

PUBLIC ORGANIZATION BUREAU OF HUMAN RIGHTS AND RULE OF LAW

Submission to the 53 Pre-Sessional Working Group of the CESCR (26 May 2014 – 30 May 2014)

ANALYSIS OF SEVERAL CONCLUDING OBSERVATIONS BY THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

This report is drafted by public organization Bureau on Human Rights and Rule of Law within the scope of the Access to Justice through pro bono legal aid programme with financial support of OSI-Budapest.

Open Society Institute (OSI)-Budapest does not bear any responsibility for the content of this report.

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List of abbreviations:

HIV –Human Immunodefficiency Virus

GBAO - Gorno Badakhshan Autonomous Oblast

CWD – Children with Disability

CESCR – UN Committee on Economic, Social and Cultural Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

NGO - Nongovernmental Organization

PO - Public Organization

RT –Republic of Tajikistan

MM–Mass Media

CoJ – Council of Justice

CC –Criminal Code

UPR –Unversal Periodic Review

Introduction

Being a party to most fundamental UN human rights treaties Republic of Tajikistan submits periodic reports on implementation of obligations adhered to. International Covenant on Economic, Social and Cultural Rights was ratified by Tajikistan in 1999, initial National Report by Tajikistan was provided to UN Committee on Economic, Social and Cultural Rights in 2006. At the same time Alternative Report was submitted to UN Committee.

Upon completion of the National Report review UN Committee on Economic, Social and Cultural Rights had provided Tajikistan with its Concluding Observations, which focused satisfaction with the reforms under implementation in Tajikistan, however at the same time it contained concerns related to failure to implement some of the provisions of the Covenant.

In 2011 the Government of Tajikistan had provided UN CESCR with merged Second and Third Periodic Reports. Civil Society of Tajikistan, in its turn, also started drafting alternative report on implementation of ICESCR.

It shall be noted that during the recent years a range of reforms is under implementation aimed at improving the poverty situation in Tajikistan as well as improving well fare of the population. Number of programmes, strategies and concepts is being adopted in this field, i.e, National Development Strategy of RT for the period 2010-2015, Poverty Reduction Strategy for the period 2010-2012, Strategy on increasing the well being of the population of RT for 2013-2015, Programme on improved access of the populayion to safe drinking water for the period 2007-2020, Concept on social protection of population etc.

At the same time there are certain issues in independence of judiciary, access to adequate housing, domestic violence etc.

In line with National Plan of Action to Implement recommendations provided by states-members of the UN under Universal Periodic Review (UPR) for the period 2013-2015 (№ AP-2200) Tajikistan is committed to develop plan of actions on implementation of UN Committee on Economic, Social and Cultural Rights, as well as below activities:

- Continue efforts aimed at proverty reduction and sustainable development and to implement to most possible extent National Development Strategy for 2006-2015 and Poverty Reduciton Strategy for 2010-2013.
- Ensure further improvement of social-economic situation of women in accordance with the recent reforms initiated by the Government.
- Enhance efforts aimed at improved access to safe and clean drinking water of appropriate quality as well as provide sewage services to the population. Develop national programme and plan of action on improving access of the population to safe drinking water and sanitation for the period 2013-2018. (NB from the author - though such a programme is already adopted by RT for 2007-2020).
- Enhance efforts in the field of healthcare, education, guarantees for interests and protection of rights of women and children as well as facilitate general social-economic development. Develop plan of action to implement the recommendations of UN Spreial Rapporteur on right of everyone to highest attainable level of physical and mental health;
- Develop plan of action to implement recommendations of UN Committee on Economic Social and Cultural Rights.
- Guarantee righth of children to adequate living standard, with specific emphasis on orphans, provide them with access to safe drinking water and education. Develop plan of actions to implement recommendations of UN Committee on Economic, Social and Cultural Rights etc.

Thus after several years, at the eve of next National Report of Tajikistan review by the UN Committee on Economic, Social and Cultural Rights it is possible to assess implementation of certain recommendations by the State and analyse the actual changes triggered in practice.

Given analysis touches upon 11 Concluding Observations of the UN Committee on Economic, Social and Cultural Rights in the spheres under range of activities by the PO Bureau on Human Rights and Rule of Law, as well as those where there is access to information.

