector, with the greatest increase observed in the manufacturing industry (22%).

### *Gender gap in wages*

5.6. Despite the legal prohibition on gender discrimination in Tajikistan, the level of pay for women is significantly below the level of remuneration for men. Currently the gender gap in wages in Tajikistan is one of the highest among the CIS countries: women earn on average some 60% of what men earn. One of the main reasons for the existence of the wage gap between men and women is significant gender segregation in employment. Women are more often than men engaged in low-paid economic activities. For example, high female employment in low-paid jobs is observed in agriculture. At the same time, the highest paying branches of the economy (such as transport, construction and public administration) employ predominantly men.

### *Labour protection of pregnant women and women with children*

5.7. Labour legislation provides protection of pregnant women and women with children. This includes a ban on employers to terminate the employment contracts of pregnant women, women with children under the age of 3 if they are single mothers, and women with disabled children under 16 years. Also, on completion of maternity leave, a woman may request leave to care for her child up to the age of one year and a half with payment of state social insurance during this period. During the maternity leave, her job (position) is secured. Child rearing leave is included in total and continuous work and professional experience. In recent years, a trend has been observed whereby many employers conclude short-term, typically one-year employment contracts which may be re-negotiated at the end of the set period. This is of particular concern in terms of the rights of women as guarantees offered to pregnant women and women with children who are employed under permanent contracts do not cover those hired under short-term contracts of up to one year.

### *Right to labour of disabled people*

5.8. In recent years, in Tajikistan significant reforms in the social protection of persons with disabilities were carried out. A lot of attention has been paid to the protection, adaptation and rehabilitation of persons with disabilities. At the same time, people with disabilities are still in an extremely critical and vulnerable condition. Most people with disabilities and their families live below the poverty line, and the majority of the disability benefits laid down by law are declarative and are not implemented in practice. As regards employment, a legally stipulated system of job quotas for persons with disabilities is virtually non-functional in practice. Workplaces for persons with disabilities are not adapted to their needs and are not equipped with special devices for the convenience and facilitation of their work<sup>13</sup>.

### ***Asylum seekers and refugees***

#### *Integration*

5.9. Tajikistan's 2002 Law on Refugees provides for economic and social guarantees for the protection of the rights and legitimate interests of refugees and asylum seekers. Refugees enjoy the same rights and freedoms as for citizens of Tajikistan, although their rights may be restricted in some cases on grounds of ensuring national security. However, not all guarantees provided by law are implemented in practice.

According to the Law on Refugees, the authorities are obliged to develop a program of integration of refugees.<sup>14</sup> However, so far no integration program, which would entail a concrete action plan and funding scheme, has been designed. The fact that this provision of the law currently is only declarative in nature adversely affects the realization of socio-economic rights of refugees guaranteed by international standards and national legislation. It is important to note that while the importance of integration is recognized by authorities working with refugees, there is a lack of institutional and financial resources and political will to take the necessary measures to improve the situation.

#### *Access to the labour market*

5.10. By law, refugees are not required to obtain a work permit in order to work in Tajikistan. However, given the generally difficult situation in the labour market, it would be important to implement a comprehensive program to promote their access to employment and increase their competitiveness. This could entail consultations, trainings, assistance in job search and the development of entrepreneurial skills etc. At the moment, refugees are trained as hairdressers, tailors, plumbers, electricians, etc. under the Ministry of Labour, Migration and Employment but these courses are paid by the UNHCR Office in Tajikistan. It is important that the state offers refugees basic practical training free of charge.

In some cases, refugees have not been able to have their professional competence recognized in Tajikistan by presenting the required documents. There is no mechanism for refugees to have their professional competence confirmed through examinations, tests or other means, enabling them to obtain new diplomas.

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<sup>13</sup> *Respect for the rights of persons with disabilities to decent work and employment in the Republic of Tajikistan. Report on the results of monitoring of the Bureau for Human Rights and Rule of Law, 2013 (pages 63-65).*

<sup>14</sup> Law on Refugees of the Republic of Tajikistan, article 12, point 1: 6.

### *Residency restrictions*

5.11. Government resolution no. 325 (adopted in 2000), as amended by resolution no. 328 (adopted in 2004), contains a list of places where the residence of refugees and asylum seekers is restricted. According to these resolutions, refugees and asylum seekers are not allowed to reside in the capital Dushanbe, the country's second-largest city Khujand and most border areas. Unlike refugees, other foreign citizens are not subject to this restriction, which contradicts article 26 of the 1951 Refugee Convention. This restriction makes it difficult for refugees and asylum seekers to access the labour market, health care, education, and other services. Settlements located nearby administrative centres where refugees and asylum seekers are allowed to reside are overcrowded, which has caused a rise in prices for rental housing and inaccessibility to housing.

### *Education and language training*

5.12. Professional and language trainings for refugees are organized by the UNHCR Office in Tajikistan through its NGO partners. The state does not contribute to this process. Access of refugee children to primary, secondary and higher education is not limited by law. While there is a need for individual consultations and assistance to refugee children on school subjects, psychological assistance to refugee children and their parents, and awareness-raising among refugee children and their parents, as well as other students e.g. on intercultural education and tolerance, these kinds of activities require additional resources that are not foreseen within the budgets of educational institutions.

## **Recommendations**

*The authorities of Tajikistan should:*

*5.1. Provide a definition of "forced labour" in the Labour Code and prohibit various forms of forced labour in the Criminal Code.*

*5.2. Develop and adopt legislation or regulations on labour protection in the agriculture sector.*

*5.3. Conduct monitoring of the implementation of regulations issued by labour rights oversight bodies and increase staff in the State Service for Supervision in the area of labour, employment and social protection and seek to increase the competence and motivation of staff.*

*5.4. Continue efforts to bring the minimum wage to the subsistence level. Implement the provisions on determining the minimum wage established by Presidential Decree "On measures to enhance the level of social protection of the population, an increase in the current salaries of civil servants, employees of budgetary institutions and organizations, pensions and scholarships" from 14 August 2013 (№1493).*

*5.5. Take measures to preventing wage arrears to eliminate existing wage arrears.*

*5.6. Take measures to enforce the prohibition on gender-based discrimination and to reduce gender segregation in the economy.*

*5.8. Fund employment initiatives for persons with disabilities and adopt measures to stimulate the creation of work places for this group.*

*5.9. Develop a program for the integration of refugees and allocate sufficient funding for its implementation with a view to realizing social and economic rights of refugees guaranteed by international standards and national legislation.*

*5.10. Establish a mechanism for confirming the professional competence of refugees through exams etc..*

5.11. Revoke government resolutions no. 325 and 328, which limit the right of refugees and asylum seekers to choose place of residence.

5.12. Promote skill-building among refugees relevant for accessing the labour market in Tajikistan and implement programs for refugees to learn the Tajik language (including Cyrillic writing).

## **6. Trade union rights (article 8)**

### *The independence of trade unions*

6.1. A significant gap in the legislation on trade union activities is that article 9 of the Law on Trade Unions on the one hand guarantees their independence of trade unions from state bodies (part 1), but on the other hand states that interference in their activities is permissible “in cases specified by law” (part 2). However, existing legislation does not define when such interference is considered permissible. In practice, trade unions are controlled by the government and are not very active in advocating the rights of their members.

### *The right to organize strikes, rallies and demonstrations*

6.2. Article 27 of the Law on Trade Unions guarantees the right to organize meetings, rallies, marches, demonstrations, strikes and other events as part of the struggle of unions for better working conditions. According to article 2 of the Law on Meetings, Rallies, Demonstrations and Marches, strikes may only be carried out “within the territory of enterprises, organizations and institutions” and in accordance with the procedure “set out in labour legislation”. If a strike is planned to be held outside the territory of the enterprise or organization concerned, separate state authorization is required.

