



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

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**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families
Sixteenth session**

Summary record of the 189th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 18 April 2012, at 10 a.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Initial report of Tajikistan (continued) (CMW/C/TJK/1, HRI/CORE/1/Add.128, CMW/C/TJK/Q/1 and Add.1, NGO shadow report)

1. *At the invitation of the Chairperson, the delegation of Tajikistan took places at the Committee table.*
2. **The Chairperson** invited the delegation of Tajikistan to continue replying to the questions asked at the previous meeting.
3. **Mr. Mahmaminov** (Tajikistan) explained that since a presidential decree had come into force in 2011, every Saturday members of the Government held public consultations to hear the complaints of the population and tried to address their comments. The Government also worked with NGOs and international organizations so as better to run the affairs of the country. It needed to acquire experience and relied on technical assistance and advice from its international partners.
4. **Mr. Ashurov** (Tajikistan) said that the right of aliens to housing was governed by the Foreign Nationals Act, including article 11, which stated that foreign nationals did not have the right to public housing, unless they inherited it or otherwise provided in the legislation or in international texts recognized by the country. The reason for such a restriction was that access to housing was very difficult, particularly in the capital, Dushanbe. The aim of the provision was to keep housing prices at current levels, support the most vulnerable sectors of the population and prevent corruption in the housing sector.
5. **Mr. Devonaev** (Tajikistan) said that the issue of residence permits and visas was governed by the Citizenship Act and the applicable regulations on the residence of aliens adopted by a government decree on 15 May 1999. Foreign nationals visiting Tajikistan for a limited period of time entered with a passport and must register their presence at their place of residence within three working days of their arrival.
6. The following were exempt from the process: Heads of State; members of governments and parliamentary delegations from foreign States entering Tajikistan at the invitation of the President or members of the Government or Parliament and their technical staff and family members; authorized United Nations staff, and persons entering for fewer than three working days.
7. The heads and members of diplomatic or consular missions and their technical staff, military attachés, representatives of trade missions, and family members were required to register their passport at the Ministry of Foreign Affairs or diplomatic and consular missions.
8. Any alien or stateless person aged 18 or over and legally capable may obtain Tajik nationality if they resided permanently in the country. That condition was fulfilled after a period of residence of five years in total or three years uninterrupted; the period of residence was considered to be uninterrupted if the period spent outside the country was under three months.
9. The granting of nationality was easier for nationals of States of the former Soviet Union, persons with children of Tajik nationality, persons with a family relationship to Tajik nationals, and persons married to a Tajik national, for whom the minimum period of permanent residence was reduced. That measure also applied to persons who had done important work in the areas of science, technology and culture; those that had rendered special services to the nation; and refugees.

10. **Mr. Mahmadinov** (Tajikistan) indicated that the Government was doing its utmost to combat corruption at border crossings and customs posts, notably by setting up an anti-corruption agency in order to reduce the effects of corruption on the country's economic development.

11. **Mr. Ashurov** (Tajikistan) said he assumed that the information on corruption came from the NGO report, which was based on a study by the Centre for Strategic Studies, according to which Tajik civil servants had extorted money from migrants at Dushanbe airport. An anti-corruption strategy had been implemented for the period 2008–2012, and two presidential decrees on the issue had been promulgated: one dated 30 April 2010, on complementary measures to strengthen the fight against corruption, and the other dated 14 December 2010, establishing the National Anti-corruption Council in the Republic of Tajikistan. All complaints of corruption lodged with law enforcement agencies were forwarded to the National Council and dealt with within three days, in accordance with the Code of Criminal Procedure.

12. Under the Family Code, any foreign national or stateless person wishing to marry a Tajik must have resided in Tajikistan for at least one year and must draw up a marriage contract to guarantee the family's maintenance, a provision adopted because of the high number of divorces requested shortly after marriage. It is aimed at preventing marriages being contracted lightly, and avoiding families finding themselves in a precarious situation.

13. **Mr. Jononov** (Tajikistan) explained that article 10 of the Constitution provided that any international instruments ratified by Tajikistan were directly incorporated into domestic legislation and that in cases of conflict with domestic laws, international legislation took precedence. Judges had already been applying international law for many years, as well as with the norms of the Commonwealth of Independent States. The Government had established a commission responsible for bringing domestic legislation into line with binding international instruments.

