



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the second periodic report of Tajikistan*

1. The Committee considered the second periodic report of Tajikistan (CCPR/C/TJK/2) at its 2982nd and 2983rd meetings (CCPR/C/SR.2982 and CCPR/C/SR.2983), held on 9 and 10 July 2013. At its 3002nd meeting (CCPR/C/SR.3002), held on 23 July 2013, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Tajikistan and the information presented therein. It expresses appreciation for the constructive dialogue with the State party's high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/TJK/Q/2/Add.1) to the list of issues (CCPR/C/TJK/Q/2), which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of the Law on Prevention of Domestic Violence in 2013, as well as the amendment of the Criminal Code in 2012 that incorporated a definition of torture in line with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and certain reforms of the Code of Criminal Procedure in 2010; and

(b) The adoption of the Commissioner for Human Rights Act in 2008.

C. Principal matters of concern and recommendations

4. While taking note of article 10 of the State party's Constitution, according to which international agreements take precedence over national laws, the Committee regrets the

* Adopted by the Committee at its 108th session (8–26 July 2013).

lack of evidence that the domestic courts have given effect to the provisions of the Covenant. The Committee is also concerned about the absence of a national mechanism to implement the Committee's Views under the Optional Protocol, and about the failure to implement the Views adopted by the Committee in relation to the State party (art. 2).

The State party should take appropriate measures to raise awareness about the Covenant and its applicability in domestic law among judges, lawyers and prosecutors to ensure that its provisions are taken into account before domestic courts. The State party should include in its next periodic report detailed examples of the application of the Covenant by the domestic courts. It should take all the necessary measures, including legislative, to establish mechanisms to give full effect to the Committee's Views.

5. While welcoming the appointment of the first Commissioner for Human Rights in May 2009, the Committee is concerned that the Office of the Commissioner is accredited only with B status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, for reasons that include its insufficient guarantees of independence and inadequate funding. The Committee is further concerned about information received on the lack of independence and ineffectiveness of the Office of the Commissioner (art. 2).

The State party should bring the Office of the Commissioner into full compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and provide it with the necessary financial and human resources to ensure that it can effectively and independently implement its mandate.

6. The Committee notes with concern that women remain underrepresented in the public sector, particularly in decision-making positions. Also, the Committee regrets the lack of information on the impact of the Law on State Guarantees of Equal Rights between Men and Women and Equal Opportunities in the public and private sectors. Finally the Committee is concerned about the resurgence of patriarchal attitudes and stereotypes concerning the role of women in the family and society (arts. 2, 3 and 26).

The State party should strengthen its efforts to increase the participation of women in the public and private sectors, including through the adoption of appropriate temporary special measures to give effect to the provisions of the Covenant. Furthermore the State party should ensure the full implementation of the above-mentioned law, and inform the Committee in its next periodic report of the impact of the Law on State Guarantees of Equal Rights Between Men and Women and Equal Opportunities. Moreover, the State party should undertake comprehensive measures to change regressive societal perception of gender roles in the public and private spheres.

7. While welcoming the adoption of various measures to combat violence against women, the Committee notes with regret the continuing reports of domestic violence. The Committee is concerned that cases of domestic violence, including sexual violence, remain underreported and that domestic violence is accepted by the society at large. The Committee further regrets the lack of information on whether cases of domestic violence are, notwithstanding the will of the victim, investigated ex officio, and not only in cases of grave bodily harm (arts. 2, 3 and 7).

The State party should adopt a comprehensive approach to prevent and address all forms of domestic violence and:

(a) **Intensify its awareness-raising campaigns targeting particularly community and religious leadership, men and women, on the adverse impact of domestic violence on women;**

(b) **Reinforce the post of the police inspector in charge of combating domestic violence by allocating adequate resources;**

(c) **Guarantee that cases of domestic violence are thoroughly investigated ex officio, regardless of the severity of the harm; that the perpetrators are brought to justice and, if convicted, punished with commensurate sanctions; and that victims are adequately compensated;**

(d) **Ensure the availability of a sufficient number of adequately resourced shelters.**

8. While welcoming the continued moratorium on the death penalty, the Committee regrets the slow progress of the process to abolish the death penalty and remove it from the State party's Criminal Code (art. 6).

