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**ADVANCE UNEDITED VERSION**Distr.: General  
25 August 2017

Original: English

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**Committee on the Elimination of Racial Discrimination****Concluding observations on the ninth to eleventh periodic reports of Tajikistan<sup>\*</sup>****Draft prepared by the Country Rapporteur**

1. The Committee considered the ninth to eleventh periodic report of Tajikistan (CERD/C/TJK/9-11), submitted in one document, at its 2562nd and 2563rd meetings (CERD/C/SR.2562 and CERD/C/SR.2563), held on 10 and 11 August 2017. At its 2576th meeting (CERD/C/SR.2576), held on 21 August 2017, it adopted the following concluding observations.

**A. Introduction**

2. The Committee welcomes the combined ninth to eleventh periodic report submitted by the State party. The Committee notes with satisfaction that the State party's report generally complies with the reporting guidelines. It appreciates the presence of a high-level delegation, the frank and constructive responses provided to the questions and comments raised by Committee members.

**B. Positive aspects**

3. The Committee welcomes the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2014), and the Convention on the Prevention and Punishment of the Crime of Genocide (2015).

4. The Committee also welcomes the State party's efforts to amend its legislation and policies to ensure further the protection of human rights and implementation of the Convention, including:

- (a) The revision of the Law on Refugees (2014).
- (b) The new Constitutional Law on Nationality (2015).

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<sup>\*</sup> Adopted by the Committee at its ninety-third session (31 July – 25 August 2017).

(c) The Trafficking in Persons and Assistance to Victims Act (2014), the Comprehensive Programme to Combat Trafficking in Persons 2011-2013 and 2014-2016.

(d) The ratification of the Agreement on Cooperation among Ministries of Internal Affairs of State Members of the Commonwealth of Independent States in Combatting Trafficking in Persons (2014-2018).

(e) Various amendments to the Criminal Code between 2013 and 2015, in order to strengthen the role and expand the powers of the law enforcement agencies in combating trafficking in persons.

(f) The introduction of several provisions to prevent statelessness, including amongst children, and to facilitate naturalization of certain categories of stateless persons under the simplified procedure.

(g) The creation of an Ombudsman for children (2016).

## C. Concerns and recommendations

### Relevant data

5. The Committee notes the steps taken by the State party to compile some disaggregated data on the ethnic composition of its population. It regrets however that such data are not easily accessible to the public, and are largely missing from the combined ninth to eleventh periodic report submitted by the State party. The Committee reiterates the importance of comparative indicators on the enjoyment of the rights under the Convention by members of ethnic minorities, Roma/Jughi and non-citizens, including women and children, in areas such as health, life expectancy and mortality, employment, education, access to justice, representation in public institutions or detention, which are needed to assess progress and difficulties in implementing the provisions of the Convention (arts. 1 and 5). The Committee also regrets the absence of disaggregated data on the Pamiri and Yagnobi ethnic minority groups, who were included in the 2010 Census as ethnic Tajiks.

**6. The Committee reiterates its view on the importance of compiling and making available accurate disaggregated data on the socioeconomic and cultural status and conditions of the various groups in the population. The Committee considers this information as a useful tool for the State party to secure the equal enjoyment of the rights under the Convention to all, and to avoid discrimination on ethnic and national grounds (CERD/C/TJK/CO/6-8, para. 8). Such data should be disaggregated by various grounds, including ethnicity, nationality, sex and age, and include information on the situation of the Pamiri and Yagnobi communities. The Committee recommends the State party to ensure that a comprehensive set of disaggregated data is sought in the next population census (2020).**

### Definition and criminalization of racial discrimination

7. The Committee notes that the State party has in place a number of legal provisions including those prohibiting racial discrimination, but reiterates its concerns that the State party has yet to amend existing legislation in order to adopt a comprehensive definition of racial discrimination in line with the Convention, which includes all grounds of racial discrimination. The Committee further notes its concerns that existing legislation does not cover all rights and fundamental freedoms under the Convention and is not in full compliance with article 4 of the Convention in relation to the absence of criminalization for incitement to racial discrimination, and acts of racially motivated violence (arts. 1, 4 and 5).

**8. The Committee reiterates its recommendation (CERD/C/TJK/CO/6-8, para. 9 and 10) that the State party reviews its position that a definition of racial**

discrimination in line with the Convention is not necessary. It urges the State party to amend or enact legislation, so as to include an overarching definition of racial discrimination in line with the Convention, to combat racial discrimination in all spheres of public life, including political, economic, social or cultural. The Committee also recommends that the State party condemn and criminalize all forms and manifestations of racial discrimination, set out in article 4 of the Convention. The Committee also wishes to be informed about the extent to which the burden of proof before the state court is on the person affected by racial discrimination.

