

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review:

2nd Cycle, 25th Session

TAJIKISTAN

I. BACKGROUND INFORMATION

Tajikistan acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1993. Tajikistan is not yet a State party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). It is, however, a party to other international instruments, such as the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child*, which establish obligations relating to the right to nationality and enjoyment of fundamental rights by stateless persons.

The national legislative framework governing asylum in Tajikistan consists of the *Law on Refugees* (hereinafter the *Law on Refugees*).¹ Refugee status determination (RSD) in Tajikistan is conducted by the Department of Citizenship and Work with Refugees (DCWR) under the Passport Registration Service (PRS) of the Ministry of Interior.

Determination of refugee status, however, is made in the Inter-Ministerial National RSD Commission forum, which is held on a monthly basis. UNHCR had an observer status in the Commission, but in the course of 2013 its role in this forum was curtailed and in January 2014 UNHCR was no longer invited to the Commission. After sustained advocacy, UNHCR was allowed to return to the Commission in mid-2014, but this decision was subsequently revisited by the Government and currently UNHCR is not able to exercise its observer status. It should be stressed that no official communication has been shared with UNHCR on this matter.

¹*Tajikistan: Law on Refugees* [Tajikistan], amended as of 26 July 2014, available at: <http://www.refworld.org/docid/3eda26b84.html>. This law amends the *2002 Law of the Republic of Tajikistan on Refugees*.

Refugees and asylum-seekers:

Tajikistan hosts the largest number of refugees in Central Asia, primarily from neighbouring Afghanistan, and the country continues to receive asylum-seekers, both from Afghanistan and a small number from other countries such as Iran, Iraq, Kyrgyzstan and Pakistan.

As of December 2014, Tajikistan hosted 2,149 refugees and 123 asylum-seekers. Among the asylum-seeker population there are both entire families and single-headed households. Over 90 per cent of all Afghan refugees in Tajikistan are ethnic Tajiks, and the remainder includes individuals of Hazara, Pashtun, Uzbek and Turkmen ethnicities. Most refugees and asylum-seekers reside in urban areas near the capital Dushanbe, including the towns of Vahdat, Hissor and Rudaki, as well as in the northern city of Khujand.

Recognized refugees and asylum-seekers are granted work permits and temporary residency permits, although refugees recognized under UNHCR's mandate after exhausting appeals in the national asylum system are not able to get work permits or temporary residence permits.² Refugees and asylum-seekers are legally precluded from residing in the main urban centres,³ which has negative implications on their ability to access employment, healthcare, education and other services.

Stateless persons:

According to the information provided by the State Statistics Committee, 1,364 individuals identified themselves as stateless persons in the 2010 national Census. In contrast, as of February 2015, 637 persons were officially registered as stateless by the Government. UNHCR is of the opinion that the real extent of statelessness in Tajikistan is currently unknown. However, based on profiling work carried out by UNHCR and its partners in 2014, a projected baseline population of over 40,000 stateless persons and persons of undetermined nationality was established for high-risk districts in the country.

The main causes of statelessness and risk of statelessness in Tajikistan are the dissolution of the former Soviet Union, cross-border movements, mixed marriages and births from those marriages. In many instances, persons of undetermined nationality simply require nationality documentation confirming their Tajik nationality.

Main protection concerns for stateless persons relate to lack of access to essential services due to lack of identity documents and the risk of being penalized for irregular stay in the country. No comprehensive exercise of identification of stateless persons or those at risk of statelessness has been conducted. In addition, no national mechanism to confirm stateless status/nationality has been established. However, in 2014, UNHCR launched in conjunction with the Government of Tajikistan a pilot project to better understand the extent of statelessness, register stateless persons and persons of undetermined nationality, and establish the framework for achieving solutions for stateless persons. As of 30 June 2015, 9,414 individuals with undetermined nationality were registered under a national pilot project to address statelessness, and it is expected that well over 15,000 individuals in total will be registered by the end of 2015.

² Asylum-seekers are now granted work permits as a result of the 2014 amendments to the *Law on Refugees*.

³ *Resolution 325 of 26 July 2000* prohibits refugees and asylum-seekers who arrived after 2000 from residing in the main urban centres.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 1st cycle UPR recommendations

Linked to 1st cycle UPR recommendations no. 90.13: “Ratify the 1954 and 1961 Statelessness Conventions (Germany); Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (Slovakia);” **and no. 90.14:** “Positively consider adhering to the Convention related to the Status of Stateless Persons of 1954 and other instruments related to Stateless Persons (Mexico).”⁴

Despite the fact that Tajikistan did not support the recommendations from the 1st cycle UPR concerning accession to the *Statelessness Conventions*, UNHCR nevertheless observes that the Government has indicated its readiness to further consider accession upon analysis of potential financial implications in case of accession. UNHCR is aware that the Tajik Government is seriously exploring the issue of accession and, in the meantime, has shown its readiness to revise its legal framework on nationality to bring it in line with the *Statelessness Conventions*.

