**INFORMATION OF NON-GOVERNMENTAL ORGANIZAITONS OF TAJIKISTAN FOR DEVELOPING THE LIST OF QUESTIONS FOR THE THIRD PERIODIC REPORT OF TAJIKSITAN ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Dushanbe – 2018**

**Acronyms:**

SNSC – State National Security Committee

CCP – Code of Civil Procedure

TDC – Temporary Detention Center

CAT – Convention against Torture

HRC – Human Rights Committee

MoI – Ministry of the Interior

MoES – Ministry of Education and Science

ICRC – International Committee of the Red Cross

ICCPR – International Covenant on Civil and Political Rights

IPM – Independent Preventive Mechanism

NGO – Non-governmental Organization

UN – United Nations

RT – Republic of Tajikistan

PTDC – Pre-trial Detention Center

FC – Family Code

CC – Criminal Code

CCP – Code of Criminal Procedure

UPR – Universal Periodic Review

HRC – Human Rights Commissioner (Ombudsman)

OP – Optional Protocol

***Introduction***

The document was developed by the following non-governmental human rights organizations of Tajikistan.

1. NGO Bureau for Human Rights and Rule of Law
2. NGO Human Rights Center
3. NGO INIS
4. NGO Khoma
5. NGO Independent Human Rights Center
6. NGO Civil Freedoms Office

Republic of Tajikistan is a party to all core human rights treaties providing reports to UN treaty bodies on a regular basis.

During the period 2010-2015 the country has developed and submitted 11 periodic reports to UN treaty bodies (report to the UN Child Rights Committee will be considered in September 2017) and adopted 8 National Plans for the implementation of recommendations made by UN Human Rights treaty and constituent bodies.

However, there is no common action plan for implementing recommendations made by UN Human Rights bodies and a Strategy for cooperation and joint actions with UN Agencies to implement recommendations and to provide national reports in a timely manner. The texts of treaty bodies’ recommendations are not published officially; a system for their dissemination among state bodies is not established.[[1]](#footnote-1)

*The purpose of developing and providing the list of questions is to promote the Government of the Republic of Tajikistan to implement UN Human Rights Committee Final Recommendations.*

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**CONSTITUTIONAL, LEGAL AND INSTITUTINOAL FRAMEWORKS FOR FULFILLING INTERNATIONAL OBLIGATIONS (ARTICLE 2 OF ICCPR)**

Article 10 of the Constitution provides an opportunity for national courts to apply international treaties directly. However, such a practice is not common. No statistics are kept about the application of norms of international treaties by courts.[[2]](#footnote-2)

On November 18, 2013 the Plenum of the Supreme Court of Tajikistan adopted the Resolution “On courts’ application of international legal instruments ratified by the Republic of Tajikistan, in which, the following explanations are provided in particular:

“International legal instruments ratified by Tajikistan, in accordance with article 10 of the Constitution of the Republic of Tajikistan, are integral part of the legal system of the republic. In case of incompliance of laws of the republic with the ratified international legal instruments, norms of international legal instruments are applied.

Under international legal instruments one has to understand official documents adopted and recognized by international community of countries as a whole, as legally binding. These include, in particular, the documents of the UN and its specialized agencies.

The Plenum Resolution also focuses to the fact that international legal instruments recognized by the Republic of Tajikistan have direct and immediate effect and are applied by courts when dealing with civil, family, criminal cases as well with cases of administrative offense”. [[3]](#footnote-3)

The Third National Periodic Report of the Republic of Tajikistan for 2017 on the implementation of the International Covenant on Civil and Political Rights notes that “Courts regularly refer to relevant provisions of international treaties when making their decisions, including to the provisions of the Covenant. The Constitutional Court applies the provisions of the Covenant regularly”.[[4]](#footnote-4)

Concerning the Committee’s views on Optional Protocol as well as failure to implement the views adopted by the Committee with regard to the state party, one has to note that “An international body’s decision about human rights violation does not give the victim a legal right to require the review of decisions and/or reparations, since there is no corresponding law in place.

A mechanism for implementing the views of the Human Rights Committee in accordance with the Optional Protocol to the ICCPR is not established in the Republic of Tajikistan. The issue of official publication of the Committee’s decision is not resolved”. [[5]](#footnote-5)

**We kindly request you to provide answers to the following questions:**

1. **What is the statistics regarding the application of international legal instruments by courts?**
2. **Has the mechanism for implementing the UN Human Rights Committee decisions on individual reports been created?**
3. **Do you plan an amendment to the legislation of the Republic of Tajikistan to include a provision about the decision of an international body about human rights to serve as a basis for the review of a decision and/or reparations?**
4. **Are the texts of the Final Recommendations translated into the state language? How are the Final Recommendations and HRC views publicized?**

On March 28, 2012 the UN Subcommittee on coordination of the activity of national human rights institutions accredited the Tajik Ombudsman Office with “B” status.

Ombudsman in RT is appointed by the President of the Republic of Tajikistan with the consent of Majlisi Namoyandagon Majlisi Oli of the Republic of Tajikistan (the country’s parliament).[[6]](#footnote-6)

International human rights bodies and experts repeatedly remarked that the Ombudsman legislation and activity do not meet the Paris Principles.

With the purpose of ensuring compliance of the national legislation with the Paris Principles the Law “On amending the law “On Ombudsman in the Republic of Tajikistan” was adopted. The amendments are related to expanding the authority as well as coordination activities of the Ombudsman.

Presently, on the initiative of the head of state Child Ombudsman Office has been introduced who, at the same time, is the Deputy Ombudsman.

The Draft National Action Plan for the implementation of recommendations of the UN Human Rights Council member states for 2017-2020, in accordance with the Universal Periodic Review (second period), stipulates activities related to development and approval of an action plan to implement UN Human Right Subcommittee recommendations on accreditation and further improvement of the Law “On Ombudsman of the Republic of Tajikistan”.

Since 2016 the Tajik Ombudsman does not participate in the governmental delegations taking part in the consideration of the National Reports of Tajikistan in the UN treaty bodies.

Amendments to the Law of the Republic of Tajikistan “On Ombudsman in the Republic of Tajikistan”[[7]](#footnote-7) also provided for establishing the Child Ombudsman (CO) position in the Republic of Tajikistan.

**Questions: We kindly request you to answer: what measures do you plan to take to raise the level of accreditation of the Ombudsman Office in the Republic of Tajikistan and to create a national human rights institution compliant with the Paris Principles?**

The process of developing regulatory and legal acts in the area of human rights does not meet the principles of openness. Civil society is not sufficiently involved in the process of lawmaking in consequent discussion of draft laws. Public hearings or participation in working groups for development/discussion of reform projects, programs or regulatory and legal acts are possible in cases if these working groups are supported by international donor organizations or when civil society representatives get to know about the process of developing laws. The country’s legislation does not provide for an obligation to publish draft regulatory and legal acts. The National Legislation Center under the Executive Office of the President of RT ([www.mmk.tj](http://www.mmk.tj)) does not post information about laws being developed.

**Question: Kindly provide information about legislative and law-enforcement frameworks for the civil society’s participation in lawmaking. In what stage the civil society is involved in the process of developing reform projects, programs and regulatory and legal acts?**

Prohibition of discrimination is enshrined in the Constitution of the Republic of Tajikistan and is mentioned in various regulatory and legal acts of the country.

However, Tajikistan lacks a comprehensive legislation prohibiting discrimination. There is no separate law on the prohibition of discrimination; the national legislation does not contain the definition of direct and indirect discrimination in the public and private sectors, discrimination based on disability age and sexual orientation.

The courts’ practice in dealing with discrimination cases is extremely limited. There are no special training courses for practicing judges on discrimination and there are no lawyers specialized in discrimination issues. There is no National Action Plan to combat discrimination.[[8]](#footnote-8)

In accordance with the procedure of the Universal Periodic Review (second period) for 2017-2020 approved by the decree of the President of the Republic of Tajikistan on June 7, 2017 an item (31) was incorporated into the National Action Plan for the implementation of recommendations of the UN Human Rights Council member states to consider the issue of improving the legislation of the Republic of Tajikistan in 2018-2019 and to develop a law on comprehensive combat against discrimination (118.21, 118.23).