14. **Mr. Devonaev** (Tajikistan) said that, in accordance with the right to work and with legislation in force, all workers must be aged 18 or over and were required to present a certificate of good health and fitness to do the work for which they were recruited. Migrant workers' country of origin was not at all taken into consideration when medical certificates were issued.

15. **Mr. Ashurov** (Tajikistan) explained that in paragraph 141 of the report (CMW/C/TJK/1), which mentioned migrant workers or their families that had been "illegally convicted", it referred to persons that had been unfairly convicted and that, after consideration of their case by the Ministry of Foreign Affairs, had been found to be innocent. In such cases, the interested parties had their moral and property rights restored.

16. **Ms. Muhammadijeva** (Tajikistan) said that in 2009 the Committee for Women and the Family had begun to implement a support service project for young women, which, since 2012, had been entirely financed by the Government. In collaboration with civil society organizations that committee had also implemented a broad programme aimed at promoting the social integration of migrants' families, combating trafficking in persons and mobilizing local resources for village development. Within the framework of that programme, a countrywide information campaign targeting the families of migrant workers was carried out on the social protection measures for which they were eligible, and the rights of the family.

17. Families in need of support could contact the Committee on Women and the Family, which was represented in each of the country's 68 districts. Various family members received support via crisis units. Women and children could be looked after in this way. A service in charge of legal affairs and a telephone helpline were also available at the units, which were all answerable to the committee, and statistics were collected in order to

identify needs and obtain an overview of the situation. The Government used that data, compiled in three languages (Tajik, Russian and English) as a basis for its initiatives. Moreover, twice a week, the committee received a great many people, seeking assistance. Following an initial interview with the chairperson of the committee or one of his or her assistants, several members of the committee received the petitioners in order to hear their requests.

18. In order to stimulate women to set up in business and to encourage job creation, particularly for families where the head of the household had gone abroad, the Government could provide financial support and advice for those wishing to launch their own business. Annual grants were also awarded to assist families.

19. The assistance provided by the Government could also include help in obtaining a passport for travel abroad, or buying a mobile phone or SIM card. Russian courses were also offered, for the numerous migrant workers moving to Russian-speaking countries. Steps had also been taken to protect migrant workers' family members staying behind in Tajikistan. Each month, the situation of those concerned was assessed and, reviewed each quarter at the ministerial, district and regional levels. Every Saturday, a surgery was held at the committee's local headquarters in the districts and regions to answer questions affecting migrant workers and members of their families.

20. **Mr. Devonaev** (Tajikistan) observed that the Government measures with regard to private employment agencies were taken in accordance with article 8 of the 2002 Regulation on Migrant Workers, as well as the provisions governing the licensing of those agencies. Tajikistan had over 300 such establishments which, in 2011, had recruited several thousand foreign workers. In April 2012, it had been decided to establish a national council to help frame a migration policy, analyse the situation in that area, take decisions on the basis of that analysis, and monitor trends. With the support of NGOs, Tajikistan had also drawn up a bill to regulate the activities of private recruitment agencies. Given the steady growth in global migration and the increasing competitiveness on the labour market, Tajikistan endeavoured to draw on the experience of countries with more know-how and develop legislative instruments regulating the activities of private employment agencies.

21. **Mr. Jononov** (Tajikistan) added that his country had already started to intervene in Dushanbe and elsewhere to defend the rights of migrant workers. In each case, the relevant information had been communicated to the Procurator-General, who had been able to examine the facts and act accordingly.

22. **Mr. Ashurov** (Tajikistan), responding to the question on legal assistance for foreigners, said that Tajikistan was currently preparing a Bar bill, particularly on legal assistance, the provisions of which would conform to the relevant norms of international law. It should also be noted that Tajikistan did not regard regular migrants in the same way as irregular migrants.

23. **Mr. Devonaev** (Tajikistan), responding to the question on Tajik migrant workers who had met a violent death in the Russian Federation, explained that by virtue of the Agreement on employment and the protection of the rights of foreign nationals signed between the Russian Federation and Tajikistan, the State of the national in question was required to defray the cost of repatriating the body. When the employer was responsible for the death, the repatriation costs were reimbursed in accordance with the legislation of the destination State. The relevant departments on both sides cooperated with each other to ensure repatriation and open criminal investigations.

