



Tajikistan

**REPORT FOR THE UNIVERSAL PERIODIC REVIEW
FROM THE NGO RULE OF LAW AND ACCESS TO JUSTICE NETWORK.**

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TABLE OF CONTENT

I. RIGHT TO FAIR TRIAL	3
II. ACCESS TO JUSTICE FOR VICTIMS OF DOMESTIC AND GENDER-BASED VIOLENCE	4
III. PROVISION OF FREE LEGAL AID TO VULNERABLE GROUPS	6
IV. CHALLENGES TO RESPECTING THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS.....	8

The present report is submitted by the Rule of Law and Access to Justice Network of civil society organizations working in the areas of the rule of law and access to justice, human rights and women's rights in Dushanbe, Sughd and Khatlon provinces and Gorno-Badakhshan Autonomous Oblast (GBAO). The Network is composed of the following organizations:

Public association "Human Rights Centre"
Public Association "Bureau for Human Rights and Rule of Law"
Public Foundation "Your Choice"
Public Foundation "Legal Initiative"
Public Association "Pamir Lawyers Association"
Public association "Independent Centre for Human Rights"
Public association "Office for Civil Liberties"
Public association "League of Women Lawyers"
Public association "Gulrukhsor"
Public association "Saodat"
Public association League of Women with Disabilities "Ishtirok"
Public association "Nachoti Kudakon"
Public association "Khurshedi Zindagi"
Public association "Sayokhat"
Public association "Women and Society"
Public association "Imkoniyat"
Public association «Lawyers»
Public association «Society development foundation»
Public association «Legal Education Center»
Public association «Justice for women»
Public association «Bonuvoni Fardo»
Public association «The world of law»
Public association «Gamkhori»

I. RIGHT TO A FAIR TRIAL

1. Despite continuous improvements in judicial legislation, there are serious problems related to the independence of the judiciary and access to justice.
2. In recent years, local court websites have been developed and launched. In 2019, new Judicial and Legal Reform Program for 2019-2021¹ was approved, which provides for the elaboration and adoption of law of the Republic of Tajikistan “About ensuring access to information on activity of the courts”.
3. There are problems in ensuring transparency and openness of court proceedings. Representatives of civil society note that, when conducting trial observations, observers are required to obtain the permission of court presidents and judges, as well as have to explain the purpose of the trial visit, even when trials are open.²
4. Physical access to the courts is restricted by the presence of a permit system and guards at the entrance to the courthouse³, visitors are prohibited from carrying telephones and other recording devices⁴, although domestic legislation provides for the use of written and audio recordings of court proceedings without the consent of the court. Generally, the judges justify the injunction on the grounds that it interferes with the progress of the trial, while the injunction is not formalized⁵. Some judges noted that the use of audio or video recordings required the authorization of the President of the Court, which indicated a lack of independence of judges.
5. There are no ramps in court buildings, and in some buildings do not have elevators, which makes the building hard to reach for persons with disabilities⁶, there is no accessible environment for persons with visual impairments, including luminous or voice signs with announcements, office numbers of judges, assistants, texts with large print and Braille text.
6. No professional interpreters are used for trials and no court documents are provided in a language that the parties to the proceedings understand.
7. Procedural legislation of Tajikistan does not provide for procedures for informing participants in court proceedings and the public of the time and place of hearings, as well as ensuring appropriate measures to ensure public access in open court proceedings. The information presented in court stands is available only in the State language, in small print and often too high⁷, which creates problems for members of ethnic and linguistic minorities who do not speak the State language, persons with visual problems, and persons with disabilities⁸.
8. The Courts’ websites⁹ do not contain information about the content of judicial acts that have entered into legal force, information is posted irregularly, there are no elements of electronic justice in the performance of certain procedural actions¹⁰.

9. Recommendations

- 1) Take measures to ensure the publicity of judicial proceedings in law and in practice.

