



**International covenant  
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HUMAN RIGHTS COMMITTEE

Eighty-fourth session

SUMMARY RECORD OF THE 2286th MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 13 July 2005, at 3 p.m.

Chairperson: Ms. CHANET

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT AND OF COUNTRY SITUATIONS (agenda item 6)  
(continued) (CCPR/C/TJK/2004/1; CCPR/C/84/L/TJK; HRI/CORE/1/Add.128)

Initial report of Tajikistan (continued)

1. At the invitation of the Chairperson, the members of the delegation of Tajikistan resumed their places at the Committee table.
2. The CHAIRPERSON invited the delegation of Tajikistan to reply to further questions on the Committee's list of issues (CCPR/C/84/L/TJK).
3. Mr. BOBOHONOV (Tajikistan), replying to question 16, said article 18 of the Constitution guaranteed all individuals the right to life and the inviolability of their person, while article 19 guaranteed the right to a fair trial, legal representation and protection against arbitrary detention. The Code of Criminal Procedure and the Code of Administrative Offences set out the rules for detention: a brief period of detention was possible before or after the bringing of charges if deemed necessary to prevent the commission of a criminal act or to prevent escape or the destruction of evidence. Detention could be ordered by the procurator, the court or investigators. In accordance with article 82 of the Code of Criminal Procedure, detention could be for a maximum period of two months, with extension possible in complicated cases to a total of six months or nine months at the request of the prosecution; in the most serious cases detention could be extended to a maximum of one year and three months at the request of the Procurator-General. No further extension was permitted and the detainee would have to be released.
4. Under article 221 of the Code of Criminal Procedure, the detainee had the right to appeal his detention before a court within 24 hours; he had the right to be present in court if he so desired and the court had three days to review his detention and any extension. In accordance with articles 90 and 92 of the Code of Criminal Procedure, individuals detained by the National Security Service had a right to the services of a lawyer and other protections guaranteed by law.
5. Mr. KAHAROV (Tajikistan), referring to question 17, said that the Constitution guaranteed all individuals the right to have their case heard before an independent court and to have the services of a lawyer who, in accordance with article 268 of the Constitution and the Civil Code, had the right to see all material pertinent to the case. In practice, however, a detainee rarely enjoyed the services of legal counsel during his detention; legal counsel was usually not available until the detainee's case came before the courts.
6. Turning to question 18, he said that he would also address question 21, which dealt with a related matter. A defendant had the right to legal representation at all stages of the trial and within 24 hours of being detained. If he did not have counsel, the procurator or the court could assign a lawyer to the defendant's case. The defendant could also be represented in court by a family member or a representative of, for example, a trade union. In practice, however, it was difficult to find a lawyer because there were only approximately 500 in the whole country, most

of them based in the capital and major cities. In remote areas there might be only one lawyer; a detainee could call on a family member to act as his advocate because of the difficulty of finding a lawyer, especially within 24 hours. In cases where the detainee could not afford a lawyer, one was appointed and his expenses were paid by the State. Efforts were being made to improve the situation.

7. With regard to question 21, he said that during court proceedings both the prosecutor and defence counsel had equal rights to see all evidence, a principle which was strictly applied by the courts. While at times the prosecution was perceived as having more influence than the defence because of its status as representative of the State, they were considered equal before the courts and had equal rights to appeal any decision. In 2004, due in part to the shortage of lawyers, relatively few cases had been defended by lawyers before the courts. Any decision arising out of a proceeding during which the defendant had not had legal counsel was considered invalid.

8. Mr. WIERUSZEWSKI expressed regret at the late submission of the State party's report; while it constituted a good effort, more information was needed on the practical implementation of the rights guaranteed under the Covenant. He noted that the report had been prepared in close consultation with civil society and that there had been positive developments such as the State's accession to various international human rights instruments, the transfer of responsibility for prisons from the Ministry of the Interior to the Ministry of Justice, and the establishment of the Government Commission on ensuring compliance with international human rights obligations. That commission could be a particularly useful tool in promoting and protecting human rights.