Analysis covers period from 2006 to 2013.

Methodology

For partial analysis of UN Committee on Economic, Social and Cultural Rights Concluding Observation implementation the following methodology was utilized:

- Analysis of international and national reports and research works, mass media data, accessible statistic data;
- Analysis of national legislation regarding its compatibility with international standards in the fields under analysis.

Analysis

Recommendation 43. The Committee requests the State party to ensure that the provisions of the Covenant are given effect to by its domestic courts, that legal and judicial training takes full account of the justiciable elements of all Covenant rights, as defined in the Committee's General Comments, and that it promotes the use of the Covenant as a domestic source of law. In this regard, the Committee draws the attention of the State party to General Comment No. 9 on the domestic application of the Covenant. The Committee invites the State party to include information concerning case law on the application of the Covenant in its next periodic report.

In line with article 10 of the Constitution of Tajikistan "international legal acts adopted by Tajikistan are included in the legal system of the republic, in case when there is incompliance of the laws of the republic with international acts, norms of international acts prevail". Thus treaties related to 'hard law' that are binding for implementation for the state upon ratification are obliging the state to implement the adhered obligations. Despite that norms of international treaties ratified by Tajikistan are practically never used. Courts are never referring to ratified international treaties. There are very few cases of application of international human rights law during court proceedings.

On 18 of November 2013, Resolution of the Plenum of Supreme Court of RT "On application of provisions set forth in international treaties ratified by RT" explaining that pretrial investigation bodies and courts can apply international norms ratified by Tajikistan directly. Thus of national legislation does not contain provisions that are existing in international law, judges while deciding on the case can use these norms and refer directly to the norm.

During the period under analysis this Concluding Observation of the Committee was not implemented.

Recommendation:

To apply norms set forth in international treaties, ratified by Tajikistan alongside with national legislative norms during court proceedings.

Recommendation 45. The Committee stresses the importance of an independent judiciary for the enjoyment of all human rights, including economic, social and cultural rights. The Committee urges the State party to take immediate steps to guarantee the full independence and impartiality of the judiciary, particularly through introducing a system of appointing judges for an indefinite period.

Despite of ongoing reforms of judiciary system, it remains weak and ineffective. Courts are not coping with growing number of cases, and most judges are considered corrupt. Executive authority has a solid grasp of judiciary.¹

Chairman, deputies of the chairman and judges of Constitutional, Supreme and Supreme Economic Court are selected by Majlisi Milli Majlisi Oli (Parliament) of the Republic of Tajikistan as per the submission of the President of RT.

Judges in military tribunals, for courts in Gorno Badakhshan Autonomous Oblast (GBAO), district, Dushanbe courts, economic courts of GBAO, district and Dushanbe are appointed by the President upon submissions from the Council of Justice of RT².

The structure of Council of Justice includes Examination Commission that carries out qualification assessment exams for the candidates for the position of judge.

The term for all the judges in Tajikistan is 10 years, and upon expiration of the term they can be re-appointed to the same position. Number of such re-appointments is not limited, however all the judges are retired at the age of 65.

As per the legislation of the Republic of Tajikistan the process for waiving the immunity of the judge can be different: the judges of higher instances can not bear criminal liability and arrested without permission of the Parliament, and for lower instances without the consent of the President.

In 2007 Programme of Judiciary Reform for 2007-2010 was adopted in Tajikistan. In 2010 second phase of the judiciary reform was approved for 2011-2013 which aims at strengthening judiciary, enhance role of court in protection of rights, freedoms and legitimate interest of citizens and enhance the trust of the population to judiciary system.

The programme of judiciary reform in Tajikistan for 2011-2013 had suggested to study the possibilities for termless appointment of judges with working experience of more than 10 years, and who are acknowledged as good judges, however there is no information on the outcomes within the framework of this Programme.

Given recommendation of CESCR on termless appointment of judges was not implemented during the period under analysis.

Recommendations:

- To improve formation principles, composition and methods of work for Council of Justice in order to enhance its independence and role within judiciary system, as well as transfer to judiciary authority.
- To review the system of appointment for judges including opportunity for termless appointment of a judge.
- To select judges on clear criteria out of bigger number of candidates.
- Council of Justice shall review life-long training curricula for judges in order to improve the qualification including issues related to application of international norms in national courts.