¹ Presidential Decree of the Republic of Tajikistan About the Program of judicial and legal reform in the Republic of Tajikistan for 2019-2021, April 19, 2019 No. 1242

² NGO " Human Rights Center", "Monitoring of criminal proceedings in the Republic of Tajikistan. The results of monitoring for the period from April 2013 to January 2014". (2014)

³ Please refer to footnote 47

⁴ NGO "The World of Law", "Study of publicity of judicial process and openness of judicial information in Dushanbe" (2018)

⁵ Ibid

⁶ Ibid

⁷ Please refer to footnote 47

⁸ Ibid

⁹ UNDP, Study "Analysis of the Implementation of the State Programs of the Republic of Tajikistan in the Field of Judicial and Legal Reform" (2017)

¹⁰ Ibid

- 2) Provide access to information on the activities of the courts by enacting legislation on access to judicial information and ensuring the smooth operation of judicial websites that are accessible, inter alia, in the languages of national minorities.
- 3) Ensure free access to the court buildings for visitors and representatives of mass media (journalists)
- 4) Buildings and facilities, such as courts, investigative and prosecutorial buildings should be accessible to persons with physical disabilities, persons with reduced mobility, and persons with hearing and visual impairments.
- 5) During the trials involving persons with disabilities Judges should consider conducting itinerant sessions.
- 6) Fully respect the right to an interpreter and ensure the participation of a professional interpreter in the process.

II. ACCESS TO JUSTICE FOR VICTIMS OF DOMESTIC AND GENDER-BASED VIOLENCE.

10. At present, Tajikistan has a number of legislative initiatives to protect victims of domestic violence. However, there are significant challenges in preventing domestic violence and providing protection to victims of domestic violence. Prosecution offices should play an important role in this process. According to Art. 24 of the Tajik Criminal Procedure Code, all criminal cases are divided into private, private-public and public prosecution cases. In practice, the prosecutor's office deals mainly with public prosecution, and these are crimes of average gravity or serious crimes (for example, murder, injury to health, resulting in death, etc.). Despite the provision of the paragraph 4 of Article 24 of the Tajik Criminal Procedure Code, the prosecutor has the right to carry out criminal prosecution in cases of private and private-public prosecution, regardless of the position of the victim of the crime, however, in practice, in cases of domestic violence (Articles 112 and 116 of the Criminal Code of the RT) this provision is not applied by the prosecutor's office¹¹. There is no official statistics regarding the cases initiated by the prosecutor's office under Articles 112 and 116 of the Criminal Code of the Republic of Tajikistan, where the victims and suspects are members of the same family, or persons who jointly run a common household.

11. The criminalization of domestic violence in accordance with the final recommendations of the UN CEDAW Committee remains pending. Accordingly, under the provisions of article 354 of the Code of Criminal Procedure, a victim of domestic violence is personally obliged to collect evidence against the perpetrator, while being economically dependent on the perpetrator. In addition, vast majority of victims lack legal knowledge about their rights and remain physically accessible to the perpetrator.

12. In addition, Tajik criminal procedure law does not require the provision of free legal counsel to victims of domestic violence.

13. Cases of administrative offenses, qualified under Articles 93.1 (Violation of the legislation of the Republic of Tajikistan on the prevention of domestic violence) and 93.2 (Violation of the requirements of a protective instructions) of the Code of Administrative Offenses of the Republic of Tajikistan (CAO RT) also does not provide for real protection of the victim, since it only entails the imposition of a fine against the violator. These legislative norms worsen the situation of victims of domestic violence, and these are women and more vulnerable groups of women, having restricted access to effective justice.

14. The Criminal Code also contains articles applicable to domestic violence, including articles 117 (ill-treatment) and 120 (Threatening to kill or causing grievous bodily harm), which impose heavier penalties, including imprisonment for up to three years. No statistical information is

¹¹ The third alternative report of public associations of Tajikistan on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Dushanbe. 28.09.2018

available on the cases brought under this article concerning the threat of murder. Often, the law enforcement authorities refuse to prosecute the threat of murder because there are no grounds to accept such complaint. According to article 117 of the Criminal Code, the basis for the institution of criminal proceedings for psychological violence must be the systemic nature of the offence. Accordingly, such an approach can only worsen the situation of the victim of domestic violence, bearing in mind that in the event of systematic beatings or threats and other psychological pressure, the victim may simply end up in a hospital with severe injuries, in other cases, the victims attempt suicide.

