

Summary Record of the dialogue between the Human Rights Committee and the Official Delegation of Tajikistan (13th –14th July 2005)

This summary underlines the concerns of the Human Rights Committee (HRC) that were raised during the dialogue held with the Tajik Delegation at the 84th session in Geneva, on July 13 and 14, 2005. This dialogue focused on the list of issues¹ that had been prepared by the HRC and submitted beforehand to the Tajik Delegation with the aim to obtain complementary information to the initial report of the State Party².

In introduction to this dialogue, the Tajik Delegation stated that the International Covenant on Civil and Political Rights (ICCPR) constituted the basis of the Constitution of the Republic of Tajikistan adopted in 1994. The Delegation underlined that Tajikistan was a young Republic, which was aware of the need to promote human rights and felt involved in doing so, but as it had limited capacities and resources, the support of the international community was necessary to proceed.

The Committee underlined that Tajikistan submitted its initial report five years late, and added that statistics provided were insufficient. However, the Committee noted that the very high level Delegation, as well as the collaboration with NGOs in writing the report, proved how seriously the initial report had been prepared. He also noted several elements that pointed out an encouraging evolution of human rights in Tajikistan during the last few years, in particular the creation of a committee responsible for human rights issues; the ratification to several international conventions; the moratorium on death penalty ordered by the President of Tajikistan in 2004; the reduction of sentences in the Penal Code; the interdiction of polygamy and forced marriage.

The Committee was especially concerned about:

1/ the non-respect of the State Party's obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (despite provisional measures, Tajikistan executed several people sentenced to death).

2/ the extremely high level of the jail population. It was said that Tajikistan should develop alternative sentences instead of imprisonment for minor offences.

3/ The status of the prosecutor should be modified, as the prosecutor performs the combined functions of investigator and of general supervisor. The access to a lawyer should be granted during the first 24 hours of detention.

4/ The limited possibilities for politic opponents to express their views, along with the sentences for opinion offence, which constitutes an infringement of freedom of expression.

Constitutional and legal framework within which the Covenant is implemented; right to an effective remedy (art. 2)

The Delegation explained that Article 10 of the Constitution provided that international legal instruments are an integral part of the legal system. If there is a conflict between domestic and international law, international law prevails. Besides, the courts are competent to apply directly the provisions of the ICCPR.

Regarding the procedures for implementing the Committee's views, the Delegation pointed out that in March 2002 the Commission on the Realisation of International Human Rights Obligations was established to deal with individual complaints.

Execution of the death row inmates with pending HRC cases:

Between 2002 and mid-2005, there were 18 requests from the HRC requesting comments on individual complaints. For instance:

¹ See the Committee's "List of issues", UN document CCPR/C/84/L/TJK.

² See Tajikistan's Initial Report, UN document CCPR/C/TJK/2004/1.

1/ Mr. Kombolov, who murdered three people and committed other crimes. HRC requested information on Mr. Kombolov in December 2003 and a reply was sent in March 2004 informing HRC that Mr. Kombolov's sentence had been commuted to 25 years of imprisonment.

2/ Mr. Hammidev, who was found guilty of several crimes including aggravated murder, involvement with a criminal organisation and robbery, was sentenced in September 2001 and HRC requested information on this case in February 2003. In December 2004, the Supreme Court and the prosecutor informed HRC that his sentence had been commuted to 25 years of imprisonment.

3/ Mr. Assudovich was sentenced in spring 2000 and was executed in the spring of 2001. The Delegation stated that there was no record or a request from HCR on this case.

4/ Mr. Valinovitch was accused of robbery and murder of three people and was then sentenced to death. Although a request for non-completion of the execution was submitted on behalf of his spouse under the Optional Protocol, the Commission on the Realisation of International Human Rights Obligations did not receive this information.

Equality between sexes and non-discrimination (arts. 3 and 26)

The Delegation presented several measures that had been taken to increase the number of women in political, official and decision-making positions. Thus, the presidential decree dated 21 May 2005 was issued to address the gender imbalance in rural regions by increasing the quota of women attending school in rural areas. Reference was also made to a national report regarding the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) since the independence. The report stated that policies had been introduced to improve the cultural, economic and social lives of women, including specific programmes carried out by the Committee on Women and Family Affairs.

