

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 39th Session

TAJIKISTAN

I. BACKGROUND INFORMATION

Tajikistan acceded to *the 1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1993. Tajikistan is not yet a State party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) nor to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). Tajikistan is, however, a party to other international instruments, such as the *International Covenant on Civil and Political Rights (ICCPR)* and the *Convention on the Rights of the Child (CRC)*, which establish obligations relating to the right to nationality and enjoyment of fundamental rights by stateless persons.

Tajikistan's operational environment is characterised by complex geopolitical factors influenced by Fergana Valley that saddles across eastern Uzbekistan, southern Kyrgyzstan and northern Tajikistan, and being ethnically complex and historically volatile. The 1,300 km border with Afghanistan is characterised by multiple smuggling activities, combined with worsening situations in Afghanistan being a push factor for population displacement within and across the country. The Government of Tajikistan continues to maintain a closed border policy with limited regard for protection-sensitive border management, along with infused national security imperatives affecting protection space.

The country hosts the largest number of refugees and asylum seekers in Central Asia: 408 asylum-seekers and 5,581 refugees (as of 31 December 2020), primarily from neighbouring Afghanistan and a small number from Iran, Iraq, Uzbekistan and Ukraine. Over 90 per cent of all Afghan refugees in Tajikistan are ethnic Tajiks followed by Hazara, Pashtun, Uzbek and Turkmen ethnicities. Most refugees and asylum-seekers reside in *peri-urban* areas near the capital Dushanbe, including the towns of Vahdat, Hissor and Rudaki, as well as in the northern town of Jabbor Rasulov. The registration is carried out by the Government, and the age and gender-disaggregated data is unavailable and not shared with UNHCR.

Tajikistan also hosts 6,385 (3,327 female and 1,216 male) stateless persons and those at risk of statelessness. The number, however, tends to increase as the identification process continues. Statelessness in Tajikistan has been the by-product of the dissolution of the former Soviet Union; migration, including in the context of the civil war and mixed marriages; as well as gaps in nationality legislation and policy or administrative obstacles preventing the acquisition or confirmation of nationality.

The overall asylum and refugee situation in Tajikistan continues to be heavily affected by national security concerns. Despite this, there has been some progress made in the human-rights-based approach, specifically amendment of Article 499 of the Administrative Code, abolishing deportation of refugees and asylum seekers for violation of rule of stay as per Resolution 325. The COVID-19 pandemic became a catalyst for the worsening of existing

socio-economic problems by exposing gaps of poor health and social protection systems and fuelling some instability in the political dynamics in the country. Most refugees and asylum seekers were affected, losing opportunities to sustain their daily lives while being employed in the informal job market. The stateless population, including persons with undetermined nationality with no valid documents, while having access to healthcare, however could not benefit from social allowance as part of the government's national COVID-19 response plan. The state support remains largely unavailable and this group of people started to deprioritize documentation issues over meeting their basic needs in view of the COVID-19 pandemic and deteriorating socio-economic situation.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR wishes to note that the Government of Tajikistan has made significant progress by finalizing the first round of amendments to the *Civil Registration Law* (in July 2019) as part of the ongoing Civil Registration System reform in Tajikistan. This introduced several positive changes, including free birth registration, within three months of birth. In addition, in December 2019, the Parliament of Tajikistan adopted an *Amnesty Law* to legalize stateless persons and foreign nationals illegally residing on the territory of Tajikistan, thus paving the road for resolution of the most complex statelessness cases in the country, which could not be solved under the existing legislative framework. The *Amnesty Law* is applied to all irregularly residing stateless persons and foreign nationals originating from former USSR countries who arrived in Tajikistan before 31 December 2016. Since the implementation of the Law, 1116 persons falling under the scope of the Law were registered, out of which 79 persons legalised their stay and received residency permits.

The principle of non-refoulement is embedded in Tajik laws as well as a series of international conventions to which Tajikistan is a party. The abolition of deportation as a sanction from part 3 of Article 499 of the *Code of Administrative Offenses* has become an important step to protect asylum-seekers and refugees from deportation, thus bringing local legislation closer to the requirements under international law.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Achieve universal birth registration

Linked to 2nd cycle UPR recommendation no. 115.16 “Strengthen the national mechanisms to improve the protection of the rights of children (Kuwait)”; **also linked to 1st cycle UPR recommendation no. 88.50:** “Ensure that all births are registered and facilitate access to birth registration services including by reducing its cost (Uruguay).”