6.3. The Labour Code provides that restrictions on the right to strike are allowed in cases where striking poses a serious threat to human life and health, security and the defence of the state. In accordance with article 30 of the Law on Civil Service, civil servants are not allowed to take part in strikes that may disrupt the functioning of public bodies and impede the execution of their duties. The law does not specify whether such restrictions apply only to civil servants who exercise public functions on behalf of the state (for example, judges) or civil servants in general, including those who work in public services such as healthcare and education or in state-owned companies.

### *The right of trade unions to organize their administration*

6.4. ILO Conventions stipulate that trade unions should have the right to organize their own activities. This entails respect for the inviolability of premises and respect for the privacy of correspondence and communication. National legislation does not establish any safeguards in this respect.

### *The right of foreign citizens to join trade unions*

6.5. Article 5 of the Law on Trade Unions (par. 4) states that foreign citizens and stateless persons residing in Tajikistan may join trade unions “except in cases specified by law and international legal instruments recognized by Tajikistan.” However, this law does not specify in which cases foreign citizens and stateless persons may be denied the right to join trade unions. There is also no mentioning of such restrictions in the Law on the Legal Status of Foreign Citizens in the Republic of Tajikistan.

## Recommendations

*The authorities of Tajikistan should:*

6.1. *Set out by law in which cases state intervention in trade union activities is permissible.*

6.3. *Provide details in relevant legislation on the categories of public servants, whose right to strike is limited.*

6.4. *Guarantee by law the right of trade unions to inviolability of their premises, as well as to privacy of their correspondence and communication.*

6.5. *In relevant legislation, detail the cases in which the right of foreign citizens and stateless persons to join trade unions may be limited.*

## 7. The right to social security (article 9)

*Lack of a comprehensive approach*

7.1. While a number of strategies and programs relating to social security have been adopted in Tajikistan, a systematic and comprehensive approach to this issue is lacking. There is no coherent strategy and different programs are not coordinated. Also, effective mechanisms for the implementation of laws in this area are lacking, including in terms of funding. While a government concept for reforming the social security system was adopted in 2006, this document has not proven an adequate basis for reform. The reform concept is set out to be implemented through a targeted program. However, no such program has been adopted. The concept also fails to determine the responsibility of authorities for various activities, set fixed deadlines, clearly define beneficiaries and provide details on funding.

7.2. In some cases, social and health care programs continue to be funded through international assistance. For example, while the government's Strategic Plan on reproductive health foresees the free provision of means of contraception, a groups of NGOs that conducted an analysis of national policy on reproductive rights was informed by the Ministry of Health that contraceptives are provided free of charge by reproductive health centres with assistance of the UNFPA.<sup>15</sup>

*New pension system*

7.3. Currently the process of establishing a new unified pension system is under way in Tajikistan. This system entails pensions consisting of both insurance-based and state-guaranteed payments.

In accordance with the Pension Law adopted in January 2010 (Law №595), as of January 2013, the pension amount to which citizens are entitled depends not only on the number of years they have been working and their level of income in the last five years, but also on the amount of insurance payments they and their employers have made. According to article 7 of the law, the basic part of pensions is determined on the basis of the subsistence level, which according d to the Law on Living Wage is determined on the basis of the cost of the consumer basket and basic payments. However, since the size of the consumer basket has not been defined, the subsistence level has also not been determined. Currently the average pension is around 200 Tajik Somoni (less than 40 USD) per month. For disabled

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<sup>15</sup> Report on "The Right to reproductive health: public policy analysis based on a HRBA, Dushanbe, 2012. This report was prepared by the NGOs Nota Bene, the Human Rights Center and the Child Rights Center with the support of the Netherlands Helsinki Committee.

people, it is even lower, below the level of the minimum pension established by a presidential decree from 01 September 2013.

7.4. There are concerns that the transition to the new pension system will result in an increasing gender gap in pensions and have a detrimental impact on women since it enhances the link between employee contributions and the pension amount. There is a high level of gender imbalance in employment in Tajikistan as the employment rate among women is lower and women are paid less. For this reason, many women are in a weak position in terms of “earning” a decent pension. The new principles used for determining the pension level also risk undermining redistribution within the pension system.<sup>16</sup>

7.5. In some cases, citizens do not apply for disability pensions or other social benefits due to lack of awareness. The authorities have failed to take appropriate measures to promote legal awareness among citizens.

#### *New indicator for determining social benefits*

7.6. The State party has committed itself to use all available resources to ensure the gradual realization of all rights set forth by the ICESCR. In view of this, it can be expected that social benefits will continue to increase and improve, or at the least not decline. In 2008, Tajikistan introduced a new standard indicator for calculations in this area. The amount of pensions and social benefits are now calculated using this indicator rather than on the basis of the minimum wage as previously. However, the standard indicator is considerably lower than the minimum wage: when introduced it was set at the level of 40 Somoni, while the minimum wage at that time was 80 Somoni. Also, unlike the minimum wage, it has not increased since 2011. As a result, the introduction of this indicator has resulted in a deterioration of benefits. For example, under article 14 of the Law on State Social Guarantees, child allowances are now set at the level of three standard indicators for the first child, while it previously equalled three minimum wages.

#### *Maximum limit for pensions*

7.7. The maximum amount of retirement pension is limited by a presidential decree. Presently pensions cannot exceed 520 Somoni per month. For example, even if an employee has earned a pension of 1500 Somoni per month based on the number of years of work and income in the last five years, his or her pension will not exceed this amount.

#### *Social security of vulnerable groups*

7.8. Another problem in social policy in Tajikistan is the lack of a legal definition of the vulnerable categories of the population. Some legal acts use the terms “poor family” or “low-income family”, but there are also no clear criteria for these.<sup>17</sup>

7.9. Parents of disabled children often fall outside social benefit programs. Disabled people are entitled to pensions at a minimum amount that is less than the minimum wage. While the minimum monthly wage currently is 250 Somoni (50 USD), the minimum pension for disabled people is 130 Somoni (26 USD). Parents or other guardians who are not able to work as they care full-time for disabled children do not receive any additional allowances and are therefore in a difficult financial situation. As they do not work, they are also not able to earn a decent retirement pension. If parents of disabled children take up a job,

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<sup>16</sup> Legislation and policies of the RT in the area of social protection of the population: gender analysis, Dushanbe, 2012. Supported by the UN Women.

<sup>17</sup> Regulation on “providing compensation to poor families to reimburse expenses for the use of electricity and natural gas.



they are not entitled to receive assistance of a social worker, but are forced to hire a nanny at their own expense. Parents of disabled children are also not entitled to any specific tax deductions. The only concrete benefit of disabled persons is the right to one weekend a month off paid by the state social insurance (art. 169). The Labour Code grants parents of disabled children the right to 14 days of leave per year, but such leave has to be held at their own expense. This Code also prohibits the termination of employment contracts of parents of disabled children. However, this provision only applies to long-term contracts, while many employers currently offer short-term contracts.

7.10. There is no systematic approach to ensuring social protection of children left without parental care, orphans and graduates of boarding schools for such children. There is no single legal act regulating the rights and benefits of orphans and children left without parental care. Instead, benefits are laid down in various laws, which makes it difficult for these categories of children to identify the social guarantees they are entitled to.