Recommendation 48. The Committee calls on the State party to strengthen the protection afforded to refugees and asylum seekers, inter alia by facilitating the procedures necessary to obtain personal documents, including birth certificates, identity cards and work booklets, to enable them to enjoy their economic, social and cultural rights. The Committee urges the State party to consider withdrawing the Governmental resolutions No. 325 and 328 and to revise its Refugee Law in order to grant asylum seekers the right to work.

¹ Alternative NGO report on implementation of International Covenant on Civil and Political Rights, 2013.

² Council of Justice is created by the President of RT to select and provide candidates for judges, dismissing judges, organizing qualification assessment exams etc. This body belongs to executive authority.

This recommendation of CESCR is analysed in the context of cancellation of Resolutions № 325 and 328, restricting opportunities for refugees to reside in certain areas.

Identification of corresponding housing is a problem for people seeking for asylum and refugees due to limitations set forth by the Resolutions of the Government № 325 and 328, another factor is lack of temporary residence centers for displaced people in Tajikistan. It is a crucial issue, as asylum seekers are to find housing in periphery districts, located far from densely populated areas from the moment of arrival to the country. At the same time, lack of housing can prevent from obtaining a refugee status as one of the preconditions for submitting formal request on refugee status is a confirmation of residence in permitted areas.³

In line with the Resolution on List of Areas in the Republic of Tajikistan where temporary residence for asylum seekers and refugees is restricted as of 26 July 2000 № 325 (edited in 2004⁴ and 2007) asylum seekers and refugees are not allowed to live in 24 areas of RT including the capital Dushanbe, as well as bigger cities of Khujand, Kulyab and Kurgan Tube and in Gorno Badakhshan Autonomous Oblast (GBAO). This provision violates article 26 of the Convention of 1951 which sets forth the obligation for member states of the Convention (including Tajikistan) to provide refugees legally residing on the territory of the country right to choose location and free movement within the territory of the country provided all the rules applied to movement of foreigners are implemented.

Recommendation of CESCR related to cancellation of Resolutions of the Government № 325 and 328 is not implemented.

Recommendation:

To cancel Resolutions of the Government of RT № 325 and 328.

Recommendation 53. The Committee calls upon the State party to adopt a minimum wage that would enable workers and their families to enjoy an adequate standard of living and that the minimum wage standard is thoroughly enforced. In this regard, the Committee encourages the State party to provide and regularly update statistical data regarding the consumer's basket of goods as a minimum standard of living.

In line with the Decree of the President of the Republic of Tajikistan⁵ № 1493 as of 14 August 2013 minimal wage in Tajikistan is 250 somoni (nearly 50 USD).

Consumer basket in Tajikistan, i.e. minimal range of food, non food goods and services necessary to protect health and ensure activities.

Subsistence minimum is cost of consumer basket and amount of obligatory payments.⁶

In May 2009 the Law on Subsistence Wage was adopted in RT. In line with this law poor families in Tajikistan are considered to be those living on wages that are regardless of their efforts that are lower than subsistence wage. Average per capita income comprises of average monthly income divided by number of each family member. Information on amount of subsistence per capita wage as well as data on basic social demographic groups should be published quarterly in official statistical editions of the Republic of Tajikistan.⁷ In practice, such data is not published and amount of subsistence wage in Tajikistan is not known.

«As per the data of StatAgency, price for the set of food products included in consumer basket based on the consumption rates of October 2011 per member of a family was 121 somoni

³ Gap and weak points analysis: review of legislation and practices of refugee provision in the Republic of Tajikistan, Danish Refugee Council, author Martin Rozumek, independent consultant, June 2012

⁴ These changes enacted withdrawal of Kafarnihon, Faizabad, Darband, Tajikabad, Tavildara, Garm and Yavan districts from the list where it is not allowed to live to people looking for asylum or refugees.

⁵ On measures to enhance level of social protection of the population, increase of salaries for public employees, workers of budget facilities, pensions and stipends

⁶ Article 1 of the Law on Subsistence Wage

⁷ Article 9 of the Law on Subsistence Wage

(\$25), though if calculating it on the basis of ration nutrition norm it should have been 257 somoni (\$53). In line with the calculations of the journalist the consumer basket price was 991 somoni. In other words, this is the amount of money necessary for 1 person for modest living. Nevertheless average salary in Tajikistan is 450 somoni.⁸ At the time of the analysis 991 somoni is approximately 200 USD, and 450 somoni is nearly 90 USD.

