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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined twelfth and thirteenth periodic reports of Tajikistan*

1. The Committee considered the combined twelfth and thirteenth periodic reports of Tajikistan[1] submitted in one document, at its 2971st and 2972nd meetings[2] held on 20 and 21 April 2023. At its 2978th meeting, held on 27 April 2023, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined twelfth and thirteenth reports of the State party. It also welcomes the constructive dialogue with the State party's delegation, and it thanks the delegation for the information provided during the consideration of the report and after the dialogue.

B. Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party:

(a) The Law on Equality and Elimination of All Forms of Discrimination, which came to force on 22 July 2022.

(b) Amendments to Article 499 (3) of the Code of Administrative Offences on 4 July 2020, which abolished deportation as a sanction for asylum seekers and refugees for the violation of the rule of stay.

(c) Amendments to the Civil Registration Law, in July 2019, which provides for free birth registration, within three months of the birth of the child.

(d) National action plan to combat trafficking in persons 2022 – 2024.

4. The Committee welcomes the engagement of the State party with the four Special Procedures mandate-holders who visited the country between September 2017 and April 2023.

C. Concerns and recommendations

Statistics

5. While noting the limited data provided by the State party during the dialogue, the Committee regrets the lack of updated statistics on the ethnic composition of the population,

* Adopted by the Committee at its 109th session (11 - 28 April 2023).

[1] CERD/C/TJK/12-13

[2] See CERD/C/SR.2971 and CERD/C/SR.2972

particularly on the Pamiri and the Yaghnobi people, and the lack of comprehensive data on non-citizens (migrants, refugees, asylum seekers and stateless persons). The Committee regrets that the State party does not recognize, in accordance with the principle of self-identification (general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention), the Pamiri as a distinct group of people living on the territory of the State party which are subject to marginalization and discrimination. The Committee also regrets the absence of data on the enjoyment of economic, social and cultural rights by the various ethnic groups in the State party (arts. 1 and 5).

6. **Recalling the guidelines for reporting under the Convention,[3] the Committee recommends that, in its next periodic report, the State party provide updated disaggregated data on the ethnic composition of the population, based on the principle of self-identification, including on the Pamiri and the Yaghnobi people, and on non-citizens including migrants, refugees, asylum seekers and stateless persons. The Committee also recommends that the State party supply statistics on the enjoyment of economic, social and cultural rights, disaggregated by ethnic group, in order to provide the Committee with an empirical basis for evaluating the equal enjoyment of rights under the Convention.**

Definition of racial discrimination

7. The Committee welcomes the adoption in July 2022 of the Law on Equality and the Elimination of All Forms of Discrimination. However, it is concerned that article 1(1) of the referred Law on the definition of discrimination does not explicitly integrate descent in its list of prohibited grounds of discrimination. The Committee is also concerned that while indirect discrimination is prohibited under Article 5(3) of the said Law, the definition of discrimination under article 1(1) does not encompass indirect discrimination as it requires that the discriminatory action be "intended to harm or impair the recognition, enjoyment or exercise of human rights". The Committee further regrets the lack of information demonstrating the preliminary results of the effective implementation of the referred law (art. 1).

8. **The Committee draws the State party's attention to its general recommendation No. 29 on descent in the context of article 1 (1) of the Convention and recommends that the State party amend article 1 (1) of the Law on Equality and the Elimination of All Forms of Discrimination to explicitly prohibit descent-based discrimination. Recalling paragraph 7 of general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the State party is reminded that discrimination under the Convention encompasses both direct and indirect discrimination, meaning purposive or intentional discrimination and discrimination unintentionally created, as an effect of an action. The Committee therefore recommends that the State party replace the expression "intended to" contained in article 1(1) of the Law on Equality and the Elimination of All Forms of Discrimination with "has the purpose or effect of", in line with article 1(1) of the Convention. The Committee further recommends that the State party ensure and monitor the effective implementation of the referred Law, including through awareness-raising campaigns for rights holders and capacity building for duty bearers, and with the full involvement of all concerned groups of society and other relevant stakeholders.**

