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MINORITY RIGHTS GROUP (MRG)
COALITION OF CIVIL SOCIETY ORGANIZATIONS OF TADJIKISTAN "CIVIC SOLIDARITY AND COOPERATION"

Access to justice for national or ethnic minorities in Tajikistan

Minority Rights Group (MRG)

Minority Rights Group is an NGO working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 partner organizations in nearly 50 countries. It has consultative status with the United Nations Economic and Social Council (ECOSOC) and observer status with the African Commission on Human and Peoples' Rights (ACHPR).

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Coalition of Civil Society Organizations of Tajikistan 'Civic Solidarity and Cooperation'

The Coalition of Civil Society Organizations of Tajikistan 'Civic Solidarity and Cooperation' is a voluntary, non-profit, non-political association of civil society organisations in the Republic of Tajikistan, established to unite the efforts of civil society in promoting the implementation of state policy regarding ethnic, religious and linguistic minorities, people with disabilities, survivors of gender-based violence, and other vulnerable groups, ensuring respect for their rights and exercising civic oversight over the implementation of Tajikistan's international obligations and the Sustainable Development Goals (SDGs) to improve the social situation of vulnerable groups and protect their interests.

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TABLE OF CONTENTS

I. ACCESS TO JUSTICE FOR NATIONAL OR ETHNIC MINORITIES

1.1. Ethnic, religious and linguistic minorities in Tajikistan

1.2. International Standards and Obligations for the Protection of National Minorities

1.3. Legal Regulation of the Rights of National Minorities in the Legislation of the Republic of Tajikistan

1.4 Barriers to Access to Effective Justice

II. RECOMMENDATIONS

List of Abbreviations

ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UN	United Nations
LAC	Legal Aid Centers

I. ACCESS TO JUSTICE FOR NATIONAL OR ETHNIC MINORITIES

1.1. Ethnic, religious and linguistic minorities in Tajikistan

1. Tajikistan is populated by different ethnic and linguistic groups. The majority are Tajiks, making up 86.1 per cent of the population, according to latest population census from 2020.

2. In Tajikistan, the term 'national minorities' refers to ethnic groups living within the country who are citizens of Tajikistan but do not belong to the majority ethnic group (the Tajiks).

3. About 11 per cent of the population is identified as Uzbek. There are also Kyrgyz (around 0.4 per cent)[1]. Even smaller ethnic or national minorities include Turkmens, Russians. Tatars are a small minority in Khatlon Province; they consider themselves Arab by descent, although they speak Tajik. They are estimated to be over 5,000 people. There is also a small community of Arabs.

4. The Afghan refugee population has increased following the Taliban's return to power in 2021. There are also smaller communities of Turks, Chinese, Persians, Koreans, Germans, Kazakhs and Azerbaijanis residing in Tajikistan.

5. The census included Pamiri people, who were estimated to comprise about 230,100 people (2.2 per cent of the population) in 2022, within the Tajik category – a categorization which they dispute. Pamiri culture is a mixture of ancient Zoroastrian beliefs and Ismailism, a Shi'a branch of Islam. The culture began to form over two thousand years ago and has survived to this day due to the extreme isolation afforded by the Pamir Mountains. They speak a variety of languages, including Shugni, Rushani, Vakhi, Bartangi, Yazgulemi, Khufi and Ishkashimi.

6. Another marginalised ethnic group in Tajikistan are Yaghnobis. The Yaghnobi language is a Persian language and similar to Farsi. The Yaghnobi language and culture are under threat of extinction, and the few (less than 1,000) residents remaining in the Yaghnob Valley do not receive any proper state support. The law on national language indicates that the Yaghnobi language should be protected, as well as Pamiri.

1.2. International Standards and Tajikistan's Obligations Regarding the Protection of National or Ethnic Minorities

7. Tajikistan is party to the ICERD, ICESCR and to the ICCPR.

8. It should be noted that Tajikistan has not yet ratified the Convention on the Rights of Persons with Disabilities, despite its signature in 2018. On February 27, 2020, a National Action Plan was adopted to prepare the country for the ratification and implementation of the Convention on the Rights of Persons with Disabilities. Ratification of this Convention is important for sign language users which constitute a linguistic minority. Its ratification would be an important step toward removing the specific barriers they face when attempting to implement a non-discriminatory approach to the use of their language and to access public services in sign language whenever possible and appropriate.

