



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

Distr.: General
30 December 2010
English
Original: Russian

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

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

Initial reports of States parties due in 2004

Tajikistan*

[3 December 2010]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Initial report of Tajikistan on implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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I. Introduction

1. This initial report is submitted under article 73 of the Convention and was drawn up in line with the Guidelines on the form and content of reports to be submitted to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.
2. It covers the period from the beginning of 2003 to the end of June 2010 and is divided into two parts. The first describes the constitutional, legal and administrative basis for implementation of the Convention and the country's policy on migration. The second part provides specific information on the implementation of individual rights under the Convention.
3. The report was drawn up by a working group of the Government Commission on International Human Rights Obligations, which included the presidential adviser on legal policy, as well as representatives of the Department for Constitutional Guarantees of Citizens' Rights of the Executive Office of the President (working group leader), the National Legislation Centre reporting to the President, the Employment and Social Protection Department of the Executive Office of the President, the Ministries of Foreign Affairs, Justice, and Internal Affairs, the Further Education Institute for Procuratorial Staff, the Office of the Commissioner for Human Rights, and NGOs.
4. During the preparation of the report, the working group held regular consultative meetings with representatives of civil society. The draft report was discussed at public hearings and sent for consideration to State bodies; recommendations were received both from the State bodies and from civil society institutions.
5. The report preparation process was given broad coverage in the media.

II. Information of a general nature

A. General economic and socio-political situation in the field of labour migration in Tajikistan

6. Migration by Tajik citizens to work in other countries is an established process that attracts increasing numbers of young people each year. It has begun to have a huge impact on the country. Not only does it help to meet the citizens' domestic and other socio-economic needs, it is also having an effect on the country's socio-economic policy. Figures from the National Bank of Tajikistan show that remittances from migrant workers make up around 50 per cent of the country's gross domestic product. In 2008, over US\$ 2 million came into the country through the banks, helping to reduce poverty and create new jobs, support business activities and stabilize the national currency and the creditworthiness of the commercial banks. In social terms, labour migration has promoted the acquisition of new skills (in construction, agriculture, etc.), increased the housing stock, and brought the possibility of investing remitted funds into local infrastructure development (improving roads and means of communication, building mini-factories in the regions, etc.). Law enforcements officers have noted a reduction in the level of economic crime over the years as labour migration has increased. However, along with the positive aspects of labour migration, a number of problems have also resulted from emigration of the population. First and foremost, there is the outflow of qualified staff and manual workers that the country needs for its recovery and to build an economically and politically stable State. Because of their illegal status, many migrant workers often do not have adequate access to effective legal protection in the country of destination. This situation is compounded by the fact that

many migrant workers from Tajikistan do not have adequate language or professional skills.

7. To address all these problems, the Government is taking measures in line with the National Strategy to Regulate International Labour Migration Processes from Tajikistan. The Strategy is intended to optimize the advantages of organized labour migration and improve social and legal support for migrant workers in the country and abroad. The Government thus:

- (a) Is improving the national legal framework for regulating labour migration;
- (b) Has set up the Migration Service within the Ministry of Foreign Affairs to regulate international labour migration. In April 2010, in his annual message on the main aspects of domestic and foreign policy, President Emomali Rahmon noted the need to set up a special Government structure to deal exclusively with issues related to labour migration.

The mechanism for interdepartmental collaboration in regulating such issues has been improved with the establishment of the Interdepartmental Commission for the Regulation of Migration Processes. There is also better collaboration with the principle countries of destination including, for instance, agreements with the Russian Federation and Kazakhstan on protecting migrant workers' rights. The Ministry of Internal Affairs Migration Service and other mandated bodies have developed drafts of various agreements with countries of destination for migrant workers from Tajikistan on protecting migrant workers' rights.

8. Tajikistan can be described as a country of immigration, emigration and transit (a certain number of Afghan nationals have travelled on and continue to travel on to other countries, using Tajikistan as a transit country). Over recent years, the Government has looked at attracting investment into the country's economy as the most important factor in developing the different branches of the economy, such as industry, communications and the service sector. To regulate matters related to the recruitment and use of foreign labour under the Ministry of Internal Affairs Migration Service, a commission has been set up to issue licences (permits) for recruiting foreign workers to Tajikistan and for sending migrant workers abroad. Currently, there are 342 companies, 30 of which deal with finding employment for local workers abroad, and 312 with recruiting foreign workers to Tajikistan.

9. In recent years, Tajikistan has been paying particular attention to the development of small and medium-sized business, attracting foreign investors to help strengthen and improve the country's economy, bringing modern infrastructure to the various branches of the economy and creating new jobs offering decent wages to improve the living conditions of all the peoples and ethnic groups living in the country. The country's leadership organizes business forums each year, attracting foreign and local business people and entrepreneurs who are in a position to invest in various types of projects and run the activities.

10. When looking at the situation of migrant workers from Tajikistan in other countries, issues related to foreign nationals and stateless persons working in Tajikistan should also be considered. Although Tajikistan is not a traditional country of destination for migrant workers, the inflow of labour from countries such as China, Iran, Turkey and Afghanistan has grown markedly over recent years. This is because investors have shown growing interest in Tajikistan, putting resources into various strategic projects such as the construction of power plants, roads and tunnels, resulting in an increase from 124 legally resident foreign migrant workers registered in Tajikistan in 2005 to 1,389 in 2006, 2,814 in 2007, 3,446 in 2008, and 4,523 in 2009. Given that, the Government is making an effort to use more transparent and modern methods to attract foreign workers, ensuring respect for

the human rights provided for in the international legal instruments it has recognized and its domestic legislation.

11. Recognizing the scale of female labour migration from Tajikistan, the Government has also begun to look at developing a gender approach to the issue. Experts have in the past noted the absence of such an approach in various strategic documents on labour migration. Research in Tajikistan on respect for the rights of women migrant workers in countries of origin and of destination has helped to produce more reliable data on the problems encountered. The results have highlighted not only an increase in female labour migration in Tajikistan in recent years, but also an exacerbation of gender issues in general in international labour migration. In this connection, in 2010, a number of donor organizations working with the relevant Government and State agencies set up a programme on labour migration that has components on improving legislation to take account of gender specificities and providing a wider range of services for migrant workers and their families, taking account of the gender factor at all stages of the migration cycle. More than 21,000 women left the country to find work abroad in the first six months of 2010.

12. The Convention is a legal instrument to defend the rights of all migrant workers and members of their families. For Tajikistan, ratification of the Convention was a serious step on the path to recognizing and respecting the rights of migrant workers. To raise public awareness, publicize the Convention and disseminate knowledge in the area of migrant workers' rights, the text of the Convention has been translated into the official State language, published in the national newspapers, printed in brochures and compilations, and provided free of charge to libraries, educational establishments and State structures to make it available to broad sectors of the population.

B. Constitutional, legislative and judicial frameworks governing the implementation of the Convention

13. In accordance with the Constitution, Tajikistan, as a social State, creates the conditions necessary to guarantee a life of dignity and free development for every individual. Human and civil rights and freedoms are governed and protected by the Constitution and laws of Tajikistan and by international legal instruments to which Tajikistan is party. Human and civil rights and freedoms are exercised directly. They determine the goals, content and application of laws, the activities of the legislative and executive branches and of local authorities and local self-governing bodies. Human and civil rights and freedoms are guaranteed by the judiciary. Citizens' rights and freedoms may be restricted only in order to uphold the rights and freedoms of other citizens, maintain social order and defend the constitutional system and territorial integrity of Tajikistan.

14. Foreign nationals and stateless persons enjoy the rights and freedoms proclaimed, on an equal footing with Tajik citizens in socio-economic and cultural areas.

15. Under article 10 of the Constitution, international legal instruments ratified by Tajikistan form an integral part of the national legal system. In the event of conflict between domestic legislation and ratified international legal instruments, the latter apply. Thus, Tajikistan recognizes the primacy of international law over national legislation.

16. In the years since independence, Tajikistan has recognized all the main international legal human rights instruments and continues to actively implement their norms in domestic legislation.

17. After ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families on 28 November 2001, amendments

were made to the Migration Act, the Legal Status of Foreign Nationals Act and other legal instruments to bring national legislation into line with it.

18. The regulatory framework that governs various aspects of migrant workers' rights consists of:

Laws and regulations related to migrant workers' rights

- The Constitution (6 November 1994)
- Constitutional Act on Citizenship (4 November 1995)
- Constitutional Act on the Constitutional Court (3 November 1995)
- Constitutional Act on the Courts (6 August 2001)
- Constitutional Act on the Procuratorial Agencies (25 July 2005)
- Press and Other Media Act (14 January 1990)
- Citizens' Appeals Act (14 December 1996)
- Labour Code (15 May 1997)
- State Borders Act (1 August 1997)
- Culture Act (13 December 1997)
- Criminal Code (21 May 1998)
- Family Code (13 November 1998)
- Civil Code, part 1 (30 June 1999)
- International Treaties Act (11 December 1999)
- Migration Act (No. 881, 11 December 1999)
- Act on the licensing of designated activities (17 May 2004)
- Act on protection of the population against tuberculosis (22 December 2006)
- Education Act (17 May 2004)
- Penal Enforcement System Act (23 June 2004)
- Human Trafficking Act (15 July 2004)
- Tax Code (3 December 2004)
- Customs Code (3 December 2004)
- State Civil Registration Act (29 April 2006)
- Voluntary Associations Act (12 May 2007)
- Social Services Act (5 January 2008)
- Code of Civil Procedure (5 January 2008)
- Commissioner for Human Rights Act (20 March 2008)
- Code of Administrative Offences (31 December 2008)
- Freedom of Conscience and Religious Associations Act (26 March 2009)
- Labour Protection Act (19 May 2009)
- Code of Criminal Procedure (3 December 2009)