National human rights institution

9. While the Committee welcomes the State party's efforts to bring the activities of the Commissioner for Human Rights into line with the Paris Principles, it is concerned about the limited progress achieved regarding its independence, and the insufficient human and financial resources allocated to the institution, which put in jeopardy its ability to fulfil its mandate. In this regard, the Committee regrets that the institution is still accredited with B status by the Subcommittee on Accreditation of the Global Alliance of National Human

[3] CERD/C/2007/1

Rights Institutions, which means that it is only partially in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

10. **The Committee recommends that the State party guarantee the full independence of the Commissioner for Human Rights and take all necessary measures to provide it with sufficient financial and human resources to fully discharge its mandate. In this regard, the Committee encourages the State party to take further steps to implement the Global Alliance of National Human Rights Institutions' recommendations on bringing the Commissioner for Human Rights into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

Implementation of Article 4 of the Convention

11. While noting the information provided by the delegation during the dialogue that the State party is preparing a draft of the new Criminal Code, the Committee remains concerned that the current Criminal Code is not in full compliance with Article 4 of the Convention, given that incitement to racial discrimination and acts of racially motivated violence are not criminalized (art. 4).

12. **Recalling its general recommendations No. 7 (1985) relating to the implementation of Article 4 of the Convention, general recommendation No. 15 (1993) on Article 4 of the Convention and general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State Party accelerate the adoption of the draft of the new Criminal Code and ensures that it covers all elements of article 4 of the Convention and that it is effectively enforced.**

Pamiris

13. The Committee is seriously concerned over the tensions in the Gorno-Badakhshan Autonomous Region (GBAO) with reports of the use of lethal and excessive force against protesters in the region, followed by prolonged internet shutdowns and subsequent violent attacks, arbitrary detentions, threats and harassment of the members of the Pamiri minority (art. 5).

14. **The Committee recommends that the State party:**

(a) Carry out, as soon as possible, an impartial and transparent investigation surrounding the events in GBAO since November 2021, in accordance with applicable international standards.

(b) Take all the necessary measures to prevent further escalation of violence in the region, including by responding to the grievances of the Pamiri minority.

(c) Engage in a constructive and open dialogue with the Pamiri minority.

(d) Implement conflict-prevention measures that meet international human rights standards, including measures to protect the Pamiri minority.

Roma/Jughi

15. The Committee remains concerned about the structural discrimination faced by Roma/Jughi that prevents them from enjoying their rights and fundamental freedoms, and that Roma/Jughi women and girls often face discrimination on multiple grounds, including ethnicity and gender. In particular, the Committee is concerned about their increased economic vulnerability due to the Covid-19 pandemic and consequent difficulties for labour migration and about the challenges they face in access to quality education, health, and social services, obtaining personal documents, registration at their place of residence, legalization of housing, and protection against exploitation and harmful traditional practices. The Committee regrets that the State party has not developed a concrete plan of action or strategy to protect Roma/Jughi against discrimination and stigmatization and to promote their human rights (art. 5).

16. **Recalling its previous concluding observations[4] and its general recommendation No. 27 (2000) on discrimination against Roma, the Committee urges the State party to adopt a plan of action or strategy with a view to improving the situation of Roma, including women and girls, ensuring their protection against discrimination and stigmatization and promoting their fundamental rights, including their rights to education, work, health and adequate housing. The Committee also recommends that the State party organize awareness-raising campaigns to promote tolerance, understanding and solidarity within its population towards the Roma community.**

Participation in public and political life

17. The Committee remains concerned at the unequal representation of ethnic minorities, particularly women belonging to ethnic minorities, within public institutions at the federal as well as the local levels and in politically elected bodies at the national and local levels, which is not in proportion to their numbers in the overall population. The Committee is also concerned about the underrepresentation of Pamiris in public life, in particular in GBAO (arts. 2 and 5).

