

**56 th Session of COMMITTEE ON THE ELIMINATION OF DISCRIMINATION
AGAINST WOMEN**

**Joint statement of the International Public Organization “Right and Prosperity” and
Public Organization “Bureau on Human Rights and Rule of Law” on implementation of
Article 9 of the Convention of elimination of all forms of discrimination against women in
the Republic of Tajikistan**

Abbreviations:

RT		Republic of Tajikistan
RU		Republic of Uzbekistan
SP		Stateless person
NGO		Nongovernmental organization
IO		International organization
AS		Asylum seeker
DCWR	PRS	Department on citizenship and Work with Refugees of the Passport
MoI of RT		Registration Service under the Ministry of Interior of the Republic of Tajikistan
USSR		Union of Soviet Socialist Republics
PR		Permanent Residency
RP		Residence Permit
CoAV RT		Code of Administrative Violations
CRO		Civil registration office
MFA RT		Ministry of Foreign Affairs of the Republic of Tajikistan
PRS MI RT		Passport and registration service under the Ministry of Interior of the Republic of Tajikistan

Introduction

This information is pertinent to implementation of the Republic of Tajikistan's obligations under the Article 9 of the CEDAW. Information presented in this document is based on the monitoring, conducted by the International Public Organization "Right and Prosperity" and "Bureau on Human Rights and Rule of Law" in Isfara, Ghonchi, B.Ghafurov and Spitamen districts of Soghd oblast. It is also based on relevant research and situation analyses conducted by local experts and international organizations, particularly UNHCR and UNWOMEN in 2008, 2010 and 2013.

Also, the document reflects issues discussed during the regional conference on preventing and decreasing statelessness and protecting stateless persons in the Central Asia, held in Ashgabat on December 9-10, 2009.

The document reviews and analyses laws and regulations related to the risk of statelessness, as well as the data from the Statistics Agency under the President of the Republic of Tajikistan.

Background

1364 stateless persons, including 649 women (400 of them are 18 and above¹) are registered in Tajikistan as of 21 September 2010. These are persons who failed to identify their citizenship during the population census. As of today, there is no complete and reliable statistics on the number of stateless persons residing in the Republic of Tajikistan.

The official statistics shows, that as of May 2013, there are 384 stateless persons² residing in Tajikistan. This statistics covers only persons officially registered as stateless persons in the government authorities. It was impossible to receive information on number of female stateless persons.

There is no data on persons, who did not apply for stateless person certificate, or those whose application is rejected, whose citizenship is unidentified due to lack of valid documents certifying their identity.

According to the data from international and nongovernmental organizations, the actual number of stateless persons exceeds official statistics. Problem areas are remote rural regions and districts (jamoats, villages) bordering with Uzbekistan and Kyrgyzstan: in Soghd oblast – Istaravshan, Zafarabad, Mastchoh-Buston, Kanibadam, Isfara, Spitamen, Ayni, Old Mastchoh, Yaghnob districts; In Khatlon oblast – Shahritus, in districts under direct republican subordination – Tursun-zade town.

Root causes for the statelessness is legal ignorance and not applying to government authorities, fear of penalties and punishment, including deportation, intensive migration processes, incomplete border demarcation, complex procedure of obtaining citizenship, nonfeasance of government authorities.

1 Population and housing census in the Republic of Tajikistan, 2010. Statistics Agency under the President of the Republic of Tajikistan.

2 Data from Passport and Registration Service under the Ministry of Interior of the Republic of Tajikistan

Human rights organizations know cases when citizens have applied to local authorities but not received any aid or assistance. Cases are known in Ghonchi and Kanibadam districts of Soghd oblast, when after such applications women were deported from the territory of Tajikistan for violation of residency rules (Code of administrative violations of RT, Art. 499 p. 1). Unfortunately, families of these women refused to give interviews. In a vast majority of the cases, problems related to lack of valid documents certifying identity affect women in rural areas³.

A.A. A. was born in 1987 in Spitamen district of Soghd oblast of the RT. In 2000 her parents sent her to Bekabad district of RU, where in 2004, after completion of school she was granted Uzbek citizenship. Her parents are citizens of Tajikistan and live in Khujand town of Soghd oblast. In 2008 A.A. left for Khujand to live with her parents. Ever since, she permanently resides in Tajikistan while extending her stay visa once in few months.

In 2009 A.A. submitted required documents to the regional office of the Passport and registration service under the Ministry of Interior of the RT (PRS MIRT) in Soghd oblast, to get a residency permit (RP) in the RT. In accordance with the Rules of residency for foreign citizens in the RT, review duration for materials on issuing residency permit should not exceed one month. However, review of her application lasted above three years. Meanwhile, Akhmerova A.A. applied to the President of the RT and Ombudsman to seek assistance in solving her problem, yet useless.

