



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/TJK/2004/1
11 April 2005

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

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

Initial report

TAJIKISTAN*

[Original: Russian]
[19 July 2004]

* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

**NATIONAL REPORT ON THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL
RIGHTS IN THE REPUBLIC OF TAJIKISTAN**

Article 1

1. The Declaration of Independence of the Republic of Tajikistan, adopted by the Supreme Soviet on 9 September 1991, proclaimed the people's right to self-determination and the State's commitment to abide by international law and international obligations and the principles for establishing a State governed by the rule of law.
2. The Republic of Tajikistan is a sovereign, democratic, law-governed, secular and unitary State that recognizes the inviolability of human rights and freedoms, as embodied in the Tajik Constitution adopted on 6 November 1994 by nationwide referendum.
3. The territory of Tajikistan is indivisible and inviolable; the soil, subsoil, water, airspace, and fauna and flora are all the exclusive property of the State, which acts as the guarantor of their efficient use in the interests of the people.

Article 2

4. Human beings and their rights and freedoms are the supreme value. The rights and freedoms of the person and the citizen are recognized, observed and protected by the State (Constitution, art. 5).

The rights and freedoms of the person and the citizen are regulated and protected by the Constitution and laws of the Republic and by international legal instruments recognized by Tajikistan (Constitution, art. 14).

5. Article 17 of the Constitution states that all persons are equal before the law and the courts. The State guarantees the rights and freedoms of every person regardless of ethnicity, race, sex, language, religion, political beliefs, education or social or property status.
6. Article 143 of the Tajik Criminal Code (1998 version) states that direct or indirect violation or restriction of the rights or freedoms of an individual or citizen on grounds of sex, race, ethnicity, language, social origin, personal, financial or official status, attitude to religion or other factors is a crime.
7. Any person requiring legal protection is guaranteed such protection under the laws of Tajikistan. Rights are protected by the legislature, the executive and the judiciary.
8. Article 19 of the Constitution states that every person is guaranteed judicial protection and the right to demand the review of his or her case by a competent and impartial tribunal established by law. The Constitution guarantees judicial protection to the victim and compensation for injury.

9. The Constitution of Tajikistan is the highest legal authority and its provisions are self-executing (Constitution, art. 10).

10. In order to enforce the provisions of the Constitution, a phased process of judicial and legal reform is under way, including the preparation and implementation of a series of legislative and organizational measures to ensure judicial protection and the punctilious observance of human rights and freedoms in accordance with the universally recognized norms and principles of international law.

11. The starting point for this reform was the Constitutional Act on the Status of Judges in Tajikistan, adopted on 3 November 1995. The Act contains safeguards of judicial independence that are applicable to judges at all levels and cannot be repealed or amended by other laws or regulations. A milestone in judicial and legal reform was the adoption on 3 November 1995 of the Constitutional Act on the Organization of the Courts, which established the court system, defined the procedure for assigning jurisdiction to judges, set out the constitutional provisions on the judiciary and its independence from the legislature and the executive, the inviolability of judges, the equality of all persons before the law and the courts, the open nature of judicial proceedings, and the involvement of citizens in the administration of justice as lay judges, social defenders and prosecutors. It also confirmed the binding nature of judicial decisions on all State bodies, officials, voluntary organizations and individuals and legal entities.

12. The ordinary court system includes military courts at the garrison level functioning as courts of first instance and the Military Chamber of the Supreme Court of Tajikistan. The jurisdiction of military courts and the procedures governing their establishment and operation are set out in the Constitutional Act on Military Courts of 3 November 1995, which states that military courts are ordinary courts administering justice in the Tajik armed forces and other military units and formations. Military courts are also independent, while subject to the Tajik Constitution, constitutional acts and other laws. Procedural law stipulates that the judicial decisions of military courts may be appealed in the civil justice system. Judicial decisions handed down by the Military Chamber of the Supreme Court that have not yet become enforceable, and judgements rendered at first instance and by way of cassation are examined by the Cassational Division of the Supreme Court of Tajikistan and by the Presidency of the Supreme Court.

13. An important element in strengthening judicial independence is the protection that the State affords judges, as provided for by the Constitutional Act on the Status of Judges in Tajikistan. This protection consists in the competent State bodies taking measures to ensure judges' safety and their legal and social protection. In order to enhance the prestige of the judiciary and uphold the working procedures of the courts, the position of court bailiff has been instituted in the court system.

14. In order to establish further prerequisites for the independent administration of justice, by his Decree of 14 December 1999 the President of Tajikistan established the Council of Justice of Tajikistan and, on 6 June 2000, the Council of Justice Act became law. This Act stipulates that the Council of Justice is a collegiate body with the task of organizing the work of the civil and

military courts (except the Constitutional Court, the Supreme Court and the Supreme Economic Court) through measures in the areas of human resources, finance and logistics. The Constitutional Act on the Courts of Tajikistan was adopted on 6 August 2001, consolidating previous statutes on the status of judges, court proceedings, the Supreme Court, the military courts, the economic courts and the Council of Justice Act.

15. With a view to democratizing judicial proceedings and broadening citizens' access to justice, new codes have been drafted and adopted: the 1997 Labour Code, the 1998 Criminal Code, the 1998 Family Code, the 1999 Civil Code (parts I and II) and the 2001 Penal Enforcement Code. Draft new codes of criminal, civil and economic procedure are currently in preparation, and work is continuing on a draft of part III of the Civil Code and the Code of Administrative Offences.

16. The Constitutional Court plays a special role in the legal protection of citizens. The Constitutional Court's decisions are final in protecting the rights of all persons whose interests could be affected by the enforcement of a legislative act held to be unconstitutional.

17. By its decision of 26 March 1996, the Constitutional Court ruled that the Decree of the Presidency of the Supreme Court suspending the effect of articles 6, 28, 48, 49, 53 (para. 1), 85, 90, 92, 97, 221 (paras. 1 and 2) of the Code of Criminal Procedure, which make provision for lodging an appeal with the court against pre-trial detention or the extension of custody, is inconsistent with articles 10 and 19 of the Constitution, under which every citizen is guaranteed judicial protection.

18. By its decisions of 12 June 2001 and 16 October 2001, the Constitutional Court ruled that article 329, paragraph 5, and article 339, paragraph 2, of the Code of Criminal Procedure, and article 303, paragraph 1, and article 337, paragraph 1, of the Code of Civil Procedure restrict the rights of the parties to judicial proceedings with regard to the lodging of protests or appeals against decisions of the Supreme Court handed down at first instance and are therefore inconsistent with articles 17, 19 and 20 of the Tajik Constitution and article 14 of the International Covenant on Civil and Political Rights.

19. Tajikistan has the following institutional mechanisms for the protection of human rights:

- The Office of the Procurator-General is the State body that monitors the correct and uniform application of the law by ministries, departments, committees, administrative bodies, voluntary associations, officials, economic entities irrespective of form of ownership, and citizens;
- The Ministry of Internal Affairs is the State administrative body with executive and administrative responsibility for upholding public order, ensuring the security of the individual and society and preventing crime;
- The Ministry of Justice is the State executive body that implements the State's legal policy and ensures that the rights and legitimate interests of citizens and legal entities are upheld;

- The Ministry of Security is the State executive body responsible for preventing acts that jeopardize the security of Tajikistan and, within the limits of its jurisdiction, ensures the security of individuals, society and the State;
- The Bar facilitates protection of the rights and legitimate interests of citizens and organizations, the administration of justice and the observance and strengthening of legality. The Bar's principal areas of activity are dispensing advice, explaining legal issues, providing representation in the courts and other State bodies in civil and administrative cases, and drawing up statements, complaints and other documents of a legal nature.

20. In order to assist the President and the Government in monitoring respect for the constitutional guarantees of the rights and freedoms of individuals and citizens, the Department (now the Office) for constitutional safeguards of citizens' rights under the authority of the Executive Office of the President was established in 1997. By its decisions of 7 September 2001 and 4 March 2002 respectively, the Government established the Government Commission on the Rights of the Child and the Government Commission on ensuring compliance with international human rights obligations.

21. In Tajikistan, bodies exist at every level to deal with issues concerning the family, women and children. The Majlis-i Namoyandagon (lower chamber) of the Majlis-i Oli (Parliament) of Tajikistan has a committee on social issues concerning the family, health care and the environment and a committee on constitutional legality, legislation and human rights, while the Majlis-i Milli (upper chamber) of the Majlis-i Oli has a committee on upholding constitutional principles, human and civil rights and freedoms, and legality. The Government Committee for Youth Affairs and the Government Committee for Women's and Family Affairs were established in 1991. The latter implements State policy on women's issues and the protection of women's rights and freedoms. The Government Commission on Juvenile Affairs has also been established.

A large number of non-governmental organizations (NGOs), many of which are involved with human rights issues, operate in Tajikistan.

22. Since independence, Tajikistan has ratified all six core international human rights instruments:

- The Convention on the Rights of the Child of 20 November 1989 (ratified in 1993);
- The Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (ratified in 1993);
- The Convention on the Elimination of Racial Discrimination of 7 March 1977 (ratified in 1994);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (ratified in 1994);

- The International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (ratified in 1998);
- The International Covenant on Civil and Political Rights of 16 December 1966 and its Optional Protocol (ratified in 1998).

All six international human rights agreements have been translated into the official language of Tajikistan and published in the official gazette *Jumhuriat* and in brochures in Tajik and Russian that have been widely circulated throughout the population.

Article 3

23. Equality between men and women is guaranteed in article 17 of the Tajik Constitution and regulated by the Criminal, Criminal Procedure, Civil, Family and Labour codes of Tajikistan, the Reproductive Health and Reproductive Rights Act and other national laws and regulations. Tajik legislation provides for the uniform legal regulation of all relations involving men and women, irrespective of gender, except where a distinction is made in order to extend such privileges to women (on physiological or other grounds) as are necessary to ensure that equal results can be achieved by men and women.

A bill on equal rights and opportunities for men and women is currently being examined by Parliament (the Majlis-i Namoyandagon of the Majlis-i Oli).

24. Article 47 of the Tajik Constitution stipulates that the rights and freedoms provided for under article 17 of the Constitution (i.e., the principle of equality between the sexes) cannot be restricted even in states of emergency.

25. Sex discrimination is a crime and is punishable as such. Article 143 of the Tajik Criminal Code (Violation of citizens' equality) states that:

“1. Direct or indirect violation or restriction of rights and freedoms of an individual or citizen on grounds of sex, race, ethnicity, language, social origin, personal, financial or official status, place of residence, attitude to religion, beliefs or membership of political parties or voluntary associations, that harms a citizen's rights and legitimate interests, shall be punishable by a fine in the amount of 200 to 500 times the minimum monthly wage, or deprivation of liberty for up to two years.

“2. The same offence committed by a person:

(a) Who uses or threatens violence;

(b) Acting in his or her official position - shall be punishable by deprivation of liberty for a period of two to five years with or without loss of the right to hold certain posts or engage in certain activities for up to three years.”

26. Article 18 of the Tajik Constitution stipulates that no one shall be deprived of life except pursuant to the judgement of a court and in accordance with the law. The death penalty is prescribed for a circumscribed group of particularly serious crimes. Any person sentenced to

death has the right to appeal the sentence and lodge a petition for mercy. The Criminal Code (Amendments and Additions) Act of 16 July 2003 abolished the death penalty for women. In April 2004, President Emomali Rakhmonov introduced a moratorium on the death penalty.

27. One aspect of women's right to life is the issue of reproductive health, greater attention to which has become a key health-care strategy for reducing infant and maternal mortality and women's dependence on abortion. Reproductive health centres have been established, the principal aim of which is to introduce new perspectives and approaches in the work of the Ministry of Health regarding the improvement of contraceptive assistance, mainly within the framework of primary medical care. In 1999, 34.6 per cent of women of childbearing age were using various types of contraceptives. That figure fell to 28.7 per cent in 2000, 22.8 per cent in 2001 and 15.3 per cent in 2002. However, women's dependence on abortion as a birth control method remains fairly high, although it is tending to decline (91.9 abortions per 1,000 births in 1999; 94.1 in 2000; 88.5 in 2001 and 77.6 in 2002).¹

Notwithstanding certain downward trends, the maternal mortality (53.0 per 100,000 live births in 1999; 44.6 in 2000; 46.6 in 2001; and 60.6 in 2002) and infant mortality (19.4 per 1,000 live births in 1999; 15.5 in 2000; 27.9 in 2001; and 16.6 in 2002) rates are still high.¹ Studies show that the main causes of infant and maternal morbidity and mortality are the public's lack of medical awareness, poor housing and amenities, and inadequate diet.

28. Citizens are free to choose whether and when to have children. Relations between men and women and family planning issues are based on equality, freedom and mutual responsibility and respect (Reproductive Health and Reproductive Rights Act, art. 9). The Tajik Criminal Code makes it an offence to force a woman to have an abortion (art. 124). In the period 1999-2003, there were four criminal prosecutions in this category, two of which resulted in court convictions.²

In order to prevent sex discrimination in the use of reproductive technologies (artificial insemination and embryo implantation), it is not permitted to choose the sex of the child, except where there is a possibility that a sex-related disease may be inherited. Nor is it permitted to perform a selective abortion depending on the sex of the foetus (Reproductive Health and Reproductive Rights Act, arts. 18 and 20).

29. In order to improve the status of women and their health, and to reduce maternal and infant mortality, the National Plan of Action for the Advancement of Tajik Women and the Enhancement of Their Status and Role for the period 1998-2005 was approved by Government Decision No. 436 of 5 November 2002 and is now being implemented. The Plan provides for the implementation, in cooperation with public bodies and NGOs, of the Public Health Protection Strategy for the period up to 2010, which outlines the following national programmes:

- Campaign against iodine deficiency disorders;
- Campaign against diarrhoeal diseases;
- Campaign against tuberculosis;
- Prevention of iron deficiency anaemia;

- Campaign against hepatitis B and its prevention;
- Campaign against tropical diseases;
- Prevention of and campaign against HIV/AIDS and sexually transmitted diseases.

The National Environmental Sanitation Action Plan.

Sectoral programmes:

- Promotion of breastfeeding;
- Campaign against acute respiratory infections.

The National Programme for Reproductive Health and Reproductive Law.

Educational programmes on matters affecting family health and primary health services, including antenatal care for pregnant women and the development of mechanisms to implement the State's guarantee of free medical care, including preventive care, for women and children.

30. Women are protected against violence under the Criminal Code, the Family Code, the Labour Code, the Reproductive Health and Reproductive Rights Act and other laws and regulations.

Under article 138 of the Criminal Code pertaining to rape, i.e. sexual intercourse with the use or threat of violence against the victim or her relatives, or taking advantage of the helpless state of the victim, shall be punishable by deprivation of liberty for a period of between 3 and 20 years, depending on legally defined aggravating circumstances, or sentenced to death. In the period 1999-2003, 296 criminal prosecutions were brought under this article, of which 188 resulted in court convictions.²

Under article 139 of the Criminal Code, violent acts of a sexual nature are punishable by deprivation of liberty for a period of between 5 and 7 years and, where there are aggravating circumstances, for a period of between 15 and 20 years.

Coercion to perform sexual intercourse or lesbian or other acts of a sexual nature using blackmail, the threat of destroying, damaging or confiscating property, or by exploiting the victim's occupational, financial or other dependence, shall be punishable by a fine of between 500 and 700 times the minimum wage, punitive deduction of earnings for up to two years or deprivation of liberty for up to two years (Criminal Code, art. 140). In the period 1999-2003, three criminal prosecutions were brought under this article, two of which resulted in court convictions.²

Women who become pregnant as a result of rape are guaranteed the reproductive right freely to choose whether or not to give birth to the child, the right to medical and social assistance, advice and counselling, and to treatment of the effects of artificial interruption of pregnancy (Reproductive Health and Reproductive Rights Act, art. 20, and Public Health Protection Act, arts. 33 and 61). Furthermore, the State guarantees the confidentiality of

citizens' recourse to the relevant bodies and organizations in connection with the exercise of their reproductive rights and the protection of their reproductive health. Accordingly, agencies, individuals and legal entities are bound to maintain the confidentiality of the information that citizens have had recourse to them (Reproductive Health and Reproductive Rights Act, art. 16).

In order to avoid pressure being put on women to establish a dependent relationship or conceal sexual violence, enforced pregnancy or enforced abortion is prohibited (Reproductive Health and Reproductive Rights Act, art. 9).

31. With a view to preventing all forms of violence against women and rendering assistance to victims of violence, the National Plan of Action for the Advancement of Tajik Women and the Enhancement of Their Status and Role envisages the establishment of crisis centres to offer moral and psychological support to women who have been subjected to various forms of violence, the establishment of a telephone hotline to offer support to victims of violence, the institution of a system of legal education for women on the issue of violence, and the undertaking of sociological research in various regions of Tajikistan to determine the prevalence and causes of the problem of violence against women. This action is being taken in cooperation with State structures and a number of NGOs, such as the Association of Tajik Women Scientists and the Khujand Association of Businesswomen. The Dilsuz centre for psychological and legal assistance has been established under the auspices of the Government's Committee for Women's and Family Affairs, and telephone hotlines that provide psychological counselling to women in crisis situations are operating in the provincial centres of Sogd and Khatlon oblasts.

In addition to the above, a number of comprehensive measures implemented jointly by public bodies and NGOs are regulated under the State programme on the principal areas of State policy to ensure equal rights and opportunities for men and women in Tajikistan for the period 2001-2010, approved by Government Decision No. 391 of 8 August 2001. Specifically, it is planned to establish a national research centre to collect and study information about incidents involving violence against women, open free legal advice centres for women, hold seminars and meetings with broad-based public involvement on the issue of violence against women and women's rights, organize special training on the issue of violence against women for staff of the Ministry of Internal Affairs, develop specific mechanisms for receiving complaints from and rendering assistance to abused women, develop and implement educational programmes for law enforcement officers, medical workers and journalists, and consolidate judicial practice in criminal cases involving violence against women. In the period 1999-2003, a total of 93 and 73 criminal prosecutions were brought under articles 116 (Beating) and 117 (Cruel treatment) of the Criminal Code that directly involved domestic violence or other abuse of women. Of these, 33 and 64 cases respectively resulted in court convictions.²

32. The criminal law in force in Tajikistan prohibits all forms of slavery and the slave trade. Abduction and unlawful deprivation of liberty are criminal offences (Criminal Code, arts. 130 and 131). Employment contracts concluded upon engagement for work must conform to labour legislation, which envisages free and fair work with equal pay for work of equal value. Recruitment for the purposes of sexual or other exploitation is a criminal offence (Criminal Code, art. 132). In the period 1999-2003, eight criminal prosecutions were brought under article 132 of the Criminal Code, five of which resulted in court convictions.²

Coercion to engage in prostitution and brothel-keeping are criminal offences (Criminal Code, arts. 238 and 239). In the period 1999-2003, 14 criminal prosecutions were brought under these articles, 10 of which resulted in court convictions.²

Following Tajikistan's ratification on 13 April 2001 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949, the Tajik Criminal Code was supplemented by article 130, paragraph 1, which criminalizes traffic in persons for the purposes of sexual or other exploitation.

Public information campaigns in the mass media, relevant publications and television programmes alert women leaving the country to the possible threat of forced labour or prostitution.

33. The Tajik penitentiary system is based on the principles proclaimed in the Covenant. Specifically, article 412, paragraph 10, of the Code of Criminal Procedure and articles 63 and 78 of the Penal Enforcement Code provide that men and women shall be segregated in corrective labour colonies. Girls sentenced to youth custody must be detained separately from adults. However, in view of Tajikistan's economic difficulties and the small number of girls sentenced to youth custody, at the present time girls are housed at a women's corrective labour colony together with adults, albeit in a separate section of the colony. A less rigorous regime operates at women's corrective labour colonies, and pregnant women and mothers are guaranteed care and medical treatment (Penal Enforcement Code, art. 101). Convicted women with children in homes attached to correctional colonies are permitted short-term release from the penitentiary to arrange for their child to be taken care of by relatives or guardians or in a children's home. Women with disabled children are permitted one period of short-term release a year to spend time with them (Penal Enforcement Code, art. 98).

Tajik criminal law empowers the courts to excuse pregnant women and women with children under 3 from serving their sentence - provided that the sentence does not exceed five years for serious or particularly serious crimes - for the same length of time that a woman may be excused from work in connection with pregnancy, childbirth or up to the child's third birthday, as prescribed by the law in force (Criminal Code, art. 78).

The number of women prisoners significantly decreased in the period 1999-2002 following an amnesty. A total of 669 women have benefited from remission of sentence. Thus, 18 sentences were remitted in 1999, none in 2000, 573 in 2001, 78 in 2002 and none in 2003.³

In 2003, with financial assistance from the Organization for Security and Cooperation in Europe (OSCE) Centre in Tajikistan, the school building at one women's correctional colony has been renovated, books have been purchased for the library, and a computer course has been started for girls in youth custody.

34. The equal right of women and men to have access to justice and a fair trial is guaranteed by the Tajik Constitution. Under the Constitution, everyone is equal before the law and the courts irrespective of sex. The testimony of men and women has equal status. Everyone is guaranteed judicial protection. Everyone has the right to demand that his or her case be

reviewed by a competent and impartial tribunal. The presumption of innocence operates with respect to all citizens (Constitution, arts. 17 and 19, and Code of Criminal Procedure, art. 8). These constitutional provisions are also reflected in the Code of Criminal Procedure (Code of Criminal Procedure, art. 9).

35. Women's status in society is further determined by the extent of their civil-law rights. In this connection, the requirements of article 16 of the Covenant are consistently reflected in domestic laws and regulations. Specifically, under current legislation, women and men have an equal right to recognition as a person before the law, i.e. they have the capacity to possess, use and dispose of property, to enter into contracts or exercise other civil-law rights. The right of a man or a woman to be recognized as a person before the law, as Tajik citizens, is embodied in articles 18 and 19 of the Civil Code, and may be limited only in accordance with the law or the judgement of a court, pursuant to a declaration that the bearer of the right has limited or no legal capacity (Civil Code, arts. 30 and 31). Article 9 of the Code of Civil Procedure guarantees that justice shall be administered in accordance with the principles of equality of citizens before the law and the courts, irrespective of their sex.

36. The equal right of men and women to freedom of thought, conscience and religion (Covenant, art. 18) is guaranteed in Tajikistan by the Constitution (art. 26), the Religion and Religious Organizations Act (art. 3) and the Criminal Code (art. 157).

It is not permitted to coerce a citizen to declare his or her attitude to religion, to profess or abjure a religion, to participate or refuse to participate in acts of worship, religious rites and ceremonies, or to study a religion. The exercise of the right to freedom of conscience is subject only to such restrictions as are necessary to preserve public safety and law and order, health and morality, and the rights and freedoms of other citizens as established by law and consistent with Tajikistan's international obligations (Religion and Religious Organizations Act, art. 3).

37. The Constitution and the Family Code assign to men and women the same rights in marriage, including the reproductive right to determine the number of children in the family and to control their birth spacing. Men and women are responsible in equal measure for bringing up and educating their children and exercising the rights of motherhood and paternity. While the principal obligation to ensure the best possible standard of living for children lies with parents, it is for the State to create the conditions to enable parents to perform their obligations (section IV of the State programme on the principal areas of State policy to ensure equal rights and opportunities for men and women in the Republic of Tajikistan for the period 2001-2010).

38. The principle of equal rights of the spouses upon entry into marriage, during marriage and at its dissolution is contained in article 33 of the Constitution, which states that everyone has the right to found a family. Men and women who have attained marriageable age have the right freely to enter into marriage. Spouses have equal rights in family relations and upon dissolution of the marriage. Polygamy is prohibited.

In addition to attainment of the marriageable age of 17, the mutual consent of the man and the woman entering into marriage is necessary for the marriage to take place (Family Code, art. 13). The giving away in marriage of a girl who has not attained marriageable age, by her parents or guardians, or by persons exercising authority over her, and likewise the brokering of

such a marriage or the offering of inducements to such persons to give a girl away, shall be punishable by deduction of earnings for up to two years, restriction of liberty for up to five years or short-term rigorous imprisonment for up to six months (Criminal Code, art. 168). In the period 1999-2003, 52 criminal prosecutions were brought under article 168 of the Criminal Code, 39 of which resulted in court convictions.²

Trafficking in minors is a criminal offence (Criminal Code, art. 167). In the period 1999-2003, 10 criminal prosecutions were brought for trafficking in minors, including girls. Four prosecutions resulted in court convictions.²

Polygamy, which infringes the rights of women and has an adverse effect on the upbringing of children, is a criminal offence. Under article 170 of the Criminal Code, bigamy or polygamy, i.e. cohabiting with two or more women in a single household, is punishable by a fine of between 1,000 and 2,000 times the minimum wage, punitive deduction of earnings for up to two years, restriction of liberty for up to five years or short-term rigorous imprisonment for between three and six months. In the period 1999-2003, 147 criminal prosecutions were brought under article 170 of the Criminal Code, 123 of which resulted in court convictions.²

In order to ensure the full and free consent of women to marriage, national legislation stipulates that marriage with a victim of rape shall not be deemed to qualify or discharge criminal liability. Nor shall rape serve as a ground for lowering the minimum age for entry into marriage.

Article 32 of the Family Code guarantees the equal rights of spouses in the family. Specifically, each spouse is free to choose his or her occupation, profession, activity, place of residence and current address. Questions of paternity, motherhood, upbringing and education of children and other issues of family life are resolved jointly by the spouses based on the principle of spousal equality.

39. A marriage contract shall not give rise to sex discrimination. Upon marriage, the spouses shall, as they wish, choose the surname of either one of them as their common surname, or keep their respective premarital surnames, or attach the surname of the other spouse to their own surname. A change in the surname of one of the spouses shall not entail any change in the surname of the other (Family Code, art. 33).

The marriage or dissolution of marriage between a citizen of Tajikistan and a non-Tajik citizen shall not entail a change in citizenship. A change in citizenship of one of the spouses shall not entail a change in citizenship of the other spouse. The dissolution of the marriage shall not affect the citizenship of any children born or adopted during the marriage (Constitutional Act on Citizenship of the Republic of Tajikistan, art. 8).

40. Articles 16 to 20 of the Constitutional Act on Citizenship of the Republic of Tajikistan regulate questions relating to the citizenship of children.

41. The equality of property rights of the spouses, as guaranteed in the Family Code, is very important for ensuring women's rights in the family. Thus, property accumulated by the spouses during the marriage is owned by them in common. The spouse who, during the marriage, administered the household, raised the children or for other valid reasons did not have an

independent income, also possesses the right to joint ownership (Family Code, art. 34). Spouses shall possess, use and dispose of property held in common by mutual agreement (Family Code, art. 35).

42. In the event of dissolution of the marriage, current Tajik legislation guarantees the equal rights of the spouses.

If in divorce proceedings one of the spouses does not consent to the dissolution of the marriage, the court takes steps to reconcile the spouses and is entitled to defer the proceedings by fixing a period of three months for the spouses to effect a reconciliation.

The marriage is dissolved if a court establishes that it is impossible for the spouses to continue to live together and preserve the family, and measures to reconcile the spouses have proved ineffective (Family Code, art. 22). However, a husband does not have the right without his wife's consent to initiate legal proceedings to dissolve a marriage while his wife is pregnant and for 18 months after the birth of a child (Family Code, art. 17).

Upon dissolution of the marriage, matters pertaining to the personal and property rights of the spouses are settled by the court, based on the principle of equality between the sexes, the interests of the children and taking account of the individual circumstances of each case and on the basis of the marriage contract (Family Code, arts. 34-42).

The Family Code also provides for and defines the conditions in which an incapacitated spouse may obtain a living allowance, both during marriage and after the dissolution of marriage (arts. 90 and 91).

43. In deciding matters of inheritance, gender is a legally insignificant factor. In all cases, women have the same right to inherit as men.

44. The benefits and allowances for women established by the Labour Code of Tajikistan are intended to make it easier for women to combine gainful employment with family responsibilities. Thus, pregnant women and women with children under 3 are prohibited from working overtime, at weekends, on official holidays, and from being sent on special assignments. Women with children between the ages of 3 and 14 (or 16 in the case of children with disabilities) may work overtime or be sent on special assignments only with their consent (Labour Code, art. 162).

Women are granted maternity leave of 70 calendar days prior to giving birth and 70 calendar days afterwards (86 days in the event of complications and 110 days if they give birth to two or more children), and are entitled to a State social insurance benefit (Labour Code, art. 164).

Upon expiry of maternity leave, a woman may be granted leave, if she wishes, to care for her child up to the age of 18 months. During this period, she is entitled to a State social insurance benefit.

Should she so wish, a woman may also be granted additional leave without pay to care for her child up to the age of three (Labour Code, art. 165).

While on leave caring for her child, a woman may, if she wishes, work part-time or from home, retaining her right to draw a State social insurance benefit.

A woman keeps her work (position) for the duration of her leave. Childcare leave is included in total and uninterrupted length of service, and also in length of service in a specialized profession (except where a pension is awarded in connection with special working conditions) (Labour Code, art. 166).

In addition to rest and meal breaks, a woman with a child under 18 months is allowed additional breaks to feed her child. Such breaks, each lasting at least 30 minutes, must be taken at least every 3 hours. Where a woman has two or more children aged 18 months, the break must last for at least one hour. Breaks to feed children are part of work time and are paid at the average wage rate.

Should she so wish, a woman may request that breaks to feed her child be added on to her rest and meal breaks, or that all the breaks be amalgamated and transferred to the start or the end of the workday, which would be shortened accordingly (Labour Code, art. 167).

At the request of a pregnant woman or a woman with children up to the age of 14 (or 16 in the case of children with disabilities), including a woman with guardianship over children, an employer must arrange for her to work a shorter workday or a shorter workweek (Labour Code, art. 168).

Pregnant women and women with children shall, at their request, be granted annual leave, either before or after maternity leave, or after childcare leave, irrespective of how long they have worked at the enterprise.

Women and men with two or more children under 14 or a disabled child under 16, and single mothers with children under 14 (or 16 in the case of children with disabilities), shall, at their request, be granted annual leave in the summer or at some other time convenient to them (Labour Code, art. 170).

45. In order to ensure women's reproductive rights and prevent discrimination against women in employment relations, provision is made for the criminal liability of the employer. For example, unfounded refusal to employ a woman on the ground that she is pregnant, or unfounded dismissal for the same reason, or unfounded refusal to employ a woman with a child under 3, or unfounded dismissal of a woman in this category, shall be punishable by a fine of between 300 and 500 times the minimum wage or punitive deduction of earnings for up to two years (Criminal Code, art. 155).

Discrimination in matters of pay is prohibited. An employer must remunerate workers equally for work of equal value. It is not permitted to modify pay terms in such a way that a worker is disadvantaged thereby (Labour Code, art. 102).

46. The provisions of article 22 of the Covenant as regards women have been incorporated into the Tajik Constitution. Under article 28 of the Constitution, all citizens have the right of association and are entitled to form voluntary associations, political parties and trade unions. A number of women's NGOs, including NGOs engaged in human rights activities (League of Women Jurists), have been established and are operating in Tajikistan. Some of them are working on gender issues (for example, the NGOs Society and Law, Women Scientists, and others). One characteristic of most of these NGOs, aside from the fact that they are "women's organizations" according to their charters, is that they are headed by women.

47. The provisions of article 25 of the Covenant are reflected in article 27 of the Tajik Constitution, articles 2, 6, 10, 31 and 32 of the Civil Service Act, article 4 of the Constitutional Act on Elections to the Majlis-i Milli of Tajikistan, and article 2 of the Constitutional Act on the Election of Deputies to Local Councils of People's Deputies, which stipulate that women and men shall have equal access to the civil service and equal involvement in the electoral process. Thus, the question of equal participation of men and women in shaping and implementing State policy has been legislatively resolved in Tajikistan. At the same time, however, a significant constraint on women's ability to exercise their rights under Tajik law is the fact that gender stereotypes and religious and traditional customs continue to exert a powerful influence in society. According to these stereotypes and customs, men are primarily responsible for supporting and protecting the family, whereas the role of women is to rear children and run the household. Sociological surveys show that this view is supported by a majority of women, particularly in rural districts.⁴ However, it should be noted that the difficult economic situation in Tajikistan and the relative poverty of the population have increasingly prompted women to try to resolve their families' financial problems. However, rather than working for the State, they usually enter the small business sector, where incomes are higher. Another problem is the low level of legal and political awareness among women (especially rural women) and their lack of psychological preparedness to participate in political life.

