

Tajikistan: Joint Coalition NGO submission to the United Nations Committee on Economic, Social and Cultural Rights ahead of the 72nd Session

Non-discrimination, vulnerable groups (women, LGBT people, persons with disabilities, persons living with HIV, homeless and stateless people)

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Joint NGO submission: International Partnership for Human Rights, Notabene, Human Rights Center, League of women with disabilities “Ishtirok”, Association of Parents of Disabled Children, NGO Law and Prosperity, NGO Diyor

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Table of contents

Introduction	3
Non-discrimination, vulnerable groups	3
WOMEN	3
Domestic Violence	3
Sexual harassment	5
Banned from wearing the hijab and recommendations on what to wear	5
Right to work	6
Polygamy and early marriages	6
LGBT PEOPLE	6
Trans people	7
PERSONS WITH DISABILITIES	8
Domestic legislation, strategies and “invalidity” definition	8
Allegations of abuse in semi-closed institutions	9
Physical barriers to accessing rights	9
Rights to work, education and health	9
PERSONS LIVING WITH HIV	10
STATISTICS	10
LEGISLATION, GOVERNMENT PROGRAMMES AND ACTION PLANS	10
VIOLATIONS OF THE RIGHT TO PRIVATE LIFE IN LAW AND PRACTICE	11
RIGHT TO WORK	12
RIGHT TO EDUCATION	12
RIGHT TO HEALTH	12
HOMELESS PEOPLE	13
STATELESS PEOPLE	13
Suggested recommendations to the authorities of Tajikistan	14

Introduction

This submission provides information on the observance of economic and social rights in Tajikistan since the Committee on Economic, Social and Cultural Rights last reviewed Tajikistan in 2015. The document focuses on **Articles 2, 3, 6, 7, 9, 11, 12 and 13** of the Covenant and highlights the situation of vulnerable groups such as women, LGBT, persons with disabilities, persons living with HIV, homeless and stateless people.

This submission was jointly prepared by the following NGOs: International Partnership for Human Rights, Notabene, Human Rights Center, League of women with disabilities "Ishtirok", Association of Parents of Disabled Children, NGO Law and Prosperity, NGO Diyor.

The Public Foundation Notabene coordinated the preparation of the submission and compiled the input of the participating organisations and experts and International Partnership for Human Rights provided assistance with finalising the report as part of an EU joint project with Notabene.

Non-discrimination, vulnerable groups

Article 17 of the Constitution of Tajikistan guarantees equality before the law regardless of race, sex, language, religion, political beliefs, education, social status or wealth, and **Article 143 of the Criminal Code** penalizes violations of the equality of citizens on certain discriminatory grounds. However, the Article is worded in a way that places the burden of proof on the victim and requires her or him to prove the "infliction of harm," a concept that is not defined by criminal law. This legislation does not cover types of **discrimination other than those specified and discrimination on the grounds of disability, sexual orientation, gender identity or age are not mentioned.**

The authors of this submission welcome the adoption of the **first-ever anti-discrimination legislation in Tajikistan**. The new Law on Equality and Prohibition of Discrimination was signed into force by President Emomali Rahmon on 19 July 2022. It provides for a broad concept of discrimination and an open list of prohibited grounds for discrimination including race, colour, origin, gender, language, religion and beliefs, national and (or) ethnic origin, disability, health status, age, nationality, opinion, property or other status. Furthermore, the law provides for the concept of direct and indirect discrimination, stalking, including sexual harassment as well as aggravating circumstances of discrimination such as multiple discrimination, repeated and prolonged discrimination. The adoption of the Law is a significant development in promoting equality in the legal system of Tajikistan. However, **sexual orientation and gender identity were excluded as grounds for discrimination from the draft law.**

Under Article 13 of the new Law, the **Commissioner for Human Rights in Tajikistan** (Ombudsperson) is responsible for ensuring equality and preventing discrimination.

Women

DOMESTIC VIOLENCE

Domestic violence (DV) against women is **widespread** in Tajikistan. The exact extent of DV in Tajikistan is difficult to assess due to the lack of comprehensive official statistics, but also to narrowly defined social roles and societal stigma which often prevent women from speaking out about abuse. According to the 2017 Tajikistan Demography and Health Study that was carried out by the Statistical Agency under the President of Tajikistan, only one in 10 women survivors of DV seek help from the authorities.¹

Whilst noting the positive steps taken by the government to combat DV such as the adoption of the Law on the Prevention of Violence in the Family in 2013, the State Action Plan for the Prevention of Family Violence 2014-2023, and the provision of some specialised police officers trained on issues of DV - this **progress is being undermined by remaining protection gaps in legislation, weaknesses in the criminal justice system and the failure of the authorities to address the widespread problem in a systematic manner.**

¹ <https://dhsprogram.com/pubs/pdf/FR341/FR341.pdf>

Failure to criminalise DV

DV is **not included as a separate offence in the Criminal Code**. This leaves DV victims to pursue criminal prosecutions under other Articles of the Criminal Code which do not reflect the nature of victim-perpetrator relationships in DV cases and the specific protection risks.

In the absence of a specific article on DV, victims who sustain minor injuries that are qualified under articles 113 and 116 of the Criminal Code (deliberate infliction of bodily injury and assault) have to **pursue complaints against the perpetrators in a private capacity** - without support from the law enforcement services - leaving them vulnerable to pressure from abusers or relatives not to press charges. This has resulted in ongoing impunity for perpetrators.²

In a welcome development, the **draft of the new Criminal Code contains an Article punishing DV**, including physical violence, isolation, intimidation, control and economic deprivation and neglect. However, the definition **fails to cover all types of violence** as recommended by the Committee against Torture and the Committee for the Elimination of Discrimination Against Women in their latest reviews of Tajikistan, notably psychological violence, marital rape and sexual assault.