18. **Recalling its previous concluding observations,[5] the Committee urges once again the State party to ensure the equitable public and political representation and participation of persons belonging to ethnic minorities, particularly women. It recommends that the State party take measures to improve the representation of these persons within all public institutions at the federal and local levels, including through the adoption of special measures. The Committee also recommends that the State party encourage the participation of ethnic minorities in public and political life, including through awareness-raising activities, in addition to the adoption of special measures, where necessary. It further recommends that the State party take all necessary measures to ensure that all ethnic minorities, as well as Pamiris, be represented in public life.**

Promotion of minority languages

19. The Committee is concerned that even though the national legislation and policy recognize the educational needs of minority populations, in practice, only a few schools for ethnic minorities meet their educational needs, and multilingual teaching is not embedded in pre-primary and basic education to the extent required to develop strong language skills in children and young people. The Committee is also concerned about reports that, despite legislative protection, the Yaghnobi and the Pamiri languages are under threat of extinction and the State party has not taken adequate measures to address the situation. In particular, the Committee is concerned about reports alleging the absence of State support for the study and wider use of the Pamiri languages (art. 5).

20. **The Committee recommends that the State party:**

(a) Adopt special measures and allocate additional resources to ensure sufficient opportunities for children and young people from ethnic minorities to learn and be educated in their mother tongues, particularly during pre-primary and basic education, through the adequate provision of trained teachers and textbooks in minority languages.

(b) Empower and develop appropriate competencies of regional and local authorities concerning minority education and support the participation of minorities in the process of policy formulation at the regional and/or local level.

(c) Take effective measures to ensure the preservation of minority languages, particularly the Pamiri and Yaghnobi languages.

(d) Support the inclusion of the Pamiri languages in the education system and in television and radio broadcasts.

[4] CERD/C/TJK/CO/6-8, para. 13
[5] CERD/C/TJK/CO/6-8, para. 12

Situation of refugees and asylum seekers

21. The Committee remains concerned about Government Resolutions No. 325 of 26 July 2000, and No. 328 of 2 August 2004, which prohibit refugees and asylum seekers from residing in major urban centres, thus restricting their right to freedom of movement and residence and negatively affecting their access to employment, healthcare, education and other basic services (art. 5).

22. **Reiterating its previous recommendations[6] and recalling its general recommendation No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention, the Committee recommends that the State party repeal Government Resolutions No. 325 and No. 328 to ensure that refugees and asylum seekers can enjoy their rights to freedom of movement and residence, on an equal footing with non-nationals in the State party, as well as their rights to work, health, education and other basic rights under article 5 of the Convention.**

Deportation of Afghan nationals

23. The Committee is concerned about reports of the ongoing risks of deportation of Afghan nationals, including refugees and asylum seekers, and the denial of their access to justice, in violation of the principle of non-refoulement (art. 5).

24. **The Committee reminds the State party that forcibly returning people fleeing persecution back to their country places them at risk of irreparable harm upon their return on account of torture, ill-treatment or other human rights violations. It recommends that the State party refrain from expelling, deporting, returning or extraditing any individual, regardless of their status, in respect of the principle of non-refoulement, when there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights and guarantee that they are able to exercise their right to access to justice in the State party, including by ensuring them accessible and adequate complaint and reparation procedures. The Committee also recommends that the State party avoid collective deportations and ensure that persons seeking refuge in its territory can access refugee determination procedures.**

Situation of stateless persons

25. The Committee notes with interest the State party's intent to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The Committee regrets that the Amnesty Law, adopted on 18 December 2019, allowing for stateless persons and foreigners to regularize their legal status without penalties, is no longer in effect since December 2022 and that the COVID-19 pandemic and its associated restrictions prevented many persons from submitting in time their applications for regularization of their legal status (art. 5).

26. **The Committee recommends that the State party extend the validity of its Amnesty law to enable stateless persons and foreigners living in the State party to regularize their legal status. The Committee also recommends that the State party expedite the ratification of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Restriction of the right to marriage and choice of spouse for foreigners and stateless persons

27. The Committee regrets the imposition of additional requirements for foreigners and stateless persons to marry a Tajik national, under article 12 (3) of the Family Code: (1) to support documentation of their residence in the country for at least one year before the marriage, and (2) to present the marriage contract. The Committee notes the State party's declared intention to protect the Tajik spouse and their children from abandonment after a fictitious or temporary marriage with a foreigner or stateless person. It is, however, of the

[6] CERD/C/TJK/CO/6-8, para. 14 and CERD/C/TJK/CO/9-11, para 16.

view that protective measures should be in accordance with the Convention and guarantee the enjoyment of fundamental rights and freedoms by everyone, without distinction as to race, colour, or national or ethnic origin. The Committee is therefore concerned that the imposition of these requirements has a discriminatory effect on the rights of foreigners and stateless persons in the State party, in particular the right to marriage and choice of spouse (art. 5).