**Question: kindly inform, is it expected to adopt a single anti-discrimination law in RT?**

**RIGHT FOR FAIR TRIAL (article 14 of ICCPR)**

*Independence of judicial authorities*

A number of programs aiming to create an independent judicial system have been adopted in Tajikistan. However, presently the judicial system of Tajikistan retains elements of control of the judiciary by executive and legislative authorities. The criteria for selecting the judges are not transparent; courts are not independent financially; funding of the judiciary is provided on the discretion of executive authorities.

Key powers in terms of instigating disciplinary proceedings against judges, distribution of cases, logistical support belong to the Chairman of the Supreme Court, the Supreme Economic Court and inferior courts.

**Questions:**

1. **Kindly answer: what measures are being taken to achieve real independence of judicial authorities from executive and legislative authorities?**
2. **Is there a plan to take measures for limiting the role of courts’ chairmen in instigating disciplinary proceedings against judges?**

The Constitutional Law “On courts of RT” empowered the courts’ chairmen to distribute cases among judges according to an established procedure. However, accurate and clear procedures regulating the rules of distributing cases among judges considering the case complexity, judges’ workload and specialization are not developed.

Question: kindly inform, based on what principles the cases are distributed among judges?

The Constitutional Law of the Republic of Tajikistan "On the Procurator's Office of the Republic of Tajikistan" provides for the possibility of suspending the implementation of court decisions[[9]](#footnote-9) that have not entered into legal force, as well as appealing the decision of the court by the prosecutor's office in the exercise of supervisory powers, which is an interference to the judiciary activities.

**Question:** **Kindly provide information as how the provisions of article 41 of the Constitutional Law of RT “On Prosecutor’s Office” comply with the independence of the judiciary?**

Military tribunals are granted the competence to consider criminal cases involving both, military and civilians.

The Constitutional Law of RT “On courts of RT”[[10]](#footnote-10) provides that military courts have the authority to prosecute all criminal, civil and family cases in which one of the parties are military servicemen, as well as all cases of administrative offense against military servicemen.

Consequently, all cases in which one of the parties of the process is a military serviceman and the other party is a civilian, for example, family and civil cases are dealt with by the military court.

As for cases related to conscripts appealing the decisions made by conscription commission, civil courts refer such cases to military courts despite the fact that the conscript has not yet received the status of a serviceman. Civil courts argue this by saying that the conscription is exclusively a matter for the military, accordingly the cases have to be considered by military courts. [[11]](#footnote-11)

**Question:**

1. **Kindly provide information: Is there a plan to exclude the jurisdiction of the military court over civilians from the legislation of RT?**
2. **Is there a plan to exclude the authority of military courts to consider cases related to the complaints filed by “conscripts”-citizens who are undergoing military training?**

*Access to judicial information*

Access to judicial information, in accordance with the international legal norms, in majority of cases must be open. A number of legal acts have been adopted in this area in Tajikistan and there is a well-developed and comprehensive legal framework to ensure openness of judicial information.

However, in practice, these legislative provisions are not implemented. Often, in order to restrict access to judicial information, courts refer to information protection instructions or other bureaucratic barriers. In addition, there is no clear definition in these regulatory acts on access to judicial information what constitutes “judicial information”.

One of the most important sources of judicial information is the courts’ websites. When exploring the judiciary websites it was found out that all courts launched their websites on the Internet which, to certain extent, should contribute to transparency of their activity. Presently courts of different levels run 56 websites. However, these websites have serious shortcomings: lack of information about the transfer of specific cases and the content of judicial acts that have entered into legal force, irregular updates. It has also been found out that there are no clear requirements for the design of judicial websites and the information posted on them. It is also unclear who provides the information, in what volume and with what frequency, for it to be subsequently posted on the site.

The courts’ budgets do not have a separate item for payment of services provided by internet service providers. When attempting to visit the courts’ websites it was found out that a number of websites were inaccessible due to the fact that providers cut them off from the network for failure to pay the bill.

In addition, there is no center or specialist with whom one could quickly consult on emerging issues related to the website design.

**Questions:**

1. **Kindly answer: How is the issue of citizens’ access to information on legal proceedings being resolved?**
2. **Are there employees in the courts responsible for posting and updating information on the websites?**
3. **What budget is allocated for payment of services provided by internet service providers, site maintenance and update as well as information boards in the court buildings?**
4. **How often the websites and information boards are updated in the court buildings and what other conditions are created through which the population could independently receive necessary information about the activity of courts?**

*Independent functioning of the bar*

Lawyers’ independence is an essential guarantee for protecting human rights and is necessary for providing quality legal assistance.

On March 18, 2015 the law of the Republic of Tajikistan “On the bar and legal practice” was adopted and it entered into legal force on March 28, 2015. In November 2015 amendments were made to the law.

In December 2015 Union of Lawyers was officially registered by the Ministry of Justice. The Law “On the bar and legal practice” adopted in March 2015 and amendments made to it in November 2015 contains a number of provisions which threaten the independent functioning of the bar in the country. In particular, the law provides for establishment of a Qualified Commission under the Ministry of Justice of Tajikistan responsible for granting and terminating the status of a lawyer. The Qualification Commission is established for 2 years composing of 9 members of whom 4 are representatives of government agencies and 5 are representatives of the Lawyers’ Union who are elected by the congress of lawyers.

The Chairman of the Qualification Commission is one of the deputies of the Justice Minister of the Republic of Tajikistan.

Also, in accordance with the new provisions all lawyers have to take a qualification exam and regularly undergo recertification in the newly established Qualification Commission which is under the jurisdiction of the Ministry of Justice.

Active lawyers in the country had to take the qualification exam within a year after the new law entered into force in March 2015. Initially lawyers with over 10 years of working experience were exempted from taking the exam, however amendments made to the law in November 2015 abolished this provision.

These amendments also introduced a number of restrictions on access to the lawyer’s profession. Thus, persons with criminal records, as well as those dismissed from the bar or from judicial or other government agencies for violation of the “professional oath” cannot work as lawyers. As the anti-corruption examination of the law carried out by the NGO Network “Rule of law and access to justice” proves, the established requirements are overstated, since they do not provide for such a mechanism as removal and cancellation of criminal records for lawyer candidates, moreover, such requirements, as a rule, are not applied to those holding public offices.

As a result, after adoption of the new law the number of lawyers in the country has significantly decreased and resulted in the deterioration of people’s access to lawyers’ services. In 2018 the number of lawyers who received the status is about 700 which is extremely small nationwide.

According to the Law of RT “On the bar and legal practice” the Bar Association does not have the right to open branches and affiliate offices which restricts access to legal assistance for residents of remote regions where lawyers do not exist at all.

**Question:**

1. **Kindly provide information as what measures are expected to be taken to eliminate executive authorities’ interference to the bar independence? Is there a plan to devolve powers of the Qualification Commission to the Tajik Union of Lawyers?**
2. **Is there a plan to amend the law on the bar to eliminate the overstated requirements for entry into the lawyer’s profession?**
3. **What measures are undertaken by the state to increase the number of lawyers?**
4. **What measures does the state take to involve lawyers to work in remote and hardly accessible regions of Tajikistan?**

Presently lawyers are obliged to develop their professional skills once in five years in educational institutions that have state accreditation. Article 35 of the Law of RT “On the bar and legal practice” indicates the expression “state accreditation” that hinders lawyers professional development.

**Question: kindly answer: is there a plan to exclude from the bar legislation the requirement for lawyers to develop their professional skills in institutions with a state accreditation? How is it planned to ensure lawyers professional development?**

Another issue of concern for the lawyers’ community is the diverse taxation of lawyers’ groups. Some groups are taxed as individual entrepreneurs, although lawyers’ activity is not an entrepreneurship according to the law. Bar Associations, Legal Advice and Lawyers’ Offices are organizational forms of the bar in the Republic of Tajikistan and they operate under one single law, that is, the Law of RT “On the bar and legal practice”, consequently, there should be a single taxation requirement for lawyers’ groups and lawyers.

**Question: kindly answer, what measures are planned to be taken to ensure single taxation of lawyers’ groups and lawyers?**

In multiple cases lawyers have been threatened and repressed, including threats to lawyers’ relatives, in case if the lawyer does not refuse to participate in the case or protects the victim assiduously. Lawyers participating in the terrorism and extremism cases systematically receive threats from security officials when filing complaints on the use of torture on behalf of their clients.[[12]](#footnote-12)

In March 2014 the State Financial Control and Anti-Corruption Agency arrested lawyer Fakhriddin Zokirov on suspicion of fraud who in a group of lawyers Shuhrat Qudratov and Ishoq Tabarov participated in Zaid Saidov’s case as a defense counsel.