24. **Mr. Ashurov** (Tajikistan) added that the costs of repatriation of the body of a Tajik migrant who had died abroad were covered by the Tajik Government. In addition to the Russian-Tajik Agreement on foreign nationals, both countries' Ministries of Internal Affairs collaborated in the fight against organized crime.

25. **Mr. Devonaev** (Tajikistan), replying to the question on employment contracts, said that a standard contract for employers and migrant workers had been proposed by the joint Russian-Tajik working group created by the Agreement signed in 2004 by both countries. The standard contract, which indicated the rights and obligations of both parties to the contract, as well as the main relevant provisions, would be examined at the next session of the working group.

26. **Mr. Ashurov** (Tajikistan), responding to the question on the observations of the International Federation for Human Rights (FIDH), said that all studies on migrant workers and all proposals were welcome as long as they contained positive components designed to improve their situation. Tajikistan had taken note of the excellent FIDH study and had started to use the information it contained. However, the document had been published, after Tajikistan had submitted its initial report to the Committee. In future, Tajikistan planned to take the recommendations of the Committee and FIDH into account.

27. **Mr. Mahmaminov** (Tajikistan), supplementing Ms. Muhammadieva's reply to questions on trafficking in persons, recalled that the International Organization for Migration (IOM) was represented in his country. Moreover, Tajikistan had a special commission to address the issue and that the Tajik Government was making an effort to reintegrate victims of human trafficking by providing support and helping them to find employment. Particular attention was given to street children who worked in the markets, and action had been taken to enable them to study and prepare for their future.

28. **Mr. Devonaev** (Tajikistan), providing clarification on the management and regulation of migration, explained that the measures undertaken fell within the framework of national migration policy. It focused mainly on disseminating any useful information to migrant workers, monitoring social guarantees and facilitating the reintegration of migrants returning to Tajikistan. Moreover, a procedure had been established for selecting and sending migrant workers abroad, and they had access to job centres, a legal assistance network and appropriate training.

29. **Mr. Ashurov** (Tajikistan) explained that the aim of the State-run services was to make the lives of all migrant workers, whether emigrants or immigrants, easier and to regularize their situation. There was no question of making decisions for them or imposing constraints.

30. **Ms. Muhammadieva** (Tajikistan) said that the 2009 study on employment of migrant workers had noted that more than 100,000 workers had temporarily returned to Tajikistan. That study, had produced information on the difficulties encountered by migrants abroad, which Tajikistan would be able to cite in its collaboration with the Russian Federation and other countries.

31. **Mr. Mahamaminov** (Tajikistan) added that migrant workers who returned temporarily to the country in the winter were able to benefit from training programmes for different occupations, which allowed them to remain to some extent on the domestic market. They could also take language courses. For additional information, he invited the experts to consult the websites of the relevant Tajik departments.

32. **The Chairperson** asked whether the medical examination for migrant workers was the same for an immigrant and emigrant alike. He also wished to know how the Procurator-General acted in cases involving recruitment agencies and if Tajik legislation already referred to the Convention. He also wished to know how much of the budget went on the migration policy, and the resources were distributed between emigrants and immigrants.

33. **Mr. Tall**, thanking the delegation for their precise and comprehensive replies, noted that foreign nationals did not have the right to public housing, and asked whether any study had established that foreigners' access to housing had caused serious problems. He would

also like to know if corruption linked to access to housing affected foreigners more than Tajiks, and how it was that a migrant worker enjoyed better access to housing than a Tajik national.

34. Noting that the marriage contract must guarantee the solvency of the foreigner, who must have some capital to provide for his or her family, he would like to know whether that condition also applied to Tajik citizens and whether it did not in itself reflect discrimination in the right to marriage. He wished to know whether the Bar Act of 4 November 1995 was effective and the number of foreigners that had received legal aid, the type of offences committed by those foreigners, the budget allocated to legal aid, and whether irregular migrant workers had the right to legal assistance.

35. **Mr. El-Borai** asked about the link between judicial bodies and the department of the Ministry of Foreign Affairs responsible for examining the files of illegally convicted persons. He also wished to know how persons could be illegally convicted and whether they were entitled to damages. Private recruitment agencies having been authorized by the International Labour Organization since the 1980s, on condition that their services were free, were the Tajik agencies services free for migrants?