#### **Absence of court cases on racial discrimination**

9. The Committee notes the information provided by the State party regarding the continued absence of complaints regarding acts of racial discrimination received by law enforcement, investigative bodies, the Ombudsman office and courts. The Committee reiterates that the absence of complaints is not necessarily positive and further notes that it may indicate a lack of information or trust in the authorities amongst the population (art. 6).

10. **In the light of its General Recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice systems, the Committee reiterates its previous recommendation (CERD/C/65/CO/6-8, para. 11), and urges the State party to conduct an in-depth analysis on the absence of complaints. The Committee further recommends that the State party undertake efforts to sensitize and build capacities of law enforcement and judicial officers on the provisions of the Convention, and to raise awareness and inform the general public about their rights under the Convention, including the right to effective protection and remedies.**

#### **Participation in public and political life**

11. The Committee remains concerned at the unequal representation of ethnic minorities within public institutions at the federal as well as at the local levels, which does not represent their proportion within the overall population. The Committee also notes that the data provided by the State party do not include information on the representation of women from ethnic minority groups in public and political life. The Committee further expresses its concern about the fact that minority groups are not adequately consulted before a decision related to the change of public names is effected. The Committee notes that the previous names had an ethnic minority origin.

12. **The Committee urges the State party to ensure the equitable public and political representation and participation of persons belonging to ethnic minorities, including women. It recommends that the State party improve representation of these persons within all public institutions at the federal and local levels, including through the adoption of special measures.**

#### **Situation of Roma/Jughi community**

13. The Committee expresses its concerns that structural discrimination faced by the Roma/Jughi prevents them from enjoying their rights and fundamental freedoms, and notes that Roma/Jughi women and girls often face discrimination that is based on multiple grounds, including ethnicity and gender. In particular, the Committee is concerned about the challenges faced by the Roma/Jughi in obtaining personal documents, registration at place of residence, legalization of housing, access to quality education, health, social assistance and protection against exploitation and harmful traditional practices. The Committee reiterates its regrets that the State party does not recognize the need to develop a concrete plan of action or strategy to protect the Roma/Jughi against discrimination and stigmatization and to promote their human rights (art. 5).

**14. The Committee, recalling its General Recommendation No. 27 (2000) on discrimination against Roma, reiterates its recommendation (CERD/C/TJK/6-8, para. 13), and urges the State party to adopt a strategy or plan, with a view to improving the situation of Roma/Jughi, including women and girls.**

**Situation of refugees and asylum seekers**

**15. The Committee remains concerned about Regulations 325 and 328, which restrict refugees' and asylum seekers' freedom of movement, the majority of whom are from Afghanistan, by forbidding them to live in specific areas, in particular in Dushanbe and Khujand. The Committee also remains concerned about the challenges consequently faced by refugees and asylum seekers in accessing employment, health, education and other basic services. The Committee further regrets that asylum seekers face a significant risk of refoulement, due to the lack of effective access to fair and efficient asylum procedures, penalization of irregular stay or entry and harsh administrative measures applied by the State party in the case of non-compliance with freedom of movement restrictions (arts. 1 and 5).**

**16. Bearing in mind its General Recommendation No. 22 (1996) on Article 5 of the Convention of refugees and displaced persons, the Committee reiterates its recommendation (CERD/C/TJK/CO/6-8, para. 14), that the State party lift Regulations 325 and 328, and repeal article 499 (3) of the Administrative Code, to allow freedom of movement and residence for asylum seekers and refugees on an equal footing as other non-nationals, and to ensure that they can enjoy the rights to work, health care, education and other basic services. The Committee also recommends that the State party, in line with the Convention, take all the necessary measures to ensure that all asylum seekers, regardless of their nationality, have effective access to fair and efficient asylum procedures and are not penalized for irregular entry or stay.**

**Situation of stateless persons**

**17. The Committee welcomes the efforts undertaken by the State party to identify and register stateless persons, the majority of whom are women and children, who are facing an array of protection challenges due to their lack of nationality. It also welcomes the efforts undertaken by the State party to finalize an Amnesty Law in order to regularize the status of stateless persons and persons with undetermined nationalities (art. 5).**

**18. The Committee encourages the State party to continue implementing measures to ensure the identification, registration and regularization of stateless persons, while ensuring the inclusion of disadvantaged groups such as the Roma/Jughi. The Committee also recommends that the State party adopt the Amnesty Law and accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

**Combatting human trafficking**

**19. The Committee notes the efforts undertaken by the State party to combat human trafficking and assist victims. It remains concerned that Tajikistan continues to be a source of trafficking in women and children, in particular those from vulnerable groups, including minorities, refugees and asylum seekers (art. 5).**