#### *Social benefits for individual entrepreneurs*

7.11. Social benefits applicable during sick and maternity leave are determined in accordance with the Rules on the calculation of average earnings for payment of annual leave, severance pay, temporary disability benefits etc.<sup>18</sup> These rules apply only to individuals with an employment contract. Self-employed individuals (individual entrepreneurs) are not entitled to social security benefits in cases of sickness, disability and pregnancy and childbirth (women). This is the case although individual entrepreneurs pay social contributions, in addition to income tax under the simplified tax regime to which they are subject (which entails flat tax rates the level of which depends on the type of occupation).

7.12. Taxation rules for individual entrepreneurs<sup>19</sup> are also inflexible in as far as they do not foresee any possibility for entrepreneurs to temporarily suspend their professional activities, such as in terms of illness, and refrain from paying taxes when they do not have any income. In other words, entrepreneurs cannot suspend their license or certificate if they get sick and are required to pay taxes even if they do not have any income due to illness. In the case of delays in tax payments, they may face fines and penalties that are higher than the applicable tax. A clear procedure for determining pensions of self-employed individuals is also lacking. Due to these shortcomings in the current system, many entrepreneurs work in the informal sector of the economy.

#### *Pension benefits of migrant workers*

7.13. In 2012, the Tax Code was amended so as to include provisions on social security of migrant workers in cases of voluntary payment of social security contributions. Thus, Tajikistani citizens who are migrant workers abroad have the right to appeal to the tax authorities at their place of residence to be covered by the social security system and voluntarily pay applicable social security contributions.<sup>20</sup> The adoption of these provisions however, did not solve the problem of social benefits of migrant workers since many migrants have not received any information about this new opportunity and since there is no agreement between Tajikistan and Russia – the major country of destination for Tajikistani migrant workers -- on the transfer of social security payments. Tajikistan has proposed such an agreement, but Russia has been reluctant to do so. Even if an agreement on the transfer of social benefits would be signed, its provisions

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<sup>18</sup> These rules were approved by the government through decree No. 313 from 1 July 2007.

<sup>19</sup> Taxation rules for individual entrepreneurs operating on the basis of a patent or certificate, approved by the government through decree No. 451 from 31 August 2012.

<sup>20</sup> Article 212 of the Tax Code of Tajikistan.

would only apply to migrant workers who work legally, while it is estimated that as many as 80% of all Tajikistani migrant workers may be working illegally.

7.14. Migrant workers who are not registered in the pension insurance system may still be eligible for old-age pension<sup>21</sup>, disability benefits and survivor's pension. The minimum retirement pension is around 105 Somoni (about 20 USD). In the event of injury, occupational disease or the death of a migrant worker, Tajikistani legislation does not provide for any social assistance. The only form of social assistance is survivor's pension, which could be paid to the migrant's spouse if he or she dies or there is no information about him or her for more than three years<sup>22</sup>.

#### *Reduced social benefits for military personnel*

7.15. According to 2012 amendments to the Law on the status of military personnel, the social benefits to which the families of soldiers are entitled in the event of the death of soldiers was reduced by 10 times.

7.16. In recent years, the government has also reduced other benefits for military personnel and persons who provided military-related services during the civil war in Tajikistan.

#### **Asylum seekers and refugees**

##### *Financial and other assistance*

7.17. By law, persons who have been recognized as refugees have the right to receive financial and other assistance as specified by the government.<sup>23</sup> However, currently, no mechanism is in place for providing financial or other assistance to refugees and consequently no such assistance is offered. The UNHCR office in Tajikistan is the only organization that provides regular assistance to refugees. The Danish Refugee Council occasionally provides such assistance.

##### *Social benefits*

7.18. Refugees are not eligible for the same social benefits as citizens, e.g. pensions or disability benefits.

#### **Recommendations**

The authorities of Tajikistan should:

*7.1. Adopt a program for social welfare reform.*

*7.2. Develop a policy for ensuring a transparent, accessible and non-discriminatory system of social security and social insurance with the involvement of the public sector in Tajikistan.*

*7.3. Establish an official living wage rate in Tajikistan on the basis of consumer basket costs for food and seasonal clothing, as well as basic services (payment for electricity, water, medicine, education and others.). Adjust the level of pensions and other social benefits according to the living wage.*

*7.5. Raise awareness of the right to apply for social benefits.*

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<sup>21</sup> Men are entitled to such a pension at the age of 65 and women at 60.

<sup>22</sup> Study of the UN Women, "Gender Analysis of Tajikistan's Social Policies and Social Protection Laws", 2012, page. 103.

<sup>23</sup> Article 12, part 1, par. 15 of the Law of on Refugees of Tajikistan.

- 7.6. Stop using the standard indicator for determining the rates of social benefits and use the minimum wage instead.
- 7.7. Revoke the maximum limit for old age pensions.
- 7.8. Introduce the concept of “vulnerable persons” in the relevant legislation.
- 7.9. Provide additional state support to parents of disabled children, including tax deductions and other benefits.
- 7.10. Adopt a new law on social support of orphans and children left without parental care with view to providing comprehensive protection of their rights and benefits.
- 7.11. Develop rules ensuring that individual entrepreneurs are entitled to social benefits in case of sick leave, disability and maternity leave. Ensure that entrepreneur licenses can be temporarily suspended in case of sickness and maternity leave.
- 7.12. Revise the tax system, taking into account the interests of both employees and employers, as well as individual entrepreneurs; take measures to promote increasing transition from the informal to formal economy, e.g. by providing tax exemptions for the first three years, ensuring access to credit and micro-credits and providing consultation, trainings etc.; and seek additional avenues to generate state income other than through taxes, e.g. through state corporations.
- 7.13. Continue efforts to conclude a bilateral agreement with the Russian Federation (the main country of destination for Tajikistani migrant workers) on the social protection of migrant workers, covering pension and health insurance issues.
- 7.14. Raise awareness among migrant workers about the possibility to voluntarily participate in the pension insurance system.
- 7.15. Restore the level of compensation applicable in cases of the death of military servicemen to the level it was until 2012.
- 7.16. Restore other benefits for military personnel to the previous level.
- 7.17. Develop and implement a mechanism for providing financial and other assistance to refugees.
- 7.18. Protect by law the right of refugees to receive social benefits.

## **8. The right to protection of families and children (article 10)**

### *Benefits related to pregnancy and childbirth*

8.1. As a general rule, if a woman did not work under an employment contract prior to and during pregnancy and childbirth, she is not entitled to pregnancy and childbirth benefits. According to information from the Statistics Agency of Tajikistan,<sup>24</sup> only 5393 women were granted maternity leave in 2012, while 219 300 children were born that year.<sup>25</sup> Consequently, only some 2-3% of all women who gave birth were granted maternity leave in 2012.

### *Child care allowances*

8.2. According to article 14 of the Law on State Social Insurance, families with children are entitled to a one-time allowance paid out in connection with the birth of children, as well as monthly child care

<sup>24</sup> Statistics available at <http://www.stat.tj/ru/gender/generbazeng/>

<sup>25</sup> See <http://www.stat.tj/ru/database/socio-demographic-sector/>

benefits. Monthly child care benefits can be paid when the parent is granted child care leave from the place of work. It is covered by the social insurance fund until the child is one and a half years, at a rate determined by the standard indicator. Women who are not working are not entitled to such support. As most Tajikistani women are housewives, they are not eligible.<sup>26</sup>

#### *Protection of the right to nutrition of infant children*

8.3. No provision has been made in the 2006 Law on Breastfeeding Protection for ensuring that breastfeeding women who are in a vulnerable situation may have access to free baby food. Under the CEDAW, the Tajikistani authorities have an obligation to grant adequate nutrition during pregnancy and lactation (article 12).<sup>27</sup>

#### *Adoption of children by foreign citizens*

8.4. According to the Family Code, children may only be adopted by citizens of Tajikistan who are at least 18 years. Adoption to other countries is prohibited. There are also cases when individuals possessing a foreign citizenship, in most cases Russian citizenship, have been unable to adopt their nephews or other close relatives in Tajikistan who have been left without parental care<sup>28</sup>.

