



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

Distr.: General
15 August 2012

Original: English

Committee on the Elimination of Racial Discrimination
Eighty-first session

Summary record of the 2172nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 9 August 2012, at 10 a.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Sixth to eighth periodic reports of Tajikistan (continued) (CERD/C/TJK/6-8; CERD/C/TJK/Q/6-8)

1. *At the invitation of the Chairperson, the delegation of Tajikistan took places at the Committee table.*
2. **Mr. Mengeliev** (Tajikistan) said that under the Constitution all persons were equal before the law and the courts and had equal rights and opportunities, regardless of ethnicity, race, religion and other factors. Under article 10, international legal instruments ratified by Tajikistan were part of the country's legal system and, where such international legal instruments were at variance with domestic legislation, the provisions of the international legal instruments prevailed.
3. Under the International Treaties Act, Tajikistan advocated strict observance of international treaties and confirmed its commitment to fulfilling in good faith the obligations that it had undertaken under international law. The Code of Economic Legal Procedure, the Code of Criminal Procedure and the Code of Civil Procedure had introduced the adversary system in court hearings and ensured equal rights for all parties to judicial proceedings. Persons were entitled under the law to claim that their rights had been violated by invoking the Convention before the courts. Under the Codes, the courts were required to apply the international human rights law recognized by Tajikistan. Courts were thus governed not only by the rules of domestic legislation but also by international instruments to which Tajikistan was a party. Under criminal procedural law, courts did not act as procuratorial bodies nor did they act on behalf of the prosecution or the defence. In addition, violations of the equal rights of citizens were treated as offences punishable under the Criminal Code.
4. In accordance with domestic criminal law, incitement to hatred constituted a form of complicity in an offence. The Criminal Code specified criminal liability for incitement to ethnic, racial, regional or religious enmity. The desecration of mortal remains or burial sites, the organization of extremist organizations and genocide in connection with racial discrimination were provided for in criminal law. Tajikistan had specific legislation to combat extremism, which covered incitement of racial, ethnic, social and religious enmity, mass riots, vandalism, offences against the dignity of an ethnic group, and advocacy of notions of ethnic or racial superiority or inferiority based on attitude to religion or social, racial and ethnic background.
5. Turning to the question raised concerning criminal and administrative liability for acts involving racial discrimination, he referred to article 189 of the Criminal Code, which was described in paragraph 12 of the report. He also referred to article 374 of the Code of Administrative Offences, mentioned in paragraph 14, which covered the production, storage, import or distribution of media products containing information or material aimed at disseminating propaganda for or arousing social, racial, ethnic or religious discord. The Local Government Authorities and Village and Rural Communities Self-Government Act required public officials to comply with the principle of equality and prohibited any form of racial discrimination in the performance of their duties. Issues of racial discrimination were also dealt with in the Labour Code and Family Code.
6. The right of participants in a trial to speak their mother tongue or use the services of a court interpreter was inalienable. Court proceedings in the country were conducted in the official language, Tajik. However, procedural legislation guaranteed ethnic minorities the right to be heard or defend themselves in court in their own language, including Russian,

Uzbek, Kyrgyz and Turkmen. Court proceedings could be conducted in minority languages where large numbers of minority ethnic groups had settled historically, for example ethnic Kyrgyz in the Murghob and Jirgatal districts, Turkmen in Jilikül district or Uzbeks in the Kabutiyon and Shaartuz districts. In some instances, the judges themselves required interpretation.