36. **Mr. Taghizade** said that he was happy with the quality of the clarifications provided by the Tajik delegation. However, he requested clarification on the bill on private employment agencies and how they functioned. Had any of those agencies been prosecuted and had thus lost the right to recruit migrant workers, and had any migrant workers received damages for abuse? He also wished to know how many deaths of migrant workers were linked to health problems, workplace accidents or other causes and whether the causes of death had been investigated or studies conducted in that area. He assured the delegation that the Committee was willing to provide assistance, particularly technical assistance, for all migration issues.

37. **Mr. Sevim**, noting that the Convention advocated the principle of non-discrimination and equality between nationals and non-nationals, said that the right to property was a problematic issue for migrant workers and that the limited housing stock could not explain the difficulties they encountered in access to property. Similarly, the impossibility of family reunification could be justified neither by the number of divorces nor by economic problems. Both problems suggested that international law did not have primacy over domestic law. Common labour contracts should reflect the rights enshrined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

38. He would like to know how social security legislation was applied in Tajikistan and whether migrant workers who returned to their country of origin were entitled to their pension contributions in full and whether it retained its value. He pointed out that ratification of the ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118) would extend social security entitlements to Tajik nationals living abroad even in the absence of a bilateral agreement in respect of those entitlements. Noting that no readmission agreements had as yet been concluded, he urged the Government to take due account of the provisions of articles 16 and 22 of the Convention in any related negotiations, including those currently under way with the Russian Federation.

39. **Mr. Ibarra González** asked exactly how many employment agencies were active in Tajikistan and how they operated. He would also like to know how much workers who found jobs were required to pay the agencies and whether the Government exercised oversight in order to prevent abuse. Noting that 21,000 women had gone to work overseas in the second half of 2010, he wondered what arrangements were made for their children.

40. **Mr. Nuñez-Melgar Maguiña**, welcoming the State party's progress on occupational migration but noting with concern that it had not signed the Protocol to

Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), asked whether the provisions of the Protocol were nonetheless incorporated into domestic law and whether initiatives in that area included a national plan for combating trafficking in women.

41. **Mr. Brillantes** said that it was highly regrettable that FIDH had used a document about Tajik migrant workers to criticize the Filipino model for exporting labour (http://www.fidh.org/IMG/pdf/taj_report-2.pdf), even though it was referred to as an example of best practice by the Organization for Security and Cooperation in Europe (OSCE), IOM and ILO. He hoped that there would be no repeat of such a situation.

The meeting was suspended at 12 p.m. and resumed at 12.20 p.m.

42. **Ms. Muhammadijeva** (Tajikistan) said that migrant workers underwent medical examinations when starting a job in order to check their suitability for the work. The examinations were performed by a variety of specialists according to guidelines contained in a form approved by the Ministry of Health and also used in Russia. The same procedure applied to Tajik nationals returning to their country to work after a period overseas. It was therefore a standardized procedure applicable to all.

43. Replying to the question about the situation of children whose mothers went to work in other countries, particularly in Russia, she said that according to Government figures 917,000 Tajiks had gone to work overseas in 2009, 10 per cent of them women; the number of women emigrant workers was therefore higher than the figure cited by the Committee. According to the 2010 census, there were 1.2 million families in Tajikistan, the average family consisting of 7 people in rural areas and 4.5 people in urban areas. Families therefore tended to be quite large and children whose parents left to work overseas were entrusted to the care of aunts and uncles or grandparents. Each administrative subdivision had a child monitoring committee that kept track of how many children did not live with their parents and who was responsible for their care. The Statistics Agency monitored the situation and transmitted the information to the Deputy Prime Minister responsible for such issues.

44. **Mr. Ashurov** (Tajikistan), answering questions concerning case law and the role of the prosecution service, said that under the Constitution responsibility for ensuring the harmonious application of legislation throughout the country lay with the Procurator-General and the procurators under his authority. The Procurator-General and other procurators had a duty to consider in a timely manner any information concerning violations of migrants' rights, particularly violations by private employment recruitment agencies. They could also exercise general oversight of application of laws, without waiting for the transmission of information, and were required to take prompt action whenever violations of the law were identified.

45. With regard to the question of whether or not the Convention was invoked in the case law of Tajikistan, the State party made every effort to ensure that ratified international treaties were incorporated in legislation. The courts could refer to those treaties, but as yet there was no case law involving implementation of the Convention.