28. **Taking into account its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party review its Family Code to bring it into full compliance with the Convention and its other international obligations. 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, including the right to marriage and choice of spouse. The Committee recalls in this regard that States 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.**

Birth registration

29. The Committee notes the Amendments to the Civil Registration Law, in July 2019, as part of the ongoing Civil Registration System reform in Tajikistan, which provides for free birth registration, within three months of the birth of the child. However, the Committee is concerned about gaps in national legislation that prevent parents who lack proof of nationality or are undocumented from registering the birth of their child (art. 5).

30. **In light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee emphasizes that birth registration is a prerequisite for the exercise of a wide range of human rights. It therefore recommends that the State party finalize the reform of the Civil Registration System to incorporate safeguards for universal birth registration, ensuring that all children born in its territory are registered, regardless of their nationality or their parents' residency status, with a view to preventing statelessness and to ensure their access to basic human rights, including access to education.**

Trafficking in persons

31. The Committee notes with interest the efforts of the State party to prevent, combat and eradicate trafficking in persons in the context of international migration. However, it shares the concern expressed by the Special Rapporteur on trafficking in persons, especially of women and children,[7] about the limited attention given to internal trafficking, particularly affecting migrant workers, such as the lack of monitoring of the risks of trafficking for forced labour and the limited access to assistance and protection for migrant workers who are victims of trafficking or at risk of trafficking. The Committee is further concerned about the lack of preventive measures and protection against the trafficking of children belonging to minority groups who are at risk of trafficking, in particular for forced begging, forced criminality, labour and sexual exploitation (art. 5).

32. **The Committee recommends that the State party:**

(a) Strengthen the implementation of its framework for combating trafficking in persons, including by ensuring the allocation of sufficient human, technical and financial resources for the effective implementation of its laws and policies, reinforcing coordination among government security, justice and social service agencies, and enhancing the cooperation of those agencies with civil society.

(b) Enhance its efforts to develop and implement standardized early identification mechanisms and a referral system for victims of trafficking, with targeted measures for the protection of those most vulnerable to trafficking.

[7] A/HRC/50/33/Add.1

(c) Intensify its efforts to investigate all allegations of trafficking in persons, prosecute those responsible, and punish those found guilty with appropriate penalties, while ensuring victims' access to effective remedies.

(d) Enhance the licensing and monitoring of recruitment agencies and implement the ILO's general principles and operational guidelines on fair recruitment.

(e) Strengthen protection and assistance for victims of trafficking or at risk of trafficking, particularly migrant workers, and ensure their access to adequate legal, medical and psychological assistance and social services, including shelters, in cooperation with civil society organizations.

(f) Strengthen the capacity of the National Commission on Child Rights to address issues related to trafficking, including identification, assessment, and support to children, including children belonging to minority groups, and their caregivers.

(g) Improve collection of anti-trafficking law enforcement data and statistics on labour migration trends.

(h) Implement the recommendations made by the Special Rapporteur on trafficking in persons, especially women and children, in her report based on her visit to the State party.

Complaints of racial discrimination

33. The Committee remains concerned about the lack of information on complaints regarding acts of racial discrimination received and addressed by law enforcement, domestic courts and other investigative bodies, in particular, the Commissioner for Human Rights (art. 6).

34. **The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and recalls that an absence of complaints and legal action relating to racial discrimination does not mean there is an absence of racial discrimination in a State party, but that it may reveal a lack of applicable legislation, poor awareness of the legal remedies available, a lack of trust in the judicial system, a fear of reprisals or a lack of will on the part of the authorities to prosecute the perpetrators of such acts. The Committee therefore recommends that the State party:**

(a) Adopt measures, with a clear time frame, to assess the effectiveness of remedies available to victims of racial discrimination, including by conducting surveys and collecting information on discrimination on the grounds of race, skin colour, descent, or national or ethnic origin, and in doing so ensure effective, inclusive and meaningful consultation with and participation of civil society organizations, including organizations representative of the groups most exposed to racial discrimination.