9. With regard to question 1 of the list of issues, on the status of the Covenant under domestic law, he took note of the fact that, pursuant to article 10 of the Constitution, the provisions of an international treaty would prevail over domestic law but wondered whether, in practice, a court could directly invoke the Covenant and base its decision directly on the latter, or whether a ruling from the Constitutional Court would be necessary.

10. Turning to questions 2 and 3 on the Optional Protocol, he recalled that it was the obligation of the State party to establish mechanisms to facilitate its citizens' appeals to the Committee and to ensure interaction with the Committee in matters involving such appeals. The Committee's interaction with the State party might take the form of a request for further information or a request for the implementation of interim measures, pending consideration of the appeal.

11. To date the Committee had received 25 communications from citizens of Tajikistan and had concluded its consideration of 4 of those communications. In two of the four cases, those of Saidora and Khalilova, the Committee had requested interim measures in the form of a stay of execution for the individuals concerned, but the State party claimed the Committee's request had never been received. He asked if the delegation could explain how a request sent by the Committee secretariat to the State party's mission in New York, which had confirmed receipt of the Committee's request, had never reached the competent authorities. The Committee had also requested further information in relation to the four communications, but had only received a response relating to one of the communications.

12. He pointed out that some of the Committee's requests for information and interim measures had been made in 2003 and 2004, after the establishment of the Government Commission on ensuring compliance with international human rights obligations. It was essential that the State party thoroughly investigate such situations with a view to ensuring that they did not recur. The State party should also ensure adequate follow-up to the Committee's views on human rights violations involving, for example, the use of torture; those views should be duly taken into account, with systemic reforms to prevent future abuses as well as specific measures to ensure compensation and/or new trials for victims. There was an urgent need for the State party to address those matters in order to avoid tarnishing its image and to prove its commitment to implementing the provisions of the Optional Protocol and the Covenant. He would welcome the delegation's views on how to ensure effective communication with the Committee in the future.

13. The statistics regarding gender equality were discouraging, and the Committee was concerned that the situation had not improved over recent years. Although important institutional changes had been made, such as the establishment of the Committee for Women's and Family Affairs and the Coordinating Council on Gender Issues, those bodies must function effectively to ensure equality between the sexes. He asked whether legislation was in place to prohibit discrimination on the basis of sexual orientation. Although the Government's figures for convictions in cases of domestic violence were low, that did not necessarily mean that domestic violence was a rare occurrence. It was often a hidden problem, since victims were afraid to speak out. He asked to what extent support and shelter were offered to victims of domestic violence, since the problem could not be solved without adequate victim protection.

14. He expressed concern that punishment for polygamy had been used against people who opposed the Government. He wondered whether punishment was the most effective method of eliminating polygamy and forced marriages, and asked whether the Government was considering any other measures to address those issues. Although it was a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Tajikistan had one of the worst records for trafficking in persons. He wished to know what measures were being taken to address the root causes of trafficking, such as poverty.

15. He asked the delegation to comment on the information it had provided to the Security Council's Counter-Terrorism Committee, which had stated that the Government had been looking into the question of re-registering refugees from Afghanistan. He particularly wished to know whether that process had been completed, how it had been conducted, whether the refugees in question had adequate legal guarantees, and whether any of them had been deprived of their refugee status, and if so, on what grounds.

16. Mr. ANDO said that the Committee had adopted decisions on four communications from individuals in Tajikistan, on issues relating to the death penalty. In two of those cases, the Government had not fully cooperated with the Committee's request for interim measures. He wished to know whether the Government Commission on ensuring compliance with international human rights obligations was responsible for seeing to it that the Committee's recommendations were fulfilled. He commended the fact that the Commission allowed NGO representatives to participate in the drafting of periodic reports to treaty bodies, and hoped that transparency in

Tajikistan's human rights protection system would continue to increase. Although the Committee had received replies from the Government of Tajikistan on three of its four decisions, those replies simply reiterated information previously sent to the Committee. He hoped that if any new information became available, the Government would transmit it to the Committee as soon as possible.

17. Turning to the constitutional decision annulling provisions of domestic law that were incompatible with the Covenant, he asked whether those domestic provisions had been invalidated immediately on the adoption of that decision, or whether they were undergoing revision. He also asked whether the decision could be retracted, and if so, whether there was a system in place to provide compensation to victims of injustices.