7. Replying to the question raised concerning efforts to combat terrorism, he said that counter-terrorist activity in the country was based on the principle of the lawfulness of inflicting harm on terrorists. That did not mean that terrorists could be harmed during criminal proceedings to obtain evidence. Article 7 of the Counter-Terrorism Act specified the authorities involved in combating terrorism, including the State National Security Committee, the Ministry of Internal Affairs, the Ministry of Defence and others. Those authorities were regarded as law enforcement bodies. The use of coercive measures such as restraining devices or weapons was regulated by the law. Any harm caused to terrorists by the State's counter-terrorism measures must be legally justified and within the bounds of the law. Furthermore, the use of torture was prohibited by law. Under article 10 of the Code of Criminal Procedure, respect for the honour and dignity of the individual was a responsibility of officials and agencies conducting criminal proceedings. No party to criminal proceedings could be subjected to violence, torture or other cruel or degrading treatment. The use of torture was a criminal offence punishable under the law and the relevant provision of the Criminal Code was in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. With respect to marriages with foreign nationals, he said that the Family Code as amended in 2011 had established additional requirements for marriages between Tajik citizens and foreign nationals, including residence in Tajikistan for at least a year and a mandatory marriage contract. The requirements had been prompted by appeals from Tajik women who had married foreign citizens and left the country only to find that their spouses were still legally married to other persons. Tajikistan did not recognize bigamy or polygamy. There were other instances in which Tajik women who had married foreign nationals had simply been abandoned and had been reduced to prostitution and other forms of exploitation. The amendments were thus introduced to prevent such cases or the contracting of sham marriages. The new restrictions did not discriminate in any way on ethnic, racial or other grounds. Under the current Code, marriage contracts must cover property rights, the rights and obligations for the care of children and care for a spouse incapable of working and in need of assistance. The amendments applied to Tajik citizens and foreign nationals alike.

9. Concerning religious associations, he said that a law had been adopted in 2009 on freedom of conscience and religious associations, which defined a religious association as a voluntary association of followers of a religion for the purpose of common worship, the performance of religious ceremonies, religious education and the spreading of religious beliefs. Religious associations included religious communities and religious organizations. The following were recognized as religious communities: local mosques for five daily prayers, local Jamatkhana religious societies, houses of prayer and other forms of communities that did not contravene the law. Religious organizations included nationwide religious centres, central major mosques, the central Jamatkhana, religious educational establishments, churches, synagogues and other forms of organizations that did not contravene the law. Tajikistan had a Committee on Religious Affairs that was responsible for defining those religious associations. He referred to the non-Islamic religious associations registered in Tajikistan listed in paragraph 71 of the report.

10. The Penal Enforcement Code of 6 August 2001 established the principle of equality of convicted persons before the law. All prisoners therefore enjoyed freedom of worship. Persons deprived of their liberty could request that representatives of religious associations

should be permitted to visit the facilities in which they were detained. They were also free to perform religious rites and to read religious literature provided that they complied with the prison regulations and respected the rights of other prisoners. The Ministry of Justice had not received a single complaint to date concerning violations of the rights of prison inmates to freedom of thought, conscience and religion.

11. He agreed that the two terms used in the legislation in force, deportation and removal, might lead to confusion because there was no clear-cut rule governing their applicability in practice. The Code of Administrative Offences, the Legal Status of Foreign Nationals Act and the Refugees Act used the term “removal”, whereas the legislation that regulated the activities of bodies working with refugees and foreigners used the term “deportation”. In practice, national security agency officials were entitled, under the Legal Status of Foreign Nationals Act, to remove foreigners, subject to the consent of a public prosecutor. For instance, if a person without regular identity documents arrived at the Tajik border, the border guards could recommend his or her removal from the territory on obtaining the consent of a public prosecutor. Foreign nationals within Tajik territory who broke the law could be removed pursuant to the Code of Administrative Offences on the basis of a court decision. However, the foreigner could appeal against the decision. The types of offences that could entail the penalty of removal were set out in articles 68, 476, 478, 497, 498 and 499 of the Code of Administrative Offences. The discrepancy between the two terms was associated with the enactment of the new Code in 2009. He agreed that steps should be taken to ensure consistent terminology in all relevant legal instruments.

12. Tajik legislation permitted the establishment of both registered and unregistered public associations. An association could thus be established without acquiring the status of a legal entity. Applications for registration as a legal entity were submitted to the Ministry of Justice. Twenty-four national minorities had established public associations.