Currently, under the national legislation, a birth certificate confirming the birth of a child can be issued at the Civil Registry Offices (ZAGS) when parents (or one parent) present their identity documents, along with a copy of the child's birth notification issued by medical facilities. In practice, the parent(s) might face difficulties in registering the birth of their child if either parent lacks valid identity documents, while the birth is not registered and birth certificate not issued at all if the parent(s) lack prove of nationality or are undocumented.

In this regard, UNHCR would like to refer to the 2013 and 2015 Human Rights Council resolution on birth registration and the right of everyone to recognition everywhere as a person before the law, which “*reminds* States of their obligation to register births without discrimination of any kind and irrespective of the status of the parents of the child, and also reminds States that birth registration should take place immediately after birth and that late birth registration

should be limited to those cases that would otherwise result in a lack of registration;”¹ On the same note, UNHCR would like to refer to one of the pledges made by Tajikistan during the High-Level Segment on Statelessness in 2019: “To complete the Civil Registration System reform in the country, securing safeguards for universal childbirth registration regardless of the legal status and possession of identity documents by parents.”²

Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. In addition, without this legal record, a person might not be able to enjoy fundamental human rights, including access to education and medical services, as a birth certificate is a requisite document to apply for an identity document in Tajikistan.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a) Accede to and fully implement the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- b) Amend the Law on Civil Registration to ensure universal birth registration of all children born on the territory of Tajikistan regardless of the legal status of parents and availability of identity documents; and
- c) Raise awareness of the importance of birth registration and birth certificates, especially in rural areas.

Additional protection challenges

Issue 2: Freedom of movement restrictions and associated penalties, including rejection of asylum applications and risk of refoulement

Government Resolutions 325 and 328 (passed in 2000 and 2004 respectively) stipulate an exhaustive list of settlements where the temporary residence of refugees and asylum-seekers is allowed, thus prohibiting asylum-seekers and refugees from residing in designated urban areas, including the two main cities of Dushanbe and Khujand. As a result, the Resolutions severely restrict the freedom of movement and choice of residence of refugees and asylum-seekers in Tajikistan, particularly as stipulated under Article 12 of the *ICCPR*. Moreover, the continued implementation of these Resolutions negatively affects access of refugees and asylum-seekers to the labor market, health care, education, housing and other services. The Resolutions are strictly enforced by the Government, and non-compliance results in the rejection of asylum applications, and administrative penalties. Rejection of asylum applications for such non-compliance raises the risk of refoulement.

Moreover, it should be stressed that Resolutions 325 and 328 specifically target refugees and asylum-seekers exclusively, whereas other foreign nationals are not subject to any movement or residence restrictions. In this context, UNHCR would like to refer to the Committee on the Elimination of Racial Discrimination’s Concluding Observations on Tajikistan from 2017, which recommended that “the State party lift regulations 325 and 328..., so that asylum seekers and refugees can enjoy freedom of movement and residence on an equal footing with other non-

¹ UN Human Rights Council, *Birth registration and the right of everyone to recognition everywhere as a person before the law : resolution / adopted by the Human Rights Council*, 9 April 2013, A/HRC/RES/22/7, available at: <http://www.refworld.org/docid/53bfacfa4.html> ; And UN Human Rights Council, *Birth registration and the right of everyone to recognition everywhere as a person before the law : resolution / adopted by the Human Rights Council*, 7 April 2015, A/HRC/RES/28/13, available at: <https://www.refworld.org/topic,50ffbce582,50ffbce5112,558ab29a4,0,UNHRC.RESOLUTION..html>

² The list of all 360 pledges made during the High Level Segment on Statelessness can be found at <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

nationals, and the right to work, health care, education and other basic services.”³ Furthermore concern raised by the Committee on Economic, Social and Cultural Rights from 2015, which states that despite legal reforms undertaken by the State party, the access of refugees and asylum seekers to certain urban areas still remains restricted. Therefore, the Committee recommended: “that the State party take the necessary steps to lift the restrictions under Presidential resolutions No. 325 (2000) and No. 328 (2004), with a view to ensuring enjoyment by refugees and asylum seekers of the economic, social and cultural rights enshrined in the Covenant”.⁴

Additionally, while the Law on Refugees of Tajikistan has provisions for issuance of travel documents, in practice, refugees are not issued Travel Documents, as stipulated in Article 28 of the 1951 Convention Relating to the Status of Refugees, and therefore some refugees are restricted from travelling abroad.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a) Lift the restrictions imposed under Resolutions 325 and 328 which prohibit refugees and asylum-seekers from living in certain urban areas so as to ensure their freedom of movement throughout the country and their liberty to choose a place of residence; and
- b) Issue travel documents to refugees, so that refugees who do not possess valid travel documents can travel outside of the country where necessary.