#### *Domestic violence*

8.5. Despite the adoption of the new Law on Preventing Domestic Violence in 2013, such violence is still widespread in Tajikistan. According to the Chairman of the State Committee on Women and Family Affairs, the reported number of suicides among women increased by 4% from 2012 to 2013 and was close to 300 in 2013.<sup>29</sup> It is believed that many of these cases were related to domestic violence. There are no comprehensive statistics on the number of victims of domestic violence.

8.6. The Law on Preventing Domestic Violence lacks effective implementation mechanisms. For example, while article 21 of the law sets out that protection orders may be issued in relation to domestic violence offenders for a period of 15 days (which can be extended to 30 days), it does not contain any details on how such orders will be issued, by what body, within what time frame etc. No reference is made either to any other legal act that would regulate these issues. It would be important that protection orders would be issued by court, rather than by law enforcement authorities.

8.7. Protection orders do not provide for eviction of offenders. In practice, domestic violence offenders remain in the shared homes, while victims are forced to leave. The Housing Code contains a provision on forced eviction, which however only applies to state-owned premises, while most housing now is privately owned. As a rule, domestic violence offenders (men) are the housing owners. It would be relevant to adopt legal provisions on evictions in domestic violence cases, ensuring for a court procedure consistent with the property rights of citizens.

8.8. The Law on Preventing Domestic Violence does not clearly define to whom it applies. According to article 4 of the law, it applies to citizens of Tajikistan and foreign citizens and stateless persons residing in

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<sup>26</sup> Information provided by the NGO the Human Rights Center.

<sup>27</sup> Report on "The Right to reproductive health: public policy analysis based on a HRBA," Dushanbe, 2012. The report was prepared by the NGOs Nota Bene, the Human Rights Center and the Child Rights Center with the support of the Netherlands Helsinki Committee.

<sup>28</sup> Report on "International standards and national laws of the Republic of Tajikistan in the field of rights and interests of orphans and children left without parental care" prepared by the Young Lawyers Association "Amparo", Khujand, 2012.

<sup>29</sup> See <http://www.dialog.tj/news/news16107>

Tajikistan who are married, as well as their “family members.” It also applies to co-habiting individuals who “share household.” The law does not specify who are considered “family members” or what is understood by a “shared household.” It is not clear if the law applies e.g. to those who have married only in religious ceremonies, ex. spouses and family members, daughters-in-law or elderly parents living separately, who are also often exposed to domestic violence by their children.

8.9. Domestic violence is not criminalized. Thus, it is not recognized as a separate offence in the Criminal Code and domestic violence cases are not matters of public prosecution.<sup>30</sup> Domestic violence is an administrative offense. Article 93 of the Code on Administrative Offenses penalizes violations of legislation on preventing domestic violence, as well as violations of the requirements of protection orders.

8.10. A State Program on Preventing Domestic Violence has been adopted for the period 2014-2023. This program is mainly aimed at awareness-raising and capacity-building of civil servants. No concrete indicators for assessing progress has been set out. Similarly to in the case of the Law on Preventing Domestic Violence, adequate resources for the implementation of the program are also lacking.

8.11. There is a lack of coordination on measures to prevent domestic violence between different authorities, including the Ministry of Internal Affairs, the Ministry of Health, the Ministry of Education, the Ministry of Labour and Social Security, the Committee on Women's Affairs, local authorities etc. According to article 7 of the Law on Preventing Domestic Violence, the government will ensure overall coordination of the activities of different authorities, but currently this provision is not being realized. There is also no mechanism for referring victims of domestic violence to relevant bodies.

#### *Access to justice for victims of domestic violence*

8.12. Access to justice for victims of violence is limited. Court cases are initiated as private prosecution cases. Victims are required to collect evidence, conduct expertise, and ensure representation of their interests at their own expense. While victims are typically economically dependent on the abuser or his family, they are not entitled to free legal aid and in most cases do not have access to shelter. Courts do not consider issues of compensation for moral damage, unless victims raise this issue. However, most victims are not aware of this opportunity.

#### *Abandoned families of migrant workers: General situation*

8.13. There is lack of official statistics on the number of abandoned families of migrant workers in Tajikistan. According to an IOM survey, about one-third of all migrants never return to their home country. There is a growing number of migrant workers who have died for different reasons in their countries of destination or who have gone missing. While most migrant workers are men, the wives of migrant workers who are left without the support of their husbands carry a heavy burden with respect to child-rearing, farming and other chores. Due to the lack of education and professional skills, these women often have limited access to employment. In some cases, the abandoned wives of migrants enter into unofficial, polygamous marriages to improve their economic situation. There are cases when the abandoned wives of migrant workers are known to have committed suicide due to depression and the lack of prospects for improving their situation.

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<sup>30</sup> Annual report of the Legal Aid Centers under the project “Access to justice and judicial reform –Phase VI,” 2011; and Valentina Kasimbekova, “Who will protect Tajik women from violence?,” 26 August 2011, at <http://news.tj/ru/newspaper/article/kto-zashchitit-tadzhikskikh-zhenshchin-ot-nasiliya/>

8.14. According to research conducted by UNICEF<sup>31</sup>, children from abandoned migrant families are more aggressive, disobedient and depressed. Children from such families often drop out of school and start working in order to support their families.

#### *Consideration of the needs of migrant worker families in migration policy<sup>32</sup>*

8.15. According to the Labour Migration Strategy for 2011-2015, the government will support family members of migrant workers through professional and business skill training, micro-crediting, promotion of self-employment, the development and implementation of social projects etc. However, the government has not allocated sufficient funds for the implementation of this strategy and its implementation has been limited. Only few families have benefited from programs for improving the economic opportunities of families of migrant workers. In 2013, the NGO Human Rights Centre conducted a study on the rights of women migrant workers and female family members of migrant workers, which covered more than 300 people in different regions of the country. The interviews with wives of migrant workers conducted as part of this study indicated that no programs for supporting the families of migrant workers had been realized in the regions covered by the study.

#### *The right of foreign nationals, stateless persons and refugees to marry in Tajikistan*

8.16. Amendments to the Family Code adopted in 2011 tightened requirements regarding marriages between Tajik citizens and foreign citizens and stateless persons. Thus, according to article 12 of the Family Code, foreign citizens or stateless persons wishing to marry a Tajik citizen are required to have resided at least one year in Tajikistan and to conclude a marriage contract with their spouses. This contract must be concluded prior to the registration of the marriage and must be certified by a public notary. There are cases when notaries require proof of financial security of the foreign spouse (including housing), which is problematic since national legislation does not allow foreign citizens to own real estate (article 11 of the Law on the Legal Status of Foreign Citizens in the Republic of Tajikistan)<sup>33</sup>. Article 24 of the Family Code provides that, in case of divorces where one of the parties is foreign national or a stateless person, the court decision will be based on the conditions of the marriage contract. While refugees who are marrying Tajik citizens are required to provide certificates of marriage capacity, refugees are not always able to contact their diplomatic representatives out of fear of persecution. In 2012, the UN Committee on the Rights of Migrant Workers<sup>34</sup> recommended that the State party take the necessary measures, including legislative amendments, to ensure the right of foreign and stateless migrant workers and members of their families to marry Tajik nationals and to acquire real estate. There is no information about progress on the implementation of this recommendation.