Regarding the legal and protective measures that are available to women to deal with domestic violence and sentences for perpetrators, the Delegation recalled that Tajikistan is party to CEDAW and the Convention Against Torture (CAT). They also tried to expand women's rights in accordance with the Vienna Declaration and Programme of Action and the Beijing Conference on Women. In 2000, a decree was adopted to ensure that equality will not be violated in any situations. Discrimination based on gender is considered as a criminal offence. Between 2003 and 2004, 114 domestic cases were considered and 114 sentences were handed down.

On the question of forced marriages and polygamy, the Delegation stated that men and women had equal rights to marry, during the marriage and upon dissolution of marriage. The minimum age of getting married is seventeen. If the woman is underage, the person who arranged the marriage could be sentenced to two years of labour or five years imprisonment. In 2003-2004, there were 59 cases of forced marriages. In cases of rape, the perpetrator does not escape criminal liability by marrying the victim. Furthermore, polygamy is prohibited. Those who commit polygamy can be sentenced to pay a fine, two years of labour or five years imprisonment.

Derogations (art. 4)

The Delegation recalled that the Constitution provides for when a state of emergency can be declared and also prohibits the restriction of any right under Articles 16, 17, 18, 19, 20, 21, 25 and 28.

Right to life (art. 6)

Regarding the current status of the moratorium on death, the Delegation recalled that the Criminal Code reduced from 45 to 5 the number of offences for which the death penalty is enforceable: murder under aggravated circumstances, terrorism, genocide, biocide and rape under aggravated circumstances. Besides, in June 2004, the Parliament adopted a law that

suspended the application of the death penalty. All death penalty sentences were commuted to 25 years of imprisonment. In terms of abolishing the death penalty, the Delegation stated that a referendum was required in order to amend the Constitution. The Delegation also drew attention to a law that was adopted in March 2005, which prohibits life imprisonment of women, juveniles under 18 and people more than 63 years old.

Moreover, the Delegation asserted that in 2003, over 34 death sentences that had been awarded, 16 were executed, and that in 2004, 7 death sentences were awarded. After the moratorium on death penalty, 29 death sentences issued before 2004 were commuted to life imprisonment.

Furthermore, the prohibition of expulsion, return or extradition to States where there is evidence that a person may be tortured was underlined. It was also stressed that a series of bilateral agreements were signed with China (legal assistance), Kazakhstan (legal assistance for civil, criminal and family affairs), Uzbekistan, India and Ukraine (extradition for the last three).

Freedom from torture; treatment of prisoners and other detainees; security of the person and freedom from arbitrary arrest (arts. 7, 9 and 10)

Measures were reportedly adopted to eliminate torture, and the Delegation stated that Tajikistan is trying to improve monitoring systems to ensure that people who commit torture are held accountable. Thus, the Criminal Code provides sanctions against investigators who forced a person to testify under threat or blackmail. The punishment is more severe if any physical violence is used and if such actions lead to serious consequences for the victim. The punishment for torturing a detainee is 5-10 years and dismissal from their job for a period of five years. The Criminal Procedural Code prohibits the people accused or involved in crime from being subjected to threat of violence during judicial proceedings.

As regards the statistics on complaints regarding allegations of torture under the charges of "*Complaints of torture*" (art. 117), "*Exceeding ones authority*" (art. 316), "*deliberately bringing someone innocent into custody*" (art. 348), "*forcibly extracted false confession*" (art. 353), and "*forcibly asking for bribe's*" (art. 354), in 2003-2004 there were 62 complaints of which 5 led to conviction. In 2003, 28 policemen were sentenced and in 2004 24 law enforcement officials were sentenced.

As of July 1, 2004, there were 2,000 persons in pre-trial detention out of 11,000 detainees.

According to the Delegation, citizens are aware of their rights and will bring complaints when their rights are violated. Moreover, the system responsible for correctional facilities was transferred to the Ministry of Justice and it was said that the Ministry of Justice is working with internal organisations and NGOs to reform the system. For instance, 150 people were trained to do national training about the reforms. The delegation underlined their interest in expanding the use of alternative measures and have drafted amendments to develop this practice. In May 2004, legislation was adopted to amend the Criminal Code reduce sentences, in order to replace in many cases sentences by fines. Yet, the Delegation acknowledged that not all conditions of detention were in line with international standards and that a lot of reforms were still needed.