- Presidential Decree on strengthening the campaign against illegal immigration into the Republic of Tajikistan (2 April 2001)
- Government Decision approving the passport system (15 July 1997)
- Government Decision establishing the Interdepartmental Commission on Migration Processes reporting to the Government (21 October 1997)
- Government Decision on the State Migration Policy Framework (8 October 1998)
- Government Decision on the Interdepartmental Commission to Combat Trafficking in Persons (4 January 2005)
- Government Decision confirming regulations governing the Ministry of Internal Affairs (28 December 2006)
- Government Decision approving regulations on aspects of licensing designated activities (3 April 2007)
- Government Decision establishing a commission reporting to the Government on compliance with international human rights obligations (4 March 2002)
- Government Decision approving regulations for the issuance of foreign-travel passports with electronic information chips and temporary travel documents for return travel to Tajikistan for Tajik citizens (2 April 2009)
- Order of the Minister of Internal Affairs confirming the regulations of the Migration Service (20 February 2007)

Legal instruments related to the rights of migrant workers who are Tajik citizens

- Employment Promotion Act (1 August 2003)
- Youth and Youth Policy Act (15 July 2004)
- Government Decision on the Policy Framework for Labour Migration of Tajik Citizens to Other Countries (6 September 2001)
- Government Decision on the Programme of International Labour Migration for Tajik Citizens, 2003–2005 (3 December 2002)
- Government Decision confirming the regulations of the State Public Employment Service (10 May 2005)
- Government Decision on the Programme of International Labour Migration for Tajik Citizens, 2006–2010 (31 January 2006)
- Government Decision on the Ministry of Labour and Social Protection (28 December 2006)
- Government Decision approving the Social Protection Policy Framework (29 December 2006)
- Government Decision on the State Agency for Social Protection, Employment and Migration (3 March 2007)
- Government Decision approving the regulations of the Ministry of Internal Affairs Office for Migration in the Russian Federation (29 March 2007)
- Government Decision approving the Employment Promotion Programme, 2008–2009 (30 December 2007)
- Government Decision creating the State Centre for Adult Education (5 March 2008)

- Government Decision approving the Job Creation and Retention Policy Framework, 2008–2015 (5 March 2008)
- Government Decision on the registration of international migration by Tajik citizens (1 August 2008)
- Joint order of the Ministry of Internal Affairs and the Ministry of Health establishing a travel advisory clinic (No. 461 of 14 September 2007 and No. 598 of 8 October 2007)
- Joint order of the Ministry of Internal Affairs and the Ministry of Education on education for migrant workers in vocational training institutes (March 2010)

Legislation related to the rights of migrant workers who are foreign nationals or stateless persons

- Legal Status of Foreign Nationals Act (1 February 1996)
- Presidential Decree on quotas for immigration and recruitment of foreign workers (25 December 2009)
- Government Decision approving the rules governing the stay of foreign nationals in Tajikistan (15 May 1999)
- Government Decree approving the rules for issuing work permits to foreign nationals and stateless persons working in Tajikistan, and model form (31 October 2008)
- Government Decision approving immigration control regulations (2 December 2008)
- Government Decision approving procedure for the processing and issuing of visas to foreign nationals and stateless persons (27 February 2009)

19. Two important legal instruments are currently being drafted (July 2010). They are the National Strategy on International Labour Migration, 2011–2015 and the International Labour Migration Act. The Strategy is intended to form the basis for the drafting and implementation of an effective policy on international labour migration. The Act will regulate the policy implementation mechanism and provide the economic and social basis for managing the migration processes.

20. Tajikistan has ratified 46 conventions and 20 recommendations of the International Labour Organization (ILO), including the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143), the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182) of 1 June 1999, the Recommendation concerning General Conditions to stimulate Job Creation in Small and Medium-Sized Enterprises (No. 189) of 2 June 1998, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime of 1 December 2000.

21. Tajikistan has signed the following multilateral and bilateral agreements concerning migrant workers:

(a) Agreement on cooperation in the field of labour migration and social protection for migrant workers in the countries of the Commonwealth of Independent States (CIS) (15 April 1994);

(b) Decision of the Inter-Parliamentary Assembly of CIS Member States on labour migration in the CIS countries (13 May 1995);

- (c) Agreement on cooperation between CIS Member States in combating illegal migration (6 March 1998);
- (d) Framework policy on the gradual establishment of a common labour market and regulated labour migration in CIS Member States (15 December 2000);
- (e) Framework policy on collaboration between CIS Member States in combating illegal migration (16 September 2004);
- (f) Declaration on the migration policy agreed in the context of the CIS (5 October 2007);
- (g) CIS Member States' programme of cooperation on combating illegal migration, 2009–2011 (10 October 2008);
- (h) Convention on the legal status of migrant workers and their families, adopted by CIS Member States on 14 November 2008;
- (i) Agreement between the Government of Tajikistan and the Government of Kyrgyzstan on employment and social protection for migrant workers (6 May 1998);
- (j) Agreement between the Government of Tajikistan and the Government of the Russian Federation on employment of Tajik citizens in the Russian Federation and of citizens of the Russian Federation in Tajikistan and protection of their rights (16 October 2004);
- (k) Agreement between the Government of Tajikistan and the Government of Kazakhstan on employment of Tajik citizens working temporarily in Kazakhstan and of citizens of Kazakhstan working temporarily in Tajikistan and protection of their rights (5 May 2006).

- Programme of collaboration on labour exchange between the Government of Tajikistan and the government of Moscow, Russian Federation (17 September 2007)
- Memorandum of collaboration on social protection between the Ministry of Labour and Social Protection of Tajikistan and the Ministry of Labour and Social Development of the Russian Federation (9 December 2002)
- Memorandum between the executive authorities of Khatlon province, Tajikistan, and the municipal regions of Orenburg and Volgograd, Russian Federation, on labour migration (18 September 2007)
- Memorandum between the executive authorities of Soghd province, Tajikistan, and the town of Ivanovo, Russian Federation, on labour migration (18 September 2007)
- Memorandum between the executive authorities of Soghd province, Tajikistan, and Altay and Krasnodar territories, Russian Federation, on labour migration (18 September 2007)
- Memorandum between the Migration Service of the Ministry of Internal Affairs of Tajikistan and the National Employment Commission of the Chamber of Commerce and Industry of Saudi Arabia (24 August 2009)

22. Until 2007, the Migration Service of the Ministry of Labour dealt with issues related to labour migration. On 30 November 2006, in line with the Presidential Decree on the restructuring of the central executive bodies, the Ministry of Labour's responsibilities for labour migration were entrusted to the Ministry of Internal Affairs, where a Migration Service was set up as an independent structural unit of the Ministry, responsible for developing and implementing national policy on labour migration, issuing passports and visas, and providing public registry services. One of the Ministry's main tasks in implementing migration policy is, within the limits of its mandate, to take measures to

regulate labour migration, and to ensure law and order, public security and migration processes on the basis of current assessments and forecasts of the situation.

23. To better protect the rights of migrant workers from Tajikistan in other countries, the Ministry of Internal Affairs has opened offices for migration in the Russian Federation and elsewhere.

24. In order to take greatest advantage of the benefits of organized labour migration, Tajikistan has signed bilateral agreements with the main countries of destination for its migrant workers: the Russian Federation and Kazakhstan. A joint Russian-Tajik working group has been set up and meets annually to improve implementation of the Agreement between the Governments of the two countries on the employment of Tajik citizens in the Russian Federation and of Russian citizens in Tajikistan and the protection of their rights, of 16 October 2004. It was set up in line with article 3, paragraph 2, of the Agreement, and includes representatives of all the relevant bodies dealing with labour migration in each of the countries concerned. The working group's main tasks, as defined in its regulations, are:

- Resolving issues that arise during implementation of the Agreement
- Planning measures towards implementation of the Agreement
- Coordinating activities of the bodies responsible for implementation of the Agreement in the two countries
- Harmonizing legislation on migration in the Russian Federation and Tajikistan

On 16 April 2004, the Heads of Government of the CIS Member States adopted a Decision establishing and approving the regulations of a joint commission to enhance coordination in their activities under the Agreement on cooperation in combating illegal migration, signed by the CIS Member States on 6 March 1998 (Tajikistan ratified the Agreement on 14 May 1999). The Commission follows the CIS Member States' Programme of cooperation in combating illegal migration, 2006–2008, and the work plans for 2009–2010. Intergovernmental commissions on economic collaboration have been set up between Tajikistan and the Russian Federation, Tajikistan and Kazakhstan, and Tajikistan and Kyrgyzstan to consider, among others, cooperation in the area of labour migration and combating illegal migration. The commissions initiate the negotiation and signing of new agreements and memoranda on migration, address the problems of migrant populations, and search for new forms of close collaboration to regulate migration processes. They give preliminary approval to draft regulatory documents to be signed by the leadership of each party. Issues related to implementation of the Agreement between the Government of Tajikistan and the Government of the Russian Federation of 16 October 2004 include:

- Under article 6, length of service for migrant workers is recognized reciprocally by the parties and, at the time of the final exit of the migrant worker, the employer provides an appropriate document authenticated by a stamp.
- Under article 8, issues related to social insurance for migrant workers should be resolved by a separate agreement between the Parties in the area of social insurance. In this connection, in 2007, the Ministry of Internal Affairs drew up a draft Agreement between the Government of Tajikistan and the Government of the Russian Federation on collaboration in the area of social insurance and sent it to the Russian party for consideration.