13. The Public Council of the Republic of Tajikistan had been created in 1996 during a period of civil conflict in the country and had contributed to national reconciliation. It was a forum, chaired by the President of the Republic, which brought together representatives of the Government, Parliament, public bodies, political parties and national associations. Its principal goal was to promote a permanent dialogue between political entities and civil society organizations in order to achieve a balance of interests. Programmes and plans were also being implemented to promote and protect the rule of law and to ensure cooperation between the Government and non-governmental organizations (NGOs).

14. Human rights education had been incorporated in the curricula of establishments at all levels of education. In addition, the Government had adopted Decree No. 383 in 1997 on measures for the improvement of citizens’ legal education and of legal work. The Decree had provided for the establishment of a Methodological Coordination Council, which was chaired by the Minister of Justice and composed of the Minister of Education, the Minister of Culture, the Chairperson of the State National Security Committee, the Minister of Internal Affairs, the Prosecutor-General, the President of the Supreme Court, the Chairperson of the Higher Economic Court, the Chairperson of the Committee on Television and Radio Broadcasting, and the President of the Academy of Sciences. The Council worked with regional authorities, and compliance with its decisions was mandatory. It met four times a year to develop a workplan and guidelines for its implementation.

15. With regard to the Committee’s question about persons of African descent, a small number of students and employees of international organizations were of African descent. Two Africans had been amnestied and allowed to leave Tajikistan in 2011.

16. It was difficult to issue textbooks in Uzbek because of the need to convert Latin into Cyrillic script. Moreover, the Uzbek curriculum differed in some respects from the Tajik

curriculum. Although the cultures of the two countries were intertwined, there was a difference of approach to education. Agreements had been concluded with Uzbekistan and steps had been taken at the interdepartmental level to ensure that textbooks were provided to Uzbek schools. Teachers were being trained in national minority languages such as Uzbek, Russian and Kyrgyz in higher education establishments.

17. **Ms. Muhammadieva** (Tajikistan) said that a population and housing census had been conducted in 2010. A total of 2,334 people had self-identified themselves as Roma; men, at 1,158, accounted for 49.6 per cent of the total and women, at 1,176, for 50.4 per cent. The Roma population had thus declined from 4,249 in the 2000 census.

18. The total number of Roma aged 15 years and over was 1,248. Just four had completed and four had not yet completed higher education. Fifteen persons had completed vocational education, 267 had completed general secondary education, 195 had completed basic education, 522 had completed the first four grades of primary education, and 76 had had no schooling.

19. The economically active population, aged 15 years and over, totalled 324, of whom 37 were registered as unemployed with employment agencies. A total of 231 Roma were employed in agriculture, 4 in the industrial sector, 20 in the construction sector, 2 in the transport sector, 3 in restaurants, 4 in the civil service, 6 in the education system, 3 in the health-care system, 3 in the social welfare system, 1 in the cultural sphere, 2 in the retail trade and 6 in domestic employment; 2 were self-employed.

20. In response to the question as to why Roma lived in villages rather than in urban areas, she said that many of them lived in Varzob, which was within walking distance of the capital city, Dushanbe. Many Roma also lived in the Rudaki district, which extended south from Dushanbe.

21. Preparatory work for the 2010 population census had begun in 2005. The authorities had studied United Nations recommendations on methodology and classification with a view to enacting census legislation that complied with international standards. Criteria had been adopted, for instance, for the classification of nationality, income and area of employment. The Methodological Coordination Council had also studied the question of nationality. There had been 237 nationalities and ethnic groups in Tajikistan according to the 2000 census, but that figure had declined to 91 by 2010. The figures had been examined by a number of ministries and departments, a demographic institute and a consultant from the United Nations Population Fund (UNFPA). Experts from the Russian Federation and Kazakhstan had also assisted in the development of the standards and resulting documents, and the Tajik authorities had drawn on the data-processing expertise of a company based in Moscow.