Earlier the lawyers who participated in Zaid Saidov’ case in the process of investigation, litigation as well as after proclamation of the sentence stated that they were exposed to pressure, threats and persecution by government officials, statements have been published numerous times in the mass media with regard to threats to lawyers and their family members.

The UN Special Rapporteur on the issues of judges and lawyers’ independence noted in her report about the role of lawyers in the administration of justice that the lawyers should not be associated with their clients or with their clients’ cases; lawyers should not be persecuted for any lawful acts they commit as a result of performing their duties.

On July 21, 2014 famous Tajik human rights activist and lawyer Shuhrat Qudratov was detained. According to the official report of the State Financial Control and Anti-Corruption Agency, he was detained at the time of taking a bribe from his client Amirali Sulamaev who was accused of fraud for its subsequent handover to one of the judges of the court in Ismoili Somoni District of the capital city “with the purpose of judgement of acquittal”.

### **Due to these events Tajik civil society organizations, representatives of lawyers’ groups as well as members of the NGO Coalition against Torture in Tajikistan expressed their serious concern over the increasing number of cases of detention of lawyers conducting cases of public interest.**[[13]](#footnote-13)

Two lawyers, who protected the rights of detained IRPT members, Buzurgmehr Yorov and Nuriddin Mahkamov were arrested with the accusation of fraud in September and October 2015 respectively.

Human Rights Watch (HRW) in the “Worldwide report – 2017”: Populist demagogy threatens human rights” published on January 12 reminded that since 2014 at least 6 lawyers have been arrested or deprived of their liberty.

It is reported that at the end of January 2016, Turkish lawyers Emin Yeldirim and Gulden Sonmez, as well as their Russian colleague Dagir Hasanov, who arrived in the country in the hope of meeting the arrested members of the IRPT, as well as their lawyers and relatives, were briefly detained in Dushanbe. The Tajik authorities, in their turn, denied the detention of foreign lawyers and called this information "a provocation".[[14]](#footnote-14)

**Question: Kindly answer: What measures are taken by the state to ensure the rights and security of lawyers who face pressure and persecutions for performing their duties to protect human rights?**

*Free legal assistance*

On July 2015 the Concept Paper for providing free legal assistance to the population was adopted by the Tajik Government Resolution.

In accordance with the Concept Implementation Plan, gradually, by 2023 the state will independently provide funding for the system of free legal assistance to the population, including payment for the services of lawyers who provide free assistance. However, the Concept is still being implemented with the support from international donor organizations while funds have not been allocated from the budget of Tajikistan for implementing the Concept.

In article 32 of the Law of RT “On the bar and legal practice” and in the Concept Paper for provision of free legal assistance, the category of persons entitled to receive free legal assistance includes poor citizens whose total income for every family member is less than one indicator for accounts. Presently one indicator for accounts comprise 50 Somoni (approximately US$ 5.5), which is a very low indicator for determining the property status of a person or of a family.

Another issue in the context of providing free legal assistance to the population is insufficient number of lawyers in Tajikistan. As the statistics show, presently some 700 lawyers work in the territory of the Republic of Tajikistan. At the same time, one has to note that the country’s total population is 9mln. Thus, one lawyer accounts for about 13,000 people. There are no lawyers in some remote regions at all, or there is only one.

There are weaknesses in the procedural legislation on issues related to appointing a defense counsel to persons in need of legal assistance. So, the CCP provides for a number of cases when participation of a defense counsel in the criminal case is obligatory. In civil cases the court appoints a lawyer as a representative only if the defendant does not have a representative whose place of residence is unknown, also “in other cases provided for by the law”. “Other cases” presumably refers to a list of recipients of free legal assistance under the Law “On the bar and legal practice”, but there are no such criteria as lack of funds to pay for representative’s services, as well as presence of a representative from the other party in the CCP.

**Questions:**

1. **Kindly inform, are there funds allocated from the state budget for the implementation of the Concept on provision of free legal assistance to population, if yes, how much and for what period of time these funds are allocated?**
2. **Is it expected to regulate legislatively the issues of participation of lawyers and payment of their remuneration in civil and administrative cases if the client needs a lawyer but has no funds to pay for lawyer’s services?**

**RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION (ARTICLES 21, 22 OF ICCPR)**

According to the data provided in the Thirds Periodical Report of RT on the implementation of the International Covenant on Civil and Political Rights (ICCPR) over 2,400 public associations[[15]](#footnote-15) were registered and carried out their activities in the country in 2017.

Some 1,805 NGOs are registered on the website of the Ministry of Justice of RT, in the section of public associations’ registry. [[16]](#footnote-16)

During one of the meetings[[17]](#footnote-17) Deputy Justice Minister mentioned that of all registered organizations only 800 of them provide annual reports about their activity to the Ministry of Justice of RT.

At official meetings with NGOs representatives of the Ministry of Justice of RT pointed out that in recent years some 300 NGOs have been closed down throughout the country, prevalently the ones which were not operational and did not fulfill their duties to provide annual information to the registration body about continuation of their activities.

Only in one of the five regions of Tajikistan for the past 8 months of 2017 over 20 organizations were closed down.[[18]](#footnote-18) Presently a so-called organizations’ self-liquidation method is applied. That is, when the organization’s general meeting decides to liquidate the organization. There are sufficient grounds to assume that the registration bodies, including security agencies force NGO management to take such decisions.

The country’s legislation establishes a wide range of agencies to which non-commercial organizations report and provide information about their activities. Inspections, registration and reporting procedures are a correct and lawful practice; however, such lawful procedures are selectively applied against active human rights organizations as a punitive and intimidating measure. Inspection of some human rights NGOs are carried out by the Ministry of Justice and tax authorities on the request of the NSSC.

The country’s legislation does not provide for exhaustive reasons for compelled liquidation of organizations.

The law provides rules that in case an NGO changes its legal address it must reregister with registration bodies. Taking into account that NGOs indicate their actual location in their annual reports to the Ministry of Justice, some NGOs do not reregister, moreover, reregistration is a tedious and costly process. Thus, this provision allows representatives of registration bodies to bring claims to courts about liquidation of organizations only because the organization, having changed its address, did not reregister.

Presently the issue of amending the Law of the Republic of Tajikistan “On public associations” is being addressed, however, public association representatives have no information on what changes will this law undergo; the draft law was not presented in the public domain so that the civil society has the opportunity to make their recommendations.

Such types of non-commercial organizations as public funds, which are not subject to the Law “On public associations” and are registered by tax authorities, face legal issues.[[19]](#footnote-19)

**Questions:**

1. **How many NGOs went through the liquidation procedure in recent years and what are the main reasons of their liquidation?**
2. **What is the reason of suddenly increasing inspections of NGO statuary activities in the country during the past 3 years? What is the reason of NGO inspections on the SNSC request?**
3. **Why the civil society is not involved in the process of discussing the draft law on public associations?**
4. **Kindly inform, is it expected to exclude from the public associations law the provision on obligatory reregistration in case of changing the address?**
5. **Does the Ministry of Justice address the issue of legislative simplification of registration and reregistration of public associations, facilitation of the procedure of providing reports, introduction of the electronic reporting system?**
6. **What legislative measures will be taken for regulating the activity of public funds?**

**EQUALITY BEFORE THE LAW AND NON-DISCRIMINATION, EQUALITY OF THE RIGHT OF MEN AND WOMEN (ARTICLE 3 AND 26 OF ICCPR)**

Despite the fact that the Government is undertaking steps to speed up the increase in the representation of women in public positions, women are still underrepresented in all branches of government, especially in decision-making positions. Men’s domination in government at all levels does not help reduce latent discrimination against women when nominating candidates for leadership positions and conducting competitive interviews to fill civil service vacant posts.

**Questions:**

1. **Kindly inform, what is the percentage of women among all civil servants holding high-ranking, middle-ranking and low-ranking managerial positions in the country level from 2013 to 2017 inclusive?**
2. **What is the percentage of women among all civil servants holding high-ranking, middle-ranking and low-ranking managerial positions in the local level from 2013 to 2017 inclusive?**

Public gender associations repeatedly noted that the Law of RT “On state guarantees of equality of men and women and equal opportunities for their realization” has a declarative nature, since there are no practical implementation mechanisms in place and the law is not applied in practice. The General Prosecutor’s Office of RT has to report on the implementation of the law. During one of the public events on gender issues a representative of the Prosecutor General’s Office was asked about the implementation of the law to which he replied that the General Prosecutor’s Office of RT annually reports to the President of RT and that the report is not presented for public access. The website of the Directorate for Constitutional Guarantees and Citizens’ Rights under the Executive Office of the President of RT does not contain such information as well.