### **Recommendations**

*The authorities of Tajikistan should:*

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<sup>31</sup> UNICEF, Impact of Labour Migration on "Children Left Behind" in Tajikistan, November 2011, at [http://www.unicef.org/tajikistan/Web\\_Migration\\_Report\\_Eng\\_light.pdf](http://www.unicef.org/tajikistan/Web_Migration_Report_Eng_light.pdf)

<sup>32</sup> Study conducted by the NGO Centre for Human Rights, "Respect for the rights of women migrant workers from Tajikistan: Analysis of the implementation by Tajikistan of general recommendations of the UN Committee on the Elimination of All Forms of Discrimination against Women on women migrant workers," 2013.

<sup>33</sup> According to this law, foreign nationals are not allowed to acquire ownership of residential buildings, houses or other real estate (except for through inheritance), unless otherwise provided by national laws and international legal instruments recognized by Tajikistan.

<sup>34</sup> Recommendations of the UN Committee on the Rights of Migrant Workers on Tajikistan, April 2012.

8.1.-8.2. Amend article 14 of the Law on State Social Insurance so as to safeguard the rights of unemployed women and their children to receive pregnancy and child care benefits, in accordance with article 34 of the Constitution of the Republic of Tajikistan..

8.3. Expand the program on state guarantees for providing health-care services to the entire territory of the country, allocating adequate funding for this purpose. Introduce relevant amendments to the Law on Breastfeeding and ensure that breastfeeding women who are in a vulnerable situation are granted free baby food, in accordance with part 2 of article 12 of the CEDAW.

8.4. Amend the Family Code so as to allow foreign citizens to adopt children left without parental care or orphans who are their close relatives.

8.6. Amend housing legislation so as to introduce provisions protecting the rights of women who are victims of domestic violence; abolish the current regime of registration at the place of residence (“propiska”); and consider the adoption of legislation that would make it possible to evict domestic violence offenders from dwellings they share with their victims.

8.7. Improve the Law on Preventing Domestic Violence by defining and widening the range of persons who are subject to this law; setting out that protection orders will be issued by court; establishing criteria for implementing measures to prevent domestic violence; and adding detailed provisions on the establishment of a mechanism for referring victims of violence to the relevant authorities.

8.8. Amend the Criminal Code so as to introduce a provision criminalizing domestic violence, which takes into account the issue of dependency of victims on offenders..

8.9. Allocate adequate funding from the state budget for the implementation of the Law on Preventing Domestic Violence and the corresponding state program. Moreover, seek additional opportunities to ensure systematic funding for measures to protect the rights of women and children subjected to domestic violence, including by bringing this issue to the attention of the international donor community.

8.10. Grant the vice prime minister of the government responsibility for coordinating the activities of different authorities relating to the implementation of the Law on Preventing Domestic Violence, and make the General Prosecutor’s Office responsible for supervising the implementation of the law. All authorities who have been tasked with measures relating to the implementation of the Law on Preventing Domestic Violence should coordinate their actions to create a mechanism for referring victims of domestic violence to the relevant institution and ensuring effective responses to cases of domestic violence.

8.12. Amend the Criminal Procedure Code to improve protection of victims of domestic violence by ensuring that cases of domestic violence are dealt with under public or private-public prosecution, rather than private prosecution. Revise the Criminal Procedure Code to provide for the establishment of specialized courts or specialized court procedures for considering cases of domestic violence and introduce provisions on restricting access to victims of suspected perpetrators and the eviction of offenders from shared dwellings to protect the rights of victims and children.

8.13. Study the situation of abandoned families of migrant workers (in particular women and children) and develop appropriate measures to ensure their support.

8.14. Consider measures to identify children who have been abandoned by migrant workers and provide them with targeted support and ensure their right to education.

8.15. Integrate a gender perspective into the new labour migration policy that is being developed for the period beyond 2015 and ensure that the program that will be adopted includes a separate chapter on protecting the rights of women migrant workers and female relatives of male migrant workers. In view of the specific needs of the families of migrant workers, provide access to special loan programs, organize vocational training and entrepreneurship education, promote income-generating activities etc.

8.16. Bring the provisions of the Family Code (articles 12, 24 and 41.2) into compliance with the international obligations of the Republic of Tajikistan and the recommendations of UN treaty bodies.

## **9. The right to an adequate standard of living (article 11)**

### *The right to adequate housing*

9.1. The level of housing construction in Tajikistan does not correspond to the continued and fast level of population growth, which leads to an imbalance between supply and demand in the housing market. Every year, an increasing demand for housing is observed in Dushanbe and other major cities during the autumn-winter period, when a large number of migrant workers return to the country after seasonal work abroad. In rural areas, almost the entire housing stock consists of private houses, and there are no apartment buildings. In combination with the limited availability of land for construction, this contributes to the housing shortage. Housing prices are comparatively high: according to official statistics, the per square metre cost of housing in the country varies from \$250 to \$1200.<sup>35</sup> The market value of property differs significantly from the official statistics. Virtually the entire housing stock (99%) is privately owned by citizens, and only a small part (1%) is publicly owned.

### *Social housing*

9.2. There is no official policy on social housing development in the country, and the system for providing housing subsidies based on income is inefficient and non-transparent. There is no strategy on housing issues relating to vulnerable groups, such as low-income families, large families, single mothers with young children, minorities, disabled persons, the elderly, refugees, etc.

### *Forced evictions*

9.3. According to the government Agency for Construction and Architecture, in the past five years, more than 30 general city and regional development plans have been developed and approved. While authorities conduct awareness-raising campaigns to inform citizens about planned construction activities, such measures are often insufficient. Forced evictions are a growing problem. In 2008-2012, courts dealt with 2316 cases of forced evictions and displacements. The process of obtaining remedy through court in such cases is lengthy, complicated and expensive.

9.4. There are cases when residents resisting evictions have faced criminal cases, e.g. on hooliganism (article 237 of the Criminal Code), using violence against a government representative (article 328), insulting a public official (article 330) or threatening the use of violence in connection with the administration of justice or preliminary investigation (article 356).

### *Unauthorized construction*

9.5. Issues related to unauthorized construction are also of concern. In some cases, citizens build houses without obtaining permission from the relevant authorities. Starting in 2014, local authorities have stepped up measures to demolish such buildings, resulting in forced evictions of the residents, who are

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<sup>35</sup> See Asia Plus article from 16 July 2014, at <http://news.tj/ru/news/komilzoda-stroyashchiesya-segodnya-zdaniya-namnogo-prochnee-tekh-cto-vozvodilis-v-sovetskoe-vr>



often not provided alternative accommodation or land for construction. This situation is the result of low legal awareness of citizens and abusive actions by officials.

#### *Evictions of the residents of dormitories*

9.6. Another issue of concern are the forced evictions of residents of dormitories, a housing type dating back to the Soviet era when they were used by various state institutions for their employees. In recent years, dormitories have been privatized, while still inhabited by their previous residents. There are cases when the new private owners of dormitories have forcibly evicted residents, claiming that these people do not have legal right to live there, lack the required authorization legal documents or stopped working for the institutions to which the dormitories previously belonged already a long time ago. The claims made against dormitory residents are usually satisfied by courts and these individuals are evicted without being granted alternative accommodation. Requests made by the new owners for the annulment of documents authorizing residents to live in dormitories are also in most cases satisfied by courts, which ignore the statute of limitations set out by law (three years). Individuals evicted from dormitories in practice end up on the street without alternative housing and without receiving any compensation, thus becoming homeless.

#### *Homelessness*

9.7. Homelessness is one of the aspects of the right to adequate housing. There are no comprehensive official statistics on the number of homeless people in the country. National legislation also does not recognize homelessness and does not provide any definition of the term "homeless person." There are no specialized shelters or social centres for the homeless.