Punishments foreseen in the draft Criminal Code include fines, correctional labour or up to 40 days' detention for an act incurring minor harm to another family member; or for up to three years in relation to several family members. If a perpetrator commits abuse whilst they have a restraining order against them; or against a pregnant woman, a minor, a vulnerable person or in the presence of a minor; or an act incurring average harm, these crimes are punishable by up to three years' imprisonment. Acts incurring grievous bodily harm, driving to suicide or acts of extreme cruelty are punishable by from two to five years' imprisonment. Acts entailing the death of two or more persons are punishable by from four to seven years' imprisonment. Other provisions of the Criminal Code also apply to DV, including articles 117 (ill-treatment) and 120 (death threats or grievous bodily harm), and are punishable with imprisonment of up to three years.

Article 354 of the **Criminal Procedure Code stipulates that a victim of DV is personally responsible for compiling evidence against the perpetrator**. At the same time most victims remain economically dependent and physically accessible to the perpetrator. The **Code of Administrative Offences** punishes violations of the legislation on the prevention of DV and violations of protective orders. However, domestic legislation fails to **provide effective protection for the victim as it only foresees fines for the abuser**.

Additional barriers to justice

Other obstacles to justice for victims of DV include **difficulties in accessing free-of-charge medical examinations**, and meeting evidentiary requirements that medical certificates have to document physical abuse thereby **excluding victims of economic and psychological abuse from pursuing criminal complaints**. There are **virtually no female forensic specialists**, although most victims are women and girls. Judges and police officers often **prioritise reconciliation over protection**; and **perpetrators** of DV regularly **benefit from amnesties**.

Impunity for perpetrators

Authorities rarely investigate allegations of DV, and rarely prosecute the alleged perpetrators. The Interior Ministry is authorised to issue administrative restraining orders, but in cases of DV police often issue only warnings, short-term detention, or fines for committing "administrative offences".³

In addition, the government **does not provide enough resources for the protection of survivors** of DV. Most victims, particularly in rural areas, do not have access to shelters, psychosocial, legal counselling and other services. There are only seven women's shelters in Tajikistan, which receive no government support. Crisis centres report that the **already critical situation further deteriorated during the COVID-19 pandemic**.⁴

2 <https://iphronline.org/wp-content/uploads/2017/03/ENG-Domestic-violence-in-Taj->

3 For further information, refer to: <https://www.iphronline.org/domestic-violence-tajikistan-time-right-wrongs-20170308.html>, <https://www.iphronline.org/wp-content/uploads/2021/09/UPR-Taj-torture-1.pdf>

4 <https://cabar.asia/ru/ubezhishha-dlya-zhertv-domashnego-nasiliya-v-dushanbe>

SEXUAL HARASSMENT

There are no comprehensive statistics on the prevalence of sexual harassment in Tajikistan, and no detailed analyses of investigations and court decisions. According to CSO observations, courts that consider sexual harassment cases usually sentence **perpetrators to administrative penalties** such as short-term detention, community service and fines.⁵ **Most victims of sexual harassment do not lodge complaints for fear of reprisals and public shame.**

Cases involving harassment can be qualified under various parts of the Criminal Code (e.g. Article 140, entitled “coercion to an act of a sexual nature”; or Article 134 in the section punishing crimes against personal freedom, honour and dignity or Article 237 in the section on public order and morality). Since most cases are investigated by men, **victims** often face prejudice and in order to **prove that sexual harassment or rape took place**, the victim has to prove that she resisted the aggressor, otherwise sexual intercourse is considered to be voluntary.

In September 2018, Dushanbe Mayor Rustam Emomali set up a working group under the city's Department of Internal Affairs, responsible for reviewing complaints from women about “indecent behaviour by men”. According to the Supreme Court, in the first half of 2019, Dushanbe courts considered 42 cases of sexual harassment, three of which were related to rape.⁶

In 2019, the Committee on Women and Family Affairs, which runs a call centre for victims of sexual harassment in the workplace offering victims legal and psychological support⁷, put forward a proposal to criminalise harassment which was supported by the Prosecutor General's Office and the Supreme Court. So far **draft amendments to the Criminal Code** are under discussion but they have not been shared with CSOs.

In a positive move, **sexual harassment and workplace harassment are reflected in Article 6 of the new Law on Equality and Prohibition of Discrimination**, which defines sexual harassment as any form of malicious and unpleasant verbal, non-verbal or physical conduct of a sexual nature intended to humiliate a person or create an intimidating, hostile, humiliating, degrading environment for that person. Article 19 provides for the right of **recourse to the courts**. Thus, victims of discrimination, including sexual harassment, may apply to the courts for compensation for material and moral damages. In addition, Article 20 of the Law provides for criminal and administrative offences relating to discrimination to be dealt with in accordance with the provisions of the legislation on criminal and administrative procedure. However, there is a lack of legislative regulation of this issue in both criminal and labour legislation, and a lack of practical protection for women.

BANNED FROM WEARING THE HIJAB AND RECOMMENDATIONS ON WHAT TO WEAR

In 2018, the Committee on Women and Family Affairs set up a commission tasked with drafting a bill banning hijabs in public and private institutions,⁸ which remains **under consideration at the time of writing**.