18. Ms. PALM commended the State party's progress in reducing the use of the death penalty. According to the Tajik Constitution, death sentences could only be handed down for the gravest categories of crime, such as murder, terrorism, biocide, rape and genocide. She wished to know if precise definitions of those crimes existed in Tajik legislation. She asked whether the moratorium on the death penalty, which had been decided in April 2004, had entered into force immediately. There had been 50 executions in 2004, and she took it that they had been carried out before April of that year. She wished to know the date of the most recent execution.

19. She asked whether the moratorium on the death penalty applied only to executions themselves, or if it also applied to the handing-down of death sentences. If a particularly serious crime, such as a terrorist attack, had been committed, could a court sentence the perpetrators to death, and if so, what procedure would ensue? The Committee had been informed that for certain crimes, the death penalty had been replaced by a sentence of 25 years' deprivation of liberty. She wondered whether the death penalty had officially been abolished for those crimes, or whether life imprisonment was merely an alternative. Further information would be appreciated on the specific regime of the institutions in which prisoners serving life sentences were held, such as how prisoners were treated and how many prisoners were held in those institutions. She wished to know whether a referendum on the total abolition of the death penalty was planned for the near future.

20. Sir Nigel RODLEY said that although Tajikistan had domestic legislation on expulsion that was in line with its international refugee obligations and article 3 of the United Nations Convention against Torture, no information had been provided on how those norms were applied in practice. The Office of the United Nations High Commissioner for Refugees (UNHCR) had reported that Tajikistan had returned Afghan and Uzbek refugees, despite the individuals in question having been at serious personal risk in their countries of origin. Human Rights Watch and the International Committee on the Elimination of Racial Discrimination had also expressed deep concern about the State party's disregard for the principle of non-refoulement. He wished to know how the Government ensured that it was not in violation of articles 6 and 7 of the Covenant.

21. As to allegations of torture and ill-treatment by police and security officials, the delegation had only provided information on legal background. Information on current practices and measures to prevent the use of torture by law enforcement officials would be appreciated. The delegation had stated that the punishment of law enforcement officials involved in the death

of a public official had been an isolated case. He wished to know in what respect that case had been isolated. He asked whether the Government considered torture, which had been the subject of four individual communications to the Committee from Tajikistan, to be a serious problem. Article 354 of the Criminal Code appeared to apply only to the use of coercion to extract confessions. He wished to know whether it could also apply to the use of coercion to obtain information.

22. A breakdown of prison population by capacity would be appreciated, in order to give the Committee a clearer view of any problems of overcrowding in Tajik detention institutions. The Committee had been informed that pre-trial detention conditions were poor, and the delegation's comments on that question would be welcome. He requested statistics on the numbers of female detainees in pre-trial and correctional detention facilities. He welcomed the transfer of responsibility for detention procedures from the Ministry of Justice to the Ministry of the Interior, and commended the increase in transparency in those procedures. NGOs had, however, reported a decrease in access to detention facilities since that transfer of responsibility. He wished to know whether that was simply a transitional problem, and what measures were being taken to overcome it.

23. Although a person detained on the order of a prosecutor theoretically had the right to challenge the justification or lawfulness of that decision, the viability of that process was questionable. It was also unclear how that provision was compatible with article 9 of the Covenant. As a rule, placement in detention required a judicial order and he called on the State party to take appropriate measures.

24. It had been brought to the Committee's attention that lawyers were sometimes denied access to detainees for extended periods. Access was reportedly only granted at the time of registered detention, not de facto detention, and the time elapsing between the two was often considerable. He asked how the State party intended to remedy that problem. Furthermore, he wished to know whether it was true that prosecutors or investigators were authorized to deny lawyers access to detainees. Access to a court-appointed lawyer also seemed problematic; courts could only arrange for the assignment of a lawyer once the person had been brought to trial and lengthy periods of pre-trial detention seemed to be rather common.

25. Pursuant to article 18 of the Criminal Code, a person could be held in administrative detention for up to 15 days. That provision posed problems with regard to article 9 of the Covenant. It also opened the door to possible abuse, since the authorities had unsupervised control over detainees during that period.