It should be mentioned that amendments to the *Constitutional Law on Nationality* were finalized and submitted to the Parliament in early 2015, and on 7 August 2015, the President signed into law a revised *Constitutional Law on Nationality*. UNHCR is pleased to note that the new *Law on Nationality* includes a number of significant improvements to the existing legislation. First, the law brings the definition of stateless persons into closer compliance with the definition set out in the *1954 Convention*. Several provisions were also introduced to prevent statelessness, including in the context of children. For example, a safeguard was added whereby a child born to a Tajik national and a foreign citizen will acquire Tajik nationality if the child is rendered stateless in the period of three (3) months after birth as a result of the failure of his/her parents to submit a written agreement on choosing the nationality of the child. The provision of the previous law whereby nationals who reside abroad for five years could be deprived of their nationality if they failed to register with Tajik consular authorities has also been removed. UNHCR further welcomes the inclusion of provisions that aim to facilitate naturalization for certain categories of stateless persons under a simplified procedure.

It should be noted, however, that a positive provision of the previous law, whereby refugees had access to nationality under simplified procedures (2.5 years of permanent residency), has been removed, which is disadvantageous for refugees seeking to locally integrate. It should also be noted that the provision on granting nationality to children who are abandoned by their parents (“foundlings”) requires proof of birth in the country, which is not required under the *1961 Convention*, which assumes that birth occurred in the country unless proof to the contrary exists. UNHCR would also recommend the development of additional procedural guarantees, either in the *Law on Nationality* itself or in its implementing regulations, including in the context of grounds for rejecting an application for citizenship and making decisions to withdraw Tajik nationality. The Government plans further harmonization of its legislation related to statelessness, following the adoption of the *Constitutional Law on Nationality*.

⁴ “Report of the Working Group on the Universal Periodic Review: Tajikistan,” A/HRC/19/3, 12 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TJSession12.aspx>.

Additional achievements and positive developments

Refugees and asylum-seekers:

The revision of the *Law on Refugees* began in January 2012 under the coordination of a Working Group appointed by the Minister of Internal Affairs, to which UNHCR provided substantial inputs. The amended *Law* was adopted on 26 July 2014. There are some positive amendments in the *Law on Refugees* in relation to the right to employment for asylum-seekers, principles of non-discrimination, *non-refoulement*, and exclusion clauses that are in line with the *1951 Convention*. Despite the significant amendments made, UNHCR would like to note that certain gaps remain: a) the existence of pre-screening procedures before an asylum claim is registered; and b) access to the asylum procedure being dependent on various preliminary requirements, namely registration with local authorities (implying the possession of a travel document and visa), medical examination, and evidence of residence (in accordance with *Resolution 325*). In addition, the *Law* does not provide for complementary forms of protection. In this regard, UNHCR shared its commentary on the *Law on Refugees* with the Tajik Government in July 2015 for further consideration. (See Issue 5 below for further information).

In addition to the recent legislative amendments, Tajikistan, with support from the Danish Refugee Council (DRC), has established a Temporary Reception Centre which can accommodate modest number of asylum-seekers with specific protection needs and vulnerabilities, in particular female-headed households living without community support. UNHCR has provided advocacy and technical support for the project, advocating for Government ownership of the Centre and assumption by the Government of its operation. The Temporary Reception Centre is not currently operating, however, pending minor renovations and ongoing discussions between DRC and the Government.

In 2015, given UNHCR's and the Ministry of Internal Affairs' enhanced collaboration on refugee-related matters, the Expert Working Group on Refugee Protection in the Republic of Tajikistan was established to discuss issues related to the national asylum system, as well as the role that UNHCR could play therein. The Working Group is called to address pertinent protection issues affecting refugees and asylum-seekers and to find practical solutions to them, through collaboration between the Government and UNHCR, as well as amongst various Government ministries and departments. The discussions of the Expert Working Group also included the existing concerns in relation to access to the territory and the lack of a protection-sensitive migration management system and referral mechanism for asylum-seekers, often resulting in penalization for irregular entry. As a result, the Expert Working Group, with support from UNHCR, developed *Standard Operating Procedures on Referral Mechanism at the Border*, which is being considered by the Ministry of Interior and the Border Guards officials for further approval and adoption.

Furthermore, UNHCR would like to acknowledge the willingness of the Tajik authorities, despite the absence of concrete/specific recommendations on refugee-related matters from the 1st cycle UPR, to consider refugee issues as a separate topic for review during its national consultations on UPR implementation.

Stateless persons:

UNHCR welcomes various initiatives taken by the Government in recent years, under the leadership of the Executive Apparatus of the President, Ministry of Internal Affairs and other

entities, to address the problem of statelessness in Tajikistan. This also includes the passage of the new *Constitutional Law on Nationality of the Republic of Tajikistan* on 7 August 2015, as mentioned above.