15. There is a problem with forensic expertise if it is not linked to a criminal case. There are virtually no female specialists in the forensic system, while the most frequent victims of domestic violence, including sexual violence are women and girls. This constitutes a significant obstacle for victims to undergo a medical examination or test and then go to court for appropriate protection. The opinion of the forensic physician is essential proof of the perpetrator's guilt.

16. There is a lack of gender sensitivity in domestic violence in the courts. When a lawyer, who is provided by a public organization for domestic violence cases, turns to the prosecutor's office, they are given the answer that they need to go to court, since these are private prosecution cases and are initiated by the court. And the courts return such private statements without even providing a reasoned determination or other written response.

17. There is no definition of the concept of "sexual harassment" in Tajik legislation, no statistics on the problem, and no review or study of the practice of law enforcement agencies in investigating such cases or of court decisions. Furthermore, it is very difficult to prove harassment in court. Cases involving harassment are dealt with under article 140 of the Criminal Code of the Republic of Tajikistan, entitled "Coercion to act of a sexual nature", which covers offences against sexual freedom or inviolability of the person. In addition, criminal law punishes crimes against personal freedom, honour and dignity¹². Also, such actions can be qualified as crimes against public order and morality¹³. Since most of these cases are investigated by men, victims face prejudice against the victim. Thus, in order to prove the fact of sexual harassment or rape, the victim had to resist the rapist, otherwise sexual intercourse is considered to be voluntary.

18. Early marriage is not only a cause of violation of women's rights, but also it is a gender-based violence. Although polygamy is prohibited and punishable in the country, however, this practice is still common in Tajikistan. Early and unregistered marriage increases the vulnerability of women and girls and the risk of domestic violence. Such marriages exacerbate a woman's economic dependence and isolation. The Family Code of the Republic of Tajikistan allows to reduce the age of marriage by one year in exceptional cases, but these cases are not established by law. In practice, the courts, when deciding to lower the marriageable age, take into account such arguments as "difficult economic circumstances of the bride", "Love" or "pregnancy".

19. Recommendations.

- 1) to criminalize all types of gender-based violence, including domestic violence, sexual harassment;
- 2) to amend the Criminal Procedure Code of the Republic of Tajikistan so that domestic violence cases fall under the category of public prosecution cases and be initiated by the investigation, and not by the victim herself through the courts;
- 3) to amend the Family Code of the Republic of Tajikistan in order to exclude the provision on reducing the marriageable age.
- 4) to publish statistical information on all criminal and administrative cases related to gender-based violence.
- 5) to provide victims of gender-based violence with a lawyer at the expense of the State;

¹² Chapter 17 of the Criminal Code Art. 134

¹³ Part 1 Art. 237 of the Criminal Code

- 6) to provide effective remedies against violence for all women who are in polygamous relationships.

III. PROVISION OF FREE LEGAL AID TO VULNERABLE GROUPS.

20. Currently, Tajikistan is implementing the Concept for the provision of free legal aid to the population, approved by the Government Resolution in 2015, the purpose of which is to create the basis for the development and further improvement of the state system of affordable and qualified free legal aid to the population.

21. In accordance with the concept, primary free legal aid can be received by all citizens, including those who cannot pay for the services of a lawyer themselves and secondary free legal aid to needy and poor people. For the direct implementation of the State Concept 2015, a state institution "Legal Aid Center" was established under the Ministry of Justice of the Republic of Tajikistan.

22. In July 2020, the Law "On Legal Aid" was adopted. The law does not specify that legal assistance, both primary (legal consultation) and secondary (lawyer at the investigation stage and in court), will be provided at the expense of the state. When regulating issues related to the management of the legal aid system, such issues as interaction between various state and non-state legal aid services and the procedure for payment for legal aid services were overlooked.