The State party should expedite its efforts to abolish the death penalty and remove it from the Criminal Code and to ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, in line with the information provided on the President's commitment to do so.

9. The Committee is concerned about the number of violent deaths of persons deprived of liberty and the lack of effective investigations thereof, and that compensation to relatives is rarely provided. The Committee is also concerned about the unsatisfactory action taken to resolve the problem of tuberculosis as a common cause of deaths of persons in custody and about the poor conditions in prison facilities (arts. 6 and 10).

The State party should ensure that all deaths in custody are fully and promptly investigated, that the perpetrators are brought to justice and that compensation is provided to the victims' families. The State party should also take effective measures to address deaths in custody due to tuberculosis and take appropriate measures to eradicate this phenomenon. The State party should gradually improve prison conditions and publish statistics on the number of prisoners held.

10. The Committee is concerned about the allegations of civilian deaths and injuries during the security operation in Khorog city in July 2012 and that investigations into these cases have not yet been finalized (arts. 2, 6 and 9).

The Committee urges the State party to accelerate its efforts in finalizing the investigation surrounding the killing and wounding of civilians in the 2012 security operation, while ensuring its adherence to international standards of investigation. In this regard, the State party should establish accountability for perpetrators and compensate victims and their families.

11. The Committee is concerned that the refusal to grant persons refugee status because of their irregular crossing of the State border or a late referral by the border services of asylum requests to the competent authorities leads to their detention and even refoulement, which is prohibited under the Covenant. The Committee is also concerned that frequent raids on refugees and asylum seekers staying in urban areas in contravention of Presidential Resolutions Nos. 325 and 328 lead to the rejection of asylum claims, refusal to issue or extend documents or even expulsion and deportation, in contravention of articles 6 and 7 of the Covenant (arts. 6, 7, and 12).

The State party should scrupulously respect the principle of non-refoulement. It should ensure that access to asylum procedures is not barred and applications are not turned down because refugees have entered the country irregularly or their cases were referred belatedly to competent authorities. The State party should guarantee that restrictions on freedom of movement under Presidential Resolutions Nos. 325 and 328 are never used as a basis for exposing any person to a risk of violation of articles 6 or 7 of the Covenant.

12. The Committee is concerned at reports of unlawful expulsion and extradition. It is also concerned at the lack of sufficient time and clear procedures to challenge such decisions, and about the State party's overreliance on diplomatic assurances (arts. 6 and 7).

The State party should strictly apply the absolute principle of non-refoulement under articles 6 and 7 of the Covenant, and ensure that decisions on expulsion, return or extradition accord with the due process of the law. In this regard, the State party should exercise the utmost care in evaluating diplomatic assurances, and should refrain from relying on such assurances where it is not in a position to effectively monitor the treatment of such persons after their return and take appropriate action when assurances are not fulfilled.

13. Despite information provided during the dialogue, the Committee remains concerned at reports concerning the abduction and illegal return of Tajik citizens from neighbouring countries to the State party, apparently followed by incommunicado detention and other ill-treatment (arts. 2, 7 and 9).

The State party should investigate all allegations of abductions and illegal returns of Tajik citizens, and avoid any involvement in such renditions. The State party should also investigate all related allegations of torture, ill-treatment and arbitrary detention, bring perpetrators to justice, and compensate victims.