All of the above considerations have created a gender imbalance in Tajikistan's power structures. Bearing in mind that women account for 49.6 per cent of the total economically active population, the situation in the various State bodies of Tajikistan is as follows (data from December 2003).

Legislature

Post	Total	Men	Women	% men	% women
Majlis-i Oli (total)	97	81	16	83.5	16.5
Majlis-i Namoyandagon of the Majlis-i Oli	63	52	11	82.5	17.5
Majlis-i Milli of the Majlis-i Oli	34	29	5	85	15

Executive

Post	Total	Men	Women	% men	% women
Deputy Prime Ministers	6	5	1	83	17
Director of the Executive Office of the President and deputy directors	3	3		100	0
Ministers and chairpersons of State committees	24	24		100	0
Principal deputy ministers	25	24	1	96	4
Deputy ministers and deputy chairpersons of State committees	74	66	8	89	11
State counsellors to the President	5	5		100	0
Departmental directors	32	28	4	86	14
Chief executives of oblasts	4	4		100	0
Deputy chief executives of oblasts	22	18	4	82	18
Chief executives of cities and districts	74	67	7	91	9
Principal deputy chief executives of cities and districts	70	64	6	91	9
Deputy chief executives of cities and districts	177	117	60	66	34

Judiciary

Post	Total	Men	Women	% men	% women
All judges	271	216	55	80	20
Presiding judges	77	71	6	92	8
Constitutional Court	6	5	1	83	17
Supreme Court	33	26	7	79	21
Supreme Economic Court	11	7	4	64	36

The results of the 2000 election to the Majlis-i Namoyandagon of the Majlis-i Oli showed that, although the representation of women in Parliament is still low in percentage terms, women are nevertheless becoming increasingly active in national political life. Thus, 25 women candidates stood for election in single-mandate election districts; 4 of them were returned as deputies. Fourteen women candidates stood for election in the party lists of five political parties, and seven were returned as deputies to the Majlis-i Namoyandagon of the Majlis-i Oli.

48. The issue of equal participation of women in public administration is closely connected with the enrolment of women in general education, secondary and tertiary education. Although in 2002 the proportion of schoolgirls and female students at secondary specialized educational institutions is on the whole balanced, comprising 46.4 per cent and 50.7 per cent respectively, elsewhere the gender situation has worsened. In tertiary educational establishments, for example, the proportion of female students is just 24.8 per cent. The proportion of women in postgraduate education is even lower; in 2002, the proportion of women with doctorates and women candidates of science was just 10.8 and 20.3 per cent, respectively.

Government Decision No. 199 of 19 April 2001 introduced preferential entry conditions to tertiary educational establishments (a quota system) for girls from remote highland areas of Tajikistan. To date, a total of 2,193 girls have enrolled as students in tertiary educational establishments under the quota system (434 girls in 1999; 519 girls in 2000; 610 girls in 2001; and 630 girls in 2002).⁴

To enhance the effectiveness of gender policy and develop social partnership with local NGOs and international organizations, the Ministry of Labour and Social Welfare and the Ministry of Health have established coordinating councils on gender issues in education, employment and reproductive health that report to the Ministry of Education.

49. Bearing in mind the specific features of the gender situation as outlined above, Tajikistan has based its State policy to guarantee the equal rights and opportunities of men and women on the principle that measures and actions taken by the State must be directed to the achievement of equal outcomes for men and women, and not just to equal treatment of both sexes (the State programme on the principal areas of State policy to ensure equal rights and opportunities for men and women in Tajikistan for the period 2001-2010).

Presidential Decree No. 5 of 3 December 1999 on the advancement of women has had a decisive impact on the systematic implementation of this principle, by phasing in personnel changes in various power and administrative structures with a view to advancing women to positions of leadership. Joint comprehensive measures of State and non-governmental structures intended to raise the profile of women in society have been developed and included in legislation. One member of the Government, a deputy prime minister, is a woman. A deputy chairperson of the Majlis-i Milli of the Majlis-i Oli is a woman, as is a deputy chairperson of the Majlis-i Namoyandagon of the Majlis-i Oli. Eleven deputies of the lower chamber of Parliament are women, as are two chairpersons of committees of the Majlis-i Namoyandagon of the Majlis-i Oli and five members of the upper chamber of Parliament. One chairperson of a government committee is a woman, as are one senior counsellor to the President, four counsellors to the President and four chiefs of section of the President's Executive Office. Women account for 28.8 per cent of the staff of the President's Executive Office.

50. Women play an important role in Tajik cultural life. There are 49 women directors in the central apparatus of the Ministry of Culture and of teaching establishments in the cultural domain.

51. Institutional mechanisms for upholding the equal rights and opportunities of men and women are specified in section II of the State programme on the principal areas of State policy to ensure equal rights and opportunities for men and women in Tajikistan for the period 2001-2010.

In the Tajik Government, matters relating to the position and status of women are overseen by a deputy prime minister. The Government Committee for Women's and Family Affairs was established in 1991 and has been in operation since. The Committee's principal function is to promote and enforce policy to advance the status of women in all spheres of State and public life. Similar structures operate in the regions. In 2003, the Government Committee for Women's and Family Affairs plans to prepare a draft document on the training and advancement of women leaders.

The Committee of the Majlis-i Namoyandagon of the Majlis-i Oli on Women's Affairs, Health Care, Social Welfare and the Environment plays an important role in devising gender policy. The Committee's tasks include drafting legislation within its terms of reference.

Similar committees and commissions report to oblast, city and district assemblies and legislative bodies in the regions.

Structures that deal directly with issues affecting women, the family and children operate in ministries and departments of the social sector (education, health care, labour and social welfare).

Article 4

52. In the event of a public emergency in Tajikistan that threatens the life of the nation and an official proclamation to this effect, the State may, in accordance with the Constitution and the Constitutional Act on Legal Arrangements in a State of Emergency of 3 November 1995, restrict the exercise of a number of rights to the extent strictly required by the exigencies of the situation. However, this does not mean that it may restrict all rights, including certain specific rights, or take discriminatory measures on various grounds.

According to the aforementioned Constitutional Act, Tajikistan is obliged immediately to inform the other parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of any restrictions, the reasons for such restrictions, and the date when the restrictions will cease to have effect.

Article 69, paragraph 19, of the Tajik Constitution and article 2 of the aforementioned Constitutional Act stipulate that a state of emergency applicable throughout the territory of Tajikistan or distinct oblasts, districts or cities shall be proclaimed by presidential decree, which shall immediately be submitted for approval by a joint session of the Majlis-i Milli and the Majlis-i Namoyandagon of the Majlis-i Oli, with notification to the United Nations.

Within one day of the entry into force of the presidential decree, the Majlis-i Oli shall convene a session and within three days approve the presidential decree proclaiming a state of emergency.

The Majlis-i Oli shall adopt a decision on this matter in open voting by a simple majority of people's deputies.

A state of emergency applicable throughout the territory of Tajikistan may be introduced for up to three months. Where necessary, this period may be extended by the President (Constitution, art. 46).

53. In accordance with article 47 of the Tajik Constitution, the rights and freedoms contained in the following articles of the Basic Law may not be restricted:

Article 16. A Tajik citizen abroad shall remain under the protection of the State;

Article 17. Everyone is equal before the law and the courts;

Article 18. Everyone has the right to life;

Article 19. Everyone is guaranteed judicial protection;

Article 20. No one shall be considered guilty of a crime until a court judgement has become enforceable;

Article 22. A person's home is inviolable;

Article 25. State bodies, voluntary associations, political parties and officials must uphold the opportunity of all persons to obtain and familiarize themselves with documents affecting their rights and interests, except in circumstances prescribed by law;

Article 28. Citizens have the right to form associations.

54. Pursuant to article 1 of the Constitutional Act on Legal Arrangements in a State of Emergency, a state of emergency may be introduced in Tajikistan in the following circumstances:

- (1) Natural disasters and accidents, epidemics and epizootics that endanger the life and health of the population;
- (2) Mass law-and-order violations that constitute a real threat to the rights and freedoms of citizens;
- (3) Attempts to seize State power or change the constitutional system of Tajikistan by force;
- (4) Encroachments on the territorial integrity of the State that threaten its borders;
- (5) A need to re-establish constitutional law and order and the operation of State bodies.

The reasons for a state of emergency shall be given when the decision to introduce it is made, and its duration and territorial extent shall likewise be specified.

The President of Tajikistan has the right to abrogate a state of emergency before its scheduled expiry date if the circumstances that led to its proclamation no longer obtain, or to extend the state of emergency if such circumstances persist.

A decision to introduce, extend or abrogate a state of emergency shall enter into force upon its adoption, unless the decision specifies otherwise, and shall be made known forthwith.

55. Article 4 of the Constitutional Act on Legal Arrangements in a State of Emergency stipulates that, in a state of emergency, where specific circumstances warrant, the relevant State bodies may take the following steps:

- (1) Reinforce protection of public order and facilities that ensure the day-to-day existence of the population and the functioning of the economy;

- (2) Temporarily evacuate citizens from hazardous districts, with a compulsory offer of alternative permanent or temporary accommodation. This measure is designed to protect these citizens' life and health;
- (3) Introduce special arrangements for entering and leaving an area in order to maintain law and order and preserve political stability;
- (4) Prohibit certain citizens from leaving a specified locality, or their house or apartment, for a prescribed period, and remove public order violators not resident in a particular locality, at their own expense, to their current address or a place outside the area where the state of emergency has been proclaimed;
- (5) Temporarily confiscate from citizens firearms, bladed instruments and ammunition, and from enterprises, institutions and organizations, military equipment used in training, explosives, radioactive substances and materials, potent chemicals and poisons;
- (6) Prohibit the holding of meetings, rallies, street processions and demonstrations that would further destabilize the situation, and also public hunger strikes and pickets, spectacles, sports and other mass events;
- (7) Establish special work schedules for enterprises, institutions and organizations regardless of form of ownership, and resolve other issues pertaining to their economic activity;
- (8) Appoint and dismiss directors of enterprises, institutions and organizations and prohibit the dismissal of workers and employees for valid reasons;
- (9) Employ the resources of enterprises, institutions and organizations to prevent and manage the consequences of emergencies with subsequent payment of compensation in the manner defined by the Tajik Government;
- (10) Prohibit the holding of strikes;
- (11) Enlist able-bodied citizens to work at enterprises, institutions and organizations, and also to manage the consequences of emergencies and ensure labour safety;
- (12) Restrict or prohibit the trade in weapons, ammunition, explosives, potent chemicals and poisonous substances, and also spirits and spirituous substances, with the exception of medicaments;
- (13) Impose a quarantine and implement other mandatory public health and disease control measures;
- (14) Restrict or prohibit the use of reproduction equipment, radio broadcasting apparatus, and audio and video recording equipment; confiscate sound-amplifying equipment; establish control over the mass media and, if necessary, introduce censorship and restrictions on the publication of newspapers;
- (15) Introduce special rules for the use of telephones;

- (16) Restrict transport movements and inspect vehicles;
- (17) Introduce a curfew;
- (18) Curtail the formation and activity of armed groups of citizens not provided for by Tajik law;
- (19) Check citizens' documents and, if necessary, where there is reason to suppose that citizens possess weapons, ammunition, explosives, potent chemicals or poisonous agents, conduct personal searches and inspect substances and vehicles;
- (20) Prohibit the import or export with a view to circulation in other localities of printed publications and tape and video recordings that call for the destabilization of the situation, inflame inter-ethnic strife or incite disobedience to the relevant State bodies.

56. The President of Tajikistan has the right to overrule any decision of subordinate bodies and officials acting in the areas where a state of emergency has been proclaimed. In order to coordinate efforts to prevent or manage the consequences of emergencies, the Tajik Government and the chief executive officers of the Gorny Badakhshan Autonomous Oblast, the oblasts, the city of Dushanbe, and the districts and towns may form ad hoc provisional bodies (Constitutional Act on Legal Arrangements in a State of Emergency, art. 5).

During states of emergency and emergency rule, directors of enterprises, institutions and organizations are entitled where necessary to reassign workers and employees without their consent to forms of work not specified by an employment contract.

The principle that the directors of enterprises, institutions and organizations shall be elected may not be observed during states of emergency and emergency rule, if this serves the interests of normalizing the situation.

During curfew and emergency rule, citizens are prohibited from being on the streets or in other public places without specially issued passes and documents certifying their identity, or to reside away from their homes without such documents.

Persons who violate these arrangements shall be detained by the militia or military patrols until the end of curfew, and persons without identity papers shall be detained until their identity is established, but for no longer than three days, and their persons and belongings may be searched.

A violation of the provisions described in paragraph 4, subparagraphs 3, 4, 6, 10, 12 to 16 and 20, of this section of the report, and of the requirements contained in article 7, paragraph 1, of the Constitutional Act on Legal Arrangements in a State of Emergency, shall carry an administrative penalty in the form of a fine ranging from half to three times the minimum wage or administrative detention for up to 15 days.

The spreading of provocative rumours or the commission of acts that provoke violations of public order or incite ethnic strife, or which actively seek to obstruct citizens and officials from exercising their lawful rights and performing their duties, or wilful defiance of a legitimate

order or request of an officer of the internal affairs agencies, a member of the armed forces or some other person performing official obligations or under an official duty to protect public order, or any similar actions that breach public order and the public peace, or violations of administrative oversight rules in localities where a state of emergency has been proclaimed, shall be punishable by a fine ranging from 10 to 20 times the minimum wage or administrative arrest for up to 30 days, depending on the gravity of the offence.

Note: The minimum wage as at 1 January 2004 was 7 somoni, or US\$ 2.37 at the rate set by the National Bank.

Reports of such offences are officially drawn up by duly authorized officers of the internal affairs agencies or by the commandant of a particular locality.

Cases involving the offences covered by articles 8 and 9 of the aforementioned Constitutional Act must be heard by a judge within three days under the procedure specified by the Tajik Code of Administrative Offences. Persons who have committed administrative offences may be detained until their case is heard by a judge.

Pursuant to article 11 of the aforementioned Act, in states of emergency the Supreme Court has the right to change the statutorily prescribed territorial jurisdiction of civil and criminal cases.

Citizens who have suffered injury in emergencies or in connection with efforts to prevent or manage emergencies undertaken by the relevant State bodies or enterprises, institutions and organizations, shall be provided with accommodation, shall receive compensation for any material injury, and shall be helped to find work and afforded other assistance as required.

57. When the relevant State bodies do not perform their proper functions in areas where a state of emergency has been declared, or if they act unconstitutionally, the President of Tajikistan may establish temporary emergency rule throughout the country or in certain areas, namely direct presidential rule, and suspend the powers of the relevant State bodies.

A proposal to introduce emergency rule may also be made by bodies and officials who, under the Constitution, have the right to initiate legislation. Thus, under article 58 of the Tajik Constitution, besides the President, the following bodies or officials have the right to initiate legislation: a member of the Majlis-i Milli, a deputy of the Majlis-i Namoyandagon, the Tajik Government, and the Council of People's Deputies of Gorny Badakhshan Autonomous Oblast. The Constitutional Court, the Supreme Court and the Supreme Economic Court also have the right to initiate legislation on matters within their jurisdiction.

As stipulated by articles 14 and 15 of the Constitutional Act on Legal Arrangements in a State of Emergency, the President may impose emergency rule through a body that he establishes or an official whom he appoints. The President decides which body shall be responsible for imposing emergency rule throughout the country or in certain areas, and the Majlis-i Oli is notified of this decision (art. 14).

The reasons for emergency rule shall be given when the decision to introduce it is made, and its duration and territorial extent shall likewise be specified.

The President of Tajikistan has the right to abrogate emergency rule before it is scheduled to expire if the circumstances that led to its proclamation no longer obtain, or to extend emergency rule if the circumstances persist.

Emergency rule of specific areas, cities and districts in the event of the disbanding of a council of people's deputies or a local executive body (*khukumat*) shall cease with the holding of elections for a new local council of people's deputies in these territories or the formation of a new local executive body (*khukumat*)

A decision to introduce, abrogate or extend emergency rule shall enter into force as soon as it is adopted, unless specifically stipulated otherwise, and shall be made known forthwith (art. 15).

Bodies or officials administering emergency rule have the right:

- To take the measures stipulated by article 4 of the aforementioned Constitutional Act;
- To suspend the work of councils of people's deputies and local executive bodies (*khukumats*);
- To assume their functions on a temporary basis;
- To submit proposals to State and administrative bodies of Tajikistan on matters relating to the governmental, economic, social and cultural development of the territories under their jurisdiction.

Pursuant to the Constitutional Act on Legal Arrangements in a State of Emergency, the decisions of bodies or officials administering emergency rule in specific territories on issues within their jurisdiction are binding on all State bodies, enterprises, institutions, organizations and associations situated in these territories.

While emergency rule is in force, the President of Tajikistan has the right to overturn any decision by subordinate bodies and officials operating in localities where a state of emergency has been proclaimed.

During this period, with a view to coordinating efforts to prevent or manage the consequences of emergencies, the Government of Tajikistan and the chief executive officers of Gorny Badakhshan Autonomous Oblast, the oblasts, the city of Dushanbe, and the districts and towns may form ad hoc provisional bodies.

58. The persons enlisted to oversee the state of emergency shall be determined by the President of Tajikistan.

Certain benefits and guarantees are established for such persons; for example, salaries and allowances for special and military grades are paid at double the normal rate. One month of service in a state of emergency counts as three months for the purposes of calculating the length of service pension (number of years worked).

Any and every lawful (including constitutionally sanctioned) restriction of citizens' rights and freedoms in a state of emergency shall be permitted only in the event of a clear and present threat to citizens' rights and freedoms, the independence and territorial integrity of the State, or natural disasters as a result of which the constitutional bodies of Tajikistan are unable to function normally. As a temporary measure, the restriction of certain rights provided for under the International Covenant on Civil and Political Rights shall be permitted during the proclamation of a state of emergency in Tajikistan, solely with a view to ensuring the security of citizens and the State.

No state of emergency has been proclaimed in Tajikistan since 1999.

Article 5

59. Pursuant to article 14 of the Tajik Constitution, the rights and freedoms of the person and the citizen are regulated and protected by the Constitution and laws of the Republic, and by the international legal instruments recognized by Tajikistan.

60. It is permitted to restrict citizens' rights and freedoms only in order to uphold the rights and freedoms of other citizens, ensure social order and defend the constitutional system and territorial integrity of Tajikistan.

61. No one shall be subjected to torture or cruel and inhuman treatment.

62. Special norms prohibiting unlawful actions are contained in the Tajik Criminal Code (chap. 19, Crimes against the constitutional rights and freedoms of the person and the citizen; chap. 32, Crimes against justice), the Code of Criminal Procedure and the Penal Enforcement Code.

63. The international legal instruments recognized by Tajikistan are an integral part of the legal system of the Republic. In the event of a contradiction between Tajik law and these international norms, the norms contained in the international legal instruments shall apply (Constitution, art. 10).

Until 2001, Supreme Court judgements were not subject to appeal by way of cassation (Code of Criminal Procedure, art. 329). By its decision of 12 June 2001, the Constitutional Court held that article 329 contradicted article 19 of the Tajik Constitution and article 14, paragraph 5, of the International Covenant on Civil and Political Rights. Pursuant to this decision, the Majlis-i Oli brought this norm of the Code of Criminal Procedure into line with the Tajik Constitution, as a result of which Supreme Court judgements may be appealed and challenged by way of cassation.

Article 6

64. Article 18 of the Tajik Constitution stipulates that everyone has the right to life.

Pursuing a peace-orientated policy, Tajikistan respects the sovereignty and independence of other States and determines its foreign policy on the basis of international norms. War propaganda is prohibited (Constitution, art. 11).

Tajikistan is developing a defensive military doctrine intended to protect the legal, sovereign, democratic and secular State and its interests. On the strength of this doctrine, the armed forces are being trained to perform tactical operations and prevent the development of local and regional military conflicts.

Since the start of the anti-terrorist operation in Afghanistan, Tajikistan has cooperated actively with other States to ensure that this operation is waged successfully.

65. Section XV, chapter 34, of the Tajik Criminal Code (Crimes against peace and the security of humanity) specifies the following offences:

- The planning, preparation, launching or waging of a war of aggression (art. 395, paras. 1-2);
- Public calls to launch a war of aggression (art. 396);
- The manufacture or proliferation of weapons of mass destruction (art. 397);
- Genocide (art. 398);
- Biocide (art. 399);
- Ecocide (art. 400).

Tajikistan has no nuclear or offensive weapons.

Tajikistan has acceded to the following international treaties in the area of non-proliferation of weapons of mass destruction:

- Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968;
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993;
- Comprehensive Nuclear Test Ban Treaty of 24 September 1996.

66. Tajikistan is establishing effective mechanisms to protect and defend human life not only in the context of law enforcement but also in the domain of crime prevention and the preservation of human life in the social sphere.

Everyone has the right to health protection. Within the statutorily defined framework, everyone may benefit from free medical care in State health-care institutions. Other forms of medical care are determined by law (Constitution, art. 38).

67. The campaign against HIV infection, and the prevention and treatment of HIV, is a core area of activity of the Ministry of Health. The AIDS Prevention Act was approved on 27 December 1993. A new bill on the prevention of HIV infection is currently in preparation. A national programme to prevent and combat HIV/AIDS and sexually transmitted diseases (STDs) has been devised. There is a standing national coordinating committee for the

prevention of HIV/AIDS. In view of the epidemiological danger of the spread of HIV infection, on 30 December 2000 the Tajik Government approved a new national programme for the prevention of HIV/AIDS and STDs for the period to 2007. To date, a total of 75 cases of HIV infection have been officially recorded in Tajikistan; in the past 18 months, the number of HIV infections has increased more than tenfold in relation to the total number of cases over the past 10 years, that is, since the first cases of HIV infection were recorded.

Since 1999, a total of 15 HIV clinics have been opened and are currently operating in Tajikistan; the clinics employ experts, nurses and consultant physicians (a narcologist, psychotherapist, dermatologist, venereologist and volunteers from among drug addicts).¹

68. Under Tajik law, homicide in all its forms is interpreted as intentional deprivation of human life.

More than 70 articles of the Tajik Criminal Code deal with offences against the life, health, freedom and inviolability of the person.

69. The number of homicides and attempted homicides in Tajikistan has been decreasing from year to year: there were 357 such cases in 1999, 283 in 2000, 233 in 2001, 180 in 2002 and 164 in 2003; this decrease is attributable to the stabilization of the social and economic situation in Tajikistan. At the same time, the proportion of cases solved is increasing: 32.9 per cent in 1999, 36.8 per cent in 2000, 42.9 per cent in 2001, 47.1 per cent in 2002 and 52.6 per cent in 2003.²

In the period 1999-2003, the Tajik courts convicted 938 persons of homicide.²

70. In acquiring sovereignty and independence, Tajikistan has encountered a number of major problems, including acts of terrorism and sabotage. Under criminal law, acts of this nature are considered particularly serious crimes.

Terrorism is a naked threat not only to people's lives and health but also to the very fabric of society. Article 179, paragraph 1, of the Criminal Code (consisting of four paragraphs and a number of subparagraphs) prescribes punishment for terrorism, the definition of which includes causing an explosion, arson, or discharging a firearm or any other action that endangers people's lives, causing significant material damage or precipitating an event with other socially dangerous consequences, where such actions are intended to compromise public safety, terrorize the population or influence decision-making by the authorities, as well as the threat of the aforementioned acts. Paragraph 2 prescribes liability for acts of terrorism committed by a group of persons by prior conspiracy or as a repeat offence. Under paragraph 3, it is an offence to make an attempt on the life or cause bodily injury to a State or public official or a representative of the authorities in connection with their State or public activity with the intention of destabilizing the situation, influencing the decision-making of State bodies, or obstructing political or public activity. Paragraph 4 criminalizes the acts described in the preceding three paragraphs, if committed by an organized group, with the threat of use of weapons of mass destruction or radioactive materials or other acts capable of causing mass destruction of human life, by a particularly dangerous recidivist, or if they result in manslaughter by criminal negligence or have other grave consequences. In addition to other punishments, paragraph 4 provides for the death penalty.

With a view to defining the legal and organizational framework for combating terrorism in Tajikistan, on 21 April 1997 the President promulgated a decree on intensifying efforts to combat terrorism and, on 16 November 1999, the Majlis-i Oli adopted the Anti-Terrorism Act, which gives a clear-cut legal definition of terrorism.

By its decision of 26 July 2000, the Tajik Government adopted the State programme on strengthening efforts to combat terrorism for the period 2000-2003.

The early 1990s witnessed an upsurge in terror and other manifestations of extremism owing to the internal armed conflict. There were three acts of terrorism in 1994, four in 1995, six in 1996, seven in 1997, three in 1998, two in 1999, seven in 2000, six in 2001 and three in 2003. These attacks were directed both against Tajik citizens and citizens of other States.²

Article 22 of the Anti-Terrorism Act provides for compensation of losses caused by an act of terrorism, to be paid from the State budget, with subsequent recovery of damages from the guilty party.

Criminal cases involving terrorist offences and civil actions involving compensation for harm caused by acts of terrorism may, at the court's discretion be heard, in camera (Anti-Terrorism Act, art. 18).

Tajikistan is a party to the following anti-terrorist conventions:

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973 (State party since 2001);
- International Convention for the Suppression of Terrorist Bombings of 1997 (since 2002);
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971 (since 1996);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation of 24 February 1988, supplementing the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (since 1996);
- Convention on Offences and Certain Other Acts Committed on Board Aircraft of 14 September 1963 (since 1996);
- Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 (since 1996);
- Convention on the Physical Protection of Nuclear Material;
- International Convention against the Taking of Hostages of 17 December 1979 (since 2002);

- International Convention for the Suppression of the Financing of Terrorism (since 2001).⁵

71. Sabotage poses an equally serious threat to society and the State (Criminal Code, art. 309) insofar as it normally involves causing explosions, arson or other acts intended to destroy or damage enterprises, buildings, transport and communications infrastructures and vitally important public facilities with a view to undermining national security and defence capability. Two crimes in this category were committed in 1994, none in 1995, 2 in 1996, 32 in 1997, 6 in 1998, 4 in 1999, none in 2000, 1 in 2001, 1 in 2002 and 3 in 2003.²

Sabotage destabilizes society. Analysis of this type of crime has shown that acts of sabotage began to occur only after the period of civil confrontation in Tajikistan. Sabotage and terrorist groups in Tajikistan have evolved into groups that exclusively carry out robberies, kidnappings for ransom and other violent and mercenary crimes.

72. Hostage-taking and abduction are crimes that pose a danger to people's life and health. The motive is profit and extortion; occasionally, the lives of hostages or abductees have been threatened or the hostages have been physically injured and, in some cases, even murdered.

Two separate articles have been included in the Criminal Code, namely article 130 (Abduction), consisting of three paragraphs and subparagraphs prescribing punishment in the form of deprivation of liberty, and article 181 (Hostage-taking), which also consists of three paragraphs and a number of subparagraphs; paragraph 3 of article 181 provides not only for punishment in the form of deprivation of liberty but also for the death penalty. However, under the Criminal Code (Amendments and Supplements) Act of 2003, the death penalty has been ruled out as a punishment. The number of cases brought under article 181 of the Criminal Code was six in 1999, seven in 2000, three in 2001, seven in 2002, and two in 2003. The number of cases brought under article 130 of the Criminal Code was one in 1999, seven in 2000, five in 2001, six in 2002 and two in 2003.²

73. One of the preconditions for the commission of the offences stipulated in article 130 (Abduction) and article 181 (Hostage-taking) of the Criminal Code is the disappearance of a person without trace, thereby giving rise to the submission of a number of declarations which, under criminal procedure legislation currently applicable in Tajikistan (Code of Criminal Procedure, art. 105), are reports of offences committed. The procedure for dealing with such reports, and the matters to which they may refer, are regulated by the Police Inquiries Act of 1999.

In 2000, searches were made for 860 missing persons pursuant to declarations made by citizens. Of these, 440 persons were located and 420 remained untraced. In 2001, the police conducted searches for 777 missing persons, of whom 407 were located and 370 remained untraced. In the first six months of 2002, the police searched for 650 people, of whom 289 were located and 361 remained untraced.²

74. Article 186, paragraph 1, of the Criminal Code criminalizes banditry, i.e. the formation of a stable armed group (band) for the purpose of attacking citizens or an organization, and also leadership of such a group.

Article 186, paragraph 2, makes it an offence to participate in an established armed group (band) or in any attacks carried out by it.

The commission of the acts stipulated in article 186, paragraphs 1 and 2, by a person acting in his or her official capacity or by a dangerous or particularly dangerous recidivist is an offence under paragraph 3. Article 186, paragraphs 1 and 3, prescribe the death penalty in addition to other punishments, although under the 2003 Criminal Code (Amendments and Supplements) Act the death penalty has been ruled out as a punishment.

75. Article 42 of the Criminal Code provides that a person who removes a danger to his or her life, health, rights or legitimate interests by resorting to acts that contain the constituent elements of a criminal offence, shall be exonerated.

The use of firearms is provided for in the manner prescribed by statute.

The Weapons Act, adopted in 1996, regulates the weapons and ammunition in circulation in Tajikistan (article 22 regulates the use of weapons).

76. Militia officers have the right to use weapons as a last resort in the following circumstances:

- (1) To protect citizens from attack and to release hostages;
- (2) To repulse a group or armed attack on militia officers or other persons performing their duties or who are under a public duty to defend public order and prevent crime, or any other attack in which their lives or health would be endangered;
- (3) To repulse a group or armed attack on citizens' homes, important and protected sites, the premises of government and public bodies, enterprises, institutions and organizations irrespective of form of ownership, and to repulse an attack on a military or service detachment of the internal affairs agencies;
- (4) To detain persons offering armed resistance or apprehended in the course of committing a serious or particularly serious crime, or a criminal escaping custody, and also an armed individual who refuses to comply with a lawful demand to surrender his weapon.

Recourse to a weapon must be preceded by warning of its intended use. A weapon may be used without prior warning in the event of sudden or armed attack; an attack using military equipment, vehicles, aircraft or river vessels; an attempt to escape from custody using weapons or vehicles; escape from custody in a moving vehicle; and in operations to free hostages.

It is prohibited to use weapons against women, obviously disabled persons and minors, except in the event of an attack, armed resistance or a group or armed attack endangering human life, nor is it permitted to use weapons where significant numbers of people are gathered, which would occasion a risk of injury to others.

Militia officers have the right to use weapons in the following circumstances:

- (1) To stop vehicles by damaging them, if the driver poses a genuine threat to citizens' life and health and fails to comply with the lawful demands of militia officers to stop;
- (2) To neutralize an animal that threatens citizens' life and health;
- (3) To sound the alarm or to summon assistance.

In all cases of firearm use, a militia officer must take all possible steps to ensure the safety of citizens in the vicinity, provide immediate medical assistance to injured persons, and immediately notify their relatives or legal representatives.

In all cases, within 24 hours of using a weapon, a militia officer must submit a report to the chief militia officer at his place of work or the place where the weapon was used and, in the event of the death or wounding of a citizen, the procurator must be notified forthwith.

77. However, if a firearm is used unlawfully by law enforcement officers, they shall be held criminally liable for acting outside the scope of their authority pursuant to article 316 of the Criminal Code and, depending on the consequences of the unlawful use of the weapon, under other articles of the Criminal Code for multiple offences (homicide, infliction of bodily injury, damage to property, etc.). In 2002, S. Chalishev, former chief officer of the Ministry of Internal Affairs Organized Crime Department for the Gissar group of districts, was sentenced by the Tajik Supreme Court to 25 years' deprivation of liberty for unlawful use of a firearm that caused the death of three people.