After three years, 25 September 2012, already PRS DMI RT in Soghd oblast ruled to deny issuing residency permit to A.A. Due to expiration of passport validity in 2013 A.A. returned to Uzbekistan, where she exchanged her passport and came back to Tajikistan. She has to periodically extend her visa to stay in the country.⁴

Usually, persons without documents are recorded in the jamoats' household books and thereby have access to individual human rights, such as healthcare and education. Children have access to basic and general education. However, there are serious barriers in accessing higher and vocational education, due to the problems related to obtaining national ID (passport) and lack of documents in parents.

Lack of documents creates impediments for employment in government bodies, receiving land plot for construction of house, departure outside the place of residence, registration of marriages, obtaining pensions, receiving social benefits for pregnancy, delivery/maternity (which is very important for women) and disability allowances. Lack of documents and citizenship limits the right to be engaged in entrepreneurship, acquiring immovable property, have accounts in the bank, receive credits etc. Comprehensive analysis of causes of uprising statelessness in the country has never been conducted.

Statelessness risks:

Based on preliminary data⁵, in Tajikistan there are few categories of population at risk of statelessness:

³ Report of the Government delegation at the Regional Conference on prevention and reduction of statelessness and protection of stateless persons in Central Asia, Ashgabat, 9-10 December 2009

⁴ From the experience of legal clinic of the PO "Center on Human Rights"

⁵ Data from UNWOMEN, IPO "Right and Prosperity", Bureau on Human Rights and Rule of Law, Human Right Center, NGO "Maqsad", NGO Nakhli navras"

1. So called *border wives*, mainly citizens of Uzbekistan and Kyrgyzstan, married to the citizens of the Republic of Tajikistan (RT) before the collapse of USSR and currently residing in the RT. The only document, certifying their identity, is the 1974 sample passport (passport of the USSR citizen), issued in Uzbekistan. The fact that the passport is issued in Uzbekistan, in practice, is an impediment for receiving Tajikistan citizenship.

Incomplete border demarcation led to the fact that citizens of RT and the Republic of Uzbekistan continued getting married even after their countries became independent. They reside in the RT for 10-15 years without citizenship of Tajikistan, with expired passports of citizen of Uzbekistan, often violating rule of residency for foreign citizens. Most of these marriages are civil marriages that are not registered in the civil registration offices of RT and RU.

In some districts of Soghd oblast, there are women who were deported from Uzbekistan to Tajikistan, as violators of residency rules in RU. These women at their times lost Tajikistan citizenship due to marriage with the citizen of RU and departure for permanent residency and afterwards not receiving Uzbekistan citizenship.

2. Citizens of Tajikistan, departed to Uzbekistan for work before collapse of USSR or during the civil war (1992-1997), who resided at the territory of Uzbekistan based on "Residence permit" with the right to permanent residence. Currently these documents are expired and are not any more extended by the Uzbek authorities. As a result, concerned persons are deported from the territory of Uzbekistan and for long time cannot obtain Tajikistan citizenship. *For instance, residents of Ghonchi districts were working in the plants and factories in Bekabad township of RU. And since they were mainly residing there, after the collapse of USSR they got "Residence permit of the Republic of Uzbekistan". After resignation they returned to the Republic of Tajikistan, back to their families, however, yet the only document certifying their identity is "Residence permit of the Republic of Uzbekistan".*

3. Persons, who did not exchange their Soviet passports. These are mainly inhabitants of remote areas and mostly women. According to residents of Isfara and Ghonchi districts, due to Resolution of the Government of the Republic of Tajikistan dated 05.09.96, № 414, which sets the term for exchanging passports up to 01 September 2001, local police had collected Soviet passports, promised to issue new national passports. But bags with the collected passports were accumulated in the police offices and no measures to renew them were taken since then. Later on, according to them, they exchanged their passports themselves. Thus, there are still persons, who failed to replace their old USSR passports before the set time. Moreover, persons possessing USSR passports, which entered the country before enforcement of the Constitutional law on citizenship and were not born in Tajikistan, had no right to automatically obtain country's citizenship. Currently these persons are among stateless persons or are at risk of statelessness.

4. Former RT citizens, who left for Uzbekistan and obtained RU citizenship or stateless person status. By virtue of circumstances, they had to return to Tajikistan and reside on visa, which they need to continuously extend. These persons also apply for getting Tajik citizenship. In case when they face problem in the RU with the extension of passport or stateless person certificate, the risk of statelessness is high.

1. A woman and her family members, who were stateless persons in the RU, came to the RT for permanent residence from the RU on their valid stateless persons certificate and visa. Upon arrival they got registered at the place of temporary residence. The woman and her family were timely extending their visas and upon 6 months of legal residence she submitted her documents to obtain permit for permanent residence in the Republic of Tajikistan to the regional subdivision of the PRS MIRT in Soghd oblast. Review time was unfoundedly delayed and only in 2011 they were informed about the denial in issuing the permit for permanent residence in the RT. Given that the validity period of the stateless person' certificates was expiring, she beforehand applied to the Embassy of the RU in the RT for extending the validity of the certificate, where she got a refusal.