The Government of Tajikistan and UNHCR launched the first ever national statelessness project in the country in 2014 and an Inter-Ministerial Working Group on Statelessness was formed, through which a multi-year *National Action Plan* has been developed,⁵ establishing parameters for joint profiling, registration, and solutions until 2018. The *National Action Plan* has to be further endorsed at the level of the Apparatus of the President along with the *Legalization Agreement*, mentioned below. Once approved, the *National Action Plan* envisages field operational activities countrywide.

Pilot registration activities have been undertaken in key target regions, including Shartuz district of Khatlon Province since November 2014; Istaravshan district of Soghd Province since May 2015; and Tursunzade district in the Districts of Republican Subordination since June 2015 (see Issue 2 below for further information).

In order to address statelessness in the country, the Ministry of Internal Affairs developed a draft *Legalization Agreement*, which would waive administrative penalties and prevent deportation for those residing in the country without any documentation. The *Legalization Agreement* is currently being reviewed at the Inter-Ministerial level and will require promulgation as a Presidential Decree to go into effect. Although the *Legalization Agreement* has not yet been endorsed by all Ministries and no Presidential Decree has been issued, UNHCR notes that this is a positive step demonstrating the willingness of the State to identify the extent of statelessness in the country and provide further solutions, including facilitated naturalization or confirmation of nationality.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 1st cycle UPR recommendations

Issue 1: Access to birth registration

Linked to 1st cycle UPR recommendation no. 88.50: “Ensure that all births are registered and facilitate access to birth registration services including by reducing its cost (Uruguay).”

In Tajikistan, a birth certificate confirming the birth of a child can be issued at the Civil Registry (ZAGS) when parents (or one parent) present their identity documents along with a copy of the child’s birth notification issued by medical facilities. The parent(s) could face difficulty in registering the birth of their child if either parent lacks identity documents. UNHCR is concerned that this is an issue particularly for parents who are stateless or of undetermined nationality and therefore have no valid proof of nationality. It should be noted that UNICEF’s report *Every Child’s Birth Right: Inequities and trends in birth registration* (as of December 2013)⁶ indicates the birth registration rate as 88 per cent for

⁵ The full title of the *National Action Plan* is “the plan for the key activities by the executive and local public authorities of the Republic of Tajikistan regarding the identification of stateless persons and foreign citizens residing illegally on the territory of the Republic of Tajikistan, their registration, confirmation of identity, and simplified procedures for the issuance of residence permits.”

⁶ UN Children’s Fund (UNICEF), *Every Child’s Birth Right: Inequities and trends in birth registration*, December 2013, available at: <http://www.refworld.org/docid/52b2df3e4.html>.

Tajikistan, which is the lowest among Commonwealth of Independent States (CIS) countries. This issue could continue to affect the next generations.

In this regard, UNHCR would like to refer to the 2013 Human Rights Council resolution on birth registration and the right of everyone to recognition everywhere as a person before the law, calling upon “States to ensure free birth/registration, including free or low-fee late birth registration, by means of universal, accessible, simple, expeditious and effective registration procedures without discrimination of any kind.”⁷ Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. In addition, without this legal record, a person might not be able to enjoy fundamental human rights, including access to education and medical services, as a birth certificate is a requisite document to apply for an identity document in Tajikistan.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a. Issue birth certificates to all children born on its territory regardless of their parents’ possession of identity documents; and
- b. Raise awareness of the importance of birth registration and birth certificates, especially in rural areas.

Additional Protection Challenges

Issue 2: Extent of stateless in the country is unknown and action is required to address the increasing numbers of identified cases

As the first step in resolving the complex issue of statelessness in Tajikistan, following the launch of the national statelessness project in 2014, UNHCR and its partners jointly carried out various field-based profiling and identification activities in the pilot geographical focus areas⁸ where the highest numbers of stateless persons were estimated to reside. These activities were undertaken in close collaboration with the Government of Tajikistan. From late 2014 through 30 June 2015, 9,414 individuals with undetermined nationality were registered, and it is expected that around 15,000 total individuals will be registered by the end of 2015. Preliminary findings of the pilot exercises demonstrated that over 80 per cent of the individuals registered as stateless persons, persons at risk of statelessness and/or persons of undetermined nationality were women and children. In this regard, UNHCR would like to refer to the Committee on the Elimination of Discrimination Against Women’s recommendation in 2013⁹ that Tajikistan “take the measures necessary to address the statelessness of women and children.”

The preliminary results of the profiling exercise also revealed that persons who lack nationality documentation faced difficulties in accessing social services, formal employment

⁷ UN Human Rights Council, *Birth registration and the right of everyone to recognition everywhere as a person before the law* : resolution / adopted by the Human Rights Council, 9 April 2013, A/HRC/RES/22/7, available at: <http://www.refworld.org/docid/53bfacfa4.html>.

⁸ Shahrutuz district of Khatlon Province; Istaravshan and Shahrستان districts of Soghd Province; and Tursunzade and Shahrinav districts in the Districts of Republican Subordination.

