

**Implementation of international obligations  
on human rights by Republic of Tajikistan:  
legal framework and procedures**

(results of the research)



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*Signed to print on 03.01.2012 Format 140 × 205.  
Typeface Arial. Print operative.  
Circulation 150 copies. For free distribution.  
Printed by CP Zurbekov B. R.*

Dushanbe 2012

БКБ 67.92  
Б-30

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*This publication has been funded by the Open Society Institute (Budapest).  
The views expressed in this publication do not necessarily reflect the opinion  
of the Open Society Institute – Budapest*

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<b>Temur Toshiev (brother of Mahmadrusi Iskandarov)</b>	Art. 7, 9 (1, 3), 14 (1 & 3 d, e, g)	In verbal requests dated October 4, 2006, November 21, 2007, February 26, 2009, February 23, 2010 and September 13, 2010, the member was asked by Committee to provide information on admissibility and content of communication. The State did not respond to the request of the Committee.	Art. 7, 9 (1 & 3), 14 (1 & 3 b, d, e, g)	<b>March 30, 2011</b>
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## LIST OF ABBREVIATIONS

AYL “Amparo” – association of young lawyers “Amparo”  
 UNTOP – UN Tajikistan Office of Peace building  
 Bureau of Human Rights – Bureau of Human Rights and Rule of Law  
 ICESCR – International Covenant on Economic, Social and Cultural Rights  
 ICCPR – International Covenant on Civil and Political Rights  
 CAT – Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment.  
 CERD – Convention on the Elimination of all forms of Racial Discrimination.  
 CEDAW – Convention on the Elimination of all forms of Domestic violence Against Women.  
 CRC – Convention on the Rights of the Child.  
 CLMR - International Convention on the protection of the right of all migrant works and members of their families.  
 CRPD - Convention on the rights of persons with disabilities.  
 CED - International Convention for the protection of all persons from enforced disappearing.  
 HRC – Human Rights Committee.  
 MFA – Ministry of Foreign Affairs.  
 NGO – non-governmental organizations.  
 OHCHR - Office of High Commissioner on Human Rights.  
 Commission – Commission under the Government of Tajikistan on the implementation of the international obligations in Human Rights sphere.  
 OSCE – Organization on Security and Cooperation in Europe.  
 Department of constitutional guarantees – Department of Constitutional guarantees of citizens’ rights of the Executive Administration of the President of Tajikistan.  
 RT – Republic of Tajikistan.  
 Mass Media – Mass Media outlets.  
 Special Rapporteur – Special Rapporteur of the UN Council of Human Rights.  
 OP – Optional Protocol.  
 EWG – expert working groups.

<b>Valeri Khostikoev</b>	Art. 14(1, 3)	The State-member provided comments as a note verbal, dated March 20, 2007	Art. 14 (1)	<b>October 22, 2009</b>
<b>Nadezhda Kirpo (mother of Pavel Kirpo)</b>	Art. 7, 9, 14 (3 d, g)	The State did not respond to the request of the Committee.	Art. 7, 9 (1-3), 14 (3 g)	<b>October 27, 2009</b>
<b>S.A (son R.A )</b>	Art. 6, 7, 14 (1)	On May 4, 2004 the state informed the Committee that R.A. was amnestied and the death penalty sentence was replaced with long-term imprisonment. Additionally the state-member provided commentaries on the content of communication, dated March 1, 2006 and October 21, 2009	The communication is considered as inadmissible according to the art. 2 & 5 (2 b) of the Optional protocol	<b>October 23, 2009</b>
<b>Bahrullo Minboev</b>	Art. 6 (1 & 2), 9 (1 & 2), 14 (1 & 3 b, e)	On October 13, 2003 the State informed that the author was amnestied on September 4, 2003 and his death penalty sentence was replaced with 20 years of imprisonment. In May 2003 and July 2005 the State was recommended to comment on admissibility and	Communication was not considered as admissible in accordance with art. 2 of the Optional Protocol.	<b>March 19, 2010</b>

## INTRODUCTION

After announcement of the independence, the Republic of Tajikistan joined all the main international treaties<sup>1</sup> on Human Rights hence taking the responsibility on their implementation. The Constitution of the Republic of Tajikistan declared Tajikistan as a democratic state based on the Rule of Law and recognizing the Human Rights as of great value. The Constitution of Tajikistan also envisages that the international legal treaties ratified by Tajikistan are a constituent part of the legal system of the republic. In a situation when laws of the republic contradict the recognized international legal treaties, the regulations of the international legal treaties are given priority<sup>2</sup>.

According to the international obligations, the Republic of Tajikistan had to submit preliminary reports on first ratified documents already in 1994. However until 2000 the state submitted only one report to the Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child and delayed the reporting on all other documents.

In July 1999 the Government of Tajikistan applied to the Office of High Commissioner on Human Rights (OHCHR) for assistance in preparation of the periodic reports on six main UN Human Rights instruments. Upon the receipt of this request there was organized Technical mission of OHCHR that visited Tajikistan from May 14 to May 28, 2000. The main objective of the OHCHR visit was to define the needs of Tajikistan in the implementation of the main Human Rights documents. The mission recommended creating relevant coordination body in the Government structure and organizing national capacity building training for the Government official and NGOs, as well as the awareness raising campaigns for the population.

In 2002 by the Decree of the Government of Tajikistan there was established a Commission under the Government of Tajikistan on the implementation of the international obligations in Human Rights sphere (the Commission). The Commission has wide authorities on the implementation of the international treaties in the Human Rights sphere, including preparation of national reports to UN bodies (Universal Periodic Review, periodic reports to the treaty bodies),

<sup>1</sup> Please see table № 2, page 10

<sup>2</sup> Constitution of Tajikistan, Art. 10, **dated November 6, 1994, with amendments introduced on September 26, 1999 and June 22, 2003.**

<p><b>Zulfia Idieva (mother of Umed Idiev)</b></p>	<p>Art. 6 (1, 2), 7, 9 (1, 2), 14 (1, 2, 3 d, e, g)</p>	<p>Official note was sent with request to postpone death penalty execution until the decision is made on admissibility. On May 20, 2004 the state informed the Committee that due to late receipt of the request from the Committee, the death penalty sentence was executed without indication of the exact date of the execution. On May 28, 2004 the author provided death certificate for her son, that stated that Mr. Idiev was executed on April 24, 2004, i.e. 11 days after the request on non execution of the death penalty was sent by the Committee. On June 3, 2004 the Committee applied to the State with request to provide more detailed information about time and conditions of the death penalty execution of Mr. Idiev. The state did not respond to this request.</p>	<p>Art. 7, 9 (1, 2), 14 (3 d, e, g) and Art. 6 (2) in the aggregate to the articles. 14 (3 d, e, g) of ICCPR. The state also violated the obligations in accordance to the article 1 of the Optional protocol.</p>	<p><b>March 31, 2009</b></p>
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communication on the individual communications, preparation of the visits of the special procedures of UN Human Rights Council, etc.

In 2011 Human Rights Committee reviewed and issued the considerations on 22 individual communications with regards to Tajikistan that have been submitted in accordance with the First Optional Protocol to the International Covenant on Civil and Political Rights. However for the time being there was not implemented any of the provided considerations. In 2012 the working group was established to develop a mechanism on the implementation of the considerations of the Human Rights Committee on individual communications and it is foreseen to introduce further reform of the activities of the Commission.

Current monitoring of the activities of the state bodies of Tajikistan on the implementation of the international obligations in the Human Rights sphere was conducted from February 2011 to November 2011 and had the following objectives:

- Legislative analysis of the activities and functions of the state bodies on preparation and submission of the reports to UN bodies and the Human Rights Council on UPR procedures, as well as the coordination of the activities on the implementation of the recommendations of UN Human Rights bodies;
- Analysis of the mechanisms and procedures, as well as the practical work done by the state bodies on communication with UN bodies on the individual communications, and the practical implementation of the decisions of the international Human Rights bodies ;
- Analysis of the practical participation of NGOs in the report writing process and application of other UN mechanisms on Human Rights protection.

Monitoring included the analysis of the national legislations, UN documents with regards to the Republic of Tajikistan and interviews with the representatives of the state bodies and non-governmental organizations.

In parallel to this work, the public association “Youth Human Rights group” (Bishkek, Kyrgyzstan) created a working group on developing the mechanisms of the implementation of the decisions of the international Human Rights bodies on the individual communications. A representative from the public foundation “Notabene” participated in this working group as a regional expert.

<b>Safarov (father of Alisher and Boboniyaz Safarov and uncle of Farhod Salimov), Kholmurod Burhonov (father of Shahobiddin Muhammadiev)</b>	Art. 6 in the aggregate to the articles 14, 7, 9, 14 (1, 3 b, e, g)	Articles 6; 7; 9; 10; 14, pp. 1 & 3 g)	Art. 6, 7, 9, 10, 14 (1, 2, 3 b, e, g)	<b>Safarov, Farhod Salimov and Shahobiddin Muhammadiev, art. 14 (1) with regards to Farhod Salimov.</b>	<b>October 20, 2008</b>
<b>Saibibi Khuseinova (mother of Ibrohim Khuseinov) and Pardahon Butaeva (mother of Tojiddin Butaev)</b>	On May 20, 2004 the state informed the Human Rights Committee that on April 30, 2004 there was announced moratorium on death penalty and the death penalty sentences of I. Khuseinov and T. Butaev were replaced with long-term imprisonment.	The State provided commentaries in May 4, 2004 and March 9, 2006.	On December 4, 2003 the state informed the Committee that on November 7, 2003 the death penalty sentence was replaced with 25 years of imprisonment.	Art. 7 in the aggregate to the art. 14 (3 b) with regards to Khuseinov and art. 14 (3 e) with regards to T. Butaev	<b>March 30, 2009</b>
<b>Gulkarat Sattorova (mother of Zarif Sattorov)</b>	On May 20, 2004 the state informed the Human Rights Committee that on April 30, 2004 there was announced moratorium on death penalty and the death penalty sentences of I. Khuseinov and T. Butaev were replaced with long-term imprisonment.	The State provided commentaries in May 4, 2004 and March 9, 2006.	On December 4, 2003 the state informed the Committee that on November 7, 2003 the death penalty sentence was replaced with 25 years of imprisonment.	Art. 7 and point 3 g) of the art. 14 of ICCPR.	<b>March 30, 2009</b>
<b>Vladimir Donaev (father of Vyacheslav Donaev)</b>	On May 20, 2004 the state informed the Human Rights Committee that on April 30, 2004 there was announced moratorium on death penalty and the death penalty sentences of I. Khuseinov and T. Butaev were replaced with long-term imprisonment.	The State provided commentaries in May 4, 2004 and March 9, 2006.	On December 4, 2003 the state informed the Committee that on November 7, 2003 the death penalty sentence was replaced with 25 years of imprisonment.	Art. 7, 14 (3 g)	<b>March 30, 2009</b>

The recommendations developed by this working group are also applicable for the Republic of Tajikistan<sup>3</sup>.

Public Foundation “Notabene” would like to thank the members of the monitoring group: Favziya Nazarova, Galina Derevenchenko and Sergei Romanov, as well as Mr. Khaidar Khasanov – responsible secretary of the Commission under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere, Mr. Sherali Jononov – head of international legal department of the Ministry of Foreign Affairs of Tajikistan, Ms. Tatyana Bozrikova – director of Public Foundations “Panorama”, Ms. Muattar Khaidarova – head of NGO “Society and law”, Mr. Zulfikor Zamonov – representative of NGO “Bureau of Human Rights and Rule of Law”, Mr. Furkat Lutfulloev - social policy reform and child protection officer (UNICEF), Ms. Nargis Karimova – juvenile justice project coordinator (UNICEF), as well as other people without whom it would be impossible to finish this research. The special thanks goes to Ms. Dilrabo Samadova – representative of Association of Young Lawyers “Amparo” for her contribution to the present publication.

The present publication is made for the representatives of state bodies, particularly the members of the Commission under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere, Ministry of Foreign Affairs, court authorities, NGOs, professors of law schools and the students of law schools, as well as all other people interested in information on international human rights law

<sup>3</sup> See chapter 11 of the report

Шукурова (жена Довуда Назриев and his brother Sherali Nazriev)		decision is made on admissibility. On July 9, 2002 the State provided comments without indication of the request of the Committee on internal protection measures. On July 23, 2002 the author informed that her husband and his brother were executed on July 11, 2002.	and art. 7 with regards to the author.	March 20, 2007
Rozik Ashurov (father of Olimjon Ashurov)	Art. 7, 9 (1, 2 & 3), 14 ( 1, 2, 3 a, b, e, g & 5)	The State did not respond to the request of the Committee.	Art. 7, 9 (1, 2 & 3), 14 ( 1, 2, 3 a, b, e, g)	March 27, 2007
Mahmadali Karimov and Amon Nursatov (Aldamir Karimov (son of Mahmadali Karimov), Saidabror Askarov, Abdumajid Davlatov and Nazar Davlatov (both of Nursatov and cousins accordingly).	Art. 6, 7 9 10 14 with regards to Aidamir Karimov, Abumajid Davlatov and Nazar Davlatov and art. 14 (3 b & d) with regards to Saidabror Askarov	The State informed that all death penalty sentences with regards to the supposed victims have been replaced 25 years of imprisonment.	Art. 6 (2), 7 & 14 (3 g) together with art. 10, art. 14 (2) with regards to brothers Davlatov, as well as the art. 6 (2), 7 together with art. 14 p. (3 g), art. 10, 14 (p. 2, 3 b, d) with regards to Karimov and Askarov	March 27, 2007
Bakhriniso Sharifova (mother of Yakubjon Rahmatov), Saidali	Art. 7, 9 (1, 2), 10, 14 (1, 3 b, d, e, g)	The State did not respond to the request of the Committee.	Art. 7, 14 (3 g), 10 & 14 (1) with regards to Yakubjon Rahmatov, Alisher	April 1, 2008

## Chapter 1. Human Rights protection in the system of United Nations: general information.

Mechanisms of Human Rights protection in the UN system might be divided into two main parts: a) mechanisms of the UN statutory bodies ; and b) mechanisms of the UN Human Rights treaties.

Amongst the key charter bodies on Human Rights we may highlight **the Human Rights Council** as a subsidiary body of the United Nations General Assembly that was established by adopting a resolution of General Assembly 60/251. This body is having most of the mandates, mechanisms, functions and the responsibilities that have been taken over from the United Nations Commission on Human Rights. Human Rights Council consists of 47 UN state members.

Council considers situation related to the Human Rights violations, including sever and systematic violations and gives the recommendations on these cases. It also should assist the effective coordination and integration of the activities related to Human Rights within the UN system;

**Universal Periodic Review<sup>4</sup> (UPR)** – this is a new mechanism of the United Nations Human Rights Council, was established by General Assembly resolution 60/251 of 15 March, 2006. UPR periodically examines the implementation of the obligations in the sphere of Human Rights by the UN Member States. UPR allows exchanging the examples of best practices in the sphere of Human Rights worldwide. Review is conducted by the UPR working group, consisting of the 47 members of the Council, however each of 192 UN Member States may participate in the hearings, including the interactive dialogue. Each country review is facilitated by a group of three rapporteurs (known as “troika”), representing three states chosen through the drawing of lots before each session of the working group.

The review is conducted based on the following documents:

- 1) Information provided by the State (national report);
- 2) Information from the reports of independent specialists and expert groups in the sphere of Human Rights, so called special procedures, Human Rights treaty bodies and other UN institutions;

<sup>4</sup> <http://ohchr.org/RU/HRBodies/UPR/Pages/BasicFacts.aspx>

<b>Abdulkarim Boimurodov (father of Mustafakul Boimurodov)</b>	Art. 6, 7, 9 (1,2), 14 (1, 3 a, b, d & g)	The State did not respond to the request of the Committee. On July 4, 2001, Mr. Khalilov was executed.	Art. 7, 9 (3), 14 (3 b & g)	October 20, 2005			
<b>Kholniso Aliboeva (wife of Valijon Aliboev)</b>	Art. 6, 7, 14 (1, 3 d, g, 5)	A letter was submitted with request to postpone the death penalty execution until the decision is made on admissibility. The State did not respond to the request of the Committee. On July 7, 2001, Mr. Aliboev was executed.	Art. 6 (2), 7, 14 (1, 3, d, g, 5), as well as art. 7 with regards to Ms. Aliboeva	October 18, 2005			
<b>Bakhriddin Kurbanov (father of Jamollidin Kurbanov)</b>	Art. 6 (1 & 2), 7, 9, 14 (1,3 e, g)	The State did not respond to the request of the Committee.	Art. 7, 9 (1 & 2), 14 (1, 3 g)	March 16, 2006			
<b>Davlatbi Shukurova (wife of DovudDavlatbi)</b>	Art. 6, 7, 9, 14 (1, 3 b, d, e, f, g & 5)	A letter was submitted with request to postpone the death penalty execution until the	Art. 6; 7; 9 (1), 14 (1 & 3 b, d, g) with regards to Dovud and Sheraili Nazriev	March 17, 2006			



3) Information provided by other interested parties including the non-governmental organizations and national human rights protection institutions.

Upon completion of the state review s final document is elaborated with participation of the concerned state and assistance from OHCHR. This document includes the questions, conclusions and recommendation made to the state during the review, as well as the answers of the concerned state<sup>5</sup>.