26. Mr. O'FLAHERTY said that human trafficking had been identified as a matter of grave concern in the State party. Despite the adoption of several commendable measures, persistent institutional and governmental shortcomings might require attention. The Committee's attention had been drawn to the lack of training for law enforcement officials in victim rights and victim support. Resource allocation for victim care, rehabilitation and reintegration appeared to be largely inadequate. Tajik diplomatic missions abroad reportedly lacked the resources to engage in counter-trafficking activities and Tajikistan had not entered into any relevant collaborative agreements with other States. It had also been suggested that some individual staff members

of the Ministry of the Interior might be complicit in trafficking. He asked the delegation to comment on the veracity of those allegations and to explain how the Government intended to rectify the situation.

27. Mentally disabled or psychiatrically ill persons who had been declared legally incapable could reportedly be placed in psychiatric institutions indefinitely by their relatives or legal representatives, provided the latter had obtained the agreement of a doctor. That process did not appear to be subject to any judicial control and the persons' release depended on the goodwill of the relatives or the management of the respective institution. He asked what measures the State party intended to take to address that problem.

28. Mr. AMOR asked the delegation to clarify the competence of the Constitutional Court with regard to the interpretation and application of the law. He also wished to learn of the status of the Covenant in relation to domestic legislation, including the Constitution. He wondered whether the task of monitoring conformity of the Constitution with the international instruments to which Tajikistan was a party fell to the Constitutional Court.

The meeting was suspended at 4.30 p.m. and resumed at 5 p.m.

29. Mr. VATANOV (Tajikistan) said that the Constitutional Court had the power to directly invoke the Covenant when settling legal disputes. Courts of general jurisdiction, on the other hand, did not invoke the Covenant, but sometimes drew on the provisions of other international instruments. The provisions of the Convention on the Rights of the Child, for example, were invoked in proceedings relating to intercountry adoption.

30. According to the Criminal Code, a very serious crime was understood as conduct constituting an offence punishable by a minimum of 12 years' imprisonment. The imposition of the death penalty was restricted to murder or rape with aggravating circumstances, terrorism, biocide or genocide. In practice, death sentences had been handed down for murder or rape with aggravating circumstances only. The moratorium on the death penalty applied to the imposition and execution of a death sentence for any crime, regardless of its gravity. The 14 persons executed in 2004 had been sentenced prior to the declaration of the moratorium on 30 April of that year. Death sentences handed down afterwards had been reviewed by the courts; the persons concerned had either been granted a presidential pardon or had had their sentences commuted to a maximum of 25 years' imprisonment. Life imprisonment had only recently been introduced into the Criminal Code, primarily as an alternative to capital punishment. Tajikistan's "special regime" prison colonies had erroneously been translated as "strict regime" colonies. Those institutions were intended for particularly dangerous repeat offenders.

31. The abolition of the death penalty had been extensively debated over many years. Local NGOs had carried out a number of surveys, which had revealed that between 70 and 80 per cent of the population were in favour of maintaining capital punishment. In the light of that circumstance, a referendum on the question had been postponed; it had appeared judicious to declare a moratorium instead. Holding a referendum would require considerable time and resources. Unless awareness-building activities were carried out, the electorate was likely to vote in favour of maintaining the death penalty. The Government was nevertheless exploring the possibility of a referendum.

32. Mr. KHAMIDOV (Tajikistan) said that, pursuant to article 10 of the Constitution, international instruments, once ratified, became an integral part of domestic legislation and were thus applicable. Unlike in other countries, that process did not require the adoption of specific legislation. Unfortunately, law enforcement officials and judges were often reluctant to apply the relevant provisions. The Government therefore conducted training activities to enhance judges' awareness and acceptance of international law. As in other post-Soviet societies, changes to deeply entrenched attitudes could only be achieved over time. The declaration of the moratorium on the death penalty illustrated his Government's commitment to that process.

