



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/CO/84/TJK
18 July 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-fourth session

ADVANCE UNEDITED VERSION

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

TAJIKISTAN

1. The Human Rights Committee considered the initial report of Tajikistan (CCPR/C/TJK/2004/1) at its 2285th, 2286th and 2287th meetings, on 13 and 14 July 2005 (CCPR/C/SR/2285-2287), and adopted the following concluding observations at its 2299th meeting on 22 July 2004 (CCPR/C/SR/2299).

A. Introduction

2. The Committee welcomes the submission of Tajikistan's initial report (CCPR/C/TJK/2004/1), even if submitted with some delay, prepared in accordance with the Committee's guidelines and with OHCHR's technical assistance, and notes the quality of the replies to the list of issues and the replies to the Committee's additional oral questions.

B. Positive aspects

3. The Committee notes with appreciation the diminution of the number of crimes punishable by the death penalty and the moratorium of April 2004 on the

imposition and execution of death sentences, as well as the commutation of all existing death sentences in the State party.

4. The Committee welcomes the existence of sanctions against forced marriages and polygamy.

5. The Committee welcomes the establishment of the State party's Commission on the Implementation of International Obligations, which, *inter alia*, is responsible for the coordination of the follow-up to be given to the Committee's Views under the Optional Protocol.

C. Principal subjects of concern and recommendations

6. The Committee notes with concern that domestic violence against women remains a problem in Tajikistan (Covenant, articles 3 and 7).

The State party should take effective measures, including training of police officers, promotion of public awareness and, in more concrete terms, human rights training to protect women against domestic violence.

7. Whilst noting the efforts made by the State party to diminish the gender imbalance in government positions, and to improve the status and rights of women in society, the Committee considers that much more needs to be done (Covenant, articles 3 and 26).

The State party should take more positive measures to ensure a higher representation of women in public life.

8. The Committee recalls that in at least two cases, the State party has executed prisoners under sentence of death, even though their cases were pending before the Committee under the Optional Protocol to the Covenant and requests for interim measures of protection had been addressed to the State party. The Committee recalls that in acceding to the Optional Protocol, the State party recognized the Committee's competence to receive and examine complaints from individuals under the State party's jurisdiction. Disregard of the Committee's requests for interim measures constitutes a grave breach of the State party's obligations under the Covenant and the Optional Protocol (Covenant, article 6).

The State party should fully comply with its obligations under the Covenant and the Optional Protocol, in accordance with the principle of *pacta sunt servanda*, and

take the necessary measures to avoid similar violations in future.

9. The Committee is concerned about information before it that, when prisoners under sentence of death were executed, the authorities systematically failed to inform the families and relatives of the date of execution or to reveal the place of burial of the executed persons. These practices amount to a violation of article 7 of the Covenant with respect to the family and relatives of the executed persons (Covenant, art. 7).

The State party should take urgent measures to inform families of the burial sites of those who were executed before the moratorium.

10. The Committee is concerned about the widespread use of ill-treatment and torture by investigation and other officials, to obtain information, testimony or self incriminating evidence from suspects, witnesses or arrested persons (Covenant, articles 7, and 14, paragraph 3 (g)).

The State party should take all necessary measures to stop this practice, to investigate promptly all complaints of the use of such practices by officials, and to proceed to the rapid prosecution, conviction and punishment of those responsible, and to provide adequate compensation to the victims.

11. The Committee is concerned about the widespread accounts of detainees' access to a lawyer being obstructed, particularly in the period immediately following arrest. It appears that the right to consult a lawyer only arises when an arrest is registered, rather than from the actual moment of arrest (Covenant, articles 7, 9, and 14, paragraph 3 (b)).

The State party should take measures to ensure that the right to counsel arises at the moment of arrest, and that any instances where law enforcement officers are alleged to have obstructed access to a lawyer are fully investigated and appropriately punished. This right should also be ensured in respect of persons in need of free legal assistance.

12. The Committee is concerned that a procurator, rather than a judge, remains responsible for authorising arrests. This creates an imbalance in the equality of arms between the accused and the prosecution, as the procurator may have an interest in the detention of those who are to be prosecuted. Further, detainees are not brought before the procurator following their arrest. An appeal to a Court to review the lawfulness and grounds of arrest is possible, but it does not guarantee the participation of the detainee (Covenant, article 9).

The State party should revise its criminal procedure legislation and introduce a system which ensures that all detainees are as a matter of course brought promptly before a judge who will decide without delay on the lawfulness of the detention.

13. The Committee is concerned that a person may be placed under administrative arrest of up to 15 days, and that such detention is not subject to judicial supervision (Covenant, article 9).

The State party should ensure that administrative detention is subject to the same right to challenge the lawfulness of the detention as ought to pertain to other forms of arrest, in light of the Committee's recommendations in paragraph 12 above.