**Procedure on submission of the complaints<sup>6</sup> to the Human Rights Council.** In accordance with the Resolution 5/1 there was established a new procedure on submission of the complaints on sever and absolutely confirmed violations of Human Rights and the main freedoms committed in any part of the world and under any circumstances. This procedure is the improved procedure 1503 of the Commission on Human Rights. New procedure preserves the confidential character in order to have more close cooperation with the state.

In accordance with the procedures there are two working groups created – Working group on communications and Working group on situations.

Working group on communications assess the admissibility and the contents of the complaints, also verifying whenever the complaint separately or in compilation with other complaints demonstrate regular sever and absolutely confirmed violations of Human Rights and main freedoms. Working group on situations considers the complaints forwarded to it by the Working group on communications, including the state answers and submit to the Council reports on sever and confirmed Human Rights violations. Working groups also recommend the Council possible measures that are necessary to be taken.

<sup>5</sup> For more detailed information on Universal Periodic Review, please see: <http://ohchr.org/RU/HRBodies/UPR/Pages/BackgroundDocuments.aspx>, and <http://www.upr-info.org/-ru-.html>

<sup>6</sup> See. Resolution 5/1. Institutional set-up of the UN Council on Human Rights.

Author of communication	ICCPR article mentioned in the complaint	State response during the review of the complaint	Consideration of the Committee about the violations.	Date of issue
Safarimo Kurbanova (mother of Abduali Kurbanov)	Art. 6, 7, 9 and 10 (p. 1), art. 14 (p.3 a, g, and p. 5)	The State did not respond to the request of the Committee.	Art. 7 (p. 2 & 3) art. 9, art. 10, (p. 1), art. 14 (p. 3 a, g) and art. 6	November 6, 2003
Barno Saidova (wife of Gaibulljon Saidov)		A letter was submitted with request to postpone the death penalty execution until the decision is made about the case admissibility. The State did not respond to the request of the Committee. On April 4, 2011 Mr. Saidov was executed.	Art.6, art. 7, art. 10 (p.1), art. 14 (p. 1, 2, 3 b, d, g & p. 5)	July 8, 2004
Saadat Khomidova (mother of Bakhtrom Saidov)	Art. 6 (p. 1 & 2), art. 7, art. 9, art. 14 (p.1, 3 b, g)	The State did not respond to the request of the Committee.	Art. 7, Art. 9 (p. 1 & 2), art.14 (1, 3 b, e, g) in addition to art. 6	July 29, 2004
Mar'yam Khalilova (mother of Valijon Saidov)	Art. 6 (p. 1, 4), art. 10 (p.1), art. 14 (p. 1, 2, 3 g & p. 5)	A letter was submitted with request to postpone the death penalty execution until the decision is made on	Art. 6 (p. 1), art. 7, art. 10 (p.1), art. 14 (p.2, 3 g & p. 5)	March 30, 2005

Human Rights Council after considering the complaint may take the following measures:

- a) To stop consideration of the situation in case of no grounds for further consideration or activities;
- b) To continue monitoring the situation and request member state to provide additional information in due time;
- c) To continue monitoring the situation and assign independent and high qualified expert to observe the situation and report to the Council;
- d) To stop the case consideration within the confidential procedure in order to start an open case consideration;
- e) To recommend OHCHR to provide technical support to the state in order to build the capacities and/or provide consultations.

**"Special procedures" of the Human Rights Council**<sup>7</sup> - this is general name for this mechanism, created by the Commission on Human Rights and adopted by the Human Rights Council for consideration of a particular situation in the country or thematic issue in any parts of the world. For the time being there are 29 thematic mandates and 9 country mandates.

Country mandates include the studies, monitoring, consultations and provision of publicly open information on the Human Rights situation in a certain country or particular territories. Thematic mandate deals with the Human Rights violations worldwide. Special procedures may take various actions including the replies to the individual communications, researches, consultations on technical cooperation at the national level and participation in general encouraging work.

Special procedures either means the individuals (so called "Special Rapporteur", "Special representative of the General Secretary", "Representative of the General Secretary" or "independent expert") or the working groups consisting usually of five member (one from each region). Mandates of the special procedures are formulated and defined in the special resolutions.

The most of the special procedures obtain information about Human Rights violations within the frames of their activities and submit the appeals on urgent measures or the letters with indication of the supposed violations to the Governments, asking for further explanations. Mandate holders also visit the countries for

12. Communications Nos. 1263/2004 and 1264/2004, Saybibi Khuseinova and Pardakhon Butaev vs. Tajikistan (October 20, 2008, ninety fourth session)
13. Communication No. 1200/2003, Sattorova vs. Tajikistan (April 30, 2009, ninety fifth session)
14. Communication No. 1195/2003, Dunaev vs. Tajikistan, (April 22, 2009, ninety fifth session)
15. Communication No. 1276/2004, Zulfia Idieva vs. Tajikistan (April 23, 2009, ninety fifth session)
16. Communication No. 1519/2006, Khostikoev vs. Tajikistan, (December 3, 2009, ninety seventh session)
17. Communication No. 1401/2005, Kirpo vs. Tajikistan (December 3, 2009, ninety seventh session)
18. Communication No. 1240/2004, S.A. vs. Tajikistan (December 6, 2009, ninety seventh session)
19. Communication No. 1174/2003, Bakhrullo Minboev vs. Tajikistan (May 11, 2010, ninety eighth session)
20. Communication No. 1499/2006, Toshev (Iskandarov) vs. Tajikistan (March 30, 2011, one hundred first session).

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<sup>7</sup> <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

## ANNEX 1

### Table of UN Human Rights Committee considerations with regards to the Republic of Tajikistan.

1. Communication No. 1096/2002, Kurbanov vs. Tajikistan (November 6, 2003, seventy ninth session)
2. Communication No. 964/2001, Saidov vs. Tajikistan (July 8, 2004, eighty fifth session)
3. Communication No. 1117/2002, Khomidov vs. Tajikistan (July 29, 2004, eighty first session)
4. Communication No. 973/2001, Khalilov vs. Tajikistan (March 30, 2005, eighty third session)
5. Communication No. 1042/2001, Boimurodov vs. Tajikistan (November 16, 2005, eighty fifth session)
6. Communication No. 985/2001, Aliboev vs. Tajikistan (November 16, 2005, eighty fifth session)
7. Communication No. 1208/2000, Kurbanov vs. Tajikistan (April 19, 2006, eighty-sixth session)
8. Communication No. 1044/2002, Shukurova vs. Tajikistan (April 26, 2006, eighty sixth session)
9. Communication No. 1348/2005, Rozik Ashurov vs. Tajikistan (March 20, 2007, eighty ninth session)
10. Communication Nos. 1108/2002 and 1121/2002, Karimov and Nursatov vs. Tajikistan (April 3, 2007, eighty ninth session)
11. Communication Nos. 1209, 1231/2003 and 1241/2004, Sharifova, Safarov and Burhonov vs. Tajikistan, (April 1, 2008), ninety second session)

investigation of the situation on Human Rights at the national level. Mandate holders usually submit letters to the Government requesting permission to visit a country and in case of approval the state issues the invitation letter. Some states issued “permanent invitations”, that means that they are ready to accept any visits of the special mandate holders. Upon conclusion of the visits by the special mandate holders, they present visit reports including their conclusions and the recommendations<sup>8</sup>.

#### **Treaty mechanisms of Human Rights protection<sup>9</sup>.**

One of the achievements of the United Nations was in developing comprehensive legal data base in the sphere of Human Rights. For the first time there was created general compilation of laws related to Human Rights protection to which any state could join. For the time being there are more than 100 independent conventions active in UN system, whereas the most important are the documents created by the bodies responsible for control over the implementation of the obligations by the Member States:

1. International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Optional Protocol;
2. International Covenant on Civil and Political Rights (ICCPR) and two Optional Protocols – first Optional Protocol on individual communication procedures and the second one on abolition of the death penalty.;
3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol;
4. International Convention on the Elimination of All Forms of Racial Discrimination (CERD);

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<sup>8</sup> For more details, see: Seventeen Frequently Asked Questions about United Nations Special Rapporteurs  
<http://ohchr.org/Documents/Publications/FactSheet27en.pdf>

<sup>9</sup> See more: The United Nations Human Rights Treaty System: An introduction to the core human rights treaties and the treaty bodies. Fact Sheet #30: <http://ohchr.org/Documents/Publications/FactSheet30en.pdf>. See also: New Core International Human Rights Treaties <http://ohchr.org/Documents/Publications/newCoreTreatiesen.pdf>.

5. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol;
6. Convention on the Rights of the Child (CRC) and First Optional Protocol to CRC on involvement of children in armed conflict and Second Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
7. International Convention on the protection of the right of all migrant workers and members of their families;
8. Convention on the rights of persons with disabilities and the Optional Protocol;
9. International Convention for the protection of all persons from enforced disappearing.

International treaties on Human Rights create legal obligations for the Member States to promote and protect Human Rights at the national level. In accordance with each treaty there are international committees (Committees on Human Rights) consisting of the independent experts using various methods to observe the implementation of the treaty regulations.

Each committee consists of the independent experts (from 10 to 23 persons) with adequate competence in the sphere of Human Rights. The experts are selected or elected by the Member States for the term of four years with the right to be re-elected.

All treaty bodies are entitled to receive and regularly consider the submitted **reports** of the Member States with detailed explanation of the implemented treaty obligations in the relevant countries. They issue **guiding principles** to assist the states in preparation of their reports, develop **general recommendations** with interpretation of the treaty norms and organize discussions on the issues related to the international treaties. Treaty bodies may consider the complaints or individual communications with information on rights violations committed by the member states, if the relevant states are agreed to this procedure. Some bodies (for ex: Committee against Torture) may conduct further investigations.

**Obligations of the states to submit the reports** – each member state usually during one or two years after ratification and enforcement of particular treaty shall provide first report. After that the state shall provide periodic reports in accordance with the treaty regulations (usually each four or five years) describing further measures on the implementation of the treaties (see table 1).

The reports shall include legal, administrative and court measures taken by the state in order to enforce the regulations of the treaty, as

have been applied and guarantee prosecution regardless to such laws.

It is necessary adopting legal normative act (law) regulating procedures of the implementation of the considerations of the international Human Rights bodies. In the law it is necessary mentioning a responsible state agency and to clarify the functions of this agency and the functions of other state bodies on the implementation of the recommended legal protection measures.

The Law shall envisage the issue of interactions with other power branches, such as the legislative and judicial powers.

Almost in every international case on Human Rights there are mistakes and shortages related to activities of judicial system. These mechanisms shall define the roles of judicial instances and the measures on the elimination of the shortages in of judicial system work. These measures should consider the issues of non-use of prescription and possibility to re-open the criminal cases in light of the decisions made on the individual communications.

Adoption of the law allows introducing relevant changes into procedural legislation of the country and other legal normative acts.

**How is it regulated?** One of the important questions in creating mechanism on the implementation of the decisions of the international Human Rights bodies is the question on legal regulation of the activities of this body. Analysis of the experience from the other countries allows highlighting several different models in regulation of this issue.

Adoption of separate law, defining general frames of the implementation of the decisions of the international Human Rights bodies. Some countries adopt separate laws for the sake of the implementation of the decisions of the international Human Rights bodies. Thus Costa Rica adopted the law on international decisions, which envisages that “the Decrees of Inter-American Court on Human Rights and the President upon information of the relevant administrative and court authorities of the Republic have the same legal force and shall be executed as the decrees issued by the national courts”.

Columbian law on Compensations to the victims of Human Rights violations that have been approved by the international bodies (July, 1996) covers the cases reviewed by the UN Committee on Human Rights and Inter American Commission. In accordance with the law the state body makes decision on compensation amount that is checked by the Administrative court, whose decision might be appealed.

Peru law on procedures of law enforcement covers the decisions on all “sub national tribunals” in accordance to which the Ministry of Foreign Affairs shall forward all decisions to the court that considers it as the last instance. The Court shall issue the order to the Ministry of justice on paying any compensation that are clearly mentioned in the decision and which should be paid out of the special fund created for this purposes.

Adoption of the special legal document (decree) on particular case. On the case of Cantos, considered in the Inter-American Court, there was adopted special Decree of the executive authorities that formulated particular restorative measures and defined the State Administration bodies responsible in accordance with this decision.

In the case of Barrios Altos (vs. Peru) Inter American Court decided that the “laws on amnesty”, protecting the government officials from prosecution for the Human Rights violations, are contradicting to the obligations in the Human Rights sphere. Upon the court decision, the State ministry issued a resolution ordering the prosecutors to re-open the cases to which the “laws on amnesty”

well as indicate any facts or difficulties in observation of the Human Rights. In order to have adequate quality of the reports, allowing the committee to do their work, each treaty body has developed **the guiding principles** on the form and the content of the state reports.

**Table 1. Timetable for submission of the reports on particular treaties.**

No	Document title	First report	Periodic report
1.	CERD	1 year	2 years
2.	ICESCR	2 years	5 years
3.	ICCPR	1 year	4 years
4.	CEDAW	1 year	4 years
5.	CAT	1 year	4 years
6.	CRC	2 years	5 years
6.1.	Optional Protocol to CRC	2 years	5 years or with the following CRC report
6.2.	Second Optional Protocol to CRC	2 years	5 years or with the following CRC report
7.	CLMR	1 years	5 years
8.	CRPD	2 years	4 years
9.	Convention on enforced disappearing.	2 years	-

As a result of the state report consideration the “final recommendations” are presented in order to give the state practical recommendations and promote further measures on observation of the rights envisaged in the treaties. In the final recommendations the treaty bodies acknowledge positive steps undertaken by the states and identify further measures to ensure absolute enforcement of the treaty regulations.

The states are recommended **to publish the final recommendations in their countries** in order to inform the society on the most effective ways to implement the Human Rights treaties.

Upon submission of the first reports, the states shall submit to the treaty bodies further regular reports. These reports called “periodic reports”. An important element of the periodic reports is to inform the committees on further steps made by the member state on the implementation of the recommendations of the treaty bodies, including the recommendations to the previous reports, which is the cycle loop of the report writing.

**Consideration of the individual communications.** Committees on Human Rights may receive and consider information and individual communications on violation of the rights by the Member States. This procedure is optional for the Member States: the Committee can not consider the communications related to the Member State if the State does not directly recognize the competence of the treaty body either by making an appeal to the relevant treaty article or by adopting the relevant optional protocol.

**Investigation.** Three treaty bodies – Committee against torture, Committee on the elimination of discrimination against women and Committee on enforced disappearing – may start their own investigations in case of reliable information with reasonable arguments on serious, sever or systematic violations of the conventions by any Member States. The investigations might be conducted only with regards to the member state that recognized the competence of the relevant committee to conduct the investigations. This procedure might be initiated in case the Committee received the reliable information on systematic violations of the rights envisaged in the Conventions by any Member States. Committee may initiate country visits to carry out confidential investigation and urgent submission of the relevant report. The procedure is confidential and the measures shall be taken in order to establish the cooperation with the Member State.

**General observations.** Each treaty body that monitors the implementation of a certain treaty obligations also publishes their interpretations/commentaries on the Human Rights treaties in a form of the general commentaries.

General commentaries of the treaty bodies cover wide spectrum of questions from the general commentaries to the basic regulations of the treaties (particular human rights issues) to the general recommendations on information that should be included in the state reports.

Thus in Columbia, where the practice of the implementation of the decisions of the international bodies considers to be the most effective, the Committee includes the representatives from the Ministry of internal affairs, MFA, Ministry of justice and Ministry of defense (coordinating body – Ministry of Foreign Affairs).

In Peru within the frames of the National consultative council on Human Rights under the Ministry of justice in April 2001 there was created Special Commission on control over the implementation of the international procedures that was mandated to control the implementation of the considerations (recommendations) of UN procedures and Organization of the American states<sup>63</sup>.

In Ukraine the responsibility on observation of the implementation of the decisions of the international bodies (European court on Human Rights) is with the Ministry of justice of Ukraine.

**Supreme body of executive power.** Mechanism is established within the executive power of the country: President or Government. Mechanism is often a coordination mechanism and includes the representatives from different ministries and agencies with permanent secretariat in the executive body.

In Guatemala there is Presidential commission on coordination of the executive policy in the Human Rights sphere, which is coordinating human rights work and activities of the executive and judicial powers. There are 6 permanent members in the commission from different ministries.

In Tajikistan there is Commission under the Government of Tajikistan on the implementation of the international obligation in the Human Rights sphere, which is preparing national reports to UN Human Rights treaty bodies and is responsible for communication on the individual communications. The Commission members are 16 representatives from the state bodies, including the representatives from Supreme Court, Ombudsman of Tajikistan. Secretariat of the Commission is the Department of constitutional guarantees of citizens' rights of the Executive Administration of the President of Tajikistan. It is assumed that the creation of a mechanism on the implementation of the consideration of the Human Rights Committee under the Commission will be the most effective mechanism in case of sufficient legal basis, detailed goals and objectives, responsibilities and permanently working secretariat at the level of the Government Administration.

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<sup>63</sup> Professor David S. Baluarte, American University.

## CHAPTER 11. MODEL MECHANISMS OF THE IMPLEMENTATION OF THE CONSIDERATION OF THE HUMAN RIGHTS TREATY BODIES.

In order to answer a question on possible model of the implementation of the considerations of the Human Rights treaty bodies it is necessary to consider the nature of protection measures that are envisaged by these bodies in consideration of the individual communications. Legal protection measures might be conventionally divided into three types: a) measures of individual nature; b) general measure and c) legal measures. Depending on a type of the recommendations different branches of state power might be responsible for their implementation:

- 1) legislative power (when we talk about changes of law that is contradicting the international treaties);
- 2) executive power (in the reform process or implementation of the individual measures);
- 3) judicial power (in review of the court decisions or court hearings).