The Delegation also recalled that only the court prosecutor could ask for pre-trial detention, and that detention is limited to two months. It can be extended up to six months by the prosecutor, up to 9 months by the public prosecutor of Tajikistan if the case is particularly complicated, and up to 15 months by the public prosecutor of Tajikistan if serious crimes have been committed. The person under arrest has the right to appeal the decision of the prosecutor of prolongation of his/her detention. If the appeal is received, the prosecutor must send to the court, within 24 hours, the evidence reaffirming the legality of the detention (cpc art. 221.1). The court has then three days to examine the case.

In accordance to the Constitution, everyone under arrest has the right to consult a lawyer when officially detained. But it is rare that people have a lawyer from the beginning of their detention.

Right to a fair trial (art. 14)

According to article 92 of the Constitution, legal assistance is guaranteed at every stage of the investigation and trial, and according to article 49 of the Penal Code, the defence lawyer can participate in a case as soon as charges are issued. Yet, in practice several difficulties are faced. The first is related to the shortage of lawyers insofar as Tajikistan has only 500 lawyers, and most of them are located in the major cities. In cases where it is not possible for the detainee to hire a lawyer, a lawyer is appointed by the investigator or court and expenses are paid by the State.

The constitutional law of the Republic of Tajikistan states that judges are appointed and dismissed by the President of the Tadjik Republic on submission from the Legal Council. The judges of the Supreme Court and the Supreme Economic Court are proposed by the President and appointed by the Upper Chamber of Parliament. Until recently, judges were elected for five years. But following amendments on the Constitution, the term of office was extended to 10 years. After this term, judges can be appointed or re-elected for another 10 years term.

The government bodies responsible for countering terrorism are the Ministries of Security, of Interior, of Defence and of Emergencies, as well as the State Guard and the customs officers. The Delegation stated that there was no specific legal provision for terrorist suspects.

Freedom of religion and belief (art. 18)

According to the Tajik Delegation, there are 3,029 mosques, 85 non-Islamic places of worship and 20 religious training facilities accompanied by one university of a religious nature, in accordance with article 14 of domestic law. The delegates told the Committee that all the religious activities undertaken by the State are in direct compliance with the law. In addition, the Committee was concerned about the rights of homosexuals in the society. The delegates commented that while Tajikistan does not accept homosexual marriages, there is no punishment for non-coercive sexual relations between individuals of same sex.

Right to freedom of expression, assembly and association; right to take part in the conduct of public affairs (arts. 19, 21, 22 and 25)

The Delegation commented that members of the group Hizb'Ut-Tahrir, who had been arrested and sentenced to prison, were accused of, among others, inciting national religious and anti-racial riots. It underlined that it is illegal for anyone under the age of 17 to join an association.

The Delegation denied the arrest of journalists in connection with their profession. Although the Committee expressed its concern about journalists and the right of freedom of the press, the Delegation did not comment on this matter. They did however refute a claim that a Mr. Talibiv was persecuted for being a journalist, saying he was not a journalist.

Moreover, political parties in Tajikistan are regulated by the Law on Political Parties. Two parties were thus denied party status, as they accordingly did not meet the law requirements, including voluntary membership.

Furthermore, the Delegation stated that the concept of NGOs is not used in Tajikistan, and that the right to form associations to protect the common interest is regulated by the law. The associations can perform whether registered or not. However, if they are not registered they are not considered as a legal organisation.

Committee members were also concerned about the burning of mosques and whether it was related to the Hizb'-Ut-Tahrir group. It was answered that this group was not the responsible one, however the Delegation added that members of this group were "fanatics" whose stringent beliefs and radical action would not change.

Dissemination of the Covenant and the Optional Protocol

Finally, the Delegation underlined that the report presented before the Committee had been prepared publicly by experts appointed by the Committee to fulfil international obligations and the civil society, and had received help from the HRC and the UN Office for Peace Building. It was then sent to all Ministries and government bodies for their perusal and enforcement. The ICCPR was translated into Tajik and the Covenant was published in the government gazette and in fliers. The Delegation also added that human rights law and human rights courses were increasingly taught to law enforcement officers and judges.