**Question: Kindly answer: Has the monitoring and evaluation of the implementation of the Law of RT “On state guarantees of men and women’s equal rights and equal opportunities and their realization” been conducted since its adoption in 2005 through 2018? What are the results?**

Paragraph 25 of the Third National Periodic Report on the ICCPR implementation says: “Ministries and agencies of the country, concluding from the main goals of strategic documents carry out the following activities: identification of the long-term state policy to ensure rights and opportunities for education, selection and placement of management personnel of the country from amongst capable women and girls, ensuring equal rights of women and men when nominating and appointing to leadership positions, providing comprehensive conditions for studies, attracting girls to continue their education in grades 10-11, preparation and provision of housing conditions and provision of stipends to female students in higher education institutions”.

**Questions:**

1. **Kindly provide information in percentage, how many females compared to males have been attracted to education during the period 2013-2017?**
2. **In percentage, how many females compared to males have been provided with accommodation and stipends in higher education institutions during the period 2013-2017?**

Paragraph 38 of the Third National Periodic Report of the Government of RT on the ICCPR implementation says: “Inspectors for combating domestic violence considered 203 applications in 2015, 482 in 2016 and 200 in six months of 2017. Also the inspectors for combating domestic violence and district militia inspectors issued 35 domestic violence injunctions in 2015, 134 in 2016 and 42 in six months of 2017”.

Public associations active in the area of support to victims of domestic violence question the effectiveness of the issued domestic violence injunctions for the victims. The Law of RT “On prevention of domestic violence” does not provide for measures to ensure the implementation of domestic violence injunctions. Thus, a person who systematically abuses alcohol, upon issuance of a domestic violence injunction which says: “it is forbidden to consume alcohol and drugs”, is not able to fulfill it immediately, in fact such people need to be treated. But it requires resources and their consent. Currently, the health legislation of RT does not provide for compulsory treatment of such patients. Also, the law does not provide for measures to avoid repeated exposure of the victim to violence. But if both the victim and the aggressor are staying in one house, it is inevitable. The document with an inscription not to consume alcohol or return to the house where you have been beaten won’t solve anything in this matter, which thereby contradicts Paragraph F or Article 4 of the Declaration on the Elimination of Violence against Women.

Ministry of the Interior of RT does not provide statistics on cases related to domestic violence under the criminal legislation. Paragraph 34 of the National Report lists articles of the Criminal Code of the Republic of Tajikistan under which one can hold the aggressor criminally liable, but not all crimes committed under these articles are related to domestic violence.

**Questions:**

1. **Kindly provide information: has the effectiveness of issuing domestic violence injunctions been evaluated?**
2. **How many administrative cases were filed for not implementing domestic violence injunctions in 2015, 2016 and 2017?**
3. **How many criminal cases related to domestic violence were considered in court from 2013 to 2017?**
4. **How many administrative cases related to domestic violence were considered from 2013 to 2017?**

The effective Law of RT “On prevention of domestic violence” does not focus on providing social assistance to victims of domestic violence. It lists support centers and centers for medical and social rehabilitation of victims as institutions for prevention of domestic violence and indicates their objectives. However, this is not enough. According to the effective law support centers can be established both by the state and private individuals. By establishing such centers the state fulfills its immediate task, thereby implementing the provisions of the Declaration on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Discrimination against Women (article 2), article 10 of the International Covenant on Economic, Social and Cultural Rights. The law does not provide for development of state standards for such centers and does not provide for creation of long-term asylums (shelters). Often, the victim has no other resort than to return home where she is subjected to violence.

The Government has adopted the State Program for the Prevention of Domestic Violence for 2014-2023. However, the program does not contain measures focusing on provision of assistance to the victims of domestic violence. The program is more aimed at changing the public perceptions of domestic violence, eradicating traditions causing domestic violence, building the capacity of government officials and doctors on domestic violence and relations with mass media.

**Questions:**

1. **How many state shelters have been opened in the country and are operating on the state account for victims of domestic violence?**
2. **What is the percentage of allocated funds from the state and local budgets of the country for the implementation of gender programs, specifically on the State Program for the Prevention of Domestic Violence in 2014, 2015, 2016, 2017?**
3. **Has the implementation of the Law of RT “On prevention of domestic violence” and the State Program for the Prevention of Domestic Violence for 2014-2023 been monitored?**

The Code of Criminal Procedure of RT (CCP) does not provide for compulsory allocation of a lawyer to victims of domestic violence at the expense of state and that is one of the reasons why victims often are not able to defend themselves independently. On their way to justice they face barriers in the form of condemnation and misunderstanding by law-enforcement agencies, courts and even neighbors. Victims are persuaded to take back their applications, and moreover, there are no other measures of social nature that would help her to achieve justice. Moral and material damage that should be compensated to victims of domestic violence is not practically provided.

**Questions:**

1. **Kindly provide the statistics: how many victims of domestic violence have been provided with due moral and material compensation (kindly indicate the statistics in percentage from the total number of victims of domestic violence)?**
2. **Are victims of domestic violence provided with lawyers at the expense of the state budget, as necessary? How many victims of domestic violence were provided with such assistance from 2013 to 2017?**

**MARRIAGE AND FAMILY, NON-INTERFERENCE IN PRIVATE AND FAMILY LIFE (ARTICLES 17, 23, 24 OF ICCPR)**

On March 25, 2011 article 12 of the Family Code of RT was amended according which, if one of the intending spouses is a foreigner or a stateless persons, meeting the following additional conditions is required: а) residence in the territory of the Republic of Tajikistan for at least one last year; b) compulsory conclusion of a marriage contract.

**Question:**

1. **Kindly provide information on how amendments made to the Family Code of RT in March 2011 with regard to restricting marriages with foreign citizens comply with the standards of article 23 of the Covenant on Free Marriage?**
2. **Question: kindly provide statistics on marriages with foreign citizens for the past 3 years as well as statistics on marriages for the past 3 years before making amendments (breakdown by genders).**

In 2016 amendments were made to the Family Code of RT (in articles 14 and 15) according which marriages were banned between:

* Children of brothers, sisters, brothers and sisters;
* Maternal uncle and niece, paternal uncle and niece, maternal aunt and nephew, paternal aunt and nephew;
* Persons breastfed by one woman;
* Persons without compulsory medical examination.

Kinship or breastfeeding of children by one woman is complicated and practically impossible to prove or disprove. It is not possible to conduct a genetic examination in RT; it is a very expensive procedure for ordinary citizens. These amendments will lead to additional bureaucracy and corruption in the civil status registration system.

**Question: Kindly inform, will “persons breastfed by one woman” be excluded from article 14 of the Family Code?**

On August 23, 2016 the Resolution of the Government of RT #374 was adopted by which the rules of conducting compulsory medication examination for intending spouses were approved. These rules indicate that the medical examination is conducted free of charge and the intending spouses have to disclose the information about status of their health to each other.

This provision contradicts the principles of respect for human rights and non-interference to private life. Also some surveys conducted among intending spouses indicate that the medical examination is not always conducted free of charge.[[20]](#footnote-20)

**Question: Is it expected to bring article 15 of the Family Code of RT on compulsory medical examination of intending spouses in compliance with international standards?**

The provisions of article 45 of the Law of RT “On state registration of civil status” have a negative impact on women’s status. Often, at the time of marriage, in particular in rural areas, men require their wives to adopt their family names. In case of divorce, this article reserves the right of one of the spouses to give his/her consent to name his/her spouse, who changed his/her family name upon marriage, by his/her family name or to require that the spouse chooses his/her premarital family name. In practice such spouses are men and for women such disagreement or absence of her former husband in the country (there are numerous reasons for that, one of them is the labor migration) leads to financial and administrative difficulties. It involves changing the documents where husband’s family name is indicated, returning to one’s own family name, changing children’s documents etc.[[21]](#footnote-21)

**Question: Kindly inform, is it expected to exclude the provision of article 45 in the Law of RT “On state registration of civil status”?**

The Family Code of RT prohibits international adoptions of children. It has an influence on mixed marriages, so, for example, a foreign citizen who is married to a Tajik citizen (or a female citizen) cannot adopt a child from his/her previous marriage. In addition, many former Tajik citizens, having adopted Russian citizenship, lost their Tajik citizenship.