For acting outside the scope of his authority, using a weapon and causing a death in custody, militia officer U. Kholboev was sentenced by Khatlon oblast court to 13 years' deprivation of liberty in January 2000.²

78. Tajikistan has taken steps to reduce the application of the death penalty. The 1998 Criminal Code has reduced the number of capital crimes from 47 to 16. Pursuant to the 2003 Criminal Code (Amendments and Supplements) Act, the death penalty has been ruled out as a form of punishment in the case of another 10 articles.

The death penalty may not be imposed on women or on persons under the age of 18 who have committed a crime (Criminal Code, art. 59, para. 2).

The death sentence may be imposed only for particularly grave crimes (Criminal Code, art. 59), namely:

Homicide (art. 104, para. 2), categorized as follows:

- (a) Killing of two or more persons;
- (b) Killing of a person or his or her relatives in connection with the performance of the person's official duties or a civic or public duty;
- (c) Killing of a child or a person known by the perpetrator to be in a helpless state;

- (d) Killing combined with abduction or hostage-taking;
- (e) Killing of a woman known by the perpetrator to be pregnant;
- (f) Killing with particular cruelty;
- (g) Killing in a manner that endangers the lives of a number of people;
- (h) Killing by a firearm, military equipment or explosives;
- (i) Killing by a group, a group by prior conspiracy, an organized group, or by a criminal association (organization);
- (j) Killing for monetary gain or contract killing, and killing combined with robbery, extortion or banditry;
- (k) Killing with intent to commit criminal mischief;
- (l) Killing to conceal another crime or to facilitate its commission, and killing combined with rape or forcible actions of a sexual nature;
- (m) Killing on the grounds of ethnic, racial, religious or regional enmity or hatred, or a vendetta;
- (n) Killing with a view to taking the victim's organs or tissues;
- (o) Killing committed by a law enforcement officer or a member of the armed forces;
- (p) Deliberate violation of the norms of international humanitarian law committed in the course of armed conflict;
- (q) Killing by a particularly dangerous recidivist or a person who has previously committed homicide, except for the acts stipulated under articles 105, 106, 107 and 108 of the Criminal Code.

Rape (art. 138, para. 3), categorized as follows:

- (a) Rape of a girl known to be under 14 or a close relative;
- (b) Rape by a particularly dangerous recidivist;
- (c) Rape by an organized group;
- (d) Rape committed in the course of a public calamity or mass disorders, or rape that occasions serious consequences;
- (e) Rape with the use or threat of use of weapons or objects used as weapons.

Terrorism (art. 179, para. 4), categorized as follows:

The acts stipulated in paragraphs 1, 2 and 3 of article 179:

- If committed by an organized group;
- If combined with the threat of use of a weapon of mass destruction, radioactive materials or other actions capable of causing mass destruction of human life;
- If committed by a particularly dangerous recidivist;
- If such acts cause death or other serious consequences through negligence.

Genocide - article 398 of the Criminal Code.

Biocide - article 399 of the Criminal Code.

In the articles of the Criminal Code cited above, the death penalty is provided for as an optional punishment and the courts consider this matter on a case-by-case basis, in the light of the character of the defendant, the gravity of the offence and the attending circumstances.

79. Criminal cases in which the death sentence may be imposed on an offender are heard by the court of the Gorny Badakhshan Autonomous Oblast, oblast courts, Dushanbe city court and the Supreme Court (Code of Criminal Procedure, arts. 32 and 33).

All persons sentenced to death have the right to petition for a pardon when their sentence becomes enforceable (Penal Enforcement Code, art. 216).

Pardons are granted to specific persons by the President of Tajikistan (Criminal Code, art. 83). The Pardons Board reporting to the President operates in accordance with Presidential Decree No. 721 of 8 May 1997. The Board makes a preliminary assessment of petitions for pardoning offenders who have been sentenced by Tajik courts to a range of punishments, including the death penalty, and draws up relevant recommendations.

The Board also examines the case files of persons who have been sentenced to death but have not lodged a petition for pardon.

Under article 59, paragraph 3, of the Criminal Code, the death sentence may be commuted by way of a pardon to deprivation of liberty for 25 years. In the period 1999-2004, the President pardoned 23 people who had been sentenced to death, 87 people were excused from serving the remainder of their sentence, and 74 people had their sentence reduced.

Since 1991, the Majlis-i Oli (Parliament) of Tajikistan has adopted nine amnesty acts, most recently on 29 August 2001, as a result of which 20,406 citizens were exonerated.³

80. Article 329 of the Code of Criminal Procedure provides for the right to lodge cassational appeals and protests against sentences.

The defendant, defendant's counsel and legal representative, and also the victim and the victim's representative, have a right of appeal, by way of cassation, against sentences handed down by the courts. The procurator is obliged to lodge a cassational protest against every unlawful or unfounded judgement. Claimants for criminal indemnification, persons civilly liable and their representatives have the right to appeal against a judgement in proceedings relating to an action for criminal indemnity.

A person acquitted by the courts has a right of cassational appeal against a judgement of acquittal with regard to the reasons and grounds for the acquittal.

81. Chapter 22 of the Penal Enforcement Code regulates the manner and place in which persons sentenced to death are detained, their legal status, the reason for the imposition of the death penalty and the manner in which it is to be carried out.

82. Tajikistan imposed a moratorium on the death penalty in 2004.

Article 7

83. No one may be subjected to torture or cruel or inhuman treatment. Coercive medical or scientific experimentation on human beings is prohibited (Constitution, art. 18).

84. Tajikistan is taking steps to eliminate crimes against the person and the use of torture or cruel treatment. To this end, the State is improving the various procuratorial oversight systems and judicial controls in order to ensure that anyone who uses torture is punished in accordance with the law. Tajikistan's criminal legislation provides for punishment for the use of torture, beatings and cruel treatment.

For example, article 354 of the Criminal Code penalizes any attempt to force a suspect, accused person, defendant, victim or witness to make a statement, or an expert to give an opinion, by means of threats, blackmail or other unlawful acts on the part of persons conducting a preliminary investigation or administering justice. The penalty is increased if the commission of such an act involves degradation of the person being questioned or the use of torture or other forms of violence, or if such acts produce serious consequences (a term of deprivation of liberty of from 3 to 10 years with or without suspension of the right to hold official posts or engage in certain activities for up to three years).

Article 316, paragraph 3, of the Criminal Code establishes criminal liability for abuse of authority accompanied by the use of force.

Torture, cruel treatment and other inhuman acts that result in serious or moderate bodily harm to, or the death of, a victim are addressed in article 354, article 110 (Serious harm to health), article 111 (Moderate harm to health), and article 104, paragraph 2 (Homicide committed by a law enforcement officer or a member of the armed forces).

Article 15 of the Code of Criminal Procedure prohibits attempts to obtain statements from an accused person or other persons involved in a case by violence, threats or other unlawful means. This provision applies both to preliminary investigations and to court proceedings.

Article 10 of the Penal Enforcement Code categorically prohibits the subjection of a convicted person to torture or cruel, inhuman or degrading treatment or to medical or other forms of scientific experimentation, even with his consent, which may endanger his life or health.

85. The Procurator-General and his staff of procurators are responsible for ensuring strict compliance with and uniform application of the law (Constitution, art. 93).

Article 3 of the Constitutional Act on procuratorial agencies of the Republic of Tajikistan defines the main tasks of such agencies in monitoring the observance of civil rights and freedoms by all bodies and officials; monitoring compliance with the law by law enforcement and crime-fighting agencies and agencies conducting preliminary inquiries and pre-trial investigations; monitoring compliance with the law in places where persons are held under arrest, on remand or in pre-trial detention in connection with the enforcement of sentences or other coercive measures ordered by a court; and coordination of the activities of the agencies fighting crime and other offences.

Paragraph 2 of Order No. 10 of the Procurator-General of 10 August 2000 on improvement of procuratorial supervision of compliance with the law in the enforcement of criminal sentences and in remand centres states:

“During verification of compliance with the law in correctional colonies, young offenders’ institutions and remand centres, special attention shall be paid to instances of degrading, arbitrary or cruel treatment of convicts or prisoners by members of institutions or agencies enforcing criminal sentences, and to instances of unjustified placement in punishment facilities; special care shall be taken to ensure that the detention conditions are humane and in accordance with the Standard Minimum Rules for the Treatment of Prisoners.”

In addition to the various legislative, judicial and administrative measures prohibiting torture, the State also uses the media to expose and criticize unlawful acts.

With a view to increasing public awareness, measures are being taken to prevent torture and other cruel, inhuman or degrading forms of treatment or punishment and to provide support for victims of torture. In June 2002, with assistance from OSCE and other international organizations, the event “Action to support victims of torture” was held in Dushanbe; it was attended by young people and intellectuals.

However, owing to the poor standards of professionalism of some members of the law enforcement agencies, isolated cases of torture still occur. For example, police officers in Sogd oblast (A. Vakhobov, D. Burkhanov, D. Pulodov and others) unlawfully arrested citizens O. Toshmatov, D. Mirzoev, N. Yadgorov, F. Akhmedov and others on suspicion of murdering the head of the local authority, C. Begijonov. Bodily harm of varying degrees of severity was inflicted on these victims by beatings with truncheons and metal objects and by burns; along with threats; these means were used to obtain written confessions to the murder. This was reported to the local procurator’s office, and criminal proceedings were instituted under article 354 of the Criminal Code, i.e. for obtaining statements from suspects or accused persons

by means of torture or other forms of violence. By a decision of the Criminal Division of the Supreme Court, nine police officers were sentenced to varying terms of deprivation of liberty for using torture.²

M. Ergashev, the executive head of the internal affairs office in the town of Isfara, received a court sentence of five years' deprivation of liberty for beating and inflicting bodily harm on citizen Kadyrov in order to obtain a confession; the victim subsequently tried to commit suicide.²

Although the Civil Code (arts. 1086, 1096, 1115 and 1116) provides for compensation for damages, there have been no instances of application by victims of torture or other cruel treatment for compensation from the perpetrators.

As a result of the incorporation of article 167, the Criminal Code now establishes criminal liability for trafficking in children, including for the purpose of removing organs or tissues from them for transplant. Ms. N. Bakhtiyarova, senior physician of maternity home No. 2 in Dushanbe, and A. Ganieva and M. Gafurova, members of the home's nursing staff, were each sentenced to five years' deprivation of liberty for trafficking in children by the Zheleznodorzhny district court in Dushanbe.²

86. Order No. 2 of the Procurator-General of 10 August 2000 on strengthening procuratorial supervision of strict compliance with the law in connection with the detention, arrest, criminal prosecution, committal for trial and sentencing of citizens requires members of law enforcement agencies to comply strictly with the law when a citizen is arrested or remanded in custody. Procuratorial agencies systematically verify compliance with this Order in pre-trial detention and holding facilities; if any violations are discovered, the law enforcement officers concerned are prosecuted. Twenty-five officers have been prosecuted: none in 1999-2000; 13 in 2001; 5 in 2002; and 7 in 2003.²

87. The 1996 Citizens' Communications Act establishes the procedure for citizens to submit proposals, applications and complaints to State and voluntary associations, enterprises, institutions and organizations irrespective of form of ownership, and the time limits for their consideration. In addition, articles 14 and 15 of the Act establish the liability of officials of State bodies and public organizations and enterprises with regard to the violation of legislation on communications from citizens and provide for compensation for damages resulting from failure to comply with the provisions of the Act in the consideration of their complaints and applications.

Article 163 of the Criminal Code penalizes unlawful refusal to process applications from citizens, failure without due cause to observe the time limits for processing applications, adoption of unfounded decisions in violation of the law, and infringements of legislation on communications from citizens that cause significant harm to the rights or protected interests of citizens, society or the State.

Order No. 90 of the Procurator-General of 25 October 2000 on reinforcement of procuratorial supervision of strict compliance with the law in the consideration of

communications from citizens regulates the procedure for considering communications, applications and complaints submitted by citizens to procuratorial bodies, and arrangements for personal interviews with citizens.

The procurator's office undertakes detailed verification of complaints and applications received from citizens and communications from the media concerning infringements of the law, the use of illegal methods during the preliminary inquiry and investigation stages and the hearing of criminal cases by the courts, as well as during the enforcement of court sentences, judgements and decisions.

Complaints, applications and letters addressed to the procurator by detainees are not subject to censorship and must be sent to the addressee within 24 hours after they are received.

In accordance with criminal procedure legislation, complaints about the actions of persons conducting preliminary inquiries or of investigators are sent to a procurator by the administration of the place of pre-trial detention within 72 hours after they are received, and complaints about actions and decisions of a procurator are submitted to the procurator next in seniority.

Other complaints, applications and letters in connection with criminal proceedings are sent by the administration of the place of pre-trial detention, within 72 hours after they are received, to the person or agency handling the case. Complaints, applications and letters containing information whose communication may obstruct the establishment of the truth in a criminal case are not sent to the addressee; the person in custody and the procurator are so informed.

Complaints, applications and letters concerning matters unrelated to the proceedings in a case are duly considered by the administration of the place of pre-trial detention or are sent to the addressee in accordance with the procedure established by law (Code of Criminal Procedure, art. 425).

Over the past five years, 153 complaints concerning the use of unlawful methods of investigation were submitted to the Office of the Procurator-General: none in 1999; 55 in 2000 (11 successful); 42 in 2001 (9 successful); 40 in 2002 (unsuccessful); and 18 in 2003 (1 successful).²

Over the past five years, members of law enforcement agencies were prosecuted for the commission of 315 different offences.²

88. The work of correctional labour establishments and the agencies enforcing court sentences of punitive deduction of earnings without deprivation of liberty, and also sentences in the form of restriction of liberty, is conducted in strict compliance with the law. The officials of these establishments and agencies are responsible for ensuring such compliance. Persons serving sentences must comply scrupulously with the requirements of the law concerning the procedure and conditions for serving sentences.

89. Correctional institutions operate according to strict internal regulations (Penal Enforcement Code, art. 83) that lay down the procedures relating to the reception of convicted

persons; the rules governing the conduct of convicted persons during periods of work, rest and study; the list of educational measures and the list of jobs and positions in which such persons may not be employed; the list of objects and personal effects that convicted persons may have with them, and the permitted quantities; the confiscation of items that such persons may not use; the rules governing checks, visits, and the receipt of parcels and letters; their delivery to prisoners and the list of food products and personal items that may be sold to them.

90. Article 38 of the Constitution accords everyone the right to health protection.

Article 105 of the Penal Enforcement Code provides for the medical care of persons serving sentences of deprivation of liberty in places of detention. All the medical and health services for persons serving sentences in places of detention are organized and provided in accordance with the Internal Regulations of Correctional Institutions and with Tajik legislation. Medical services for inmates are provided by prison medical facilities (hospitals, special psychiatric and tuberculosis hospitals, medical units), while inpatient and outpatient care for inmates suffering from tuberculosis, chronic alcoholism, drug addiction or HIV are provided by secure hospitals.

The Ministry of Justice and the Ministry of Health determine the procedure for providing medical services to persons deprived of their liberty, the organization and conduct of sanitary inspections, and the use of medical institutions of health agencies and their personnel for this purpose.

Persons serving sentences of deprivation of liberty who are ordered by a court to undergo compulsory treatment for alcoholism, drug addiction or toxin addiction under article 97 of the Criminal Code receive such treatment while serving their sentences.

In the case of persons convicted of minor offences and persons whose psychological condition does not constitute a threat, the courts may transmit the necessary paperwork to the health agencies so that a decision can be taken on the treatment of such persons or their transfer to a psychiatric hospital in accordance with the relevant health legislation.

Convicted foreign nationals and stateless persons have the rights and duties established by law for citizens of Tajikistan, subject to the restrictions imposed by legislation on convicted persons.

Foreign nationals sentenced to restriction or deprivation of liberty are also entitled to maintain links with the diplomatic missions and consular posts of their State, and nationals of countries having no diplomatic or consular representation in Tajikistan may maintain links with the diplomatic missions of a State that has undertaken to protect their interests, or with international organizations concerned with their protection (Penal Enforcement Code, art. 18).

According to article 16 of the Constitution, no Tajik citizen may be extradited to a foreign State. The extradition of criminals to foreign States is determined on the basis of bilateral agreements. Tajikistan may grant political asylum to foreign nationals whose human rights have been violated.

91. Under article 32 of the 1993 Education Act, pupils in general education schools are entitled to protection against unlawful acts on the part of the administration and teaching and other staff that infringe their rights or injure their sense of honour and dignity. The regulations on general education schools adopted by Government Decision No. 626 dated 12 October 1995 set out the functions of general education schools:

- To provide access to education and protect schoolchildren against any kind of discrimination in education;
- To make arrangements for protecting and improving the health of schoolchildren.

Tajikistan's criminal legislation addresses the questions of liability and punishment for cruelty to children (beating, torture) and other forms of cruel treatment of children. In its recommendations concerning the initial report of Tajikistan on its implementation of the Convention on the Rights of the Child, which was submitted for consideration in 1998, the Committee on the Rights of the Child pointed to various instances of cruel treatment of children and injury to their human dignity, including mental and physical violence in the family and in schools and other institutions for children. Tajikistan is acting on the Committee's recommendations and is taking steps to prevent cruelty to children. To this end, it has formulated a national plan of action to protect children's rights, which was approved by a government decision of 4 July 2003; the plan envisages the following measures:

- Conduct of research on the nature and scale of the commercial sexual exploitation of children; drafting of regulations to protect persons who expose instances of violence from discrimination and revenge, and the organization of rehabilitation programmes; educational campaigns; and intensification of cooperation between States;
- Conduct of educational and awareness-raising campaigns on the adverse consequences of the cruel treatment of children; and the expansion of rehabilitation and reintegration programmes for victims of child abuse;
- Introduction of appropriate procedures and mechanisms for receiving complaints and monitoring and investigating cases of cruel treatment, and for preventing of offences against children subjected to abuse in the course of judicial proceedings;
- Establishment of confidential telephone hotlines for child victims of violence;
- Drafting of a bill on social and legal protection against domestic violence.

The aforementioned bill has been drafted and is now being widely debated.

92. Article 25 of the Criminal Code addresses the condition of limited responsibility in connection with the imposition of penalties and may serve as the basis for imposition of compulsory medical measures.

Article 98 of the Criminal Code provides for the following compulsory medical measures for mentally-ill persons:

- Outpatient treatment (observation and treatment by a psychiatrist);
- Compulsory treatment in a general psychiatric institution;
- Compulsory treatment in a specialized psychiatric institution.

The extension, amendment or termination of compulsory medical measures are decided by a court on the basis of the findings of a psychiatric commission (Criminal Code, art. 100). The termination of compulsory medical measures accompanied by the enforcement of a sentence may be ordered by a court on the application of a penal enforcement agency based on the findings of a psychiatric commission (Criminal Code, art. 103).

There are several pieces of legislation regulating the procedure for imposing compulsory medical measures on persons suffering from mental disorders.

The living conditions and regimes and the supervision of patients in psychiatric hospitals are determined in the light of the conditions that will best facilitate their treatment and reintegration into society and the world of work without injuring their personal dignity or impairing their independence or sense of initiative. Patients are entitled to send and receive letters and receive packages and visits. Visiting hours for relatives and friends and the receipt of parcels are governed by the Internal Regulations. Oral and written applications and complaints by patients or their relatives or legal representatives are registered and processed in accordance with the established procedure.

93. Article 18 of the Constitution prohibits compulsory medical and scientific experimentation on human beings.

Article 133 of the Criminal Code penalizes the unlawful commitment to a psychiatric hospital of persons who do not require treatment, and their unlawful detention there; the penalty is increased if the offence is committed by a person for selfish reasons and in abuse of his or her official position, and if it causes the patient's death through negligence or serious harm to his or her health or produces other serious consequences.

94. In the training provided for law enforcement personnel, Tajikistan's educational institutions (the law departments of the State University, the Taxation and Law Institute, the Tajik-Russian Slavonic University, the Academy of the Ministry of Internal Affairs, and the Higher School of the Ministry of Security) provide instruction in a number of disciplines, imparting knowledge and skills for the detection of crime without recourse to unlawful methods.

The State health system operates research institutes and other national facilities and centres that conduct research corresponding to the subjects and programmes of the Academy of Sciences; such research and experiments are conducted only on animals. Clinical trials of drugs are permitted for scientific purposes once the drugs have been tested on suitable animals. In the event of rejection under laboratory analysis, clinical trials may be terminated ahead of schedule.

Article 8

95. Life, honour, dignity and the other inherent human rights are inviolable.

Human and civil rights and freedoms are regulated and protected by the Constitution, the laws of the Republic, and the international legal instruments recognized by Tajikistan.

96. The State safeguards the rights and freedoms of all persons regardless of ethnicity, race, sex, language, religion, political beliefs, education, and social or property status (Constitution, art. 17).

These constitutional precepts and other laws, in particular the Labour Code and the Criminal Code, prohibit slavery, the slave trade, servitude and other related phenomena, as well as other acts violating the legislation in question.

97. Tajik law regulates the legal consequences of situations in which a person is forced into dependency on another person, which is possible in connection with prostitution, drug trafficking and certain other abusive practices. For example, the Criminal Code punishes illegal trafficking in narcotic drugs and psychotropic substances or their precursors (art. 200); illegal handling of narcotic drugs, psychotropic substances or their precursors (art. 201); misappropriation of narcotic drugs and psychotropic substances or their precursors (art. 202); illegal cultivation of prohibited plants containing narcotic substances (art. 204); establishment or maintenance of dens for the consumption of narcotic drugs and psychotropic substances or their precursors (art. 205); and illegal dealing in powerful or toxic substances (art. 206).

The Narcotic Drugs, Psychotropic Substances and Precursors Act, adopted in 1999, is now in force. Tajikistan has acceded to the main international legal instruments in this area, such as the Convention on Psychotropic Substances of 21 February 1971 and the Single Convention on Narcotic Drugs of 30 March 1961, as amended by the Protocol of 25 March 1972.

The establishment or maintenance of brothels, procuring and pimping, and the illegal establishment or maintenance of gambling dens (Criminal Code, arts. 239 and 240) are also subject to prosecution under the law.

Following Tajikistan's accession to the United Nations Convention against Transnational Organized Crime and its two additional protocols, on the suppression of trafficking in persons, especially women and children, and on the smuggling of migrants by land, sea and air, the rules contained therein were incorporated into domestic criminal legislation. In particular, criminal liability for trafficking in persons is established in article 130, paragraph 1, of the Criminal Code, while article 167 deals with trafficking in minors.

Article 130, paragraph 1 (Trafficking in persons), states:

“1. Trafficking in persons is the buying or selling of persons with or without their consent by means of deception, recruitment, concealment, transfer, kidnapping, fraud, taking advantage of situations of vulnerability, bribery to obtain the consent of a person controlling another person, and other means of coercion with a view to subsequent sale, involvement in sexual or criminal activities, or use in armed conflicts, the

pornography business, forced labour, slavery or practices analogous to slavery, debt slavery, or with a view to commercial adoption. Such trafficking shall be punished by deprivation of liberty for between five and eight years with confiscation of property.

“2. The acts referred to in paragraph 1 of this article, when committed:

- (a) Repeatedly;
- (b) By a group of persons acting together by prior agreement;
- (c) Against two or more persons;
- (d) With the use or threat of violence;
- (e) With a view to removal from the victim of organs or tissues for transplant;

(f) By an official or representative of an authority through use of his or her official position or by another person holding an administrative position in a commercial or other organization;

(g) With the transfer of the victim across the State frontier of Tajikistan;

shall be punished by deprivation of liberty for between 8 and 12 years with confiscation of property.

“3. The acts referred to in paragraphs 1 and 2 of this article:

(a) If such acts resulted in the death of a victim of trafficking in persons or in other serious consequences;

(b) If committed by an organized group;

(c) If committed by a particularly dangerous recidivist;

shall be punished by deprivation of liberty for between 12 and 15 years with confiscation of property.”

Article 167 of the Criminal Code (Trafficking in minors) prescribes penalties in the following terms:

“1. Acts aimed at securing the sale or purchase of a minor, regardless of the form of their commission, shall be punished by deprivation of liberty for between five and eight years.

“2. The same acts, when committed:

(a) Repeatedly;

(b) Against two or more minors;

- (c) By a group of persons acting together by prior agreement;
- (d) Through the use of one's official position;
- (e) With the unlawful export of such a person across the frontier or his or her unlawful import from abroad;
- (f) For the purpose of involving the person in the commission of a crime or in other antisocial behaviour;
- (g) For the purpose of removing the person's organs or tissues for transplant;

shall be punished by deprivation of liberty for between 8 and 12 years with or without suspension of the right to hold certain posts or engage in certain activities for a period of up to 3 years.

"3. The acts referred to in paragraphs 1 and 2 of this article:

- (a) If committed by an organized group;
- (b) If such acts resulted in death through negligence or in other serious consequences;

shall be punished by deprivation of liberty for a period of between 10 and 15 years with or without suspension of the right to hold certain posts or engage in certain activities for between 2 and 5 years."

The Criminal Code also regards the kidnapping of persons for the purpose of their exploitation (art. 130), unlawful deprivation of liberty (art. 131) and the recruitment of persons for exploitation (art. 132) as criminal offences and prescribes appropriate penalties for the commission of such acts.

98. According to the Constitution, "Everyone has the right to work and to choose his or her profession or occupation and the right to labour protection and to social protection against unemployment." Remuneration for work must not be lower than the minimum wage.

No restrictions are permitted in labour relations. Equal pay must be paid for equal work.

No one may be subjected to compulsory labour except in the cases prescribed by law.

The employment of women and children in heavy or underground work or in work in harmful conditions is prohibited (Constitution, art. 35).

Article 8 of the Labour Code also prohibits compulsory labour but it does not regard the following activities as compulsory labour:

- (1) Work that may be demanded under the General Military Duties and Military Service Act of 29 November 2000;

(2) Work that may be demanded in an emergency threatening the lives, personal safety or health of the population under the Act on the Legal Regime Governing Emergencies;

(3) Work that may be demanded as a result of the entry into force of a court sentence and performed under the supervision of the State authorities responsible for ensuring compliance with the law in the enforcement of court sentences handed down in accordance with the 1998 Criminal Code and the 2001 Penal Enforcement Code. In such cases, workers may not be placed at the disposal of individuals or to private companies.

The Criminal Code and the Penal Enforcement Code provide for punitive deduction of earnings as one of the main types of criminal penalty.

For example, article 52 of the Criminal Code states:

“1. Punitive deduction of earnings may be ordered at a convicted person’s place of work or in other places designated by the penal enforcement agencies, which must be in his district of residence, for a period of two months to two years, with retention by the State of 20 to 50 per cent of the convicted person’s earnings.

“2. In the case of persons recognized to be unfit to work, the court may replace punitive deduction of earnings with a fine calculated on the basis of one month’s minimum wage for one month’s correctional labour.

“3. In the event of a person’s persistent refusal to comply with a sentence of punitive deduction of earnings, the court may replace the uncompleted part of the sentence by restriction of liberty, rigorous imprisonment or deprivation of liberty on the basis of one day of restriction of liberty for one day of deduction of earnings, one day of rigorous imprisonment for two days of deduction of earnings, or one day of deprivation of liberty for three days of deduction of earnings.

“4. Punitive deduction of earnings may not be imposed on:

- (a) Members of the armed forces;
- (b) Persons under 16 years of age;
- (c) Women over 50 years of age or men over 60 years of age;
- (d) Pregnant women;
- (e) Persons childcare leave;
- (f) Disabled persons in categories I and II.”

Pursuant to article 58 of the Criminal Code, persons sentenced to deprivation of liberty shall be isolated from society and held in a correctional colony, an open prison, a correctional colony with an ordinary, strengthened, strict or special regime, or a prison. Persons sentenced to deprivation of liberty who are under 18 years of age at the time of sentencing are housed in an

educational colony with a general or strengthened regime in accordance with the procedure established by the Code. The isolation of convicted persons from society is accompanied by the performance of the work required as a result of the entry into force of a court sentence, performed under the supervision of the State authorities responsible for ensuring compliance with the law in the enforcement of court sentences.

Correctional labour is imposed in Tajikistan in accordance with the requirements of articles 7 and 10 of the Covenant. Efforts are being made to improve legislation on the conditions under which correctional labour is performed and to improve the facilities created for this purpose, such as open prisons, correctional labour colonies, and so on. It should be noted that, with a view to improving the penal enforcement system, and also as confirmation of Tajikistan's commitment to observing human and civil rights (including the rights embodied in the International Covenant on Civil and Political Rights) in connection with the serving of sentences imposed by the lawful decision of a competent court, and in the light of the recommendations of international human rights organizations, Tajikistan has begun to reform its legislation and the penal enforcement system. For example, pursuant to Presidential Decree No. 855 of 26 July 2002, the administration of the penal enforcement system has been transferred from the Ministry of Internal Affairs to the Ministry of Justice, and measures for the gradual reform of the system have begun.

In the context of the reform of the penal enforcement system, efforts are being made to improve the relevant legislation, specifically by making the provisions of the Criminal Code and the Penal Enforcement Code less harsh.

99. The defence of the fatherland, the protection of the interests of the State and the reinforcement of its independence, security and defence capability are the sacred duty of the citizen (Constitution, art. 43). Accordingly, within the meaning of article 8, paragraph 3, of the Covenant and pursuant to article 8 of the Tajik Labour Code, military service in Tajikistan is not regarded as compulsory labour.

Questions of military service are regulated by the General Military Duties and Military Service Act, adopted in 2000.

Under article 343 of the Criminal Code, the following cases of refusal to perform military or alternative service are regarded as crimes:

(1) Refusal of a routine call-up to active military service, as well as refusal by a person liable to military service of a call-up for training or testing, unless he has legal grounds for release from such service, is punished by a fine of between 500 and 1,000 times the minimum wage or by deprivation of liberty for up to two years.

(2) Refusal to perform alternative service by persons exempted from military service is punished by a fine of between 300 and 800 times the minimum wage or by rigorous imprisonment for up to six months.

(3) Refusal of a call-up to emergency military service or alternative service when accompanied by:

- (a) Deliberate damage to one's own health;
- (b) Falsification of documents or other fraud,

is punished by deprivation of liberty for a term of two to five years.

Note: The person called up does not incur criminal liability if he presents himself at the enlistment point before his case is referred to a court (Criminal Code, art. 343).

Tajikistan has no system of civilian national service for persons who refuse to perform military service because of their beliefs. The General Military Duties and Military Service Act provides for alternative service for persons exempted from military service. However, there are no arrangements for performing such service. In practice, there have been no instances of a citizen exempted from military service requesting to perform alternative service.

100. The employment contract is one of the means of regulating labour and associated relations; when concluding such a contract the parties are free and enjoy equal rights. Coercion to conclude an employment contract is prohibited except in cases when a labour contract is mandatory under the Labour Code, other legislation or a voluntarily accepted obligation of the parties. The unjustified refusal to conclude an employment contract with a worker assigned to a job by the State employment service as part of a quota, a reserved-jobs scheme or in the other cases specified in the Labour Code and other laws is prohibited. A worker invited to take up a job under a transfer from another organization by agreement between the directors of the enterprises may not be refused an employment contract.

At the request of a worker or an authorized agency, employers are required, in the cases prescribed by the Labour Code, to notify the worker and the agency in writing of the reasons for the refusal to hire the worker. A worker is entitled to conclude employment contracts with several employers when he holds several jobs, provided that such action is not specifically prohibited by law. The conclusion of an employment contract in the cases envisaged by law may be subject to certain other conditions (competitive examination, selection board). In this connection, article 4 of the Labour Code provides that a worker who voluntarily concludes an employment contract is obliged conscientiously to perform his functions in accordance with the contract. Thus, any person who concludes an employment contract in accordance with the law voluntarily assumes the responsibility of performing the duties in question, and failure to do so entails the corresponding legal consequences that affect some of the employee's rights. According to article 26 of the Labour Code, an employment contract is an agreement between an employer and a worker under which the worker is obliged to perform work in one or several trades, specialties or posts calling for the corresponding qualifications, and is subject to the internal rules of the enterprise, while the employer is obliged to pay the worker for such work and provide the working conditions prescribed by labour legislation and other regulations and by agreement between the parties. This does not imply forced or compulsory labour in the meaning of article 8 of the Covenant; such work in part of a person's normal civil duties.