14. While welcoming the 2012 amendment of the Criminal Code incorporating the definition of torture in line with the Convention against Torture, the Committee is concerned at the widespread practice of torture of persons deprived of their liberty, including minors. Despite information provided by the delegation, the Committee also remains concerned at allegations of torture and ill-treatment of persons suspected of belonging to banned Islamic movements. Moreover, the Committee is concerned that: (a) investigations into allegations of torture or ill-treatment are inadequate; (b) an independent mechanism to examine such complaints is absent; (c) judges in pretrial detention hearings disregard such allegations; (d) coerced confessions are routinely used as evidence in courts despite the provision of the Criminal Procedure Code to the contrary; (e) convictions of public officials for committing acts of torture are rare; and (f) compensation to victims is rarely provided (arts. 2, 7, 10, and 14).

The State party should make greater efforts to close the gap between practice and law concerning torture. It should investigate effectively all allegations of torture or ill-treatment through an independent mechanism, and ensure that law enforcement personnel receive training on the investigation of torture and ill-treatment by integrating the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in all training programmes. The State party should launch ex officio investigations and should mandate judges in pretrial detention hearings to examine such allegations and refer for investigation. It should also guarantee the exclusion by the judiciary of evidence obtained under torture as provided by law. Moreover, it should bring alleged perpetrators to justice, and if convicted, punish them with commensurate sentences and compensate victims.

15. The Committee expresses concern that corporal punishment is not explicitly prohibited in schools, and continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should pursue its intention as stated during the dialogue and amend the Education Act (2004) to explicitly prohibit corporal punishment in schools. The State party should also take practical steps to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

16. The Committee is concerned at: (a) the frequent failure to register detention following arrest within the time frame prescribed by the law, which facilitates the use of torture and ill-treatment with the aim of extracting confessions, and (b) the failure to apply procedural safeguards immediately after arrest despite the law in place, including access to a lawyer, family members and medical personnel. It is moreover concerned at the lack of systematic oversight of places of detention by organizations independent from the prosecution (arts. 7, 9, 10 and 14).

The State party should guarantee the registration of detainees within the legal time frame, and ensure that all arrested persons, including minors, fully enjoy their rights as required by the Covenant, including access to a lawyer, family members and medical personnel. It should also institute an independent mechanism for inspection of all detention facilities by relevant international humanitarian organizations and/or independent national human rights non-governmental organizations (NGOs).

17. The Committee is concerned that arrested persons may routinely be detained up to 72 hours prior to being brought before a court, and at the excessive use of pretrial detention, which is imposed solely on the grounds of the gravity of the crime (art. 9).

The State party should ensure that persons in police custody are brought before a judge within a maximum period of 48 hours, and that the judge's decision on pretrial detention is based on individual circumstances, such as risk of flight, and not solely on the ground of the gravity of the crime.

18. The Committee expresses its concern that judges lack security of tenure and other guarantees of independence from the executive, and do not operate as effective checks on prosecutors, and at reports that corruption is widespread in the judiciary. In addition, it is concerned that lawyers are harassed for carrying out their professional duties and are subject to external interference, particularly from the Ministry of Justice, and that a system of State-subsidized legal aid for persons in need facing criminal charges is not available (arts. 2, 9 and 14).

The State party is urged to intensify its efforts in reforming the judiciary and take effective measures to guarantee the competence, independence and tenure of judges, including by extending their tenure, providing for adequate salaries, and reducing the excessive powers of the Prosecutor's Office. The State party should also ensure that the procedures and criteria for access to and conditions of membership of the Bar do not compromise the independence of lawyers. The State party should create a State-subsidized legal aid system for persons in need.

19. The Committee reiterates its previous concern (CCPR/CO/84/TJK, para. 18) that military courts still enjoy jurisdiction to examine criminal cases in which military personnel and civilians are jointly accused (art. 14).

The State party should without further delay prohibit military courts from exercising jurisdiction over civilians.

20. The Committee is concerned at the severe restrictions on freedom of religion as expressed in the Freedom of Conscience and Religious Associations Act, the Law on Responsibility of Parents for Upbringing of Children, and the Administrative Code. It is particularly concerned that Tajik children may receive religious education only from State-licensed religious educational institutions and children below the age of 7 years are denied that right; that all religious education abroad is subject to State permission; and that the State party enjoys excessive power to control activities of religious associations. The Committee is particularly concerned at the absolute ban of several religious denominations within the State party, including Jehovah's Witnesses, and certain Muslim and Christian groups (arts. 2, 18, 22).