(b) Conduct awareness-raising activities to ensure that the public, in particular members of minorities, is aware of what constitutes racial discrimination and of available legal remedies.

(c) Provide training programmes for law enforcement officials, prosecutors, judges and other public officials on the identification and registration of incidents of racial discrimination.

(d) Provide in its next report, information and statistics on complaints of racial discrimination, as well as on investigations, prosecutions, convictions, sanctions imposed, and remedies provided to victims, disaggregated by age, gender, and ethnic or national origin.

Human rights defenders, civil society organizations and journalists

35. The Committee is seriously concerned about reports that human rights defenders, members of civil society organizations and journalists belonging to minorities, as well as those advocating for their rights, are being subjected to harassment; intimidation; arbitrary arrests and detentions; closed, unfair trials; and imprisonment. The Committee regrets that the national counter-terrorism legislation, composed of the Law of the Republic of Tajikistan

on Combatting Terrorism and provisions of the Criminal Code, contains an overly broad and ambiguous definition of "terrorism" and related offences and it is concerned about reports that this legislation has been used as grounds for the arrest and detention of human rights defenders, members of civil society organizations and journalists. The Committee is also concerned about the lack of legal recognition of human rights defenders in the State party and reports of increased pressure by State authorities on civil society organizations and their representatives, ranging from excessive administrative burdens, and threats, to being persuaded or forced to self-liquidate (art. 5).

36. **The Committee recommends that the State party:**

(a) Carry out effective, thorough, and impartial investigations into all reported cases of arbitrary arrests and detention, intimidation and harassment of, and threats and reprisals against human rights defenders, members of civil society organizations and journalists belonging to minorities, as well as those advocating for their rights, establish accountability for perpetrators and provide remedies to the victims.

(b) Review the definition of "terrorism" and related offences contained in the Law of the Republic of Tajikistan on Combatting Terrorism and provisions of the Criminal Code, in line with international human rights standards, and ensure that this legislation is not used to arrest, detain or prosecute human rights defenders, members of civil society organizations, and journalists, including those working on the rights of minorities, in the exercise of their rights to freedom of opinion and expression and their rights to freedom of peaceful assembly and association.

(c) Take all the necessary measures, including through the adoption of a specific law on the protection of human rights defenders, to ensure that all human rights defenders, including those working on minority rights, are recognized and can carry out their peaceful and legitimate activities without fear of restrictions, judicial prosecution, and reprisals.

(d) Take all the necessary measures to ensure that civil society organizations can operate freely without undue restrictions, excessive administrative burdens, threats, or any other form of persecution.

D. Other recommendations

Ratification of other treaties

37. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance, and the Indigenous and Tribal Peoples Convention 1989 (No. 169) and the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization.**

Amendment to article 8 of the Convention

38. **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.**

Declaration under article 14 of the Convention

39. **The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.**

Follow-up to the Durban Declaration and Programme of Action

40. **In light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

International Decade for People of African Descent

41. **In light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies in collaboration with organizations and peoples of African descent. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.**

Consultations with civil society

42. **The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.**

Dissemination of information

43. **The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly made available to all State bodies entrusted with the implementation of the Convention, including municipalities, publicized on the website of the Ministry of Foreign Affairs in the official and other commonly used languages, as appropriate.**

Common core document

44. **The Committee encourages the State party to update its common core document, which dates to 2004, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400** words **for such documents.**

Follow-up to the present concluding observations

45. **In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 12 (Implementation of Article 4 of the Convention), 16 (Roma/Jughi) and 24 (Deportation of Afghan nationals) above.**

Paragraphs of particular importance

46. **The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14 (Pamiris) and 36 (Human rights defenders, civil society organizations and journalists) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.**

Preparation of the next periodic report

47. **The Committee recommends that the State party submit its fourteenth to eighteenth periodic reports, as a single document, by 10 February 2028, 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.**