**20. The Committee encourages the State party to continue its efforts in combating this scourge by prosecuting perpetrators, providing protection, assistance and reparation to victims of trafficking, including in cooperation with neighbouring States (art. 5).**

**Discriminatory law against non-citizens**

21. The Committee reiterates its concern regarding the amendment of the Family Code in 2011 restricting the right of foreigners and stateless persons, including migrants, to marry Tajik women, which has a discriminatory effect, in violation of the Convention. The Committee takes note of the State party's declared intention to protect Tajik women from human trafficking. It is however of the view that protective measures should never be in violation of fundamental rights and freedoms, including the right to marriage and choice of spouse, on the basis of equality of men and women. The Committee further notes that couples who are denied the right to civil marriage often marry exclusively according to Islamic custom (nikokh), which may deny women and children legal and economic protection if marriages are dissolved (arts. 1, 2, 5 and 6).

22. **Taking into account its General Recommendation No. 30 (2004) on discrimination against non-citizens, the Committee reiterates its recommendation (CERD/C/TJK/CO/6-8, para. 16) 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.**

**Mandate of the Ombudsman**

23. The Committee welcomes the efforts undertaken by the state to adopt a new strategy for the Ombudsman, which includes steps to solidify protection of human rights and enhance access to justice. The Committee however remains concerned that the Ombudsman is not fully independent, and further notes that the Ombudsman was accredited with "B status", which means that it is only partially in compliance with the Paris Principles (art. 2).

24. **In the light of its General Recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee reiterates its recommendation (CERD/TJK/CO/6-8, para. 17) that the State party guarantee the independence of the Office of the Ombudsman by providing it with adequate human and financial resources to carry out its mandate, including promoting and monitoring the rights under the Convention. The Committee further encourages the State party to take necessary measures to raise the level of the Ombudsman Office or to establish a national human rights institution in compliance with the Paris Principles.**

**Promotion of minority languages**

25. While the Committee recognizes the efforts undertaken by the State party to increase the number of textbooks in minority languages, to train teachers and promote the further development of ethnic minority languages, it is concerned about the decrease of instruction in Uzbek, Russian, Kyrgyz and Turkmen, and the absence of Yagnobi and Pamiri languages in the educational curriculum. The Committee also notes the planned reform of the State party to introduce the requirement for students to write an essay in Tajik when taking University entrance exams, and finds that while ensuring knowledge of the State language among members of ethnic minorities is an important consideration, it is crucial that efforts taken to this end do not create a disadvantage for members of minority groups (art. 5).

26. The Committee recommends that the State party take measures to ensure that ethnic minorities have access to instruction in minority languages, taking into account the particular needs and interest of these groups when developing strategies and programmes to this end. The Committee encourages the State party to continue its efforts to ensure that schools attended by minority students have the necessary equipment and capacities. The Committee also encourages the State to support the preservation and development of the Pamiri and Yagnobi languages, through academic research, the introduction of cultural and language tools in educational curriculum as well as media.

#### **Combating prejudices**

27. The Committee is concerned about the prejudices held by the general public towards Roma/Jughi as well as other minorities, such as the Pamiri. It welcomes the efforts of the State party to mount awareness campaigns to promote tolerance, understanding and solidarity within the population towards the Roma/Jughi (art. 7).

28. The Committee recommends that the State party further enhances its efforts to mount awareness campaigns, with a view to combat prejudices and negative stereotypes towards minority ethnicities such as the Roma/Jughi and Pamiri, and to promote understanding, tolerance and friendship amongst all ethnicities.

### **D. Other recommendations**

#### **Follow-up to Durban Declaration and Programme of Action**

29. In the light of its General Recommendation No. 33 (2009), the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), taking into account the outcome document of the Durban Review Conference (April 2009), and that it report accordingly.

#### **International Decade for People of African Descent**

30. In the light of General Assembly resolution 68/237, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International Decade for People of African Descent, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

#### **Consultations with civil society organizations**

31. The Committee recommends that the State party to consult and increase its dialogue with civil society organizations concerned with human rights protection, in particular those working to combat racial discrimination, in the preparation of the next periodic report and in follow-up to the present concluding observations.

#### **Declaration under article 14 of the Convention**

32. The Committee urges the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.

**Amendment to article 8 of the Convention**

33. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

**Common core document**

34. The Committee invites the State party to update its core document submitted in 2004 (HRI/CORE/1/Add.128) in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. 1). The Committee urges the State party to observe the limit of 42,400 words for such documents (General Assembly resolution 68/268).

**Follow-up to concluding observations**

35. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12 and 14 above.

**Paragraphs of particular importance**

36. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 8, 16, 18 and 22 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

**Dissemination**

37. The Committee recommends that the State party's reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

**Preparation of the next report**

38. The Committee recommends that the State party submit its combined twelfth to thirteenth periodic report by 10 February 2020, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

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