#### *Apartment buildings*

9.8. Since the early 1990s, urban housing has not undergone any systematic maintenance. The Law on Apartment Buildings adopted in 2009 was intended to solve this problem by providing for three forms of management of apartment buildings by apartment owners. All three forms were designed to involve the voluntary and active participation by apartment owners in the management of apartment buildings. However, due to passivity of apartment owners, the resistance to new system by public housing departments and shortcomings in the new arrangements, this legislation has not had the desired effect. With the assistance of non-governmental organizations, and in cooperation with local city authorities, more than 150 homeowner associations (each for one apartment building) have been established in the five largest cities of Tajikistan, i.e. Dushanbe, Khujand, Kurgan-Tube, Kulyab and Chkalov. However, currently only 20-30 of these are actively operating. Overall, the state of most apartment buildings continues to deteriorate due to lack of professional maintenance.

#### *Housing in need of urgent repair*

9.9. According to information from official sources,<sup>36</sup> housing considered to be in urgent need of repair (emergency cases) constituted only 0.26% of all housing at the beginning of 2012. There are no statistics on the ethnic, social and other origin of the residents of such houses. Most of these houses are located in rural areas.

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<sup>36</sup> Responses to inquiry received by Tajikistan's Statistical Agency on 12 April 2013 and the state HMK enterprise on 18 March 2013.

### *Access to drinking water in rural areas*

9.10. Lack of access to safe drinking water is a major problem in Tajikistan. Tajikistan has the highest rate of people lacking access to safe drinking water among the CIS countries, or some 51%. People who lack access to clean water instead use water from unsafe sources, such as ponds, canals and rivers for household needs.<sup>37</sup> In view of this, water-borne diseases pose a serious threat to public health. Currently there is limited infrastructure for providing access to safe drinking water and sanitation, especially in rural areas. As pointed out by donors, this issue would need to be addressed in a sustainable manner in order to improve the situation.<sup>38</sup>

### *Sewerage and waste system*

9.11. More than 70% of all residential areas in the country practically lack sewerage systems. Only 25% of the population has access to centralized waste collection and removal. While 86% of residents in cities and 67% of residents in regional centres have access to such services, – less than 4% of residents in rural areas have such access. This situation poses a threat to environmental safety. Gradually accumulating waste undermine the environmental safety of cities and districts, public health and hygiene, as well as the living conditions of the population.

### *Access to electricity*

9.12. The main source of electricity in Tajikistan (99%) is hydroelectric sources. Hydroelectric power has a seasonal nature, increasing in summer and decreasing in winter. Due to this, approximately 70% of Tajikistan's population experiences electrical shortages in the autumn-winter period.<sup>39</sup> During this season, electricity supply is restricted across the country according to a set schedule. Only in Dushanbe and Khujand, electricity supply is ensured 24 hours a day. In all other areas, electricity supply is limited to 3-4 hours in the morning and 3-4 hours in the evening. These restrictions do not apply to hospitals, schools, strategic objects and certain administrative buildings. The system for electricity distribution and supply remains non-transparent and common citizens are not consulted on these issues. It is unclear on what grounds businesses often are granted more hours of electricity supply than the general population. Reports indicating that electricity was exported to Afghanistan in winter 2012, while electricity supply was restricted at home caused public outrage.<sup>40</sup>

### *Heating*

9.13. The country has virtually no functioning central heating system. In rural areas, where 75% of the population lives, residents use electricity for heating purposes in up to 16% of all cases, while wood, dung, coal, gas and liquid fuels are used in the remaining cases. In urban households, 35-40% of residents use electricity, another 30-35% wood, 15% coal and the rest gas, liquid fuels and dung.

## **Recommendations**

*The authorities of Tajikistan should:*

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<sup>37</sup> Response from the HMK, 18 March 2013.

<sup>38</sup> See [http://www.swiss-cooperation.admin.ch/uzbekistan/ru/Home/Activities\\_in\\_Tajikistan/SAFE\\_DRINKING\\_WATER\\_AND\\_SANITATION/Tajikistan\\_Water\\_Supply\\_and\\_Sanitation\\_Project](http://www.swiss-cooperation.admin.ch/uzbekistan/ru/Home/Activities_in_Tajikistan/SAFE_DRINKING_WATER_AND_SANITATION/Tajikistan_Water_Supply_and_Sanitation_Project)

<sup>39</sup> Quick assessment and analysis of gaps in the energy sector in Tajikistan, April 2012. «

<sup>40</sup> See <http://news.tj/ru/news/tadzhikistanu-ne-khvataet-sveta-potomu-chto-ego-voruyut>

9.1. Adopt a new Housing Code, providing the basis for the full realization of the right to adequate housing; speed up the ratification of the Optional Protocol to the ICESCR and the Convention on the Rights of Persons with Disabilities; adopt a national action plan on the implementation of the recommendations of various UN human rights bodies on the right to adequate housing; ensure effective protection of economic, social and cultural rights, including the right to adequate housing in the national strategy to improve the standard of living and allocate sufficient funds for the realization of this strategy; ensure that national courts apply the ICESCR provisions on the right to adequate housing and other rights; consult all relevant stakeholders in the elaboration and implementation of legislation and policies in this area.

9.2. Develop a national social housing policy to ensure that the most needy and vulnerable groups of the population are granted housing on the basis of principles of equality and non-discrimination; increase government spending on the construction of social housing; review national legislation and policies in order to ensure wider access to mortgage for low-income families, taking into account their limited capacity of repayment; and develop and regularly update appropriate indicators for assessing the needs of disadvantaged and marginalized individuals and groups with respect to access to adequate housing. Such indicators should be disaggregated by sex, age, health status, place of residence (urban, rural) and ethnicity.

9.3.-9.4. Establish clear criteria for evictions with a view to ensuring compliance with relevant international human rights standards; adopt mechanisms and procedures for ensuring that individuals who have been forcefully evicted or resettled are granted appropriate compensation and that their right to adequate housing is guaranteed; and task the Ombudsman Office with monitoring and studying the situation with respect to the right to adequate housing, including forced evictions, as well as land and property rights.

9.5. When possible, initiate procedures to legalize unauthorized constructions.

9.6. Take measures to protect the rights of people evicted from dormitories.

9.7. Maintain and update statistics on the homeless on the basis of sociological surveys and housing censuses.

9.8. Improve legislation concerning the management and maintenance of apartment buildings with a view to ensuring the development of professional housing management structures and safeguarding the rights of apartment owners in the decision-making on these issues. Also, reform the system for addressing issues relating to housing accounting, registration and certificates and transfer responsibility for all these issues to law-enforcement authorities; and harmonize the legislation on the maintenance and operation of apartment buildings with legislation governing public utilities (electricity, gas, water).

9.9. Develop and regularly update indicators for assessing the needs of disadvantaged and marginalized individuals and groups living in dilapidated housing. Such indicators should be disaggregated by sex, age, health status, place of residence (urban, rural) and ethnicity.

9.10. Consider establishing local water supply systems managed by village residents and village associations; develop local, economically viable long-term tariffs for drinking water supply, based on the needs of individual water supply systems, rather than normative calculations; create a permanent public commission for improving water supply at the regional, district and city level and charge it with monitoring and analysing problems in this area; develop and adopt customer-oriented standards for drinking water services, detailing the procedure for providing such services, the responsibility of the service-providers for violations of the agreed terms, and issues of inform consumers about water outages; adopt and implement measures for informing and educating citizens on issues of safe drinking water.