25. Tajikistan also participates in all the meetings organized in the framework of the Council of Leaders of Migration Agencies of the CIS Member States, the Coordinating Committee of leaders of the bodies of the Collective Security Treaty Organization Member States that deal with combating illegal migration, the Council on Migration Policy of the Committee for Integration of the Eurasian Economic Community and the joint commission

of participating States of the CIS Member States' Agreement on Cooperation in Combating Illegal Migration.

C. Administrative framework (structures) in the field of labour migration

26. The main State agencies involved in developing policy on labour migration include:

- The Ministry of Internal Affairs, specifically its Migration Service
- The Ministry of Labour and Social Protection
- The Ministry of Foreign Affairs
- The Office of the President
- The Interdepartmental Commission on Migration Processes
- The State National Security Committee

27. The Migration Service of the Ministry of Internal Affairs: under Presidential Decree No. 9 of 30 November 2006 on the restructuring of the central executive bodies, the functions of the Ministry of Labour and Social Protection related to labour migration were entrusted to the Ministry of Internal Affairs. At the beginning of 2007, the Ministry of Labour and Social Protection's Migration Service was abolished and its functions transferred to the Ministry of Internal Affairs. The Migration Service was set up within the central structure of the Ministry of Internal Affairs as an independent structural unit of the Ministry, responsible for developing and implementing national policy on labour migration, issuing passports and visas, and providing public register services. One of the Ministry's main tasks in implementing migration policy is, within the limits of its mandate, to regulate labour migration and ensure law and order, public security and migration processes, on the basis of current assessments and forecasts of the situation. The Migration Services works through provincial-level structures, which consist of the 11 units shown below.

Departments of the Migration Service:

- Department of Legal Services and International Cooperation
- Department of Citizenship and Refugee Work
- Visa Department
- Work Permit Department
- Foreign Nationals Visa and Registration Department
- Organization and Monitoring Department
- Passport and Civil Registration Department
- Finance Department
- Labour Migration Department
- Department of Public Transport Monitoring and Migration Registration
- Staff Management Group

The main tasks of the Migration Service are:

(a) Together with ministries and other authorities, to develop and implement State policy on labour migration, and to deal with passport, visa and civil register work, as well as issues related to citizenship and working with refugees;

(b) To draw up proposals on regulating migration processes, develop and improve domestic legislation and negotiate international agreements on labour migration and passport and visa work; to coordinate the activities of the executive agencies in implementing State policy on labour migration and the passport and visa work of the Ministry of Internal Affairs;

(c) Within the bounds of its mandate, to develop and use measures to regulate international labour migration processes, recruit foreign labour to Tajikistan and secure employment for Tajik citizens abroad;

(d) To provide methodological and organizational leadership for the activities of the provincial migration units, the passport and visa services, the information office and the Ministry of Internal Affairs offices for migration in the Russian Federation and other countries;

(e) Within the limits of its mandate, to develop and implement measures to prevent illegal migration, and to organize immigration controls for foreign nationals and stateless persons;

(f) To draft funding proposals for events to implement State policy on labour migration, to organize and monitor the targeted expenditure of those resources;

(g) To study international experience in regulating migration processes, to develop bills, other legal norms and methodological materials on labour migration, taking account of the migration and socio-economic situation emerging in Tajikistan;

(h) To participate in the development of draft agreements and other international documents on issues related to labour migration and to implement their provisions;

(i) To develop and implement in due form measures to help Tajik citizens find employment abroad;

(j) To organize licensing of the activities of legal and physical persons related to finding employment for Tajik citizens abroad;

(k) To consider questions related to issuing exit visas from Tajikistan for specific categories of persons;

(l) To define and recognize the legal status of migrant workers in accordance with national legislation and to defend their rights and interests.

Under Government Decision No. 599 of 2 December 2008, activities related to work with refugees and asylum-seekers were transferred from the responsibility of the Ministry of Labour to that of the Ministry of Internal Affairs. In implementation of that Decision, Ministry of Internal Affairs Order No. 292 of 6 May 2009 set up the Department of Citizenship and Refugee Work within the structure of the Migration Service. In October 2009, the Refugee Status Commission was set up, its members including the head of the Migration Service (chairperson), staff from the Department of Citizenship and Refugee Work and representatives of the State National Security Committee, the public health services and the Office of the President. The Commission also has observers from the Office of the United Nations High Commissioner for Human Rights, who have the right to make recommendations on the procedure for granting refugee status and other issues related to protecting refugees and asylum-seekers. Work is being done to improve domestic legislation related to defending refugees' rights. The Commission's regulations have been drafted and approved. They recognize the basic standards for protecting refugees and take account of the experience of other countries. There are currently 2,447 refugees and asylum-seekers in the country. They include:

(a) 2,047 individuals in a regular situation;

- (b) 400 individuals whose applications are under consideration (asylum-seekers).

Most (2,442) of the refugees and asylum-seekers are citizens of Afghanistan, while 5 are citizens of Iran. They are living in Dushanbe (630) and Vahdat (1,429), the districts of Rudaki (110), Hisor (75) and Shahrinaw (29), Sughd province (137) and Khatlon province (37). Unfortunately, the temporary asylum centre has not yet been built, which makes the work of the Migration Service much more difficult.

28. The Office for Migration in the Russian Federation comes under the administrative umbrella of the Ministry of Internal Affairs. Its main function is to assist Tajik migrant workers in various areas related to their stay in the Russian Federation, such as the renewal of documents, establishing the identity of undocumented individuals, providing certificates of the existence or absence of a criminal record, etc. Moreover, the Office assists companies from Tajikistan in issues related to employing migrant workers from Tajikistan, collaborates with the Russian Federation Ministry of Internal Affairs and other Governmental and non-governmental organizations. In only six months of this year, the judicial authorities of the Russian Federation have issued 2,022 decisions on the deportation of Tajik citizens from the Russian Federation. Moreover, the law enforcement agencies have arrested and charged 131,265 Tajik citizens with administrative offences, 45,907 of them for breaking the migration regulations. Under Russian legislation, Tajik citizens are held prior to deportation in Ministry of Internal Affairs temporary holding centres for foreign nationals. Currently, there are 47 voluntary organizations of Tajik nationals active throughout the Russian Federation, providing comprehensive awareness-raising on crime prevention for Tajik citizens in the country, helping to recruit Tajik citizens as workers for companies there, addressing issues concerning relations between employers and migrant workers and taking appropriate measures to create good working conditions for them.

29. The Ministry of Labour and Social Protection is the central executive agency responsible for the implementation of a unified State policy and the development of a regulatory framework for labour, employment, vocational training for adult migrant workers, social insurance and social security. The Ministry also coordinates the activities of other ministries, departments, enterprises, institutions and other organizations, irrespective of the type of ownership or departmental status, as well as local State executive authorities, on issues that fall within its mandate. Currently, it deals mainly with issues related to internal migration and improving the vocational capacity and awareness of migrant workers going abroad. Specifically, the Ministry's regulations give it the following responsibilities in the area of international labour migration:

(a) Together with the ministries and departments concerned, to develop proposals for State policy on migration and draft programmes on issues related to migration, to organize and coordinate their implementation;

(b) To promote the development of the vocational skills and awareness of international migrant workers.

30. The Ministry has the right, in its activities:

(a) To request and receive, in due order, from State bodies, local authorities, legal persons, irrespective of the type of ownership, papers, findings, information or other materials necessary to address issues within its mandate;

(b) To request and receive data on population migration from the Statistics Agency reporting to the President;

(c) To organize the development and introduction of uniform information technology and computerized systems, including in the field of internal migration (it should be noted that, prior to 2007, when the Migration Service was still part of the Ministry of

Labour, a computerized reporting system had been introduced to deal with data on refugees).

31. The Regulations on the State Agency for Social Security, Employment and Migration (No. 102 of 3 March 2007) state that the Agency is the executive body responsible for providing State services in the areas of social security, employment and population migration. In the area of international migration, it has the following responsibilities:

(a) To monitor, evaluate and forecast migration processes, and take measures to deal with issues related to migration;

(b) To enhance the competitiveness of international migrant workers on the labour market;

(c) To collaborate with diplomatic representatives of foreign States accredited in Tajikistan and the offices for migration of Government agencies of other countries;

(d) To participate in action to combat illegal migration and to organize migration controls;

(e) To organize conferences, seminars, meetings and awareness-raising on migration, to issue various types of publications and to organize events with media participation.

32. The Agency comes under the administrative umbrella of the Ministry of Labour and Social Protection. Its central apparatus includes the Department for Population Migration, which has offices in towns and districts throughout the country. The contribution of the Ministry, and specifically the Agency, to migration-related issues is of an important declarative nature. In particular, the provision of information to international migrant workers often depends on the funding being available and has to be coordinated with the Ministry of Internal Affairs Migration Service to ensure the clear distribution of reliable information; studies of trends in the labour market, particularly the foreign labour market, may not be carried out directly by the Agency itself. In many countries, the Ministry of Labour and Social Protection works on such matters with the accredited offices of the Ministry of Foreign Affairs; in this particular case, it also has to work with the office of the Ministry of Internal Affairs.

33. The Ministry of Foreign Affairs, in line with its mandate in the area of migration, protects the rights and interests of Tajik citizens living abroad and processes exit and entry papers in due form.

34. The State National Security Committee (through its Border Force), which, together with other authorities is responsible for protecting the State borders, verifies the legality of entries into and exits from the country. It has the following responsibilities in the area of migration:

(a) To verify the legality of entries and exits across the State's borders;

(b) To use information systems in accordance with the law to register persons and record data and statistics;

(c) To request and receive free of charge, from State agencies, enterprises, institutions, organizations and voluntary organizations, information necessary to fulfil its obligations.