Article 4, paragraphs 9 and 11, of the Constitutional Act on the Legal Regime Governing Emergencies allows the State authorities, in an emergency and in the light of the specific circumstances, to use the resources (including the labour resources) of enterprises, establishments and organizations to prevent or eliminate the consequences of an emergency,

subject to subsequent payment of compensation as determined by the Government, and to recruit able-bodied citizens to work in such enterprises, establishments and organizations and to eliminate with the consequences of the emergency, subject to guarantees of their safety. This is an exception to the general regulations and does not imply forced or compulsory labour in the meaning of the Covenant; it is part of a person's normal civil duties prescribed by law. This regulation is applied in specific circumstances, i.e. only during a legally declared state of emergency.

Article 9

101. Under the Constitution, everyone has the right to liberty and personal inviolability (art. 18). No one may be subjected without legal justification to arrest, detention or exile (art. 19).

Detention, like any other restriction of liberty, is regulated by the Code of Criminal Procedure and the Code of Administrative Offences. The following are the legal provisions concerning detention:

- Detention is defined as the temporary deprivation of the liberty of a person suspected of committing an offence, with a view to halting his or her criminal activity and preventing him from fleeing or concealing or destroying evidence;
- A person may be detained either before or after the initiation of criminal proceedings. In the latter case, detention is permitted only by a decision of the person conducting the preliminary inquiry, an investigator, a procurator or a court.

The following are the grounds for detention under article 412, paragraph 3, of the Code of Criminal Procedure:

- When a person has been caught in the act of committing a crime or immediately after committing a crime;
- When witnesses, including direct victims, have identified a person as having committed a crime;
- When clear signs of the commission of a crime have been found on a person, in his immediate surroundings or in his home;
- When a person has attempted to run away or has no permanent residence, or when his or her identity cannot be established.

102. The question of detention is also addressed in article 257 of the Code of Administrative Offences, according to which, “in the cases specified in the legislation of the Republic of Tajikistan, in order to prevent the commission of administrative offences and when all other means of influencing a person or establishing his identity have been exhausted, he may be placed under administrative arrest, examined to determine whether he is drunk, removed from behind the wheel of his vehicle, or have his vehicle impounded for a period not exceeding three hours”.

Administrative arrest is an administrative penalty and may be imposed in exceptional cases for different types of administrative offences for up to 15 days. Administrative arrest is ordered by a district court or judge handling administrative proceedings. Administrative arrest may not be imposed on pregnant women, women with children under 12, persons under 18, or disabled persons in categories I and II.

103. Guarantees of rights during detention:

- The agency carrying out the preliminary inquiry or the investigator is required to draw up a report on any case of detention, including an indication of the reasons and grounds, the day, time and place of arrest, the explanations given by the detainee, and the time the report was drawn up; the report must be signed by the arresting officer and by the detainee (Code of Criminal Procedure, art. 412, para. 4);
- The agency carrying out the preliminary inquiry or the investigator is required to submit a written report on any case of detention to a procurator within 24 hours;
- The procurator is required to approve the detention within 48 hours or order the detainee's release (Code of Criminal Procedure, art. 412, para. 5);
- The agency carrying out the preliminary inquiry or the investigator must notify the family of the detainee. If the person is being held on suspicion of committing a serious offence, his family is notified only if such notification will not obstruct the establishment of the facts of the crime. It is mandatory for the parents of a minor to be notified of his or her detention (Code of Criminal Procedure, art. 416, para. 6);
- The agency carrying out the preliminary inquiry or the investigator must explain to the person concerned the reasons for his or her detention and his or her rights and duties (Code of Criminal Procedure, art. 412, para. 11);
- Detention in police custody must not exceed 72 hours;
- A detainee is released if the suspicion that he or she has committed an offence is not confirmed, or if there is no need to impose on him a preventive measure of arrest, or if the time limit for detention has expired (Code of Criminal Procedure, art. 412, para. 17);
- Deliberate unlawful detention, i.e. temporary deprivation of liberty, is punished by restriction of liberty for up to three years, or by rigorous imprisonment for three to six months, or by deprivation of liberty for up to two years;
- Deliberate unlawful remand in custody is punished by deprivation of liberty for up to three years (Criminal Code, art. 358);
- The deliberate criminal prosecution of a person known to be innocent is punished by deprivation of liberty for between three and five years with suspension of the right to hold certain posts for up to five years (Criminal Code, art. 348);

- The deliberate passing of an unlawful sentence, decision or other judicial acts is punished by deprivation of liberty for between three and five years with suspension of the right to hold certain posts for up to five years (Criminal Code, art. 349).

104. Guarantees of protection during detention provided by the Code of Criminal Procedure:

- Defence counsel has access from the moment he receives notification of the detention (art. 49);
- Persons detained on suspicion have the right to know what they are suspected of; to request verification by a procurator of the legality of their detention; and to submit complaints and applications to State authorities and voluntary organizations and to officials (art. 412, para. 11);
- The administration of the place of detention provides persons detained on suspicion of having committed an offence with opportunities to see relatives and other persons (art. 412, para. 13);
- Complaints and applications addressed to a procurator, an investigator or a person carrying out the preliminary inquiry by persons detained on suspicion of having committed an offence are transmitted to the addressee without delay (art. 412, para. 14).

Tajikistan follows the practice of examining detainees on their admission to a holding facility or remand centre in order to determine their state of health and the presence of any bodily injuries and, at the request of the detainee, suspect, accused or convicted person, to determine whether he or she has been subjected to violence: it is then mandatory for the medical personnel of the holding facility or remand centre to conduct an examination without delay. The findings are communicated to the person concerned. Refusal to conduct an examination constitutes grounds for complaint to a procurator.

105. No one may be detained or arrested without legal justification. Detainees are entitled to the services of a lawyer from the moment of their detention (Constitution, art. 19).

However, under the current Code of Criminal Procedure, the arrangements for access by defence counsel are inadequate and not fully in accordance with the requirements of article 9 of the International Covenant on Civil and Political Rights.

Pursuant to article 48 of the Code of Criminal Procedure, accused persons are entitled to participate in proceedings before a court of first instance. Such proceedings are conducted in the presence of the defendant, whose appearance is mandatory; if he or she fails to appear, the case must be deferred (Code of Criminal Procedure, arts. 246 and 247).

Under article 50 of the Code of Criminal Procedure, defence counsel may be invited to participate by an accused person or a defendant. The accused person or the defendant may dismiss his or her defence counsel at any time; in such cases, the defence is conducted by the

accused person or the defendant. However, article 51 of the Code specifies certain types of cases in which the participation of defence counsel is mandatory; defence counsel is then appointed by the investigator or the court through the Bar.

106. Order No. 2 of the Procurator-General of 10 August 2000 on strengthening procuratorial supervision of strict compliance with the law in connection with the detention, arrest, criminal prosecution, committal for trial and sentencing of citizens, which is binding on all the State's law enforcement agencies, requires members of law enforcement agencies to comply strictly with the law in connection with the detention and arrest of citizens. Procuratorial bodies systematically monitor compliance with this Order in police cells, holding facilities and remand centres; if any violations are discovered, the law enforcement officers concerned are prosecuted.

Procuratorial bodies detected the following violations:

- Unlawful detention of citizens in holding facilities: in 1999 - 19; in 2000 - 46; in 2001 - 63; in 2002 - 41;
- Unlawful prosecutions: in 1999 - 25; in 2000 - 25; in 2001 - 48; in 2002 - 16;
- Unlawful arrest: in 1999 - 30; in 2000 - 25; in 2001 - 33; in 2002 - 13.²

Most of the offences involving unlawful detention are committed by agencies carrying out initial inquiries: the police and the Drug Control Agency of the Office of the President. For example, Drug Control Agency officers unjustifiably detained seven persons in 2000, four in 2001, and nine in 2002.²

Checks by procuratorial bodies in 2000-2003 resulted in disciplinary action against 169 employees of internal affairs agencies and 104 employees of procuratorial bodies; 8 employees of internal affairs agencies and procuratorial bodies were dismissed for breaking the law in connection with the detention and arrest of citizens. Criminal proceedings were initiated in 18 cases of unlawful detention of citizens by militia officers, who were subsequently convicted by the courts.²

107. Article 133 of the Criminal Code establishes criminal liability for unlawful commitment to a psychiatric hospital and prescribes a penalty of deprivation of liberty for between five and eight years with suspension of the right to hold certain posts for up to three years.

Procedural law devotes special attention to matters connected with the choice of preventive measures. Under article 82 of the Code of Criminal Procedure, the pre-trial investigation agencies and the courts are entitled to impose one of the following preventive measures on accused persons:

- Signature of an undertaking not to leave the district;
- Personal recognizance;
- Supervision by the headquarters of a military unit;

- Bail;
- Remand in custody.

108. Under articles 6 and 90 of the Code of Criminal Procedure, remand in custody may be imposed as a preventive measure by order of a court or with the approval of a procurator only with respect to offences for which the law prescribes punishment in the form of deprivation of liberty for a period of over one year. And it is only in exceptional circumstances that this preventive measure may be imposed for the commission of an offence for which a sentence of less than one year's deprivation of liberty may be handed down. These circumstances include the following situations: the suspect or accused has no permanent residence or his identity cannot be established; he has violated a preventive measure imposed earlier; he has evaded the investigation agency or from the court.

Remand in custody may be ordered for minors if they are suspected or accused of committing a serious or particularly serious offence, and only in exceptional circumstance for intermediate offences.

109. Under Tajikistan's criminal procedure legislation, remand in custody may be imposed as a preventive measure for accused persons, defendants and suspects when the offence in question may be punished by deprivation of liberty for over one year. Remand in custody may be imposed by a decision of an investigator or the person carrying out the initial inquiry that has been approved by a procurator, or by a court decision ordering remand in custody as a preventive measure (Code of Criminal Procedure, arts. 90, 413 and 415). Persons remanded in custody have the right under article 221, paragraphs 1 and 2, of the Code to appeal to the court against their detention or the extension of its duration either directly or through defence counsel.

The remand-in-custody procedures also apply to convicted persons whose sentences have not entered into force.

The legislation on pre-trial detention sets out the rules governing the committal to places of pre-trial detention of persons remanded in custody as a preventive measure in order to exclude the possibility of their hiding from the investigating authorities or the courts, obstructing efforts to establish the truth or engaging in criminal activity, or in order to ensure the enforcement of a sentence. Persons remanded in custody as a preventive measure are held in pre-trial detention centres. In certain cases, persons in this category may be held in prisons, police cells or guardhouses. Remand prisoners may not be held in police cells for more than three days. If prisoners cannot be taken to a remand unit owing to distance or the lack of proper transport, they may be held in police cells for a longer period but not for more than 20 days. In such cases, and when persons remanded in custody as a preventive measure are held in a prison, they are held under the conditions prescribed in articles 413 to 431 of the Code of Criminal Procedure.

110. When deciding whether to approve an application for pre-trial detention, a procurator must carefully study all the documents in the file. If necessary, he must question the person face to face; this is mandatory in all cases involving minors. Thus, the holding of persons in custody pending judicial proceedings is not a general rule; in each specific case (taking into account the

seriousness of the charge, the character of the accused and his or her age, state of health and family situation), the investigating authorities or the courts are entitled to impose one or another type of preventive measure.

Pursuant to article 96 of the Code of Criminal Procedure, a preventive measure must be revoked when it is no longer needed or replaced by a less severe measure when the circumstances of the case so require.

111. Criminal procedure law accords persons remanded in custody and their defence counsel or legal representatives the right to appeal to a court against a procurator's decision to place them in custody. The procurator or the investigator is required to transmit such an appeal to the court within 24 hours, together with documentation confirming the legality of and the grounds for remand in custody as a preventive measure (Code of Criminal Procedure, art. 221, para. 1).

The legality of and grounds for the imposition of pre-trial detention or the extension of its duration are verified by a judge where the person in question is being held. The judge must make this determination within three days of his receipt of the documents of the case. It is mandatory for the person remanded in custody to participate in the verification process. Only in exceptional cases, when this person petitions for his application to be considered in his absence or refuses of his own free will to participate does the court sit without him.

112. Following verification, the judge issues one of the following decisions:

- (1) Revocation of the preventive measure of remand in custody and release of the detainee;
- (2) Rejection of the appeal.

In the event of failure to submit documents confirming the legality of and grounds for the imposition of pre-trial detention or the extension of its duration, the judge orders the revocation of this preventive measure and the release of the detainee.

Copies of the judge's decision are transmitted to the procurator and the appellant and, if the detainee's release is ordered, to the place where he or she is being held for immediate action. If a detainee whose release is ordered is present at the court hearing, he or she is immediately released by the judge in the courtroom itself (Code of Criminal Procedure, art. 221, para. 2).

113. The Code of Criminal Procedure prescribes the time limits for initial inquiries and pre-trial investigations (arts. 117 and 127), for remand in custody (art. 92) and for the hearing of a case once it has been referred to a court (art. 240); it also specifies the procedures for extending such time limits. The law has thus established a situation in which all accused persons are tried without unjustified delay.

114. Under article 50 of the Code of Criminal Procedure, defence counsel may be invited to participate by an accused person or a defendant. The accused person or the defendant may dismiss his or her defence counsel at any time; in such cases, the defence is conducted by the

accused person or defendant. However, article 51 of the Code specifies certain types of cases in which the participation of defence counsel is mandatory; defence counsel is then appointed by the investigator or the court through the Bar.

115. The Criminal Code establishes criminal liability for extracting information by means of threats, blackmail or other unlawful acts on the part of the person conducting the pre-trial investigation or administering justice (art. 354).

116. Punishment is a coercive measure ordered by a court and takes the form of suspension or restriction of the rights and freedoms of the convicted person. Punishment is imposed in order to restore social justice, reform the convicted person and prevent the commission of further offences either by the convicted person or by others.

The Criminal Code takes a differentiated approach to the imposition of criminal penalties. The harshest penalties are rigorous imprisonment, deprivation of liberty and the death sentence.

Rigorous imprisonment means holding a person in strict confinement and may be ordered by a court for a period of between one and six months.

Deprivation of liberty means isolating a person from society by placing him or her in a correctional colony, an open prison, in a correctional labour colony operating an ordinary, strengthened, strict or special regime, or in a prison. Deprivation of liberty may be ordered for a period of between 6 months and 20 years. In the event of partial or full overlapping of terms of deprivation of liberty resulting from simultaneous sentencing multiple offences, the maximum term of deprivation of liberty may not exceed 25 years.

117. Under article 311 of the Code of Criminal Procedure, a verdict of acquittal is handed down when:

- (1) The occurrence of the crime is not established;
- (2) The defendant's act does not constitute an offence;
- (3) The defendant's participation in the commission of the offence is not proved.

When a defendant who was being held in pre-trial detention is acquitted or released without sentence or has his sentence remitted or when his sentence does not entail deprivation of liberty, he is immediately released by the judge in the courtroom itself.

118. A substantial guarantee of the protection of civil rights and freedoms under existing legislation is the restoration of a person's legal rights, which includes the right to compensation for material and moral damage and the restoration of labour, pension, housing and other rights.

Under article 85 of the Criminal Code, a person who has not committed an offence and has been prosecuted without justification or unlawfully convicted is entitled to restoration of his or her legal rights; in other words, the court must acknowledge that he or she was prosecuted without justification or unlawfully convicted.

The person concerned is accorded full restoration of his or her legal rights.

Full compensation is paid by the State for the damage caused to a person by unlawful conviction or unlawful prosecution.

Compensation for material and moral damage caused to a person as a result of unlawful action by State authorities or public bodies is paid in accordance with the law at their expense (Constitution, art. 32). This constitutional rule is applied in accordance with article 56 of the Code of Criminal Procedure and articles 5 and 116 of the Code of Civil Procedure, as well as with other legislation. Compensation is prescribed in all cases when a person suffers material damage during the commission of an offence. A person may exercise this right independently or by application to a procurator to act on his or her behalf.

The right to compensation arises in cases of acquittal, when a criminal case is terminated because the occurrence of the offence was not established when the defendant's act does not constitute an offence, when the defendant's participation in the commission of the offence is not proved, or when a case involving an administrative offence is terminated.

Judge M. Shamsiddinova of the Frunze district court in Dushanbe, who had been held in pre-trial detention for over nine months on suspicion of having committed an offence under articles 17 and 183, paragraph 1 (Abuse of official position), articles 188, paragraph 2, and 187, paragraph 2 (Bribe-taking) and article 196, paragraph 2, of the Criminal Code, was acquitted by a decision of the Criminal Division of the Supreme Court of 14 November 1997. Judge Shamsiddinova was awarded an appropriate amount of damages by a Supreme Court judgement dated 29 June 1998.

In addition to being notified of the dismissal of the case against him or her or provided with a copy of the verdict of acquittal, the person concerned or, if he has died, his heirs and dependants, is notified of his or her right to damages and of the procedure for compensation. Within six months from the date of receipt of such notification, the person in question may submit an application to the body that decided to dismiss the case or issued the verdict of acquittal. This application must be dealt with within one month and a (judgement) decision must be issued on its approval or rejection. If the application is approved, the body dealing with it must send a copy of its decision (judgement) to the applicant or his or her heirs within three days so that the applicant or the heirs may obtain a cheque, which is issued by the finance department of the relevant local authority (*khukumat*) within five days. The amount of the damages is paid by agencies of the National Bank against the local authority's cheque.

If the person concerned disagrees with the decision on his application, he may appeal against it to the courts.

Article 10

119. Article 10 of the Tajik Constitution states that international legal instruments recognized by Tajikistan form part of the national legal system. Under this provision, the penal correction authorities take steps to implement the requirements of the following international legal

instruments: the United Nations Standard Minimum Rules for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the Code of Conduct for Law Enforcement Officials; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other instruments relating to the treatment of persons deprived of their liberty.

The Penal Enforcement Code of Tajikistan was drafted and adopted in 2001 with due regard for the standards of international law regarding the observance and protection of prisoners' rights. Compared with the previous version, the new Penal Enforcement Code contains a large number of provisions on the protection of the rights of persons deprived of their liberty, and broadens the opportunities for contact between convicts and the outside world in terms of visits, correspondence, telephone conversations, and receipt of parcels and packets.

120. Article 3 of the Penal Enforcement Code states that the object of penal correction is not only to penalize wrongdoing but also to encourage criminals to reform and prevent the recurrence of offences, including offences committed by other persons. The basis for penal corrections and the application of other criminal-law measures is the enforceable judgement of a court or a ruling or decision amending such a judgement (Penal Enforcement Code, art. 4).

Article 47 of the Criminal Code specifies the following forms of punishment:

- (a) Fine;
- (b) Loss of the right to hold certain posts or engage in certain activities;
- (c) Loss of special military rank, service grade and State honours;
- (d) Punitive deduction of earnings;
- (e) Restrictions relating to military service;
- (f) Restriction of liberty;
- (g) Short-term rigorous imprisonment;
- (h) Detention in a military disciplinary unit;
- (i) Confiscation of property;
- (j) Deprivation of liberty;
- (k) Death penalty.

The introduction of the penalty of short-term rigorous imprisonment referred to in articles 62 to 69 and 160 to 165 of the Penal Enforcement Code has been deferred until 2008 (Decision No. 846 of 7 May 2003 of the Majlis-i Namoyandagon of the Majlis-i Oli of the Republic of Tajikistan).

121. With a view to encouraging further demilitarization and democratization and ensuring more humane treatment of persons deprived of their liberty and respect for their dignity, Tajikistan is undertaking a programme of legal reform, in the course of which it intends to improve the penitentiary system and bring it into line with international standards. A key strategy for making conditions more humane is the transfer of penitentiaries (prisons and colonies) from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice, pursuant to Presidential Decree No. 855 of 26 July 2002 on reforming the penal correction system. Unlike the Ministry of Internal Affairs, the Ministry of Justice is not involved in crime fighting and can administer penal corrections independently.

In order to ensure more effective and timely procuratorial oversight, a procurator's office responsible for monitoring compliance with the law at places of deprivation of liberty has been established; the office is responsible for ensuring that the law is scrupulously adhered to at such facilities.

122. Article 95 of the Penal Enforcement Code stipulates that convicts are permitted to send and receive letters and telegrams, without restriction, at their own expense. Under article 92, convicts have the right to make telephone calls. Convicts in punishment cells, disciplinary units, special cells and solitary-confinement cells are permitted to make telephone calls solely in exceptional personal circumstances.

The following rules apply to visits and the sending of parcels and packets:

(1) In ordinary-regime correctional labour colonies (Penal Enforcement Code, art. 128), convicted prisoners have the right to eight short and six long visits a year and to receive an unlimited number of parcels, hand-delivered packages, and packets. If the prisoner is not punished for breaching the rules of the facility and exhibits a conscientious attitude to work, after six months have elapsed he or she is allowed unrestricted visits and may be released from the penitentiary for annual leave of absence.

(2) In strengthened-regime correctional colonies (Penal Enforcement Code, art. 130), convicts are allowed six short and four long visits and have the right to receive one parcel and one packet without restriction. If the prisoner is not punished for breaching the rules of the facility and exhibits a conscientious attitude to work, after at least one year has elapsed he or she is permitted unrestricted visits and may be released from the penitentiary for annual leave of absence, pursuant to a decision of the administration.

In strict-regime correctional colonies (Penal Enforcement Code, art. 132), convicts are allowed four short and three long visits and have the right to receive one parcel, one hand-delivered package and one packet without restriction.

(3) In special-regime colonies (Penal Enforcement Code, art. 134) convicts are allowed three short and two long visits and have the right to receive one parcel, one hand-delivered package and one packet without restriction.

(4) Convicts serving their sentence at a prison (Penal Enforcement Code, art. 136) are entitled to two short and two long visits, to receive parcels, one hand-delivered package and one packet without restriction, and to two hours' exercise a day.

(5) Convicts in strict-regime prisons are allowed two short visits a year. They also have the right to receive parcels, hand-delivered packages, and packets without restriction and to take one hour's exercise a day.

(6) Convicts serving their sentence in ordinary-regime reformatories (Penal Enforcement Code, art. 140) are entitled to unrestricted short visits and six long visits a year. They are also entitled to receive parcels, hand-delivered packages, and packets without restriction.

(7) Convicted prisoners in strengthened-regime reformatories (Penal Enforcement Code, art. 141) are entitled to unrestricted short visits and four long visits and have the right to receive parcels, hand-delivered packages, and packets without restriction.

(8) In corrective-labour open prisons (Penal Enforcement Code, art. 126), convicts are supervised rather than guarded. In accordance with the daily routine, they are entitled to move freely around the facility. With the permission of the administration, they may leave the territory of the prison without supervision, if this is required by the nature of the work or study they are engaged in. With the consent of the governor of the open prison, they may live with their families in rented accommodation or in their own accommodation in the open prison or outside it.

(9) Convicts in punishment cells forfeit the right to have visitors, make telephone calls, buy food and receive parcels, hand-delivered packages, and packets.

(10) Every month, convicts in special or solitary-confinement cells have the right to spend money they have earned in the correctional institution on food and essential items, to a value of double the fixed minimum wage. They also have the right to receive one parcel or hand-delivered package and one packet every six months, to take 90 minutes' exercise a day and, with the consent of the administration, to have one short visit every six months.

Article 123 of the Penal Enforcement Code states that prisoners in punishment cells shall be denied visits, telephone calls and the right to buy food and receive parcels, hand-delivered packages, and packets, although they retain the right to one hour's exercise a day.

Every month, convicts transferred to special cells have the right to spend money they have earned in the correctional institution on food and essential items, to a value of double the fixed minimum wage; to receive one parcel or hand-delivered package and one packet every six months; to take 90 minutes' exercise a day; and, with the consent of the administration, to have one short visit every six months.

Convicts held in punishment cells who are transferred to special or solitary-confinement cells work separately from other prisoners. The total period of confinement in special or solitary-confinement cells may not exceed six months in the course of one year, or 16 days in a punishment cell (Penal Enforcement Code, art. 123).

123. Persons deprived of their liberty pursuant to a court judgement are held in correctional institutions.

In passing a sentence of deprivation of liberty, the courts take account of the gravity of the offence and the character of the defendant.

Men deprived of their liberty are sentenced as follows:

- Convicts who have committed an offence through negligence and have been sentenced to no more than five years' deprivation of liberty are sent to open prisons;
- First-time offenders who have intentionally committed lesser or intermediate crimes, and convicts who have committed offences through negligence and have been sentenced to more than five years' deprivation of liberty, are sent to ordinary-regime correctional colonies;
- First-time serious offenders who have committed a serious crime are sent to strengthened-regime correctional colonies;
- First-time offenders who have committed a particularly serious crime and repeat offenders, if the convicted person is serving or has previously served a sentence of deprivation of liberty, are sent to strict-regime correctional colonies;
- Convicts declared by the court to be particularly dangerous repeat offenders or whose death sentence has been commuted to deprivation of liberty by way of a pardon are sent to special-regime correctional colonies.

124. Women deprived of their liberty are sentenced as follows:

- Convicts who have committed an offence through negligence are sent to open prisons;
- Convicts held by the court to be particularly dangerous repeat offenders are sent to strict-regime correctional colonies;
- Other women are sent to ordinary-regime correctional colonies.

Article 58, paragraph 7, of the Criminal Code states that, depending on the nature and degree of the social danger of the crime, the character of the offender and other factors, the court may specify that a sentence be served under a less onerous regime.

As at 1 December 2003, there were 507 women prisoners. Tajikistan has one women's ordinary-regime correctional colony. In line with the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners concerning proximity of women's detention facilities to their families' permanent place of residence, and in view of the fact that most women convicts come from the central and southern regions of Tajikistan, the women's correctional colony was relocated from the northern to the central region of the country in March 2003; this has made it easier for the prisoners to maintain ties with their families.

125. Persons sentenced to more than 10 years' imprisonment for particularly serious crimes, and also particularly dangerous repeat offenders, may be ordered to serve part of their sentence - but no more than five years - in a prison. Convicts serving their sentence in a prison are held in separate cells.

126. Male convicts sentenced to deprivation of liberty who were under 18 when the court passed sentence are sent to ordinary- or strengthened-regime reformatories, while female convicts are held exclusively in ordinary-regime reformatories.

127. A court may change the type of correctional institution to which a convict has been assigned for the reasons and according to the procedure specified by the Penal Enforcement Code and other national laws.

128. Among other things, penal enforcement legislation aims to protect the rights, liberties and legitimate interests of convicts, afford them assistance and encourage their social adaptation. In the process of penal correction, minimal restrictions are placed on convicts' rights, in other words, only such restrictions as are required to achieve the ends of punishment.

129. Article 420 of the Code of Criminal Procedure stipulates that convicted prisoners must be segregated from persons in custody. Unlike the legal status of convicted prisoners, the legal status of persons in custody awaiting trial is regulated by the provisions of the Code of Criminal Procedure. Pre-trial detention is used only as a preventive measure in respect of persons charged with an offence, defendants and persons suspected of an offence punishable at law by deprivation of liberty, in order to exclude the possibility of their hiding from the investigating authorities or the courts, obstructing efforts to establish the truth or engaging in criminal activity.

130. Persons in pre-trial detention have the same statutory rights and obligations as all Tajik citizens, subject to the restrictions implied by their status as remand prisoners. The principal requirements of the regime in remand units are that prisoners' status as innocent persons should be upheld, that detainees should be isolated from the outside world, and that they should be constantly supervised.

Tajikistan has six pre-trial detention centres (remand units) housing persons subject to criminal prosecution. Remand units are subject to the requirement that men must be held separately from women, minors from adults, persons who have served a previous sentence of deprivation of liberty from first-time prisoners, and persons accused or suspected of committing serious crimes and particularly dangerous recidivists from other prisoners in custody. This provision does not fully comply with the requirements of article 8 of the United Nations Standard Minimum Rules for the Treatment of Prisoners with respect to the custody of women and under-age female offenders in different institutions, since Tajikistan currently lacks the necessary financial resources.

131. The programme for State human rights education in Tajikistan, approved by Government Decision No. 272 of 12 June 2001, aims to provide detainees and prisoners with sufficient instruction, information and education about human rights to enable them to assert their legitimate rights. To this end, the programme provides for:

- The preparation and publication of brochures, posters and booklets with information about the core provisions of Tajik laws and international legal instruments laying down standards for the treatment of detainees and prisoners;
- Lectures, discussions, thematic activities and information spots;
- Making available to prisoners written information about the rules governing their treatment, making allowances for the disciplinary requirements of the institution;
- Making available rooms for meetings between convicts and members of their families, and material relating to human rights;
- Organizing a human rights section in the space set aside for legal education;
- Making available an area where detainees can obtain essential human rights information;
- Familiarizing prisoners with their rights following release from a correctional institution and issuing them with a checklist of their rights upon release.

132. Persons in custody are held in communal cells. In exceptional cases, pursuant to a reasoned decision by the person or agency handling the case or by the administrator of the pre-trial detention facility, and with the authorization of the procurator, they may be kept in individual cells.

In practice, the custody arrangements in pre-trial detention facilities do not accord with the status of a person not yet found guilty. Unlike convicts, a remand prisoner is not entitled to family visits, correspondence or telephone calls. Detainees may meet with their relatives or their legal counsel only with the permission of the person conducting the investigation.

Old-style remand units continue to exist in Tajikistan, notwithstanding the provisions of rule 9 of the United Nations Standard Minimum Rules for the Treatment of Prisoners with regard to the provision of individual cells or rooms. The sanitary installations are located in the cells themselves, which also does not conform to the requirements of propriety. There are currently no material resources to rectify these instances of non-compliance.

An order of the Ministry of Internal Affairs establishes norms for the accommodation of prisoners in cells, namely a minimum of 2.5 square metres per person (except pregnant women, who are entitled to 4 square metres). The established norms are currently being adhered to, since remand units have capacity for 2,620 detainees and currently accommodate 2,020.³

Food, articles of everyday use and medical treatment for detainees on remand are normally paid for by the State, in accordance with relevant norms. Although funding for these items is increased annually, the norms still do not guarantee enough for a person to live on. In order to meet pre-trial detainees' need for items of current use, the previous restrictions on receiving parcels and hand-delivered packages have been lifted.

133. Remand units are pre-trial detention facilities for the accommodation of persons for whom custody has been prescribed as a preventive measure. In certain cases, persons in this category may be held in prisons, police cells or guardhouses.

134. Remand prisoners may not be held in police cells for more than three days. If prisoners cannot be taken to a remand unit owing to distance or the lack of proper transport, they may be held in police cells for a longer period but for no more than 20 days. In such cases, and also in the event of accommodation in a prison, the remand prisoners shall be subject to the arrangements for custody in remand units specified in section 10 of the Code of Criminal Procedure.

135. If a person serving a sentence in a place of deprivation of liberty is subject to criminal prosecution for another offence, and remand in custody is prescribed as the preventive measure, the individual in question may, upon the decision of the person or body handling the case, be detained in the punishment cells of the correctional colony pending transfer to a pre-trial detention facility.

136. Article 429 of the Code of Criminal Procedure specifies that, if remand prisoners physically resist officers of a pre-trial detention facility, engage in riotous conduct or commit other violent acts, they may be placed in handcuffs or a straitjacket in order to prevent them from harming themselves or those around them. In the event that a remand prisoner assaults or performs another act calculated to endanger the lives of officers of the pre-trial detention facility or other persons, or if a prisoner escapes from custody, a weapon may be used in exceptional circumstances if there is no other way of stopping the aforementioned actions. Weapons may not be used against women or minors escaping from custody.

The administration of the pre-trial detention facility must immediately notify a procurator of every incident involving the use of firearms.

Article 427 of the Code of Criminal Procedure stipulates that the administration of a pre-trial detention facility may apply the following sanctions to remand prisoners who violate regulations:

- Warning or reprimand;
- Special cell-cleaning duty;
- Loss of the right to buy food and receive the next parcel and hand-delivered package for one month.

Remand prisoners who deliberately violate the facility regime may, upon the reasoned decision of the administrator of the pre-trial detention facility, be detained in a punishment cell for up to 10 days, and minors for up to 5 days. Pregnant women and women whose children are detained with them may not be sent to a punishment cell.