The **Ministry of Education** introduced a **dress code** in 2009,⁹ which **bans wearing the hijab in schools and government institutions**. Authorities allowed women to wear a traditional head covering – a scarf that covers hair but not the neck – at schools and universities. Parents and school officials appeared to accept this arrangement. A Ministry of Education decree issued in 2012 obliges all female teachers, university students, and schoolchildren to wear a traditional dress during the celebration of Nowruz.¹⁰

According to media reports, the Committee on Women and Family Affairs cooperated with the Interior Ministry in conducting regular **raids against women wearing the hijab in public**, threatening those who refused to remove their hijab with fines and six months' imprisonment.¹¹

5 <https://asiaplustj.info/ru/news/tajikistan/society/20191203/devushka-ya-bi-tebya-za-domogatelstva-v-tadzhikistane-predlagayut-vvesti-ugolovnoe-nakazanie>

6 <https://fergana.agency/news/112926/>

7 <https://www.asiaplustj.info/ru/news/tajikistan/society/20210118/moi-rebyonok-stal-zhertvoi-nasilija-kuda-mne-obratshatsya>

8 <https://cabar.asia/en/tajikistan-between-hijab-and-secularism>

9 <https://www.dw.com/ru/таджикских-преподавателей-обязали-соблюдать-дресс-код/a-4746471>

10 https://rus.ozodi.org/a/dress_code_tajikistan_education_system_/24490375.html

11 https://www.forum18.org/archive.php?article_id=2421

The government has long tried to curtail the influence of what it describes as “alien” culture, and outward signs of religious extremism. In 2018, the Ministry of Culture issued the 376-page **Guidebook to recommended outfits in Tajikistan** that details **what Tajik women and girls over the age of seven should wear** for different occasions.¹² The document is not law but **several government agencies have been tasked with enforcing compliance**. According to the document, neither mini skirts nor maxi dresses should be worn; hemlines should fall at least 15-20 centimetres below the knee and 20 centimetres above the ankle. Sleeves must not be shorter than 10 centimetres, and necklines must not drop below 15 cm in the front, and five in the back. In the period under review, local media reported about students, most of them female, who were not allowed to attend classes on the grounds of “improper appearance”.¹³

RIGHT TO WORK

Women are generally expected to occupy the **role of caregivers** for the household, children and other family members.

Article 216 of the Labour Code **prohibits the employment of women in arduous, underground or hazardous work**, thus depriving them of the right to choose their own employment. Jobs of this kind are better paid than the occupations in which women usually work. The state justifies this prohibition by the reproductive role of women, but these professions also have a negative impact on the reproductive health of men.

Girls face higher obstacles to accessing education than boys. This has **implications for the access of women and girls to the labour market**. Out of the total number of registered unemployed persons, at least 77 per cent lack education or vocational training skills, 17 per cent have completed secondary general education and 60 per cent have lower secondary education.¹⁴

Discrimination also affects women of retirement age, especially in the public sector. The retirement age for women is set at 58 and for men at 63. Many women receive a pension that is **lower than the subsistence minimum**.

POLYGAMY AND EARLY MARRIAGES

Although polygamy is prohibited, the practice is common. Early and unregistered marriages increase the vulnerability of women and girls and they exacerbate their economic dependence and isolation. The Family Code allows courts to reduce the legal age of marriage – 18 – by one year in exceptional cases, but does not stipulate the grounds for such decisions. In practice, courts take into account arguments like “difficult economic circumstances of the bride”, “love” or “pregnancy”.

The **law provides criminal penalties for the marriage of an underage girl** (articles 168 and 169 of the Criminal Code), which can punish her parents and guardians, religious officials and those who facilitated the marriage. Between 2016 and 2020, the courts considered 78 criminal cases and **convicted 146 persons** (52 of whom were women).¹⁵

LGBT people

The human rights of lesbian, gay, bisexual and transgender (LGBT) people are often abused and individuals are subject to **discrimination** if their sexual orientation or gender identity is discovered, although consensual **homosexual relations between men were decriminalized** in Tajikistan in 1998. LGBT people continue to be at risk of physical and sexual abuse by law enforcement officers and police often exploit their vulnerable

12 <https://www.rferl.org/a/tajikistan-what-to-wear-a-style-guideline-for-women/29197855.html>

13 <https://www.asiaplustj.info/ru/news/tajikistan/society/20191008/v-tadzhikistane-vneshnii-vid-vliyaet-na-protsess-polucheniya-znaniy-ofitsialno>

14 See Medium-Term Development Program of the Republic of Tajikistan for the period 2016-2020. Section 4.2. Productive Employment.

15 Third periodic report of Tajikistan under the Universal Periodic Report of the UN Human Rights Council.

position to extort money from them. **Fear of exposure, stigmatization, reprisals and further abuse** prevent victims of abuse and discrimination to lodge complaints.¹⁶

The Committee against Torture (in 2018), the Committee on the Elimination of All Forms of Discrimination Against Women (2018) and the Human Rights Committee (2019) have expressed concern about torture, discrimination and other human rights violations against LGBT persons in Tajikistan and have issued recommendations to address them. Recommendations were also made during the Universal Periodic Review in 2021. However, none of these recommendations have been included in any of the Government's action plans on human rights. Domestic legislation, including the newly adopted Law on Equality and Prohibition of Discrimination, does not explicitly prohibit discrimination on the grounds of sexual orientation and gender identity. There are **no government policies, programmes or initiatives aimed at counteracting such discrimination or at promoting tolerance** of sexual minorities.