In development of the implementation mechanisms for the considerations of the Human Rights treaty bodies, it is necessary to take into account the following **criteria** or **requirements**:

**Within what state body does this mechanism work?** Studying of the practices of the implementation of the decisions of the Human Rights international bodies in different countries allowed defining three main models/mechanisms of the implementation of the decisions of the Human Rights international bodies.

**Judicial body.** Measures on the implementation of the decisions of the Human Rights international bodies are defined by court authorities. This mechanism is envisaged for example in Peru. Ministry of Foreign Affairs shall transfer all decisions to the court for consideration and issuing the order to the Ministry of justice on paying any compensation envisaged in the decision. In case when the compensation amount is not defined, the court has to initiate the process to define this amount. Court issues the order to the relevant state bodies on execution of the decision.

**Profile ministries.** Legislation of most of the countries entrust the implementation of the decisions of the international bodies on the relevant state bodies that are coordinated by the profile ministries. For example the Ministry of Foreign Affairs (hereinafter – MFA) or the Ministry of justice.

## Chapter 2. Review of the national legislation of the Republic of Tajikistan.

In March 2, 1992, at the 46<sup>th</sup> session of UN General Assembly there was adopted the Resolution 46/224 on admission of the Republic of Tajikistan to United Nations Organization. Admission of the country to UN created a basis for development of cooperation with the specialized UN organizations and institutions.

Since that time, Tajikistan ratified almost all universal international UN documents on Human Rights (see table 2).

**Table 2. Table of the ratified universal UN documents on Human Rights**

No	Document title	Date of ratification	Date of enter into force
1.	International Covenant on Economic, Social and Cultural Rights (ICESCR)	04/01/99	04/04/99
1.1.	Optional Protocol to ICESCR	-	-
2.	International Covenant on Civil and Political Rights (ICCPR)	04/01/99	04/04/99
2.1.	First Optional Protocol to ICCPR	04/01/99	04/04/99
2.2.	Second Optional Protocol to ICCPR	-	-
3.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	11/01/95	10/02/95
3.1.	Optional Protocol to CAT	-	-
4.	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	11/01/95	10/02/95
5.	Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	26/10/93	25/11/93
5.1.	Optional Protocol to CEDAW	Signed on 07/09/2000	-
6.	Convention on the Rights of the Child (UN CRC)	26/10/93	25/11/93

6.1.	First Optional Protocol to CRC on the Involvement of Children in Armed Conflict	05/08/2002	05/09/2002
6.2.	Second Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography	05/08/2002	05/09/2002
7.	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	08/01/2002	01/07/2003
8.	Convention on the Rights of Persons with Disabilities	-	-
8.1.	Optional Protocol to the Convention on the Rights of Persons with Disabilities	-	-
9.	International Convention for the Protection of All Persons from Enforced Disappearance	-	-

the implementation of the international obligations in the Human Rights sphere with the relevant feedback communication.

Constitution of the Republic of Tajikistan in the article 5 defines that the human rights and freedoms are sacred. The rights and liberties of the person and citizen are recognized, observed, and protected by the state.

Constitution defines the priority of the international norms over the national legislation. Thus in accordance with article 10 “the Constitution of Tajikistan possesses supreme legal power, and its norms have direct application. Laws and other legal acts that are contrary to the Constitution do not have legal force. International legal acts recognized by Tajikistan are a constituent part of the legal system of the republic. In the case of a discrepancy between the laws of the republic and recognized international legal acts, the norms of the international legal acts are applied.”

Republic of Tajikistan stands for the strict observance of the international treaties and confirms its adherence to the principle of bona fide implementation of the international obligations<sup>10</sup>.

The President and the Government of the Republic of Tajikistan are responsible for decision making on observation of the implementation of the international agreements of the Republic of

<sup>10</sup> Law of Tajikistan “On international treaties”



expert working groups and the participation of the civil society institutes at all stages of the Commission work.

3. To allocate necessary resources for the creation of the permanent staff units playing the role of the secretariat of the Commission that should be responsible not only for the process of the national report writing to UN treaty bodies but also for timely communication with UN bodies and constant monitoring of the implementation of the recommendations of UN Human Rights bodies.

4. In the ministries and agencies to define staff unit responsible for communication with the Secretariat of the Commission on the implementation of the international obligations in the Human Rights sphere. In order to have effective work, these staff members should regularly improve the qualification on the Human Rights issues and practices of the Human Rights Committees.

5. To create unified resource data base under the Secretariat with statistical and other information on the activities of Tajikistan on the implementation of the international obligations in the Human Rights sphere (state statistical information, reports and researches, previous communications with UN bodies, etc.). This data base shall be accessible for all relevant state bodies mentioned in the para 3 of the present recommendations. Data base will allow creating institutional basis for the activities of the state bodies, while the systematically collected information will allow having prompt analysis of the information necessary for the national treaty reporting to UN bodies.

6. To develop mechanism of implementation of the Consideration of international bodies on Human Rights on the individual communications. Please see some creative proposals on possible mechanisms in the chapter 11 of the present report.

7. To develop system of dissemination of the information on the international obligations of Tajikistan in the Human Rights sphere (texts of international documents, national reports, final recommendations, and considerations of the Human Rights Committees). Such information may be published on the websites of the Ministry of Foreign Affairs of Tajikistan, Ombudsman of Tajikistan and Ministry of justice of Tajikistan. In the future to create special website for the Commission on

Tajikistan and designation of the state officials or agencies responsible for supervision over the implementation of the international agreements of the Republic of Tajikistan. General observation of the implementation of the international treaties of the Republic of Tajikistan, including the implementation of the treaties by the other side is carried out by the Ministry of Foreign Affairs of the Republic of Tajikistan.

Thus we may highlight two key state bodies responsible for the observation of the international Human Rights obligations: the Government of Tajikistan and the Ministry of Foreign Affairs.

#### **Ministry of Foreign Affairs of the Republic of Tajikistan**

Ministry of Foreign Affairs of the Republic of Tajikistan is conducting registration of the international treaties of the Republic of Tajikistan in the UN Secretariat and other relevant bodies of international organizations, as well as conducts registration of the international agreements of the Republic of Tajikistan. Copies of the international agreements of the Republic of Tajikistan are submitted to the Ministry of justice of the Republic of Tajikistan for inclusion into the State registry of legal acts.

In accordance with the regulation of the Ministry of Foreign Affairs of the Republic of Tajikistan, the competences of the Ministry are the following:

- to observe the implementation of the international agreements of the Republic of Tajikistan;
- to participate in developing proposals on compliance of the national legislation of Tajikistan with the international legal obligations;
- to summarize and develop proposals to improve the legislation of Tajikistan in the sphere of international relations;
- to ensure participation of Tajikistan in the activities of the United Nations Organization, Organization for Security and Cooperation in Europe, CIS and other international and regional organizations, conferences and fora;

#### **Government of the Republic of Tajikistan**

Government of Tajikistan ensures the implementation of the obligations of Tajikistan under the international treaties, as well as observes the implementation of the obligations by other treaty members. Government of Tajikistan creates permanent commissions, defines tasks, procedures for their activities and adopts necessary regulations on these commissions.

**Commission on the implementation of the international obligations in the Human Rights sphere under the Government of the Republic of Tajikistan (hereinafter the Commission).** (established by the Decree of the Government, dated March 4, 2002)

Commission is established to assist the implementation of the international legal obligations of Tajikistan in the Human Rights sphere.

***Functions of the Commission:***

- Coordination of the activities between interested stakeholders on the implementation of the international obligations in the sphere of Human Rights;
- Observation of the national reporting writing process on the implementation of the international obligations in the sphere of the Human Rights and further submission of the reports to the relevant UN bodies;
- Assistance in bringing the legislation of Tajikistan in compliance with the international agreements ratified by Tajikistan in the sphere of Human Rights;
- Assistance in ratification of the international treaties in the sphere of Human Rights in accordance with the established procedures and accession to such treaties;
- Study and evaluation of the conditions of the national legislation of Tajikistan and its compliance with the international norms in the sphere of Human Rights;
- Assessment of the effectiveness of Tajikistan participation in the international treaties in the sphere of Human Rights;
- Consideration of the suggestions from the interested stakeholders and development of the consultative opinions on Tajikistan position with regards to application of the international treaties in the sphere of Human Rights protection;
- Assistance in promotion of the Human Rights education;
- Researching and developing the recommendations in the sphere of application and improve of the Human Rights protection norms;
- Interactions and cooperation with the state bodies, public associations and other national non governmental institutions, international organizations on the issues of Human Rights protection;

prepare questionnaires and send them to the countries with request to provide relevant information. Tajikistan provided 1 response to the thematic questionnaire out of 24 questionnaires sent in accordance to the mandates of the special procedures<sup>62</sup>.

17. For the time being in Tajikistan the state bodies **do not publish and do not disseminate publicly the texts of the national reports to UN treaty bodies, final recommendations of these bodies and the considerations of the Human Rights Committee on individual communications with regards to Tajikistan.** Website of the Ombudsman of the Republic of Tajikistan presents the only text of the first national report on the implementation of the International Convention on the protection of the right of all migrant workers and members of their families. Mainly the texts of the UN documents with regards to Tajikistan are published on the websites of the non-governmental organizations.

18. General problem of the civil society institutes is the **lack of analytical capacities of the NGO representatives**, lack of information about work of each other and produced information analytical materials (results of the researches and reports).

19.

**MAIN RECOMMENDATIONS.**

1. To reform the activity of the Commission under the Government of Tajikistan on the implementation of the international obligation in the Human Rights sphere in order to create unified centralized mechanism with all necessary capacities (trained responsible staff, effective communication, inter-agency coordination), which is legally regulated and provided with necessary administrative procedures and with adequate planning (including financial planning).

2. Legislation shall define/regulate the activities of the Commission on the implementation of the international obligations in the Human Rights sphere with clear detailed functions and objectives. To envisage the activities of the

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<sup>62</sup> Compilation prepared by the Office of High Commissioner on Human Rights in accordance with point 15 b) of the annex to the Resolution 5/1 of the Council of Human Rights. Tajikistan. A/HRC/WG.6/12/TJK/2

This is due to the **lack of permanent Secretariat of the Commission** that could work on the issues of implementation and monitoring of the implementation of the international obligations in the Human Rights sphere. Responsible secretary of the Commission is at the same time the head of the Department of the constitutional guarantees (responsible secretary of Commission on the issues of pardon and citizenship). The responsible secretary on the issues of pardon and citizenship is also the member of the commission on state awards under the President of Tajikistan. Due to increased workload on the report writing, according to the opinions of the Department staff members, they don't have sufficient physical capacities to additionally monitor implementation of the final recommendations of the Human Rights Committees and to report on the implementation of the recommendations of the human rights treaty bodies.

**13. Inconsistence of the statistical information, lack of updated information** prevents the expert working group from including all necessary information into the reports. In some cases, information received in the Statistical Agency under the President of Tajikistan do not comply with statistical information provided by the profile state bodies. Updated statistical data was not provided by all state bodies. This is systemic problem related to interaction policy and coordination between the state bodies on exchange of the statistical information.

**14.** In preparation of the responses to the communication of the Human Rights Committee on the issues of admissibility and content of the individual communications, **the state limits to the simple study of the criminal case** materials and doesn't analyze the complaints on the violations of the rights envisaged in ICCPR.

**15. None of 22 considerations of the Human Rights Committee** on the individual communications that have been issued by the Committee with regards to Tajikistan, **were implemented by the state.**

**16. The State did not response to any requests of the special procedures on individual communications that have been sent to the Republic of Tajikistan.** Special procedures also conduct their own research on the most acute topics related to their mandate. For this purpose they may

➤ Supervision over the implementation of the Commission recommendations.

**Competence of the Commission:**

- Submission of the recommendations to the Government of Tajikistan on the main directions and implementation of the international obligations of the Republic of Tajikistan in the sphere of Human Rights;
- Instruction of the interested bodies on observation of Human Rights, restoration of violated Human Rights and Freedoms;
- Consider the reports of the state officials and interested bodies on the situation in the sphere of Human Rights observations in the competent organizations;
- Creation of the working groups, expert commissions to conduct expertise and draft laws or other legal acts of Tajikistan in the sphere of Human Rights, as well as direct application of Human Rights norms;
- Involvement of the workers from the interested bodies into the Commission work (*the representatives of other executive, legislative and judicial bodies and prosecutor offices, as well as public associations working on Human Rights protection may have a consultative voice in work of the Commission*);
- Receive materials from the interested bodies on the issues relevant to the Commission competences.

Secretariat of the Commission is the Department of Constitutional guarantees of the citizens' rights of the Executive Administration of the President of Tajikistan (hereinafter the Department of Constitutional guarantees). The Secretariat is responsible for the case management, preparation of the materials for the Commission meetings, and organization of work of the working groups and expert commissions.

**Commission on the Rights of the Child under the Government of the Republic of Tajikistan.**

Commission was established in 2001 in order to assist the implementation of the Tajikistan legislation and international obligations in the sphere of Child Rights protection. In the beginning the functions of the Secretariat of the Commission were carried out by the Department of the Constitutional guarantees.

In 2008 new Regulation on the National Commission on Child Rights was adopted. The Commission is the permanent body

responsible for the State policy on protection of the Rights of the Child and aimed at the implementation of the national legislation and the international obligations of the Republic of Tajikistan in accordance with Convention on the Rights of the Child and other international treaties on Child Rights protection.

In accordance with the new Regulation, the Commission has wide range of responsibilities on the issues of Child rights protection and has the Secretariat, as well as the local representatives at oblast and district levels. The Commission members are divided into 6 expert groups, each working on a certain issue with regards to the Child rights, such as national report on the implementation of Convention on the Rights of the Child, de-institutionalization, juvenile justice, children with special needs, etc. Representatives of the public associations are selected to become the members of the Commission upon proposal from the Chairmen of the Commission and should be approved by the Commission. In order to ensure wide public participation in the work of the Commission, the participation of the public association might be rotated on periodical basis. Representatives of the interested bodies, as well as UNICEF and other international organization working on the Child Rights protection may have the consultative voice in the Commission.

Commission has the following tasks related to the implementation of the international obligations in the sphere of child rights protection:

- To coordinate and control the activities of the bodies and the institutions related to the implementation of the legislation and international obligations of Tajikistan in the sphere of child rights protection;
- To assist in bringing the legislation of Tajikistan in compliance with the international treaties in the sphere of child rights protection that have been ratified by the Republic of Tajikistan;
- To assist in accordance with established procedures to the process of ratification of the international treaties in the sphere of child rights protection or accession to such treaties by Tajikistan;
- To assess the effectiveness of Tajikistan participation in the UN Convention on the Rights of the Child and other international treaties in the sphere of child rights protection;
- To consider and develop consultative opinion on the draft international agreements, normative legal acts of Tajikistan, related to the child rights protection;

such reconsideration is possible through the process of supervisory protests, which may be initiated due to newly discovered facts, such as the recognition by the Human Rights Committee of the facts of the violations of ICCPR norms. Norms of the Criminal Procedure Code also may be used by the Human Rights Committee in application of the legal protection measures (for ex.: investigation of torture facts or victim's death).

9. There is a serious **problem in communication and referral (re-addressing) of the letters and requests between UN Human Rights bodies and the state bodies of Tajikistan.**

10. **Staff rotation** in the state system and **lack of special departments and units responsible for provision of information for the needs of report writing** also impact on the process of treaty report writing to UN bodies. Very often, the new members of the ministries and agencies are involved into the reports writing and expert working group activities. These people often do not have necessary knowledge on report writing and institutional memory about previous relevant activities of their institutions. These factors delay the processes of report writing and may seriously affect the quality of the submitted information from the relevant state bodies.

11. Taking into consideration that the organizational work on the report writing is carried out by the Department of the constitutional guarantees, a constant **senior staff rotation** in this department affect the process of report writing in general. Thus we may see active work in this direction from 2000 to 2004 and serious decrease (almost stagnation) of the work on the report writing until 2008. In 2008 the expert working groups activated their work and in November 2011 all periodical reports are already completed and submitted to the relevant Committees or in the process of final approval of the draft reports.

12. Work of the Commission and the expert working groups is limited to preparation and submission of the reports to UN treaty bodies and **do not include the monitoring of the implementation of the final recommendations** of UN Human Rights bodies. **There was not adopted a single action plan on the implementation** on any of the documents (Final recommendations of the Human Rights Committee).

ministries and agencies, Ombudsman office (since 2009) and non-governmental organizations. The heads of the working groups are the senior specialists/specialists of the Department of constitutional guarantees (except for the group on the report writing to the Committee on the Rights of the Child). General coordination of all expert groups is conducted by the responsible secretary of the Commission (senior specialist of the Department). This leads to the often situation when the members of the expert working groups from different ministries and agencies do not have enough information and authorities to request relevant information from the state bodies that they represent.