1.3. Legal Regulation of the Rights of National Minorities in the Legislation of the Republic of Tajikistan

9. The 1994 Constitution of Tajikistan contains a number of provisions of particular relevance for ethnic, religious or linguistic minorities2 . According to the Constitution, "all are equal before the law and the courts. The state guarantees the rights and freedoms of every person, regardless of nationality, race, gender, language, religion, political beliefs, education, social status, or property status" (Article 17). Also guaranteed are the right to legal protection (Articles 18, 19, 20, and 21), political rights (Article 27), the right to freedom of movement and housing (Articles 22 and 24), the right to freedom of religion, belief or conscience (Article 26), the right to inheritance (Article 32), the right to marriage (Article 33), social rights (Articles 35, 36, 37, and 38) and cultural rights (Articles 40 and 41).

10. Article 2 is of particular importance for linguistic minorities, as it recognizes Tajik as the state language and Russian as the language of interethnic communication, and stipulates that "all nations and ethnic groups residing within the territory of the Republic have the right to freely use their native language".

The 2022 Anti-Discrimination Law

11. A significant development since the last UPR of Tajikistan is the adoption, on July 19, 2022, of a Law "On Equality and the Elimination of All Forms of Discrimination"3, establishing that the state is obligated to guarantee protection against the infringement of rights and to implement programs to eliminate all forms of discrimination. The preamble to the Law states that: "The present law defines the arrangements and legal framework for the implementation of the equal rights and opportunities by every individual in the Republic of Tajikistan, and establishes a legal system for prevention of and effective protection from all forms of discrimination".

12. The law defines and prohibits discrimination (Article 1), whether it is direct or indirect (Article 5), as well as sexual harassment (Article 6), segregation ("any attitude (action or inaction) that directly or indirectly leads to the separation or differentiation of a person on the grounds set forth by the present Law" - Article 8), protection from persecution or "victimization" (Article 10 - "Victimization - persecution – any hostile treatment towards and humiliation of persons who reported discrimination, testified to discrimination, refused acts of discrimination on someone's instruction or participated in the consideration of a discrimination case in accordance with the provisions of the present Law"), and others.

13. The law provides that victims of discrimination can file complaints with courts and other state bodies, including the Human Rights Commissioner, whose role is to take measures to ensure compliance with this law. A positive development for minorities is the law's recognition that authorities may adopt special and temporary measures. Article 1, paragraph 3 states:

> *"Special and provisional measures taken to provide appropriate assistance to individuals or a group of persons in the enjoyment or exercise of their rights shall not be deemed to be discriminatory, provided that the implementation of such measures does not result from the granting of special rights to various groups of persons. Provided that the measure is carried out for legitimate purposes and in a reasonable proportion between the means used and the objectives pursued, it shall not be deemed to be discriminatory if: (…) it is the result of the implementation or adoption of special provisional measures aimed at preventing or redressing harm to persons affected by the indicia set fort in paragraph 1 of this Article, especially members of vulnerable groups, including persons with disabilities, members of ethnic, religious, national or linguistic minorities, women, children, youth, the elderly and other vulnerable persons, victims of criminal proceedings, internally displaced persons, refugees and asylum seekers, in order to ensure their full participation in all spheres of life."*

14. The law explicitly enshrines for the first time the right of individuals to seek judicial remedies in case of discrimination and compensation for damages.

The National Strategy on Human Rights Protection

15. In terms of policy, the National Strategy on Human Rights Protection for the period up to 2038 was approved by a Resolution of the Government of the Republic of Tajikistan dated August 5, 20234 . This strategy was developed by a working group involving several sectors of the government, in collaboration with civil society, taking into account international human rights standards and the recommendations of international organizations. The Action Plan for the implementation of this strategy for 2023–2025 provides for a set of measures that includes access to legal aid for national minorities.