35. The Interdepartmental Commission on Migration Processes, reporting to the Government, was established by Government Order No. 462 of 21 October 1997 to improve the management of migration processes and coordinate the activities of agencies dealing with migration in the current conditions. The same Order set up an

interdepartmental working group to draft proposals for improving the country’s legislation on migration. The Interdepartmental Commission is a permanent coordination agency with responsibility for developing and adopting relevant decisions on issues related to migrants of all categories, refugees and asylum-seekers. It is a voluntary body, consisting of representatives of the different ministries and departments of local authorities concerned, and may also invite to its meetings representatives of voluntary and international organizations, academics and experts in the area of migration, as necessary. All the country’s ministries and departments are represented at first deputy level on the Commission, which is headed by the deputy Prime Minister. It may set up working groups to consider specific issues. Its main task is to coordinate the activities of the ministries, departments and local authorities in managing migration processes in the country. In implementation of its allotted tasks, the Commission has two main groups of functions, as shown below.

General functions:

- To analyse migration processes, whatever their cause, including the problems of all categories of migrants, refugees and asylum-seekers
- To collaborate with international organizations on issues related to migration
- To develop recommendations for improving domestic legislation on issues related to migration, including the problems of refugees and asylum-seekers
- To organize seminars on specific aspects of managing migration processes

Legislative functions:

- To take part in discussions on bills, draw up proposals for the ratification of international agreements on migration submitted for the consideration of the Majlis-i Oli (parliament)
- To take decisions in implementation of acts and international instruments recognized by Tajikistan governing issues related to migration
- To submit issues related to migration, including the problems of refugees and asylum-seekers, to the Government for consideration

Special functions:

- To develop, in due order, and implement measures to provide assistance to Tajik citizens employed abroad
- To consider the situation related to ensuring the security of migration processes in the country and its regions, ministries and departments, and evaluate that work

Its current regulations provide for the Commission’s decisions within the limits of its mandate to be binding on ministries, departments and local authorities. Its special functions consist of implementing measures to assist Tajik citizens employed abroad.

36. Interaction and cooperation between State authorities in the field of migration:

<i>Policy making in the area of labour migration</i>	<i>Decent work and education</i>	<i>Social and economic protection</i>	<i>Protection and promotion of the interests of migrants abroad</i>
Migration Service of the Ministry of Internal Affairs	Migration Service of the Ministry of Internal Affairs	Migration Service of the Ministry of Internal Affairs	For information: Ministry of Foreign Affairs and Ministry of Internal Affairs

<i>Policy making in the area of labour migration</i>	<i>Decent work and education</i>	<i>Social and economic protection</i>	<i>Protection and promotion of the interests of migrants abroad</i>
	Ministry of Labour and Social Protection Ministry of Education	Ministry of Labour and Social Protection	Office for Migration in the Russian Federation (alternatively: labour unions and NGOs) For representation in State institutions: Ministry of Foreign Affairs

37. The Migration Service, together with various State and voluntary organizations, regularly organizes awareness campaigns to protect and support migrant workers leaving Tajikistan and provides workers and their families with sufficient information to decide on whether to move abroad. Efforts are also being made in Tajikistan to improve regulations governing the activities of private employment agencies. Business involving the employment of Tajik citizens abroad is subject to licensing, and unlawful employment practices are punishable under the Criminal Code. Trafficking in persons for labour exploitation or forced labour and the organization of illegal migration also incur criminal liability.

38. Migration statistics are directly related to all other components of the migration management mechanism and are a necessary means for drafting laws on and regulating migration as a whole. Statistical information is also necessary for understanding the situation of migrant workers in the State and assessing the implementation of the Convention. Recognizing the importance of collecting statistical data on labour migration, the Government has issued several decisions to regulate the registration, collection and exchange of statistical data on labour migration.

39. The Migration Service is the principal State authority responsible for collecting information on labour migration. Domestic law requires the Central Border Force Department of the State National Security Committee to assist the Migration Service in collecting statistical data on labour migration. The Service is required in turn to make statistical information on labour migration available while the Statistical Agency reporting to the President provides the population, State authorities and the public at large with statistical data on labour migration. This information is published in the press and on the Agency website at www.stat.tj. Information on labour migration, the stay of foreign nationals, the issuing of documents, registration and other issues is posted on the Migration Service's own site (migration.tj).

40. The Migration Service performs the following duties pertaining to the collection, registration and exchange of data on migration:

- Registers foreign nationals or stateless persons entering Tajikistan
- Processes the documents of foreign nationals and stateless persons applying for permanent residence in Tajikistan
- Exercises immigration control with respect to foreign nationals and stateless persons in accordance with domestic law
- Is participating in the introduction of a single automated registration and reporting system for labour migration issues

- Together with other branches of the Ministry of Internal Affairs responsible for carrying out an integrated technical policy, is developing and introducing integrated information technology and a common automated data-processing system to monitor and transmit information on issues that fall within the scope of the Migration Service

41. Government Decision No. 378 of 1 August 2008 on reporting the migration abroad and return of Tajik nationals vested the Migration Service with the authority to register international migration. International migration registration cards for Tajik nationals have been developed especially for that purpose. The card's format was approved by Government Decision No. 622 of 31 October 2009. The migration registration cards make it possible to collect information on Tajik nationals leaving the country, including their personal details (full name, date of birth, gender and place of residence), education and occupation and the country to which they are travelling, purpose of travel and length of stay in the country of destination. The migration card must be completed by persons leaving Tajikistan for official or business purposes, study or work abroad, or private matters. The Migration Service uses the information collected only for the compilation of statistics.

42. The State authorities regularly conduct national household surveys to identify the number of migrant workers travelling abroad. The surveys make it possible to collect data on the number of such workers in each region, disaggregated by gender, age and country of destination. Until 2007, such inquiries were made by units of the Ministry of Labour and Social Protection. The Migration Service has since collected the information with the assistance of local authorities at the subdistrict (*jamoat*) level.

43. Every year the Government approves a statistical work programme setting out the type, periodicity, framework (i.e. sample design) and deadline for submission of various statistical data. Under the 2009 statistical work programme, the Migration Service must report to the Statistical Agency attached to the Office of the President on the following, according to procedures prescribed by law:

- (a) The number and personal status of nationals leaving for work abroad (every six months);
- (b) The professional status of nationals leaving for work abroad (once a year);
- (c) The status and number of foreign workers (every six months).

44. The Central Border Force Department's functional responsibilities in the area of collecting, registering and exchanging data on migration include:

- (a) Verifying that State border entry/exit requirements are met;
- (b) Using information systems in accordance with the law to register persons and record actual data and statistics.

45. The immigration control work of the Department at entry points involves checking travel documents, conducting an initial interview and verifying the accuracy of the stated purposes and intentions of persons crossing the border. The data is then used to collect information on the number of persons crossing the border. The Department works with the Migration Service to collect such data. It also issues a migration card to foreign nationals and stateless persons when they enter and collects it when they leave the country and collects the international migration registration cards of Tajik nationals.

46. There are some shortcomings in the work of the Department at border control points, particularly as regards prompt handling of entry/exit documents, which often impinges on the procedures for the entry of persons and goods across the State border. The shortcomings are to a large extent owing to the lack of proper equipment or an integrated information system and insufficient professional training of border point personnel. The Government

has adopted a National Border Control Strategy that provides for improving entry point infrastructure, which would address existing shortcomings and gaps.

47. The Ministry of Foreign Affairs also has the means for collecting data on labour migration. This includes issuing work visas to immigrants and covers all persons who enter the country legally.

48. There are other channels of information aside from the administrative sources of statistical data on labour migration referred to above such as the labour force and household budget surveys conducted by the Statistical Agency reporting to the President, the living standards measurement surveys conducted by the World Bank, special labour migration surveys conducted by the International Organization for Migration (IOM), ILO and other international organizations since 2003 and data from the National Bank of Tajikistan on remittances by migrant workers.

49. Tajikistan is working closely with international organizations to protect and promote the rights of migrant workers and implement the Convention. Tajikistan has been a member of ILO since 1993 and of IOM since 1994.

50. International organizations have been working together with the Government and relevant authorities in the area of labour migration towards:

(a) *Capacity-building for migration management.* The Government is providing support for legal and policy reform, institutional capacity-building of the relevant labour migration authorities and various types of technical assistance. For example, since 2009, IOM, together with the World Bank, has provided support to the Government working group drafting a new national labour migration strategy for 2011–2015 and a bill on Tajik migrant workers abroad. In 2008 and 2009, ILO conducted several major studies to review labour migration law, the work of private employment agencies and the collection of statistical data on labour migration. In 2009 and 2010, with the support of the European Union, the French Agency for Technical Cooperation and Development (ACTED) held a round of workshops and training courses for Migration Service staff development.

(b) *Protecting and supporting migrant workers and their family members.* Since 2004, with the technical assistance of organizations such as the Organization for Security and Co-operation in Europe (OSCE) and IOM, a number of information resource centres for migrant workers have been operating in Tajikistan through national non-governmental organizations (NGOs). International organizations are also providing assistance to Tajikistan in reforming vocational training institutes in order to improve the professional skills of migrant workers. Such reform involves not only legal and policy issues but also technical assistance to equip these educational institutions to help migrant workers acquire the professional skills required in the countries of destination. The Ministry of Health is working with international organizations to address migrant worker health-care issues. A nationwide campaign to increase awareness about sexually transmitted infections and HIV prevention has been under way in Tajikistan since 2005; it includes training of volunteers to disseminate health-care information among migrant workers and members of their families, the distribution of free brochures, the organization of theatrical performances and other measures.