9.12. Ensure transparency and accountability in this area by regularly publishing information and statistics.

Create a single regulatory authority in the electricity sector with responsibility for elaborating new regulations.9.13. Explore and develop new approaches to heat supply, including with respect to restoring a centralized heating system based on different sources of fuel (coal, electricity, natural gas, and

*renewable energy sources) and issues of thermal insulation of buildings, energy conservation and rational use of energy resources.*

## **10. The right to the highest attainable standard of physical and mental health (article 12)**

### *Fighting stereotypes concerning mental disorders*

10.1. As in other countries, mental disorders are associated with stigma in Tajikistan. It is viewed as shameful to suffer from mental illnesses and people with such disorders are subject to intolerance and discrimination. There is a lack of targeted awareness-raising and tolerance education in this area, e.g. in educational institutions at different levels, with respect to individuals with psychiatric health issues.

### *Funding for mental health care*

10.2. The full implementation of the right to health depends on adequate, equitable and sustainable funding in this sector. The current stigmatization of people with mental disorders is believed to contribute to the lack of will of the government to invest in mental health.<sup>41</sup> According to some sources<sup>42</sup>, the Department of Health of Tajikistan only allocates 1% of its budget means to addressing mental health issues. According to information obtained by Anand Grover, the UN Special Reporter on the right of everyone to the highest attainable standard of physical and mental health,<sup>43</sup> Tajikistan's government currently allocates only about 1.5% of its total health expenditure to mental health issues, half of which goes to the operations of mental hospitals. In 2005, the government signed the European Declaration on Mental Health, whose signatories commit themselves to promoting greater awareness of the importance of mental well-being and increasing investment in the mental health sector, as an integral component of furthering the well-being of the population. Despite this, according to available statistics and information on the annual state budget, funding in the field of mental health issues has not increased, although the amount spent on health issues in general has increased.

### *Mental health legislation*

10.3. The 2002 Law on Psychiatric Care lays down a set of clear general rules, which however are primarily of a declarative nature. Prior to adoption of this law, there was no specific legislation on issues related to mental health. Thus, this was the situation in 2001, when the ministry of health adopted some 20 regulations and instructions regulating the provision of mental health care. Many provisions of these regulations contradict the provisions of the 2002 law. At the same time, in practice, health care facilities rely more on by-laws and specific regulations than substantive laws, although the latter have priority under the country's legislation.<sup>44</sup>

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<sup>41</sup> Compare Jamison KR, "The many stigmas of mental illness," *Lancet*, 2006, 367:533–534.

<sup>42</sup> WHO-AIMS Report on the Mental Health System in the Republic of Tajikistan, Dushanbe, 2009 ([www.who.int/mental\\_health/tajikistan\\_who\\_aims\\_report.pdf](http://www.who.int/mental_health/tajikistan_who_aims_report.pdf)), p. 10.

<sup>43</sup> Report of UN Special Reporter on the right of everyone to the highest attainable standard of physical and mental health Anand Grover, 2012, para 36, page. 18.

<sup>44</sup> See Usmanova M.R, Jurayeva T.A, *Promoting the prevention of torture and other cruel or degrading treatment or punishment in psychiatric institutions. Report on the results of monitoring Bureau for Human Rights and Rule of Law*, Dushanbe, 2012, p. 10-12, 36-40.

10.4. While a draft government strategy and policy on mental health for the period 2012-2016 was elaborated in 2011, this document has yet to be approved. Currently, there is no single, clear and detailed strategy or plan for dealing with mental health issues.

#### *Implementation of CESCR recommendations made during the first review of Tajikistan*

10.5. In its concluding observations on the first national report of Tajikistan, the CESCR called on the State party to ensure full respect for the human rights of those detained in psychiatric institutions, through a periodic review process on a case-by-case basis and through effective judicial control. According to the Law on Psychiatric Care, a commission consisting of psychiatrists should conduct an examination and make a decision on forced hospitalization within 72 hours of the detention of an individual. Within another 24 hours, this decision should be transferred to court, which is required to make a decision on the case within 3 days. However, according to the Civil Procedure Code, judges are required to consider such cases only within 5 days, which is the period that is usually applied in practice since courts tend to give preference to the provisions of procedural codes over those of specialized laws. Another discrepancy between the Law on Psychiatric Care and the Civil Procedure Code concerns the period for appealing court decisions. While the Civil Procedure Code provides for a one month's appeal time, the Law on Psychiatric Care provides for only 10 days. This is a matter of concern in light of international standards safeguarding due process rights and the right to effective judicial control over decisions on forced detentions in psychiatric institutions.<sup>45</sup>

10.6. Information received from relatives of individuals who have been subjected to forced hospitalization in psychiatric clinics indicate that decisions on hospitalization in practice often are made by only one physician (usually the one on duty). This physician formulates the written decision on forced hospitalization, which is later reviewed by court. Also, in many cases, doctors make decision on forced hospitalization without submitting these case to court for review, thereby acting in accordance with instructions from 2001, which do not require mandatory court approval of decisions on forced hospitalization.

#### **Recommendations**

*The authorities of Tajikistan should:*

*10.1. Develop a program for conducting human rights oriented awareness-raising on non-discrimination and tolerance toward people with mental disorders in pre-schools, schools, and institutions of higher education with a view to counteracting the stigmatization faced by this vulnerable group of the population.*

*10.2. As a matter of urgency, substantially increase funding for the mental health care sector, in particular mental health care services; and improve the availability of and modernize such services, taking into account the commitments made by the State party to reduce f hospitalization and strengthen primary care.*

*10.3. Amend the Law on Psychiatric Care, in particular so as to make its provisions directly applicable; and bring regulations and by-laws used by psychiatric institutions into compliance with the Law on Psychiatric Care.*

*10.4. Accelerate the adoption of comprehensive policies and strategies in the field of mental health, ensuring that these reflect the views of stakeholders and experts in this field and are consistent with international standards on the right to health.*

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<sup>45</sup> Ibid, pages. 53-56.

10.5. *Ensure that a consistent and effective procedure is in place for judicial reviews of decisions on forced hospitalization in psychiatric institutions, with a view to protecting the rights of patients; and ensure that all cases of forced hospitalization are reviewed by court.*

## **11. The right to education (articles 12 and 13)**

### *Quality of education*

11.1. There are serious concerns about the poor quality of education and the lack of qualified teachers and education materials in Tajikistan. Currently more than 50 textbooks are lacking in schools where the language of instruction is Tajik. This problem affects in particular 10-11-graders.<sup>46</sup> Some textbooks that are in use are full of typos and scientific errors. Lack of qualified teaching staff is, among others, due to the low salaries paid to teachers.

11.2. Available indicators of achievement of students reinforce concerns. For example, in 2011, the reading skills of 30% of girls in the second grade and 31% of boys in the second grade students did not meet national standards. Among students in the fourth grade, these figures were 45% (girls) and 56% (boys).

11.3. According to the Law on the Self-Government of Local Authorities, local authorities are in charge of the selection, appointment and dismissal of education officials and school directors. In practice, appointments to such positions at the regional, city and district level, as well as to positions as school directors are often made on an arbitrary basis and those appointed do not have the relevant professional credentials. For example, there are cases when directors and deputy directors in primary and secondary schools only have secondary education.<sup>47</sup> This problem is also believed to impact the quality of education.

11.4. While the State party has failed to carry out systematic reforms to improve the quality of public education, it further increased the costs of private education in 2013 by introducing value added tax (VAT) for such educational services. . Due to the problems with the quality of education and the lack of qualified teaching staff in public schools, some families prefer to place their children in private schools. By introducing additional taxation in the field of private education, the State party further limited the number of families who can afford such education.