6. In accordance with the Regulation on both Commissions, the compositions of the Commissions include the representatives from the non-governmental organizations. On March 30, 2010, **the representatives of NGOs were excluded from the Commission on the implementation of the international obligations in the Human Rights sphere.** However the NGO representatives are not the official members of the Commission, the representatives of most active profile NGOs are still included into the expert working groups. Nevertheless, **lack of formally regulated participation of NGOs in the expert working groups put them in dependence from the decision making of the state officials.**

7. The country **doesn't have developed mechanism on the implementation of the decisions of Human Rights Committee** in accordance with the obligations on the Optional Protocol to ICCPR. **The Regulation on the Commission** under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere stipulates only general framework of the Commission activities on the implementation of the obligations in the Human Rights sphere, as well as some issues related to communication with UN bodies. At the same time, **there is lack of responsibility and the mechanisms of the implementation of the considerations of the Human Rights Committee on individual communications.**

8. **Procedural legislation doesn't envisage reconsideration of cases with regards to the considerations of the Human Rights Committee.** However

- To assist in dissemination of knowledge about national and international norms on Child Rights protection;
- To interact and cooperate with local executive bodies, public associations and other non-governmental institutions, UNICEF and other international organizations;
- To conduct research, develop reports and regulations on application and improve of the legal acts on Child Rights protection;
- To participate in development and implementation of the programs on Child Rights protection;
- To ensure development of the national reports of the Republic of Tajikistan on implementation of the UN Convention on the Rights of the Child;
- To submit to the Government of Tajikistan the proposals on strengthening of the Child Rights.

Functions of the Secretariat of the Commission are carried out by the Department of youth, sport and tourism of the Executive Administration of the President of Tajikistan and the senior specialist of this department is the responsible secretary of the Commission. Secretariat of the Commission is undertaking the following tasks:

- Coordinates and controls the activities on the state bodies, local self government, public associations on the implementation of the legislation and other legal acts as well as the international obligations of Tajikistan within the UN Convention on the Rights of the Child and other international legal acts on the rights of the child ratified by the Republic of Tajikistan;
- Prepares and submit for approval of the National Commission the national reports on the issues of the Child Rights protections, which are further submitted to the UN Committee on the Rights of the Child.

Thus for the time being the issues of observation of the international obligations in the sphere of human rights are considered by two Government Commissions. Formally there are mechanisms of interaction between the secretariats of both Commissions. The representative of the Department of Constitutional guarantees as the secretary of the Commission on the implementation of the international obligations in the sphere of Human Rights is also the member of the Commission on the Rights of the Child. At the same time the representatives of the Department of youth, sport and tourism of the Executive Administration of the

President of Tajikistan as the secretary of the Commission on the Rights of the Child is the members of the Commission on the implementation of the international obligations in Human Rights sphere.

The Regulations envisage very high level of official representation of the state bodies in both Commissions.

Thus **the Commission under the Government of Tajikistan on implementation of the international obligations in the Human Rights sphere consists of:**

First deputy Prime minister of the Republic of Tajikistan – chairman of the Commission

Head of the Department of Constitutional guarantees of the citizens' rights under the Executive Administration of the President of the Republic of Tajikistan – deputy chairman of the Commission.

Commission members:

1. First deputy Minister of Internal Affairs of the Republic of Tajikistan.
2. First deputy Minister of Foreign Affairs of the Republic of Tajikistan.
3. First deputy Minister of culture of the Republic of Tajikistan.
4. First deputy Minister of education of the Republic of Tajikistan.
5. First deputy Minister of labor and social protection of the population of the Republic of Tajikistan.
6. First deputy Minister of justice of the Republic of Tajikistan
7. First deputy Minister of economic development and trade of the Republic of Tajikistan
8. First deputy Minister of finance of the Republic of Tajikistan
9. First deputy Chairman of the State Committee on National Security of the Republic of Tajikistan
10. First deputy Director of the Agency on statistics under the President of the Republic of Tajikistan
11. First deputy Chairman of Committee on Women and Family Affairs under the Government of the Republic of Tajikistan
12. First deputy Chairman of Committee on Youth, Sport and Tourism under the Government of the Republic of Tajikistan
13. First deputy Chairman of the Supreme Court of the Republic of Tajikistan (upon agreement)
14. First deputy General Prosecutor of the Republic of Tajikistan (upon agreement)
15. Ombudsman of the Republic of Tajikistan (upon agreement)

specialized Commissions are interconnected with the work of the Expert Working Groups. Thus the issues of the child rights are included almost in all thematic reports. Issues related to human trafficking are reflected in such documents as International Covenant on Civil and Political Rights, Convention against tortures, Convention on protection of the right of migrants and their family members. Issues related to the migrants' rights and implementation of the Convention is the priority sphere for the Inter-ministerial commission on the regulation of the migration processes under the Government of Tajikistan, but the report writing to the Committee on the right of the migrants is conducted by the Expert Working Group of the Commission on the implementation of the international obligations in the Human Rights sphere under the Government of Tajikistan. This leads to unnecessary duplications in collection and analysis of the information by the Expert Working Group.

4. One of the problems faced by the state bodies is **timely receipt of the communications** from the Human Rights Committee (letters, requests). However the Department of constitutional guarantees is responsible for the overall coordination of the implementation of the international treaty obligations, including individual communications, the Ministry of Foreign Affairs is not always forwarding the communication from the Committee directly to this Department. In some case the letters from Human Rights Committee on individual communications are forwarded directly to the Supreme Court of Tajikistan and/or to the General Prosecutor's Office. As a result the state bodies have only fragmented information (on some cases) about such communications. There is no clear statistical information on the individual communications or issued decisions of the Human Rights Committee in any of the state bodies of the Republic of Tajikistan. This is also due to the lack of a formal **mechanism on inter-ministerial coordination of the activities of the state bodies.**

5. The Regulation of the Commission under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere **doesn't regulate the issue of the expert group activities, their functions and authorities.** Expert working groups are created by the Commission with involvement of the representatives from the

## CHAPTER 10. MAIN CONCLUSIONS AND RECOMMENDATIONS.

1. **Legislation of the Republic of Tajikistan in general has necessary basis for the implementation of the international obligations in the Human Rights sphere.** The responsibility for the implementation of the international obligations is with the Government of the Republic of Tajikistan that may create the relevant committees and commissions. Ministry of Foreign Affairs of the Republic of Tajikistan conducts monitoring of the implementation of these obligations.

2. The issues of the implementation of the international obligations in the Human Rights sphere are the direct responsibility of two Government Commissions: Commission on the implementation of the international obligations in the Human Rights sphere and Commission on the Rights of the Child that have been established by the decrees of the Government. The Government Decrees also defined the functions and the authorities of these Commissions. Two other Commissions, Inter-ministerial commission on fight against human trafficking and Inter-ministerial commission on the regulation of the migration processes under the Government of Tajikistan although do not work directly with the report writing to UN bodies still work on the observation of rights envisaged in the special international documents on Human Rights.

3. Existing **legal normative base** (particularly regulations of the commissions) **on the activities of the Commissions do not envisage any formal mechanisms for the interactions and cooperation at the secretariats level** on collection of necessary information needed for report writing to UN Human Rights bodies. For example, there are any formal mechanisms of interactions and cooperation between the Department of constitutional guarantees (secretariat of the Commission on the implementation of the international obligations) and the secretariat of the Commission on the Rights of the Child, Inter-ministerial commission on fight against human trafficking and Inter-ministerial commission on the regulation of the migration processes. This cooperation is informal based on personal requests of the officials from these agencies. At the same time there is need in such cooperation as the issues touched by the

16. Senior specialist of the Department of Constitutional guarantees of the citizens' rights under the Executive Administration of the President of the Republic of Tajikistan – secretary of the Commission.

Until March 30, 2010 the composition of the Commission included the representatives from two public organizations, however by the Government Decree from March 20, 2010 the civil society organizations were excluded from the members of the Commission.

**Commission on the Rights of the Child consists of the following members:**

1. Deputy Prime-minister of the Republic of Tajikistan, supervisor of the relevant issues – chairman of the Commission;
2. Head of the Department on youth, sport and tourism of the Executive Administration of the President of the Republic of Tajikistan – deputy chairman of the Commission;
3. Head of the Department of Constitutional guarantees of the citizens' rights under the Executive Administration of the President of the Republic of Tajikistan
4. Head of the Department on science and education of the Executive Administration of the President of the Republic of Tajikistan;
5. Head of the Department of employment and social protection of the population of the Executive Administration of the President of the Republic of Tajikistan;
6. Deputy Director of the Agency on drug control under the President of the Republic of Tajikistan;
7. Deputy Minister of justice of the Republic of Tajikistan;
8. Deputy Minister of Internal Affairs of the Republic of Tajikistan;
9. First deputy Minister of education of the Republic of Tajikistan;
10. First deputy Minister of labor and social protection of the population of the Republic of Tajikistan;
11. First deputy Minister of Public Health of the Republic of Tajikistan;
12. First deputy Chairman of the State Committee on statistics of the Republic of Tajikistan;
13. Deputy Chairman of the Committee on Women and Family Affairs under the Government of the Republic of Tajikistan;

14. Deputy Chairman of the Committee on youth, sport and tourism under the Government of the Republic of Tajikistan
15. Representative of the public association (upon agreement);
16. Representative of the public association (upon agreement);
17. Senior specialist of the Department of youth, sport and tourism of the Executive Administration of the President of the Republic of Tajikistan – secretary of the Commission.

For the time being the Commission also includes two members – representatives of NGOs: NGO “Nasli Navras” and “Center on the Rights of the Child”.

**Inter Ministerial Commission on fight against human trafficking.**

As additional measure on prevention of human trafficking there was established a working group in the Commission on the implementation of the international obligations in the Human Rights sphere to research the issues of prevention of human trafficking. Later on, due to adoption of the law “On fight against human trafficking”, the Government of Tajikistan issues a decree on January 4, 2005 on establishment of the Inter Ministerial Commission on fight against human trafficking under the Government of the Republic of Tajikistan that consists of the representatives from the relevant ministries and agencies.

Inter Ministerial Commission on fight against human trafficking carries out the following activities:

- Collects, analyzes, summarizes and exchanges the information on the scale, situation and tendencies of human trafficking;
- Coordinates the activities of the interested bodies on the implementation of the international obligations in the sphere of fight against human trafficking and cooperates with the Commissions under the Government of the Republic of Tajikistan on the implementation of the international obligations in the sphere of human rights and child rights;
- Takes part in the preparation of the international agreements of the Republic of Tajikistan in the sphere of fight against human trafficking, assists in accordance with procedures in ratification of the international acts in the sphere of fight against human trafficking or accession of Tajikistan to these acts;
- Researches the situation with the legislation of Tajikistan, it compliance with the international legal acts in the sphere of fight

For the time being the state bodies of Tajikistan do not publish and disseminate the texts of the national reports to UN bodies, final recommendations of UN bodies and considerations of the Committee on Human Rights with regards to Tajikistan on individual complaints. Internet website of the Ombudsman of the Republic of Tajikistan contains only preliminary texts of the national report of Tajikistan on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In general, UN documents with regards to Tajikistan are published on the web pages of non-governmental organizations.



**Committee on the Human Rights (2005)** suggests the state-member to ensure publication and dissemination in Tajikistan of the first national report and current final recommendations amongst the population and the representatives of judicial, legislative and executive powers, as well as disseminate the second periodic report amongst the nongovernmental organizations in the country<sup>58</sup>.

**Committee against Torture (2006)** suggests disseminating widely the information about first report, short report and the recommendations in different languages through official web-sites, Mass Media and nongovernmental organizations.<sup>59</sup>

**Committee on Economic, Social and Cultural Rights (2006)** suggests disseminating final recommendations amongst population and inform the Committee on the measures taken to implement the recommendations by including this information into following periodic reports. Committee also strongly recommends the state-member to continue involving the nongovernmental organizations and other members of civil society in discussion of the following national treaty report<sup>60</sup>.

**Committee on the elimination of all forms of discrimination against women (2007)** asks to ensure wide dissemination of the final recommendations in Tajikistan, in order to inform ordinary people, civil servants, politicians, parliament deputies, women and human rights activists about the measures on legal and actual equality of women, as well as the further steps in to be taken in this direction. Committee asks the state-member to continue disseminating Convention, Optional Protocol, general recommendations of the Committee, Beijing declaration, Plan of Action and the final document produced at the twenty third special session of General Assembly titled "Women in 2000: equality of men and women, development and peace in XXI century"<sup>61</sup>.

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<sup>58</sup> Final recommendations of the Committee on Human Rights. Tajikistan. CPR/CO/84/TJK. 18 July 2005

<sup>59</sup> Final recommendation of the Committee against tortures. Tajikistan. 7 December 2006 CAT/C/TJK/CO/1

<sup>60</sup> Final recommendations of the Committee on economic, social and cultural rights. Tajikistan. E/C.12/TJK/CO/1. 24 November 2006

<sup>61</sup> Final recommendations of the Committee on the elimination of all forms of discrimination against women. Tajikistan. February 2, 2007. CEDAW/C/TJK/CO/3

against human trafficking and develops the recommendations on improving the legislation of Tajikistan in the sphere of fight against human trafficking;

- Assesses the effectiveness of the participation of Tajikistan in the international legal acts in the sphere of fight against human trafficking and takes practical measures on improving effectiveness of the activities on fight against human trafficking;
- Considers the proposals of the interested bodies and prepares consultative opinions on the position of Tajikistan with regards to the problem of implementation of the international legal acts in the sphere of fight against human trafficking;
- Ensures preparation of the national reports on the implementation of the international legal acts in the sphere of fight against human trafficking for submission to the relevant UN bodies, OSCE and other international organizations;

#### **Inter Ministerial Commission on regulation of the migration processes under the Government of the Republic of Tajikistan.**

The Commission is coordination body established on the permanent basis with the aim to develop and consider issues related to the migrants of all categories, refugees and asylum seekers.

#### **Competence of the Commission**

- Take decisions on the implementation of the laws and ratified by Tajikistan international legal acts regulating migration issues;
- Submit for consideration of the Government of the Republic of Tajikistan the issues related to migration, including problems of the refugees and asylum seekers.
- The Commission representatives are taking part in discussions of the national draft laws and the recommendations on ratification of the international documents related to the issues of migration before submission to Majlisi Oli of the Republic of Tajikistan.

### CHAPTER 3. UN TREATY BODIES: PRECONDITION FOR ESTABLISHING COMMISSION UNDER THE GOVERNMENT OF TAJIKISTAN ON THE IMPLEMENTATION OF THE INTERNATIONAL OBLIGATIONS IN THE HUMAN RIGHTS SPHERE.

According to the commitments the Republic of Tajikistan had to provide first reports on the ratified treaties already in 1994 (as CRC and CEDAW were ratified already in 1993). However until 2000 the State provided only one report to the Committee on the Rights of the Child and delayed submission of the reports on other treaty documents.

In July 1999, the Government of Tajikistan applied to the Office of High Commissioner on Human Rights (OHCHR) for assistance in developing the periodic reports on six main UN treaties in the sphere of Human Rights.

In May 14-28, 2000, technical mission of OHCHR visited Tajikistan to define further needs of the state in the observation of the obligations on the main treaty documents on Human Rights. Mission conducted meetings with the Government officials and the representatives of the civil society, as well as organized 3 days seminar on the process of report writing on the Human Rights instruments. Mission recommended to establish relevant coordination body in the Government structure and to organized further training on building national capacities for the Government officials and NGO representatives, as well as to carry out public awareness campaign among the population. Mission also recommended to actively involve OHCHR and other UN institutes in Tajikistan into preparation of the reports.

After that, the Government started developing the Decree on establishment of inter-ministerial body at the level of deputy ministers that would monitor the implementation and coordination of preparation and submission of the reports on UN Human Rights instruments. It was envisaged that this state body will be created in the same format as the already established Commission under the Government of Tajikistan on the implementation of the Convention on the Rights of the Child (i.e.: National Commission on the Rights of the Child).

As the result in 2002 the Commission under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere was established by the Decree of the Government of Tajikistan.

### CHAPTER 9. INFORMATION DISSEMINATION.

One of the obligations of the state-member is to disseminate information on ratified documents, as well as the final recommendation and considerations of the Human Rights Committees Human Rights Committees in all final recommendations suggested Tajikistan to spread information amongst the state bodies and wide range of people about the reports and also the adopted recommendations.

**Committee on the Rights of the Child (2000)** recommended in accordance with par. 6 of the article 44 of the Convention, to ensure wide dissemination amongst the population of the first report submitted by the state-member and consider possibility for publication of the report along with the answers to the questions raised by the Committee, as well as the short reports on discussions and final recommendations adopted by the Committee upon the report hearings. This document shall be publicly disseminated in order to stimulate public discussions and public interest to the Convention. It should also facilitate the implementation and monitoring of the Convention norms by the Government, Parliament and society, including the relevant nongovernmental organizations<sup>55</sup>.

**Committee on the Rights of the Child (2010)** suggests to ensure wide dissemination of the second periodic report and written responses submitted by the state-member, as well as the adopted recommendations of the Committee (final recommendations) amongst the population, civil society organizations, youth groups and children in order to stimulate public discussions and raise public awareness on the issues of implementation and observation of the Convention on the Rights of the Child<sup>56</sup>.

Committee on the elimination of all forms of racial discrimination (2004) **suggests the state-member to make publicly available the national report from the time of it submission as well as to publicize the recommendations of the Committee in order to make them available for general public**<sup>57</sup>

<sup>55</sup> Final recommendations of the Committee on the Rights of the Child. Tajikistan CRC/C/15/Add.136. 23 October 2000

<sup>56</sup> Final recommendations of the Committee on the Rights of the Child. Tajikistan. 5 February 2010. CRC/C/TJK/CO/2

<sup>57</sup> Final recommendations of the Committee on the elimination of all forms of racial discrimination. Tajikistan. CERD/C/65/CO/8. 10 December 2004

allow identifying whenever the detention of Mr. Iskandarov was arbitrary or not<sup>53</sup>.