(c) *Combating human trafficking.* This is a priority area of cooperation between the Government and international organizations. The IOM and ILO offices in Tajikistan have been carrying out a number of projects on legal reform and capacity-building for State agency officials in recent years.

(d) *Remittances.* Recognizing that remittances by migrant workers may have a big impact on poor households, Tajikistan is collaborating with various international

organizations to create opportunities for migrant worker families, local authorities and civil society to develop small and medium-sized businesses, especially in rural areas.

51. Tajikistan welcomes the contribution of NGOs to the promotion and protection of the rights of migrant workers and collaborates closely with them in this area. In recent years, NGOs, together with the various relevant State authorities, have been working to provide legal assistance to migrant workers, enhance their professional education, inform them and their family members about various issues concerning labour migration, conduct studies and other activities. In 2009, the Migration Service, together with several international and non-governmental organizations, launched the Civic Council on Labour Migration. It is planned that the Council will operate under a competent State authority dealing with labour migration and include various national experts and representatives of NGOs and international organizations working on labour migration issues.

III. Information on each article of the Convention

Articles 1 (1) and 7

Non-discrimination

52. Tajik law proclaims equal rights as one of the fundamental principles of a democratic State, in accordance with international human rights law. Articles 16, 17 and 35 of the Constitution provide that everyone is equal before the law and the courts, regardless of ethnic origin, race, sex, language, belief, political convictions, education, social status or wealth. Foreign nationals and stateless persons enjoy the same rights and freedoms and have the same obligations and responsibilities as citizens of Tajikistan except in the cases prescribed by law.

53. Article 5 of the Criminal Code sets out the principle of equality before the law, i.e. persons who have committed offences are equal before the law and are subject to criminal liability irrespective of their sex, race, nationality, citizenship, language, religious views, political beliefs, education, social, official status, wealth, membership of political parties or voluntary associations, place of residence or other circumstances.

54. The Code specifies penalties for the following kinds of offences involving discrimination:

- Article 104, paragraph 2 (n) – Murder motivated by ethnic, racial, religious or regional hatred or enmity, or a vendetta
- Article 110, paragraph 2 (n) – Intentionally causing serious bodily harm on grounds of ethnic, racial, religious or regional hatred or enmity, or vengeance
- Article 111, paragraph 2 (f) – Intentionally causing moderate bodily harm on grounds of ethnic, racial, religious or regional hatred or enmity, or vengeance
- Article 117, paragraph 2 (i) – Torture motivated by ethnic, racial, religious or regional hatred or enmity, or vengeance¹
- Article 143 — Violation of citizens' equality — The intentional direct or indirect violation or restriction of rights or freedoms or the conferring on citizens of direct or indirect advantages in connection with their sex, race, ethnic origin, language, social

¹ Article 117 also gives a definition of torture and, taken together with other articles of the Criminal Code, may be applied to the use of torture and other forms of ill-treatment.

origin, personal status, wealth, official position, place of residence, attitude to religion, beliefs, or membership of political parties or voluntary organizations that harms a citizen's rights and legitimate interests

- Article 149 – Unlawful restriction of a citizen's freedom of movement, choice of place of residence, travel abroad or return
- Article 189 – Incitement to ethnic, racial, regional or religious enmity
- Article 243, paragraph 2 (b) – Desecration of mortal remains or places of burial motivated by ethnic, racial, regional or religious hatred or enmity
- Article 398 — Genocide — Acts aimed at the destruction of an ethnic, racial or religious group in whole or in part through their total or partial physical extermination, forcible obstruction of childbirth or transfer of children of a group to another group, causing serious bodily harm or otherwise creating conditions of life calculated to bring about the physical destruction of members of the group

Article 83

Right to an effective remedy

55. Citizens of Tajikistan, foreign nationals and stateless persons have the right to appeal to the court and other State authorities to defend their private property, family and other rights. Foreign nationals enjoy the same procedural rights in court as Tajik citizens.

56. Article 5 of the Bar Act of 4 November 1995 provides that the “State guarantees real and equal access to legal assistance for all persons and foreign nationals residing or located in its territory”.

57. Procuratorial authorities play an important role in protecting human rights and freedoms in the State system of Tajikistan. The functions and main areas of activity of the procurator's office are set out in the Constitutional Act on the Procuratorial Agencies. The agencies of the procuratorial system monitor observance of human and civil rights and freedoms by ministries and departments, local authorities, monitoring authorities and their officials, administrative authorities and heads of commercial and non-profit organizations. The procurator's office is also required to monitor compliance with the law by administrative authorities and institutions that enforce penalties and apply measures of a coercive nature handed down by the courts, and by administrations of places of detention and remand centres.

58. The Commissioner for Human Rights Act was adopted on 20 March 2008 and the Office of the Commissioner for Human Rights was established to bolster constitutional guarantees of State protection of human and civil rights and promote their observance and respect by State authorities, local authorities and officials. The main responsibility of the Office is to promote the following:

- (a) Observance of human and civil rights and freedoms;
- (b) Redress for violations of human rights and freedoms;
- (c) Improvement of national law on human and civil rights and freedoms;
- (d) Legal education in human and civil rights and freedoms and the ways and means to protect them;
- (e) Cooperation between State authorities in protecting human and civil rights;
- (f) Development and coordination of international cooperation in human and civil rights and freedoms.

The Office is responsible for considering complaints against decisions or acts or omissions by central or local authorities, officials and public servants in cases where a complainant has previously appealed against decisions or acts or omissions in accordance with judicial or administrative procedure but does not agree with the decisions taken in respect of his or her complaint. The Office of the Commissioner for Human Rights has been given a broad mandate, including:

- To visit without interference various State and public institutions and organizations regardless of their form of ownership
- To request and obtain information, documents and materials from all organizations concerned
- To monitor the work of central and local authorities and officials as it pertains to human rights
- To obtain explanations from officials and public servants of issues requiring clarification during the review of complaints

59. The protection of the rights of migration workers and members of their families is defined as a priority area in the work of the Commissioner, who cooperates with the Commissioner for Human Rights in the Russian Federation and those in the regions of the Russian Federation to defend the rights of migrant workers from Tajikistan in the Russian Federation. The Commissioner also collaborates with international organizations and civil society institutions on studies on the protection of migrant workers' rights and remedies in the case of their violation.

Article 84

Duty to implement the Convention

60. Under article 1 of the International Treaties Act, international treaties form the legal basis for international relations and promote the maintenance of peace and security and the development of international cooperation in accordance with the purposes and principles of the Charter of the United Nations.

61. The President and the Government take steps to implement international treaties to which Tajikistan is a party and determine the official or department responsible for monitoring the status of implementation of such treaties.

62. The Ministry of Foreign Affairs monitors overall implementation of international treaties to which Tajikistan is a party, including by the relevant foreign party.

63. The Commission on International Human Rights Obligations was formed and operates pursuant to Government Decision No. 79 of 4 March 2002. The Commission's main responsibility is to promote the implementation of international legal obligations undertaken by Tajikistan in the area of human rights. It performs the following functions:

- (a) Coordination of the work of the relevant authorities in implementing international human rights obligations;
- (b) Preparation of national reports on the status of implementation of international human rights obligations for submission to the relevant United Nations bodies;
- (c) Assistance in ensuring that domestic law is consistent with international human rights treaties to which Tajikistan is a party;

- (d) Assistance in ratifying or acceding to international treaties under the established procedure;
- (e) Study and assessment of the status of national law, particularly its consistency with international human rights standards;
- (f) Assessment of the effectiveness of Tajikistan's participation in international human rights treaties;
- (g) Consideration of proposals of the authorities concerned and preparation of advisory opinions for shaping the position of Tajikistan on the application of international human rights treaties;
- (h) Assistance in raising awareness about human rights;
- (i) Conduct of studies and preparation of proposals for the application and improvement of human rights standards;
- (j) Interaction and cooperation with State authorities, voluntary associations and other national non-governmental institutions and international human rights organizations.

64. The Interdepartmental Commission on Migration Processes is a specialized body that coordinates the work of the executive authorities in managing migration processes in Tajikistan. The Commission carries out the following duties:

- (a) Analyses migration processes, including the problems of refugees and forced migrants arising from natural disasters, war or ethnic and other social conflicts and reviews and proposes alternative options for resolving them;
- (b) Cooperates with international organizations on migration issues;
- (c) Drafts recommendations to improve national laws on migration, including in respect of the problems of refugees and forced migrants;
- (d) Prepares bills and draft decisions of the Majlis-i Oli (the national legislature), the President and the Government on migration issues;
- (e) Organizes seminars on specific aspects of managing migration processes;
- (f) Reviews the level of safety of migration processes in the country and its individual regions, ministries and departments and provides an assessment of work to ensure such safety;
- (g) Takes decisions aimed at carrying out laws and international regulations governing migration recognized by Tajikistan;
- (h) Submits questions relating to migration, including the problems of refugees and forced migrants, for Government consideration.