### *Access to education*

11.5. Preschool education is not compulsory in the country and access is extremely limited, especially in rural areas. More than 90% of all children do not have access to preschool education. The overall enrolment ratio of children aged 3-6 is only about 9%, which is the lowest in the Central Asian region. According to the National Strategy for the Development of Education, the aim is to increase access to pre-school education for 5-6 years old children to 50% by 2020. This will require the introduction of new forms of early childhood education services and expanding the role of the private sector.

11.6. While there is generally a high level of access to education in Tajikistan, certain groups of children remain marginalized in education. Girls, especially those from poor families are one vulnerable group with respect to completing primary education.<sup>48</sup> Some 20% of girls drop out school before completing all years

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<sup>46</sup> Report "Development of general education in Tajikistan in the new socio-economic conditions", PhD Atakulaev Usman Ismailovich, Dushanbe, 2010.

<sup>47</sup> Ibid

<sup>48</sup> UNICEF, Publications Digest on Children Studies #2: A qualitative survey on girls' education in Tajikistan.

of basic, compulsory education (9 grades). Although indicators are better at the primary level (grades 1-4), this situation is a matter of serious concern. In addition, there are other vulnerable groups of children who have limited access to education, including children with disabilities, abandoned children of migrant workers, children in conflict with the law, children who are working, children living on the street, and children in rural areas.

11.7. Teachers have a key role to play in promoting gender equality and access to education for girls. However, lack of competence and motivation among teachers obstruct the implementation of new teaching methods and the development of new curriculums for promoting gender equality.

11.8. In order to promote access to higher education of girls from remote mountainous regions, a special presidential quota has been applied. In 1997-2005, 4450 female students from remote mountainous regions enrolled in higher educational institutions on the basis of such a quota. Out of these, only 383 returned to their home regions after completing their studies.<sup>49</sup> Studies have pointed to shortcomings in the selection and placement of the beneficiaries of this program. For example, in some cases, preference has been given to relatives or other acquaintances of those making the decisions.

#### *Access to education in the penitentiary system*

11.9. Most prisoners lack access to secondary school education (basic school education at grades 5-11). Out of the country's 13 penitentiary institutions, only five provide general secondary school education for convicts, while three provide vocational training. Convicts in other prisons lack access to vocational training.<sup>50</sup> Overall some 15% of the prison population (in male colonies) has not completed secondary school.

11.10. There is no secondary school at all in the one women's colony that exists in the country. In this colony, underage girls serve their sentences along with adult women, and all convicts are held together, including women with children. Some 25% of all women prisoners have not completed the first nine years of basic education.

#### *Education abroad*

11.11. The Law on the Responsibility of Parents for the Upbringing of Children prohibits Tajik citizens from studying abroad without permission by the authorities (article 9). Following a statement made by the president in 2010, when he said that it is impermissible for young Tajiks to receive religious education in other countries, thousands of students were forced to return home to avoid criminal prosecution for illegal education in Islamic countries in the Middle East.

#### ***Access to education of national minorities<sup>51</sup>***

11.12. Access to education of national minorities is a matter of serious concern, among others, due to measures to reduce instruction in minority languages and the lack of adequate teaching material (see more below).

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<sup>49</sup> Ibid.

<sup>50</sup> Study by the NGO Jahon on "Availability and access of education - a fundamental human right in the penitentiary system of the Republic of Tajikistan," 2014.

<sup>51</sup> "Survey on the access of national minorities in the Republic of Tajikistan to education" conducted by independent experts with assistance of the Office of the High Commissioner (OHCHR), 2013.

11.13. According to the Law on State Language from 2009, all citizens are obliged to speak the state language. This law also required government institutions to completely switch to the state language as their working language. However, according to a 2010 survey, only 48% of all members of national minorities in Tajikistan are fluent in the state language. The problem of lack of knowledge of Tajik among members of ethnic minorities is reinforced by the insufficient professional level among teachers of the state language in schools providing instruction in the languages of ethnic minorities. Currently most of these teachers are graduates from Tajik philology departments who do not have the appropriate knowledge or skills for teaching the Tajik language as non-native.

#### *Quality of textbooks*

11.14. A recent study revealed a number of problems in Tajik language textbooks for the grades 2- 5, such as poor use of methodology, , poor consideration of the age and psychological characteristics of the children to whom the books are targeted, poor communicative orientation, discrepancy with educational standards and the curriculum etc.

11.15. There is an acute shortage of native language textbooks for education in Uzbek, Turkmen and Kyrgyz, which negatively affects the quality of education in such schools. This problem is more acute than that of lack of textbooks for instruction in the Tajik language and requires urgent measures to secure financial resources for publishing existing textbooks, translating new textbooks from Tajik into the Uzbek, Kyrgyz and Turkmen languages, as well as the publication of educational programs and teaching materials in the languages of education.

#### **Recommendations**

*The authorities of Tajikistan should:*

*11.1. Carry out systematic reforms to improve the quality of education and to ensure the recruitment of competent teachers and the availability of appropriate teaching materials.*

*11.1-11.3 Enhance training programs for teachers in colleges, higher pedagogical institutes and universities in the country; increase the wages of teachers, restore social benefits for them, in accordance with the Law on Education, and consider additional benefits for them, such as free utilities to ensure that teachers have a decent standard of living and to attract qualified professionals and prohibit individuals without higher special education from taking up pedagogical positions. Also take measures to ensure continued professional development of teachers.*

*11.4. Revoke the VAT for private education services.*

*11.5. Develop national programs for ensuring access of all children to preschool education, especially in rural areas. To this end, amend existing legislation on compulsory pre-school education and provide the private sector with more opportunities and incentives to establish pre-school education facilities, including through tax benefits.*

*11.6. Adopt an integrated approach to promote school attendance among vulnerable groups of children, including girls from poor families, children with disabilities, abandoned children of migrant workers, children in conflict with the law, children working and living on the street, and children in rural areas.*

*11.7. Develop human rights and gender-mainstreaming educational programs for students, parents and teachers, which incorporate activities promoting discussion of gender stereotypes and ways to prevent and eliminate discrimination against women. Ensure that the school curricula pays more attention to gender issues and that the content of educational materials is gender neutral.*



*11.9.-11.10. Improve cooperation among relevant government bodies to ensure that all prisoners have access to general and vocational secondary school education. Also, amend existing legislation so as to enable prisoners to transfer to another penitentiary institution of the same type on the basis of their educational needs; and safeguard by law the right of convicts to obtain education through the Internet (distance courses).*

*11.12. Consider the special needs and interests of national minorities when education strategies and programs are developed; regularly monitor the dynamics of the number of schools and classes offering instruction in minority languages, as well as the number of students attending such instruction, especially at elementary school level; and carefully consider the basis for decisions to reduce classes providing instruction in minority languages in areas of compact settlement of ethnic minorities.*

*11.13. In order to improve the quality of teaching of the state language at various levels of education, to monitor and evaluate the implementation of the state program on the development of the state language for 2012-2016 and, on the basis of the results, elaborate an action plan for the implementation of activities that have not yet been realized. Also, improve the education of teachers in the state language in schools providing instruction in minority languages by allowing for specialization in such instruction at pedagogical universities; and consider organizing instruction in the Tajik language as a second language by dividing classes into subgroups with a view to ensuring that the instruction is carried out in accordance with relevant methodology for teaching a second language.*

*11.14-15. Prepare a long-term plan for the development of curricula, textbooks, and teaching materials for schools with Russian, Uzbek, Kyrgyz and Turkmen languages of education; involve teachers from minority schools and representatives of minorities in the process of elaborating education programs and curricula; and consider establishing a separate unit within the Ministry of Education with responsibility for developing teaching aids for schools with Russian, Uzbek, Kyrgyz and Turkmen languages of education*