- website blocking. March 26, 2007. Special Rapporteur on freedom of opinion and expression. Government response was not received<sup>54</sup>.

For the time being the issues relevant to the observation of the international obligations on Human Rights are the competences of two Commissions: Commission on the implementation of the international obligations in the Human Rights sphere and National Commission on the Rights of the Child. At the same time the Inter ministerial commission on fighting against human trafficking and the Inter ministerial commission on regulation of migration processes under the Government of Tajikistan although do not work directly with preparation of the reports to UN bodies but at the same time observe the rights envisaged in the international Human Rights documents.

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<sup>53</sup> Opinions adopted by the working group on arbitrary arrests. /HRC/7/4/Add.1. 16 January 2008

<sup>54</sup> The right to freedom of opinion and expression Report of the Special Rapporteur, Amebyi Ligabo. A/HRC/4/27/Add.1. 26 March 2007

## CHAPTER 4. UN TREATY BODIES: REPORT SUBMISSION.

Since the establishment of the Commission on the implementation of the international obligations in the Human Rights sphere (hereinafter the Commission) it has done a great amount work. The report on the implementation of the decisions of the first meeting of the Commission in 2003 particularly mentioned:

“For the time being the Republic of Tajikistan submitted only one first national report on implementation of the Convention on the Rights of the Child, which was reviewed by the UN Committee on the Rights of the Child in 2000 in Geneva. Since that time the Republic did not report to the UN on implementation of any other Human Rights documents that is creating a negative image of the country and exclude it from the list of equal civilized partners in the global system of cooperation. Debts of Tajikistan on submission of the national reports last already from 1993... Not submission of the national report on implementation of CERD has created the serious concerns particularly that the treaty was ratified by Tajikistan already in 1994. Stabilized political situation in the country oblige us today to report on the existing debts. At the first meeting of the Commission it was decided to create an expert group on development of the national reports on two documents: International Covenant on Civil and Political Rights and Convention on Elimination of all forms of Discrimination against Women, as well as the expert group on development of the Basic document as a part of the national reports. For the time being (author's note: it means 2003), first draft of the Basic document was developed and is under approval by the ministries and other state agencies. Work on the national report on implementation of the International Covenant on Civil and Political Rights is going at the full speed. Work on the report on implementation of the Convention on Elimination of all Forms of Discrimination against Women is at the stage of review of the collected information. For the time being another three expert groups have been established to develop national reports on ICESCR, CAT and CERD. All three groups will start working upon approval from the Chairman of the Commission. It is also necessary to mention at the following fact. During the process of elaboration of the draft national reports the expert groups met with certain misunderstanding and

person seeking asylum and was seen for the last time in the UNHCR office in the second half of the day on February 26, 2010.

On March 4, 2010, the regional office of UNHCR in Central Asia, based in Bishkek was informed that Mr. Botakuziev was apparently arrested by the State Committee on national security of Tajikistan and is under a threat of extradition to Kyrgyzstan. According to the information of the non-governmental organization Mr. Botakuziev has been beaten that seriously undermined his health. Despite multiple attempts of the defense lawyer, he was not able to get access to Mr. Botakuziev. The probable reason for the arrest of Mr. Botakuziev was his professional activity as Human Rights defender and particularly his critical views on demonstration dispersal in Nookat region by the security forces of Kyrgyzstan.

Serious concern of the special rapporteurs was due to the fact of physical and psychological conditions of Mr. Botakuziev, lack of access of the defense lawyer and possibility of extradition to his motherland.

*Response of the Government of Tajikistan:* In the letter dated March 29, 2010 the Government of Tajikistan replied that the absence of Russian version of the communication did not allow promptly responding to it. However during the time of this report writing the Government did not provide any further clarifications.

Previous communications were related to the following issues:

- forced evictions in Dushanbe city, March 2008. Special Rapporteur on adequate housing. Government response was not received<sup>51</sup>.

- with regards to the legislative draft on freedom of conscience and religious belief, which is violating freedom of religion. August 2008. Special Rapporteur on freedom of religion or belief. Government response was not received<sup>52</sup>.

- with regards to the case of Mr. Mahmadrusi Iskandarov. November 21, 2006. Opinion of the working group on arbitrary arrests. The State was active in communication. Final opinion of the working group: The materials presented to the working group do not

<sup>51</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari. A/HRC/7/16/Add.1. 4 March 2008

<sup>52</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir. A/HRC/7/10/Add.1. 28 February 2008

he had serious respiratory problems and urgently needed medical examination, particularly chest x-ray in order to start adequate medical treatment. Meanwhile according to the information Pre-trial Detention Center # 2 doesn't have necessary medical equipment to diagnose Mr. Ismanov and prescribe necessary treatment. Thus the prison administration of Pre-trial detention Center #2 applied several times to the family of arrested person asking for the medicines.

For the first time Mr. Ismanov became a subject for the joint appeal made on November 19, 2010 by the Chairman of the Working group on arbitrary arrests, the Special Rapporteur on independence of judges and advocates and the Special Rapporteur on tortures and other cruel, inhuman and degrading treatment and punishments. However the Government of Tajikistan did not reply to it. In the appeal made on February 17, 2011, the Special Rapporteurs expressed their concern with regards to the worsening health conditions of Mr. Ismanov due to lack of medical assistance, his physical and psychological immunities and lack of the investigation of the statements about the tortures.

*Government response:* At the time of the report writing the Government did not submit yet the response to the report of the Special Rapporteurs.

*Joint appeal of the Working group on arbitrary arrests, together with the Special Rapporteur on tortures and other cruel, inhuman and degrading treatment or punishments, Special Rapporteur on the situation with human rights defenders and Special Rapporteur on independence of judiciary and lawyers on the case of Nematullo Botakuziev.*<sup>50</sup> On February 26, 2010 Mr. Nematullo Botakuziev, citizen of Kyrgyzstan, as it was state disappeared in Dushanbe (Tajikistan) after the meeting in the local office of UNHCR. Mr. Botakuziev was hiding in Kyrgyzstan since October, 2008 after the state authority accused him in organizing the protests in Nookat (Kyrgyzstan) in October 1, 2008 and calling him for criminal liability. Upon arrival to Tajikistan in mid February 2010 Mr. Botakuziev asked for an asylum. He was registered in the local office of UNHCR as a

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<sup>50</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/16/52/Add.1, 1 March 2011; Report of the Special Rapporteur on the situation of human rights defenders Margaret Sekaggya, A/HRC/16/44/Add.1, 28 February 2011

even unwillingness of some ministerial officers to provide necessary information for the reports..."<sup>11</sup>

During first years of the Commission work the meetings were held regularly. Later on the meetings were conducted with delays as a team of state officials and accordingly the Commission members were constantly changing. New members of the Commission needed some time to study the working materials of the Commission.

Participation in the meetings of the Commission on implementation of the international obligations<sup>12</sup> also changed over the time. In the beginning the Commission members were informed by letters about the time of the meeting and the relevant documents such as meeting agenda and hand over materials for discussions have been forwarded to them. Later on the Commission members were informed about the time of the meeting by phone and all the materials were given to them during the meeting.

Work of the Commission also depended on the availability of donor support. When such support was provided (by Sweden International Development Agency, Swiss Cooperation Office in Tajikistan, OSCE office in Tajikistan, UNTOP, etc.) the Commission conducted various workshops and round tables, translated into Tajik language and published the international legal acts and national reports, etc.

Taking into account that the mechanisms of report submission was new for the state bodies and there was no enough capacities amongst the representatives of the expert groups, the international organizations conducted series of educational activities for the members of the expert groups on preparation of the reports to UN treaty bodies, as well as on procedures on submission of the individual communications to the UN Committee on Human Rights. For example starting from 2005 UN Tajikistan Office of Peace building (UNTOP) together with the Swiss Cooperation Office in Tajikistan and OSCE Center in Dushanbe conducted series of trainings on preparation of the reports to the UN Treaty bodies.

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<sup>11</sup> Report for 2003 on the results of the first year of work of the Commission on the implementation of the international obligations in the Human Rights sphere under the Government of Tajikistan.

<sup>12</sup> Interview with Ms. Muattar Khaidarova, member of the Commission from NGO "Society and Law"

In November 2002, UNTOP with assistance from OSCE and the Swiss Cooperation Office in Tajikistan conducted four seminars on the implementation of the obligations and elaboration of the reports on CEDAW and ICCPR. The seminars were designed for the members of the expert groups of the Commission under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere, state officials and NGO representatives. These seminars were conducted by the international experts on Human Rights as well as the local specialists on the issues of legislation in the Human Rights sphere. Later on the same trainings were conducted on the other UN documents.

In 2002 UNTOP in cooperation with OSCE conducted an analysis of the national legislation on compliance with the norms of the Convention on the Elimination of All Forms of Discrimination against Women. In the frames of this project an international expert on gender rights together with a national expert conducted series of meetings with the representatives of the Government and NGO working on the issues of gender equality. International and local experts conducted the analysis of the national legislation. Upon the end of the project, the report on comparative analysis was presented and the recommendations for improve of the situation in the implementation of the Convention on the Elimination of All Forms of Discrimination against Women have been developed. In 2003 similar analysis was conducted for the norms of the International Covenant on Civil and Political Rights.

In November 2002 a new Information Documentation Center on Human Rights was created and opened. The Center contained legal data base on Human Rights, textbooks and methodic brochures on Human Rights education, literature necessary for reports writing to UN Committees on the key Human Rights documents. Upon the establishment of the Ombudsman Institute in Tajikistan in 2012 the library of this Center was handed over to the office of the Ombudsman.

All these efforts starting from 2004 allowed the country complete the reporting, although with some delays on every Human Rights treaty (see the table 3)

coverage and criticism in Tajikistan and negatively affect on the freedom of speech in the country.

*Government response:* Special Rapporteur expressed his regret not receiving any reply from the Government of Tajikistan to his letter, as he considers it as an important part of cooperation from the state side.

*Joint appeal of the Chairman of the working group on arbitrary arrests, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on tortures and other cruel, inhuman and degrading treatment and punishments and the Special Rapporteur on independence of judges and advocates on the case of Mr Ilkhom Ismanov*<sup>49</sup>.

On February 17, 2011 the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health together with the Special Rapporteur on tortures and other cruel, inhuman and degrading treatment and punishments and the Special Rapporteur of independence of judges and advocates submitted joint appeal to the Government of Tajikistan expressing concern with regards to arrest and the health conditions of Mr. Ilkhom Ismanov.

According to the information in the middle of November 2010 Mr. Ismanov was transferred to Pre-trial Detention Center of Khujand city, however his defense lawyer was able meeting with him only on November 20, 2010, for the first time after the court trial on November 12, 2010. The lawyers was not allowed staying with the client alone as well as the spouse of the arrested who met her husband in the presence of the representative of the State committee on national security. According to their information Mr. Ismanov was barely walking and looked very threatened. They also were unable to get information about the beginning of investigation on the fact of tortures against Mr. Ismanov and the statement that he was arrested on November 3, 2010 but not November 9, 2010 as it was declared by police. In addition the relatives of Ismanov said that

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<sup>49</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/16/52/Add.1, 1 March 2011; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grove A/HRC/17/25/Add.1, 16/05/2011

request to provide relevant information. Tajikistan provided an answer only to 1 questionnaire out of 24 questionnaires submitted in accordance with the mandates of the special procedures.<sup>47</sup>

## **8.2. INDIVIDUAL COMMUNICATIONS, COMMUNICATION WITH THE GOVERNMENT.**

In 2010 and 2011 the Special Rapporteurs sent the letters to the Government of Tajikistan on 3 cases: closure of Mass Media web sites, cases of Ismanov and Botakuziev. The Government of Tajikistan did not reply to any appeals of the Special Rapporteurs. Below is the summary of the special procedures on communication with the Government of Tajikistan about the urgent complaints.

*Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue*<sup>48</sup>. On November 9, 2010 UN Special Rapporteur on freedom of opinion and expression Mr. Frank La Rue sent a letter where he expressed concern with regards to increasing pressure on independent Mass Media, including tax inspections of the publishing houses and the newspapers and several Internet web sites blocking.

According to the information received on September 19, 2010 the convoy of the Ministry of Defense of the Republic of Tajikistan was attacked by the military group in Rasht valley and as the result at least 25 people were killed. As soon as several electronic and printing mass media outlets criticized the work of the Ministry of defense, they were accused in accessory to the military gang and attempt to weaken the Government positions. Immediately after that the investigations was started on evasion of the taxes and the activities of the several printing outlets such as Farazh, Nigoh, Paikon and Millat were stopped. Furthermore the access to some international and tajik Internet websites such as [www.fergana.ru](http://www.fergana.ru), [www.centrasia.ru](http://www.centrasia.ru), [www.avesta.tj](http://www.avesta.tj), and [www.tjknews.com](http://www.tjknews.com) was blocked.

Special Rapporteur expressed concern with regards to abovementioned actions that may reduce independent news

<sup>47</sup> Compilation made by the Office of the High Commissioner on Human Rights in accordance with point 15 b) of the annex to the resolution 5/1 of the Human Rights Council. Tajikistan. A/HRC/WG.6/12/TJK/2

<sup>48</sup>Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue A/HRC/17/27/Add.1, 27 May 2011

**Table 3. Debts of Tajikistan on submission of the reports to UN treaty bodies.**

<b>№</b>	<b>Document title</b>	<b>First report to be submitted</b>	<b>First report reviewed</b>	<b>Delays</b>
1.	CERD	1996	2004	8 years
2.	ICESCR	2000	2006	6 years
3.	ICCPR	2000	2005	5 years
4.	CEDAW	1994	2007	13 years
5.	CAT	1996	2006	10 years
6.	CRC	1997	2000.	3 years
6.1.	1 <sup>st</sup> Optional Protocol to CRC	2004	Not submitted	7 years
6.2.	2 <sup>nd</sup> Optional Protocol to CRC	2004	Not submitted	7 years
7.	Convention on the Rights of the Migrants	2004	Submitted in 2010	6 years

## **4.1. PROCESS OF THE REPORT WRITING AND SUBMISSION.**

Within the Commissions there are different expert working groups (hereinafter EWG) on preparation of different reports. EWG consist of the representatives from different ministries and agencies, Ombudsman's office (since 2009) and NGOs. Heads of the working groups are the senior specialists of the Department of the Constitutional guarantees (except for the group on the report on CRC). General coordination of the expert groups work is carried out by the Secretary of the Commissions (senior specialist of the Department).

For the period of the preparation of the reports the EWG conduct several working meetings. During the first meeting new members of the group are introduced to the objectives and report drafting process, as well as conducted analysis of the final recommendations provided by UN Committee. Taking into account basic principles of the report writing by the member states, the members of the expert groups elaborate question list and information necessary for the report and disseminate it amongst the members of the group. Additionally head of the expert group submits the official requests with questions to the relevant ministries and agencies. During the next meetings the working group reviews received information and

makes draft of the report. Upon completion of the report development, it is submitted to the relevant ministries and agencies for approval, as well as to the nongovernmental organization for commentaries.

There is a positive practice of round table discussions of the draft reports (except for the report on CRC) with participation of the expert group members, NGOs<sup>13</sup> and the international organizations. These round tables are conducted upon the initiative from the civil society organizations in cooperation with the expert groups and support from the international organizations. Upon receipt of the commentaries and the recommendations, draft reports are corrected and submitted to the Commission for approval. Upon approval by the Commission, the report is submitted through the Ministry of Foreign Affairs of Tajikistan to the Office of UN High Commissioner on Human Rights for further transmission to the relevant UN Committee.

Commission on the Rights of the Child<sup>14</sup> is supported by UNICEF Tajikistan while preparing the treaty reports to the Committee on the Rights of the Child. Question of developing second treaty report to the Committee on the Rights of the Child was raised by the representatives of UNICEF already in 2006. In 2007 the Commission on the Rights of the Child officially applied to UNICEF with financial request on preparation of the national report.

There was created a working group consisted of the representatives from the Commission on the Rights of the Child, Ministry of education, Ministry of Public Health, Ministry of justice, Presidential Administration, etc. Coordination of the working group is carried out by the Commission on the Rights of the Child under the Government of Tajikistan. All the requests have been prepared to the relevant ministries and agencies, as well as the Agency on statistics under the President of Tajikistan in order to collect information necessary for the report. The representatives of the Department of the Constitutional guarantees as the members of the Commission on the Rights of the Child also participated in the working group meetings.

Members of the working group with support from UNICEF visited different regions of Tajikistan in order to collect and verify

<sup>13</sup> Herein the NGOs are the public associations and public foundations.

<sup>14</sup> Information on the activities of the Commission on the Rights of the Child was provided by Mr. Furkat Lutfulloev, Social Policy reform and Child Protection Officer, UNICEF

	<p>on tortures and other cruel, inhuman and degrading treatment and punishments. Visit is planned for the first half of 2012.</p>
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Upon the visit to the country, the special procedures prepare their recommendations to the country and observe the implementation of these recommendations.