The sanctions imposed on remand prisoners are in keeping with the gravity and nature of the offence. Measures designed to cause persons in custody physical suffering or to diminish their dignity are prohibited.

137. Article 125 of the Penal Enforcement Code distinguishes open prisons for convicts sentenced by the courts and open prisons for convicts transferred from ordinary-, strengthened- and strict-regime colonies on account of their record of good behaviour. Convicts serve their sentence of deprivation of liberty in identical conditions in both categories of prison. Men and women convicts may be detained in the same open prison.

At open prisons, the inmates are not held under guard; they may move freely around the territory of the colony in accordance with the daily routine; they may leave the territory of the prison unsupervised, subject to permission from the administration; and they have unrestricted property rights and visits. They normally reside in specially designated accommodation and, provided that they have committed no disciplinary offences, they may live with their families in the territory of the open prison, subject to the governor's permission.

138. The requirement that convicts be detained separately does not apply to secure hospitals or correctional colonies with attached children's homes. Persons sent to such colonies are detained in accordance with arrangements specified by the court. Persons infected with HIV are held separately from other convicts with other infectious diseases. A total of 1,150 convicts with tuberculosis and 22 convicts infected with HIV are serving sentences in places of deprivation of liberty.³

139. Persons serving sentences in places of deprivation of liberty are provided with essential amenities in accordance with health and hygiene regulations.

Convicts are provided with a separate bed and bedding. They are given clothing, linen and footwear appropriate to the season and with regard to age, sex and climatic conditions.

Persons deprived of their liberty are fed sufficiently to ensure normal bodily functions. Food allowances vary with state of health, age, climatic conditions, the location of the correctional colony, and the nature and arduousness of the work performed by the convicts. Convicts can use the money they earn from prison work to buy additional food over and above the established allowances. Convicts who have no wages for reasons beyond their control, and convicts with no money in their personal accounts, are provided with food and essential items free of charge.

Pregnant women, breastfeeding mothers, minors and category 1 and 2 disabled persons have better living conditions and are prescribed more generous food allowances (Penal Enforcement Code, art. 104).

Persons deprived of their liberty also have the right to satisfy their material needs by obtaining clothing, essential items and food from relatives or other sources at their own expense.

140. Medical units and hospitals have been established and operate in correctional colonies to provide medical treatment to persons deprived of their liberty, and there is a secure hospital for the accommodation and outpatient care of convicts suffering from tuberculosis, chronic alcoholism and drug addiction, and HIV infection.

A convicted prisoner has the right to be referred to and undergo treatment in private medical institutions.

Penitentiary administrations must carry out the necessary health, hygiene and disease-control measures to protect convicts' health (Penal Enforcement Code, art. 105).

Account is taken of prisoners' state of health in enforcing a sentence of deprivation of liberty. In the period 1999-December 2003, a total of 333 individuals were released from correctional colonies as a result of illness.³

141. In addition, penitentiary administrations utilize internal resources to improve everyday living conditions, for example through prison industries and subsidiary food production, and so on.

In view of the existing financial difficulties, all assistance received from international organizations, foreign States and charitable organizations is channelled in its entirety towards improving convicts' detention conditions.

142. A convict is considered reformed when he or she develops a respectful attitude towards other people, society, work and the norms, rules and traditions of communal life, and when he or she is induced to behave in a law-abiding manner.

The principal means of correcting convicted persons are the prescribed arrangements (regime) for enforcing and serving sentences; re-educational work; labour; general education; vocational trainings and social pressure.

The means of correction applied vary in accordance with the type of punishment, the nature and degree of the social danger of the crime, the character of the convict and his or her behaviour (Penal Enforcement Code, art. 14).

Notwithstanding the measures that are being taken, deprivation of liberty largely remains a punitive measure imperfectly suited to the social rehabilitation of prisoners.

It is considered that the performance by convicts of socially useful work is a fundamentally important means of correction. However, owing to the difficult economic situation, not all prisoners can be given work. This has an adverse effect on their day-to-day living conditions. Of the average total convict population of 10,531, there is enough work only for 1,231 or 17 per cent of the total. The other convicts occupy their time with refurbishing the prison and performing chores. Efforts are currently being made to expand the garment-making facilities and the cement and clay block production facilities, which will create approximately 250 extra jobs.³

143. Correctional institutions provide moral, legal, labour, physical and other re-education of convicts, which is instrumental in achieving the goal of correction.

Re-education work with convicts is conducted on an individual or group basis or on a mass scale using psychological teaching methods. Such work is organized in a differentiated manner according to the correctional institution, the applicable regime, the duration of the punishment and the conditions of imprisonment.

Individual re-education work is conducted on the basis of a study of each convict's character, taking account of his or her crime, age, psychological state, education, profession and other relevant factors.

In re-educating convicts, use is made of the press, radio, television, films and libraries. Organizations that provide convicts with general or vocational education play a special role. A total of 1,150 convicts are currently taking study courses; of that number, 450 are in vocational institutes and 700 in secondary schools. There are seven secondary schools and three vocational institutes attached to penitentiaries. The latter train specialists in seven disciplines.³

The participation of convicts in re-education efforts is encouraged and taken into consideration when determining the extent of their correction, and also when applying incentives and punishments.

In the period from 1999 to December 2003, a total of 706 individuals were paroled and 3,067 were transferred from correctional colonies to open prisons on account of their record of good behaviour and re-education.³

144. The application of correctional measures to convicts is posited on the development of their ability to take constructive initiatives and their sense of self-organization. Prisoners' associations, close relatives and other persons able to exert a positive influence over convicts are associated with these efforts. The wider community plays its part in re-educating convicts, helping them to adapt to the workplace and day-to-day life, and participates in the activities of correctional institutions and agencies (Penal Enforcement Code, art. 11).

Article 14 of the Penal Enforcement Code states that the administration may invite community, charitable and religious organizations to assist in the re-education of prisoners.

145. Prisoners' associations have been formed in correctional colonies. Participation by convicts in the activities of such associations is encouraged and taken into consideration when determining the extent of their correction.

The principal objectives of prisoners' associations are to help convicts reform themselves and develop themselves spiritually, professionally and physically; to develop their sense of constructive initiative and exert a positive influence on the re-education of convicts; to have a say in issues involving the organization of convicts' work, everyday life and leisure; to form healthy relationships among convicts; and to provide social assistance to convicts and their relatives.

Prisoners' boards, made up of convicts with a record of good behaviour, are formed to represent the correctional institution as whole or certain sections of it.

Other internal prisoners' organizations may be established in correctional institutions, provided that they do not run counter to the aims, procedure and conditions of penal enforcement (Penal Enforcement Code, art. 116).

Correctional institutions work in conjunction with the voluntary organizations Nasli Navras, Mukhabbat va Makhbuson, AIDS Foundation East-West, and the religious organizations of the Evangelical Christian Baptist Church and the Qaziat to set convicts on the right path in modern life through talks and lectures intended for their re-education.

146. In addition to re-education measures and the correction of the subsequent behaviour of convicts in society, and with a view to ensuring the possibility of their reintegration into society upon release, at least 25 per cent of a convict's wages (50 per cent in the case of elderly convicts, category 1 and 2 disabled convicts, minors, pregnant women and women with children in homes attached to correctional colonies) must remain on his or her personal account for the duration of the prison term so that convicts have sufficient funds to live on immediately after release.

Convicts maintain various forms of contact with the outside world to ensure their subsequent rehabilitation and reintegration: periodic visits from relatives, telephone calls, unrestricted receipt of parcels, hand-delivered packages, and packets, the opportunity to send and receive an unlimited number of letters, and short visits in order to make post-release employment and living arrangements, and longer absences in cases of paid leave.

147. Article 211 of the Penal Enforcement Code states that persons discharged from serving their sentence are entitled to the following forms of social assistance:

- Free travel to their place of residence or work, and food and money for the duration of the journey;
- Provision of seasonal clothing and footwear if they lack means to acquire such items;
- The possibility of a lump sum payable from a special fund of the correctional institution or the penal correction agencies;
- Discharged minors are dispatched to their parents or surrogate parents.

Social assistance may take the form of help with obtaining employment or settling into daily life, material assistance, removing the consequences of serving a sentence, provision of a pension, placement in medical institutions, residential homes, old people's homes, or the establishment of guardianship arrangements. Responsibility for implementation lies with local government, the inspectorate overseeing punitive deduction of earnings, and employment and social assistance services.

In order to enhance the ability of its staff to assist in the social rehabilitation of prisoners, the Ministry of Justice is scheduling relevant training for staff at correctional institutions in the period 2003-2006.

148. Deprivation of liberty is applied to a minor as a last resort and for as short a time as necessary. In 2002, nationwide, a total of 501 criminal cases involving 520 individuals were investigated in connection with charges against minors, or otherwise involving minors, and 435 criminal cases against minors were referred to the courts for trial. On 1 December 2003,

there were 131 young offenders at the reform school administered by the Department of Corrections, and re-education measures other than deprivation of liberty were prescribed for other wrongdoers. In amnesties during the period 1999-2003, 83 minors were released from places of deprivation of liberty; 11 in 1999; none in 2000; 71 in 2001; 1 in 2002; and none in 2003.³

149. By law, minors sentenced to deprivation of liberty may serve their sentences in ordinary- or strengthened-regime young offender's institutions. In practice, however, there is only one such institution for young male offenders in Tajikistan. The regime at this colony does not fully conform to the requirement that first-time offenders must be segregated from repeat offenders, or that persons convicted of lesser and intermediate crimes must be segregated from those convicted of serious and particularly serious crimes.

150. Young offenders at reform schools are housed in normal accommodations. They have the unrestricted right to buy food and essential items, the right to short visits without restriction and to six long visits a year and, provided that they are well-behaved and display a conscientious attitude to work and study, they are permitted to have visits and take annual leave outside the colony (Penal Enforcement Code, art. 140).

151. With a view to reforming young offenders sentenced to deprivation of liberty and preparing them to live autonomously in society, a standard training and education programme is being prepared to encourage them to adopt law-abiding behaviour and a conscientious attitude to work and study, and to provide them with a basic general education, vocational training and a higher level of education and culture.

In order to help organize training and education, provide better educational facilities and address matters concerning convicts' social welfare and their adaptation to employment and everyday life after release, a board of guardians operates at the reform school. The board of guardians is made up of representatives of State enterprises, institutions, organizations, voluntary organizations and citizens.

In order to enhance the impact of re-education measures on young offenders, parents' committees made up of parents, surrogate parents or close relatives have been formed in affiliation with the various sections of the colony.

Other voluntary associations are able to participate in the work of reform schools.

152. Owing to financial difficulties, no young offenders' institution has been established for girls in Tajikistan. Convicted girls are sent to an ordinary-regime women's correctional colony, where they are held separately under the regime stipulated for minors. As at 1 December 2003, 17 girls were being held in places of deprivation of liberty.³

153. Article 97 of the Criminal Code stipulates that a court may prescribe compulsory measures of a medical nature in the case of persons who committed acts containing the elements of a criminal offence while irresponsible for their actions, or who became mentally ill following the commission of the crime, or whose mental capacity is limited.

Compulsory treatment is provided by autonomous medical institutions under the jurisdiction of the Ministry of Health.

Compulsory medical treatment may take the following forms:

- (a) Outpatient observation and psychiatric treatment;
- (b) Compulsory treatment in a general psychiatric hospital;
- (c) Compulsory treatment in a specialized psychiatric hospital;
- (d) Compulsory treatment in a specialized psychiatric hospital under close observation.

Special medical staff have contact with persons committed to psychiatric institutions; officers of the agencies responsible for law and order are present solely as guards outside the institution.

154. The Penal Enforcement Code specifies that the procurator's office shall monitor the legality of penal corrections. In order to ensure ongoing monitoring and oversight, central and oblast-level procurator's offices have departments and offices, respectively, to monitor legal compliance in correctional institutions. In addition, the national procurator's office has a special office to monitor the work of correctional institutions.

Article 25 of the Penal Enforcement Code states that, in the course of overseeing penal corrections, a court shall monitor enforcement of punishments when deciding on such issues as release on parole, commutation of sentence and discharge, and shall look into complaints from convicts and other persons regarding the actions of penitentiary administrations and penal enforcement agencies. The penal enforcement agency must notify the court that passed sentence, of the stage reached in the enforcement of the punishment.

Officials (personnel) of institutions and penal enforcement bodies are overseen directly by the Ministry of Justice and higher-ranking agencies administering the enforcement of punishments. The procedure for performing in-house monitoring is laid down by laws and regulations. In the period 1999-December 2003, no personnel at correctional institutions were subject to official or other sanctions for treating prisoners in an unacceptable manner.³ In 2002, correctional colonies were provided with special sealed boxes to enable prisoners to file complaints and communications regarding the actions of prison staff and other officials.

155. Penitentiary administrations are taking steps to prohibit overcrowding and to release individuals whose continued imprisonment would be inadvisable.

To this end, the courts also systematically enforce the provisions of the law on early release, release on parole and commutation to a more lenient sentence for prisoners who have demonstrated their willingness to reform. The Ministry of Justice and the judiciary must address the issues of prison overcrowding and the relaxation of criminal penalties.

156. In order to increase the expertise of prison officers in the sphere of human rights, the programme entitled "State system of human rights education in the Republic of Tajikistan" provide for the institution of an effective system for instructing and training personnel in human rights matters in general and prisoners' rights in particular, and for the introduction of human rights in the curriculum of special educational establishments at correctional institutions, including the need to pass an examination on the subject.

The Penal Correction Department of the Ministry of Justice performs various kinds of educational work. As part of vocational training for personnel at correctional colonies in Sogd oblast, seminars have been held on observance of human rights, prisoners' rights and the prohibition of torture and other cruel treatment. The seminars were held with the support of international organizations.

With effect from February 2002, the Penal Correction Department has organized one-month vocational training courses for staff at correctional institutions with the support of the Swiss Cooperation Office. In addition to special disciplines, those attending the courses learn such skills as how to observe and protect rights and how to treat persons deprived of their liberty in accordance with international legal norms and national standards. By the end of 2003, more than 100 staff had received instruction of this nature. There are plans to continue and refine this type of staff training in the period 2003-2006.

The study of international legal norms and national standards for the treatment of prisoners has also been incorporated into the timetable of weekly vocational training sessions for staff at correctional institutions.

The rationale underlying the training of staff at correctional institutions is that, in the course of their duties, they will be able to spread awareness of prisoners' rights among the convicts whom they supervise.

157. In connection with the transfer of correctional institutions to the jurisdiction of the Ministry of Justice and the introduction of new requirements affecting the organization of work of correctional colonies and the treatment of prisoners, and with a view to gauging the conscientiousness, humaneness, competence and personal qualities of prison officers, performance appraisals were conducted in 2003. As a result of the appraisals, individuals unfit to ensure the proper administration of correctional institutions were relieved of their duties or demoted.

Article 11

158. Articles 19 and 20 of the Constitution state that, without lawful grounds, no one may be subjected to detention, custody, or exile. No one may be prosecuted for an act that at the time of its commission was not considered a crime. Under chapter 24 of the Tajik Civil Code, failure to fulfil contractual obligations (breach of obligations) entails the civil (material) liability of the debtor. Under the Criminal Code, failure to fulfil contractual obligations is not considered a crime and consequently does not give rise to a criminal penalty, including deprivation of liberty.

Disputes relating to breach of contractual obligations are resolved by way of civil action.

A person who is not in a position to fulfil a contractual obligation incurs only material liability; unless there is evidence of a crime, no one may be prosecuted and deprived of their liberty.

In accordance with current law and practice, failure to act upon the decision of a court regarding fulfilment of a contractual obligation shall not give rise to deprivation of liberty.

Article 12

159. Under article 24 of the Tajik Constitution, every citizen has the right to freedom of movement, freedom to choose his or her place of residence, and the right to leave and return to Tajikistan. The restriction of citizens' rights and freedoms is permitted solely in order to ensure the rights and freedoms of other citizens, uphold public order, and protect the constitutional system and territorial integrity of Tajikistan (Constitution, art. 14).

160. Article 21 of the Civil Code stipulates that the place where a person permanently or principally resides shall be considered to be that person's place of residence.

The place of residence of minors under 14 or citizens under tutorship is deemed to be the place of residence of their legal representatives or guardians.

161. In accordance with the Passport Regulations approved by Government Decision No. 302 of 15 July 1997, citizens must register by place of residence and by current address. Registration by place of residence is performed by the internal affairs agencies. A Tajik citizen's current address or place of residence is registered on the basis of documents confirming that the individual in question has legally acquired ownership of a house or other dwelling, or attesting that a person is entitled to use a dwelling on the basis of a lease, sublease or rental agreement, or on the basis of a document entitling a person to occupy accommodation on other grounds provided for by Tajik law.

The following persons must register their place of residence:

- Tajik citizens residing permanently in Tajikistan;
- Tajik citizens residing permanently abroad who have entered Tajikistan for temporary residence of more than six months;
- Tajik citizens who have moved from one area of Tajikistan to another for temporary residence of more than six months;
- Foreign citizens and stateless persons who reside permanently in Tajikistan;
- Military personnel residing outside barracks.

162. Under the Foreign Citizens in Tajikistan (Legal Status) Act of 1 February 1996, foreign citizens may move about the territory of Tajikistan and choose where to reside in Tajikistan in the manner established by Tajik law. Restrictions on movement and choice of place of residence are

permitted where these are necessary to ensure national security, protect public order and the health and morals of the population, and to defend the rights and statutory interests of Tajik citizens and other persons.

Foreign citizens may enter Tajikistan provided that they hold an entry-exit visa issued by the Tajik Ministry of Foreign Affairs, its offices abroad, or the embassies and consular posts of foreign countries with which Tajikistan has relevant agreements.

If foreign citizens enter Tajikistan for a stay of more than six months, they must obtain a residence permit from the internal affairs agencies. The validity of the permit is extended each time the entry-exit visa is extended. A residence permit cannot be extended unless the entry-exit visa is extended. A residence permit that is extended without a corresponding extension of an entry-exit visa is considered invalid.

Foreign citizens present in Tajikistan on other lawful grounds are considered temporary residents. They must register their national passports or equivalent documents within three days of arrival and leave Tajikistan upon expiry of the time limit for the visit.

163. The following identity documents are used to register an individual by place of residence:

- (1) Tajik passport holders permanently residing in Tajikistan must present their passport;
- (2) Children under 16 living separately from their parents (tutors, guardians) must present their birth certificate;
- (3) Tajik citizens permanently residing abroad who return to Tajikistan for a temporary stay of over six months must present their passport or equivalent document;
- (4) Foreign citizens and stateless persons permanently residing in Tajikistan must present their residence permit;
- (5) Military personnel of the Peacekeeping Forces of the Commonwealth of Independent States must present a certificate issued by the command of military units and institutions.

Persons subject to registration must present the necessary documents for registration within seven days to the passport offices of the local internal affairs agencies.

Stamp duty in the amount established by Tajik law is levied on registration by place of residence. The forms required to register one's place of residence are specified by the Ministry of Internal Affairs.

164. In the interests of national security and public order, and also to ensure public health, the Tajik Government may impose restrictions on a person's freedom to choose a place of residence in certain areas of Tajikistan.

Pursuant to article 5 of the Refugees Act, Government Decision No. 325 of 26 July 2000 lists communities where asylum-seekers and refugees are not allowed to reside temporarily. These are the Gorny Badakhshan Autonomous Oblast, the cities of Dushanbe, Tursunzade, Rogun, Kofarnikhon, Khujand, Chkalovsk, Kairakkum, Taboshary, Kanibadam, Isfara, Kurgan-Tyube, Sarband, Kulyab, Nurek, and the Varzob, Faizabad, Darband, Garm, Bobojon Gafurov, Tajikabad, Tavildara, Jirgatal, Pyanj, Kumsangir, Farkhor, Moskovsky, Shurabad, Shaartuz, Kabodiyon, Jilikul and Yavan districts.

In order to register the place of residence or current address of Tajik citizens in communities located in special zones (closed administrative territories), a license obtained according to established procedure must be presented. In areas where the Tajik Government has imposed restrictions on the freedom to choose a place of residence, the following citizens arriving at a place of permanent residence shall be registered regardless of such restrictions:

- (1) Spouses shall be registered to the living space occupied by the other spouse;
- (2) Minor children and wards shall be registered to the living space occupied by their parents or guardians;
- (3) Adult children without families of their own, or unmarried adult children with their own children, shall be registered to the living space occupied by their parents;
- (4) Parents shall be registered to the living space occupied by their children;
- (5) Brothers and sisters who have not attained the age of majority and do not have parents, and non-able-bodied brothers and sisters regardless of age, unless they have their own families, shall be registered to the living space occupied by their brother or sister;
- (6) Military personnel discharged from the armed forces upon expiry of their prescribed term of service, if they were called up for military service from the community in question, shall be registered to the living space they occupied prior to their call-up, or to the living space occupied by their parents or other relatives;
- (7) Military personnel on fixed-term service who are discharged into the reserves or retired from service, non-commissioned officers and officers of the armed forces and members of their families who lack accommodation, shall be registered to the living space occupied by the serviceman's close relatives or those of his spouse;
- (8) Persons discharged from serving their sentence in places of deprivation of liberty or exile, or no longer subject to the restrictions imposed by a suspended custodial sentence combined with a compulsory work assignment, or paroled from a place of deprivation of liberty with a view to employment on a public works project, shall be registered to the living space occupied by members of their family or relatives with whom they lived prior to their conviction;
- (9) Temporarily absent persons, if in accordance with current legislation they retain the right to have the use of living accommodation.

These restrictions do not apply to the following categories of temporary residents:

- (1) Students at educational institutions categorized under established procedure as tertiary or intermediate special institutions, and graduate students, associate professors, registrars, students in preparatory courses and staff attending training and refresher courses shall be registered for the duration of their course of study;
- (2) Family members of graduate students, associate professors, registrars, students at military academies and educational institutions of the Ministry of Security and the Ministry of Internal Affairs categorized under established procedure as tertiary educational institutions shall be registered for the duration of their course of study;
- (3) Military personnel on fixed-term service who are discharged into the reserves or retired from service, non-commissioned officers and officers of the armed forces and security agencies (and members of their families) shall be registered in the communities where they permanently resided prior to call-up or entry into service, provided that they arrived in these communities within three months of discharge into the reserves or retirement from service, until such time as they are granted living accommodation in these communities according to the established procedure;
- (4) Legally recognized refugees.

165. The following persons shall be removed from the registers kept by the internal affairs agencies:

- (1) Persons who have left for another place of residence;
- (2) Persons called up for fixed-term military service;
- (3) Persons declared by a court to have forfeited the right of use of living accommodation;
- (4) Deceased persons.

166. Registration by place of residence may be annulled by the internal affairs agency that performed the registration or by a higher-ranking internal affairs agency or a court if violations of the Passport Regulations, other Tajik laws or regulations or inter-State agreements occurred at the time of processing the registration.

A request to annul registration by place of residence may be submitted by the legal entity or individual concerned within the time limit specified by Tajik laws and regulations.

167. Tajik citizens shall surrender their passports to the internal affairs agencies in the event of their being called up for fixed-term military service or the relinquishment or loss of Tajik citizenship. The passport of a Tajik citizen may be confiscated by a body conducting an initial inquiry or a preliminary investigation, or by a procurator's office or a court, in cases prescribed by law. The passports of remand prisoners and persons sentenced to deprivation of liberty with a

compulsory work assignment are confiscated and held at the institutions enforcing the sentence. Passports are returned to their owners when they are released from custody or they have served their sentence.

168. Foreign citizens may enter Tajikistan on a valid foreign passport, and stateless persons may enter the country with valid identity documents issued by the competent authorities of the country where they permanently reside, provided that they possess an entry-exit visa, unless some other entry-exit procedure has been established by other statutes or agreements with the relevant country.

In 1999, a total of 14,986 persons entered Tajikistan; the total number of visitors in 2000 and 2001 was 15,072 and 17,139, respectively. There is no information about the number of persons who entered Tajikistan in 2002. Migration increase was 14,942 in 1999, 14,442 in 2000 and 14,370 in 2001, which is considerably less than the number of persons who left Tajikistan.⁶

169. A foreign citizen may be refused entry into Tajikistan:

- (1) In the interests of national security or to protect public order;
- (2) If this is necessary to protect the rights and legitimate interests of Tajik citizens and other persons;
- (3) If, in the course of a previous visit, an individual is found to have breached laws on the legal status of foreign citizens in Tajikistan, or customs, currency or other legislation;
- (4) If, in applying for entry to Tajikistan, an individual has provided false personal information or has not submitted the required documents;
- (5) For other reasons specified by Tajik law.

170. Entry and exit visas for Tajikistan are issued to foreign citizens abroad by the diplomatic missions or consular posts of the Republic of Tajikistan, and in Tajikistan by offices of the Ministry of Internal Affairs. At the request of host organizations, foreign citizens may be issued with multiple-entry visas. The procedure for issuing multiple-entry visas is specified by the Ministry of Foreign Affairs and the Ministry of Security.

The following documents provide grounds for issuing entry visas or extending the validity of such visas:

- For foreign citizens entering Tajikistan at the invitation of host organizations or working for permanent foreign missions, written invitations from these organizations or missions;
- For foreign citizens entering Tajikistan on private business or with a view to permanent residence, and permanent foreign residents travelling abroad on private business or leaving Tajikistan to take up permanent residence elsewhere, a permit from the internal affairs agencies issued upon request.

Under transit regulations, foreign citizens transiting Tajik territory must go to the point of exit on their designated route and may stay in Tajik territory provided that they have a permit issued by the competent authorities. The rules on transiting Tajik territory are established pursuant to Tajik laws and regulations.

In order to create favourable conditions for economic development, strengthen trade and economic cooperation, attract foreign investment and broaden cultural and scientific ties, on 25 October 2003 the Tajik Government adopted Decision No. 460 ratifying the simplified procedure for processing and issuing Tajik entry-exit visas to citizens of the European Union, the United States of America and Japan. A simplified procedure for processing and issuing visas was approved on the basis of this decision.

171. Foreign citizens visiting Tajikistan for short periods may reside in Tajikistan using passports registered according to the established procedure. Passports shall be submitted for registration at the point of destination within three days of arrival, excluding public holidays and weekends. The following passport holders are exempt from the registration requirement:

(1) Heads of State and Governments of foreign countries, members of parliamentary and government delegations entering Tajikistan at the invitation of the President, the Majlis-i Oli and the Government of Tajikistan, technical personnel attached to these delegations, and family members of the aforementioned persons;

(2) Persons entering Tajikistan on a United Nations laissez-passer;

(3) Foreign citizens entering Tajikistan on public holidays or weekends, or for a stay of no more than three working days, who leave Tajikistan within this period;

(4) Foreign tourists on organized tours;

(5) Crew members of foreign military aircraft entering Tajikistan in accordance with the established procedure. The movement across Tajik territory of military aircraft crews shall be permitted by the senior military garrison commander in accordance with the plan for the reception of incoming military aircraft;

(6) Crew members of civilian aircraft operated by international airlines while at airports designated in the current schedule.

Foreign passports are registered at a foreign citizen's first point of entry into Tajikistan.

172. Permission to reside permanently in Tajikistan is documented by a residence permit issued to foreign citizens by the internal affairs agencies. Applications for permanent resident status are submitted by foreign citizens entering Tajikistan for a short stay directly to the internal affairs agencies at their place of residence, and by persons living abroad to diplomatic missions or consular posts of the Republic of Tajikistan. The validity of a residence permit issued by the internal affairs agencies to foreign citizens aged 16 or over shall coincide with the validity of the holder's passport but shall not exceed five years, whereas foreign citizens aged 45 or over shall

be issued with a permit whose validity coincides with that of their passport. Stateless persons are issued with five-year residence permits; the validity of permits issued to stateless persons aged 45 and over is unlimited. A foreign citizen must submit an application to extend the validity of an existing permit, or a request for the issuance of a new one, to the internal affairs agencies at his or her place of residence at least 10 days before the current permit expires, or immediately in the event of the loss of a permit.

If foreign citizens fail to submit new or extended documents within one year of the expiry of their passports, the internal affairs agencies shall issue them with Tajik residence permits for stateless persons. Citizens of States with which Tajikistan has signed an international treaty or other relevant agreement on the prevention of dual nationality may be issued with a stateless person's residence permit upon presentation of a document indicating that the competent authorities of that State have permitted such persons to relinquish their citizenship. The stateless person's residence permit shall be replaced by a foreign citizen's residence permit if the holder presents a valid foreign passport to the internal affairs agencies.

173. Foreign citizens may move about the territory of Tajikistan and choose their place of residence as established by Tajik law. Restrictions on movement and choice of place of residence are permitted where necessary to ensure national security, protect public order and the health and morals of the population, and to protect the rights and legitimate interests of Tajik citizens and other persons. Foreign citizens have freedom of movement in those areas of Tajikistan that are open to visits by foreigners. Foreigners may enter and travel in areas closed to them only with the authorization of the internal affairs agencies. Foreigners entering such areas at the invitation of host organizations shall be admitted on the basis of written invitations from such organizations, cleared in accordance with established procedure. Foreigners entering such areas at the invitation of permanent representation offices or on private business, or foreigners who are permanent residents of Tajikistan, shall be admitted on the basis of personal written requests. At the request of the organizations hosting foreign citizens, the latter may be permitted multiple entries and freedom of movement in the area in question. Foreign citizens who have changed their place of residence in Tajikistan in breach of the law must return to their former place of residence at the request of the internal affairs agencies. In certain cases, the internal affairs agencies may issue such visas.

174. A foreign citizen shall not be permitted to leave Tajikistan:

- (1) If there are grounds for criminal prosecution, until the proceedings in the case have been completed;
- (2) If the individual has been convicted of a crime, until the sentence has been served or until the individual has been discharged from serving his or her sentence;
- (3) If the individual's departure is contrary to the interests of national security, until the circumstances precluding the individual's departure no longer obtain;
- (4) If there are other grounds under Tajik law for preventing the individual's departure.

The departure of a foreign citizen from Tajikistan may be deferred pending fulfilment of his or her economic obligations in connection with the public interests of Tajik citizens and other persons, or of State, and cooperative or other voluntary organizations.

Any person who disagrees with a decision taken by an official may challenge the official's course of action through the courts by filing a complaint.

175. Migration in Tajikistan is regulated by the Migration Act of 11 December 1999. On 28 November 2001, Tajikistan ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990.

Between 12,000 and 15,000 people emigrated from Tajikistan every year in the period 1999-2002 (non-return migration with change of place of residence).⁷

Non-Tajik citizens present in Tajik territory who are fully justified in fearing that they might be persecuted in their State of nationality on the grounds of race, religion, citizenship, ethnicity, membership of a certain social group or on account of their political beliefs, and who therefore cannot or will not avail themselves of the protection of that State, or persons not holding specific citizenship and who, being present in Tajikistan under similar circumstances, cannot or will not return to the State where they permanently reside owing to such fears, and asylum-seekers who have left their country of nationality or former place of residence with the intention of seeking refugee status in Tajikistan, may remain in Tajikistan in accordance with the procedure and conditions specified in the Refugees Act of 2002, and may ask for refugee status or seek asylum.

Tajikistan may grant political asylum to foreign citizens whose human rights have been violated (Constitution, art. 16).

According to the Refugees Act, an asylum-seeker is a foreign citizen or stateless person who has left his or her country of nationality or former place of residence with the intention of seeking refugee status in Tajikistan.

The grounds and procedure for the recognition of asylum-seekers or refugees in Tajikistan, the economic, social and legal guarantees for protecting their rights and legitimate interests, and the legal status of refugees are defined and specified in the Refugees Act.

Article 13

176. Article 16 of the Constitution states that foreign citizens and stateless persons enjoy the proclaimed rights and freedoms and have the same rights and duties as Tajik citizens except in the cases prescribed by law.

An alien lawfully in the territory of Tajikistan may be expelled only in pursuance of a decision reached in accordance with law. Such person has the right to appeal against his or her expulsion, to have his or her case reviewed by the competent authority or a person or persons especially designated by the competent authority, and to be represented for this purpose before such authority, person or persons.