23. Legal aid, as a public service, may be the subject of a State order. Article 8 of the Law «On Legal Aid» states that public associations may also provide legal assistance. And public associations should have the right to tender for such services. In each field of the state tender, due to its specificity, there must be a certain state social customer. The Law of the Republic of Tajikistan "On Legal Aid" does not consider such a possibility as an institution of state social order in the provision of primary and secondary legal aid. The powers of the authorized body are not defined in this direction as well. It is not clear who is the state social customer, who is responsible for taking measures to select the contractor, conclude an agreement by the parties, finance and control the execution of the state social tender¹⁴. It is advisable that the Law of the Republic of Tajikistan "On Legal Aid" provides an opportunity for public associations to participate in a tender for the provision of legal services for certain categories of the population. So, for example, people with HIV, fearing the disclosure of their status, do not turn to a state lawyer, they usually turn to public organizations. The issue of using the state social order in the provision of legal assistance is still unresolved and not sufficiently transparent.

24. The category of persons who are entitled to secondary legal assistance in criminal, administrative and civil cases is the subject of great controversy. In all categories of cases, there are persons such as recipients of targeted social assistance. Analysis of the Law "On Legal Aid" and the Law "On targeted social assistance" reveals problems in identifying such persons, namely:

- firstly, obtaining the status of a recipient of targeted social assistance has a long, unclear and complicated procedure.
- secondly, the law of the Republic of Tajikistan "On targeted social assistance" connects the criteria of this status with the degree of education of the head of the family, while not defining who is the "head of the family".
- thirdly, the Law of the Republic of Tajikistan "On Legal Aid" imposes the obligation to find out the social status of a person for a barrister/state lawyer, which is unjustified from the point of view of the effectiveness of the provision of legal aid and its accessibility.

25. According to the Law "On Legal Aid", **persons entitled to legal assistance in criminal matters are granted only to those referred to in article 21**, which include:

¹⁴ Art. 1 of the Law of the RT "On the State Social Order," December 31, 2008, No. 482. http://portali-huquqi.tj/publicadliya/view_detailslist.php

- Suspects, accused persons, defendants or convicts in need of legal assistance are unable to pay for such services, who are recipients of targeted social assistance in accordance with Tajik legislation;
- Suspects, accused persons, defendants or convicted minors and orphans whose parents (or persons acting in their stead) are unable to pay for these services, who are recipients of targeted social assistance in accordance with Tajik legislation;
- Suspects, accused persons, defendants or convicts who, due to physical or mental disabilities, cannot independently exercise their right to defense;
- Accused persons who is outside the Republic of Tajikistan and evades the appearance for the investigation;
- If a person is charged with an offence for which the death penalty or life imprisonment may be imposed;
- a defendant in custody who refuses to appear at the court hearing;
- veterans of the Great Patriotic War and persons equated to them, veterans of wars on the territory of other states and persons equated to them, as well as persons who suffered as a result of the disaster at the Chernobyl nuclear power plant, or who took part in eliminating the consequences of this disaster.

In accordance with the provisions of the Law of the Republic of Tajikistan "On legal assistance", amendments have been made to articles 50 and 51 of the Code of Criminal Procedure, which also provide for this category of persons, entitled to receive legal assistance at the expense of the State. In addition, Article 26. The Law "On Legal Aid" specifies the procedure for paying for the services of a lawyer, according to which, upon the provision of all the necessary documents by a lawyer, the payment is made by the Legal Aid Center.

At the same time, according to Article 51 (Obligatory participation of a defender) of the Criminal Procedure Code of the Republic of Tajikistan, other categories of persons are also provided who have the right to enjoy the services of a lawyer from the state, but are not included in the Law on Legal Aid, namely, they are

- if the suspect, the accused or the defendant petitioned for the provision of a lawyer;
- a suspect, an accused or a defendant is minor person;
- a suspect, an accused or a defendant do not speak the language in which the proceedings are conducted;

In this case, the decision on the provision of a free lawyer is decided by the inquiry officer, investigator, prosecutor or judge, who have the right to recognize the participation of a defense lawyer in other cases as necessary if they believe that the complexity of the case and other circumstances may make it difficult for the suspect, accused or defendant to exercise their right to protection. In these cases, the decision of the inquiry officer, investigator, prosecutor, judge, or a court ruling on the allocation of a defender lawyer is mandatory for the Union of Lawyers of the Republic of Tajikistan.