On November 20, 2009, the Special Rapporteur on freedom of religion or belief sent a letter requesting to provide information on the measures taken to implement the recommendations upon his visit to the country in 2007. As of November 20, 2011 the Government did not provide any response yet<sup>45</sup>. According to the information provided by the Ministry of Foreign Affairs to the research team in December 2011, the responses to the questions of the Special Rapporteur were submitted.

On November 27, 2006, the Special Rapporteur on independence of judges and advocates sent the request letter to the Government of Tajikistan to provide information on the follow-up measures taken by the Government to implement the recommendations given in the report of the Special Rapporteur after his visit to Tajikistan and other general measures and progress achieved by the country and related to the mandate of the Special Rapporteur. On February 27, 2006, the Government replied to the letter of the Special Rapporteur and provided some statistical information on quantity of judges and prosecutor officers working in Tajikistan, as well as with regards to women and ethnical minority groups. Special Rapporteur expressed gratitude to the Government of Tajikistan for this reply and statistical information and appealed to monitor the implementation of the recommendations and provide further missing information requested in the letter that was sent on November 27, 2006<sup>46</sup>.

Special procedures also conduct their own researches on most acute topics related to their mandates. For this purposes they may develop questionnaires for the countries and submit them with

<sup>45</sup> Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangi. A/HRC/13/40/Add.1. 16 February 2010. См также. <http://www.ohchr.org/Documents/Issues/Religion/FU-Tajikistan.pdf>

<sup>46</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. A/HRC/4/25/Add.1. 5 April 2007



## CHAPTER 8. SPECIAL PROCEDURES OF THE COUNCIL OF HUMAN RIGHTS.

### 8.1. COUNTRY VISITS.

As it was already mentioned in the chapter 1 of the present document, the Special Rapporteurs carry out country visits in order to study human rights situation inside of particular country. In order for the Special Rapporteurs to visit a country, they have to get special invitation. In some cases a country may send "Open invitation" on all special procedures. For the end of 2011 **Tajikistan did not send any open invitations on the special procedures.**

Beginning from 2005, the country was visited by three special rapporteurs, 4 requests from the special procedures were submitted and received invitation for the country visit in 2011 (see the table 5).

**Table 5: Country visits (statistical data for November 2011)**

Country visits and reports	Request for a visit. Agreement of the visit by the country, future planned visits.
Special Rapporteur (SR) on independence of judges and advocates. September 25 – October 1, 2005 <a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/100/56/PDF/G0610056.pdf?OpenElement">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/100/56/PDF/G0610056.pdf?OpenElement</a>	SR on adequate housing as one of the components of the right to adequate living standards.
SR on freedom of religion or belief. February 26 – May 3, 2007 <a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/149/88/PDF/G0714988.pdf?OpenElement">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/149/88/PDF/G0714988.pdf?OpenElement</a>	Working group on enforced or involuntary disappearing. Request submitted in July 2011. Invitation received in September 2011.
SR on violence against women. May 15-23, 2008 <a href="http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/133/80/PDF/G0913380.pdf?OpenElement">http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/133/80/PDF/G0913380.pdf?OpenElement</a>	SR on health rights. Request submitted in June 2011, re-submitted in July 2011. Invitation issued in September 2011. Possible visit is planned in 2012.
	Invitation was sent in September 2011 to the Special Rapporteur

information, as well as to collect additional data that was necessary for the national treaty report.

Tajikistan delegation at the meetings of the Committees on Human Rights is represented by the high level officials that indicate on serious attention paid to the issue of treaty reporting. Head of the delegation is usually the Minister of justice of the Republic of Tajikistan. The delegation, depending on the international treaty, may consist of the following people: General prosecutor, Chairman or deputy Chairman of the Supreme Court, ministers or deputy ministers.

As the results of the analysis of the work practices on report submission, we may highlight the following problems and challenges:

Taking into account that organizational part of the work is carried out by the Department of constitutional guarantees. Constant **staff rotation** in this department is negatively affecting the quality of work on preparation of the national reports. In this regards it is possible to notice as there was active work happening in 2000-2004 and significant decrease of the activities (almost stagnation) on preparation of the reports until 2008. In 2008 the work of the expert groups was re-activated and in November 2011 all periodic treaty reports were completed and submitted to the relevant UN Committees or at the stage of final elaboration and approval (see the table 4).

**Table 4. Submission of the reports to UN treaty bodies** (statistics as according to November 15, 2011.  
<http://ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>)

No	Document title	First report reviewed	Next report to be submitted	Delays
1.	CERD	2004	10/02/2008. Submitted in July 11, 2011	3 years
2.	ICESCR	2006	June 2011, not submitted	-
3.	ICCPR	2005	01/08/2008. Submitted in August 25, 2011	3 years
4.	CEDAW	2007	2010. not submitted	1 year
5.	CAT	2006	31/12/2008.	2 years

			Submitted on 16/12/2010	
6.	CRC	2000	-	No delays
6.1.	1 <sup>st</sup> Optional Protocol to CRC	-	2004. not submitted	7 years
6.2.	2 <sup>nd</sup> Optional Protocol to CRC	-	2004. not submitted	7 years
7.	Convention on the Rights of the Migrants	-	Submitted on 03/12/ 2010	6 years

High Commissioner on Human Rights to provide technical assistance”<sup>44</sup>.

Committee on the Rights of the Child in the final recommendations “strongly appeals to the Member State to provide promptly preliminary reports on both Optional Protocols to the Convention, which should be provided already in 2004”<sup>15</sup>

**Staff rotation** in the system of the state institutions, as well as **the lack of specialized departments responsible for provision of information necessary for the reports** negatively affects the processes of development of the reports to UN treaty bodies. Very often the new members from the ministries and agencies are appointed for every new report writing and the working groups, and they often do not have necessary skills and experience of the report writing, as well as do not have any institutional memory on previous activities of their ministry or agency in a certain sphere. These factors hamper the process of report writing and may seriously affect the quality of the submitted information from a certain state body.

**Lack of cooperation and interactions between the Commission on the implementation of the international obligations in the Human Rights sphere and other Commissions working on particular Human Rights issues.** For example, there are no any formal mechanisms for cooperation amongst the Department of constitutional guarantees (Commission on the implementation of the International obligations) and the Secretariat of the Commission on the Rights of the Child, Inter-Ministerial Commission on fight against human trafficking and Inter-Ministerial

<sup>15</sup> Final recommendations. Tajikistan 5 February 2010. CRC/C/TJK/CO/2

<sup>44</sup> Human Rights Council Report: eighteenth session. 18 November 2011. A/HRC/18/2. Par. 209-210

## CHAPTER 7. PROCEDURE OF INDIVIDUAL COMMUNICATIONS IN THE COUNCIL OF HUMAN RIGHTS.

On March 22, 2011 at the 42 (closed) session of the UN Human Rights Council, there was adopted a confidential resolution with regards to Tajikistan. The document was adopted based on the complaint on massive violations of Human Rights in Tajikistan that was received by the Human Rights Council through the Complaint procedure (former procedure 1503).

Taking into consideration the fact that such procedure is confidential, we do not have information on the content of the report to the Human Rights Council. Unofficial information received by the research group indicates that the report concerns the issues of tortures and detention conditions in the penitentiary institutions, as well as the issue of non implementation by Tajikistan of the recommendations of the Committee on Human Rights as in accordance with the Optional Protocol to ICCPR.

Human Rights Council in a confidential resolution decided to observe the situation and recommend the Government of Tajikistan to submit relevant information on that issue at the seventeenth session of the Human Rights Council.

At the fourteenth session on June 6, 2011 and 21<sup>st</sup> meeting on June 9, 2011 (17<sup>th</sup> session) Human Rights Council conducted two closed meetings on complaint procedure. At the twenty third meeting on June 10, 2011, the President of Human Rights Council made a statement, that "Human Rights Council conducted closed meeting to discuss human rights situation in Tajikistan in accordance with complaint procedures of the resolution 5/1 of the Human Rights Council and decided to further observe the situation"<sup>43</sup>.

At the eleventh meeting on September 11, 2011 and 29<sup>th</sup> meeting on September 27, 2011 (18<sup>th</sup> session), Human Rights Council conducted two closed meetings on the complaints procedure. At the 30<sup>th</sup> meeting on September 27, 2011, the President of Human Rights Council made a statement that "Human Rights Council conducted closed meetings to discuss human rights situation in Tajikistan... in accordance with the complaints procedure of the resolution 5/1 of the Human Rights Council and made a decision to stop discussing the Human Rights situation in Tajikistan... and recommend the Office of

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<sup>43</sup> Human Rights Council Report: seventeenth session. A/HRC/17/L. 30 June 10, 2010. Par 243, 244

Commission on regulation of migration processes. This cooperation occurs informally based on personal requests of the workers of these commissions. At the same time there is necessity for such interactions as the issues dealt by the specialized Commissions are tightly connected to the sphere of Expert group work. For example the child rights issues are included in almost all reports. Questions related to the fight against human trafficking are reflected in such documents as International Covenant on Civil and Political Rights, Convention against torture, Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Questions related to the rights of labor migrants and implementation of the Convention is under the responsibility of Inter-Ministerial Commission on regulation of migration process under the Government of Tajikistan, and the report to UN Committee is developed by the expert group of the Commission on implementation of the international obligations in the Human Rights sphere under the Government of Tajikistan. This creates duplications in collection and analysis of the information by the expert working group.

The activities of the Commission and the Expert working groups are limited to preparation and submission of the report to UN treaty bodies and **do not include the responsibility to monitor the implementation of the final recommendations** of UN Committees on Human Rights. **There are no implementation action plans** adopted for any documents (final recommendations of the UN Committee on Human Rights). Only upon an initiative of the Coalition of gender organizations "From equality de jure to equality de facto" the action plan was adopted on the implementation of the final recommendations of the UN Committee on elimination of all forms of discrimination against women, but unfortunately this action plan was not officially adopted by the Commission. This is due to the lack of the permanent staff in the Secretariat of the Commission to deal with the issues of implementation and monitoring of implementation of the international obligations in the Human Rights sphere. Responsible secretary of the Commission is the head of the Sector on citizenship and pardon of the Department on the Constitutional guarantees (responsible secretary of the Commission on citizenship and pardon issues). Responsible secretary on the issues of pardon and citizenship is also the member of the commission on state awards under the President of Tajikistan.

Due to increase of workload on the report writing, according to the opinion of the Department staff, they physically do not have time to

carry out additional work on monitoring of the implementation of the final recommendations of the Committee on Human Rights and provide reports on the implementation of these recommendations.

While developing final recommendations the Committees on Human Rights sometimes ask the Member States to provide information on the implementation of particular recommendation of the Committee in a shorter period of time. For example in 2006 the Committee against Torture asked Tajikistan to provide within one year an information on the implementation of the recommendations related to the rights of detained persons, control over detention places, impunity of people committed tortures and the testimonies obtained with tortures<sup>16</sup>. The State did not reply to this request. In 2008 the Committee against Torture sent relevant reminder<sup>17</sup>.

In 2005 Committee on Human Rights recommended Tajikistan to submit within one year information on the implementation of the recommendations related to cruel treatment and tortures, equality and pleading requirement of the criminal process, conditions in the prisons and intimidation of the journalists<sup>18</sup>. Tajikistan provided relevant information on the activities on implementation of the recommendations<sup>19</sup>.

**Inconsistence of statistical information and lack of updated information** create obstacles for the expert working groups in both Commissions in using necessary information in the reports. In some cases the received information from the Agency on statistics under the President of Tajikistan doesn't comply with statistical information provided by the profile state agencies. Updated statistical information was provided only by few state bodies.

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<sup>16</sup> Final recommendations of the Committee against torture. Tajikistan. CAT/C/TJK/CO/1.

<sup>17</sup>

<http://www2.ohchr.org/english/bodies/cat/docs/followup/Tajikistanreminderfollowup.pdf>

<sup>18</sup> Final recommendations of the Committee on Human Rights. Tajikistan. CCPR/CO/84/TJK

<sup>19</sup> CCPR/C/TJK/CO/4/Add.1.

on UPR procedure. Around 50 representatives of NGOs, Mass Media and international organizations have attended this live broadcasting event.

For the time being the representatives of NGO are discussing the lobbying for the recommendations on UPR and the follow up monitoring of their implementation.

information, development of the recommendations and advocacy planning.

As a result of the coalition work there were prepared two consolidated reports: 1) on the implementation of civil and political rights by Tajikistan; 2) on the implementation of social and economic right by Tajikistan<sup>40</sup>.

NGO “Human Rights Center” prepared special report on the right of migrant workers and members of their families<sup>41</sup>.

In coordination with international NGO, Tajik NGOs took part in developing another two consolidated thematic reports<sup>42</sup>.

In April 2011 there was organized presentation of consolidated report of UN institutions in Tajikistan and the presentation of NGO consolidated reports. Upon the presentation of the NGO reports, official working group analyzed this information and invited the coalition members for the second meeting. During this meeting there was carefully discussed every article of the NGO report. It is necessary mentioning that such meetings do not imply any pressure on the NGOs. After these meetings the texts of the NGO reports did not change and was submitted on March 14, 2011 to the Secretariat of UN High Commissioner on Human Rights.

Promotion of the recommendations of the civil society took place in August-September 2011 in Geneva. The representatives of NGO coalition conducted meetings and briefings with 15 diplomatic missions.

On October 3, 2011, NGO “Bureau of Human Rights and Rule of Law” organized live broadcasting of the presentation of the Government of Tajikistan delegation in the Council of Human Rights

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<sup>40</sup> See:, JS2

<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TJ/JS2-JointSubmission2-eng.pdf>

<sup>41</sup> See:, Human Rights Center. Labor migration from Tajikistan

<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TJ/HRC-HumanRightsCentre-eng.pdf>

<sup>42</sup> See. JS3

<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TJ/JS3-JointSubmission3-eng.pdf>, and JS4

<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TJ/JS4-JointSubmission4-eng.pdf>

#### **4.2. NGO ACTIVITIES ON ALTERNATIVE REPORT WRITING.**

**Non-governmental organizations are actively involved in preparation and submission of the national reports**, as well as consolidating efforts in development of the alternative reports to the Committee on Human Rights.

In accordance with the regulations of both Commissions, they included the representatives of the nongovernmental organizations. On March 30, 2010 NGOs were excluded from participation in Commission on implementation of the international obligations in Human Rights sphere. Until that time the following NGOs took active part in the work of this Commission: “Society and law” and Republican Collegium of Advocates. However up to date the representatives of NGO officially are not the members of the Commission, the representatives of most active profile NGOs are involved in to the expert working groups. Responsible secretary of the Commission during creation of the expert working groups conduct consultations with NGOs and define two NGOs for inclusion into the expert working group. However **absence of the formally approved participation of the NGOs in the expert working groups put them in depend position from the decisions of the state officials.**

NGO participation in the meetings of the Commission on implementation of the international obligations<sup>20</sup> changed over the time. In the beginning NGOs took an active part in all meetings of the Commission. After the rotation of the head of the Commission, NGOs were not invited to the meetings. During last few years (i.e. since 2011) there were almost no invitations to the meetings of the Commission (author’s note: most probably due to new regulation on the Commission that excluded the NGOs from the membership in the Commission).

NGOs members of the Commission have actively discussed the drafts of the reports presented at the meetings of the Commission. Later on the practice changes and the approval process became formal.

Members of the Commission on the Rights of the Child at the current moment are the NGOs “Nasli Navras” and “Child Rights Center” (author’s note: the most active NGOs working in the sphere of the rights of the child). During the elaboration of the second

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<sup>20</sup> Interview with Ms. Muattar Khaidarova, member of the Commission from NGO “Society and Law”

periodic report to the Committee on the Rights of the Child, besides the NGOs who officially are the members of the Commission there were other organizations also contributing to this report such as NGO "Health" and NGO "Sarchashma". These organizations took an active part in the working group meetings, participated in discussion on various issues. Information and statistical data provided by the NGOs were partially used in developing this report<sup>21</sup>.

Other form of NGO participation in the process of national treaty reporting is **discussion of the draft national reports**. As it was already stated the draft reports are submitted to the NGOs for their commentaries. NGOs may provide not only the commentaries but also different thematic researches and reports, that might be used in the national reports. NGOs also may provide the commentaries and suggestions during the working group meetings on discussion of the draft national reports.

Preparation and submission of **the alternative information** to the Committee on Human Rights is one of the activities of the NGOs in Tajikistan on protection of social interests. In Tajikistan there is a positive practice of developing alternative reports to the UN Committees. Almost in every case, the preparation of the report was done by the coalition (network, working groups) of the NGOs working on different parts of the same document. Usually the process of developing an alternative report starts in parallel with the national report writing or immediately after the submission of the national report to the relevant UN Committee. Besides the alternative reports the NGOs also submit the questions to the Committee on Human Rights which may go into the list of questions addressed to Tajikistan on various reports. NGOs analyze the existing information and if it is necessary, conduct additional monitoring of human rights on a certain issue. General coordination of work is carried out by one or two organizations. NGO representatives submit the reports to the Committees and also conduct side events with participation of the Committee members just before the official hearings of the national reports of Tajikistan. General issues related to all Coalitions are the lack of analytical capacities of the NGO representatives, lack of information about each other's activities and developed information analytical materials (results of the researches, reports). As the results of the

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<sup>21</sup> Interview with Mr. Furkat Lutfulloev, Social Policy reform and Child Protection Officer, UNICEF

process to come up with the initiatives and provide recommendations with regards to the content of the report. For period of 2010-2011 there were organized several meetings with NGOs to discuss the content of the report.