⁹ Committee on the Elimination of Discrimination against Women, Concluding Observation on Tajikistan, 56th session, 30 September - 18 October 2013, CEDAW/C/TJK/CO/4-5, para. 32(d), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=812&Lang=en.

and other State benefits. The vast majority of these individuals have resided in the country for decades, some holding former USSR passports that they never exchanged for Tajik passports, while others are foreign citizens who require confirmation of their citizenship of another State due to potential withdrawal of their citizenship as a consequence of residence abroad. Statelessness in Tajikistan often arises in the context of persons living in border areas, such as foreign women married to Tajik nationals who are at risk of being denaturalized due to residence abroad. More specifically, a majority of them are Uzbek citizens who have been residing in the territory of Tajikistan for more than five years with an expired visa and/or expired passport issued in a foreign state. Children born in Tajikistan of mixed marriages also face a risk of statelessness if one or both of their parents lack valid documentation.

The findings of this profiling exercise also suggested that persons, in particular those without valid documentation, are generally reluctant to share personal information with the authorities because they fear administrative penalties and/or deportation. The adoption of the abovementioned *Legalization Agreement*, currently pending at the Inter-Ministerial level, will remove these penalties and be an important step in addressing statelessness.

Overall, the field-based profiling and identification activities demonstrated and confirmed the significance of the nationwide statelessness issue in Tajikistan, which has brought about the Government's realization of the existence of this problem and the need to address it.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a. Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*;
- b. Adopt the *Legalization Agreement* waiving the administrative penalties and deportation for illegal stay in the country;
- c. Conduct countrywide registration to identify the number of stateless persons in Tajikistan and achieve solutions for them, including confirmation of nationality, granting of residence permits and facilitating naturalization for them;
- d. Ensure stateless persons have access to identity documentation, social services and benefits and employment opportunities; and
- e. Harmonize nationality-related legislation following the adoption of the amended *Constitutional Law on Nationality*.

Issue 3: Freedom of movement restrictions and associated penalties, including rejection/revocation/cancellation of refugee status and subsequent deportation.

Resolutions 325 and *328* passed in 2000 and 2004 respectively prohibit asylum-seekers and refugees from residing in designated urban areas, including the two main cities of Dushanbe and Khujand. These *Resolutions* also stipulate an exhaustive list of settlements where the temporary residence of refugees and asylum-seekers is allowed. As a result, the *Resolutions* severely restrict the freedom of movement and choice of residence of refugees and asylum-seekers in Tajikistan. Moreover, the continued implementation of these *Resolutions* negatively affects access of refugees and asylum-seekers to the labour market, health care, education, housing and other services.

The *Resolutions* are strictly enforced by the Government and non-compliance results in the rejection of asylum applications; the *de facto* revocation of refugee status; detention; and

administrative penalties. Furthermore, since Article 499(3) of the *Administrative Code* envisages that a breach of *Resolution 325* is subject to an administrative penalty conducive to the deportation of refugees, the enforcement of these *Resolutions* often leads to *refoulement*.

These provisions undermine the safeguards contained in Article 14(1) of the *Law on Refugees*, which states that “[a]sylum-seekers, persons applying for refugee status, recognized refugees, and whose refugee status has ceased or has been cancelled cannot be returned or deported against their will to the territory of a state where their life and freedom would be threatened on account of their race, religion, citizenship, membership of a particular social group or political opinion.”

Beginning in November 2012, deportation orders have been executed and asylum-seekers and refugees have been deported to Afghanistan, contrary to the provisions of international refugee law and to the customary international law principle of *non-refoulement*. In total, 36 families (43 persons) were forcibly deported to Afghanistan between November 2012 and March 2015. The vast majority of these deportation incidents were due to the individuals’ non-compliance with *Resolution 325*. The majority of the cases had appealed to the higher court instances with the support of UNHCR, but were deported before appeals were exhausted. UNHCR is further aware of several cases of *refoulement* where recognized refugees holding valid refugee status documents were deported to Afghanistan.

It should be stressed that *Resolutions 325* and *328* specifically target refugees and asylum-seekers exclusively, whereas other foreign nationals are not subject to any movement or residence restrictions. In this context, UNHCR would like to refer to the Committee on the Elimination of Racial Discrimination’s *Concluding Observations* on Tajikistan from 2012, which recommended that Tajikistan “Lift the regulation forbidding refugees to live in specific areas, in particular in Dushanbe and Kjujand.”¹⁰

In addition, Tajikistan received recommendations from the Human Rights Committee in 2013 to respect the principle of *non-refoulement* and to guarantee that freedom of movement restrictions are never used as a basis for exposing any person to a risk of violations of Articles 6 and 7 of the *International Covenant on Civil and Political Rights*.¹¹ Furthermore, the Committee on Economic Social and Cultural Rights recommended in 2015 that Tajikistan lift freedom of movement restrictions in order to ensure refugees’ and asylum-seekers’ enjoyment of economic, social and cultural rights enshrined in the *Covenant*. The Committee also called on Tajikistan to repeal Article 499(3) of the *Administrative Code*, which envisages administrative penalties and deportation for those in violation of the said *Resolutions 325* and *328*.¹² (See the Annex below for further information).