Thus, the woman was left with nothing: she could not get permanent residence and the validity of her stateless person certificate expired. She could not leave for RU because she already left it for permanent residence to the RT and her document validity was expired. She could not repeatedly apply for permanent residence, because her document was void, moreover, she could not get visa for the same reasons. Hence, her stay in the RT became illegal and return to RU impossible

2. A woman – stateless person from RU, who came to RT for permanent residency. In November 2009 she entered RT legally, on visa and submitted the whole required set of documents to get permit for permanent residence in the RT to the regional PRS MIRT in Soghd oblast in May 2010. The documents were valid at the time of application. Because the issue was reviewed longer than it is provided by the legislation, validity of stateless person certificate was running short. Therefore, she timely applied to the Embassy of the RU in RT to extend the validity of her stateless person certificate. However, Embassy of RU denied extending her stateless person certificate due to her departure abroad from the country for permanent residence.

According to the current legislation of the Republic of Tajikistan, the woman is considered as illegally staying in the territory of the RT. Lawyers of the organization have analyzed the legislation of the RU and concluded that the denial to extend the stateless person certificate by the Embassy of RU was illegal.

Thereby, the NGO Human Rights Center (HRC) addressed a letter to the MFA RT, describing all the details of the case and requesting to send a note to the Embassy of the RU in RT to resolve the circumstances. Based on the letter, relevant note has been sent to the Embassy of RU in RT. The response from the Embassy of the RU did not arrive up to now.⁶

3. Persons without birth certificate, whose parents did not get the certificate at birth and consequently, this category of persons failed to obtain passport. The main cause of not obtaining birth certificate is the fact of home delivery. For this, according the legislation of the RT “On civil registration”, they should submit the statement of a person being present at delivery beyond medical facility and without medical assistance. Home delivery remains usual practice in rural areas of Tajikistan, although its number decreased compared to 1990-es. In many cases, these children are not registered at birth. The Government intensively develops measures to solve this issue and simplify the birth registration procedure, including through simultaneous issuance of medical certificate of birth and birth certificate, when a child is born in the medical facility. However, the problem exists up until now.⁷

6 Information shared by Legal clinic of the PO “Human Rights Center”.

7 Report of the Government delegation at the Regional Conference on prevention and reduction of statelessness and protection of stateless persons in Central Asia, Ashgabat, 9-10 December 2009

4. Persons, entered into marriage based on the birth certificate in absence of pre-printed passport forms. In 1991-1994 marriage stamps were made by jamoats (local authorities) in the birth certificates. For instance in Isfara district government authorities mentioned about 30 women, who applied to civil registration offices within a year for issuing of marriage certificate. They have been recommended to apply for a national passport. Such practice is mainly observed in the remote rural areas.

5. Female refugees married Tajik citizens. Vast majority of such marriages are not registered, that is a religious rite “Nikah” is conducted. Changes in the Family Code with regard to limitations on marriage with foreigners led to increase in unregistered marriages. According to the legislation, a person married citizen of RT⁸ may not be recognized as refugee, but receives a permanent residence. However, in practice such persons generally issued a refugee status for three years with the obligation of its annual extension. Risk to lose the status is high by virtue of nontransparent procedures.

Moreover, female refugees who have not registered their marriage in the civil registration offices do not have the right to apply for permanent residence.

*An example of Vajhiya Shohmuhammad who got refugee status in Tajikistan in 2006. In 2008 she married Tajik citizen. Their marriage was not officially registered; they have two children: one is 4 years old and the second is 6 month old. Vajhiya applied to civil registration offices to get birth certificates. But, due to the fact, that she had no documents and registration, she has been denied to issue documents for her children. In 2012 she was divested refugee status in her absence. She got to know about it only in 2013 when she applied to PRS MoI of RT. Thus, according the legislation she has to leave the territory of the RT together with her two minor children, because the court left in force the decision on depriving of her refugee status.*⁹

Access to citizenship

One of the grounds for obtaining residence permit is legal continuous residence in the territory of the country within at least 6 months. Usual condition for conferment of Tajikistan citizenship is permanent residence in the territory of Tajikistan: for foreign citizens and stateless persons five consecutive years directly before application; for refugees these terms are halved (Constitutional law of the RT “On citizenship of the RT” Article 23).

Persons, residing without visa, without registration, with expired validity of passport or stateless person’s certificate are considered illegal residents and are subject to administrative punishment in the form of fine and deportation from the territory of RT¹⁰.