Recommendation of CESCR on regular updates of statistic data on consumer basket is not implemented.

Recommendation:

1. To publish regularly in formal press information on the amount of subsistence wage and consumer basket in Tajikistan.
2. To provide compliance of minimal wage to the amount of subsistence wage.

Recommendation 54. The Committee urges the State party to undertake measures to combat sexual harassment in the workplace including by adopting specific legislation rendering it a criminal offence.

Labour legislation of Tajikistan lacks a notion of sexual abuse on a working place and prohibition for such harrassment .

Criminal Code of RT has a Chapter on Crimes against sexual freedom or sexual integrity, where article 140 Improsing sexual activities indicates among other cases working dependence of the victim on the perpetrator when the victim is forced to sexual activities. Committing this offense is subjected to fine or imprisonment for up to 2 years. Thus, a person guilty in sexual abuse can bear criminal liability under criminal legislation of RT.

This recommendation of CESCR was implemented partially as labour legislation of RT during the period under analysis was not added with the norms protecting from sexual abuse and harrassment on a work place.

Recommendation:

To introduce definition of sexual abuse on the work place in the labour legislation of Tajikistan and norms for protection from such abuse.

Recommendation 58. The Committee urges the State party to adopt - as a matter of priority - a law on domestic violence and to render it a criminal offence. The Committee encourages the State party to take all necessary measures to protect victims of domestic violence, inter alia by setting up prevention and early assistance centres, counselling services and temporary shelters, and to promote information campaigns and training of law enforcement and medical personnel on the criminal nature of such acts. The Committee requests the State party to include information on the results of these measures and on the number of victims, perpetrators, convictions, and the types of sanctions imposed, in its next periodic report.

This recommendation of the Committee was review from the perspective of the new Law on Prevention of Domestic Violence, since the information on setting up centers and shelters for the victims of violence as well as trainings for law enforcement staff is provided in forth and fifth Periodic National Report of RT and Alternative NGO report on implementation of the Convention on Elimination of Discrimination against Women by Tajikistan.

The Law on Prevention of Domestic Violence was adopted in Tajikistan in March 2013. In order to bring the legislation in compliance with the law, Code on Administrative Violations was added with article 93¹ (Violation of the requirements set forth by the legislation of the Republic of Tajikistan on Prevention of Domestic Violence) and article 93² (Violation of the

⁸ Source: <http://www.news.tj/ru/newspaper/article/tadzhikskaya-korzina>

requirements for protection orders). “Intended physical, mental or economic act or threat committed within a family if such act violates rights and freedoms of a family members and with lack of indicators of the crime is implied by violation of the requirements of Tajik legislation on prevention of domestic violence”. This article is vaguely formulated and provides opportunities for the perpetrator to avoid serious punishment for domestic violence, as the law provides a fine in the amount of 2 to 5 calculation indicators⁹ (from 80 to 200 somoni which is approximately from 16 to 40 USD) .

Violation of the requirement of protective order leads to a fine for physical persons in the amount of from 5 to 10 calculation indicators (from 200 to 400 somoni, which is approximately 40-80 USD) or administrative arrest for 5 to 15 days.

Thus despite of the fact that a separate law was adopted, domestic violence in Tajikistan is being qualified as an administrative offense and rather mild punishment is provided. Given recommendation of CESCR is implemented partially as domestic violence in Tajikistan is qualified as an administrative offence, not as a crime.

Recommendation:

To include liability for violating the Law on Prevention of Domestic Violence within criminal legislation of RT.

Recommendation 64. The Committee recommends that the State party take all the necessary measures, including the adoption of a national housing strategy, to guarantee the right to adequate housing to all persons residing under its jurisdiction and to address the problem of the lack of adequate social housing units. In this connection, the Committee draws the State party’s attention to its General Comment No. 4 on the right to adequate housing. The Committee requests the State party to provide, in its next periodic report, disaggregated data on persons on waiting lists for social housing and information on progress made to improve this situation.