In this context, the ongoing revision of the *Criminal Code* by the established Inter-Ministerial Working Group may bring positive developments, in particular through the inclusion of a

¹⁰ Committee on the Elimination of Racial Discrimination, Concluding observations on Tajikistan, 81st session, 24 October 2012, CERD/C/TJK/CO/6-8, para. 14(a), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=5.

¹¹ Human Rights Committee, Concluding Observations on Tajikistan, 108th session, 22 August 2013, CCPR/C/TJK/CO/2, paras. 11 – 12, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=623&Lang=en.

¹² Committee on Economic, Social and Cultural Rights, Concluding Observations on Tajikistan, 20th session, 25 March 2015, E/C.12/TJK/CO/2-3, para. 15, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR.

provision on the absolute prohibition of extradition or deportation in cases where the subject would be at risk of torture.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a. Lift the restrictions imposed under *Resolutions 325 and 328*, which prohibit refugees and asylum-seekers from living in certain urban areas, so as to ensure their freedom of movement throughout the country;
- b. Repeal Article 499(3) of the *Administrative Code* in order to ensure respect for the principle of *non-refoulement*, in line with obligations under the *1951 Convention* (Article 33) and in order to comply with the *Law on Refugees*, amended as of 26 July 2014 (Article 14(1)); and
- c. Enshrine the absolute prohibition of extradition or deportation in cases where the subject would be at risk of torture within the *Criminal Code*.

Issue 4: Access to the territory

UNHCR does not have access to detention facilities, nor can it systematically monitor the arrival of asylum-seekers at border entry points. In addition, competent authorities in Tajikistan do not provide statistical information on foreigners held in detention or aliens who have been expelled, returned or otherwise refused entry at the borders. Consequently, UNHCR is unable to monitor Tajikistan's compliance with important provisions of international human rights instruments to which the State is party.

In the past, UNHCR has intervened in cases of asylum-seekers who crossed the border irregularly as a result of flight and were detained on migration violations¹³ under Article 335(1) of the *Criminal Code*, which foresees that "Illegal, without any documents and necessary permission, border crossing is subject to administrative penalties in amount of 500 up to 1000 indicators (1 indicator is equivalent to 6 US dollars) or imprisonment for the period of 2 up to 5 years." It should be mentioned, however, that the *Criminal Code* suggests a remark to the above cited Article as to: "the implementation of the said Article does not cover the incidents/cases of illegal border crossing by foreign nationals or stateless persons aiming to exercise his/her right for political asylum in accordance with the Constitution of the Republic of Tajikistan (Article 16 – Granting Political Asylum and Article 69 – President's Jurisdiction on Granting Political Asylum)."

The majority of these cases were subsequently deported without access to asylum procedures, in violation of both international and national law, and placing the individuals at risk of *refoulement*. One of these cases involved an Iranian asylum-seeker who was charged with 'illegal border crossing' and sentenced to seven years in prison in 2011. Following a November 2014 amnesty announced by the State, the asylum-seeker was released from penal detention, but remained in administrative detention pending deportation from Tajikistan. Following UNHCR's and its legal partner's active intervention, the asylum-seeker was released, lodged an asylum petition under UNHCR's mandate, and UNHCR subsequently recognized him as a refugee. The Government now tolerates this individual's stay in the country until a durable solution is identified.

¹³ Between 2010 and June 2015, 7 such cases have come to UNHCR's attention.

UNHCR wishes to note that the *1951 Convention* contains in Article 31 a non-penalization clause, which states that “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” The rationale behind this clause is the recognition that the position of asylum-seekers differs fundamentally from that of ordinary migrants, in that circumstances may compel a refugee or asylum-seeker to have recourse to fraudulent documentation when leaving a country in which his/her physical safety or freedom are endangered.

Although the *1951 Convention* does not specify interpretation of the notion of penalties, the object and purpose envisaged by Article 31 is the avoidance of penalization on account of illegal entry or illegal presence. This includes measures such as prosecution, fines and imprisonment. Any punitive measure, that is, any unnecessary limitation on the full enjoyment of rights granted to refugees under international refugee law, which is applied by States against refugees who would fall under the protective clause of Article 31 could be interpreted as penalization.