65. The Interdepartmental Commission to Combat Trafficking in Persons has the following responsibilities:

- (a) To lay down the foundations of State policy on human trafficking in Tajikistan and make recommendations aimed at increasing the effectiveness of anti-trafficking efforts and dealing with the causes and conditions of human trafficking;
- (b) To collect, analyse, summarize and exchange information on the extent and state of and trends in human trafficking;
- (c) To coordinate the work of the relevant authorities in meeting international obligations with respect to human trafficking and cooperate with Tajik Government commissions in meeting international obligations with respect to human rights and the rights of the child;

- (d) To organize and coordinate work to prevent human trafficking;
- (e) To coordinate the work of regional commissions, review the proposals of executive authorities to create specialized institutions and monitor the work of regional commissions and the operations of specialized institutions in accordance with the mission assigned to them;
- (f) To take part in drafting international agreements to which Tajikistan is a party and provide assistance in accordance with the established procedure in ratifying or acceding to international acts on human trafficking;
- (g) To review the status of Tajik law, in particular its conformity with international law on human trafficking, and put forward proposals on improving Tajik law on human trafficking;
- (h) To organize campaigns to educate the public about human trafficking, including the publication of information in the media and of the work of the Interdepartmental Commission on the violations and offences that have come to light, assist in publishing information on combating human trafficking, organize meetings with the public and increase public awareness about combating human trafficking and protecting its victims;
- (i) To assess the effectiveness of Tajikistan's involvement in international agreements on combating human trafficking and take practical steps to increase the effectiveness of the work of authorities assigned to combat human trafficking;
- (j) To make recommendations to the relevant law enforcement authorities to expose and prevent specific offences involving human trafficking and establish investigation task forces;
- (k) To review the proposals of the relevant authorities and draft advisory opinions on Tajikistan's positions concerning the application of international law on human trafficking;
- (l) To conduct studies and draft proposals on the application and improvement of laws on the protection of the rights and freedoms of citizens;
- (m) To interact and cooperate with State authorities, voluntary organizations, other NGOs and international organizations on human trafficking;
- (n) To draft national reports on the status of implementation of international agreements on human trafficking for submission to the relevant bodies of the United Nations, OSCE and other international organizations.

IV. Human rights of all migrant workers and members of their families

Article 8

Right to leave any country, including one's own, and to return

66. Under article 24 of the Constitution, every citizen has the right to freedom of movement, freedom to choose his or her place of residence, and to leave and return to Tajikistan.

67. The constitutional right of everyone to freedom of movement and freedom to choose his or her place of temporary and permanent residence is further protected in the Civil

Code, the Legal Status of Foreign Nationals Act and a number of other laws and regulations.

68. Under the Legal Status of Foreign Nationals Act, foreign nationals may move about and choose where to reside in Tajikistan in the manner established by Tajik law.

69. Foreign nationals may enter Tajikistan provided that they hold an entry/exit visa issued by the Tajik Ministry of Foreign Affairs or the embassies or consulates of Tajikistan abroad.

70. Every foreign national and stateless persons entering Tajikistan is given a migration card during the border control at crossing points on the State border. The local internal affairs agencies stamp the migration card (with a round mark and an official's signature) when the foreign national or stateless person arrives at his or her destination in Tajikistan, except in the case of members of official delegations of foreign States, members of diplomatic missions of foreign States and international organizations and foreign media correspondents accredited with the Tajik Ministry of Foreign Affairs.²

71. If foreign nationals enter Tajikistan for a stay of more than six months, they must obtain a residence permit from the internal affairs agencies. The validity of the permit is extended each time the entry/exit visa is extended. A residence permit cannot be extended unless the entry/exit visa is extended. A residence permit that is extended without a corresponding extension of an entry/exit visa is considered invalid.

72. Foreign nationals present in Tajikistan on lawful grounds are considered temporary residents. They must register their national passports or equivalent documents within three days of arrival and leave Tajikistan upon expiry of the time limit for their stay. In accordance with the Passport Regulations approved by Government Decision No. 302 of 15 July 1997, citizens must register by place of residence and by current address. Foreign nationals and stateless persons residing in Tajikistan are also subject to residency registration.

73. Foreign nationals temporarily residing in Tajikistan may move freely throughout the country. Foreign nationals permanently residing in Tajikistan and desiring to change their place of residence or temporarily move elsewhere are required to obtain authorization to do so from the appropriate local internal affairs agencies. Foreign nationals may enter or travel in areas that are closed to them only with the authorization of the internal affairs agencies. Those entering Tajikistan at the invitation of host organizations and foreign permanent missions are admitted on the basis of written invitations from such organizations or missions, provided that they are cleared in advance by security authorities. Those on private business or who are permanent residents of Tajikistan are admitted on the basis of personal written requests. Areas closed to foreign nationals are determined by the Tajik Government. Permission for foreign nationals and stateless persons to enter and reside in border areas is given by the State National Security Committee, the Ministry of Foreign Affairs and diplomatic missions and consular offices of Tajikistan abroad within one working day of the submission of the relevant documents and the Committee is subsequently informed within 24 hours. The procedure for foreign nationals to enter and reside in closed areas is determined by the relevant authorities of Tajikistan. The Tajik Government determines the list of such areas. The Ministry of Internal Affairs issues entry permits to foreign nationals who intend to enter and reside in a border area for official duties, business, tourism, private trips, work or study on the basis of applications from ministries or departments of Tajikistan, enterprises, commercial and non-profit organizations, head offices of enterprises

² Regulations on immigration control procedures, approved by Government Decision No. 599 of 2 December 2008.

or foreign commercial organizations or on the basis of individual written requests from foreign nationals.

74. Migrant worker residence in Tajikistan is regulated by the Migration Act, which provides that Tajik companies must obtain authorization (a licence) from the relevant Tajik authorities for activities involving the hiring of foreign workers in Tajikistan, in accordance with the Act on the licensing of designated activities. Migrant workers enter Tajikistan for employment on a visa issued in accordance with established procedure by diplomatic missions or consular posts of Tajikistan abroad. The visa may be extended if documents are submitted showing that illness, disaster or other reasons for not using it are valid and that the post has been retained in accordance with a work contract with the employer through the relevant Tajik authority. The procedure for extending visas is determined by the Ministry of Foreign Affairs. Migrant workers residing in Tajikistan must register under the established procedure with the local internal affairs agencies where they are temporarily residing on the basis of a written application of the relevant authority. Migrant workers and members of their families residing lawfully in Tajikistan have the right to leave and return to Tajikistan freely. When a work contract expires, migrant workers and members of their families are required to leave the State in which they are employed.

Articles 9 and 10

Right to life; prohibition of torture; prohibition of inhuman or degrading treatment

75. Under article 18 of the Constitution: “Everyone has the right to life. No one may be deprived of life except by a court judgement for an exceptionally serious offence.”

76. Although the Criminal Code provides for such forms of punishment as the death penalty, on 15 July 2004 the President signed the Suspension of the Death Penalty Act which imposed a moratorium on imposing and carrying out the death penalty. In 2005, article 58 (1) of the Criminal Code was amended as follows: “Deprivation of liberty for life shall be imposed only as an alternative to the death penalty for exceptionally serious offences provided for by this Code.”

77. On 8 April 2010 the President established a working group to review the social and legal aspects of abolishing the death penalty in Tajikistan. The working group includes ministers and deputy ministers from various ministries and departments and representatives of the Supreme Court, the Procurator-General’s Office and the Office of the Commissioner for Human Rights.

78. Tajikistan has established the necessary legal framework to combat torture and ill-treatment. Thus, article 18, paragraph 2, of the Constitution states: “The inviolability of the person is guaranteed by the State. No one shall be subjected to torture, cruel or inhumane treatment. It is prohibited to force a person to take part in medical or scientific experiments.”

79. Articles 12 and 88 of the new Code of Criminal Procedure, which entered into force on 1 April 2001, provide that evidence obtained during questioning or preliminary investigation through force, intimidation, torment, inhumane treatment or other unlawful means is invalid and may not be taken as grounds to bring charges or used as evidence in a criminal case.

80. Article 10 of the Penal Enforcement Code categorically prohibits the subjection of a convicted person to torture or cruel, inhuman or degrading treatment or to medical or other forms of scientific experimentation that may endanger his or her life or health, even with the person’s consent.

81. Tajikistan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 July 1994, the Convention entered into force on 10 February 1995 and was ratified in 21 July 2004.

82. Tajikistan presented its initial report on the implementation of the Convention (CAT/C/TJK/1) in 2006 and submitted its second periodic report on the implementation of the Convention and implementation of the conclusions and recommendations of the Committee against Torture (CAT/C/TJK/CO/1) in September 2010.

Article 11

Prohibition of slavery and forced labour

83. Under article 35 of the Constitution, “No one may be subjected to forced labour except in the cases specified by law.” These constitutional precepts and other laws, in particular the Labour Code and the Criminal Code, prohibit slavery, the slave trade, servitude and other related phenomena, as well as other acts violating the laws and regulations in question. In the first half of 2010, seven cases involving offences contrary to article 130 (Abduction) and six contrary to article 167 (Trafficking in minors) were brought to light.

84. The Human Trafficking Act was adopted in July 2004, with the aim of implementing State policy and regulating social relations in combating human trafficking, fulfilling international obligations undertaken by Tajikistan to combat human trafficking, and reducing the risk of individuals becoming victims of human trafficking. The Act seeks to prevent, expose and suppress human trafficking, mitigate its effects and rehabilitate its victims in physical, psychological, social and legal terms.

85. Government Decision No. 5 of 4 January 2005 established the Interdepartmental Commission to Combat Trafficking in Persons, which is a standing consultative interdepartmental agency set up to coordinate the efforts of ministries, State committees, departments and local executive authorities, enterprises and institutions and organizations to fulfil international legal obligations undertaken by Tajikistan to combat human trafficking. The Commission includes the heads of the Procurator-General’s Office, the Ministry of Internal Affairs, the State National Security Committee, the Ministry of Economic Development and Trade, the Ministry of Labour, the Ministry of Foreign Affairs and its institutions abroad, the Ministry of Education, the Ministry of Health and the local authorities of the Gorno-Badakhshan Autonomous Province, the provinces and the city of Dushanbe.