14. The Committee is concerned about persistent information attesting to poor conditions and overcrowding in the State party's prisons and other places of detention, and notes the relatively high rate of incarceration. It is also concerned about reports of the limited access of civil society and international bodies to penitentiary institutions. (Covenant, article 10).

The State party should consider alternative forms of punishment, particularly in relation to minor offences, such as community work and home detention. It is invited to take all necessary measures to allow independent visits to prisons and detention facilities by representatives of both national and international organisations.

15. The Committee has noted that the Constitutional Court and subsequently the Supreme Court have issued rulings prohibiting the use of evidence obtained in violation of the law. However, the Committee remains concerned about the absence of any prohibitive provision in the State party's criminal procedure law to this effect (Covenant, article 14, paragraphs 1 and 3(g)).

The State party should proceed to the necessary amendments of its Criminal Procedure Code and prohibit the use of evidence obtained in violation of the law, such as under duress. All allegations of illegal use of evidence in court must be duly examined, investigations must be conducted, and courts must take into consideration the outcome of such investigations.

16. The Committee is concerned that an inequality of arms between the rights of a prosecutor and a suspect/accused or defence counsel exists in practice, both during a criminal investigation and in court, such as in relation to obtaining and challenging evidence (article 14, paragraph 1). This inequality also appears to be reflected in the very low number of acquittals handed down in the State party's courts, as apparent

from the report (for example, the acquittal rate in 2002 was approximately 0.004 per cent).

The State party should amend its legislation and align its practice in order to guarantee full compliance with the basic principles of a fair trial, particularly the principle of equality of arms.

17. The Committee is concerned about the apparent lack of independence of the judiciary, as reflected in the process of appointment and dismissal of judges as well as their economic status. (Covenant, article 14, paragraph 1).

The State party should guarantee the full independence and impartiality of the judiciary by establishing an independent body charged with the responsibility of appointing, promoting and disciplining judges at all levels and by remunerating judges with due regard to the responsibilities and nature of their office.

18. The Committee notes that Military Courts have jurisdiction to examine criminal cases concerning both military and civil persons (Covenant, article 14, paragraph 1).

The State party should proceed to the necessary amendments of its Criminal Procedure Code and prohibit this practice, strictly limiting the jurisdiction of Military Courts to military persons only.

19. The Committee is concerned about reports of several in absentia convictions, notwithstanding the prohibition by law of trials in absentia (Covenant, article 14, paragraph 3).

The State party should take all necessary measures to ensure that any trials in absentia are subject to rules which guarantee the right to defence.

20. The Committee is concerned that the State party does not recognize the right to conscientious objection to compulsory military service (Covenant, article 18).

The State party should take all necessary measures to recognise the right of conscientious objectors to be exempted from military service.

21. The Committee is concerned about persistent reports that journalists have been harassed by state officials in the exercise of their profession, and that newspapers have been seized (Covenant, art. 19).

The State party should avoid any harassment or intimidation of journalists and ensure that its legislation and practice give full effect to the requirements of article 19 of the Covenant.

22. The Committee is concerned about the existence in the State party's Criminal Code of broadly worded crimes such as "injuring the honour and dignity of the President" and "attempt against the constitutional order", which may lend themselves to manipulation and limitation of the freedom of speech (Covenant, article 19).

The State party should bring its law and practice governing freedom of expression into line with the provisions of article 19 of the Covenant.

23. The Committee is concerned about reports of persistent recourse to corporal punishment as a means of discipline in schools (art. 24).

The State party should take necessary measures to prohibit this practice.

24. The Committee is concerned that, despite significant progress accomplished by the State party, there have been persistent reports that Tajikistan is a major source country for trafficking in women and children (Covenant, articles 24, 3 and 8).

The State party should redouble its efforts in combating these serious problems, in collaboration with neighbouring countries, including with a view to protecting the human rights of victims. It should also rigorously review the activities of responsible governmental agencies to ensure that no State actors are involved.

25. The Committee is concerned about the possibility, in the State party's law, to refuse to register as candidates for election individuals against whom criminal proceedings are pending, notwithstanding the fact that their guilt has not been established (Covenant, articles 25 and 14, paragraph 2).

The State party should amend its legislation and practice in line with the requirements of articles 25 and 14, paragraph 2, of the Covenant, so as to ensure that persons merely charged with an offence are presumed innocent and retain their right to stand for elections.

D. Dissemination of information about the Covenant (art. 2)

26. The Committee sets 31 July 2008 as the date for the submission of Tajikistan's second periodic report. It requests that the State party's initial periodic report and the

present concluding observations be published and widely disseminated in Tajikistan, to the general public as well as to the judicial, legislative and administrative authorities, and that the second report be circulated for the attention of the non-governmental organizations operating in the country.

27. The Committee suggests that the State party continue to benefit from the technical cooperation of OHCHR and other UN entities dealing with human rights in Tajikistan.

28. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 10, 12, 14, and 21 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.