16. Paragraph 66 of the aforementioned Plan provides for: "Regular awareness raising events on LAC's (Legal Aid Centers) activities to ensure wider access of persons to free legal aid." Information campaigns on the activities of the LACs must be conducted on an ongoing basis in the media and on social media, and this information must be posted on information boards at judicial and law enforcement agencies in the state language and the languages of national minorities; informational brochures on the activities of the LACs must also be available in the state language and the languages of national minorities.

17. Paragraph 122 of the Action Plan provides for: "Teacher-training at higher education facilities with a pedagogical bias in the language of national minorities". And Section 9, "The Right to Equality and Non-discrimination," provides for measures such as:

    - Drafting (enhancing) the legislation on equality and non-discrimination of the Republic of Tajikistan.

    - Broad public awareness-raising events on equality and non-discrimination, as well as on new non-discrimination legislation

    - Considering the drafting and adoption of a resolution of the Supreme Court Plenum on handling administrative, civil and criminal cases related to discrimination

    - Providing regular trainings on responding to, reviewing and investigating criminal cases of discrimination for law enforcement officers, prosecutors and lawyers

Absence of a specific law to protect and promote the rights of national minorities

18. Although Tajikistan has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Tajik legislation lacks a specialized law on national minorities. There is no independent ombudsman for the protection of the rights of national minorities, nor are there provisions for guaranteed translations, textbooks in minority languages, or quotas in courts for national minorities.

1.4. Barriers to Access to Effective Justice

Barriers to Employment in the Legal Sector

19. Article 2 of the Law of the Republic of Tajikistan "On Civil Service"5 provides that: "Citizens of the Republic of Tajikistan have equal rights to be employed in civil service, regardless of nationality, race, sex, language, religion, political beliefs, social status, or property status."

20. Article 11 of the aforementioned Law requires knowledge of the state language (Tajik) as one of the qualification requirements for entry into the civil service. Judges of the Republic of Tajikistan, pursuant to Article 11 of the Constitutional Law "On Courts," are also required to have knowledge of the state language in addition to professional work experience and having reached a certain age. Accordingly, the primary restriction on the appointment of persons belonging to minorities to public office is lack of knowledge of the state language (Tajik).

Barriers to Access to Justice in a language the defendant understands

21. National minorities often do not have equal access to legal services.

22. The legislation of the Republic of Tajikistan provides for the right of national minorities to use their native language in court proceedings and when addressing the court (Art. 10 of the Civil Procedure Code of the Republic of Tajikistan6 , Art. 18 of the Criminal Procedure Code7 , Art. 12 of the Code of Economic Procedure8 , and the Criminal Code of the Republic of Tajikistan). If they do not speak the official language, an interpreter must be provided.

23. In practice however, courts face challenges in providing defendants with professional interpreters. Even when an interpreter is provided, in practice, the role is often filled by court technical staff or the detainee's lawyer. Consequently, the interpreters are not professional.

24. Written translation of procedural documents is also often not provided. Even if judges issue rulings in Russian, court transcripts and documents are provided to plaintiffs exclusively in Tajik.

25. Finally, there is a lack of sufficient public judicial information in the courts: court websites are not always updated, not all rulings are published, and court rulings are not published in other languages, including Russian[9].

26. As a result, minorities with limited proficiency in the Tajik language have restricted opportunities to access justice and defend their rights in court.

27. In the article "Judicial reform in Tajikistan: Closed courts, inaccessible websites", Larisa Aleksandrova, a lawyer and director of the NGO "Your Choice", noted that access to judicial information is restricted, particularly for national minorities. In civil cases, all court decisions and other judicial documents are issued only in the Tajik language, and statements of claim and other submissions are accepted only in the official language. [10]

28. Some examples are also set out in the decisions of the UN Human Rights Committee in cases concerning Tajikistan relating to the use of torture and other forms of ill-treatment (Articles 7, 9 and 14 of the ICCPR).[11] In the case of *Ashurov v. Tajikistan*, on page 30 it is stated that, in particular: "the court rejected all the defence's motions challenging the lawfulness of detention, requesting access to all case materials, and seeking a translation of the indictment into Russian, as the defendant did not have a sufficient command of the Tajik language." Furthermore, on page 163, paragraph 3.5, it is stated that: "As a native speaker of Uzbek, during the pre-trial investigation he did not understand the content of the indictment, which was available only in Tajik. Furthermore, the first three days of the second trial were conducted in Tajik without an interpreter, although neither Ashurov nor the defence lawyer present spoke Tajik.".[12]

Barriers to access to Legal Aid

29. One element of access to justice is free legal aid for those who cannot afford legal aid otherwise. The availability or lack of legal aid often determines whether a person can exercise their right to an effective remedy and participate fully in the trial.