86. Following Tajikistan’s accession in December 2000 to the United Nations Convention against Transnational Organized Crime and its two additional protocols, on the suppression of trafficking in persons, especially women and children, and on the smuggling of migrants by land, sea and air, and their ratification on 29 May 2002, their provisions were incorporated into domestic criminal legislation. Article 130 of the Criminal Code provides that the abduction of a person in secret, in the open or by deception or the abuse of trust, or with the use or threat of force or other forms of coercion is a criminal offence punishable by imprisonment for a term of between 5 and 7 years with or without confiscation of property. Aggravating circumstances include such acts committed (a) as part of a group conspiracy; (b) repeatedly or by a person who has previously committed an offence contrary to articles 130 (1), 131 and 181 of the Criminal Code; (c) with the use of force that endangers life or health or the threat of use of such force; (d) with the use of weapons or objects used as weapons; (e) against a person known to be a minor; (f) against a woman known by the perpetrator to be pregnant; (g) against two or more persons; or (h) for mercenary motives; such cases are punishable by deprivation of liberty for 8 to 12 years. If

these acts: (a) are committed by an organized group; (b) are committed for the sexual or other exploitation of the person abducted; (c) are committed for the removal of organs or tissues for transplant; (d) involve the repetition of a particularly serious crime; or (e) have, through negligence, caused the victim's death or entailed other serious consequences, they are punishable by deprivation of liberty for 12 to 20 years. Article 130 (1) of the Criminal Code, Trafficking in persons, states:

“1. Trafficking in persons — the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs and/or tissues) — is punishable by deprivation of liberty for 5 to 8 years with confiscation of property.

“2. The acts referred to in paragraph 1 of this article, when committed:

(a) repeatedly; (b) as part of a group conspiracy; (c) against two or more persons; (d) with the use or threat of force; (e) for the removal of organs or tissues for transplant; (f) by an official or public agent through use of his or her official position or by another person holding an administrative position in a commercial or other organization; or (g) with the transfer of the victim across the State border of Tajikistan are punishable by deprivation of liberty for 8 to 12 years with confiscation of property.

“3. The acts referred to in paragraphs 1 and 2 of this article, when they:

(a) result in the death of a victim of trafficking in minors or other serious offences; (b) are committed by an organized group; (c) are committed in the context of a particularly serious repeat offence are punishable by deprivation of liberty from 12 to 15 years with confiscation of property.”

The procuratorial bodies of Tajikistan have been making a determined effort to monitor the implementation of legislation on migration and to combat illegal migration. The national media run articles from time to time on the livelihoods of migrant workers, cases of violations of their rights and freedoms, and offences committed by them with a view to preventing labour migration offences. Recommendations are made concerning what a citizen going abroad to work should know about his or her rights and obligations, and special booklets and brochures are published on this topic. Procurators with the relevant territorial jurisdiction check, as necessary, publications concerning the legal aspects of migrant activities and react with the appropriate procuratorial measures. For example, following a review of articles entitled “We are not slaves, slaves we are not” and “I do not know who is telling the truth” published in the newspaper *Asia Plus* in March 2009, the Procurator-General's Office initiated criminal proceedings against Mr. R. Akhmedzhanov, director of Rustam limited liability company, who sent a group of 36 Tajik citizens by fraud to the Russian Federation and subjected them to slave labour. The case was investigated and referred to the court. Mr. Akhmedzhanov was convicted. Much care is also taken to handle promptly the complaints and statements of citizens who are victims of criminal offences by individuals. For instance, criminal proceedings were instituted against the director of Vostok Farm limited liability company, Ms. Salima Abbosovna Mukhitdinova, who by fraud, i.e. promising to arrange for decent work in the Russian Federation, dispatched a group that included Ms. K. Omilova, Ms. O. Saidmurodova, Ms. T. Khushvakhtova and others (totalling more than 100 persons). Ms. Mukhitdinova then sold these persons there for \$500 to \$700 each. The persons were subjected to slave labour in

rock quarries in the Russian Federation. Ms. Mukhitdinova, in conspiracy with Mr. Saidburkhon Sharipov, also promised to issue certificates of competence and collected \$100 to \$150 from each member of the group for that purpose. However, no certificates were given out to any of them and the money collected was spent on personal items. Furthermore, she obtained short-term bank loans for each member of the group to pay for the trip to the Russian Federation at minimal risk to herself. Vostok Farm had only one cooperation agreement with the Russian firm Migrant-cc and could thus collaborate only with this legal firm. As several migrants could not tolerate the slave-like working conditions, they were forced to flee while others became ill or returned to Tajikistan and reported the director of Vostok Farm to the procuratorial authorities. A criminal case was filed against Ms. Mukhitdinova for offences contrary to articles 130 (1), paragraph 2 (b), 2 (c) and 2 (g), and 247, paragraph 4 (b), of the Criminal Code. At the request of the Procurator-General's Office, IOM subsequently assisted in returning the members of the group to their home country. In another case, an inquiry into a statement filed by a group of workers at a branch of Poti AS limited liability company found that the general director of the company, Mr. M.M. Khiriev, and his son, the director of the branch, Mr. G.M. Khiriev, had gained the confidence of 60 workers at the branch, sent them to the Russian Federation at their own cost, subjected them to slave labour and had still not paid them half their wages. They have also defrauded persons working at the Poti branch in Tajikistan. At present, the company owes more than six months of back wages amounting to more than 1,014,000 somoni. Criminal proceedings were instituted against Mr. M.M. Khiriev and his son, Mr. G.M. Khiriev, on evidence of offences against articles 130 (1) and 132, paragraph 3 (b), of the Criminal Code and the case was referred to the Khatlon province procurator's office for a preliminary investigation. Article 131 of the Criminal Code (Unlawful deprivation of liberty) states:

“1. Unlawful deprivation of liberty not related to abduction or hostage-taking is punishable by restriction of liberty for up to 3 years or deprivation of liberty for up to 2 years.

2. The same acts committed (a) as part of a group conspiracy; (b) repeatedly or by a person who has previously committed an offence contrary to articles 130, 131 (1) and 181 of the Criminal Code; (c) with the use of force that endangers life or health; (d) with the use of weapons or objects used as weapons; (e) against a person known to be a minor; (f) against a woman known by the perpetrator to be pregnant; (g) against two or more persons.

3. The acts referred to in paragraphs 1 and 2 of this article, when they: (a) are committed by an organized group; (b) committed for the purpose of sexual or other exploitation of the person unlawfully deprived of liberty; (c) have, through negligence, caused the victim's death or entailed other serious consequences are punishable by deprivation of liberty for 5 to 10 years.

Article 132 Criminal Code (Recruitment for exploitation)

1. Recruitment of persons for sexual or other exploitation is punishable by a fine of 500 to 1,000 times the accounts indicator, restriction of liberty for up to 2 years or deprivation of liberty for up to 2 years.

2. The same acts committed (a) as part of a group conspiracy; (b) against a person known to be a minor; (c) repeatedly are punishable by a fine of 1,000 to 1,500 times the accounts indicator, restriction of liberty for up to 3 years or deprivation of liberty for 2 to 5 years.

3. The acts referred to in paragraphs 1 and 2 of this article, when committed: (a) by an organized group; (b) for the purpose of removing such persons from

Tajikistan; (c) in the context of a particularly serious repeat offence are punishable by deprivation of liberty from 5 to 12 years.

Article 167 (Trafficking in minors)

1. Trafficking in minors, i.e. the purchase or sale of a person known to be a minor, regardless of the means and form of coercion, is punishable by deprivation of liberty for 5 to 8 years with confiscation of property.

2. The act referred to in paragraph 1 of this article, when committed: (a) repeatedly; (b) as part of a group conspiracy; (c) against two or more minors; (d) with the use or threat of violence; (e) for the removal of organs or tissues for transplant; (f) by an official or public agent through use of his or her official position or by another person holding an administrative position in a commercial or other organization; or (g) with the transfer of the victim across the State border of Tajikistan is punishable by deprivation of liberty for 8 to 12 years with confiscation of property.

3. The acts referred to in paragraphs 1 and 2 of this article, when they: (a) result in the death of a victim of trafficking in minors or other serious offences; (b) are committed by an organized group; (c) are committed in the context of a particularly serious repeat offence are punishable by deprivation of liberty from 12 to 15 years with confiscation of property.

Note: Persons who commit the acts referred to in paragraphs 1 and 2 of this article who voluntarily inform the relevant authorities and free the victim of trafficking in minors are exonerated if they have not committed any other crime.”

87. On 22 December 2009 the Ministry of Justice approved the 2010 workplan of the National Research Council for Public Legal Education and Training. Paragraph 4 of the plan sets out measures to combat trafficking in persons, particularly women and girls. The Council is composed of the Minister of Justice (Chairperson), the Minister of Internal Affairs, the Minister for Foreign Affairs, the Procurator General, the Chairperson of the Supreme Court, the Chairperson of the Higher Economic Court, the Chairperson of the State National Security Committee, the Chairperson of the Government Radio and Television Committee and the President of the Academy of Sciences.

88. The Government drafted a National Plan of Action for 2005–2010 to combat trafficking in persons, including organizational and legal measures for the psychological and social rehabilitation of victims of trafficking in persons and a number of other provisions emanating from international legal instruments on this issue.

89. The Comprehensive Programme to Combat Trafficking in Persons for 2006–2010 was approved by Government Order No. 213 of 6 May 2006.

90. A programme to improve the legislative framework for the effective investigation and prosecution of offences relating to trafficking in persons and to protect the victims of trafficking is being carried out in cooperation with IOM. The programme will also provide a framework for training law enforcement officers in investigating and preventing offences relating to trafficking in persons.