22. Employment agencies run by the Ministry of Labour recorded the number of persons seeking unemployment benefit. About 55,000 people, or 2.6 per cent of the economically active population, were registered each year as being unemployed. However, owing to shortcomings in the existing data, surveys of the labour force had been conducted with the World Bank and the International Labour Organization (ILO) in order to establish the unemployment rate. Three ILO criteria had been applied: at the time of survey, the unemployed person should not be receiving income from another source, should have registered with an employment agency and should be prepared to take up employment immediately. The figure recorded for 2010 on the basis of those criteria was 11.5 per cent. The unemployment data had not been disaggregated on the basis of nationality.

23. A wide range of ministries, departments, research institutes and NGOs supported the work of the National Coordinating Committee for HIV/AIDS Prevention and Control. Several programmes to combat the epidemic had been adopted. The latest covered the period from 2011 to 2015. Since 1991 a total of 3,846 cases of HIV/AIDS had been

recorded and 552 people had died of the disease. Men had accounted for about 77 per cent of registered cases and women for some 22 per cent. There were also disaggregated data for people in different age groups, including children, and for the various regions of the country.

24. With regard to education, there were 35 higher educational establishments, 51 secondary vocational establishments, 66 technical and vocational establishments, 3,810 general education establishments and about 500 preschool establishments. There were also international schools offering tuition through the medium of English, Russian and other languages, depending on the structure of the population in different parts of the country.

25. **Mr. Mengeliev** (Tajikistan) said that article 189 of the Criminal Code set out liability for inciting national, religious, ethnic or clan hatred. According to Council of Justice records, 49 criminal cases had been tried under article 189 in 2008–2011. Those convicted under that article had largely been responsible for inciting religious hatred or supporting religious groups banned in Tajikistan. Regarding mixed marriages between Tajik nationals and foreigners, 3,196 such marriages had been registered since 2006.

26. **Mr. Ashurov** (Tajikistan) said that the Government Commission on International Human Rights Obligations had been established in 2002, was headed by the deputy Prime Minister and was composed of the first deputies of various ministries and heads of agencies. It examined all matters addressed in United Nations conventions and reviewed all periodic reports prepared by the various specialized working groups. A draft bill amending the Constitutional Act on Citizenship had been prepared in consultation with NGOs and the Office of the United Nations High Commissioner for Refugees (UNHCR) with a view to taking into account the provisions of the Convention on the Reduction of Statelessness, although Tajikistan was not a party to it. Between 2002 and 2010, the number of stateless persons residing in the country had grown from 293 to 1,364, of whom 31 had received residency permits in 2011 and 34 in 2012. Five out of the 90 applications for citizenship received from stateless persons had been granted. As to cooperation with civil society, NGOs had contributed significantly to the preparation of the report and the Panorama Foundation was preparing an alternate report on the situation of women, which unfortunately had not been completed in time for the interactive dialogue.

27. **Mr. Jononov** (Tajikistan) said that Tajikistan was contributing to the peace effort in Afghanistan and was supporting infrastructure projects in that country. Providing a statistical overview of Afghan refugees in Tajikistan, he said that the country was home to 60 per cent of the region's Afghan refugees, or more than 2,500 people, 58 per cent of whom were men and 42 per cent women. In 2010, the Commission for Determining Refugee Status had received 1,500 applications from asylum seekers, of whom 75 had been granted refugee status. Most Afghan refugees spoke Tajik and were therefore able to live and work easily in Tajikistan, mainly in retailing, teaching or mechanics. Most of the men had achieved a certain level of education and the children of refugees were entitled to free schooling on a par with Tajik children. With support from UNHCR, courses were offered in Dari at the secondary level. Tajikistan also encouraged voluntary repatriation and resettlement in third countries. As to Tajik nationals abroad, additional consular offices had been opened in the Russian Federation and Kazakhstan and diplomatic staff received training on human rights, in cooperation with the International Organization for Migration.