Pursuant to article 31 of the Foreign Citizens in Tajikistan (Legal Status) Act, a foreign citizen may be expelled from Tajikistan if:

- (1) His or her activities are inconsistent with the interests of national security or the maintenance of public order;
- (2) His or her expulsion is essential for the protection of public health or morals or the protection of the rights and legitimate interests of Tajik citizens;
- (3) He or she has flagrantly violated legislation on the legal status of foreign citizens in Tajikistan, or the Tajikistan's customs, currency or other laws.

In addition, under article 5 of the Refugees Act, persons who have been refused refugee status, who have had their refugee status revoked or who have lost their refugee status, and members of their family, are subject to expulsion.

Decisions on the expulsion of foreigners are taken by the Ministry of Security with the agreement of the Procurator-General. An expulsion order is enforced if within one week of its issuance the person to be expelled has not appealed to a court against the legality order.

Persons may be detained for the time required for expulsion. The costs of expulsion are borne by the foreign citizens concerned.

The internal affairs agencies, acting in conjunction with the security agencies and the migration services, are responsible for monitoring compliance with the Act by foreign citizens and stateless persons and by officials and other citizens.

177. Liability under Tajik legislation is incurred by violation of the regulations on foreign citizens' sojourn, that is, when foreign citizens are living in Tajikistan without residence permits or with invalid documents, when they do not comply with the established procedures for registration, movement within Tajikistan and choice of place of residence, when they refuse to leave the country on the expiry of the authorized period of sojourn, when they do not observe the rules on travel in transit, and when they violate the Refugees Act.

Questions of the liability of foreign citizens enjoying privileges and immunities in accordance with legislation and international legal instruments are resolved through the diplomatic channel. Violation of the Act by persons obliged to comply with its requirements (including persons who invite foreign citizens to Tajikistan on private business or who provide services for them) incurs liability under Tajik legislation.

A foreign citizen who infringes legislation on the legal status of foreigners or who disregards the procedures governing sojourn of foreigners in Tajikistan may also have his or her authorized period of stay reduced. A foreign citizen's sojourn in Tajikistan may also be curtailed when the circumstances justifying his or her sojourn in Tajikistan no longer apply. Decisions to reduce the length of a foreigner's sojourn are taken by the internal affairs agencies; such decisions may be appealed before the courts.

Article 14

178. Pursuant to article 9 of the Constitution, State power is based on the principle of the separation of powers into legislative, executive and judicial branches.

In Tajikistan, the judiciary is independent of the legislature and the executive.

Judges are independent and subordinate only to the Constitution and the law. Interference in their work is prohibited and entails criminal liability (Constitution, art. 87; Criminal Code, art. 345).

179. Judicial power is exercised by the Constitutional Court, the Supreme Court, the Supreme Economic Court, the Military Court, the Court of Gorny Badakhshan Autonomous Oblast, the oblast courts, the Dushanbe city court, city and district courts, and the economic court of Gorny Badakhshan Autonomous Oblast, and the economic court of the oblasts and the city of Dushanbe.

180. The organization and operating procedures of the courts are set out in the 2001 Constitutional Act on courts in the Republic of Tajikistan. Under article 4 of the Act, all judges in Tajikistan have the same status and differ from each other only in terms of their powers and jurisdiction.

181. The independence of judges is guaranteed by:

- The procedures established by law for their selection, appointment, resignation or recall;
- Their inviolability;
- The procedures established by law for the administration of justice;
- The confidentiality of judicial deliberations in connection with the adoption of judicial decisions;
- The prohibition, under threat of prosecution, of any person's interference in the administration of justice;
- Criminal liability for contempt of court;
- The right of judges to retire, to transfer or to be transferred to a different post, or to resign or be released from the post of judge at their own request;
- The formation of a judicial community;
- The State's provision of the material and social guarantees attaching to their status;
- The creation of the organizational and technical conditions for the operation of the courts.

182. Safeguards of the independence of judges, including measures for their legal protection and provision of their material and social perquisites, are provided by the aforementioned Constitutional Act and may not be revoked or reduced by other legislation (Constitutional Act, art. 5).

183. Judges have a term of office of 10 years. The constitution of special courts is prohibited (Constitution, art 84).

The Constitutional Court has seven members, one of whom represents Gorny Badakhshan Autonomous Oblast.

Judges of the Constitutional Court are selected from among lawyers at least 30 years of age but not older than 65 who have had at least 10 years' professional experience.

184. Lawyers at least 30 years of age but not older than 65 who have sat as judges for at least five years may be selected and appointed judges of the Supreme Court, the Supreme Economic Court, the court of Gorny Badakhshan Autonomous Oblast, the oblast courts and the Dushanbe city court.

Persons aged at least 25 years of age but not older than 65 who have worked in the profession for at least three years may be appointed judges of city and district courts and the Military Court (Constitution, art. 85).

185. Judges sit either collegiately or individually. Court proceedings are based on the adversarial principle and the equality of the parties. Court hearings are always held in open session except in the cases stipulated by law. Legal proceedings are conducted in the national language or in the language spoken by the majority of the population of the locality in question. Persons who do not speak the language in which the proceedings are being conducted are provided with the services of an interpreter (Constitution, art. 88).

186. Pursuant to the Constitution, everyone is equal before the law and the courts. Everyone is guaranteed the protection of the courts. Everyone is entitled to have his or her case heard by a competent, independent and impartial court. No one is considered guilty of an offence until the court's verdict has entered into force. No one may be tried twice for the same offence (Constitution, arts. 17, 19 and 20).

187. Under article 12 of the Code of Criminal Procedure, legal proceedings must be conducted in the Tajik language or in the language spoken by the majority of the population of the locality in question. A person who does not speak the language in which the proceedings are being conducted is entitled to address the court in his or her mother tongue and to use the services of an interpreter. Documentary evidence and the other documents of the court are translated into his or her mother tongue or into another language in which he or she is fluent.

188. Hearings in courts of first instance and in courts of appeal are held in the presence of the defendant or convicted person and his or her defence counsel (Code of Criminal Procedure, arts. 246 and 339). Lack of means to pay for the services of defence counsel does not constitute grounds for the investigating or judicial agencies to refuse to provide defence counsel. In such cases, the services of defence counsel are paid for from the local budget.

189. In accordance with article 381, paragraph 3 of the Code of Criminal Procedure, the participation of interested persons in hearings as observers is permitted when necessary.

190. Pursuant to article 377 of the Code of Criminal Procedure, when under the supervisory procedure a conviction or a court ruling or decision is revised in connection with the need to apply harsher legislation owing to the leniency of the sentence or on other grounds, with the result that the convicted person's situation is worsened or when a verdict of acquittal or a court ruling or decision to discontinue the case is revised, such revision is permitted only within a period of one year from the time when the court judgement, ruling or decision entered into force.

191. In accordance with article 14, paragraph 4, of the Covenant, proceedings against juveniles are conducted in accordance with special rules.

Pursuant to the provisions of the Code of Criminal Procedure, the participation of defence counsel is obligatory in juvenile cases, notwithstanding any other circumstances. In juvenile cases, reports must be obtained on the defendant's living conditions and on the role of adults in drawing the minor into criminal activity, and his or her legal representatives must act for him or her during the pre-trial investigation and at the court hearing, in cases where compulsory educational measures are imposed and so on.

192. Chapter 14 of the Criminal Code is devoted to the special characteristics of the criminal liability of juveniles. In the case of juveniles under 16 years of age, deprivation of liberty may not exceed 10 years; in the case of juveniles aged 16 to 18, deprivation of liberty may not exceed 12 years for multiple offences or 15 years for aggregated sentences. The death penalty is not available.

193. However, it should be noted that, while the criminal law previously in force provided for the deferral of sentences imposed on juveniles for a certain period, the current law does not allow that option.

A considerable number of juveniles are sentenced by the courts to deprivation of liberty; however, in the light of the circumstances of the case and the character of the offender, convicted minors may undergo reform without having to be removed from society, provided that they are kept under appropriate supervision.

194. With regard to the requirements of article 14 of the Covenant, concerning the status of military courts, it must be pointed out that Tajikistan's military courts consist of the Military Division of the Supreme Court and the garrison courts. Their powers are set out in the Constitutional Act on courts in the Republic of Tajikistan. They hear only cases involving members of the armed forces. Their judicial decisions are subject to appeal under the normal procedure, and the cases are also considered by ordinary courts under the supervisory procedure.

195. Figures on the consideration of criminal cases by the courts and the decisions handed down in 2000-2002 are given below:⁸

Criminal cases heard by the courts

	2000	2001	2002
1. Cases resulting in a guilty verdict	7 508	7 114	6 663
2. Sentences of deprivation of liberty	5 252	5 929	4 917
3. Other sentences	3 532	2 532	2 934
4. Verdicts of acquittal	28	33	27
5. Dismissals on the grounds of lack of evidence that a crime had been committed	8	9	1

196. Article 6 of the Code of Criminal Procedure provides that no one may be remanded in custody except on the basis of a judicial decision or with the approval of a procurator. A procurator must order the immediate release of any person unlawfully deprived of his or her liberty or held custody for a period longer than that prescribed by law or a court sentence.

Criminal justice is administered on the basis of the equality of citizens before the law and the courts, irrespective of ethnicity, sex, language, attitude to religion, type and nature of occupation, place of residence or other circumstances.

197. Under current legislation, persons convicted as a result of judicial error are entitled to apply to the courts for compensation of the material and moral damage.

198. The Tajik Bar represents all the bar associations and law offices operating at the national, oblast, city and district levels. Lawyers perform their professional functions in accordance with the Bar Act.

Under this Act, the Bar provides legal assistance to citizens of Tajikistan, foreign citizens and stateless persons and to enterprises, institutions and organizations.

A lawyers' association has been established and is in operation.

The provision of advisory services for the public is being expanded in order to ensure the independent administration of justice. Such advisory services are provided by a network of law offices, a number of NGOs and attorneys.

Article 15

199. Under article 20, of the Constitution no one is considered guilty of committing a crime until the relevant court sentence has entered into force.

No one may be prosecuted for a criminal offence after the expiry of the statute of limitations or for acts that were not considered crimes at the time of their commission. No one may be tried twice for the same offence.

A law adopted after the commission of an offence and imposing a heavier penalty for such offence may not be applied retroactively. If, subsequent to the commission of an offence, a new law revokes its criminal nature or imposes a lighter penalty, the new law is applied.

200. Under article 12 of the Criminal Code, the criminal nature of an act and the associated criminal liability are determined by the law in force at the time of its commission.

A criminal law revoking the criminality of an act, imposing a lighter penalty or otherwise improving the position of the person who committed the act has retroactive force, that is, it applies to persons who committed the act in question before the new law entered into force, including persons who are serving a sentence and persons who have served a sentence but whose criminal record had not been expunged.

A criminal law establishing the criminality of an act, which imposes a heavier punishment or otherwise worsens the situation of the person who committed the act, does not have retroactive force (Criminal Code, art. 13).

201. Over the past 10 years, following the introduction of additions and amendments to the 1961 Criminal Code and the adoption of a new Criminal Code in 1998, the provisions revoking criminality or imposing lighter penalties were invested with retroactive force, as a result of which the courts either released persons convicted under earlier provisions from criminal liability or reduced their sentences. No separate statistics were produced on this question.

Article 16

202. Under article 15 of the Constitution of November 1994, any person who was a Tajik citizen on the day that the Constitution was adopted is regarded as a Tajik citizen. The procedures for the acquisition and loss of Tajik citizenship are established by law.

203. Foreign citizens and stateless persons enjoy the proclaimed rights and freedoms and have the same duties and responsibilities as citizens of Tajikistan (Constitution, art. 16).

204. Citizens' rights before the law in the territory of Tajikistan are established in chapter two of the Constitution and in the Civil Code. These provisions cover the rights embodied in the basic international human rights instruments.

205. No one may be restricted in his or her legal capacity. The legal capacity to exercise rights may be restricted in the cases and in accordance with the procedure established by law. Acts of State agencies that restrict a citizen's legal capacity to exercise his or her rights, in disregard of the conditions and procedure prescribed by law concerning such capacity, are invalid. A citizen's full or partial waiver of his or her legal capacity, and any other arrangements limiting such capacity, are void except when such arrangements are permitted by law.

206. In accordance with the general principles of legislation, the rights of Tajik citizens before the law may not be conditional on their sex, race, social origin or religion. A person's legal capacity is legally established from the moment of birth and is extinguished by his death.

207. Citizens' exercise of their legal capacity is subject to limits. In exercising his or her rights and freedoms, a citizen must not inflict damage on the environment, infringe the law or harm the legitimate interests of others.

208. The question of a person's legal capacity is addressed specifically in each branch of the law. Under the Criminal Code, a physical person of sound mind incurs criminal liability if he had reached the age of 16 before committing the offence. Persons who had reached the age of 14 before committing an offence incur criminal liability only for serious and extremely serious offences.

209. Criminal liability is not incurred by a person who was not of sound mind at the time of committing a socially dangerous act, that is, he or she could not realize the significance of his actions or control them owing to a chronic mental illness, temporary mental disturbance, feeble-mindedness or some other mental impairment. The courts may impose compulsory medical measures on persons who have committed a socially dangerous act but are deemed to be not of sound mind.

210. Article 33 of the Majlis-i Oli (Elections) Act establishes restrictions on the exercise of the legal capacity by certain categories of citizens. For example, the following categories of citizens may not stand for election to the Majlis-i Milli (upper chamber) of the Majlis-i Oli (Parliament) or to the Majlis-i Namoyandagon (lower chamber) of the Majlis-i Oli:

- Citizens who do not meet the requirements of the Constitution and the aforementioned Act;
- Citizens declared by a court as having no legal capacity or who are serving a court sentence of deprivation of liberty or who have been placed in an institution by court order for compulsory medical treatment;
- Citizens on active military service, soldiers, non-commissioned officers and other personnel of the armed forces, the Ministry of Security, the Ministry of Internal Affairs, the Ministry for Emergency Situations and Civil Defence, the Presidential Guard and the State Border Protection Committee, as well as officials of the tax agencies, customs services and other militarized bodies, provided that such persons have not retired;
- Professionals holding positions in religious organizations and associations;
- Citizens convicted of the deliberate commission of serious or particularly serious crimes, regardless of whether they have served their sentences and their criminal records have been expunged;
- Citizens whose criminal records have not been expunged;

- Citizens suspected of committing offences by the inquiry and investigation agencies and citizens under investigation for committing offences against the foundations of the constitutional system and the security of the State, or other serious or particularly serious criminal offences, except for persons involved in the military and political confrontation who have been amnestied.

211. Pursuant to article 34 of the Majlis-i Oli (Elections) Act, a citizen may not simultaneously be a member of the Majlis-i Milli and of the Majlis-i Namoyandagon.

A deputy of the Majlis-i Namoyandagon may not simultaneously be a deputy of another local representative body or self-government body.

A member of the Majlis-i Milli may not simultaneously be a member of more than two representative government bodies.

Members of the Government, judges, the Procurator-General and his deputies, procurators and other officials of procuratorial bodies, deputy ministers and chairmen of State committees, heads of the State administrative bodies and their deputies, heads of State enterprises, companies, associations and corporations and their deputies, and directors and senior officials of banks may not simultaneously be members of the Majlis-i Milli and may be registered as candidates for election to the Majlis-i Milli only if they state in their applications that they agree to stand down from their professional posts if elected to the Majlis-i Milli.

Article 17

212. The Constitution provides that a person's home is inviolable. Intrusion into a person's home and depriving a person of his or her home are prohibited except in the cases prescribed by law (art. 22).

The Constitution safeguards the confidentiality of correspondence, telephone conversations and telegraphic and other forms of communication except in the cases prescribed by law.

The collection, storage, use and dissemination of information about a person's private life without his or her consent is prohibited (art. 23).

213. Criminal liability may be incurred by infringement of the inviolability of the home or the confidentiality of correspondence, telephone conversations and postal, telegraphic or other communications, by the unlawful collection or dissemination of information about a person's private life or the refusal of an official to provide a person with collected information that directly affects his rights and freedoms, by violation of the confidentiality of adoption, by attacks on a person's honour and dignity through dissemination of false information that besmirches his or her honour, dignity or reputation, and by acts of humiliation and degradation (Criminal Code, arts. 147, 146, 144, 148, 173, 135 and 136).

214. Important safeguards are contained in the 1999 Civil Code, where honour and dignity, the inviolability of the home and private life, the confidentiality of personal and family affairs, and

other personal rights are characterized as non-material benefits protected by the corresponding provisions of the Code. If a person inflicts harm on a citizen in the form of physical or mental suffering or attacks on his or her personal rights and freedoms, the citizen is entitled to exact from that person monetary compensation for such harm, including through legal action (arts. 170-177). The Civil Code also establishes liability for harm (including harm to a person's protected non-material interests) caused by unlawful acts on the part of preliminary investigation agencies, the Office of the Procurator-General or a court (art. 1086).

215. The Constitution and the law contain provisions on protection against unlawful intrusion into the home, violation of the confidentiality of correspondence, telephone conversations and telegraphic and other communications, and interference in other spheres of private life. However, the law is silent on the concept of "arbitrary" interference in these areas of human relations. The concept of "unlawful" with respect to these spheres of human activity embraces all forms of the infringement of inviolability, as may be seen from a number of the provisions of the Criminal Code (Criminal Code, art. 147).

216. As stated in article 22 of the Constitution, intrusion into the home and violation of the confidentiality of correspondence, telephone conversations and telegraphic and other communications are permitted only in the cases prescribed by law in order to safeguard the rights of other persons or society. The procedures applicable in such cases are regulated by legislation on the procurator's office and the militia, and by the provisions of the Code of Criminal Procedure.

217. If in a criminal case under investigation there are sufficient grounds for believing that the tools of a crime, a person sought by the police, a corpse or objects and valuables that may throw light on a case are to be found in a person's home, the official or the State agency conducting the investigation may carry out a search in order to find the person or corpse and confiscate any of the other items. A personal search may be conducted on the same grounds.

A search may be conducted on the basis of a reasoned decision by an investigator but only following approval by a procurator, or by order of a court. Searches must be approved by a procurator or his deputy. In circumstances brooking no delay a search may be conducted without approval by a procurator, but a procurator must be notified of the search within 24 hours (Code of Criminal Procedure, art. 168).

218. In order to safeguard property rights and other rights, the person whose premises are being searched, or adult members of his or her family, must be present during the search. If none of these persons can be present, representatives of a local self-government body are invited to attend.

An investigator carrying out a search may seize only such objects or documents that may be related to the case (arts. 169 and 171).

219. In order to protect the inviolability of private life during a search and seizure operation, the investigator is required to take measures to prevent the disclosure of details of the private life of persons living in the accommodation in question (art. 170, para. 5).

In order to safeguard an individual's right to honour and dignity, a personal search may be conducted only by a person of the same sex and in the presence of witnesses of the same sex (art. 172).

220. Correspondence may be seized and removed from post and telegraph offices only in connection with a criminal investigation and with the approval of a procurator or pursuant to a court decision or order.

In order to prevent violation of the confidentiality of a person's correspondence, its inspection and removal must take place in the presence of witnesses drawn from the staff of the post and telegraph office (art. 174).

221. The law provides that supervision of the legality of and grounds for inspections and seizures of correspondence is carried out by a procurator's office by means of checks made in connection with the granting or refusal of approval, in the course of procuratorial supervision of the conduct of preliminary investigations, the confirmation of bills of indictment and the consideration and disposal of citizens' complaints and applications, and in the course of other supervisory functions. The legality of and grounds for interference in a person's private affairs may be verified by the courts when hearing criminal cases or considering applications from citizens in this connection. Moreover, the relevant law enforcement agencies also conduct their own internal checks.

222. It must be pointed out that the current Code of Criminal Procedure, which was adopted in 1961, has undergone significant amendment with regard to the protection of an individual's rights and freedoms. A new Code of Criminal Procedure is currently being drafted with a view to improving the regulations governing infringement of the inviolability of the home or the confidentiality of correspondence, telephone conversations and telegraphic or other communications in the course of the administration of justice in order to safeguard this inviolability and confidentiality against all forms of unlawful or arbitrary interference.

223. In the event of the discovery of infringements of the inviolability of the home or the confidentiality of correspondence, telephone conversations and telegraphic and other communications, or of unlawful collection of personal information and data, the procurator's office institutes disciplinary proceedings against the persons who committed such infringements.

In the event of the discovery of evidence of criminal activity by guilty officials of preliminary inquiry and preliminary investigation agencies, such persons are prosecuted. For example, Kurbanov, the administrative head of the Drug Control Agency in Khatlon oblast, conducted an unlawful search of the home of citizen Nuraliev. The Khatlon oblast procurator's office instituted criminal proceedings against Kurbanov and he was subsequently brought to trial. The court found Kurbanov guilty and imposed a criminal sentence.²

Article 18

224. The right to freedom of thought, conscience and religion is embodied in the Constitution and in the Religion and Religious Organizations Act of 1 December 1994.

Unrestricted freedom of conscience and the right of citizens freely to choose their beliefs and their world view are clearly stated in the Constitution. According to article 8 of the Constitution, public life in Tajikistan is developing on the basis of political and ideological pluralism. No one ideology, including a religious ideology, may be established as the State ideology. Religious organizations are separated from the State and may not interfere in the affairs of State.

Under article 26 of the Constitution, everyone has the right independently to determine his attitude to religion, to profess either individually or in community with others any religion or none, and to take part in religious services, ceremonies and rites.

According to the Religion and Religious Organizations Act (art. 1) the freedom of religion accorded to citizens by the Constitution also includes the right to social justice and equality and the protection of the rights and interests of citizens regardless of their religious beliefs (art. 3).

225. No one may be coerced to adopt a religious belief, to manifest a religion or decline to do so, or to participate or not to participate in religious services, rites or ceremonies or in religious instruction. The exercise of the freedom of conscience is subject only to such limitations as are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others that are established by law and are in keeping with Tajikistan's international obligations (art. 3).

226. Under articles 8 and 17 of the Constitution and article 4 of the Religion and Religious Organizations Act, citizens are accorded equal rights, regardless of their attitude to religion, in all spheres of civil, political, economic, social and cultural life. Any direct or indirect limitation of rights and the granting of any advantages to citizens based on their attitude to religion, or incitement to enmity or hatred in connection with religious beliefs, or insulting citizens' feelings, entail the legal consequences established by law.

227. The State encourages mutual tolerance and respect among citizens, whether or not they profess a religion, and among religious organizations of different denominations and their members. The State suppresses religious fanaticism and extremism (Religion and Religious Organizations Act, art. 5).

Under article 5 of the Religion and Religions Organizations Act, all religions and all religious denominations are equal before the law. The establishment of any advantages for or restrictions on any one religion or religious denomination in relation to the others is prohibited.

The State does not allow religious organizations to perform State functions. It does not finance the activities of religious organizations or any activity to promote atheism. Religious organizations do not perform State functions. Religious organizations are entitled to take part in public life and to make use of the media on an equal footing with voluntary associations. Members of religious organizations are entitled to participate in political life on the same footing as all other citizens. Religious organizations are required to comply with the requirements of the legislation in force and observe law and order. The State encourages mutual tolerance and respect among citizens, whether or not they profess a religion, among organizations of different denominations and their members, and suppresses religious fanaticism and extremism.

228. Article 157 of the Criminal Code imposes penalties for obstructing the lawful activities of religious organizations or the observance of religious rites, provided that such activities and observance do not disturb the public order and do not infringe the rights of other citizens. In the period from 1999 to 2003, criminal proceedings under article 157 were instituted in one case, which resulted in conviction.²

229. The State respects the freedom of parents or legal guardians to ensure the religious and moral upbringing of the children in their charge in conformity with their convictions (Religion and Religious Organizations Act, art. 3). Children may be taught religious doctrine and receive a religious education from the age of 7 with the written consent of their parents or surrogate parents, and from the age of 16 and with their consent, in their free time from school, in the language of their choice, either individually or in community with others. Tajik citizens may also attend schools established by religious organizations (Act, art. 6).

230. The State education system is secular and has no connection with any religion. All persons have access to the various types and levels of education regardless of their attitude to religion (Act, art. 6).

State general education schools and higher educational establishments teach the history of religion. A textbook entitled *The History of Religion* has been published in Tajik for the seventh grade of secondary education.

No restrictions may be imposed on the conduct of scientific research, including research funded by the State, on the publicizing of the results of such research or on their inclusion in general education curricula on the grounds of their compatibility or incompatibility with the precepts of any religion or atheism (Act, art. 5).

231. The spiritual and cultural freedom and the freedom of religion embodied in the Constitution are reflected in the activities of religious organizations in Tajikistan. The first Constitution of the independent Republic of Tajikistan was adopted in 1994, and that same year saw the adoption of the Religion and Religious Organizations Act, which established the broadest possible scope for freedom of religion. Under the Act, activities may be conducted freely by religious organizations (art. 7), religious communities (art. 8) and religious administrations, centres and associations (art. 9). All these groups are formed in order to meet citizens' religious needs with respect to the profession and propagation of religious faith, and they operate within their own organizational structures, selecting, appointing and replacing their personnel in accordance with their charters or regulations.

Religious centres and administrations are also entitled, in accordance with their registered statutes (regulations), to found monasteries, religious brotherhoods and missionary organizations (art. 10), as well as their own seminaries to train priests and other required religious personnel (art. 11).

232. Article 14 of the Act has simplified the registration of religious organizations. In order for a religious community or five-prayer mosque (small mosques in villages and towns) to obtain the capacity of legal person, the persons forming the community or mosque (at least 10 persons aged 18 or over) submit an application accompanied by the statute (regulations) to the local

authorities in the place where the community or mosque is to be established. If the community or mosque belongs to any kind of religious organization, this fact must be indicated in the statute and confirmed by the religious administration in question.

The local authorities must consider such applications within one month and then register the statute of the religious community or mosque, subject to the approval of the State agency for religious affairs. If such approval is not forthcoming, the local authorities concerned are entitled to request additional materials and seek an expert opinion. In such case, a decision must be taken within three months.

The religious associations and administrations, central mosques, monasteries and seminaries established by religious organizations submit their approved statutes (regulations) to the State agency for religious affairs for registration. This agency (the Committee on Religious Affairs) must take a decision on the registration of the statute, in coordination with the local authorities, within one month.

Central mosques may be established in villages and towns, districts, oblasts centres and cities with a population of at least 15,000 persons.

Religious organizations are entitled to judicial protection. Rejection of applications for registration or failure to take a decision within the time limits established by law may be appealed in the courts (art. 15).

Since 1999, there has not been a single case of refusal to register a religious organization.

233. Article 21 of the Religion and Religious Organizations Act accords believers broad freedom of choice of the place where religious rites and ceremonies may be held. Such places include houses of prayer and the land attached to them, places of pilgrimage, premises of religious organizations, cemeteries, private apartments and houses, civilian and military hospitals, homes for the elderly or disabled persons, places of pre-trial detention, and prisons. When necessary, permission is granted for public religious services, rites and ceremonies in accordance with the procedure for holding public meetings, rallies, demonstrations and processions. The commanders of military units and subunits do not hinder participation in religious services and rites by military personnel in their free time.

The units of the 201st Motorized Infantry Division of the Ministry of Defence of the Russian Federation stationed in Tajikistan have permanently operating regimental Orthodox Christian churches, and mosques.

234. The relations between the State and religious organizations may be described as follows.

As a secular State, Tajikistan opposes religious extremism and radicalism. The Constitution and the Religion and Religious Organizations Act prohibit the creation of extremist religious parties or organizations, and religious organizations may not interfere in the affairs of State agencies. Religious organizations (but not religious parties) and their employees are prohibited from engaging in political activities or standing for election to legislative bodies. The

establishment of religious organizations whose activities may cause harm to people's health or otherwise harm an individual's person or rights, as well as the leadership of such organizations, are liable to criminal prosecution (Criminal Code, art. 159).

Religious parties are permitted in Tajikistan.

235. Since 97 per cent of the population of Tajikistan are Muslims, the State makes every effort to ensure that ethnic and religious minorities do not feel oppressed. It has created a legal framework that allows religious minorities more fully to manifest their religion and attend to their religious needs.

The following non-Islamic religious organizations are active in Tajikistan: the Roman Catholic Church, the Evangelical Christian Baptist Church (in six towns and districts), the Evangelical Christian Church (in eight towns and districts), the Sonmin Christian Church, the Grace Sonmin missionary society, the Baha'i centre, the New Apostolic Church, the Russian Orthodox Church (in three towns), the Nadezhda missionary centre, the Seventh-Day Adventist Church, and others.

The Constitution does not regard religion as the antithesis of culture or deny its role in society. The principles embodied in Tajikistan's legislation and the main areas of State policy facilitate the expansion of spiritual and cultural freedom. A person's freedom to choose his or her religion creates conditions for religious pluralism. Tajikistan has 257 central mosques and 2,500 small five-prayer mosques. These numbers increase every year. (For example, there were 17 central mosques in 1990 and 187 in 1999.) Tajikistan has 66 non-Islamic religious organizations. While there was not a single religious school in 1990, today there are 20 religious secondary schools and a university. On 9 October 1997, the Government adopted Decision No. 437 on the regulation of preparations for and the performance of the hajj in order to make it easier for the faithful to make the pilgrimage, improve the services for pilgrims and guarantee their safety. Pursuant to this Decision, the relevant agreements on the provision of services for pilgrims are concluded with Saudi Arabia. All domestic restrictions on pilgrimages have been lifted. Between 1993 and 2001, there was not a single case of refusal of an exit visa to persons wishing to make a pilgrimage. In 2002, pursuant to the bilateral agreement between Tajikistan and Saudi Arabia concerning performance of the hajj by Tajik citizens, the Tajik Government amended and supplemented its 1997 Decision. In order to facilitate the pilgrimage, it adopted regulations on the arrangements for Tajik citizens to make the hajj; these regulations provide for working groups to go to Saudi Arabia to conclude agreements and make arrangements for the board and lodging of Tajik pilgrims and for medical assistance and safe travel. In conjunction with Tajikistan's Islamic Centre, the relevant government agency makes use of the media to inform the public about arrangements for making the hajj, and deals with matters relating to the provision of services for pilgrims at airports. For security reasons, pilgrims are not allowed to travel by land.

The State takes measures to meet the needs of the faithful. The Islamic feasts of Ramadan and Kurbon are public holidays. Religious monuments and buildings are being restored. Since 1999, more than 20 religious buildings have been restored. The anniversaries of prominent religious leaders of the past are celebrated throughout Tajikistan. A Tajik translation of the Koran has been published.

The State does not obstruct the training of personnel for religious organizations and institutions either in Tajikistan or abroad. Tajik students study in religious schools in Egypt, Syria, Saudi Arabia, the Islamic Republic of Iran, Pakistan, Turkey, India and other countries.

Tajikistan's religious organizations have ties with many overseas organizations. They take an active part in international symposiums and conferences and in activities conducted by overseas Islamic centres, including the Islamic World League, and are members of the Eurasian Islamic Council, the Association of Islamic Universities, and so on. Christian religious organizations also have close contacts with their co-religionists in Western Europe and America, such as, for example, the Sonmin Protestant Church, the Bible League, the Nadezhda Christian mission, and others. A number of Tajikistan's clerics are foreign subjects.

Article 19

236. Article 30 of the Constitution accords to everyone freedom of expression and freedom of the press and the right to use the media.

The Press and Other Media Act and the Television and Radio Broadcasting Act establish and protect the right of every person freely to express his or her opinions and the freedom to seek, receive and impart information.

The Criminal Code imposes penalties for refusal to provide citizens with information (art. 148) and for obstruction of the lawful professional activities of journalists (art. 162). Between 1999 and 2003, not a single criminal action was brought under these articles, since there were no instances of applications by the public to the law enforcement agencies in this connection.

237. The Press and Other Media Act establishes the right of every citizen to his or her opinions and freely to express and disseminate them in any form in the press or any other media (art. 2). State censorship and persecution for criticism of the State are prohibited (Constitution, art. 30; and Press and Other Media Act, art. 2).