8 Marriage with foreign citizen and stateless person can be permitted with the condition that a foreign citizen resides within the RT at least one last year and mandatory marriage contract, which is due prior to registering the marriage (paragraph 3 Article 12 Family Code of the RT, para 2 Article 41 Family Code of the RT). Marriage contract between the citizen of the RT and a foreign citizen or a stateless person should include the following mandatory provisions: a) property legal relationships of the parties, their rights and obligations in relation to the property; b) parties responsibilities with regards to supporting children; c) supporting the spouse and children with own housing (foreign citizen according the housing legislation does not have ownership right to purchase a house); d) supporting the disabled spouse in need for care (para 4 Article 42 Family Code of RT). Introducing changes into these paragraphs of the marriage contract is unlawful (para 4 Article 43 Family Code).

9 From the practice of Legal Clinic of International Public Organization “Right and Prosperity”, 2013

10 Code of Administrative Violations of the RT, Article 499 части 1,3

For instance Afghan citizen Osifa Ghulamsabdar who leaves in Bokhtar district of Khatlon oblast since 1997 in civil marriage with Tajik citizen. They have got 7 children in this marriage, which don not have a birth certificate. After her husband's death in 2011 Osifa applied to the local authorities requesting to assist in getting documents for her children and herself. As of today, the only document certifying her identity is a certificate about crossing the border of the Republic of Tajikistan within a group of returnees – Tajik citizens from Afghanistan in 1997. Osifa never claimed refugee status in Tajikistan.

IPO “Right and Prosperity” helped her in establishment of paternity and obtaining birth certificates for her children. Currently, documents are collected to apply for citizenship, but we expect the process to be complex due to the fact that Osifa does not have documents certifying her identity and her stay in Tajikistan since 1997 is illegal according to the legislation¹¹.

Women noted complexities in communication with the government authorities, which included fear to be captured and then deported from the country due to lack of citizenship.

It is also to mention that the population is not aware of the issues of statelessness. Thus, the level of public awareness, which facilitates understanding of the situation of stateless persons and their integration is extremely low, substantially lacks.¹²

Those persons who miss documents confirming their status of stateless person face significantly more impediments in their efforts to use their rights and freedoms. Procedures on granting the status of stateless person are not effective and inaccessible. In this regards women are more vulnerable compared to men. Moreover, persons applying for registration at their place of residence as stateless persons, as a rule, should submit confirmation of not being a citizen of another state, and face the same challenges and problems at getting registration, as persons applying for citizenship.

Problems related to lack of valid documents certifying identity, in vast majority affect rural women¹³. Therefore, a network of women committees has been involved in identifying women with expired USSR passports and assisting them in receiving new documents. However, number of cases mentioned during the conference shows that the requirement for stateless persons, while applying for citizenship, to submit confirmation of not being a citizen of another state, frequently becomes serious barrier to obtaining the citizenship. Getting such certificates from another state is tied up with number of practical challenges, particularly, when this state does not have diplomatic mission in applicant's country of residence. Moreover, some countries do not respond to requests at all or respond with extensive delays.

Recommendations to the Government of the Republic of Tajikistan

- Identify the scale of statelessness (considering disaggregation based on gender, ethnicity, residency status, marital status) through nation-wide campaign with participation of nongovernmental organizations;

11 From the practice of Legal Clinic of International Public Organization “Right and Prosperity”, 2013

12 Statelessness in the Republic of Tajikistan: prevention, reduction and protection, UNHCR, 2010

13 Report of the Government delegation at the Regional Conference on prevention and reduction of statelessness and protection of stateless persons in Central Asia, Ashgabat, 9-10 December 2009

- Conduct comprehensive analysis of the causes and consequences of statelessness, based on assessment made with participation of stateless persons, including study specifics of: refugees in registered and unregistered marriages with the citizens of the RT, so called border wives, women whose marriages were registered at offices of civil registration with registration stamp on the birth certificate and other categories.
- Declare amnesty for persons who violated domicile rules according the criterion for length of residence, marital status etc., presence of marital relationships between persons in unregistered marriages, children born in such relationships etc.
- Relevant documentation and further durable solution
- Develop operating principles of competent authorities to ensure transparency on procedures, deadlines, decisions taken as well as ensuring access to information
- Establish mobile commissions (working groups) on replacing passports issued during the USSR/issuing Tajik passport to persons without documents. Specifically controlling availability of passports in women and girls
- Conduct regular households rounds in rural areas to register women who gave birth at home and unregistered children
- Conduct wide-scale awareness campaign to inform population on basics of legalization and naturalization in the RT
- Conduct orientation workshops for responsible authorities and services focused on stateless persons issues, including specific situation of women in registered and non-registered marriages
- Provide access to social aid and integration opportunities for Stateless persons
- Remove discriminatory provisions concerning limitations on marriages between the citizens of RT and foreign citizens and stateless persons from the family legislation of the RT.