28. **Mr. Alizoda** (Tajikistan) said that the Office of the Commissioner for Human Rights (Ombudsman), of which he was the head, had been operational only since May 2009, included 24 staff divided into several specialized departments and had eight regional branches. Its mandate was to protect and promote human rights; receive complaints and petitions from all individuals, irrespective of their origin or legal status; cooperate with State, NGO and international partners; examine all draft legislation relative to human rights; and provide human rights education. In 2011, the Office had received over 750

petitions. Although a person did have to exhaust all legal remedies, including the court of cassation, before applying for assistance, in cases where the complaint concerned legal procedure, the Commissioner could intervene at any stage. The Office's expert council comprising representatives of Government, civil society and the media held frequent meetings to discuss relevant issues. With the support of international actors, the Office had designed a strategy for 2011–2015, which gave priority to combating torture and discrimination and included plans for annual monitoring. A more comprehensive human rights education programme was being prepared for all levels of education. The International Coordinating Committee of National Human Rights Institutions had assigned B status to the Commissioner's Office, which had taken on board the recommendations made regarding compliance with the Paris Principles.

29. **Mr. Mengeliev** (Tajikistan) said that, in terms of raising public awareness of the law, the Ministry of Justice and affiliate bodies had held 2,800 seminars in schools, businesses and communities, had prepared 600 television and radio broadcasts and had published 200 articles in the press.

30. **Mr. de Gouttes**, in reference to equal access to justice, said that promulgating laws was not sufficient, the Committee needed to know how they were applied and whether they could be invoked by defendants. He drew the delegation's attention to general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system for guidance on that topic. He asked whether courtroom interpretation services were provided free of charge to individuals who did not speak Tajik. Turning to recommendations made during the universal periodic review, he asked whether the State party intended to ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness and requested additional information regarding the proposed new Citizenship Act. Lastly, he asked about the modalities for banning certain religious organizations, particularly in light of the Act on Freedom of Conscience and Religious Associations of 26 March 2009.

31. **Mr. Kemal** asked the origin of the recent unrest in Gorno-Badakhshan and recalled the importance of disaggregated data for both the Committee and the Tajik Government.

32. **Mr. Mengeliev** (Tajikistan) said that many courts had staff with the requisite language skills, but when an external interpreter had to be brought in, the plaintiff usually shouldered the cost. That said, no complaints had been registered regarding an inability to cover such costs. Concerning statelessness, all the recommendations made following the universal periodic review had been incorporated into a programme of action that had been submitted to the Government. He recalled that the bill revising the Citizenship Act had been drafted in cooperation with UNHCR and a coalition of NGOs and would be submitted to the relevant ministries and departments for comment. Under the Act on Freedom of Conscience and Religious Associations, children were prohibited from performing religious rites during school hours, a provision made in the best interests of children, as advocated by the Committee on the Rights of the Child.

33. The Supreme Court had ruled on several cases involving counter-terrorism and extremism. There was a list of extremist organizations which were prohibited from operating in his country. Some 100 religious extremists had been convicted for taking part in illegal activities with those organizations.

34. While the media had originally attributed the recent unrest in Gorno-Badakhshan to ethnic tensions, Government forces had in fact taken action in response to the fatal stabbing of a top security official. That murder had been committed by an organized criminal gang that had been well known for preventing members of the judiciary from performing their functions by attacking judges, prosecutors and police officers. The remote mountain region was close to Afghanistan and had a complex, turbulent history.

35. The employment survey that had been conducted had followed the recommendations of UNFPA. The Government would, however, consider disaggregating its employment data by ethnic group in the future.

36. **Mr. Ashurov** (Tajikistan) said that the prohibition on women attending mosque services had not come from the Government. It had been the Council of Ulema, the country's highest Muslim body, that had issued a fatwa prohibiting women from attending mosques.

37. **Mr. Saidou** asked whether the Office of the Commissioner for Human Rights of Tajikistan was truly independent regarding the appointment of staff, particularly given that it had received B status from the International Coordinating Committee of National Human Rights Institutions. It would be useful to know whether the Office had the right to intervene in matters brought before the courts, and whether citizens could submit complaints to the Commissioner before taking them to court. He would welcome details of any human rights training that was provided to law enforcement and security staff, and on training for border guards on the rights of refugees and asylum seekers.