Tajikistan's media conduct their activities in Tajik and in other languages in accordance with the Constitution and other legislation (Press and Other Media Act, art. 3).

238. Under article 8 of the Press and Other Media Act, the right to found mass media is vested in the local authorities and other State agencies, political parties, voluntary organizations, mass movements, creative associations, cooperatives, and religious and other public organizations established in accordance with the law, as well as in labour collectives and in individuals who have reached the age of 18. All forms of monopoly of the media (press, radio, television, etc.) are prohibited. Media enterprises must be registered within one month of the submission of an application to the State notary office in the place in which they are to operate (art. 9). Organizations with print runs of under 100 copies are not required to register (art. 11). The registration of a media enterprise may be refused only on the grounds of violation of the national legislation in force (art. 12). Appeals may be submitted to the courts by the founder or the editorial board in connection with the refusal to register a media enterprise, failure by a State

agency to comply with the time limit for registration, and decisions to terminate the activities of a media enterprise; such cases, including ownership disputes, are considered by the courts under the procedure established by article 15 of the Code of Civil Procedure.

Pursuant to article 14 of the Press and Other Media Act, media activities may be terminated on the following grounds:

- (1) By a decision of the founder;
- (2) As a result of the liquidation or reorganization of the media;
- (3) By a court decision for violation of article 6 of the Act, which prohibits abuse of the freedom of speech, or of article 22, which prohibits the dissemination of literature and publications containing calls for the violent overthrow or change of the constitutional system, information insulting to the honour and dignity of the State or the President, propaganda for war, violence or cruelty, racial, ethnic or religious discrimination or intolerance, pornography or incitement to commit other criminally punishable acts.

In the event of violation of the provisions of the Act, the procurator or the Ministry of Culture issues a formal warning to the violator; if the offence is repeated, they may apply to the courts for termination of the media operation in question (art. 14).

239. The State determines policy in the area of radio and television broadcasting and the legal bases for such broadcasting, coordinates the work of ministries, departments and other government agencies in this sphere, furnishes the necessary logistical support for State television and radio organizations, provides for the social and legal protection of their personnel, ensures compliance with Tajikistan's international commitments, and provides for Tajikistan's participation in the activities of international organizations and for international cooperation in the field of television and radio. Articles 5 and 6 of the Television and Radio Broadcasting Act prohibit interference in the creative work of television and radio organizations by State agencies and local authorities and their officials, political parties, voluntary organizations or private individuals, as well as censorship and monitoring of the ideological content of television and radio programmes.

Non-State television and radio organizations operate with their own funding under licences issued under the aforementioned Act and subject to technical authorization by the Ministry of Communications (arts. 10 and 11). Under article 13, the activities of television and radio organizations may be terminated by a decision of their founder (co-founders) or a court, or by cancellation or withdrawal of their licences. A licence may be cancelled if it was not issued to the applicant in accordance with the established procedure or if it was issued on the basis of incomplete or false information that had a significant influence on the decision to issue the licence. A licence may be withdrawn if its holder fails to comply with the requirements of the Act, or it may be suspended if the holder abuses his or her rights (art. 12).

240. The Press and Other Media Act also regulates the relations between the media and the public and organizations. Under article 5, State, political and voluntary organizations, movements and officials are required to furnish information needed by the media.

At the same time, the freedom to seek, receive and impart information imposes specific duties and specific responsibility associated with a number of limitations. The media must not abuse the freedom of speech: they are prohibited from publishing information constituting a State secret or other secret protected by law, calls for the violent overthrow or change of the constitutional system, denigration of the honour and dignity of the State or the President, propaganda for war, violence or cruelty, racial, ethnic or religious discrimination or intolerance, pornography, or incitement to commit other criminally punishable acts (arts. 6 and 34). The use of the media for the purpose of interference in the private lives of citizens, and the publication of information known to be false or slanderous or provocative information injurious to the honour and dignity of citizens, State agencies, voluntary associations and other organizations are prohibited and subject to prosecution (arts. 6 and 34). Media editors and journalists are not entitled to publish information about a pre-trial investigation without the written authorization of a procurator or the investigator or person conducting the initial inquiry, to make public any information that may indicate the identity of a juvenile offender without his or her consent and the consent of his legal representative, or to prejudge in their reports the outcome of the judicial proceedings in a specific case, or otherwise bring pressure to bear on a court before its decision or sentence enters into force (art. 29). The courts may order compensation to be paid by the media and by any culpable officials or individuals for any moral harm that they inflict. The monetary amount of such compensation is determined by the courts (art. 38). The Criminal Code establishes liability for furnishing unreliable or slanderous information to the media (art. 135). Between 1999 and 2003, criminal proceedings were instituted under articles 135 and 137 of the Criminal Code in only one case - against D. Atoulloev, the editor of the newspaper *Charogi ruz*; the case was discontinued under the General Amnesty Act.²

241. Individuals have the same rights and opportunities to obtain information as do organizations. The right of all persons to obtain information is embodied in article 25 of the Constitution, which obliges State agencies, voluntary associations and officials to ensure that everyone can obtain and examine documents pertaining to his or her rights and interests. Under article 47 of the Constitution, an individual's right and freedom to obtain information cannot be restricted even during a state of emergency.

Pursuant to article 27 of the Press and Other Media Act and article 20 of the Television and Radio Broadcasting Act, citizens are entitled to receive through the media, prompt and reliable information concerning the activities of State agencies, voluntary associations and officials. The media are entitled to receive such information from State agencies, voluntary organizations and officials, which are required to provide the media with information in their possession and with opportunities to examine documents. Complaints of refusal to furnish requested information may be submitted by a representative of the media to a higher-ranking agency or official and then to the courts. Officials furnishing information are responsible for its accuracy. Under the Citizens' Communications Act of 14 December 1996, it is the duty of State agencies, voluntary associations, enterprises, institutions and organizations that consider communications from citizens to process such communications in a timely manner and to inform the persons concerned of their findings in writing (art. 9). It is prohibited to publish information acquired in the course of considering such communications: information about a person's private life may not be released without his or her consent; and at his or her request no details of his identity may be made public (art. 11), subject to liability under article 14.

242. These principles also apply to the rights and duties of journalists in Tajikistan. Journalists are entitled to seek, receive and impart information, to be received by officials in connection with the performance of their professional duties, to make any recordings, including by technical means, to visit areas affected by natural disasters, and to have recourse to experts to verify facts and circumstances. Journalists are required to check the accuracy of information furnished to them, and to respect the rights, legitimate interests and national dignity of citizens and the rights and legitimate interests of organizations (Press and Other Media Act, arts. 31 and 32).

243. Interference in the activities of the media, obstruction by officials of State agencies or voluntary associations of the lawful professional activities of journalists, coercion of journalists to make information public or refrain from making it public are prohibited and subject to criminal prosecution (Press and Other Media Act, art. 37; Television and Radio Broadcasting Act, art. 6).

Employees of State agencies, voluntary associations, enterprises, institutions and organizations, regardless of the form of ownership, found to have published protected information about the private lives of citizens, or any other information encroaching on citizens' rights or legitimate interests, are liable to disciplinary action under the Citizens' Communications Act if such acts do not entail administrative or criminal liability.

244. Article 148 of the Criminal Code prescribes penalties for refusal to furnish a citizen with information, documents or other materials, collected in accordance with the established procedure, which directly affect his or her rights and freedoms, and for furnishing a citizen with incomplete or deliberately distorted information when such action damages his or her rights or interests: a fine of between 300 and 500 times the minimum wage or suspension of the right to hold certain posts or engage in certain activities for three to five years. Between 1999 and 2003, no criminal proceedings were brought under this article, and no applications were made by members of the public to the law enforcement agencies in this connection.

245. Obstruction of the lawful professional activities of journalists is also liable to criminal prosecution. Under 162 of the Criminal Code, any manner of obstruction of the lawful professional activities of journalists, coercion of journalists to make information public or to refrain from making it public, when accompanied by threats of violence, destruction or damage of property, circulation of slanderous fabrications or publication of any other information that the victim wishes to remain secret, or by threats to infringe a journalist's rights and interests is punishable by a fine of between 300 and 500 times the minimum wage or by punitive deduction of earnings for up to two years or by rigorous imprisonment for up to six months.

The same acts, when accompanied by violence or destruction or damage of property or by abuse of an official position, are punishable by restriction of liberty for up to three years or deprivation of liberty for up to five years, with or without suspension of the right to hold certain posts or engage in certain activities for up to three years. From 1999 to 2003, no criminal proceedings were brought under this article, since there were no applications by members of the public to the law enforcement agencies in this connection.

246. Tajikistan has six information agencies and 271 periodical publications (newspapers and magazines). Six of them are official national publications (the newspapers *Sadoi mardum* and *Jumkhuriat* (in Tajik), *Khalk ovozi* (in Uzbek), and *Narodnaya gazeta* (in Russian); and the magazines *Akhbori* (News) *of the Majlis-i Oli of the Republic of Tajikistan* and *Sbornik Sobraniya postanovlenii Pravitelstva Respubliki Tajikistana* (in Tajik and Russian)). Publications are printed in the Tajik, Russian, Uzbek, Kirgiz and Farsi languages and in the Shugni dialect.

Tajikistan has the following State television and radio stations:

- National Television and Radio;
- Television and radio of Gorny Badakhshan Autonomous Region;
- Khatlon oblast television and radio;
- Sogd oblast television and radio;
- Kulyab city television.

There are 17 non-State television studios and four non-State radio stations operating under licences.⁹

247. Since 1999, applications for registration of a printed publication or electronic means of mass communication have, in most cases, been approved when the documents were drawn up in accordance with established requirements. In one case, a radio-broadcasting licence was issued only after reconsideration of the application (Radio Azia Plus).

In accordance with the principle of comprehensive reporting on developments and events in Tajikistan the Press and Other Media Act establishes the right of foreign media to operate in Tajikistan by opening offices or accrediting journalists (art. 39). There are currently 169 accredited journalists and foreign media employees in Tajikistan. The media of foreign States are represented by one branch, three offices, seven correspondents and seven corresponding offices.¹⁰

248. The principles of media democracy and freedom in Tajikistan are also confirmed by the fact that only 50 per cent of the membership of the commission of the Committee on Television and Radio Broadcasting responsible for issuing broadcasting licences to television and radio organizations are government employees. The other 50 per cent consists of representatives of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Tajikistan, the National Association for New Technologies and Information Systems, the *Poitakht* (Capital) public television station, TAJ ANESMI, the Ministry of Communications, and the Strategic Research Centre of the Office of the President. A conciliation board is being set up to deal with any disputes that may arise.

In the light of the foregoing, it can be asserted that there is a rather high level of press freedom in Tajikistan.

249. The main obstacle to the further development of freedom of expression in Tajikistan is the absence of any support from the State either in the legislative sphere or by way of funding for publishing and broadcasting. Owing to financial difficulties, up to 50 per cent of Tajikistan's newspapers are published irregularly or have to suspend publication from time to time.

Article 20

250. Tajikistan's peace-oriented policy is embodied in the Constitution. According to article 11 of the Constitution, in pursuing this policy Tajikistan respects the sovereignty and independence of other States and bases its foreign policy on international norms. War propaganda is prohibited. Guided by the highest interests of the people, Tajikistan may join or withdraw from communities and other international organizations and establish ties with foreign countries. The State is required to cooperate with its overseas counterparts.

Pursuant to article 395, paragraph 1, of the Criminal Code, the planning or preparation of a war of aggression is punishable by deprivation of liberty for between 12 and 20 years with confiscation of property. Under article 395, paragraph 2, the launching or waging of a war of aggression is punishable by deprivation of liberty for between 15 and 20 years with confiscation of property or the death penalty. Under article 396, paragraph 1, public incitement of a war of aggression is punishable by a fine of between 500 and 1,000 times the minimum wage or by deprivation of liberty for between two and five years. The same acts, when committed by use of the media or by persons holding government positions, are punishable by deprivation of liberty for between 7 and 10 years with suspension of the right to hold certain posts or engage in certain activities for up to five years (art. 396, para. 2).

Between 1999 and 2003, no criminal proceedings were brought under article 395 or article 396 of the Criminal Code, since none of the offences in question was committed.

251. Article 8 of the Constitution prohibits any activity encouraging racial, ethnic, social or religious enmity. The Criminal Code establishes penalties for acts intended to incite ethnic, racial, regional or religious enmity.

When committed publicly or with the use of the mass media, acts intended to incite ethnic, racial, regional or religious enmity or discord, insult national dignity or promote exclusivity on the basis of citizens' attitude to religion or ethnic, racial or regional origin are punishable by restriction or deprivation of liberty for up to five years (art. 189, para. 1). The same acts, when committed repeatedly, with the use or threat of violence, by abuse of an official position, by a group of persons or by a group of persons acting by prior agreement are punishable by deprivation of liberty for between 5 and 10 years, with or without suspension of the right to hold certain posts or engage in certain activities for up to five years (art. 189, para. 2). The acts referred to in article 189, paragraphs 1 and 2, when committed by an organized group and resulting in death or other serious consequences or the forcible removal of a citizen from his permanent residence, or committed by a dangerous or particularly dangerous recidivist, are punishable by deprivation of liberty for between 8 and 12 years, with or without suspension of the right to hold certain posts or engage in certain activities for up to five years (art. 189, para. 3).

The dissemination of literature or publications containing propaganda for war, violence and cruelty, racial, ethnic or religious discrimination or intolerance, pornography or incitement to commit other criminally punishable acts are also prohibited by article 22 of the Press and Other Media Act.

Article 21

252. Article 29 of the Constitution accords to citizens the right to take part in legally authorized meetings, rallies, demonstrations and peaceful processions. No one may be compelled to take part in such events. The Criminal Code establishes penalties for obstructing the holding of meetings, rallies, demonstrations, processions or picketing or participation in such activities (art. 161).

The procedure for holding peaceful assemblies, demonstrations and processions is contained in the 1998 Meetings, Rallies, Demonstrations and Peaceful Processions Act. Article 6 of this Act regulates the right to strike.

253. Citizens have a constitutional right to take part in legally authorized meetings, rallies, demonstrations and peaceful processions. No one may be compelled to take part in such events. The State guarantees the right to organize and hold demonstrations and to participate in them by making streets, squares, parks, public gardens and other open spaces available to citizens and their associations free of charge; by disseminating information about such events in the State press, television, radio and other audio-visual media; and by encouraging government agencies and officials to provide organizational assistance. The conduct of such events may involve the use of symbols, slogans and other means of the public expression of collective or individual opinions, as well as means of propaganda. Foreign citizens and stateless persons are free to take part in demonstrations on an equal footing with Tajik citizens.

254. In order to hold a demonstration, the organizer of the demonstration must send written notification to the President of Gorny Badakhshan Autonomous Oblast or to the oblast, district or municipal authorities at least 15 days before the date set for the demonstration, indicating the demonstration's purpose, form and place or the route of the march, starting and finishing times, the expected number of participants, the names of the organizers and their particulars, and the date of submission of the notification.

Demonstrations may be held in any suitable places, except in places whose use is restricted or prohibited by decisions of local councils of people's deputies.

255. A demonstration may be banned if its declared purpose is incitement to commit acts, or the commission of the acts themselves, prohibited by the Constitution and the law of Tajikistan, if its proposed venue is a place claimed earlier for a different event, or a place where demonstrations are banned or subject to restrictions, if it causes or may cause unavoidable interference with traffic or the free movement of persons, if it is likely to interrupt the operations of enterprises, institutions or organizations providing vital public services, if it poses a genuine threat to people's lives, health or safety, or if it injures their rights or legitimate interests (Meetings, Rallies, Demonstrations and Peaceful Processions Act, art. 15). Failure to comply

with the procedure for organizing and holding meetings, rallies, demonstrations, street processions and picketing entails, following the imposition of an administrative penalty, criminal liability under article 160, paragraphs 1 and 2, of the Criminal Code.

Pursuant to article 16 of the Act, the organizer may appeal to the courts against a decision to prohibit a demonstration. The courts must consider such appeals within three days.

During a demonstration, its participants must comply with the requirements of public order. They are prohibited from carrying firearms or any specially prepared or adapted objects that may be used to endanger people's lives or health or damage the property of enterprises, institutions, organizations or private citizens (art. 18).

256. Government authorities, officials of enterprises, institutions and organizations, regardless of the form of ownership, and voluntary associations, as well as members of the public, have no right to obstruct demonstrations conducted in accordance with the law. The free expression of opinions during demonstrations is also guaranteed, provided that this does not disturb public order or the procedure for holding the demonstration that was established by its organizer (arts. 22 and 23).

257. The aforementioned Act does not cover events held in places specially adapted for such purposes, or meetings and rallies of labour collectives, or meetings (plenary meetings, congresses, conferences) of voluntary associations and political parties conducted in accordance with the law and their statutes and regulations.

258. Under article 161, paragraph 1, of the Criminal Code, unlawful obstruction of a meeting, rally, demonstration or procession or picketing, or obstruction of participation in such events, or coercion of persons to participate, are punishable when the act in question involves violence or the threat of violence by a fine or by deprivation of liberty for up to three years, with or without suspension of the right to hold certain posts or engage in certain activities for up to three years. When such acts involve the abuse of an official position, they are punishable by deprivation of liberty for between three and five years, with suspension of the right to hold certain posts or engage in certain activities for up to three years (art. 161, para. 2).

259. Since 1999, there have been no documented cases of rejection of an application to hold a demonstration, rally or peaceful assembly. No criminal proceedings were brought under article 160 or article 161 of the Criminal Code.

Article 22

260. Article 8 of the Constitution states that public life in Tajikistan is developing on the basis of political and ideological pluralism. No one ideology, including a religious ideology, may be established as the State ideology. Voluntary associations are established and operate in conformity with the Constitution and the law. The State accords them equal opportunities in the conduct of their activities. Religious organizations are separated from the State and may not interfere in the affairs of State. The establishment and operation of voluntary associations that promote racial, ethnic, social or religious enmity or call for the violent overthrow of the constitutional system and the formation of armed groups are prohibited.

261. According to article 28 of the Constitution, citizens enjoy the freedom of association.³ Citizens are entitled to take part in the formation of political parties, including parties of a democratic, religious or atheistic nature, trade unions and other voluntary associations and may freely join or leave them.

Voluntary associations are an inalienable part of civil society, and Tajikistan is endeavouring to ensure the development of these institutions of democratic society.

Several legal forms of non-commercial organization are permitted under the 1998 Voluntary Associations Act and the 1999 Civil Code, including consumer cooperatives, voluntary associations (organizations), and voluntary funds, institutions and associations. Article 3 of the Act states that “freedom of association” includes the right to form or participate in the formation of voluntary associations for the protection of common interests and attainment of common goals, the right freely to join or not to join existing voluntary associations, and the right to leave voluntary associations freely and without hindrance. The establishment of voluntary associations facilitates citizens’ exercise of their rights and the pursuit of their legitimate interests.

According to article 5 of the Act, voluntary association means “a voluntary, self-governing and non-commercial organization established by citizens or by legal entities sharing common interests and goals”.

Article 12 of the Act provides that voluntary associations may be founded and joined by citizens aged 18 years or older, by legal entities and by foreign citizens and stateless persons, who enjoy the same rights as Tajik citizens in this respect, except in the cases prescribed by domestic law or international legal instruments recognized by Tajikistan.

Tajik nationals aged 14 years or older may join or participate in voluntary youth associations, and Tajik nationals aged 10 years or older may join voluntary associations for children.

Article 14 sets out the rules for registering voluntary associations by the State. National and international voluntary associations are registered by the Ministry of Justice. Local voluntary associations are registered by the justice departments of local authorities.

Registration by the State requires the submission of the following documents: the application to the registering agency; the organization’s statute and the record of its constituent meeting; information concerning the founders; the receipt for payment of the registration fee; and certification of submission of the association’s legal address. These documents must be submitted within three months from the holding of the constituent assembly (conference or meetings). The voluntary association is registered within 30 days of the submission of the aforementioned documents. This time limit may be suspended for as long as it takes the applicant to make good any shortcomings in the constituent documents that come to light during their consideration.

Voluntary associations are entitled to create unions of voluntary associations on the basis of the constituent agreements and statutes adopted by the unions, forming new voluntary associations.

As of January 2004, Tajikistan had 1,923 non-governmental voluntary associations engaged in many different areas of activity; the number of such associations is constantly increasing.³ Their work embraces virtually every sphere: problems of the social protection of the population, education of young people, health, the environment and gender equality, as well as problems of personal safety and human rights. Voluntary associations cooperate closely with the Government in many sectors. For example, 60 voluntary associations concerned with the promotion of gender equality contributed to the drafting of the National Plan of Action to Improve the Status and Role of Women for the period 1998-2005. Voluntary associations are an important component of civil society and are helping to promote peace in Tajikistan. Many of them were involved in the signing of the Agreement on Social Accord in Tajikistan. The President of Tajikistan has a high opinion of the work of NGOs and in June 2002 he held a meeting with NGO representatives.

The law provides for the suspension of the activities of a voluntary association at the recommendation by a procurator or on the initiative of the agency that registered it; a court may suspend the activities of a voluntary association for up to three months in cases of:

- A single, flagrant violation of the statute of the voluntary association;
- Violation of the applicable legislation;
- Violation by the voluntary association of the rights and legitimate interests of natural persons or legal entities.

Decisions to suspend the activities of voluntary associations may be appealed in the courts under the established procedure. If the voluntary association concerned does not correct the indicated violations, the body that applied for the suspension of its activities may apply to the courts for the dissolution of the voluntary association.

262. Workers have the right freely to form the trade unions of their choice without prior authorization. The Trade Unions (Rights and Guarantees) Act has been in force since 1992.

Article 1 of the Act defines a trade union as “a voluntary public association of workers having common interests by virtue of their occupation, in both the production and the non-production sphere, for the protection of their labour, social and economic rights and the interests of their members”.

Trade-union organizations may form associations of trade unions on the basis of occupation or location or join such associations. Government agencies are not entitled to interfere in the activities of trade unions.

Tajikistan has a national Federation of Trade Unions, 18 sectoral committees operating nationwide, three oblast trade-union councils, more than 200 oblast, district and municipal trade-union committees, and 9,416 primary trade-union organizations with a membership of about 1.3 million, 650,000 of whom are workers, and the remainder are pensioners and students

in higher educational establishments and technical and other institutions. Local industry has 15,700 trade-union members; the textile and other light industries - 29,000; ore mining and smelting industry - 21,874; the engineering industry - 3,500; the chemical industry - 4,450; communications - 8,000; railways - 745; and energy production - 18,122.¹¹

Subject to the purposes and goals of their statutes, trade unions are entitled to cooperate with similar organizations in other States and to conclude agreements with them.

Membership or non-membership of a trade union does not entail any restriction of the labour, social and economic, political or personal rights and freedoms accorded by legislation.

Trade unions participate through representatives of their national bodies in the drafting of labour and social and economic legislation, and submit proposals on these matters to the relevant agencies. They may nominate candidates for election to Parliament and take part in election campaigns.

The administrations of State, economic and cooperative bodies and voluntary associations, as well as private individuals and officials, are required to respect the rights of trade unions and facilitate their activities. Workers elected to the staff of trade-union bodies but not released from their production work may not be subjected to disciplinary action without the prior consent of the trade-union body of which they are members.

The administrations of enterprises must provide trade unions with the equipment, premises, and means of transport and communication necessary for their activities.

Pursuant to article 18 of the aforementioned Act, trade unions are entitled to hold meetings and, subject to the procedure prescribed by law, to organize rallies, demonstrations and other mass events.

When a collective labour dispute between the administration of an enterprise and a labour collective or trade union is not settled by a conciliation commission or by arbitration, the labour collective or trade union is entitled, through their authorized bodies and subject to the applicable legislation, to organize and carry out strikes.

263. The activities of political parties are regulated by the 1998 Political Parties Act. Tajikistan has six political parties. Under article 3 of the Act, parties may be formed by Tajik citizens, freely and without any authorization, at a constituent assembly (conference or meeting) for the adoption of the party's statute and creation of its governing bodies.

For the purposes of registration by the State, a party must present a list of not less than 1,000 supporters who reside in most of Tajikistan's towns and districts. Within one month, the party must submit an application to the Ministry of Justice signed by the person authorized to do so by the constituent assembly that created the party, with an indication of the legal address of its governing body.

Within three months of its official registration by the Ministry of Justice, a party must have set up primary organizations in most of Tajikistan's oblasts, towns and districts.

Political parties take part in the life of the State in a number of ways. They nominate their candidates for election to the Majlis-i Namoyandagon (lower chamber) of the Majlis-i Oli (Parliament), to local self-government bodies and to government posts, and they form groups within representative government bodies. Tajikistan has an Islamic Renaissance Party, the only one of its kind in the region. However, religion is separated from the State, and political parties embracing a religious ideology may not use religious institutions for political purposes. Parties are not allowed to have their own bodies within State bodies, and State employees must keep their party duties separate from their official occupation.

Article 4 of the Act contains a provision prohibiting the creation and operation of political parties whose aims or activities seek the violent overthrow of the constitutional system, the formation of armed groups, or the promotion of regionalism or ethnic, social or religious enmity. Political parties are not allowed to use religious organizations for political purposes. It is prohibited to create or operate a political party in State security or internal affairs agencies, in procuratorial bodies, in customs services, in tax police offices, in justice or court agencies, in the armed forces or other armed formations, or in government bodies, secondary schools or higher educational establishments.

Under article 16 of the Act, a party's governing body is required to publish a financial report on the sources, amounts and expenditure of the funds received by the party during the reporting year, as well as on the party's property and the taxes that it has paid. This financial report is verified by the relevant tax service.

Pursuant to article 20 of the Act, if a party violates the Constitution or other legislation or receives financial or political assistance from abroad, the Ministry of Justice or the Procurator-General issues a warning calling for the termination of such unlawful activity. If, within 10 days, the party fails to comply with the order to terminate the unlawful activity, its activities may be suspended by decision of the Supreme Court for up to six months.

If the party persists in the unlawful activity after suspension or engages in activities prohibited by article 4, paragraph 1, of the Act, the Supreme Court may order its dissolution.

Article 23

264. According to national traditions and family law, fatherhood, motherhood and childhood are a matter of constant concern on the part of Tajik society as a whole. In accordance with article 33 of the Constitution, as the foundation of society, the family enjoys the protection of the State. Everyone has the right to found a family. Men and women of marriageable age are free to marry. Spouses have equal rights in family relations and the dissolution of marriage. Polygamy is prohibited.

265. The Constitution obliges parents to attend to their children's upbringing and physical development. Article 34 states that mothers and children enjoy the special protection and patronage of the State. Parents are responsible for their children's upbringing, and children who have reached the age of majority and are fit to work are required to care for their parents. The State provides for the protection of orphaned and disabled children and for their upbringing and education.

The basic rules regulating family relations are set out in the 1998 Family Code. Article 1 states that the family, marriage, motherhood, fatherhood and childhood enjoy the protection of the State.

In view of the importance and the multifarious nature of problems of family life and relations and the fact that Tajik legislation may not yet have covered all aspects of such relations, article 6 of the Family Code provides that, if an international agreement to which Tajikistan is a party establishes rules differing from those prescribed in domestic family law, the rules of the international agreement shall apply.

266. The family and family relations must be based on feelings of mutual love, respect and responsibility. Article 1, paragraph 3, of the Family Code states that only marriages concluded in the civil registry offices of the State are recognized as valid. Marriages concluded in a religious ceremony have no legal status. The law recognizes the rights and duties of the spouses only from the day of the civil registration of their marriage.

267. The marriageable age is 17. However, in exceptional circumstances and at the request of the persons wishing to marry, a court may lower the age of marriage for men and women but not by more than one year (Family Code, art. 13, para. 2). Certain circumstances restrict the right of Tajik citizens to marry. Article 14 of the Code prohibits marriage:

- When one of the parties is already officially married;
- Between full brothers and sisters or half-brothers and half-sisters (having a father or mother in common);
- Between adoptive parents and their adopted children;
- When one of the parties is declared by a court as having no legal capacity owing to a mental illness or feeble-mindedness;
- When one of the parties is declared by a court as having limited legal capacity owing to alcohol or drug abuse.

Under Tajik law, no marriage may be entered into without the free and full consent of the intending spouses.

268. Tajik legislation also contains rules on the dissolution of marriage. Pursuant to article 16 of the Family Code:

- (1) A marriage is terminated when one of the spouses dies or is declared dead;
- (2) A marriage may be terminated by dissolution (divorce) on application by one or both of the spouses, by the guardian of a spouse declared by a court as having no legal capacity, or by a procurator.

Dissolution of a marriage (divorce) takes place in a civil registry office with the consent of both spouses when they have no minor children from their marriage, or when there are

children but one of the spouses has been declared by a court to be missing or mentally ill or has received a criminal sentence of deprivation of liberty of more than three years (Family Code, arts. 18 and 19). Disputes concerning the division of common property or the payment of maintenance to a spouse with children who requires support and is unfit for work are considered only by the courts. Marriages are dissolved by the courts when the spouses have minor children from their marriage or are in dispute over property or when one of them is opposed to the dissolution of the marriage (art. 21).

Appropriate protection is provided for all the children in the event of the dissolution of a marriage. Article 24, paragraph 2, of the Family Code provides that, in the absence of agreement between the spouses, the court must:

- Determine which of the parents shall have custody of the minor children following the divorce;
- Determine which of the parents shall be required to pay maintenance for the minor children and the amount of such maintenance.

269. Tajikistan has other laws and regulations providing direct protection of the interests of the family, motherhood, fatherhood and childhood. For example, the Public Health Act establishes right of citizens to health care and medical treatment, to free choice of medical institution and physician, to the necessary information about the state of their own and their children's health, and to medical and prosthetic and orthopaedic services in other countries. Motherhood is protected by the State. Women enjoy a number of advantages and guarantees in the exercise of their rights and the pursuit of their legitimate interests.

Article 24

270. In accordance with article 34 of the Constitution, children come under the specific protection and patronage of the State.

Parents are responsible for their children's upbringing.

National legislation and jurisprudence provide for special measures and procedures for the protection of minors in conflict with criminal law. For the first time, a section of the Criminal Code has been devoted to juvenile criminal responsibility. This legislation meets the requirements of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights concerning the prohibition of the illegal or arbitrary detention of children. The criminal liability of persons under 16 years of age who have committed offences has been substantially narrowed. At the same time, and bearing in mind the circumstances of each case, the maximum duration of a sentence of deprivation of liberty for juvenile offenders with multiple convictions has increased from 10 to 15 years. When handing down a sentence, the court must take into consideration the fact that the defendant is a minor as a circumstance that mitigates his or her responsibility. At the same time, the court has the right to consider as an aggravating circumstance the commission of an offence against, or using, a child.

In accordance with article 23 of the Criminal Code, persons who reached the age of 16 before committing an offence may be held criminally responsible. Minors between 14 and 16 years of age can be held criminally responsible for 23 types of offence.

The Code of Criminal Procedure provides for the discretionary authority (to halt criminal prosecution) of the court, the procurator or investigating body at any stage of the consideration of cases involving minors, and the substitution of criminal punishment with re-education measures (art. 5, para. 3). This meets the requirements of the Convention on the Rights of the Child, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) on the separation of proceedings involving offences committed by minors from the official justice system.

Tajikistan provides for the protection of orphaned and disabled children and their upbringing and education. In 1999, children under the age of 14 comprised 41.5 per cent of the population: 2,533,000 out of a population of 6,100,000. Every year, 1,293,000 children are born.⁷

271. It is the constitutional obligation of each citizen to provide for the upbringing of his or her child. The Family Code defines the duties of parents, and responsibilities for the physical development and education of children. It also establishes the legislative procedure governing relations between parents and children, and the basis for their rights and responsibilities. In order to protect the interests of the child, certain limitations on parental rights have been established, which can be implemented only in the interests of children.

Tajik legislation provides for measures to prevent the separation of children from their parents, except in special circumstances.

This provision is strengthened by the parents' right of priority to raise their children, even when their marriage is dissolved.