There were cases when immediate uncles or aunts could not adopt nephews or nieces in Tajikistan after the death of their siblings, since they are considered foreign citizens.

**Question:** **Kindly provide information on whether the state intends to take measures to tackle the issue of international adoption and ratification of the Hague Convention on the protection of children and cooperation in the area of international adoptions?**

Polygamy is banned by the country’s legislation, however in practice there is a large number of women who are in the secondary or tertiary marital relations, established based on the religious ritual “nikoh”.

**Question:** **Kindly inform about any legislative and practical mechanisms of protecting women’s rights in religious marriages for equal rights and decision-making in family relations, as well as protecting the interest of children born in secondary and tertiary marital relations.**

Tajik courts, while rendering judgements about recovery of children’s allowance in the defendant’s absence, are unable to enforce courts decisions.

Part of enforcement documents on family cases belonging to vulnerable stratum of population are related to documents on recovery of children’s allowances. In most cases, the debtors are men. Often this has to do with issues of legislative regulation of certain social relations in the area of enforcement proceedings, as well as law enforcement practices. So, for example, paragraph 1, article 64 of the Law of RT “On enforcement proceedings” states that the collection of debts for all maintenance obligations is made on the debtor’s property, except for property which cannot be subjected to such recovery in accordance with the legislation.

In judicial practice collection of debts for maintenance obligations from the debtor’s property is often impossible because most people with maintenance obligation debts have the only residential house or an apartment which cannot be subjected to such a recovery according to the legislation (examples of the first and second article 432 of the CCP RT)[[22]](#footnote-22).

However, the law allows for collection of debt from the only residential house or apartment that is subject to the pledge agreement.

**Questions:**

1. **Kindly answer what measures does the state take to improve the situation with the compulsory maintenance obligation debts collection?**
2. **Kindly inform about legislative and law-enforcement measures to ensure judicial decisions on recovery of children’s allowances from defendants who are outside the country.**

**FREEDOM FROM TORTURE. RIGHT FOR HUMANE TREATMENT (ARTICLES 7 AND 10 OF ICCPR)[[23]](#footnote-23)**

Tajikistan has not ratified the Optional Protocol to the Convention against Torture (OPCAT) referring to financial constraints.

Since 2004 the International Committee of the Red Cross (ICRC) does not have access to detention facilities in Tajikistan to carry out monitoring. A positive step was the establishment of a monitoring group under the Ombudsman Office in February 2014 which can pay up to 15 monitoring visits to closed and semi-closed institutions. NGOs lack access to closed and semi-closed institutions to carry out an independent monitoring, except joint monitoring with the Ombudsman. Despite significant improvements, conditions in closed and semi-closed institutions often do not meet international minimum standards.

The monitoring group is part of the Working Group on advocating the ratification of OPCAT. The Ombudsman is in charge of coordinating the monitoring mechanism.

In addition to the monitoring group, civil society institutes have separate memoranda with the Ombudsman in RT on conducting joint monitoring. Thus, since 2014 the NGO “Civil Freedoms Office” – member of the Coalition against torture and impunity jointly with the Ombudsman Office in RT have been conducting monitoring of human rights in military units. During this period of time monitoring visits have been paid to 16 military units throughout the country.

**Questions:**

1. **Kindly answer, is it expected to ratify the Optional Protocol to the Convention against Torture and to create a national prevention mechanism? If yes, then when?**
2. **Is it planned to transfer the investigative wards of the NSSC, the Financial Control and Anti-Corruption Agency and the Drugs Control Agency under the Executive Office of the President of RT to the jurisdiction of the Ministry of Justice of RT?**

Tajik authorities collect and publish statistical data on criminal cases filed in accordance with article 143-1 of the Criminal Code (“torture”). According to official sources, since introduction of the article into the Criminal Code in 2012 eleven criminal cases have been filed. However most of the cases linked with accusations of torture or other forms of cruel treatment continue to be considered under different article of the Criminal Code, such as “causing suicide” (article 109), “misuse of power” (article 314), “misconduct” (article 316), “negligence” (article 322) or in cases with armed forces, “violation of statuary rules” (article 373) or “misuse of power and inaction” (article 391). All these articles are applied to criminal cases that are connected with tortures and other forms of cruel treatment; therefore, the official statistics on cases filed on these articles are not exclusively related to crimes related to torture/cruel treatment.

**Question: Kindly answer if it is expected to create in Tajikistan a single system for registration of cases related to tortures and other forms of cruel treatment containing a comprehensive statistics not only on article 143-1 of the Criminal Code, but also on other articles of the Criminal Code linked with accusations on the use of torture and other forms of cruel treatment.**

As a rule, effective investigations on allegations of the use of torture are not conducted in Tajikistan, since agencies investigating torture cases are not sufficiently independent.

A number international agencies and procedures in the area of human rights recommended the Government of the Republic of Tajikistan to create an independent investigation agency to which the authorities repeatedly stated that they don’t feel the need for creating such a mechanism due to low number of torture cases. However, here, as mentioned earlier the authorities refer to those cases filed under article 143-1 of the Criminal Code (“torture”), whereas most of the cases related to the use of torture and cruel treatment are investigated under different articles of the Criminal Code, such as “negligence”, “misuse of power” or “violation of statuary relations”.

**Question: kindly answer whether it is planned to establish an independent investigation agency for consideration of applications on the use of torture, not linked with the agency that conducts the investigation with regard to the assumed victim.**

**RIGHT FOR FREEDOM AND PERSON INVIOLABILITY (ARTICLE 9 OF ICCPR)[[24]](#footnote-24)**

Article 92, part 3 of the CCP which is applied to both adults and minors provides that the detainee must be brought before the court within 72 hours.

**Question: is it expected to curtail the term down to 48 hours, and for minor to 72 hours?**

Part 1 of article 112 of the CCP RT provides that the suspect/accused should not be kept in custody for more than two months during preliminary investigations. In practice, when taking a decision on the application of a measure of restriction, judges do not indicate the term during which the detainee should be kept in custody. Thus, the court automatically uses the maximum term of two months in primary detention provided for by part 1 of article 112 of the CCP.

The total detention period is 12 months, however, in exceptional cases this period can be extended up to 18 months (part 3 and 4). These terms are established for detainees during preliminary investigation and prior to the filing of the case with the court.

The CCP also contains detention period during the course of judicial review of criminal charges. So, in accordance with article 289 of the CCP RT the defendant’s detention period as a preventive measure from the day the case is brought to court and prior to sentencing cannot exceed 6 months, but in exceptional cases it can be extended as long as 12 months. Thus, the country’s legislation provides for maximum detention period of 30 months (18 months during preliminary investigation of the criminal case and 12 months during review of the case in the court).

**Question:** **Kindly provide information on what measures are being taken to bring the CCP provision on 18 months detention period during preliminary detention and 12 months detention period during judicial review in compliance with the requirements of article 9 of the ICCPR?**

The country’s legislation guarantees lawyer’s access to citizens detained in the investigative wards and TDCs based on presenting lawyer’s ID, however, in practice the institutions’ administration requires written permission of investigators and other law-enforcement officer who carry out the investigation of the case. What does the state do for the norms of the legislation to be implemented in practice?

**Questions:**

1. **Kindly answer, how is it expected to ensure unrestricted access of lawyers to their clients who are in closed institutions on criminal charges without requiring special permissions, but only based on orders? What measures are taken for practical applications of legislative norms ensuring lawyers’ unrestricted access to their clients?**
2. **Have there been cases when the staff of investigative wards and TDCs who required additional documents from lawyers not indicated in the law (permission from law-enforcement agencies) were held responsible?**

**FREEDOM OF EXPRESSION (ARTICLE 19 OF ICCPR)**

As of 2017, 372 newspapers were registered and operated in the country of which 104 state and 263 privately owned; 113 independent and 129 independent magazines were registered and published whose founders are public, non-governmental organizations and individuals; there are 272 private and 37 state printing houses; 11 independent news agencies were registered; there are 11 state and 20 private TV channels, as well as 7 state and 9 private radio stations.[[25]](#footnote-25)

In recent years the situation in the area of freedom of expression has deteriorated sharply. Local mass media, including independent ones, rarely write about real problems of the country; it has become difficult to receive information from government agencies. When journalists try to receive comments or information, officials unjustifiably assign the status of classified information to it, although it is not so.