In the period under review, Tajikistani **government officials** have repeatedly stated that it is necessary to **counteract homosexuality**. According to an article published by Interior Minister Ramozon Rahimzoda in the journal *Konuniyat* in October 2017, his Ministry, the Prosecutor General's Office and the Committee on Women and Family Affairs jointly launched the **operations "Morality" and "Purge"** in 2015 to prevent and combat "offences against morality and immoral behaviour", targeting a wide range of people including LGBT people. In 2016, the authorities began to single out LGBT persons and set up a working group on the issue of youth joining the LGBT community. Subsequently, 367 alleged gays and lesbians were detained and registered. After criticism by human rights groups, the authorities argued that they compiled the list to "ensure" these people's safety since they were considered to be at "high risk of HIV infection".¹⁷ The process of registering LGBT people appears to be continuing.

Central Asia is considered a "hotspot" of **HIV** infection and men having sex with men are among the top risk groups. However, many are hesitant to access diagnosis and treatment for fear of exposure and abuse.

During the **COVID-19 pandemic** LGBT people have been amongst those groups that have been particularly vulnerable to **poverty**. Many used to work in the service sector and the closure of bars, restaurants and clubs deprived many of their income.¹⁸

Societal homophobia and transphobia have made **NGOs working with LGBT clients** particularly vulnerable to government pressure. The authors of this report are aware of several such groups that had to close down following government pressure in recent years.

TRANS PEOPLE

Amending identity and other official documents

Article 74 of the Law "On the Procedure of Civil Status Registration" **allows for amending identity documents** based on a **medical certificate** confirming sex reassignment surgery. It does not allow for such amendments based on **gender identity alone**. However, the law does not set up a **mechanism** for implementation and officials often exploit this gap in the law to extort money from trans people wishing to have their identity and other documents changed.

Trans people without a valid passport, which specifies the name and gender according to a person's appearance, are usually unable to find employment, open a bank account, study at a university or vote. When attempting to cross borders transgender people are vulnerable to humiliating physical and psychological abuse.¹⁹

16 For further information, see "We just want to be the way we are!" LGBT people in Tajikistan: beaten, raped and exploited by police, February 2018: <https://iphronline.org/wp-content/uploads/2018/02/13.02.18-layout-LGBT.pdf>

17 <https://t-news.tj/region/desiutki-predstavitelei-lgbt-soobshestva-v-tadjikistane-zaprosili-pomosh>

18 <https://www.transcoalition.net/trans-and-nonbinary-people-in-armenia-georgia-moldova-and-tajikistan-during-a-pandemic-2020/>

19 <https://iphronline.org/wp-content/uploads/2017/06/LGBT-ru-for-web.pdf>

Medical needs

Domestic legislation does not prohibit **gender-reassignment medical operations**, but it does not explicitly allow them either. There is **no legal framework** governing such operations.

To our knowledge, the number of sex reassignment operations in Tajikistan is very low.²⁰ Most transgender people wishing to undergo sex change surgery go to other countries where these surgeries are routinely performed.²¹ Many trans people take up sex work to earn money for hormone replacement, medical care and surgery.

In 2019, two trans people sought help from a psychotherapist and an endocrinologist at a public clinic in Dushanbe in order to initiate the sex change process. They were reportedly turned away and insulted. In other cases, medical professionals reportedly turned down such requests stating that domestic law did not provide sufficient clarity and that they did not want “problems with law enforcement officers”. Medical schools in Tajikistan do not train doctors on health issues related to trans people and there are no medical protocols relating to their treatment.

Price increases for hormone replacement therapy (HRT) during the COVID-19 pandemic made them unaffordable to many trans people.²²

Persons with disabilities

Persons with disabilities in Tajikistan are particularly vulnerable to human rights violations such as **abuse in semi-closed institutions** and **discrimination** when it comes to their **access to education, the labour market, health care and social security**. Women and girls with disabilities often face multiple forms of discrimination based on their gender, in addition to their disability, and often poverty as well.²³

A presidential decree was adopted on 11 July 2021 providing a one-off lump-sum to vulnerable citizens, including persons with disabilities, amounting to TJS 400 (equivalent of EUR 34). The Tajikistani authorities have claimed that **pandemic response measures** have targeted persons with disabilities and that they had equal access to their rights.

However, local NGOs working on the rights of people with disabilities reported that many people with disabilities **continued to have problems accessing medical institutions and treatment** due to physical barriers, also during the pandemic. Such barriers include the lack of appropriate ramps for wheelchair users, doors that are too narrow for wheelchair users, a lack of braille markings and signs, a lack of audio information, sign language interpreters and personal assistants, to name but a few.²⁴

Government officials have repeatedly **expressed their intention to ratify the UN Convention on the Rights of Persons with Disabilities, but have not yet done so**.²⁵

DOMESTIC LEGISLATION, STRATEGIES AND “INVALIDITY” DEFINITION

In the past decade the authorities have adopted a number of **programmes and strategies** aimed at improving the situation of persons with disabilities, but **no comprehensive information** has been made **available about** their **implementation** and the **budgetary resources** actually spent or earmarked for activities.

20 Refer to: <http://rus.ozodi.org/a/25469846.html> and <http://iwpr.net/report-news/transgender-tajikistan>

21 <https://www.fergananews.com/articles/9156>

22 <https://www.transcoalition.net/trans-and-nonbinary-people-in-armenia-georgia-moldova-and-tajikistan-during-a-pandemic-2020/>

23 Refer to the joint NGO report Persons with disabilities in Tajikistan: pushed to the Margins: <https://iphronline.org/wp-content/uploads/2018/12/Tj-disabilities-report-updated-compressed.pdf>

24 <https://www.iphronline.org/wp-content/uploads/2020/09/Covid-19-TAJ-final-upd.-2.09-1.pdf>

25 See, for example: National Action Plan for the Preparation of the Republic of Tajikistan for Ratification and Implementation of the Convention on the Rights of Persons with Disabilities, 27 February 2020.