Article 36 of Tajikistan Constitution had set forth the right of everyone to housing. It is especially acute in Tajikistan due to constant increase of population, in February 2013 there were 8 mln. of population. Out of general housing fund of RT state, public housing fund, community housing fund and that of building cooperatives comprises nearly 6 % (or 4 million m²), private housing fund comprises 94 % (or 63,9 million m²). At the end of 2012 14026 families were queuing for housing. As per information provided by Agency on Construction and Architecture under the Government of RT during the recent 5 years more than 30 General City Plans were developed for different cities and district centers. Number of citizens without housing as well as number of people/families in need of social housing is not known, as Agency on Statistics under the President of RT as well as other state bodies do not collect this data.

Number of programmes, strategies and concepts in the sphere of poverty reduction and improving access of the population to housing and facilities: National Development Strategy of the Republic of Tajikistan till 2015 (NDS), Poverty Reduction Strategy for 2010-2012, Concept of transition to sustainable development for 2007-2030, Strategy on Improving Well Being of the Population for 2013-2015, Concept of reforms in housing and facilities for 2010-2025.¹⁰ etc. At the same time all these programmes do not provide new approaches and mechanisms to settle down the problem of access of people to adequate housing in particular vulnerable and poor population. There is no consolidated national housing strategy and policy.

Housing Code of RT was adopted in 1997, most of its provisions are obsolete and do not comply with current realms. Current HC contains set of norms aimed at free of charge urgent housing provision to certain categories of people (veterans, pensioners, disabled, other people in

⁹ 1 calculation indicator equals to 40 somoni (article 24 of the Law of RT On State Budget of the Republic of Tajikistan for 2014)

¹⁰ Approved by a Resolution of the Government as of 1 July 201

need of housing conditions improvement). However, these norms are not implemented in practice due to lack of state housing. Housing Code of RT does not set forth a notion of social housing, as well as any other definition of economically affordable housing for vulnerable and marginal population.

This CESCR recommendation is not implemented.

Recommendation:

1. To adopt National Housing Strategy with specific emphasis on social housing.
2. To adopt new Housing Code of RT where the notion of social housing and category of people/families entitled to such housing is provided.
3. To introduce statistic accounting of people in need of social housing and that are in the queue to get social housing.

Recommendation 65. The Committee requests the State party to provide, in its next periodic report, detailed information on the number and nature of forced evictions and on the extent of homelessness in the State party. The Committee urges the State party to take effective measures to provide all evicted persons with adequate compensation for lost housing or with alternative accommodation, in accordance with the guidelines adopted by the Committee and its General Comment No. 7 on forced evictions.

There is no proper accounting of people resettled/displaced there is data on demolished houses and flats due to alienation of land plots for public and state purposes. In accordance with information provided by Khukumat (executive state authority body) of Dushanbe 481 residential houses and flats were demolished due to alienation of land plots for state purposes.¹¹

National legislation of Tajikistan does not consider resettlement as a complex sustainable development programme, it only guarantees provision of equal housing/land plot and redress of damage and losses caused by resettlement.

Most of resettled people however do have problems in terms of payment of the compensation, provision of equal housing, provision of information on resettlement and documents certifying the rights, which are not often provided on legal grounds.

In line with international standards while deciding on aid and compensations to resettled people only those who have formalized legal rights to land are entitled, those who do not have formalized legal rights to land at the moment of census, however have claims to legalize their rights to the land plot, or those who do not have formalized legal right to land they are occupying and do not have claims to legalize it. National legislation considers only those with formalized legal rights to housing and land under alienation process entitled to compensation.¹²

Given recommendation of CESCR was implemented partially as resettled/displaced people/families are not always provided with access to reliable information and do not always get fair compensation for lost housing or equal housing.

Recommendation 66. The Committee recalls the State party's obligation to ensure access to safe drinking water within, or in the immediate vicinity, of each household. It invites the State party to identify disaggregated indicators and appropriate national benchmarks in relation to the right to water, in line with the Committee's General Comment No. 15 on the right to water, and to include information on the process of identifying such indicators and benchmarks in its next report.

¹¹ Information received during the consultation of the representative of PO Bureau on Human Rights and Rule of Law with representatives of local executive authorities. 2013

¹² Promoting rights of people under resettlement due to Roghun HES construction. Report on the results of the research. 2012.