Upon the initiative of the state working group, the NGOs prepared list of questions for UPR that reflected all issues included into NGO report. Working group studied these questions and some issued were included into the national report and on some questions additional information was gathered for further communications and discussions.

On October 3-5, 2011 Tajikistan reported on Universal Periodic Review. Official tajik delegation consisted of 11 people, including the General Prosecutor, chairman of the Council of justice, Ombudsman of Tajikistan, chairmen of the Committee on Women and Family Affairs and Committee on religion, deputy minister of labor and deputy minister of internal affairs, representatives of MFA and Executive Administration of the President of Tajikistan. Council of Human Rights issued preliminary recommendations that were partially accepted by Tajikistan with regards to some recommendations the state decided to provide final response in March 2012.

Upon return of the official delegation, they conducted working group meeting with the representatives of international organizations and NGOs and discussed the results of the activities on UPR reporting. For the time being the working group conducts regular meetings to develop final position of the state on the final recommendations to Tajikistan. There is envisaged further discussion of the state position with the representatives of the civil society.

**NGO participation.** NGO coalition was established in May, 2010 for the purpose of preparation of the report. The Coalition included the members ... of the civil society organizations (NGOs, bar associations). There were created 13 thematic groups. In the frames of the coalition work there were identified experts to consult on the information collection process and analysis carried out by the thematic groups. NGO "Bureau of Human Rights and Rule of Law" played the role of the head of the Coalition and the expert support to thematic working groups was provided by Public Foundation "Notabene".

On December 2-3, 2010 the workshop was organized for the heads of the thematic groups on analysis of the collected

fighting corruption of the State Anti-corruption Agency.

25. Abdulloev F.U. – Senior inspector of the department of international cooperation and legal support of the Head office of Drug Control Agency under the President of Tajikistan.

Process of developing UPR report was similar to the work of the expert groups on the periodic treaty reporting to UN Committees on Human Rights. The representatives of the working groups from the ministries and agencies provided compilations of the necessary information for the report writing. There was also conducted analysis of the information provided in the national treaty reports to UN bodies and final recommendations of the UN Committees on Human Rights.

International organizations also provided support to the development of the report. Thus in May 2010 with support from UN OHCHR and OSI Tajikistan there was conducted introductory conference on UPR with participation of UN OHCHR (UPR department), representative of Russia in UN Council of Human Rights Mr. Chernikov and the representatives of NGOs from Kyrgyzstan. During the conference there was also presented the information on UPR procedures, organization of the state working group on elaboration of the report, procedures on submission of the report to the Council of Human Rights and the experience of some NGOs from the other countries on preparation of the alternative reports.

After that conference the work started on collection and analysis of the preliminary information necessary for UPR report, which continued from June until November 2010. In December 2012 with support from the regional UN OHCHR there was organized working meeting on UPR report writing. Mr. Chernikov – representative of Russia in the Council of Human Rights was invited to this working meeting. During two days meeting the working group actively worked on the draft report.

In February 2011 with support from the Government of Switzerland in the frames of the Human Rights dialogue there was organized introductory visit of the official state delegation and NGO representatives to the meeting of the Council of Human Rights on UPR procedure. It allowed understanding better the planning process for the presentation of the report in October 2011.

From the beginning the state bodies understood that NGO may be a good source of information in order to identify the key problems in the Human Rights sphere. Thus the report writing process was quite transparent and the NGOs were able at any stage of the

problem analysis in preparation of the reports and after that, many organizations creating formal coalitions for constant cooperation and exchange of the experience on particular human rights issues or target groups.

*Working group on NGO shadow report writing on implementation of ICCPR and CAT obligations by Tajikistan.* The activities on the report writing to these two UN bodies started long time before the official hearings of the reports in the Committee on Human Rights (in 2003). First of all the work started on developing ICCPR report. There were conducted meetings amongst the NGOs explaining goals and objective of submission of the reports to UN bodies. In the result an active group for work on the report writing was formed out of 3 organizations: Bureau of Human Rights, Center on Human Rights and Bar Association of Sugd oblast. These organizations concluded memorandum of cooperation with the Swiss Cooperation office in Tajikistan that provided technical support to the working group.

The working group analyzed all available information, planned several small thematic monitoring of Human Rights, such as freedom of expression, rights of detained people, freedom of religion, etc. The working group, depending on specialization of different NGOs, also involved other organization in research activities. For example, the organization "NANSMIT" was proposed to conduct monitoring of the situation with regards to freedom of Mass Media in Tajikistan and the Bar Association of Sugd oblast conducted interview amongst the lawyers on the issues of criminal justice and freedom from tortures.

The organization Freedom House, which was active in Tajikistan sometime ago, there was established parallel NGO working group that also collected data for the alternative report on ICCPR. As the result, the information from both groups was summarized and included in the unified NGO report. In total there were 8 NGOs, Bar Association of Sugd oblast and practicing lawyers working on the report writing. The organization of the NGO group visit to Geneva for the meeting with the members of UN Committee on Human Rights was carried out by the International Human Rights League. This organization also organized many meetings of the tajik human rights activists with the secretariats of the Special Procedures of the Human Rights Council, as well as with the international organizations working in Geneva.

Information related to the article 7 (freedom from tortures), article 9 (personal immunity), article 10 (humane treatment) and article 14 (right to fair trial) of ICCPR was updated and included into the shadow report on Convention against tortures. This report was prepared together with the international organization OMCT that organized visit of the working group representatives to Geneva and the meetings with the members of Committee against tortures.

Upon receipt of the final recommendations from the Committee on Human Rights, the representatives of the working group organized meeting with the journalists in Dushanbe with participation of the representatives from the official delegation of Tajikistan as well as disseminated information in Mass Media.

*NGO coalition on NGO "shadow" report on the implementation of CEDAW obligations by Tajikistan*<sup>22</sup>. In 2005 an initiative group of several NGOs decided to start working on the shadow report writing to the Committee on the Elimination of all forms of discrimination against women. With this regards the round tables were conducted in all regions of the country with participation of public associations working on prevention of violence against women. As soon as the draft shadow report was developed, it was disseminated amongst the NGOs and the public hearing was held with participation of 103 non-governmental organizations from all over the country. 25 non-governmental organizations took the most active part in developing this shadow report.

NGOs also took an active part in developing list of questions to the state that were included into the official list of questions of the Committee on Human Rights, addressed to the official delegation during the hearings of the preliminary report.

During the report writing the initiative group cooperated with the organization Pacific Asia (Malaysia), which is specialized on assistance to the civil society in preparation of the shadow reports to the Committee.

The representatives of the initiative group also participated in the 37<sup>th</sup> session of the Committee on the Elimination of all forms of discrimination against women that was held in New York (USA) at the hearings of the first national report of Tajikistan on implementation of CEDAW obligations. The side events were conducted with the Committee members, who listened to the position

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<sup>22</sup> Information provided by the director of Public Association "Panorama", Ms. Tatiana Bozrikova.

- Affairs, Sport and Tourism under the President of Tajikistan  
8. Azimov Sh.Sh. – Justice of Supreme Court of Tajikistan  
9. Khalifazoda M. Kh. – Head of the department on supervision over the internal affairs bodies and drug control of the General Prosecutor office of Tajikistan  
10. Rajabov A.A. – Head of department on court management of the Council of justice of Tajikistan  
11. Khakimov A.Kh. – Head of department of international-legal relations of the Ministry of justice of Tajikistan  
12. Mahmudov M.M. – first secretary of treaty-legal department of MFA of Tajikistan  
13. Badriddinova R.Kh. – head of the department on protection of civil and political rights of the Ombudsman office of Tajikistan  
14. Nasibov O.N. – Head of legal department of Human Resource unit of the Ministry of labor and social protection of the population of Tajikistan  
15. Saidmurodov B. – Head of legal department of the Ministry of finance of Tajikistan  
16. Khalimov M.A. – Head of legal department of Migration service under the Government of Tajikistan  
17. Barotov M.Kh. – Head of legal department and international relations of the State Committee on national security of Tajikistan.  
18. Shokirova M.S. – Head of the department on gender development and international relations of the Committee on Women and Family Affairs under the Government of Tajikistan  
19. Otobaeva L.O. – Head of international law department of the Ministry of Internal Affairs of Tajikistan  
20. Umarov S. – Senior specialist of the Department of Printing and Mass Media of the Ministry of culture of Tajikistan.  
21. Makhkamboeva T.M. – Senior specialist of the Department of legal support of the Ministry of economic development and trade of Tajikistan  
22. Barotova G. – Senior specialist of the legal department and case management of the Ministry of education of Tajikistan.  
23. Khojaev T.Sh. – Senior specialist of the department of registration, legal support and case management of the Committee on television and radio broadcasting under the Government of Tajikistan.  
24. Abdulloev A.A. – Senior inspector of the department on



## CHAPTER 6. UNIVERSAL PERIODIC REVIEW.

According to the calendar of the first round of UPR cycle (2008-2011) the Republic of Tajikistan had to submit the first report in accordance with this procedure in October, 2011.

Discussion on the preparation of the report on UPR procedure started in the beginning of 2010. In January 2010, the representatives of the Department of the constitutional guarantees and the Ombudsman office in Tajikistan conducted a consultative meeting with the civil society members (NGO “Bureau of Human Rights and Rule of Law” and PF “Notabene”) and the international organizations (UN OHCHR, OSI Tajikistan, Helvetas). At this meeting there were discussed the issues of support to the government working group in preparing UPR report. Tajikistan as some other countries was going through this procedure for the first time and didn't have previous experience in developing a consolidated Human Rights report. At the working meeting there was discussed the issue of first meeting (conference) to start working on the report writing.

Working group on UPR report was created and approved in October 1, 2011 by the Commission under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere. The head of the working group is the state advisor to the President of Tajikistan on legal policy Mr. Jumahon Davlatov. The members of the working group are the following:

1. Davlatov J. M. – State advisor to the President of Tajikistan on legal policy (head of the working group)
2. Ashurov M.K. – Head of the department of the constitutional guarantees of citizens rights of the Executive administration of the President of Tajikistan (deputy head of the working group)
3. Kodirov Kh. Kh. – Senior specialist of the department of the constitutional guarantees of citizens rights of the Executive administration of the President of Tajikistan (secretary of the working group)
4. Fathudinov V. – Deputy Chairman of Supreme Economic Court of Tajikistan
5. Rahmonov S.B. – Deputy minister of Public Health of Tajikistan
6. Muhtorov M. – Deputy Chairman of the Committee on Religion under the President of Tajikistan
7. Muinova M. – Deputy Chairman of the Committee on Youth

of NGO with regards to the situation with violence against women in Tajikistan and asked various questions on the issues of their particular concern.

Upon the hearings of the first report, during the round table in Dushanbe it was decided to create NGO coalition “From equality de jure to equality de facto” that was established without registration as a legal entity. Main goal of the Coalition is to monitor the implementation of the final recommendations of the Committee on the Elimination of all forms of discrimination against women.

Taking into account that for the time being the next national report is in the process of finalization, the Coalition started working on developing their shadow report.

NGO coalition on preparation of the “shadow” report on the implementation of the Convention on the Rights of the Child<sup>23</sup>. Second national report of Tajikistan on the implementation of the Convention on the Rights of the Child was developed in 2008. Upon introduction with the national report, the NGOs of Tajikistan specialized in the sphere of Child Rights started developing an alternative report. Coordination of the activities of the Coalition was done by NGO “Bureau of Human Rights and Rule of Law” (hereinafter Bureau of Human Rights). There were organized visits to the regions of Tajikistan and conducted meetings with the NGOs where the information about goals and necessity of the “shadow” reports was discussed.

Representatives of 18 NGOs attended a special workshop on “controlling mechanisms of UN treaty bodies”. During the meeting of the Coalition members the topics (content) were selected for the report and the working groups created to work on various thematic issues. Overall final alternative (“shadow”) report was summarized and developed by Bureau of Human Rights with active support from NGO “Sarchashma” and NGO “Nasli Navras”.

While developing the report the coordinators of the working groups highlighted weak analytical capacities of the NGO

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<sup>23</sup> Interview with Nargis Karimova, project coordinator on juvenile justice, UNICEF and Galina Derevenchenko, expert of public foundation “Nota Bene” (ex coordinators of the NGO coalition on “shadow” report on Convention on the Rights of the Child).

representatives, lack of analytical skills, outdated information provided by NGOs, referrals to the outdated and ineffective laws.

In comparison to other Committees the Committee on the Rights of the Child has official meeting with the representatives of NGOs three months before the state report hearings. On October 5, 2009 there was conducted pre-session meeting in Geneva of UN Committee on the Rights of the Child with the representatives of Tajik civil society. The main goal of this meeting was to obtain more detailed information on the observation of the child rights in Tajikistan and developing list of the questions to the state. NGO group on the right of the child provided assistance in organizing this pre-session meeting with the Committee.

*Preparation of alternative NGO report on the implementation of the International Covenant on Social, Economic and Cultural Rights*<sup>24</sup>. Preparation of the alternative report to the Committee on social, economic and cultural rights was quite different from the ordinary system of cooperation of NGOs working on alternative reporting. This is due to the fact that Bureau of Human Rights and Rule of Law at that time already had experience in developing two alternative reports but has never specialized on the social and economic rights and did not intend to write the report on this topic. However upon the request from OHCHR, Bureau of Human Rights and Rule of Law made a decision to start working on the report. Due to very strict time limits in preparation of the report, there was no coalition established and the draft report was not discussed, etc.

UN Tajikistan Office on Peace building (UNTOP) presented a list of 12 NGOs who apparently were ready to participate in developing the alternative report. Representative of Bureau on Human Rights Ms. Galina Derevenchenko, as the coordinator of this work, has contacted these organizations. However almost all organization refused from active participation and only agreed to provide information that was needed for the report (in accordance to the spheres of their work).

In the beginning the basis for the report were the questions of the Committee to the Government of Tajikistan. There was identified circle of organizations (international and local) having necessary information, was done Mass Media analysis and other sources of information were identified. Available information was collected for

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<sup>24</sup> From the interview with Ms. Galina Derevenchenko, expert of Public Foundation "Notabene", author of NGO report on ICESCR

head of the Executive Administration of the President of Tajikistan Mr. Davlatov M. The reply mentions that "in accordance with p.1 art. 4 of the Optional Protocol to ICCPR, the state did not receive any notifications from UN Committee on Human Rights on this issue before December, 2009. The State found out about the request dated June 2005 and further reminders from October 2006, March 2008 and February 2009 only from the official Recommendations of the UN Committee on Human Rights received on December 27, 2009"<sup>39</sup>.

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<sup>39</sup> See also, page 39-40

authors of some complaints, which have been already reviewed by the UN Committee.<sup>37</sup>

**Case of Boimurodov vs. Tajikistan.** The recommendations of UN Committee on Human Rights were issued in November 16, 2005. Boimurodov is serving sentence in the closed correctional institution convicted for the criminal violations. Upon review of this communication the UN Committee sent the letters and appeals to different national judicial and non judicial bodies on the implementation of the UN Committee's recommendations. However the appeals to the General Prosecutor Office and Supreme Court of Tajikistan were useless, as these agencies stated that this case was considered objectively and there are no reasons for appeals and reconsideration of this particular case. Furthermore after the receipt of the recommendations of the UN Committee the situation of Mr. Boimurodov in the correction institution became worse. Upon decision of the I.Somoni district court Mr. Mustafakul Boimurodov was transferred from the correctional institution of strict regime into the prison facility. He has reported to be a subject of violence in the colony several times.<sup>38</sup>

**Nadezhda Kirpo vs. Tajikistan.** Recommendations of UN Committee were issued in October 27, 2009.

Upon receipt of the UN Committee recommendations, the relevant appeals have been made to the Supreme Court of Tajikistan, General Prosecutor Office, Ombudsman Office and Department of Constitutional guarantees of citizens' rights under Executive Administration of the President of Tajikistan with requests to enforce the recommendations of the UN Committee. In the reply of the Supreme Court of Tajikistan from February 17, 2010, №6-40/10, the Court states that "the arguments that the convicted Kirpo P.E. gave evidences under compulsion do not correspond to the real facts mentioned in the case materials". General Prosecutor Office also provided reply №13-4-10, dated 29.01.2010, where it says "that the court verdict was made in accordance with law and there is no basis for supervisory appeal".

On the appeal of Ms. Kirpo to the Executive Administration of the President of Tajikistan, there was received a reply signed by the

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<sup>37</sup> See. Research "Practice of implementation of the Recommendations of UN Committee on Human Rights in Tajikistan". UN OHCHR, Dushanbe - 2010.

<sup>38</sup> See also, page 39

the report such as: monitoring reports, legislation analysis, practical reviews and reports, etc. This information was processed, analyzed and included into the report. The state programs, plans and concepts that somehow related to the social, economic and cultural rights were also collected and analyzed. Information on the problems of the implementation of these documents was also included into the final report.

After the presentation of alternative and national reports and return from Geneva to Dushanbe, there was written an article that was published in printing and electronic Mass Media outlets. In several months the Committee published their recommendations that were translated into Russian. There was organized round table "Tajikistan: the implementation of the recommendations of UN Committee on Economic, Social and Cultural Rights". Representative of state bodies, NGOs and Mass Media took part in the work of this round table. The reports and the recommendation were published and disseminated. These materials are published also at the website of Bureau of Human Rights and Rule of Law<sup>25</sup>.