272. Every child has the right to a name (Family Code, art. 58). According to article 20 of the Civil Code, the name given to a citizen at birth is subject to registration in accordance with the civil registration procedure. In 2000, 111,536 children under the age of 1 year and 22,601 children over the age of 1 year were registered in Tajikistan. In 2001, the corresponding figures were 122,063 and 41,912. In 2002, 176,157 children were registered, 124,657 of whom were under the age of 1 year, and 51,500 of whom were over the age of 1 year.⁷

273. As yet, Tajik legislation does not contain a specific definition of the child as an independent individual with a distinct legal status. However, the legal status of a citizen who, by virtue of his or her age, falls within the meaning of the term "child" as defined in the Convention on the Rights of the Child, is regulated by separate laws.

In accordance with article 86 of the Criminal Code, minors are persons who, at the time of committing a crime, are between 14 and 18 years of age.

According to article 18 of the Civil Code, legal capacity (to have civil rights and duties) arises at the moment of birth and ceases at death. Civil dispositive capacity (the capacity to acquire and exercise civil rights through one's actions, and to create civil obligations for oneself and to fulfil them) is fully acquired on reaching the age of majority, which is 18 years. Exceptions to this rule are as follows: dispositive capacity is acquired by persons under 17 years of age who have married in accordance with the provisions of the Family Code; and by persons who have reached 15 years of age and are working under an employment agreement (contract) or who engage in entrepreneurial activity with the consent of their parents, adoptive parents or guardians. Article 13 of the Family Code provides that, in exceptional circumstances, the court has the right, at the request of the persons wishing to marry, to lower the marriageable age for men and women as set forth in article 13, but not by more than one year.

According to articles 27 and 174 of the Labour Code, persons under the age of 15 cannot be employed. In order to train young people for work in industry, students from general education schools, vocational schools and secondary special educational establishments who have reached 14 years of age may, with the consent of one of their parents or a surrogate parent, be employed to carry out light work in their spare time, provided that it poses no threat to their health and does not interfere with their education.

All persons under the age of 21 must undergo a full medical examination prior to employment (Labour Code, art. 145).

274. The Tajik Labour Code guarantees the right to work, taking account of the education, wishes and potential of every Tajik citizen, offers a number of benefits to minors, and prohibits employment that endangers children's health and disrupts their basic education.

Employers are obliged to employ graduates of general education schools and other young people under 18 who are referred to them by the employment service for job placement under established quota schemes.

Refusal to employ a person under a quota scheme is prohibited and may be challenged in the courts.

In their labour relations, persons under 18 have the same rights as adults. With regard to health and safety in the workplace, working hours, leave and certain other working conditions, they enjoy the benefits established for them under the Labour Code and other Tajik laws.

It is prohibited to employ persons under 18 to perform heavy or hazardous work, work underground, or work that could adversely affect their health or moral development. Persons under 18 are not allowed to carry or move by hand heavy objects whose weight exceeds the maximum limits prescribed for them.

The types of work in adverse conditions for which it is not permitted to employ persons under 18, and the maximum permissible loads that they may lift or move by hand, are listed in the laws and other enactments of the Republic of Tajikistan.

Employees aged between 15 and 18 are not allowed to work more than 35 hours a week, and persons between 14 and 15 years are not allowed to work for more than 24 hours a week.

Students who work in their free time during the academic year may work no more than half of the maximum period stipulated above for persons of equivalent age.

Persons under 18 on a shortened workday are paid the same as corresponding categories of workers on a full workday.

Students who work at enterprises in their free time are paid according to time actually worked or by output.

Employees under 18 are allowed at least 30 calendar days' paid leave a year, which they may use in summer or at any other time of the year convenient to them.

If the working year to which the leave applies covers the period before and after the employee's eighteenth birthday, the 30-day leave entitlement shall be calculated on a pro rata basis for the time worked prior to the eighteenth birthday, and in the normal way for any time worked after that date.

It is not permitted to employ persons under 18 years of age for night work, overtime, work on weekends or public holidays, or to send them on official business.

In addition to observing normal procedures, an employer who terminates an employment contract with an employee under 18 years of age must obtain the consent of the local labour and employment agency and the minors' board.

Parents, tutors (guardians) and agencies authorized to perform this role have the right to request the termination of an employment contract with a person under 18 if continued employment would endanger the minor's health or otherwise prejudice the minor.

275. Young offenders may be sentenced to a punishment or compulsory re-education measures.

The following punishments may be imposed on young offenders:

- (1) Fine;
- (2) Loss of the right to hold certain posts;
- (3) Punitive deduction of earnings;
- (4) Short-term rigorous imprisonment;
- (5) Deprivation of liberty.

A minor may be fined only if he or she has earned income or property to which a sanction can be applied. The amount of the fine may be up to 100 times the minimum wage.

Minors may lose the right to hold certain posts for a period of between one and two years.

Minors may be sentenced to punitive deduction of earnings at their workplace for between two months and one year. Between 15 and 30 per cent of the offender's earnings are withheld and paid to the State.

Young male offenders aged 16 or over at the time of sentencing may be sentenced to short-term rigorous imprisonment for between one and four months.

Minors may be deprived of their liberty for the following terms:

- (1) For lesser offences, up to two years;
- (2) For intermediate offences, up to three years;
- (3) For serious or particularly serious offences, if the offender is under 16, up to seven years;
- (4) For serious or particularly serious offences, if the offender is between 16 and 18 years of age, up to 10 years.

276. Young offenders are deprived of their liberty at the following institutions:

- (1) First-time young male offenders and young female offenders are sent to ordinary-regime reformatories;
- (2) Young male offenders who have already been deprived of their liberty are sent to strengthened-regime reformatories.

In sentencing minors, in addition to the factors stipulated in article 60 of the Criminal Code, account is taken of the offender's living conditions and upbringing, psychological maturity, state of health, other personality traits, and the influence of other persons.

In the case of persons under 16 who have committed intermediate, serious or particularly serious offences, a sentence of deprivation of liberty for multiple offences may not exceed 10 years.

In the case of persons between 16 and 18 years of age who have committed intermediate, serious or particularly serious offences, a sentence of deprivation of liberty for multiple offences may not exceed 12 years.

The overall sentence of deprivation of liberty for multiple offences may not exceed 15 years.

277. First-time young offenders who have committed lesser crimes may be released from criminal responsibility if it is considered that they can be reformed through the application of compulsory re-education measures.

A court may impose the following compulsory re-education measures on a minor:

- (1) A caution;
- (2) A supervision order addressed to the minor's parents, surrogate parents or a State agency dealing with minors' affairs;
- (3) An obligation to make amends for harm caused;
- (4) Restriction of leisure activities and imposition of specified behaviour requirements.

Several compulsory re-education measures may be imposed on a minor simultaneously. The duration of compulsory re-education measures, for example a supervision order addressed to the minor's parents, surrogate parents or a State agency dealing with minors' affairs, or restriction of leisure activities and imposition of specified behaviour requirements, is decided by the agency imposing the measures.

278. Minors convicted of lesser and intermediate offences may be discharged if it is considered that the aim of punishment may be achieved by referring them to a special reformatory with education on the premises or a secure hospital for young offenders.

A court may order a minor to be held in a special reformatory with education on the premises or a secure hospital for young offenders for up to three years but for no longer than the date on which the minor attains the age of majority.

A minor may be granted early release from the aforementioned institutions if the agency dealing with minors' affairs concludes that the measure is no longer necessary.

279. Persons who committed an offence as minors and have been sentenced to punitive deduction of earnings or deprivation of liberty become eligible for parole after they have served:

- (1) At least one third of a sentence for a lesser or intermediate offence;
- (2) At least one half of a sentence for a serious offence;
- (3) At least two thirds of a sentence for a particularly serious offence.

The remaining portion of a sentence of deprivation of liberty or punitive deduction of earnings for offences committed by a person under the age of 18 may be commuted to a more lenient punishment.

280. Commutation to a more lenient punishment is an option if a convict complies with the regime specified for the types of punishment listed above and demonstrates a conscientious attitude to work or study.

The remaining portion of a sentence may be commuted to a more lenient punishment after the convict has served:

- (1) At least one quarter of a sentence for a lesser or intermediate offence;
- (2) At least one third of a sentence for a serious offence;
- (3) At least half of a sentence for a particularly serious offence or a premeditated offence if the offender has previously been deprived of his or her liberty for a premeditated offence.

Where the remaining portion of a sentence of deprivation of liberty is commuted to punitive deduction of earnings, the duration of the latter shall be that specified for punitive deduction of earnings and must not exceed the duration of the remainder of the sentence of deprivation of liberty.

Persons whose sentences have been commuted to more lenient punishments may be paroled in accordance with the regulations stipulated in article 91 of the Criminal Code upon serving the appropriate portion of the more lenient sentence.

If a person whose sentence has been commuted to a more lenient punishment commits another premeditated offence during the remainder of his or her punishment, the court may sentence the individual as prescribed by articles 68 and 88 of the Criminal Code.

281. The statutes of limitations specified in articles 75 and 81 of the Criminal Code concerning release from criminal responsibility or from serving a sentence shall be reduced by half in the case of minors.

For offenders under 18, the expiry date of the criminal record specified in article 84, paragraph 4, of the Criminal Code shall be reduced as follows:

- (1) To one year after deprivation of liberty for a lesser or intermediate offence;
- (2) To three years after deprivation of liberty for a serious offence;
- (3) To five years after deprivation of liberty for a particularly serious offence.

In exceptional circumstances, taking account of the defendant's actions and character, the court may apply the provisions of this chapter to offenders between 18 and 20 years of age, with the exception of referral to a reformatory or a secure hospital for young offenders.

282. A court shall hear the views of a child over 10 when settling disputes between the parents regarding the child's place of residence and upbringing. A person is permitted to change his or her surname, first name and patronymic from the age of 16. Every child is entitled to citizenship (Constitutional Act on Tajik Citizenship of 1995, arts. 15-20).

283. A child whose parents are Tajik citizens at the time of his or her birth shall be a Tajik citizen regardless of place of birth.

Where the parents are of different nationalities, but one of the parents was a Tajik citizen at the time of the child's birth, the child shall be a Tajik citizen provided that:

(1) He or she was born in Tajik territory;

(2) He or she was born outside Tajikistan but either (or both) of the parents were permanent residents of Tajikistan at the time.

Where the parents are of different nationalities, but one of the parents was a Tajik citizen at the time of the child's birth, and both parents were permanent residents outside Tajikistan, the citizenship of a child born outside Tajikistan shall be determined by written agreement of the parents.

If one of the parents was a Tajik citizen at the time of the child's birth while the other was stateless or was unknown, the child shall be a Tajik citizen regardless of place of birth.

Where it is possible to establish the paternity of a child whose mother is stateless, and the father is a Tajik citizen, a child under 14 shall become a Tajik citizen regardless of place of birth.

A child born in Tajikistan of stateless parents shall be a Tajik citizen.

A child of unknown parentage living in Tajikistan shall be a Tajik citizen.

A child born in Tajikistan of parents who are citizens of other States shall be a Tajik citizen if these States do not grant the child their citizenship.

284. The 1994 Religion and Religious Organizations Act provides the constitutional right of all persons, including children, to religious freedom and protection of their rights and interests regardless of their religious beliefs, and access to various kinds of education regardless of their attitude to religion.

285. Adoption and tutelage remain priority placement options for children deprived of parental care. Family-type children's homes providing upbringing for groups of between 5 and 10 orphans have undergone some changes. A positive aspect of this method of bringing up children without parental care is that the children are raised in a family environment and they adapt well to society and work. However, family-type children's homes funded from local authority budgets are currently experiencing significant financial problems. The Family Code provides for the adoption of children who are Tajik citizens.

Article 173 of the Criminal Code stipulates that, if a person who is obliged to keep the fact of adoption confidential as an official or professional secret breaches this confidentiality against the wishes of the adopter, or does so for mercenary or other base motives, he or she shall be fined between 300 and 500 times the minimum wage or sentenced to punitive deduction of earnings for up to one year, or short-term rigorous imprisonment for up to four months with or without loss of the right to hold certain posts or engage in certain activities for up to five years.

The same acts, if they entail serious consequences, shall be punished by deprivation of liberty for between two and five years with or without loss of the right to hold certain posts or engage in certain activities for between three and five years.

In the event of a breach of statutory norms and procedures, or where the child's interests have been prejudiced, the procedure for invalidating or annulling the adoption is set out in Tajik legislation. Only a court may invalidate or annul an adoption.

Adopters or tutors (guardians) may be designated as having dispositive capacity, with the exception of persons who have been deprived of their parental rights or the right to adopt, and persons suspended from their duties as tutors or guardians for discharging their responsibilities in an improper manner. Access to information about the biological family is restricted solely for the purpose of ensuring the confidentiality of adoption. Minor or invalid children of a testator (including adoptive children and children born after the testator's death) shall inherit at least two thirds of the testator's estate, regardless of the contents of the will.

Certain restrictions on the capacity to perform property transactions independently apply to minors under the age of 14; such transactions are performed for them in full measure by their legal representatives.

Adoption must be registered at the civil registry office at the place where the decision on adoption was issued, no later than one month after the issuance of the decision.

286. Tajik legislation provides that children in emergencies, for example refugee children and children in armed conflicts and natural disasters who require physical and psychological rehabilitation and social reintegration, shall be provided with material, medical or other assistance and, if necessary, referred to children's residential homes and medical institutions. Every year, children spend their holidays and convalesce in children's camps organized by the Tajik Government and the independent Federation of Trade Unions. These are mainly children from large families.

287. The Criminal Code contains a whole chapter on punishments for crimes against the life, health, liberty and dignity of persons. The Criminal Code stipulates punishment for infanticide by the mother, failure to support children or pay alimony, and abuse of tutorship responsibilities. In order to protect the lives and dignity of children, the Criminal Code establishes liability for and punishes the crimes of enticing minors into criminal activity, begging and prostitution, plying them with alcohol or causing children or teenagers to consume medicines and other stupefying substances for non-medical reasons. The Family Code stipulates that parents and surrogate parents shall be liable for rough treatment, negligence, and abuse of their rights, which may entail loss of their parental rights.

288. Where a child's life or health is directly endangered, an agency of tutorship or guardianship has the right to take the child into care immediately. The Civil Code provides for the obligation to make pecuniary or material restitution for causing moral harm (physical or emotional distress). The procedure for submitting complaints is regulated by the 1996 Citizens' Communications Act, which places no restrictions on a minor citizen's ability to file a complaint either directly or through a representative.

The Family Code stipulates that, as a punitive measure, parents may lose their parental rights if they refuse to fulfil their responsibilities, abuse their rights or engage in immoral antisocial behaviour. In cases where a child would be in danger if he or she remained with his or

her parents, a court may decide to remove the child and place it in the care of tutorship or guardianship agencies, regardless of whether the parents have been deprived of their rights. In exceptional cases, where the child's life or health is in imminent danger, the tutorship or guardianship agency has the right to take a decision on the immediate temporary removal of the child from the parents or other persons nominally caring for the child. The number of children registered as being without parental care increases every year in Tajikistan.

289. Where it is necessary but impossible to provide foster care for orphans and children without parental care, measures are taken to establish appropriate conditions in children's institutions to promote their full physical, intellectual and spiritual development. Tajikistan has children's homes and residential schools for children without parental care.

Article 25

290. In accordance with article 27 of the Constitution, citizens are entitled, directly or through representatives, to participate in political life and the governing of the State.

Citizens have equal rights to enter public service.

On reaching 18 years of age, citizens are entitled to participate in referendums, to vote and, on reaching the age established by the Constitution, constitutional laws and legislation, to stand for election.

Persons declared by a court as lacking legal capacity or who are being held in places of deprivation of liberty pursuant to a court sentence are not entitled to participate in elections and referendums.

The procedure for holding elections is regulated by constitutional laws and national legislation. Referendums are carried out in accordance with constitutional law.

291. Citizens of Tajikistan have the right to elect deputies to all levels of government and to participate in referendums from the age of 18, irrespective of their social and property status, political, racial and ethnic affiliation, sex, language, education, attitude to religion, or type and nature of occupation (Constitutional Act on Elections to the Majlis-i Oli of the Republic of Tajikistan, art. 4; Constitutional Act on Elections of Deputies to Local Councils of People's Deputies, art. 2; and Constitutional Act on Referendums, art. 3). Citizens of Tajikistan have the right, on reaching 18 years of age, to be elected as deputies to councils of people's deputies of Gorny Badakhshan Autonomous Oblast, oblasts, towns and districts. On reaching 25 years of age, citizens of Tajikistan who have been permanent residents of Tajikistan for the previous five consecutive years and have a higher education, may be elected as deputies to the Majlis-i Namoyandagon (Constitutional Act on Elections to the Majlis-i Oli of the Republic of Tajikistan, art. 28).

Tajik citizens who have reached 35 years of age and have a higher education may be elected and appointed members of the Majlis-i Milli of the Majlis-i Oli of Tajikistan.

Members of the Majlis-i Milli elected by a local representative body must be permanent residents of the relevant electoral district (Constitutional Act on Elections to the Majlis-i Oli of the Republic of Tajikistan, art. 29).

In accordance with article 33 of the aforementioned Act, the following persons are not entitled to stand for election to the Majlis-i Milli or the Majlis-i Namoyandagon:

- Citizens declared by a court as having no legal capacity or who are serving a court sentence of deprivation of liberty or who have been placed in an institution by court order for compulsory medical treatment;
- Citizens on active military service, soldiers, non-commissioned officers and other personnel of the armed forces, the Ministry of Security, the Ministry of Internal Affairs, the Ministry for Emergency Situations, the Presidential Guard and the State Border Protection Committee, as well as officials of tax agencies and customs services and other militarized bodies, provided that such persons have not retired;
- Professionals holding positions in religious organizations and associations;
- Citizens convicted of the deliberate commission of serious or particularly serious crimes, regardless of whether they have served their sentences or their criminal records have been expunged;
- Citizens whose criminal records have not been expunged;
- Citizens suspected of committing offences by the inquiry and investigation agencies, and citizens under investigation for committing offences against the foundations of the constitutional system and the security of the State, or other serious or particularly serious criminal offences, except for persons involved in the military and political confrontations who have been amnestied.

In accordance with article 34 of the aforementioned Act, members of the Government, judges, the Procurator-General and his deputies, procurators and other officials of prosecutorial bodies, deputy ministers and chairmen of State committees, leaders of State administrative bodies and their deputies, directors of national State concerns, companies, associations and corporations and their deputies, and directors and officials of banks may not simultaneously be members of the Majlis-i Milli and may register as candidates to the Majlis-i Milli only if they indicate in a declaration that they agree to relinquish their current positions after election to the Majlis-i Milli.

Since 1994, three referendums have been held in Tajikistan: in 1994 on the adoption of the Constitution, and in 1999 and 2003 on the adoption of amendments and additions to the Constitution; two alternative presidential elections were held in 1994 and 1999; and two parliamentary elections to the Majlis-i Oli were held in 1995 and 2000.

292. Tajikistan's party system is developing rapidly. The following political parties, which are registered with the Ministry of Justice and have participated in elections to the Majlis-i Oli, are currently active in Tajikistan:

- (1) The People's Democratic Party of Tajikistan;
- (2) The Islamic Renaissance Party of Tajikistan;
- (3) The Communist Party of Tajikistan;
- (4) The Democratic Party of Tajikistan;
- (5) The Socialist Party of Tajikistan.

The Social Democratic Party of Tajikistan was added to the list in 2003.

There are currently three leading parties with grass-roots party organizations throughout Tajikistan and deputies in Parliament: the People's Democratic Party, the Communist Party and the Islamic Renaissance Party.

According to article 5 of the Political Parties Act, judges, procurators, members of the armed forces, staff of internal affairs bodies, State security staff, tax officials, customs officers and judicial staff, as well as foreign citizens and stateless persons, may not join political parties.

293. According to the Constitutional Act on Referendums in the Republic of Tajikistan, a referendum is a nationwide vote on the most important issues of State and public life, decisions concerning which have the highest legal force, do not require approval and must be applied throughout the territory of Tajikistan.

From the age of 18, citizens of Tajikistan have the right to participate freely, directly and personally in referendums.

Voting in a referendum is confidential and control over citizens' free expression of their will is prohibited.

Citizens of Tajikistan participate in referendums on an equal basis at their place of permanent or temporary residence. Each citizen has one vote.

Citizens are guaranteed the right to campaign without hindrance for or against the issue being put to a referendum.

The Referendum Commission is obliged to inform the population of its composition, its location and working hours, the formation of polling stations and the electoral register of citizens with the right to vote in the referendum.

One representative from each political party, trade union or other voluntary association, labour collective and the media, as well as observers from other States and international organizations, have the right to attend meetings of the Referendum Commission, visit the voting premises on the day of the referendum and during the counting of votes, and when the outcome of the referendum is announced.

294. The President of Tajikistan is the head of State and executive power (Government) and is elected by Tajik citizens by universal, equal and direct suffrage by secret ballot for a seven-year term.

Any citizen of Tajikistan over the age of 35, who speaks the State language (Tajik) and has been a permanent resident of Tajikistan for at least 10 consecutive years may be put forward as a candidate for President.

A person who has collected signatures of no less than 5 per cent of the electorate supporting his or her candidature may be registered as a presidential candidate.

The same person may not be President for more than two consecutive terms.

295. The professional activities of persons in the civil service in Tajikistan are regulated by the Constitution, the Labour Code, the Civil Service Act and other Tajik laws and regulations, based on the principle of the voluntary and equal right of citizens of Tajikistan to enter the civil service. The establishment and operation of political party structures, religious organizations and other voluntary associations, with the exception of trades unions, in State bodies and the machinery of the State are prohibited.

The lists of government posts and civil service posts constitute the Register of Public Offices, which is approved by the President of Tajikistan.

Tajik citizens over 18 years of age who have the relevant education and who meet the requirements of the Civil Service Act may be employed as civil servants.

Citizens may not be employed as civil servants or remain in the civil service if they have been declared as having limited or no legal capacity by a court decision that has entered into force, if they have criminal records that have not been expunged or have not expired, if they have committed an intentional crime, if they have refused to comply with the procedure for obtaining access to classified information constituting a legally protected secret, if they have a close relative in the civil service who would be directly subordinate or superior to them in the civil service, or if they have citizenship of a foreign State, except when civil service employment is regulated on a reciprocal basis by inter-State agreements and in other exceptional circumstances provided for by Tajik legislation.

If, during the verification process, facts come to light that prevent citizens from entering the civil service, such persons are informed in writing of their rejection and the reasons for such rejection (Civil Service Act, art. 9).

Citizens have the right to challenge the rejection in the courts.

Article 26

296. In accordance with article 17 of the Constitution, all persons are equal before the law and the courts. The State guarantees the rights and freedoms of all, irrespective of ethnicity, race, sex, language, religion, political views, education and social or property status. Men and women have equal rights.

297. Fundamental human and citizens' rights and freedoms are embodied in the Constitution (chap. 2, arts. 14-47).

Direct or indirect violation or restriction of human rights and freedoms carries criminal responsibility (Criminal Code, art. 143).

Everyone has the right to life. No one may be deprived of life, except by the verdict of a court for particularly serious crimes.

In accordance with article 6, paragraph 5, of the Covenant, the imposition of the death sentence on minors and women is prohibited (Criminal Code, art. 59).

Tajik legislation contains specific guarantees of the protection of the rights and interests of juvenile offenders, the requirements for which are set out in articles 5 and 14 of the International Covenant on Civil and Political Rights.

Article 27

298. The Republic of Tajikistan is a multi-ethnic State. In the years since gaining independence, Tajikistan has endeavoured to find the optimum model for ethnic and cultural cooperation among the different nationalities living in the country. The ethnic situation in Tajikistan over this period has been characterized by an increase in ethnic awareness and a return by minorities to their ethnic roots: language, customs and traditions. The result has been a coalescence of minorities into national communities, associations and societies.

299. There are currently over 80 nationalities and ethnic groups in Tajikistan. The problems of harmonizing inter-ethnic relations and strengthening trust, agreement and cooperation have become a matter of close attention for State institutions and the public at large, and can be solved by guaranteeing the rights of persons belonging to ethnic, religious and linguistic minorities, and through everyday political practices.

Partial statistical data from the census carried out in Tajikistan in 2000⁷

Population of Tajikistan disaggregated by nationality			
	2000	Increase or decrease (thousands)	Number of people of a given nationality as a percentage of the total population in 2000
Total population	6 127.5	1 034.9	100
Tajiks	4 898.4	1 726.0	80
Kyrgyz	65.5	1.7	1.1
Russians	68.2	-320.3	1.1
Uzbeks	936.7	-261.1	15.3

300. The Constitution of Tajikistan guarantees the right of all ethnic groups and nationalities living in Tajikistan to use their mother tongue without restriction (Constitution, art. 2). According to the preamble of the 1989 Language Act, the proclamation of Tajik as the State language in no way diminishes or undermines the constitutional rights of citizens who have

another mother tongue. The equality of languages is recognized, and legal guarantees and respect are safeguarded for all languages used in Tajikistan. The inalienable right of citizens of any ethnic group to develop their language and culture is protected, and all citizens are equal before the law, irrespective of their mother tongue.

In accordance with the principle set forth in article 10 of the Constitution, international legal instruments recognized by Tajikistan are a constituent part of the Tajik legal system and take precedence over domestic legislation. The provisions of the International Covenant on Civil and Political Rights and the Commonwealth of Independent States Convention concerning the Rights of Persons Belonging to National Minorities, which was signed in Moscow in 1994 and ratified by the Majlis-i Namoyandagon of the Majlis-i Oli on 17 January 2001, are directly applicable, since the relevant provisions of domestic legislation are incomplete.

In accordance with these instruments, persons belonging to national minorities have the right freely to express, maintain and develop all aspects of their culture. In acceding to the aforementioned Convention, Tajikistan pledged to take the legitimate interests of national minorities into account in its policies and to take the necessary measures to create favourable conditions for maintaining and developing their ethnic, linguistic, cultural and religious identity (art. 4). Persons belonging to national minorities are guaranteed cultural rights and freedoms, including the right to establish various organizations of an educational, cultural and religious nature for the maintenance and development of ethnic, linguistic, cultural and religious identity, to have national and international contacts, to establish places of worship, to make use of religious artefacts and to use and disseminate information in their native language (arts. 3-8). Measures are taken to prohibit discrimination (art. 3).

301. As the language of communication between nationalities, Russian is used freely throughout Tajikistan. Conditions are being created for the unhindered development and use of the Gorny Badakhshan (Pamir) languages and for the preservation of the Yagnobi language. The Gorny Badakhshan Autonomous Oblast decides independently on matters relating to the use of local languages (Language Act, arts. 2 and 3).

302. Every citizen is guaranteed the right to choose for himself or herself the language to use in dealing with government bodies and authorities, enterprises, institutions and organizations (including voluntary associations), and to receive information and documentation from them in the State language, Russian or another acceptable language. Staff of government bodies and authorities, of voluntary organizations, law enforcement agencies, health, cultural and trade institutions, and persons working in the service industry, transport, social services, and housing and consumer services sectors, who by virtue of their position must regularly communicate with citizens of various nationalities, are required to know the State language and Russian to the degree necessary to enable them to fulfil their professional responsibilities (Language Act, arts. 5 and 6).

Local government bodies and voluntary organizations in places with a high concentration of ethnic groups may use the local language in addition to the State language. In places with large non-Tajik populations, local government and administrative acts, and documents of voluntary organizations may be accepted and published in the local language in addition to

the State language (arts. 7 and 8). In accordance with article 21, citizens are guaranteed freedom of choice of language of instruction. General secondary education is provided in Tajik, Russian and Uzbek and, in areas densely populated by other nationalities, in the local language.

303. The violation of linguistic equality that takes the form of hostility towards any minority language, the insulting of citizens' honour and dignity for linguistic reasons, and the establishment of artificial obstacles to and restrictions on the use of languages, constitute a violation of constitutional rights and entail liability under Tajik law (Language Act, art. 35). In accordance with article 143 of the Criminal Code, a direct or indirect breach or restriction of the rights and freedoms of the person and the citizen on grounds of sex, race, nationality or language, is punishable by a fine of between 200 and 500 times the minimum wage, or by deprivation of liberty for up to two years. The same conduct, when committed by an individual using force or the threat of force, or abusing his or her official position, are punishable by deprivation of liberty for between two and five years with or without suspension of the right to hold certain posts or engage in certain activities for up to three years.

304. Freedom to choose the language of one's education is governed by the Education Act. Tajikistan guarantees its citizens the freedom to choose their language of instruction and provides a general secondary education in the State language and in areas with high concentrations of citizens of another nationality, in the local language. The freedom to choose one's language of instruction is ensured by the establishment of the requisite number of corresponding educational institutions, classes and groups, and the necessary conditions for them to operate (Education Act, art. 6).

Instruction in primary and secondary schools in Tajikistan is provided in five languages: the State language, Russian, Uzbek, Kyrgyz, and Turkmen. In vocational schools, special secondary schools and higher educational establishments, instruction is provided in Russian and Uzbek, according to specialization.

The Russian-Tajik Slavonic University opened in Dushanbe, the capital city of Tajikistan, in 1995.

305. During the civil war and the post-war years, Tajikistan's ethnic associations contributed greatly to the national reconciliation process. Tajikistan's ethnic communities cooperate actively with State bodies on issues regarding their national and ethnic development, and in the drafting of the State policy on ethnic issues. The leaders of ethnic associations participated in the work of the commission that drafted the Constitution in 1994. In 2001 and 2002, they twice participated in discussions on the draft outline of the national policy of Tajikistan. Under the auspices of the Organization for Security and Cooperation in Europe (OSCE) Centre in Tajikistan, round tables are being conducted to discuss the minorities' future development and the problems that they face in Tajikistan.

306. In the area of culture, the right to use one's own language and culture is realized through the establishment of theatres, ensembles and other artistic groups that use minority languages. There are five minority artistic groups in Tajikistan: Slavyanochka - a Russian artistic ensemble in Dushanbe; the Uzbek ensemble Umed in Spitamen district; the Uzbek ethnographic ensemble Assor in Kanibadam; the Dilkhiroj ensemble of the Uzbek society of Tajikistan; and the family ensemble Turkmeny in Jilikul district. There are also two Russian drama theatres,

one in Dushanbe and one in Chkalovsk in Sogd oblast, the Uzbek Sh. Burkhonov Theatre of Music and Drama in Spitamen district, and a Russian puppet theatre in Chkalovsk in Sogd oblast.

307. In Tajikistan, persons belonging to ethnic, religious and linguistic minorities have the right freely to express their beliefs and opinions, and to disseminate them in any form, in the press and other media. The State guarantees the right of citizens of Tajikistan to use their mother tongue and other languages of the peoples of Tajikistan to receive and disseminate mass information (Press and Other Media Act, arts. 2 and 3). There are currently 42 newspapers and 24 magazines published in the languages of ethnic and linguistic minorities: the Russian, Uzbek, Kyrgyz, and Farsi languages and the Shugni dialect. Six information agencies disseminate information in Russian. The State national television (TVT) stations, and the public television companies Poitakht and TV Subkh broadcast information programmes, news bulletins and other programmes in Russian and Uzbek, and one station of the private television company "Somoniyon" broadcasts most of its programmes in Russian. The main Russian television stations are also retransmitted in Tajikistan.

308. National minorities have the right to freedom of religion. All religions and denominations are equal before the law. The establishment of any advantages for, or restrictions on, any one religion or denomination is prohibited (Religion and Religious Organizations Act, art. 5). There are 66 non-Muslim religious organizations in Tajikistan.

Notes

¹ *Source:* Ministry of Health.

² *Source:* Office of the Procurator-General.

³ *Source:* Ministry of Justice.

⁴ *Source:* Government Committee for Women's and Family Affairs.

⁵ *Source:* Ministry of Internal Affairs.

⁶ *Source:* Ministry of Internal Affairs, Ministry of Labour and Employment.

⁷ *Source:* State Statistical Committee.

⁸ *Source:* Council of Justice.

⁹ *Source:* Committee on Television and Radio.

¹⁰ *Source:* Ministry of Culture.

¹¹ *Source:* Federation of Trade Unions.