Access to clean water and waste management is key ecological problem for Tajikistan. Problems related to preservation and management of water resources, as well as obsolete and worn out infrastructure of the water sector hinder the access of the population to clean drinking water. In line with the Constitution of the Republic of Tajikistan water is sole property of the state and state guarantees its effective usage and protection for the well being of people.¹³ Regulations on access of the population to drinking water are provided in the Water Code of RT, Law on Drinking Water and Drinking Water Supply, the Law of RT on ensuring sanitary epidemic protection of the population and Sanitary rules and norms. On 2 of December 2006 Programme on Improving Access of the population to clean drinking water for 2007-2-2- was adopted by a Resolution of the Government of RT № 514.

Less than 50% of the population have access to central drinking water supply systems. More than 70% of settlements in the country are not equipped with sewage systems. Services on collection and disposal of garbage are provided to 25% of overall population.¹⁴ As per National Plan on Implementation of UPR recommendations Tajikistan is obliged to reinforce efforts aimed at improved access to safe and clean drinking water of appropriate quality, provide population with sewage services and to develop national programme and plan of action on improving access of the population to safe drinking water and sanitation for 2013-2018.

During the period under research this CECSR recommendation is partially implemented as the state takes steps to improve access of the population to clean drinking water, however the practical situation remains drastic.

Recommendation 72. The Committee encourages the State party to provide alternative forms of mental health treatment, in particular outpatient treatment and community-based rehabilitation. In cases where confinement in a psychiatric institution is the only alternative, the Committee calls upon the State party to ensure full respect for human rights of those interned, through a periodic review process on a case-by-case basis, and effective judicial control of psychiatric confinement.

In line with the research Psychiatric Aid in Tajikistan¹⁵, there is a lack of comprehensive approved policy on psychiatric health. There are separate laws, rules and procedures and the rights of patients are limited not by the laws rather by existing procedures.

Despite of the fact that the legislation of RT provides opportunity for out patient treatment “most of the actions on mental health in Tajikistan are currently implemented on a local level, as there are no psychiatric facilities in communities, except for one pilot district...”¹⁶

National legislation of RT in line with international standards prescribes court procedure to decide on incapability of the person. The law also sets forth provision of mentally disabled person with pro bono legal aid, if the person does not have money to pay for legal services, or on obligatory participation of lawyer/representative during court proceedings, in cases of absence of mentally disabled person.

In line with the Law of RT On Psychiatric Aid, people that were forcefully placed in psychiatric facility shall be examined within 72 hours by a commission of psychiatrists. If such actions are found legitimate and well grounded within 24 hours the conclusion is referred to the court of jurisdiction valid in the area of psychiatric facility to rule on further stationar treatment of the person.¹⁷

6 months after placement for stationar treatment a decision of a commission on necessity for further stationar treatment is referred by the head of the medical facility to court, that can rule on continued stationar treatment. Further extension of stationar treatment is carried out by the

¹³ Article 5 part 1 Water Code of RT

¹⁴ Express-assessment and analysis of gaps in energy sector of Tajikistan, April 2012

¹⁵ Global Initiative in Psychiatry, 2007

¹⁶ Tajikistan: Review of the Healthcare system, Gafur Khodjamurodov, Bernd Rachel, European Observatory on systems and policies of healthcare, 2010.

¹⁷ Articles 30, 31 Law of RT On Psychiatric Aid

court each 6 months. Although there are guarantees prescribed by the legislation, it is hard to consider such court control as effective as court review depends totally on heads of heads of psychiatric facilities, who often enough are not guided by laws, rather obsolete instructions and rules. For instance, Instruction on the order of forced placement of mentally disabled people in the hospital without their consent and consent from their relatives¹⁸ does not contain a rerequirement for court order. In line with these Instructions court control is carried out six months after placement.

National legislation of RT provides that decisions and actions of psychiatric facilities and people providing psychiatric aid could be appealed in state healthcare bodies, social protection agencies, educational facilities as well as ministries and agencies which have psychiatric and a like facilities under supervision, complaints can be also lodged in the prosecution office.⁴

However, neither the Law of RT on Psychiatric Aid nor valid Instructions and Regulations provide list and order of physical sanctions to keep a person in psychiatric facilities, similarly there is no prohibition of torture and ill treatment against mentally disabled people by the staff of psychiatric facility.¹⁹

Given recommendation of CESCR is not implemented.