*Development of alternative NGO report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.* NGO Coalition was created for the preparation to the report writing out of the organizations specialized in protection of the migrants' rights and prevention of human trafficking. Taking into account the fact that the report will contain information on the rights of labor migrants from Tajikistan working in Russian Federation, the Coalition also include NGOs from Russia working with labor migrants rights. Human Rights Center is coordinating the activities of the Coalition. Human Rights Center conducted special trainings for the Coalition members on the rights of labor migrants in accordance with ICPRM and Members of their Families, mechanisms of submission of the alternative reports and advocacy on the recommendations. There were conducted several working meetings with participation of Russian NGOs to define the report content. Additional monitoring and researches were carried out in this sphere. Coalition also prepared the list of questions for the Committee on the rights of labor migrants and many of them were included in to the official list of questions to the Government of Tajikistan, which was developed by the Committee.

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<sup>25</sup> See: <http://www.humanrts.tj/ru/index/index/pageId/17/>

For the time being the work on alternative report in at the final stage of development.

*Coalition of Tajik NGOs against torture.* For the time being preparation of the alternative NGO report on Convention against torture is one of the activities of the Coalition against torture that was created in 2010. Coalition developed and adopted the Strategy of Tajik NGOs on fighting against torture and impunity. Within the Coalition there is working group, which is collecting information and conducting certain Human Rights monitoring necessary for the preparation of the alternative report.

relevant and no procedural violations occurred on this case". However the state-member declared that it proved the legitimacy of court process in the answers submitted to UN Committee on Human Rights<sup>33</sup>.

On this case, Special Rapporteur received the answer from the author of the complaint and forwarded it for commentaries to the member state. According to the opinion of the Special Rapporteur there is ongoing dialogue on the follow-up activities<sup>34</sup>.

On the case of Dunaev against Tajikistan, dated October 22, 2010, the author of communication asked the Committee with regards to the member state responsibility to provide any information on the implementation of the Recommendations of UN Committees and appealed to the UN Committee to remind the member state about international obligations on ICCPR. The request of the author was forwarded to the member state for the commentaries on November 22, 2010. The Member State was also **reminded about necessity to provide feed-back on the Recommendations of the UN Committee**<sup>35</sup>.

Thus in response to the Considerations of the UN Committee on Human Rights on the cases of Idiev vs. Tajikistan (1276/2004), Sattorov vs. Tajikistan (1200/2003), Saibibi Khuseinova and Pardahor Butaev vs. Tajikistan (1263/2004 and 1264/2004) the Member State denied the facts of any violations of rights and considered that the national courts have correctly assessed and applied the laws relevant to the case circumstances.<sup>36</sup> On some cases the Special Rapporteur considers the responses from the state as unsatisfactory and continues further dialogue on the follow-up activities.

Within the research "Practice of implementation of the Recommendations of UN Committee on Human Rights in the Republic of Tajikistan" there were carried out interviews with the

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<sup>33</sup> The same.

<sup>34</sup> Report on the follow up activities of the UN Committee on Human Rights with regards to the individual complaints, May 25, 2011, CCPR/C/101/3

<sup>35</sup> See also

<sup>36</sup> Report on the follow up activities of the UN Committee on Human Rights with regards to the individual complaints. CCPR

In order to monitor the implementation of the obligations on the Optional Protocol to ICCPR by the Member States starting from 2007 UN Committee on Human Rights appoints the **Special Rapporteur on the follow up activities of the UN Committee on Human Rights (hereinafter: Special Rapporteur)**. For the time being all the recommendations made by the Committee on Human Rights are under control of the Special Rapporteur and the relevant communication is conducted (see the table...). Special Rapporteur in the annual reports for 2010 – 2011 raised the issue of non implementation of the recommendations of UN Committee on Human Rights by Tajikistan.

On the cases of *Idiev vs. Tajikistan* and *Sattorov vs. Tajikistan*, the Special Rapporteur applied to the Government of Tajikistan asking to provide information on implementation of the recommendations of UN Committee on Human Rights. Answering this request in October 2009, Tajikistan officially denied fact of violations of any rights of the author and considers that the national courts issues correct legal opinion on the content of these cases. Mentioning that Tajikistan did not implement the recommendations, UN Committee asked the Special Rapporteur to organized meeting with the representatives of the Government of Tajikistan<sup>31</sup>.

On the case of *Kirpo against Tajikistan*, in the answer dated April 21, 2010 the state questioned the fact of violation of the author's rights, envisaged in ICCPR. The State questions the recommendation made by UN Committee with regards to admissibility and content and declares absence of any official contacts with UN Committee. The State claims not receiving any verbal notes mentioned in the Recommendations of UN Committee.<sup>32</sup>

On the case of *Khostikoev against Tajikistan*, the state-member questions the recommendations, saying that the recommendations do not consider the comments of the member state. The State refers to the statement of UN Committee that the member state "didn't disprove the facts but just mentioned that all court decisions are

<sup>31</sup> Report on the follow up activities of the UN Committee on Human Rights with regards to the individual complaints, May 21, 2010, CCPR/C/98/3

<sup>32</sup> Report on the follow up activities of the UN Committee on Human Rights with regards to the individual complaints, January 5, 2011, CCPR/C/100/3

## CHAPTER 5. UN TREATY BODIES: INDIVIDUAL COMMUNICATIONS IN ACCORDANCE WITH THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

Tajikistan is the member of the Optional Protocol to ICCPR since April 3, 1999.

In January 2000 the first individual communications was submitted to the Committee on Human Rights in accordance with the Optional Protocol to ICCPR (case of *Mr. Saidov vs. Tajikistan*). On this case the Special Rapporteur on the new complaints sent a request to the state to take the preliminary protection measures in accordance with the rule # 86 of the Committee procedures. In the annual report the Committee mentioned "With regards to the case № 964/2001 (*Mr. Saidov vs. Tajikistan*) the Special Rapporteur on the new complaints made decision in accordance with the rule # 86 to request the state to postpone the death penalty execution, the request was submitted on January 12, 2001. However, later on the Committee found out that Mr. Saidov was executed in April 4, 2001. In the letter dated June 19, 2001, which was sent to the permanent representative of Tajikistan in United Nations Organization, the Chairman of the Committee expressed deep regret with regards to the death penalty execution. This question was discussed at the seventy second session of the Committee and a verbal note was submitted to the Member State with request to provide the following information: a) what measures have been take to implement the requests of the Committee to postpone the death penalty in accordance with the rule #86; b) what are the grounds of the state decision not to postpone the execution despite the request of the Committee; c) what measures are taken by the state-member to observe the implementation of further possible requests in accordance with the rule #86"<sup>26</sup>.

As of May 01, 2011, UN Committee on Human Rights registered 29 individual complaints and issued 22 considerations of UN Committee on Human Rights with regards to Tajikistan (around 20

<sup>26</sup> Report of the Committee on Human Rights for 2000 and first half of 2001. A/56/40 (Vol. I)

considerations on 22 complaints). In general UN Committee on Human Rights acknowledged violations with regards to 27 citizens of the Republic of Tajikistan. In two considerations UN Committee on Human Rights noted that there were no violations of the rights envisaged in ICCPR (case of Minboev vs. Tajikistan and case of R.A vs. Tajikistan)

Case analysis, of the cases on which UN Committee on Human Rights already issued the considerations, showed that on 11 considerations the state-member did not provide any relevant responses. In 3 cases the UN Committee asked to postpone death penalty execution until further consideration on admissibility (6 months), however the state ignored these requests and the persons convicted to death penalty have been executed. On 7 cases the State provided the responses on the content of the considered individual communication (see Annex 1 to the present report.)

In general while considering the individual complaints with regards to the Republic of Tajikistan, the Committee on Human Rights acknowledged the following violations of rights envisaged in ICCPR:

- ▶ Death penalty sentencing with violation of the right to fair trial;
- ▶ Tortures and cruel treatment (as with regards to the victims and their relatives);
- ▶ Detention conditions;
- ▶ Right to freedom and personal immunity (illegal and frivolous arrests, legitimacy and justification of detention, etc.);
- ▶ Different aspects of fair court trial.

Committee on Human Rights while considering the individual complaints also issues the recommendations including legal protection instruments. Structure of the legal protection is following:

- Measures of individual nature: for example, compensation, damage reimbursement, restoration in election lists, family reunion, publication of a retraction in Mass Media, etc.
- General measures on unacceptability of the repeated violations: legislation changes, institutional changes, reforms.
- Legal measures: investigation, punishment, retrial, etc.

Depending on the types of the recommended protection measures the state shall develop the mechanisms on its implementation by different power branches: legislative, executive and judicial.

violation of the article 7 shall be investigated by the Member States immediately and impartially<sup>29</sup>. In this case the member state did not provide any detailed information on court hearings or any other information disproving the accusations of the author of the complaint or any information that is demonstrating adequate investigation of the facts described in the complaint. In this situation the statement of the author shall be considered as quite weighty and according to the UN Committee opinion the facts mentioned by the author indicate on the violations of the rights of her son as described in the article 7 and para 3 g) of the article 14 of ICCPR”.

It is necessary to mention that **none of the recommendations** made by the UN Committee on Human Rights on individual communications **have been implemented by the state**. It was also noted by UN Committee on Human Rights during consideration of the first treaty report on the implementation of ICCPR treaty obligations by Tajikistan. In its’ final conclusions the UN Committee “reminds that at least in two cases the Member State carried out death penalty executions, despite the fact that these cases were under consideration in UN Committee on Human Rights in accordance with Optional Protocol to ICCPR and the member state was requested to apply temporary protection measures. UN Committee also reminds that by joining the Optional protocol, the member state recognized the competence of UN Committee to take and consider the complaints of people living under the state jurisdiction. Non implementation of the UN Committee requests related to temporary measures is a serious violation of the obligations on ICCPR and the Optional protocol“. UN Committee recommended Tajikistan “to observe fully the obligations under ICCPR and the Optional Protocol in accordance with the principle of pacta sunt servanda and take necessary measures to prevent further violations in the future“<sup>30</sup>.

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<sup>29</sup> General commentaries to the article 7, № 20 [44], adopted in April 3, 1992, para. 14.

<sup>30</sup> Final commentaries of the UN Committee on Human Rights.

or relevant medical certificates.

... UN Committee is taking into consideration the fact that the member state despite the given opportunity did not provide any arguments supported by the relevant documents, disproving very reasonable statements of the authors, that their sons have been forced to confess guilt. Taking into account this situation, UN Committee considers that the available facts indicate violation of the article 7 (torture), that shall be considered together with the paragraph 3 g) (not to be compelled to testify against himself or to confess guilt) of the article 14 of ICCPR.”

On the case of Sattorov against Tajikistan<sup>28</sup>, the member state provided the comments on May 4, 2004. The state provides detailed factual information of the Supreme Court and General Prosecutor office of Tajikistan related to several crimes, including armed robbery, assault and battery; murder and hostage taking that were committed during period from February 1997 to August 1999 by the military group with participation of Mr. Sattorov.

«Member State informs that it doesn't have any information about any illegal investigation methods applied against the supposed victim. At the stage of preliminary investigation or in court neither the son of the author nor his defense lawyer did not make any statements about tortures or any other illegal investigation methods.» Furthermore, the state controversially noted that “according to the information received from the Supreme Court of Tajikistan, the statement that the son of the author was tortured and illegal investigation methods have been applied against him are absolutely groundless and do not have any evidences, as well as it was not proved during court hearings in the Supreme Court of Tajikistan. This case was considered in appeals instance of the Supreme Court on January 28, 2003 and the sentence to Mr. Sattorov was confirmed”.

In the consideration the UN Committee mentions that “the Member State did not provide any additional explanations and just answered that the son of the author was not tortured and neither he or his lawyer complained about application of torture or ill treatment.

... UN Committee reminded that the complaints on ill treatment in

Committee on Human Rights while considering the individual complaints against Tajikistan have issued the following recommendations on applying the protection measures:

▶ Individual protection measures: to pay reasonable compensation (all cases), immediate release from detention (Ms. Sharifova, Mr. Rakhmatov, etc.), provide information about burial place of the relatives (brothers Nazriev, Ms. Khalilova).

▶ General measures on prevention of repetitive violations: prevention of such violations in the future (all cases).

▶ Legal measures: Immediate release or review of the court trial with all guarantees envisaged in ICCPR (Mr. Ashurov, Mr. Sattorov, Mr. Iskandarov), initiate a criminal case on the fact of cruel treatment (Mr. Sattorov).

**Legislation** of the Republic of Tajikistan does not envisage any direct mechanisms on the implementation of the recommendations of the Committee on Human Rights. At the same time the existing legal norms allow implementing the Recommendations of the Committee on Human Rights without any problems.

As it was already mentioned in the chapter 2 of the present research, the Regulation of the Commission under the Government of Tajikistan on the implementation of the international obligations in the Human Rights sphere envisages only general framework of the Commission, as well as regulates issues of participation in communication with UN bodies. At the same time it doesn't envisage the responsibility and implementation mechanisms for the recommendations of the Committee on Human Rights with regards to the individual complaints.

Procedural legislation do not envisage the questions of court case review upon the recommendations of the Committee on Human Rights, and such review might be carried out through appeal process and re-opening of a case in exercise of supervisory power, which is based on possible new circumstances (newly discovered facts), such as the violations envisaged in ICCPR and acknowledged by the Committee on Human Rights.

Norms of the Criminal Procedure Code may be used for adoption of the legal protection measures recommended by the Committee on Human Rights (for example: investigation of torture facts or death of a victim). Prosecutor bodies may initiate an investigation on the fact of tortures, as indicated in the recommendations of the Committee on Human Rights.

<sup>28</sup> Sattarov vs. Tajikistan CCPR/C/95/D/1200/2003 22 April 2009

The **main state bodies** responsible for communication with UN Committee on Human Rights are the Ministry of Foreign Affairs of the Republic of Tajikistan and Department of constitutional guarantees (Secretariat of Tajikistan Government Commission on the implementation of the international obligations in the Human Rights sphere).

**Ministry of Foreign Affairs of the Republic of Tajikistan** is responsible for coordination of communication between the Republic of Tajikistan the UN Committee on Human Rights. Copies of the individual complaints, as well as the protests of the UN Committee on Human Rights are submitted to the representative office of the Republic of Tajikistan under UN office in Geneva that in return should immediately submit these documents to the Ministry of Foreign Affairs of Tajikistan. Ministry of Foreign Affairs of Tajikistan is registering all received notes and forward them to the Secretariat of Government Commission on implementation of international obligations or directly to the relevant state bodies (Supreme Court of Tajikistan, General Prosecutor office, etc.) Ministry of Foreign Affairs verifies the content of the responses from the state bodies and forwards the verbal notes to UN Committee on Human Rights.

**Department of constitutional guarantees of citizens' rights of the Executive Administration of the President of Tajikistan** is implementing orders from the Ministry of Foreign Affairs of Tajikistan on communication with UN Committee on Human Rights. The requests of the UN Committee on Human Rights are forwarded with the letter to Supreme Court of Tajikistan, General Prosecutor office and other relevant state bodies and the responses from these agencies with commentaries are collected by the Ministry of Foreign Affairs of Tajikistan.

**International Department of the General Prosecutor Office of the Republic of Tajikistan** studies and prepares the responses to the letters from MFA or Commission Secretariat verifying the facts mentioned in the individual complaints submitted to UN Committee on Human Rights. General Prosecutor office is requesting case materials, study the cases and prepare necessary responses for the Ministry of Foreign Affairs or Commission Secretariat. Very often General Prosecutor office is denying all arguments of the complaints' authors, based only on verification of the case materials.

**International department of the Council of justice of the Republic of Tajikistan** is also taking part in preparation of the

responses to the UN Committee on Human Rights on the cases, to which the state makes it response.

One of the problems faced by the state bodies is **the timely communication** with UN Committee on Human Rights (letters, requests). Despite the fact that coordination of implementation of international obligations including the individual complaints is the responsibility of the Department of the Constitutional guarantees, not always communication of the UN Committee on Human Rights is provided directly to the Department. In some cases the letters from UN Committee on individual complaints are forwarded to Supreme Court of Tajikistan and/or General Prosecutor office. Thus the state bodies have some fragmented information (on some cases) on a certain category of cases. There are no any state bodies in the Republic of Tajikistan with overall accurate statistical data neither on ongoing individual complaints nor on the issues considerations of the UN Committee on Human Rights.

In those cases, when the state responded to communication of UN Committee on Human Rights on the issues of admissibility and relevant to the content, **the state only studied the materials of criminal cases**, without doing proper analysis of appeals on violations of the rights envisaged in ICCPR.

Thus, on the case of Khuseinov and Butaev vs. Tajikistan<sup>27</sup>, dated April 14, 2006, the member state forwarded to UN Committee the report of the General Prosecutor of Tajikistan, dated March 28, 2006 and the letter of the first deputy chairman of Supreme Court of Tajikistan, dated March 31, 2006. ... The report conclusions mentions that the court verdict against Mr. Khuseinov is relevant to the crime committed by him and there are no reasons for re-opening this case in exercise of supervisory power.

... With regards to the applied torture to the sons of the complaint author, the UN Committee thinks that... "the member state couldn't demonstrate that the state agencies took adequate measure with regards to the author's statement about torture, as well as the member state didn't provide any documents of internal investigations

<sup>27</sup> Saibibi Khuseinova (1263/2004) and Pardakhon Butaeva (1264/2004) vs. Tajikistan. CCPR/C/94/D/1263-1264/2004, 30 October 2008