The State party should repeal or amend all provisions of the above-mentioned laws that impose disproportionate restrictions on the rights protected by article 18 of the Covenant. The State party should reverse its discriminatory refusal to register certain religious denominations.

21. The Committee reiterates its previous concern (CCPR/CO/84/TJK, para. 20) about the State party's lack of recognition of the right to conscientious objection to compulsory military service, and at the absence of alternatives to military service (art. 18).

The State party should take necessary measures to ensure that the law recognizes the right of individuals to exercise conscientious objection to compulsory military service, and establish, if it so wishes, non-punitive alternatives to military service.

22. The Committee expresses concern at reports that the State party does not respect the right to freedom of expression. In particular, it expresses concern that the new Law on the Periodical Press and Other Mass Media (2013) subjects media organizations to undue registration conditions, that journalists are subject to threats and assaults, that there is a practice of blocking news Internet websites and social networks, and that defamation lawsuits are filed against media organizations as a means of intimidation. While appreciating the removal of defamation articles from the Criminal Code, the Committee remains concerned at the existence of penal provisions on libel and insult against the President (art. 137) and insult against government representatives (art. 330(2)). (art. 19)

The State party should ensure that journalists and other individuals are able to freely exercise the right to freedom of expression in accordance with the Covenant. In this regard, the State party should ensure that individuals have access to Internet websites and social networks without undue restrictions, and that neither the State party nor its officials use the law on defamation for the purposes of harassing or intimidating journalists. The State party should review its legislation on libel and insult and should take all necessary steps to ensure that any restrictions on the exercise of freedom of expression fully comply with the strict requirements of article 19, paragraph 3, of the Covenant as further set out in the Committee's general comment No. 34 (2011) on freedoms of opinion and expression.

23. The Committee expresses concern that the Law on Non-governmental Associations (2007) imposes undue conditions and restrictions on the registration of public associations and endows the Ministry of Justice with excessive oversight power, resulting in major practical obstacles and delays in the registration and operation of such groups. The Committee is further concerned at reports of the arbitrary shutting-down of various human rights-based NGOs, without observance of procedural safeguards or as a disproportionate response to technical irregularities (arts. 22, 25).

The State party should bring its law governing the registration of NGOs into line with the Covenant, in particular with articles 22, paragraph 2, and 25. The State party should reinstate NGOs which were unlawfully shut down and should refrain from

imposing disproportionate or discriminatory restrictions on the freedom of association.

24. The Committee expresses its concern at reports of politically motivated harassment of opposition political leaders with a view to deterring their participation in future elections. In this regard, it is particularly concerned at reports of arbitrary detention of Zayd Saidov, the head of a new political party called New Tajikistan, and the secrecy surrounding his case before the court (arts. 9, 14, 25, 26).

The Committee urges the State party to foster a culture of political plurality and, to this end, desist from harassing opposition political parties and groups that are considered as holding contrary political views to the ruling party. The State party should ensure that Mr. Saidov is guaranteed the rights to liberty of person and fair trial, including the right to have his case publicly heard.

25. While noting that minority groups, including ethnic minorities, are entitled to take part in political life in the State party without legal obstacles, the Committee is concerned that in reality their participation in decision-making bodies, particularly in the houses of parliament (the *Majilis*), is rather limited (arts. 26 and 27).

The State party should strengthen its efforts to promote the participation of minority groups in political life and decision-making bodies. The State party is requested to provide in its next periodic report data on the representation of minority groups in political bodies and decision-making positions.

26. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the second periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations with a view to increasing awareness among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party. The Committee also requests the State party, when preparing its third periodic report, to broadly consult with civil society and NGOs.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations in paragraphs 16, 18 and 23 above.

28. The Committee requests the State party, in its next periodic report, due to be submitted by 26 July 2017, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.