Pressure on journalists has increased; accordingly self-censorship has sharply become pervasive among journalists. According to various sources, in recent years some 20-25 journalists left the country.

Despite the exclusion of defamatory articles 135 (defamation) and 136 (insult) from the Criminal Code of RT in 2012, the Criminal Code still retains defamation norms seriously restricting the freedom of expression.

Some representatives of state agencies, who until recently were open to mass media, now avoid journalists, although on the instruction of the President of Tajikistan state agencies are obliged to report to mass media every six months. However, formal information is presented during news conferences.

Blockage of internet resources in Tajikistan is becoming a widespread method of work for the Communication Services under the Government of RT to exert pressure on mass media for criticism.

A widespread blockage of websites was also observed in 2014, 2015 and 2016. Over hundreds of websites were blocked, including social media, the mail service mail.ru, the online encyclopedia Wikipedia, foreign news websites and many other web-resources. The website of the Tajik Media Holding “Asia-Plus” was also blocked numerous times. Blockage of the Internet sites continued in 2015 and 2016 as well. In November 2015 the European Company TeliaSonera published a statement on its website in which the company acknowledges that they were forced to block certain websites.

The Communication Service under the Government of Tajikistan denies the responsibility for deactivation of Internet resources. Nevertheless, a number of Internet providers informed the mass media that they received an unofficial order to block access to websites.[[26]](#footnote-26)

In 2016 the Unified Electronic Communications Switching Center (UECSC) was created in RT under the State Communications Operator “Tajiktelecom” to control the incoming and outgoing traffic of international electronic services and the Internet. According to the authorities, the UECSC is created to counter terrorism and extremism.

In January 2018 the Communications Service under the Government of Tajikistan instructed all providers to purchase the Internet exclusively from the Republican Data Transfer Network operating under the trademark of Tojnet and owned by the State Telecommunication Operator OJSC “Tojiktelecom”. Before that, providers used to purchase the Internet from Kyrgyzstan and other countries. These measures are also justified as fight against terrorism and extremism.

The International Organization “Reporters without Borders” in its annual rating of the press freedom for 2017 ranked Tajikistan 149th among 180 countries.

In the unveiled World Press Freedom Index of the Journalist Human Rights Group “Reporters without Borders”, Tajikistan demonstrated the highest level of regression in 2015 and dropped to the 34th position, ranking 150 out of 180. None of the countries in the world dropped so sharply in this rating this year.

In March 2016 at the invitation of the Tajik authorities Mr. David Kaye, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression visited Tajikistan.[[27]](#footnote-27) According to him, during his visit in Tajikistan he received multiple reports from journalists about pressures being exerted on them to refrain from covering issues of public interest, in particular those related to the political situation. “The Tajik legislation provides important formal means of protection for independent mass media and non-governmental organizations, but, nevertheless, journalists and civil society activists are subjected to persecutions. In this connection, many mass media have to resort to self-censorship. Mr. Kaye stated that national security issues are of concern, but the ban on opposition forces and the harassment of lawyers, journalists and activists undermine security and cause tension and long-term instability.

“Government interference in the area of communications, also information about the plans to expand control in the field of communication by the authorities is harmful to the whole society. Decline in access to information undermines not only public discussions, but also the innovations needed to build a free and growing economy” – added the UN representative.[[28]](#footnote-28)

Also, according to him, the civil society and mass media in Tajikistan come under pressure and practically there is no political opposition. [[29]](#footnote-29)

On the other hand, the financial crisis has severely affected the mass media, primarily the printed media. Dozens of newspapers were closed; hundreds of journalists lost their jobs. Many leave the profession because of small salaries, fees and the inability to combine work in several media.

In recent years several independent publications have ceased to be issued such as the newspapers “Sughd”, Facti i commentarii”, “Nuri zindagi”, “Jomea”, “Millat”, “Nigoh”, the Information Agencies “Tojnews” and “Ozodagon” discontinued their operation.

**Questions:**

1. **Kindly inform what measures are taken by the state to increase the freedom of expression in the country and reduce persecution of journalists and mass media for their critical materials?**
2. **Kindly inform, is it expected to include in the legislation on mass media the definition of “public figure”?**
3. **Kindly provide information for 2013-2017 about the number of people penalized under administrative law according to article 62 of the Code on Administrative Offences of RT for violation of the rights of mass media representatives, including the right to timely receipt of information, provided for by the law.**
4. **Kindly provide the statistics for the period 2013-2017 about criminal prosecutions and imposition of sentences under article 162 of the Criminal Code of RT for preventing journalists from lawful professional activities.**
5. **Kindly provide information about the situation with the unofficial requirement of internet providers to buy the Internet from the state-owned Telecommunications Operator OJSC “Tojiktelecom”.**
6. **Kindly inform whether it is expected to exclude the remaining defamation articles from the criminal legislation of Tajikistan.**

*Digital broadcasting*

Alongside with 103 countries of the world Tajikistan is a member of the International Telecommunication Union (ITU). In this connection, the country joined the plan for transition to digital television broadcasting during the Second Regional Conference held in Geneva in 2006.

Activities related to modernization of the broadcasting network is assigned to the OJSC “Teleradiocom” – state organization subordinate to the Committee on Television and Radio under the Government of Tajikistan. “Teleradiocom” is the operator of a social package of programs.

The final deadline for the transition has already expired; all channels had to move from the analogue television onto the digital one by June 17, 2015. Presently Tajikistan is broadcasting both on analogue and digital standards.

In Tajikistan the emphasis is placed mainly on the technical aspect of transition to digital television. Legal and social aspects at present remain outside the focus of the state.

To date, 9 national state channels broadcast on the digital multiplex in the test mode. Independent broadcasters could not cope with the tariffs for broadcasting and had to stop broadcasting in the test mode. As for the first multiplex, it includes 9 state channels. Coverage of the population to date is 60.41%.

Up to now, the legal status of independent TV channels has not been legally defined and it is not clear based on what mechanisms they will join the multiplex.

Despite the fact that digital broadcasting in Tajikistan began several years ago, limited number of population is aware about it. The population is not provided with special decoders. All these can lead to “digital inequality” or “digital divide” between those who can afford new digital services and those who cannot.

**Questions:**

1. **Kindly inform, what measures are taken by the state to inform the population about the transition to digital broadcasting?**
2. **Have measures been taken to develop legal framework that promote to creation of competitive environment among operators of digital broadcasting?**

*Licensing of audiovisual productions*

Audiovisual works (films, TV films, videos, slide-films etc.), which could be fiction, animation (cartoons), non-fiction) are subject to copyright and relations arising from the production and use of the work of art are fully regulated by the Law of RT “On copyright and related rights”

Illegal use of works subject to copyright is an immediate violation of constitutional norms of RT as well as the Law of RT “On copyright and related rights”. Due to lack of national contents (quality modern homemade audiovisual products) electronic mass media has to illegally use intellectual property products of other countries for the use of which they have no right at all.

If they turn a blind eye to the issue now, in the near future it will be clearly visible amidst Tajikistan’s WTO accession.

In order to promote economic, cultural and pluralistic audiovisual sector development in Tajikistan one has to abolish licensing requirements for the production of audiovisual works. Presence of norms in the Tajik legislation on licensing of audiovisual products contradicts both the international and domestic legislation of the country.

**Question: Kindly inform, is it expected to abolish licensing for the production of audiovisual products based on the Government Resolution dated October 31, 2014 #691 on the program of compliance of the economy of Tajikistan due to its WTO accession?**

**CHILD RIGHTS. JUVENILE JUSTICE (2 (3), 9, 14).**

*Juvenile justice*

In recent years the Republic of Tajikistan has taken a number of steps to introduce the juvenile justice system. The provisions of the Criminal Code of Procedure of RT adopted in 2009 made some improvements in the juvenile justice system. Thus, the CCP RT contains a separate chapter 44 which sets the rules for treating minors and the procedure for proceedings related to cases of crimes committed by minors. In 2017 the Juvenile Justice System Reform Program for 2017-2021 was adopted.