Only for the categories of persons specified in Article 51, the procedure for paying for the services of a lawyer is not regulated. In practice, for such cases, funds should be provided for in the local budgets of districts. But, as a rule, local authorities do not take into account the costs of lawyer fees. Therefore, lawyers, in fact, by participating in such cases, do not receive remuneration. And thus, lawyers are no longer initially motivated in participating in such cases, and this situation also affects the quality of the defense provided.

Thus, when determining the payment for the services of a lawyer in criminal cases at the expense of the state, only those categories of beneficiaries that are specified in Article 50¹ of the Criminal Procedure Code of the Republic of Tajikistan, where the mandatory participation of a defense lawyer for persons who also cannot pay for the services of a lawyer, but a lawyer is obliged to

participate in such cases, remains unregulated. The adoption of the law of the Republic of Tajikistan "On Legal Aid" did not fully resolve this problem.

26. The Law of the Republic of Tajikistan "On Legal Aid" does not contain a time frame and procedure for the payment of lawyers' fees by the Legal Aid Centre, nor does it include a mechanism for forecasting expenditures and their fixation in Tajik legislation on the State budget. There is thus a lack of sustainability in the delivery of public services, as there are no real prerequisites for further budgetary funding.

27. Recommendations:

- 1) Improve legislation on free legal aid in accordance with international standards of the right to a fair trial.
- 2) It is necessary to develop quality standards for the provision of free legal aid and adopt them at the legislative level.
- 3) Develop a clear and transparent system of payment for the services of lawyers in all categories of cases related to the provision of legal protection in free cases.

IV. CHALLENGES TO RESPECTING THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS

28. There are contradictions in national legislation that negatively affect the rights of PLHIV. Thus, in accordance with the Code of Public Health, treatment and medical examination of HIV infection is voluntary, however, the Code of Administrative Offenses establishes a penalty in the form of a fine for refusing HIV treatment and hiding information about the source of HIV infection.

29. The Criminal Code of the Republic of Tajikistan has a separate corpus delicti for HIV infection. 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 known. Since 2018, there has been an increase in discriminatory practices by law enforcement agencies against people living with HIV. In the Sughd region alone, 33 criminal cases were initiated under Article 125 against 26 persons infected with HIV in 2018, and in 2019 - 39.¹⁵

30. Article 162 of the Health Code of Tajikistan gives doctors the right to disclose the status of HIV patients upon request from the investigating authorities without justification. Some criminal cases under Article 125 Part 1 of the Criminal Code were initiated after state-run AIDS Centers provided information about the HIV status of individuals to law enforcement agencies.

31. The right to keep an individual's HIV status confidential is not respected by police investigators, operatives, court clerks and judges during investigations and court hearings.

32. Amendments to Article 14 of the Family Code provide for a compulsory medical examination before marriage. New amendments to the Family Code of the Republic of Tajikistan violate the right of PLHIV to voluntarily and confidentiality of HIV testing. In article 14 of the Family Code of the Republic of Tajikistan, one of the prerequisites for marriage is the passage of a mandatory medical examination by persons entering into marriage. Government Decree No. 374 of 23 August 2016 sets out the rules for this. The examination includes an HIV / AIDS test and the requirement to inform both spouses about the results. The medical certificate is required

¹⁵ <https://www.dialog.tj/news/v-tadzhikistane-uvlichilos-chislo-ugolovnykh-del-za-osoznannoe-zarazhenie-vich-infektsiej-2>
Source: "CA-NEWS" 03.05.2019

in order to register a marriage, and failure to comply with these requirements are punishable by a fine.

33. In turn, the Code of Administrative Offenses of the Republic of Tajikistan provides for an administrative penalty in the form of a fine for refusal from compulsory medical examination and HIV treatment, as well as for concealing the source of HIV infection.