Recommendations:

1. To carry out gradual introduction of integrated services on mental health in the community through reforming existing system of psychiatric aid.
2. To develop clear mechanism for regular and independent control on all cases of forced placement in medical facility as well as treatment, especially in cases where such placement exceeds certain period of time.
3. To carry out workshops with participation of international experts for the staff of general medical network and facilities on mental health, aimed at protection of rights of people with psychiatric disorders and adherence to principles of medical ethics.
4. To adopt ethic standards for state and private healthcare facilities for mental health.
5. To carry out special training for law enforcement personnel, lawyers, social workers, teachers etc on th issues of mental health and rights of people with mental disorders.²⁰

Recommendation 75. The Committee recommends that the State party review existing policies and practice in relation to access to education for children with disabilities, taking due account of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of General Comment No. 5 on persons with disabilities. The Committee further encourages the State party to take all appropriate measures to eliminate the persisting discrimination on the grounds of gender in the field of access to education, taking due account of its General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

Given recommendation was reviewed from the perspective of access to education for children with disabilities.

National Concept on Inclusive Education for Children with Disabilities was adopted in Tajikistan in 2011 and is covering the period from 2011-2015.²¹ However, unfortunately certain specific issues related to education for children with disabilities are not reflected fully in national legislation.

Thus, there are two concepts: «inclusive education» and «specialized education». Legislation of the RT regulating education set forth guarantees in line with international

¹⁸ Annex № 7 to order by Ministry of Healthcare of RT No 54 as of 9.02.2001

¹⁹ Support to prevention of torture and other cruel and degrading treatment and punishment in psychiatric facilities, Report on Results of Monitoring, Bureau on Human Rights and Rule of Law, 2012.

²⁰ Support to prevention of torture and other cruel and degrading treatment and punishment in psychiatric facilities, Report on Results of Monitoring, Bureau on Human Rights and Rule of Law, 2012

²¹ As of 30 April 2011

standards inclusive education for children with disabilities, allowing a child with special needs to attend pre school and school facilities of general type, where special conditions are created for these children, however at the moment a concept of “special education” is widely used in Tajikistan under which a child with disability is studying in specialized facility.

Education and upbringing for children with disability at home is carried out by educators and teachers of general category that do not really possess special knowledge and skills necessary to work with CWD as there are no special curriculum aimed at teaching children with disabilities in Tajikistan. There are no training courses and re-training courses for teachers as well as there is lack of methodological support and recommendations on how to work with CWD.

This recommendation of CESCR is implemented partially, as there are certain measures on political and legislative level ensuring inclusive education for children with disabilities, however they are not widely used in practice in the country.

Recommendations:

- Ensure accessibility of educational facilities for children with disabilities.
- Continue introduce the Concept of inclusive education for children with disabilities.
- Ensure adequate conditions in general preschool facilities to educate children with disabilities. Introduce new position of specialist working with children with disabilities in preschool facilities.
- Ensure training of specialists on educating children with physical and mental disabilities and to develop national educational curriculum;
- Support people with disabilities to get higher education and vocational education. To do so it is necessary to carry out informational campaigns in schools and communities on the benefits existing for people with disabilities while entering higher education facilities and other educational facilities.²²

Conclusion:

Given analysis does not allow to draw general conclusions on implementation of Concluding Observations provided by UN Committee on Economic Social and Cultural Rights as it covers only part of UN Committee recommendations to Tajikistan. Out of 11 recommendations under assessment 6 are not implemented, 5 are partially implemented, none of these recommendations are implemented in full.²³

Given analysis showed that as a rule legislation of Tajikistan contains all necessary norms and provisions aimed at implementation of the International Covenant on Economic Social and Cultural Rights implementation, however there is a serious problem with implementation of the legislative norms in practice.

²² Report on the results of monitoring of implementation of rights of people with disabilities in Sogd Province, Bureau on Human Rights and Rule of Law, 2011

²³ Implementation of the recommendation on both legislative and practical levels is used as criteria.