46. **Mr. Mahmaminov** (Tajikistan) said that 51 per cent of the budget of the Republic of Tajikistan, or 4.8 billion somoni, i.e. more than 1 billion United States dollars, was allocated to social issues. In the previous year 20 million somoni had been allocated to migration policy and labour protection. Migrant workers were entitled to receive a retirement pension in Tajikistan, provided that they had the required number of years' contributions. The same was true of Tajik migrants working overseas.

47. **Mr. Ashurov** (Tajikistan) said that there had been no research on the housing issue and the restrictions imposed on foreign nationals. Although restrictions on access to housing did exist, they were not intended to undermine the rights of foreign nationals. The housing stock was managed in such a way as to ensure that the most vulnerable could find accommodation, and the decisions of the bodies responsible for housing were subject to oversight. The Constitution and the law provided for legal aid for foreign nationals and, in certain cases, foreign nationals enjoyed that right on an equal footing with Tajik nationals. A working group was in the process of drafting a bill addressing the issue.

48. **Mr. Jononov** (Tajikistan) said that the Ministry of Foreign Affairs protected the rights of Tajik nationals and that any Tajik who was unlawfully convicted in a foreign country could seek assistance from the consulate or embassy. The same applied to foreign nationals in Tajikistan.

49. **Mr. Devonaev** (Tajikistan) said that there were over 300 employment agencies in Tajikistan recruiting workers for foreign countries, and their activities were licensed. The payments that workers made to those agencies were not regulated. However, Tajikistan had only recently become involved in migration flows to foreign countries and lacked experience in that field. That was why a bill on private employment agencies was being drafted, in conjunction with NGOs and international organizations represented in the country. The issue would shortly be debated in parliament.

50. With regard to the protection of the rights of foreign nationals, the Social Council, which brought together all diplomatic and consular representatives accredited to Tajikistan as well as representatives of the different diasporas living in the country, had recently held its first meeting. One of the Council's responsibilities was to safeguard the rights and interests of foreign workers living in the country. He promised to provide the Committee with a copy of the minutes of that meeting. Various meetings and conferences addressing the protection and defence of foreign nationals' rights were also organized in Tajikistan, at which regularization procedures were examined in the presence of representatives of foreign countries. A forum on illegal migration to Tajikistan was also due to be held, although the problem was only a minor one.

51. **Mr. Ashurov** (Tajikistan) said that the right to property was one of the fundamental rights of migrant workers and foreign nationals and that all legal provisions gave foreign nationals equal property rights with Tajik nationals. The standards set forth in the Convention would be taken into account in any future amendment of existing laws.

52. **Mr. Jononov** (Tajikistan), recalling that Tajikistan was a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), said that trafficking in human beings was an issue at the forefront of the Government agenda.

53. **Mr. Taghizade** said that the answers to the numerous questions raised had given Committee members a clearer picture of the situation in Tajikistan, which was quite complex. Laws and regulations were being drafted and adopted, but lacunae continued to exist, and the current situation did not conform fully to the provisions of the Convention. The institutions established did not have the means to operate effectively. However, the Committee had detected a readiness on the part of the Tajik authorities to address the problems that emigrant and immigrant workers faced. The recommendations that the Committee would make at the end of the current review would be informed by the desire to help the State party achieve that end and implement the provisions of the Convention.

54. **Mr. Mahmaminov** (Tajikistan) said that he had no doubt that the Committee's recommendations would help to alert his country to the importance of measures that sought to protect migrant workers both inside and outside the country. The Government would

make every effort to ratify other international conventions and invited Committee members to visit Tajikistan and see for themselves the achievements on the ground. The Government would also do its utmost to improve the labour market situation, drawing on technical assistance and the advice of its international partners.

55. **The Chairperson** said that the delegation's proactive and pragmatic approach and its level of expertise were commendable. All parties involved in the consideration of the report, including members of the Committee, United Nations bodies, IOM, civil society and the secretariat stood ready to help Tajikistan to formulate a more effective migration policy. He urged the Government of Tajikistan to make the declaration provided for in article 76 of the Convention, which would allow the Committee to consider communications and contribute to the promotion of the Convention in the region.

The meeting rose at 1 p.m.