30. The Law of June 26, 2020, "On Legal Aid"13 provides for two types of legal aid:

    - primary legal aid—a form of legal services provided to defendants in order to explain their rights and obligations, offer legal advice, and draft relevant documents;

    - secondary legal aid—a form of legal services guaranteed by the state, provided by a lawyer and a state attorney on the basis and in the manner prescribed by this Law and other regulatory legal acts of the Republic of Tajikistan regarding criminal, administrative offenses, and civil cases.

31. Article 5 of the draft Law "On Legal Aid" establishes the principle of "equal access to legal aid for individuals." However, this law does not specifically mention the right to legal aid in one's native language. Consequently, it will be difficult for national minorities to demand the realisation of this right by referring solely to the principles set out.

32. It is therefore important that the right to receive legal aid in a language that is accessible and understandable be clearly enshrined in the Law on Legal Aid. The lack of mention of language accessibility contradicts not only the principle of access to justice but also Article 2 of the Constitution of the Republic of Tajikistan, which establishes Russian as the language of interethnic communication.

33. This issue is also highlighted in the report by the Special Rapporteur on minority issues Fernand de Varennes, which highlights that in practice minority languages are not used when obtaining access to public services, which are provided only in Tajik and sometimes in Russian. [14]

Lack of transparency on identified gaps in the implementation of existing legislation

34. As reflected above, there remains wide gaps between existing legislation and practice when it comes to access to justice for national minorities.

35. Under Article 25 of the Law of the Republic of Tajikistan on the Human Rights Commissioner in the Republic of Tajikistan, it is provided that: "The Human Rights Commissioner shall prepare special reports on specific issues relating to violations of human and civil rights and freedoms, as well as on the state of observance of the right to equality and the elimination of all forms of discrimination in the Republic of Tajikistan".

36. According to the twelfth and thirteenth periodic reports of the Republic of Tajikistan on the implementation of the International Convention on the Elimination of All Forms of Racial

Discrimination[15], submitted in 2020, The Human Rights Commissioner has conducted a monitoring exercise.

37. As stated in paragraph 39 of the report, recommendations were made to address the identified shortcomings based on monitoring findings. Unfortunately, the results of the monitoring were not published in open sources. Consequently, it is impossible to say what problems were identified and what recommendations were formulated, although this could have been useful in understanding the issues and formulating specific recommendations.

II. RECOMMENDATIONS

1) Amend existing law to ensure non-discriminatory access to justice for national minorities, including effective provision of professional interpretation, availability of court documents in minority languages and provision of legal aid in minority languages when necessary, including in civil, criminal and administrative cases.

2) Establish, under the Office of the Human Rights Commissioner, an independent ombudsman for the protection of the rights of persons belonging to national minorities.

3) Ensure that the composition of representatives of the courts, law enforcement agencies, and other institutions for the protection of rights at all levels includes various population groups and national minorities.

4) To gain a better understanding of the obstacles faced by national minorities in terms of access to justice, conduct an in-depth analysis, with the participation of minorities, in order to properly identify the obstacles they face in accessing justice.

5) Develop, in close cooperation with minorities and civil society organisations, and disseminate awareness-raising material and initiatives—in various formats and in the languages spoken within a given community—regarding existing mechanisms and

procedures for the administration of justice, as well as available legal remedies.

[1] URL: https://unece.org/sites/default/files/2023-09/WS10RizoevENG.pdf.
[2] https://www.mfa.tj/ru/main/tadzhikistan/konstitutsiya
[3] https://mmk.tj/system/files/Legislation/1890_ru.pdf
[4] http://portali-huquqi.tj/publicadliya/view_qonunhoview.php?showdetail=&asosi_id=27738
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