However, the country still lacks a separate juvenile justice system. Children alongside with adults are tried by the common justice system, which, for the most part, is punitive. Despite the fact that the Resolution of the Plenum of the Supreme Court of RT #6 dated December 12, 2012 “On judicial practice on review of cases of crimes committed by minors” requires review of minors’ cases only by Court Chairman, his deputy or a judge with sufficient experience, however, in practice this norm is violated. There are cases where children’s cases have been dealt with by recently appointed judges with insufficient experience and practice.

The country also lacks separate investigators on minors’ cases and children’s lawyers (child rights specialists). Prosecutors who supervise child-related issues do not have the authority to back charges in court. Accusations in courts are supported by prosecutors who also support the prosecution of adults; for the most part, these prosecutors do not receive special training in working with children.

*Children victims and witnesses of crimes.*

The Law of RT “On the protection of child rights” does not reflect issues of protection and support measures for children victims and witnesses of crimes. The Tajik legislation does not provide effective measures of support and protection for children victims and witnesses of crimes and members of their families. In particular, there is no access to continuous support services (material, legal, medical, social etc.), as well as access to services contributing to the child’s rehabilitation and reintegration.

There is a special law in Tajikistan aimed at protecting participants of criminal proceedings, but, unfortunately the protection measures provided for by the law to a larger extent aimed at adult participants of the criminal proceedings and are not adapted for the protection of minor victims and witnesses of crimes considering minors’ best interest and needs. Reasons for review of a case in closed judicial proceedings do not cover a category of cases with the participation of minor victims. The CCP RT lacks periods for interrogating minor victims and witnesses. Compulsory participation of a defense counsel is foreseen only for the cases of minors, suspects, the accused or the prisoners at the bar. Minor victims do not belong to this category of persons, and thus, are not necessarily provided with a defense counsel.

## In March 2015 the special Law of RT “On the protection of child’s rights” came into effect, however, the law does not contain prohibitions of corporal punishments, also it has other shortcomings. The national legislation continues to provide for joint detention of adults and minors as well as solitary confinement of minors. There are still reports on the use torture and cruel treatment of minors, including corporal punishments.[[30]](#footnote-30)

**Questions:**

1. **Kindly inform, does the state have a plan to conduct a reform that would meet the requirements of articles 37, 39 and 40 of the Convention on Child Rights? If yes, in what areas is it planned to conduct the reform and what are the deadlines? What agency will coordinate this issue? Will there be a separate system which will include such specialists as separate judges, prosecutors, investigators, lawyers and other specialists to work with children?**
2. **Does the state have a plan to review the legislation in accordance with which the child can be deprived of liberty (arrested) only based on acts incriminated to him, when his guilt has not been proved in the court yet?**
3. **What steps does the state plan to take with regard to children victims and witnesses of crimes, taking into account that the main guarantees of protection, such as legal protection, social protection (social services: medical, psychological and social with the purpose of rehabilitating the child) are not embodied in the legislation?**

**RIGHTS OF ETHNIC MINORITIES (ARTICLE 27 OF ICCPR)**

According to the Tajik legislation all nations and people living in the country can freely speak their native language, preserve their identity and develop their national culture, receive education in their native language etc.

In accordance with the census data of 2010 the population of Tajikistan was 7,564,502 of which 84.3% were Tajiks and 15.7% were other nationalities.[[31]](#footnote-31)

Ethnic minorities in Tajikistan predominantly live densely in certain regions or locations. However, there is no official statistics about the representation of ethnic minorities in the areas of compact residence in specific district or towns (for example, in Hukumats, local majlises and judicial bodies of Murghob district and districts of Lakhsh, Dusti, cities of Dushanbe, Khujand Buston and others).

In recent years little has changed with regard to support to ethnic minorities. The same issues of limited opportunities for ethnic minorities on the following are still pending:

* Preservation and development of their culture, unique identity.
* Provision and quality of textbooks for schools with non-Tajik language of instruction.
* Receiving information in native language in mass media, in particular for the Turkmens and Kyrgyzes and others.

Since 2014 no effective strategy has been adopted or measures have been undertaken to expand the representation of citizens of various nationalities in the parliament, executive or judicial authorities.

**Question: Does the Government of Tajikistan have a plan to develop and adopt a state program or a national action plan to support and develop ethnic minorities?**

*Learning the state language for ethnic minorities*

The Tajik language has a status of the state language. The laws of the country require from every citizen to speak the Tajik language; all official correspondence must be conducted exclusively in the state language, as well as scientific researches and cultural events. With that said, there are practically no opportunities of learning the Tajik language. Sometime ago Tajik language learning courses used to be organized, programs used to be broadcast on the television, however, in recent times there are practically no opportunities.

**Question: What measures does the Government of RT take to create conditions for learning the Tajik language for ethnic minorities, in particular, for adults?**  
*Representation of women from amongst ethnic minorities in government bodies*

Representation of ethnic minorities in public authorities of various levels is significantly lower than the share of ethnic minorities in the total number of population and proportionally does not correspond with their share in the total number of population.

The national report of RT contains information about adoption and implementation of various programs by the Government of RT for promotion of gender equality, including a program for promotion of women in the government authorities. However, the report has no specific figures about the representation of women in government authorities from amongst representatives of ethnic minorities. Various publications related to gender issues also lack such statistics.

**Question: Kindly provide statistical data on the representation of women in legislative, executive and judicial authorities. How many girls and women from amongst ethnic minorities are in the personnel reserves to fill in administrative positions in the government executive bodies? How many girls from amongst ethnic minorities have been trained in the framework of the program “Education, selection and placement of managerial personnel of RT from amongst capable women and girls for 2007-2016”?**

*Statistics*

One rarely encounters data on the access of ethnic minorities to various services in the published sector statistical yearbooks (education, labor and employment, health etc.).

The public does not have open access to disaggregated data about ethnic composition of the country’s population, including the Pamiris and Yaghnabis, Roma/Gypsies and stateless persons, including women and children and their share among prisoners.

**Question:**

1. **In which statistical yearbooks, besides the 2010 census, statistical data about ethnic minorities are published regularly?**
2. **Kindly answer, is it planned to include questions in the 2020 census for receiving comprehensive disaggregated data?**

The Committee on Elimination of Racial Discrimination in its Conclusive Recommendations to Tajikistan for 2017 expresses a concern with regard to structural discrimination of the Roma/Gypsy community and notes that Roma/Gypsy women and girls often face discriminations based on multiple factor, including belonging to the ethnic group and gender factors. In particular, the Committee is concerned about difficulties faced by the Roma/Gypsy community in receiving personal documents, registration in their place of residence, legalization of their housing properties, access to quality education, health, social services and protection from exploitation and harmful types of traditional practices. The Committee repeatedly recommends the state party (CERD/C/TJK/6-8, section 13) and earnestly calls upon the country to adopt a strategy or a plan to improve the Roma/Gypsy status, including women and girls. However, earlier, the national integrated reports of RT 9-11 on the implementation of the Convention on Elimination of Racial Discrimination for 2016 notes that there is no need to develop and adopt a strategy aimed at improving the Roma/Gypsy status in the Republic of Tajikistan, since national or religious discrimination is not allowed in the country and representatives of every nation or race, regardless of their citizenship enjoy equal rights alongside with Tajik citizens.

**Questions:**

1. **Kindly answer, what measures are planned to be taken to improve the Roma/Gypsy status?**
2. **Is it planned to adopt a strategy in Tajikistan aimed at improving the Roma/Gypsy status?**

**FREEDOM OF MOVEMENT (ARTICLE 12 OF ICCPR)**

*Refugees and asylum-seekers*

The integrated 9-11th Periodic National Report of Tajikistan on the implementation of the Convention on Elimination of All Forms of Racial Discrimination notes that RT is considering the issue of ratifying the Convention about the status of stateless persons of 1954 and on the reduction of statelessness of 1961, and presently the analysis of social, economic and other consequences of joining to this convention is underway.

According to official statistics, presently 603 stateless persons are registered throughout the country with permissions to live in the Republic of Tajikistan permanently. The Government of the Republic of Tajikistan created an interdepartmental working group that developed the legal framework for amnestying and consequent legalization of the status of those who live in the territory of the Republic of Tajikistan illegally. These documents are being agreed upon.