While the **definition of “invalidity”** contained in the Convention on the Rights of Persons with Disabilities is based on the social model of disability, the definition in Article 1 of the Law on Social Protection of Invalids in Tajikistan is based on the medical model and defines an “invalid” as a person whose “health is damaged due to long-term impairments caused by impairment of body functions, complicated illnesses, trauma, physical and intellectual defects resulting in limited ability to carry out day-to-day tasks and leading to the need for social support.

When reviewing applications for “invalidity” status the authorities refer to government-approved lists of impairments that qualify for this status, but not all types of disabilities are included. The process of applying for “invalidity” status itself presents challenges that make it inaccessible for many as it is bureaucratic, time intensive and can be unaffordable, particularly for those who would have to travel from rural areas for medical, psychiatric and other examinations.

ALLEGATIONS OF ABUSE IN SEMI-CLOSED INSTITUTIONS

Tajikistan has several types of semi-closed institutions that house persons with physical, sensory, intellectual or mental disabilities: residential care facilities, special boarding schools, psychiatric centres and hospitals. There have been credible allegations during the period under review that staff at residential care institutions subjected people with disabilities to **forced abortions, forced administration of drugs, indiscriminate and inappropriate use of measures of restraint and denial of the right to family life**. The authors of this report are concerned that access of human rights monitors to residential care facilities for persons with disabilities is extremely limited.

PHYSICAL BARRIERS TO ACCESSING RIGHTS

The 2011 Law on Social Protection, town planning norms and the Town Planning Code (as amended in 2017) include requirements to ensure access for persons with disabilities. However, these **requirements are rarely enforced**. The majority of buildings remain inaccessible including hospitals, maternity clinics, centres for reproductive health, schools, other educational facilities and government buildings where individuals apply for social security provisions and the determination of their level of disability.

RIGHTS TO WORK, EDUCATION AND HEALTH

Access to the **labour market for persons with disabilities is highly restricted** as a result of prejudice, stigma, a number of discriminatory legal acts and declaring all individuals registered as “invalids” of groups 1 or 2 as unfit to work.²⁶

Tajikistan inherited a system of **special boarding schools** for children with disabilities from the Soviet Union, but many parents are reluctant to send their child to such schools, especially when they are far from home. During the COVID-19 pandemic, thirteen boarding schools for children with disabilities were closed down for over three months and the children were sent home without information when their education would resume.²⁷

Tajikistan has embarked on introducing inclusive education in state schools and a number of **pilot projects** are underway, but there is **still a long way to go to reach children in all parts of the country** and to ensure that children with all kinds of disabilities have access to education that is **tailored to their needs**. By the end of 2016, so-called Resource Classes were established in 49 general education institutions and equipped to include children with disabilities in the system of general education. More than **8000 children with a “mild form of disability” are registered in general educational institutions**. A student with a disability may attend school up to grade 9 and proceed to grades 10 and 11 depending on whether he/she completed the curriculum.²⁸

The Law on Social Protection of Invalids stipulates that the authorities should develop an Individual Rehabilitation Programme for each person with disabilities. The Programme should contain measures geared

26 <https://iphonline.org/wp-content/uploads/2018/12/Tj-disabilities-report-updated-compressed.pdf>

27 <https://www.unicef.org/eca/ru/node/7246>

28 Refer to: <http://notabene.tj/Doc/Taj/Отчет%20по%20мониторингу%20с%20ОФ%20Нотабене.pdf1>

towards strengthening the person's health including, where appropriate, surgery, technical, prosthetic and orthopaedic equipment, and appropriate therapies; as well as measures focusing on professional orientation, development and education. Unfortunately, the **implementation of the Individual Rehabilitation Programme was not included in the National Programme on the Rehabilitation of Invalids (2017-2020), and in practice Individual Rehabilitation Programmes** are not consistently drawn up.

Persons living with HIV

In 2021, Nargis, an HIV+ woman from Dushanbe, was imprisoned under Article 125 of the Criminal Code which is often used to punish HIV+ people for transmitting HIV although in many cases there is no evidence that another person was infected or that the HIV+ person was aware of his or her infection. After she was released under an amnesty she told CSO activists: ***“There should be more information about HIV, about people living with HIV, so that (other people) are not afraid of us as they are now. There is treatment, there is prevention. An HIV diagnosis should not be a guilty verdict - it's just a diagnosis.”***

While there have been some positive legislative developments in the period under review pertaining to persons living with HIV (PLHIV), **some discriminatory provisions remain** which affect the rights and access of the PLHIV to economic, social and cultural rights. In addition, legislation that protects PLHIV from discrimination is not always implemented in practice.

STATISTICS

According to official data, by the end of 2019, 11 986 PLHIV were officially registered in Tajikistan, of which 7698 (64.1 per cent) are male and 4288 (35.8 per cent) are female. In July 2022, the Minister of Health publicly stated that 10 586 PLHIV were registered in the country. Considering the stigma associated with HIV in Tajikistan, it is unknown how many PLHIV have never approached an AIDS Centre and are not included in the official statistics.