Issue 3: Non – penalization/non-refoulement for illegal border crossing

Tajikistan received recommendations from the Human Rights Committee in 2013 to respect the principle of non-refoulement and to guarantee that freedom of movement restrictions are never used as a basis for exposing any person to a risk of violations of Articles 6 and 7 of the International Covenant on Civil and Political Rights.⁵

The main applicable national law is the *Law of the Republic of Tajikistan on Refugees* (Law No.1124 of 26 July 2014), Article 6 part 2 (paragraph 1), part 4 and 5 respectively regulating the procedures upon illegal border crossing.⁶ The Article 6 lists the state entities present at the border (border guards, national security, and internal affairs body) that can receive an application for refugee status at the border and provides for the time frame to do so. The Article 6 enshrines the spirit of the Article 31 of the *1951 Convention* and provides that those forced to cross the border illegally shall be detained without applying sanctions and be referred to the internal affairs body for the asylum claims to be reviewed for registration. Despite the non-penalisation and procedure to lodge asylum application contemplated in the National Refugee Law, however, there is a need to harmonise Article 335(1) of the *Penal Code of the Republic of Tajikistan* (Law of RT №45 of 31.12.08)⁷ which establishes that illegal border crossing is

³ Committee on the Elimination of Racial Discrimination, Concluding observations on Tajikistan, 19 September 2012, CERD/C/TJK/CO/9-11, para. 16(a), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTJK%2fCO%2f9-11&Lang=en

⁴ Committee on Economic, Social and Cultural Rights, Concluding observations on the combined second and third periodic reports of Tajikistan, 25 March 2015, E/C.12/TJK/CO/2-3, para 15, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/TJK/CO/2-3&Lang=en

⁵ Human Rights Committee, Concluding Observations on Tajikistan, 108th session, 22 August 2013, CCPR/C/TJK/CO/2, paras, 11 – 12, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=623&Lang=en.

⁶ Tajikistan: Law No. 1124 of 2014 on Refugees, available at: <https://www.refworld.org/docid/3eda26b84.html>

⁷ Penal Code of the Republic of Tajikistan, available at: <http://ncz.tj/content/%D1%83%D0%B3%D0%BE%D0%BB%D0%BE%D0%B2%D0%BD%D1%8B%D0%B9-%D0%BA%D0%BE%D0%B4%D0%B5%D0%BA%D1%81->

punishable by a fine in the amount of 30,000 TJS up to 60,000 Tajik Somoni (set on annual basis) or imprisonment for the period of 2 up to 5 years. While there is a safeguard in the Article 335(3) which provides that the fine is waived in case of foreign citizens and stateless persons arrived in Tajikistan in violation of the border crossing rules for reason of seeking **political** asylum, this does not apply to asylum-seekers who are to submit applications as per procedures envisaged under Article 6 of the *Law on Refugees*. According to Article 69 of the Constitution and its interpretation along with Article 16 of the Constitution, it is within the competence of the President to grant political asylum. It is therefore assumed that the waiver of the fine stipulated in Article 335(3) of the *Penal Code* is interpreted in such a way as not to be applicable to other categories of asylum-seekers.

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a) Amend and harmonise Article 335(1) of the *Penal Code of the Republic of Tajikistan* in line with Article 6(4) of the *Law on Refugees*, amended as of 26 July 2014, to ensure that all categories of asylum-seekers are protected from penalization for irregular entry and have access to asylum procedures.

Issue 4: Unhindered access to asylum procedures

Despite the significant amendments made in the refugee legislative framework, there are still requirements which may hinder access to asylum, namely, a) the existence of pre-screening procedures before an asylum claim is registered; and b) access to the asylum procedure being dependent on various preliminary requirements, namely registration with local authorities (implying the possession of a travel document and visa), medical examination, and evidence of residence (in accordance with Government Resolution 325).

Recommendations:

UNHCR recommends that the Government of Tajikistan:

- a) Develops internal State RSD regulations, including the terms of reference for the Inter-Ministerial RSD Commission, guaranteeing unhindered and fair access to asylum procedures.

**UNHCR
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