In UNHCR’s view, the effective implementation of the obligation under Article 31 of the *1951 Convention* requires concrete steps at the national level. Specifically, States should ensure that refugees benefiting from this provision are promptly identified, that no proceedings or penalties for illegal entry or presence are applied pending the expeditious determination of claims to refugee status and asylum, and that the relevant criteria are interpreted in light of the applicable international law and standards.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a. Ensure that asylum-seekers being detained as a result of ‘illegal border crossing’ can exercise their right to seek asylum by contacting the refugee authorities and UNHCR;
- b. Give UNHCR access to detained asylum-seekers in line with the Agency’s mandate and internationally recognized supervisory functions under the *1951 Convention*;¹⁴
- c. Develop Referral Mechanism Standard Operating Procedures at the border with clear modalities on reception and further referral of asylum-seekers to the refugee authorities;
- d. Respect the principles of *non-refoulement* and of non-penalization for asylum-seekers arriving irregularly, as well as national refugee legislation; and
- e. Amend Article 335(1) of the *Criminal Code of the Republic of Tajikistan* in line with Article 6(4) of the *Law on Refugees*, amended as of 26 July 2014.

Issue 5: National legislative framework on refugee protection

Despite the significant amendments made, UNHCR would like to note that certain gaps remain in the *Law on Refugees*. These include a) the existence of pre-screening procedures before an asylum claim is registered; and b) access to the asylum procedure being dependent on various preliminary requirements, namely registration with local authorities (implying the possession of travel document and visa), medical examination, and evidence of residence (in accordance with *Resolution 325*). In addition, the *Law* does not provide for complementary

¹⁴ See Articles 35 and 36 of the *1951 Convention*.

forms of protection. In this regard, UNHCR shared its commentary on the *Law on Refugees* with the Tajik Government in July 2015 for further consideration.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a. Review UNHCR's commentary on the *Law on Refugees* shared in July 2015 on the remaining gaps and form a working platform for analyzing these gaps;
- b. Develop internal State RSD regulations, including the terms of reference for the Inter-Ministerial RSD Commission, regulating access to asylum procedures; and
- c. Regularize the legal status of mandate refugees by providing mandate refugees work and residence permits.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of Recommendations from the 1st cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedure mandate holders

TAJIKISTAN

We would like to bring your attention to the following excerpts from the 1st cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Tajikistan.

I. Universal Periodic Review

| Recommendation ¹⁵ | Recommending State | Position ¹⁶ |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------|
| Statelessness Conventions | | |
| 90.13. Ratify the 1954 and 1961 Statelessness Conventions | Germany/Slovakia | Noted ¹⁷ |
| 90.14. Positively consider adhering to the Convention related to the Status of Stateless Persons of 1954 and other instruments related to Stateless Persons | Mexico | Noted ¹⁸ |
| Birth registration | | |
| 88.50. Ensure that all births are registered and facilitate access to birth registration services including by reducing its cost | Uruguay | Supported |
| <i>International Convention for the Protection of All Persons from Enforced Disappearance</i> | | |
| 90.9. Sign and ratify CRPD and CED | Spain | Noted ¹⁹ |
| 90.12. Consider the possibility of ratifying CRPD and its Optional Protocol, CED, OP-CESCR, OP-CAT and OP-ICCPR | Argentina | Noted ²⁰ |
| 90.16. Become a party to the major international human rights instruments to which it has not yet acceded, such as the International Convention for the Protection of All Persons from Enforced Disappearance, as well as issue a standing invitation to special procedures mandate holders | Japan | Noted |
| 90.17. Ratify OP-CAT and CED and extend a standing invitation to all HRC Special Procedures | Uruguay | Noted |
| Prevention of torture | | |

¹⁵ All recommendations made to Tajikistan during its 1st cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review: Tajikistan," A/HRC/19/3, 12 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TJSession12.aspx>.

¹⁶ Tajikistan's views and replies can be found in the Addendum, A/HRC/19/3/Add.1, 27 February 2012, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TJSession12.aspx>.

¹⁷ **Addendum 90.13:** "Tajikistan does not accept this recommendation, as this question requires further consideration."

¹⁸ **Addendum 90.14:** "Answered in 90.13."

¹⁹ **Addendum 90.9:** "Answered in 90.6 and 90.7. Tajikistan does not accept the recommendation to accede to the International Convention for the Protection of All Persons from Enforced Disappearance, as this question requires further consideration. Tajikistan would welcome the provision of technical assistance for the consideration of this matter."

²⁰ **Addendum 90.12:** "Answered in 90.6, 90.7 and 90.9. Owing to a lack of financial resources, Tajikistan does not accept the recommendation to accede to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Answered in 90.1 and 90.10."