According to official information, in 2019, 1320 new cases of HIV infection (adults and children) were registered in Tajikistan, which roughly corresponds to the number of cases in 2017 and 2018. Of the new HIV cases registered in 2019, 772 were men (58.5 per cent) and 548 women (41.5 per cent). In recent years, **there has been a general trend towards an increase in the proportion of women among all new HIV infections**, from 30.9 per cent in 2011 to 41.5 per cent in 2019.²⁹

According to the National Programme to Combat HIV/AIDS 2021-2025, of the newly detected HIV cases, 388 (29.3 per cent) were detected in the late stages of the disease; these people had already developed HIV-associated or acquired immunodeficiency-indicating diseases (diseases, associated with acquired immunodeficiency syndrome). Of the patients newly diagnosed with HIV, 87 (6.6 per cent) died from diseases related to acquired immunodeficiency syndrome and other causes.³⁰

LEGISLATION, GOVERNMENT PROGRAMMES AND ACTION PLANS

The **Constitution** of Tajikistan enshrines the fundamental human rights that apply to all persons living in Tajikistan, with some exceptions for foreign citizens and stateless persons. Based on the principle of non-discrimination, persons living with HIV have equal rights and freedoms - the right to life, judicial protection, education, physical and mental health and social protection, information, privacy and others.

Chapter 24 of the **Health Code** covers HIV treatment and prevention and prohibits discrimination against PLHIV. It defines the rights of PLHIV to receive free qualified and specialised medical care, including medication, in public healthcare institutions, and recognises the principle of voluntary HIV treatment, as well as confidential and voluntary medical examinations for HIV. In case their HIV status is revealed in a breach of confidentiality, PLHIV have the right to compensation for moral and material damage. Children under 16 with HIV are entitled to a food allowance, and parents or legal representatives of children born to mothers

29 Item 9 of the National Program to combat HIV/AIDS for 2021-2025, 27 February 2021.

30 Para. 11 of the National Program to combat HIV/AIDS (2021-2025), 27 February 2021.

infected with HIV have the right to receive breast milk substitutes from the moment they are born until the time they are diagnosed with HIV, with the aim of further reducing the risk of HIV infection.

The **2022 Law on Equality and Prohibition of Discrimination** recognizes any distinction, exclusion, restriction or preference based on actual and/or potential grounds, against any person or group of persons, their relatives or persons otherwise associated with them, on the basis of their health status as discrimination.

VIOLATIONS OF THE RIGHT TO PRIVATE LIFE IN LAW AND PRACTICE

Article 125 of the **Criminal Code** punishes the transmission of HIV/ AIDS, as well as knowingly exposing others to the risk of contracting HIV. However, the legislation does not cover situations such as when the other sexual partner gives informed consent (regardless of whether the HIV infection was transmitted or not) and when the carrier was taking precautions. Thus, **all persons living with HIV who are sexually active are at potential risk of prosecution**, which is a violation of their right to sexual health. When a criminal case is opened under Article 125, the **HIV status of both the suspect and the victim is made public** which is an infringement on their right to privacy.

Article 162 of the **Health Code** gives doctors the right to **disclose the status of HIV patients** at the request from the investigating authorities without any justification. The Health Code also authorises investigators, officers, court clerks and judges to request medical information on cases opened under Article 125 of the Criminal Code without conditions of confidentiality.

The provisions of the **Family Code** regarding mandatory pre-marriage medical examinations violate the right of PLHIV to voluntary and confidential HIV testing, because they require that family members of both spouses and the civil registration office are informed of the couple's test results. The absence of a medical examination can be given as a reason for refusing to register a marriage on the grounds that the infected person would endanger the life and health of their spouse after marriage.³¹ In 2018, according to the Ministry of Health, out of 1400 newly detected cases of HIV+ persons, 48 were diagnosed during medical examination before marriage.³²

The **Code of Administrative Offences** (articles 119, 120) provides for administrative fines for refusing to undergo medical examinations and HIV treatment, as well as for concealing the source of HIV infection, which is a significant barrier for PLHIV to receive ARV therapy.

Resolution No. 475 of 25 September 2018, stipulates that PLHIV are prohibited from studying medicine, adopt a child, or be their guardian or custodian.

In the northern Sughd region of Tajikistan, 33 criminal cases were initiated under Article 125 against 26 PLHIV in 2018, and 39 in 2019. An analysis of these cases shows that most of them were opened based on data received from AIDS Centres which indicated HIV+ status but no signs of knowingly transmitting the infection.

The **right to confidentiality regarding the HIV status of PLHIV is also often not respected by police officers, court clerks and judges during investigations and court hearings**. As soon as a criminal case is opened, law enforcement officials in many cases disclose information about the person's HIV status to their relatives and neighbours. In the corridors of courthouses, court secretaries often call out the names of the defendant or lawyer, adding "AIDS case" - thereby inviting onlookers to the court hearing.

PLHIV usually do not apply to a public defender, i.e. a lawyer employed by the state, as they fear the disclosure of their status, but rather turn to CSOs. However, Tajikistan's **Law on Legal Aid** (adopted in July 2020) **does not provide for** the participation of CSOs in State tenders for the provision of such services, which creates an obstacle for such groups to provide legal assistance.

In recent years, law enforcement agencies identified 138 cases of deliberate infection of people by HIV-infected persons: 33 criminal cases were initiated against 26 HIV-infected persons in 2018, and 39 criminal cases were initiated against 32 HIV-infected persons in 2019.

31 Submission from the NGO Rule of Law and Access to Justice Network, 39th session of the UPR Working Group, Oct-Nov 2021.

32 <https://rus.ozodi.org/a/30197458.html>

CSOs working with PLHIV are regularly targeted by law enforcement officials who request them to disclose the HIV status of their beneficiaries and threaten to initiate criminal cases against them under Article 125, part 1 of the Criminal Code.

RIGHT TO WORK

Despite the fact that Article 3 of the Labour Code prohibits discrimination in the work place, PLHIV experience both **direct and indirect discrimination**.