34. The Health Code provides for breast milk substitutes for children born to HIV+ mothers (according to official statistics for 2017 there were 60, for 2018 - 53, and for 2019 - 45 such children¹⁶), from birth until their HIV status is fully determined. However, the implementation procedures are not fully defined, funding is not provided from the state budget, and funds are not always allocated from local budgets.

35. Government Decree No. 232 of 10 May 2010 provides for state benefits for HIV+ children until they are 16 years of age. However, the procedures for assigning benefits are lengthy and bureaucratic and it often takes over a year for applications to be processed. Parents of HIV+ children are regularly required to prove that their children are alive, and benefits are suspended while the information is being checked.

36. Government Decree No. 475 of 25 September 2018 forbids persons living with HIV from studying in educational medical institutions. Students are required to show proof of their HIV status before enrolling in medical institutions, and there have been cases when a student who is found to be HIV+ has been expelled from a medical course.

37. The Health Code provides for free treatment for all kinds of medical intervention in all public health institutions. However, in practice, with the exception of ARV therapy, all other treatment must be paid for. There is a particularly serious problem of insufficient psychological support for HIV+ persons to come to terms with their diagnosis, and the state-run AIDS centres do not provide free psychological assistance.

38. An HIV test is also required for employment, even when, for example, opening a small business or retail outlet. There is widespread discrimination against HIV+ persons in the workplace, and employers often refuse to hire them. Persons living with HIV do not appeal against this illegal practice for fear of their HIV status becoming known in the small districts and villages where they live.

39. In 2019, the government introduced pilot testing for HIV in some schools. The testing took place in schools, without the parents present. The authorities failed to provide the necessary counselling before and after the test, and the test results were disclosed to the school administration. There were even attempts to exclude a child from school after a positive test.

40. **Recommendations:**

1. decriminalize Art. 125 of the Criminal Code of the Republic of Tajikistan. Criminalize and prosecute only for intentional HIV infection within the framework of the general provision of article causing serious harm to health;
2. to provide people living with HIV in cases related to HIV infection with obligatory participation of a lawyer in criminal cases at the expense of the state;
3. for judges, investigative bodies and employees of the prosecutor's office to develop guidelines for the investigation of criminal cases under Art. 125 of the Criminal Code of the Republic of Tajikistan, as well as monitoring HIV prevention issued.
4. envisage in the legislation the requirements that in order to obtain data on the state of health and HIV status, a statement from a prosecutor and a court decision are required.
5. provide mandatory professional training for judges, prosecutors, police officers and other law enforcement agencies on the strict observance of the rights of PLHIV, prevention of stigma and discrimination related to HIV / AIDS
6. replace the mandatory medical examination for HIV of persons entering into marriage with voluntary and confidential testing for HIV infection, with the provision of pre- and post-test

¹⁶ Draft National Programme for Prevention of HIV/ AIDS epidemic for 2021 to 2025

- counseling.
7. bring by-laws of the Ministry of Health in line with the Health Code and exclude discriminatory standards in relation to PLHIV;
 8. to strengthen the responsibility of doctors, medical personnel, government officials who have access to information on the existence of HIV disease for disclosing confidential information and for refusing to provide medical care and services.
 9. Cancel the Resolution of the Government of the Republic of Tajikistan No. 475 as of September 25, 2018 and revise the Government Resolution as of October 1, 2004 # 406, excluding HIV from the list of diseases;
 10. Adopt the Government Decree on the issue of infant formula for children born to HIV-infected mothers, and provide funding for these purposes, both in the local budgets of Tajikistan and at the state level in the case of subsidized financing of subsidized regions:
 11. train state lawyers on understanding HIV / AIDS, the needs of PLHIV on the rights of PLHIV in terms of international human rights and HIV standards.
 12. Simplify the procedure for granting benefits to children with HIV and amend the Health Code, increasing the age of children eligible for benefits to 18 years old.
 13. stop the widespread practice of HIV testing upon admission to school, vocational educational institutions and upon employment in all types of work;
 14. The Ministry of Labor to strengthen its work with employers on compliance with safety measures at the workplace, including clarifications on HIV prevention and prohibition of discrimination against PLHIV;