33. Mr. BOBOHONOV (Tajikistan) said that forced marriage was punishable by law. Both the Government Committee for Women's and Family Affairs and the Government Committee for Youth Affairs conducted awareness-building activities in that regard, in particular among women and girls. Engaging in sexual relations with minors was characterized as a criminal offence; cross-generational sexual relations involving persons under 14 years of age were considered to constitute rape. The representative of the Islamic Renaissance Party of Tajikistan had been found guilty of engaging in sexual relations with a minor under 14 and had been punished accordingly. Twelve persons had been brought to justice on charges of having engaged in sexual relations with minors; the majority had been law enforcement officials.

34. Procurators and investigators did not have the right to prevent lawyers from participating in court cases. On the contrary, if the accused refused to call on the services of a defence lawyer, the State provided counsel and paid the resulting fees.

35. Torture had been used to extract confessions from the persons arrested for murdering the head of the local authority in Sogd. Material evidence had later proved that those confessions had been based on false testimony. The torture victims had been released and the true perpetrators brought to justice. The police officers who had committed the acts of torture had been sentenced to varying periods of imprisonment.

36. Mr. BOBOHONOV (Tajikistan) said that 211 law enforcement officials had been convicted of using torture or other cruel, inhuman or degrading treatment on detainees or suspects over the previous two years. Steps were being taken to eradicate such abuses in future.

37. Mr. KAHAROV (Tajikistan) added that the Ministry of the Interior had introduced a special certification requirement for the recruitment of judicial staff. All officials believed to have violated citizens' rights, and their direct superiors, were brought to justice.

38. Mr. DJONONOV (Tajikistan) said that, having adopted a law prohibiting trafficking in persons in 2005, the Government had established a special commission to implement it. Working in close cooperation with the International Organization for Migration (IOM), the authorities had ascertained that most Tajik victims of trafficking were sent to the United Arab Emirates. The commission had set up mechanisms designed to facilitate the return of those people to Tajikistan. An international conference on people-trafficking had been held in Dushanbe in April 2005, in conjunction with IOM.

39. Mr. KAHAROV (Tajikistan) added that several individuals and gangs had been convicted of trafficking in children and sex trafficking since the new legislation had been introduced. A unit established within the Ministry of the Interior had organized training for staff to specialize in the prevention of people-trafficking, with the assistance of IOM.

40. A total of about 473 women were currently in prison in Tajikistan.

41. Mr. KHAMIDOV (Tajikistan) said that the definition of terrorism in the Criminal Code was based on the subject, the object and the content of the offence.

42. Prison overcrowding, and prison conditions in general, were of great concern to his Government. His delegation welcomed Mr. Wieruszewski's suggestion that the international community might provide financial and other assistance to improve prison facilities and to train prison staff. His Government was willing to cooperate with international partners in that area. Despite scarce resources, the Government's commitment to improving the prison situation was clear from the fact that two new prison facilities were currently near completion. While he had no knowledge of the NGO visit after which the prison situation had reportedly worsened, he affirmed that his ministry was always willing to receive visits from members of civil society.

43. In Tajikistan, the Constitution was interpreted by parliament. While the Constitution took precedence over all international legislation that had been ratified by Tajikistan, international instruments prevailed over domestic legislation. International instruments had been successfully invoked in two court cases.

44. Mr. DJONONOV (Tajikistan) said that about 200,000 refugees from Afghanistan had fled to Tajikistan during the Taliban regime. Many of them had later travelled to other countries in the Commonwealth of Independent States or to Europe. His Government had signed an agreement on the legal status of the UNHCR office in Tajikistan. Registration of the remaining Afghan refugees was currently under way, with technical assistance from UNHCR. Over 1,000 Afghan citizens had travelled from Tajikistan to take up residence in Canada in January 2005, and a further 600 Afghan families had voluntarily returned to Afghanistan. According to the most recent data, about 2,600 Afghan refugees were currently living in Tajikistan. The Government was striving to provide them all with adequate housing and with education in their own language. Several Afghan refugees who had been given a second passport and a visa by the Tajik authorities had been found guilty of trading across the Afghan border; those cases would be handled by UNHCR and were still pending.

45. Mr. KHAMIDOV (Tajikistan) said that there were no provisions relating to sexual orientation in his country.

46. He thanked the Committee members for their questions and assured them that all constructive criticism would help to improve the situation of human rights in his country.

The meeting rose at 5.55 p.m.