Despite the adopted law of RT as of July 26, 2014 “On amending the Law of the Republic of Tajikistan “On refugees” in which some provision are brought in compliance with the international standards embedded in the Convention on the status of refugees of 1951 and the Protocol of 1967, until now there are still pending issues related to ensuring refugees’ freedom of movement and habitation. This is due to the fact that a list of population centers are established by the Resolution of the Government #325 (GR RT #325) as of July 26, 2000 (in the amended Resolution of the Government of RT #328 of 2004), where temporary residence of asylum-seekers and refugees is not allowed which contradicts article 26 of the Convention of 1951 concerning the refugees’ status: “Every contracting state will provide to refugees legally living in its territory the right to choose their place of residence and freedom of movement within the range of its territory subject to following all rules usually applied with regard to foreigners in the same circumstances” The indicated restrictions are not applied to other categories of foreign citizens in RT. The indicated restrictions have a negative impact on the lives of refugees in Tajikistan, especially, in terms of access to employment, health services, education and other services. It also creates difficulties in cases of registration of marriages between Tajik citizens and refugees or asylum-seekers, due to afore-mentioned territorial restrictions these families are restricted in choosing their place of residence and have to live in those population centers where refugees and asylum-seekers are allowed to reside. Due to afore-mentioned reasons many refugees are compelled to violate the rules and live in the prohibited population centers (mainly in Dushanbe and Khujand). As a rule, this circumstance leads to the deprivation of the refugee status, filing administrative cases for violation of rules of residence with application of administrative fines and deportations.

Analysis of adjudications proves that judges rarely specify the type of violation of the rules of residence in RT in the justification part of their decision, they do not specify what the violation is about, but in general, they refer to the Government Resolution of RT #325.

**Question:**

1. **Kindly inform whether Republic of Tajikistan plans to ratify the Convention on the status of stateless persons of 1954 and the Convention on reduction of statelessness of 1961?**
2. **Is it expected to abolish the Resolution of the Government of RT #325 and #328 and section 3 of article 499 of the Code on administrative offenses of RT?**

In 2018 Ministry of Education and Science of the Republic of Tajikistan (MoES) approved *the Rules of sending employees of education and science sectors, students and teachers of educational institutions of the Republic of Tajikistan to official travels or study in foreign countries* (The Rules).

In accordance with the Rules all students, teachers, professor and rectors of education institutions of Tajikistan must receive preliminary approval of the MoES before travelling abroad. In doing so, a letter on travelling to a foreign country should be addressed to the MoES no later than 15 working days before the trip happens. It is to be noted that the written permission of the MoES must also be received in case of participation of students and teachers in international conferences and other events related to education and science conducted inside the country.

  Teachers and students intending to travel abroad must provide a large list of documents to be agreed upon by the MoES, including justification for the trip with indication of the purpose and necessity of the trip, subjects to be considered during the event and assumed results. Preliminary approval must also be received from the MoES for any planned speeches or presentations to be made outside Tajikistan. Upon return, all participants of foreign trips must provide written reports about their trip to the Ministry of Education and Science no less than 5 days upon return.

Many pubic associations in Tajikistan are concerned that these restrictions create additional problems for organizations that cooperate with foreign educational institutions and participate in academic exchange programs.

Human rights organizations are also concerned that the new Rules contradict the Constitution of Tajikistan (article 24), Universal Human Rights Declaration, International Covenant on Civil and Political Rights, since they impose excessive restrictions on freedom of movement and free participation in educational events beyond the country for students and pupils of educational institutions. [[32]](#footnote-32)

**Question: what measures are expected to be taken for bringing the afore-mentioned Rules in compliance with the constitutional right of freedom of movement?**

1. Universal Periodic Review on human rights prepared by non-governmental organizations of Tajikistan, Report #1, civil and political rights, 2015. [↑](#footnote-ref-1)
2. Universal Periodic Review on human rights developed by Tajik NGOs, Report #1, civil and political rights, 2015. [↑](#footnote-ref-2)
3. Third Periodic National Report of the Republic of Tajikistan on the implantation of the International Covenant on civil and political rights, 2017 [↑](#footnote-ref-3)
4. Paragraph 15 of the Report [↑](#footnote-ref-4)
5. Universal Periodic Review on human rights developed by Tajik NGOs, Report #1, civil and political rights, 2015. [↑](#footnote-ref-5)
6. Article 4 of the law of RT “On Ombudsman of RT” [↑](#footnote-ref-6)
7. As of March 20, 2008, as amended on March 15, 2016 [↑](#footnote-ref-7)
8. Universal Periodic Review on Human Rights developed by NGOs of the Republic of Tajikistan, Report #1 (civil and political rights), 2015. [↑](#footnote-ref-8)
9. Article 41 of the Constitution Law of RT “On Prosecutor’s Office” [↑](#footnote-ref-9)
10. Article 59 of the Constitution Law of RT “On Courts of RT” [↑](#footnote-ref-10)
11. The information is provided by the NGO “Civil Freedoms Office” and Human Right Matter (Berlin), 2017. [↑](#footnote-ref-11)
12. Joint NGO report to the Committee Against Torture before consideration of the Third Periodic Report of Tajikistan on the process of implementing the Convention against Torture, 2018. [↑](#footnote-ref-12)
13. <http://www.notorturetj.org/statements/zayavlenie-grazhdanskogo-obshchestva-tadzhikistana-v-svyazi-s-zaderzhaniem-advokata> [↑](#footnote-ref-13)
14. <http://www.notabene.tj/Doc/Kaz/compl/Fundamentalnye-prava-cheloveka-v-Tadjikistane-mart-2016.pdf> [↑](#footnote-ref-14)
15. Paragraph 96 of the report [↑](#footnote-ref-15)
16. <http://minjust.tj/ru/fehristi-hizbhoi-siyosi-jt> [↑](#footnote-ref-16)
17. Preliminary OSCE meeting on human dimension, May 2016. [↑](#footnote-ref-17)
18. https://rus.ozodi.org/a/28835295.html [↑](#footnote-ref-18)
19. Universal Periodic Review on human rights prepared by civil society organizations of the Republic of Tajikistan, Report #1, civil and political rights, 2015. [↑](#footnote-ref-19)
20. Major provisions of the Third Alternative Report of Tajik public associations on the implementation of the Convention on Elimination of All Forms of Discrimination against Women, 2017. [↑](#footnote-ref-20)
21. Major provisions of the Third Alternative Report of Tajik public associations on the implementation of the Convention on Elimination of All Forms of Discrimination against Women, 2017. [↑](#footnote-ref-21)
22. Compulsory execution of judicial decisions on family and civil cases in Tajikistan. Issue of legislation and practice. NGO “Human Rights Center”. Dushanbe 2016. [↑](#footnote-ref-22)
23. Information in this block is excerpted from the Joint Report of NGOs to the Committee against Torture before consideration of the Third Periodic Report of RT on the implementation of the Convention against Torture, 2018. More detailed information on the implementation status of the UN Convention against Torture by Tajikistan can be found on the website: [www.notorturetj.org](http://www.notorturetj.org) [↑](#footnote-ref-23)
24. Information in this block is excerpted from the Joint Report of NGOs to the Committee against Torture before consideration of the Third Periodic Report of RT on the implementation of the Convention against Torture, 2018. For more detailed information on the implementation status of the UN Convention against Torture by Tajikistan refer to the website: [www.notorturetj.org](http://www.notorturetj.org) [↑](#footnote-ref-24)
25. Clause 93 of the Third Periodic Report of RT on the ICCPR implementation [↑](#footnote-ref-25)
26. <http://nansmit.tj/prekratit-blokirovku-saytov-v-tadzhikistane/> [↑](#footnote-ref-26)
27. <http://www.un.org/russian/news/story.asp?newsID=25531#.VyH4s1aLTIU> [↑](#footnote-ref-27)
28. <http://news.tj/ru/node/222966>, more details can be found on the link below: <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=17197&LangID=R> [↑](#footnote-ref-28)
29. <http://news.tj/ru/node/222966>, for more detailed information refer to the link below: <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=17197&LangID=R> [↑](#footnote-ref-29)
30. Information in this block is excerpted from the Joint Report of NGOs to the Committee against Torture before consideration of the Third Periodic Report of RT on the implementation of the Convention against Torture, 2018. [↑](#footnote-ref-30)
31. Source: <http://www.stat.tj/ru/img/526b8592e834fcaaccec26a22965ea2b_1355501132.pdf> [↑](#footnote-ref-31)
32. International Center for Non-for-Profit Law (ICNPL), 23rd edition of news newsletters in the area of legislation regulating the activities of non-profit organizations (NPO) in Central Asian states and other countries of the world.

    [↑](#footnote-ref-32)