Article 26, part 4 of the Labour Code requires workers to submit a document on medical examination which includes HIV testing. This pertains to all professions, including janitors, shop clerks and waiters. In the event that a person is tested HIV positive, the **employer** usually asks them to write a letter of resignation, although there is no such requirement in the law.

According to Article 105 of the Health Code, individual entrepreneurs and employees of organisations and institutions, who carry out any kind of economic activity are requested to undergo a medical examination before they start working in order to protect their health and prevent the emergence and spread of diseases. Individual entrepreneurs and legal entities are not allowed to let persons work before they have undergone a medical examination.

These **legal requirements and employment practices represent an obstacle for PLHIV to employment and they typically avoid employment in order to avoid disclosure of their HIV status**. As a result, they often take up work in the informal sector, including sex work. The fear of disclosure typically discourages PLHIV from complaining to state authorities.

According to the 2008 Medical Examination Procedure for HIV Detection, Registration, HIV Medical Examination: Infected Persons and their Preventive Monitoring, **PLHIV are prohibited from working in surgical professions**, for example as surgeons, dentists, obstetricians, specialists of the blood transfusion service and **other specialists who are directly related to blood, and specialists in infectious hospitals and departments with a risk of infection**.

RIGHT TO EDUCATION

Although domestic legislation does not impose restrictions on the right to education for HIV+ children, there are **barriers that may prevent parents from sending their child to school**.

The Health Code requires all students to undergo medical tests. Article 105, part 4 states that compulsory medical examinations are carried out at the expense of citizens when they enter the workplace or study. It is not clear what type of education the Article refers to – general secondary education, secondary vocational education or higher vocational education. When children are enrolled in pre-school or a day-care centre their parents are required to show a certificate of preliminary medical examination, in which the HIV test is now mandatory. This can lead to the disclosure of the child's HIV status and discrimination by teachers and other children.

Resolution No. 475, of 25 September 2018, provides that PLHIV are **prohibited from studying in medical educational institutions**.

Awareness raising about HIV in schools is very limited: Teachers do not receive training on how to teach comprehensive sexual education (CSE), including HIV awareness, how to educate students about HIV and STI prevention, and on the importance of non-discrimination against PLHIV. CSE is not compulsory in the educational system in Tajikistan. The Ministry of Education and Science, with the support of UNFPA, developed a manual on healthy lifestyles for children in grades 7-11, which includes information about HIV, but the topic is not covered in full. The Ministry recommends that the topic is covered as an extracurricular activity.

RIGHT TO HEALTH

Despite the fact that Article 165 of the Health Code prohibits **discrimination on the basis of HIV infection**, such discrimination remains widespread.

In accordance with Article 163, PLHIV are entitled to all types of qualified and specialised medical care free of charge, including medication, at State health care centres. However, CSO observations have shown that this is not implemented in practice. Currently, contraceptives, HIV tests and antiretroviral therapy are being procured from the Global Fund for HIV, Malaria and Tuberculosis and other donors and the authorities have not spent any funds on these items.

A focus group discussion survey on the legal and regulatory environment in the area of HIV/AIDS in Tajikistan showed that, apart from ART, PLHIV receive no free medical care and medication other than ART and HIV counselling. Fluorography, which PLHIV must undergo every three months to prevent tuberculosis, presents an additional financial burden. Unemployed PLHIV who are without income, often women and children, cannot afford it and their risk of tuberculosis increases.

PLHIV are more likely to contract other illnesses such as hepatitis B and C. The Ministry of Health has adopted a regulatory act listing the diseases for which treatment is free but hepatitis B and C are not included.

Homeless people

There is no comprehensive and reliable data about the number of homeless people in Tajikistan. In July 2021, the **Main Statistics Department of the Northern Sughd Region** informed NGOs upon request that only **one homeless person was registered in the 2010** General Population Census. Unfortunately, the most recent census, conducted in 2020, did not include information about homeless people and has not yet been published.

There is **only one shelter to provide temporary accommodation to homeless people in the city of Khujand in Sughd region**, which is **run by the city authorities**. According to a report published by the shelter, the number of residents ranged from 18 to 25 per month for the period from 2016 to 2020. However, CSO monitoring revealed that the shelter hosts no more than ten people per month on average and that its **facilities are in an extremely poor condition**.³³ Currently, construction work is taking place in the building, even though people live there; the rooms do not meet minimum sanitary and hygiene requirements, there are **no bathrooms, no shower, only one common outdoor toilet**. CSO activists have received **allegations of physical abuse by the administration**, as well as complaints about the bad quality of food and **malnutrition**. According to information published by the city financial department, almost TJS 164 435 (equivalent of EUR 12 703) were allocated for the maintenance of the shelter back in 2016. It is unclear how these funds were used given the very poor condition of the building and the inadequate care for the residents.

During a 2021 monitoring visit to the shelter, CSO activists learnt that since 2016 the shelter has housed a number of stateless people. Without documents they have been unable to leave for their homeland or legalise their stay in Tajikistan.

An especially vulnerable group of people who are largely without adequate housing are people who are chased out of their families' homes for various reasons, such as divorced women without a marriage certificate, people with addiction diseases, and victims of abuse. These people often live in unsuitable and unsanitary premises such as broken garages, abandoned facilities, basements and cemeteries.³⁴ Many have chronic and infectious diseases but are **unable to access medical care because they lack identity documents and financial means**.

Stateless people

Reliable information and statistics on stateless persons are lacking in Tajikistan and it is difficult to assess the scale of the problem. The issue of statelessness was included in the latest national census that was conducted in 2020 but the results have not yet been published.