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-----------|
| 88.23. Bring the definition of torture in domestic law into line with the definition in article 1 of CAT; Incorporate a definition of torture into its domestic law, in line with article 1 of CAT | Czech Republic/ Australia | Supported |
| 88.24. Establish a legal definition of torture in line with article 1 of CAT, and independent mechanisms to investigate and prosecute related cases | Canada | Supported |
| 88.25. Strengthen measures to combat and prevent torture and other cruel and degrading treatments | Brazil | Supported |
| 88.26. Adopt and implement efficient measures to prevent torture and other forms of ill-treatment, and ensure prompt and credible investigations into all allegations of torture including deaths in custody | Slovakia | Supported |
| Sexual and Gender-Based Violence and Domestic Violence | | |
| 88.30. Treat violence against women as a criminal offence, and enact the existing draft Bill on Social and Legal Protection against Domestic Violence | Czech Republic | Supported |
| 88.31. Enact the draft bill on Social and Legal Protection against Domestic Violence and develop a national plan to prevent and eradicate violence against women | Canada | Supported |
| 88.32. Adopt legislative measures to criminalize and prosecute gender violence at public instances, as well as establish shelters for women victims of violence and train staff involved into investigations of those cases | Spain | Supported |
| 88.35. Adopt and implement efficiently a law against domestic violence | Switzerland | Supported |
| Child protection | | |
| 88.53. Ensure that abusive child labour practices are eliminated and promote access to education of these children in a vulnerable situation | Uruguay | Supported |
| 88.55. Incorporate in the domestic law the explicit prohibition of child labour; adopt an array of measures to guarantee inclusive education and the non-discrimination of children with disabilities in the regular education system | Spain | Supported |

II. Treaty Bodies

Committee against Torture

Concluding Observations, 49th session (21 January 2013) [CAT/C/TJK/CO/2](#)

Non-refoulement and extradition

18. The Committee is concerned that the Criminal Procedure Code does not contain any provision on the absolute prohibition of extradition or deportation in cases where the subject would be at risk of torture, and that there are no clear procedures in legislation for challenging the legality before a court in extradition and deportation proceedings. It is also concerned about reports of extradition requests made by the State party of persons alleged to be members of banned Islamic groups, who, upon return to Tajikistan, are reportedly held in incommunicado detention and in solitary confinement, and subjected to torture and/or ill-

treatment by law enforcement officials. It is further concerned by allegations that persons facing risk of torture upon their return and have applied for interim measures at the European Court of Human Rights have been abducted by Tajikistani security forces in a neighbouring country and forcibly returned to Tajikistan, and subsequently subjected to torture and/or ill-treatment. Additionally, the Committee is concerned by reports that Abdulvosi Latipov, former member of the United Tajik Opposition, has allegedly been abducted from the Russian Federation to Tajikistan in October 2012 and is being held incommunicado (art. 3).

The State party should:

- (a) **Clearly establish in law and respect its non-refoulement obligations under article 3 of the Convention, including the right to appeal the issuance of an extradition warrant, and refrain from seeking and accepting diplomatic assurances from a State where there are substantial grounds for believing that a person would be at risk of being subjected to torture. It should provide detailed information to the Committee on all cases where such assurances have been provided;**
- (b) **Cease the practice of abducting and forcibly returning individuals to Tajikistan from other States and subsequently holding them in incommunicado detention, and ensure that they are not subjected to acts of torture and ill-treatment;**
- (c) **Disclose the whereabouts of Abdulvosi Latipov and ensure that he is not subjected to torture or ill-treatment and that his fundamental rights are fully guaranteed, including timely access to an independent lawyer.**

Committee on Economic, Social and Cultural Rights

Concluding Observations, 20th session (25 March 2015) [E/C.12/TJK/CO/2-3](#)

Refugees and asylum seekers

15. The Committee is concerned that, despite legal reforms undertaken by the State party, the access of refugees and asylum seekers to certain urban areas still remains restricted, which, inter alia, limits their access to the labour market, health care, education, housing and other services (art. 2, para. 2).

The Committee recommends that the State party take the necessary steps to lift the restrictions under Presidential resolutions No. 325 (2000) and No. 328 (2004), with a view to ensuring enjoyment by refugees and asylum seekers of the economic, social and cultural rights enshrined in the Covenant, and that it consequently repeal article 499 (part 3) of the Administrative Code, which provides for administrative penalties and the deportation of those in violation of the above-mentioned resolutions.

Committee on the Elimination of Discrimination against Women

Concluding Observation, 56th session (30 September - 18 October 2013)
[CEDAW/C/TJK/CO/4-5](#)

Disadvantaged groups of women

31. The Committee is concerned about the particular vulnerability of refugee women, older women, migrant women who work overseas and those left behind by male migrants, stateless women, including what are termed “border wives”, and women and girls with disabilities, who suffer multiple forms of discrimination. It is also concerned about obstacles preventing them from enjoying adequate access to health-care services, social benefits, education, employment and participation in political and public life. While noting the information and data provided on some groups of women, the Committee is concerned at the lack of detailed statistical data, disaggregated by sex, age and nationality, which would enable the situation of disadvantaged groups of women to be accurately assessed.