38. **Mr. Diaconu** (Country Rapporteur) said that, while there was no doubt that it was Government policy to eliminate racial discrimination and that international instruments prevailed over domestic legislation, a definition of racial discrimination in Tajik law was nonetheless necessary. Such a definition would be useful to both the authorities and Tajik citizens. The definition in the Labour Code unfortunately covered the area of employment only; he failed to understand why the Government did not introduce a definition that covered all areas.

39. Article 4 of the Convention referred to four activities that must be categorized as offences by States parties: dissemination of ideas based on racial superiority or hatred; incitement to racial discrimination; all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin; and the provision of any assistance to racist activities, including the financing thereof. If any one of the four was not covered in domestic legislation, steps should be taken to remedy that situation. It was not sufficient to include racist motive as an aggravating circumstance.

40. While it was perfectly legitimate to take action against fake marriages, the Government's approach in dealing with that issue constituted a violation of the Convention. Had the relevant law concerned all persons, regardless of the nationality of the spouses, it would not have constituted racial discrimination. He recommended that the State party find an alternative, non-discriminatory approach to that issue.

41. The State party should take steps to clarify the difference between departure and removal. He appreciated the clarification on the work of the Office of the Commissioner for Human Rights. The information provided in the periodic report had been misleading as it had indicated that people had to exhaust all legal remedies before they could bring a complaint before the Commissioner.

42. **Mr. Murillo Martínez** welcomed the news that there were 19 postgraduate institutes in the State party; it would be interesting to learn how many members of minority groups had access to that level of education. The number of people who had died in the State party as a result of HIV/AIDS seemed rather large relative to other countries where antiretroviral drugs were used to good effect. He asked why the mortality rate was so high. He also requested information on the level of participation of minority ethnic groups in decision-making entities in the State party.

43. **Mr. Alizoda** (Tajikistan) said that the Commissioner for Human Rights was appointed by the President, with the written agreement of parliament. The Commissioner was absolutely independent. In the wake of amendments to the relevant legislation in

March 2012, the Commissioner now had the right to request all documentation from court proceedings relevant to a case and to discuss the case directly with the procurator. The Commissioner also had the possibility to contest the court decision. Human rights education was provided to all law enforcement officers, members of the military and border guards.

44. **Mr. Jononov** (Tajikistan) added that, thanks to support from the Organization for Economic Cooperation and Development, specialist training in human rights was provided to border guards, particularly those working along the border with Afghanistan.

45. **Mr. Mengeliev** (Tajikistan) said that he had submitted a copy of a comprehensive report on HIV/AIDS in his country to the secretariat for Committee members to consult. No data were gathered on the nationality of the students at the 19 postgraduate institutions. Data on the level of participation of minority groups would be submitted to the Committee in writing.

46. **Mr. Diaconu** commended the State party for the tremendous progress it had made in many areas since the Committee's consideration of its previous periodic report in 2004. The Committee looked forward to receiving disaggregated data on the enjoyment of economic and social rights by minority groups. It would be useful to know where most minority groups were living. It was important for the State party to be aware of such information in order to be in a position to take special measures if, for example, a particular group was in a disadvantaged situation.

47. While welcoming the expanding role of the Commissioner for Human Rights, the Committee hoped the Office of the Commissioner would attain the status of a national human rights institution in accordance with the Paris Principles. At the consideration of the State party's next periodic report, the Commissioner should be in a position to act independently of the Government; it was part of the job of the national human rights institution to be critical of the Government.

48. The State party should pay more attention to education in minority languages in conjunction with the study of the official language, which would require specific teacher training and textbooks. It was necessary to ensure minority languages were taught in order to preserve the cultural and linguistic identity of the country's minority groups, which were an integral part of the State party's cultural wealth. Issues related to refugees and stateless persons could not be avoided, particularly given the geographical location of the State party. The Government must ensure that the human rights of all the people on its territory were protected, without discrimination on any grounds, including race and ethnic origin.

49. **Mr. Mengeliev** (Tajikistan) expressed his delegation's appreciation for the Committee's constructive questions and comments. They had helped to clarify the areas on which his Government needed to focus in order to improve its implementation of the Convention.

The meeting rose at 1 p.m.