The **2019 Law** "Concerning an amnesty on the legalisation of the status of foreign citizens and persons without citizenship illegally staying on the territory of the Republic of Tajikistan" **allowed those illegally**

33 The monitoring was conducted in the framework of Notabene educational trainings for CSOs in 2021.

34 <http://www.notabene.tj/Doc/Таж/анализ%20БДЛ-ноябрь%202021.pdf>

staying in Tajikistan to formalise their legal status and obtain a residence permit, without facing administrative or criminal charges.

The **amnesty will last until 25 December 2022**, but it is likely that **not all persons will be able to formalise their legal status and obtain a residence permit before this date**. CSO monitoring conducted in 2022 revealed **that not all persons covered by the Law applied** to the Passport Registration Service (PRS) of the Ministry of Internal Affairs for reasons including lack of information and difficulties to get to distant administrative centres.

The Law on citizenship provides guarantees aimed at the prevention and reduction of statelessness. However, at the same time the **Law requires a foreign citizen requesting Tajikistani citizenship to surrender any existing citizenships**. Thus, if the request for citizenship is denied, there is **a risk that the person will become stateless**. The Law also fails to provide a simplified procedure for the acquisition of Tajikistani citizenship by refugees and foreign citizens who are married to citizens of Tajikistan. Also, national legislation does not allow birth registration for children whose parents have no identity documents. It requires at least one parent to permanently reside in Tajikistan for the child to receive citizenship. This can create complications for stateless persons or for children whose parents are unknown.

Suggested recommendations to the authorities of Tajikistan

GENERAL NON-DISCRIMINATION

- In the new version of the new Criminal Code transfer the burden of proof to the state in discrimination cases, as well as to widen the definition of discrimination so as to strengthen the protection of victims.

WOMEN

- Publicly and officially condemn DV and make it clear that the state supports a zero-tolerance approach.
- Criminalize all types of gender-based violence, including DV, sexual harassment and psychological violence and ensure the punishments for DV are commensurate with the crimes committed and that the punishments are equivalent to corresponding crimes committed outside the home.
- Amend the Criminal Procedure Code so that DV cases fall under the category of public prosecution cases and be initiated by the investigation, and not by the victim herself through the courts.
- Provide victims of gender-based violence with a lawyer at the expense of the State.
- Exclude from the Family Code the provision that permits the marriage of minors in certain cases.
- Increase the number of state-funded shelters available for victims of DV, esp. in rural areas, and where possible ensure that such shelters are run in cooperation with CSO.
- Publish comprehensive statistics on all criminal and administrative cases related to gender-based violence.

LGBT PEOPLE

- Prohibit discrimination of LGBT persons in domestic legislation.
- Establish a government programme counteracting discrimination of LGBT persons and identify a body responsible for its implementation.
- Refrain from targeting LGBT people because of their sexual orientation or gender identity and erase government registers on LGBT people.
- Ensure that all civil society activists, including those working on human rights, health and other issues affecting LGBT people, can go about their peaceful activities without undue interference. Restrictions on their freedom of association must not be applied in an arbitrary or discriminatory manner.
- Engage with human rights/ LGBT activists in Tajikistan to develop training programmes for law enforcement agencies and prosecutor's offices on the human rights of LGBT people, and non-discrimination.
- Develop comprehensive legislation and legal mechanisms governing the confirmation and change of sex of trans people in identity and other documents that is in line with international human rights standards. Discard the condition that they must undergo surgery, before they can change their legal gender.

- Adopt a modern, evidence-based curriculum on sexual and reproductive health and SOGI awareness for children in schools.
- Introduce issues of sexual orientation and gender identity into the compulsory curriculum of medical students of all specialties.

PERSONS WITH DISABILITIES

- Ratify the Convention on the Rights of Persons with Disabilities.
- Provide comprehensive statistics on court cases involving allegations of discrimination against persons with disabilities, detailing the outcomes.
- Investigate allegations of human rights violations against persons with disabilities in semi-closed facilities including forced abortions, forced administration of drugs, indiscriminate measures and restraint and denial of marriage, and publish the results.
- Ensure equal opportunities for persons with disabilities on the labour market, in the education and the health systems.

PERSONS LIVING WITH HIV

- Limit criminalization of transmitting HIV to cases of intentional transmission i.e. where a person knows his or her HIV positive status, acts with the intention to transmit HIV, and does in fact transmit it.
- Repeal the government decrees of 1 October 2004 and 25 September 2018, prohibiting HIV+ people from obtaining a medical degree, adopting a child or being a legal guardian.
- Ensure compliance with safety standards for each patient and each member of the medical personnel, regardless of their HIV status.
- Revise the law “On Legal Aid” so that legal aid, both primary (legal advice) and secondary (counsel at the investigation stage and in court), will be provided at the expense of the State to vulnerable groups such as PLHIV, and that public associations can participate in State tenders for the provision of such services.

HOMELESS AND STATELESS PEOPLE

- Accede to the Conventions Relating to the Status of Stateless Persons of 1954 and on Reduction of Statelessness of 1961.
- Extend the time period during which stateless people can legalise their status in Tajikistan and obtain a residence permit without facing criminal or administrative charges for two more years to achieve the goal of reducing statelessness.
- Bring the Constitutional Law “On citizenship of the Republic of Tajikistan” (2015) in compliance with international standards.
- Bring national legislation into line with international standards so that all children born in Tajikistan are registered immediately after birth and have the opportunity to obtain a birth certificate, regardless of their parents citizenship and whether they can present identity documents and residence permits (residence registration).