32. The Committee recommends that the State party:

(a) Take all measures, including temporary special measures, necessary to improve the situation of disadvantaged groups of women, protect them from exploitation and improve their access to health-care services, social benefits, education and employment opportunities and participation in political and public life;

(b) Establish mechanisms to regularly monitor the impact of social and economic policies on disadvantaged groups of women, including by taking a comprehensive, multifaceted approach to addressing the specific challenges of migration that may affect women;

(c) Provide comprehensive information and statistical data, disaggregated by sex, age and nationality, that can be used to assess the situation of disadvantaged groups of women;

(d) Take the measures necessary to address the statelessness of women and children in the State party, including through amendment and enactment of relevant legislation, as well as through compulsory birth registration;

(e) Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Human Rights Committee

Concluding Observations, 108th session (22 August 2013) [CCPR/C/TJK/CO/2](#)

Non-refoulement and extradition

11. The Committee is concerned that the refusal to grant persons refugee status because of their irregular crossing of the State border or a late referral by the border services of asylum requests to the competent authorities leads to their detention and even refoulement, which is prohibited under the Covenant. The Committee is also concerned that frequent raids on refugees and asylum seekers staying in urban areas in contravention of Presidential Resolutions Nos. 325 and 328 lead to the rejection of asylum claims, refusal to issue or extend documents or even expulsion and deportation, in contravention of articles 6 and 7 of the Covenant (arts. 6, 7, and 12).

The State party should scrupulously respect the principle of non-refoulement. It should ensure that access to asylum procedures is not barred and applications are not turned down because refugees have entered the country irregularly or their cases were referred belatedly to competent authorities. The State party should guarantee that restrictions on

freedom of movement under Presidential Resolutions Nos. 325 and 328 are never used as a basis for exposing any person to a risk of violation of articles 6 or 7 of the Covenant.

12. The Committee is concerned at reports of unlawful expulsion and extradition. It is also concerned at the lack of sufficient time and clear procedures to challenge such decisions, and about the State party's overreliance on diplomatic assurances (arts. 6 and 7).

The State party should strictly apply the absolute principle of non-refoulement under articles 6 and 7 of the Covenant, and ensure that decisions on expulsion, return or extradition accord with the due process of the law. In this regard, the State party should exercise the utmost care in evaluating diplomatic assurances, and should refrain from relying on such assurances where it is not in a position to effectively monitor the treatment of such persons after their return and take appropriate action when assurances are not fulfilled.

Committee on the Elimination of Racial Discrimination

Concluding observations, 81st session, (24 October 2012) [CERD/C/TJK/CO/6-8](#)

Situation of refugees, asylum seekers and stateless persons, including access to citizenship

14. The Committee is concerned about restrictions on refugees' freedom of movement and right to choose their place of residence. It remains concerned about challenges faced by refugees and asylum seekers in terms of employment, access to public services, education and citizenship and about the number of long-time stateless persons (art. 5).

The Committee recommends that the State party:

- (a) Lift the regulation forbidding refugees to live in specific areas, in particular in Dushanbe and Kjujand;**
- (b) Take all the necessary measures to ensure that refugees enjoy the rights to work, health care and education;**
- (c) Ensure the appropriate protection to refugee children;**
- (d) Resolve the problem of the stateless persons and consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**
- (e) Speedily conclude ongoing legislative efforts, with the assistance of the United Nations High Commissioner for Refugees, to adopt a new Law on Citizenship and revise the Refugee Law.**

Discriminatory law against non-citizens

16. The Committee expresses its concern regarding the amendment of the Family Code in 2011 which restricts the right of foreigners and stateless persons, including migrants, to marry Tajik women by requiring legal residence in the country for at least one year and a mandatory prenuptial agreement providing the Tajik spouse with a dwelling. The Committee regrets this provision which has a discriminatory effect, in violation of the Convention (arts. 2 and 5).

In the light of its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party review its legislation to bring it into full compliance with its international obligations and the Convention, in particular the State party should ensure that non-citizens are afforded effective enjoyment of the rights mentioned in article 5 of the Convention without discrimination. The Committee recalls that State parties have the duty to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens. The Committee recommends that the State party take this into account in the new law on citizenship in order to find other ways and means to protect Tajik women while avoiding discrimination on ethnic or national ground.

III. Special Procedures

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Tajikistan (12 – 12 February 2014), 27 February 2015, [A/HRC/28/68/Add.2](#)²¹

3. Non refoulement and Extradition

40. The Special Rapporteur remains concerned about the lack of compliance with and legal recognition of the non-refoulement provision of the Convention. He regrets the lack of national legislation regulating the prohibition of extradition or deportation of persons to countries where they would be at risk of torture and ill-treatment. The Special Rapporteur was informed about several cases wherein individuals were extradited to places where they were at risk of being subjected to torture and ill treatment, including a case where one person reportedly died soon after being deported to Afghanistan. In addition, the Special Rapporteur was informed about the non-existence of appropriate legal recourses for lawyers to introduce the non-refoulement exception in an extradition proceeding and insufficient time to conduct meaningful risk assessments.

41. The Special Rapporteur strongly recommends that the Government amend its legislation to ensure that the obligation not to extradite or deport or expel a person to a country where he or she faces a risk of torture or ill-treatment is duly recognized and that appropriate legal recourse, including access to legal counsel, are guaranteed to ensure

²¹ The SR on torture also visited Tajikistan in 2012 and the mission report is available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsN-Z.aspx>.