91. Tajikistan has taken steps to establish a legal framework for combating trafficking in persons through bilateral cooperation with the United Arab Emirates. It has opened a consulate-general in Dubai to implement agreements in this area.

92. According to the Ministry of Internal Affairs Information Centre, criminal proceedings were instituted under the articles of the Criminal Code referred to above, as follows.

<i>Article of the Criminal Code</i>	<i>Total</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>January–June 2010</i>
Art. 130 (Abduction)	25	7	7	9	2
Art. 1301 (Trafficking in persons)	4			1	3
Art. 131 (Unlawful deprivation of liberty)	35	16	11	7	1
Art. 132 (Recruitment for exploitation)	21	13	6	-	2
Art. 167 (Trafficking in minors)	41	17	10	9	5
Total	126	53	34	26	13

93. The Ministry of Labour and Social Protection has created units for the social protection of vulnerable groups in the population, including an office of social protection responsible for implementing measures to protect families and children and similar structures at local level. The department of social services and social protection of families and children established at the Ministry of Labour headquarters is responsible for:

- (a) Setting policies for the social protection of families and children requiring support;
- (b) Developing mechanisms for the protection of the rights of the child and coordinating the work of social protection agencies in the area of organizing social services;
- (c) Reintegrating children into society and preventing cases of their exploitation.

The department also monitors the work of social institutions and NGOs on issues related to the quality of the social services provided.

94. The Judicial Training Centre administered by the Council of Justice has, in cooperation with IOM, developed training modules to increase judges' awareness about the problem of trafficking in persons and to familiarize them with the international legal instruments to combat it and the specifics of considering cases of this kind. It also conducted two-day workshops every month at advanced training sessions for judges between 2006 and 2007, the results forming the basis for recommendations on combating trafficking in persons. The Training Centre is currently conducting two-week sessions on domestic and international legislation, including on the topic of combating trafficking in persons.

95. Labour law provides that all citizens have equal employment opportunities. Any distinction, exclusion, preference or refusal to recruit on the basis of ethnic origin, race, colour, sex, age, religion, political opinion, place of birth or social origin that has the effect of impairing equality of opportunity in employment is prohibited.

96. the Legal Status of Foreign Nationals Act, adopted to regulate relations with foreign nationals in Tajikistan, provides for standards under which foreign nationals and stateless persons residing in Tajikistan may work as workers or employees at enterprises, institutions or organizations or engage in other employment on the same basis and under the same procedure as those established for citizens of Tajikistan and prohibits wage and several other forms of discrimination.

97. Article 8 of the Labour Code prohibits forced labour but it does not regard the following activities as forced labour: 1. Work that may be demanded under the General Military Duties and Military Service Act of 29 November 2000; 2. Work that may be demanded in an emergency threatening the lives, personal safety or health of the population under the Act on the Legal Regime Governing Emergencies; 3. Work that may be demanded as a result of the entry into force of a court sentence and performed under the supervision of the State authorities responsible for ensuring compliance with the law in the

enforcement of court sentences handed down in accordance with the 1998 Criminal Code and the 2001 Penal Enforcement Code. In such cases, workers may not be placed at the disposal of individuals or private companies.

Articles 12, 13 and 26

Freedom of opinion and expression, freedom of thought, conscience and religion; right to join a trade union

98. Under article 30 of the Constitution, everyone is guaranteed freedom of expression and freedom of the press and the right to use the media. The Press and Other Media Act and the Television and Radio Broadcasting Act establish and protect the right of every person to express his or her opinions freely and the freedom to seek, receive and impart information.

99. The Criminal Code imposes penalties for refusal to provide citizens with information (art. 148) and for obstruction of the lawful professional activities of journalists (art. 162).

100. The Press and Other Media Act guarantees the right of all citizens to hold their own opinions, express their beliefs freely and disseminate them in any form in the press and other media (art. 2). State censorship and prosecution for criticism are prohibited (Constitution, art. 30; and Press and Other Media Act, art. 2). The Tajik media broadcast in the official language and other languages in accordance with the Constitution and relevant legislation (Press and Other Mass Media Act, art. 3). The Press and Other Media Act also regulates the relations between the media, citizens and organizations. Under article 5 of the Act, State, political and voluntary organizations, movements and officials are required to furnish information needed by the media.

101. With a view to increasing transparency and openness in the work of State bodies and facilitating access to information, a press conference on the quarterly results of their work involving all media concerned is to be organized in Gorno-Badakhshan Autonomous Province, Dushanbe and cities and districts throughout the country, in accordance with Presidential Order No. AP-1677 of 4 March 2005 on organizing and holding press conferences in ministries, departments, enterprises, organizations and institutions of higher education.

102. A website of the President of Tajikistan (www.president.tj) was launched in 2005 to give citizens the opportunity to communicate directly with the President.

103. Presidential Decree No. 622 of 7 February 2009 on official responses to critical and analytical materials in the media was issued to improve implementation standards and increase the media's role in the political, social and economic life of society. Heads of ministries and departments, enterprises, organizations and local authorities are required under the Decree to take prompt and specific steps in response to criticisms and suggestions made in the media.

104. The Constitution establishes a legal framework for regulating relations involving the exercise of freedom of thought, conscience and religion. Article 1 of the Constitution specifies that Tajikistan is a secular State. A further provision is made that no State religion may be established in Tajikistan and the activities of religious organizations are separate from State activities (Constitution, art. 8). Article 26 of the Constitution states: "Everyone has the right independently to determine his or her attitude to religion, to profess either individually or in community with others any religion or none, and to take part in religious services, ceremonies and rites. No one may be coerced to adopt a religious belief, to manifest a religion or decline to do so, or to participate or not to participate in religious services, rites or ceremonies or in religious instruction. The exercise of the freedom of

conscience is subject only to such limitations as are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others that are established by law and are in keeping with Tajikistan's international obligations.

105. This right is further protected in the Religion and Religious Organizations Act of 26 March 2009, which states that freedom of conscience and freedom of religion are guaranteed in Tajikistan, including for foreign nationals and stateless persons, who enjoy the right to participate in religious ceremonies.

106. Under articles 8 and 17 of the Constitution and the Freedom of Conscience and Religious Associations Act, all citizens are guaranteed equal rights, regardless of their attitude to religion in all areas of civil, political, economic, social and cultural life. Any direct or indirect limitation of rights and the granting of any advantages to citizens based on their attitude to religion, or incitement to enmity or hatred in connection with religious beliefs, or causing offence to citizens, are punishable by law. The State encourages mutual tolerance and respect among citizens, whether or not they profess a religion, and religious organizations of various faiths and their members and suppresses religious fanaticism and extremism.

107. Total number of religious organizations and educational institutions

No.	Location	Main mosques	Daily prayer mosques	Public places	Educational institutions	Non-Islamic organizations
1.	Dushanbe	17	12	-	3	37
2.	Centrally administered districts	79	811	-	5	12
3.	Khatlon Province	75	1 241	-	3	15
4.	Soghd Province	82	720	-	9	22
5.	Gorno-Badakhshan Autonomous Province	5	-	75	-	-
6.	Total	258	2 784	75	20	86

108. The State does not authorize religious organizations to perform State functions. It does not finance the activities of religious organizations or any activity to promote atheism. Religious organizations do not perform State functions. Religious organizations are entitled to take part in public life and to make use of the media on an equal footing with voluntary associations. Members of religious organizations are entitled to participate in political life on the same footing as all other citizens. Religious organizations must comply with the requirements of the legislation in force and observe law and order. The State encourages mutual tolerance and respect among citizens, whether or not they profess a religion, and religious organizations of various faiths and their members and suppresses religious fanaticism and extremism.

109. Article 157 of the Criminal Code imposes penalties for obstructing the lawful activities of religious organizations or the observance of religious rites, provided that such activities and observance do not disturb the public order and do not infringe on the rights of other citizens. Between 1999 and 2003, criminal proceedings under article 157 were instituted, and a judgement returned, in one case.

110. Workers have the right to form the trade unions of their choice voluntarily without prior authorization. The Act on trade union rights and guarantees has been in force since 1992. Article 1 of the Act defines a trade union as "a voluntary public association of workers having common interests by virtue of their occupation, in both the manufacturing and the non-manufacturing sectors, for the protection of their labour, social and economic rights and the interests of their members". Trade union organizations may form associations

of trade unions on the basis of their economic branch or location or may join such associations. Government agencies may not interfere in the activities of trade unions.

111. The administrations of State, economic and cooperative bodies and voluntary associations, owners and officials are required to respect the rights of trade unions and facilitate their activities. Workers elected to the staff of trade union bodies but not released from their production work may not be subjected to disciplinary action without the prior consent of the trade union body of which they are members.

112. Pursuant to article 18 of the aforementioned Act, trade unions are entitled to hold meetings and, subject to the procedure prescribed by law, to organize rallies, demonstrations and other mass events. When a collective labour dispute between the administration of an enterprise and a labour collective or trade union is not settled by a conciliation commission or by arbitration, the trade union is entitled, through its authorized bodies and subject to the applicable legislation, to organize and carry out strikes.

Articles 14 and 15

Prohibition of arbitrary or unlawful interference with privacy, home, correspondence or other communications; prohibition of arbitrary deprivation of property

113. It is prohibited under the Constitution to intrude into a person's home or to deprive a person of his or her home except on grounds prescribed by law. As for interference with privacy or the home and respect for property and the confidentiality of communications, under article 18 of the Legal Status of Foreign Nationals Act, foreigners and stateless persons enjoy the same rights and freedoms guaranteed by the Constitution and other enactments as citizens.

114. The new Code of Criminal Procedure adopted on 3 December 2009 provides additional judicial guarantees of the inviolability of the home. Searches are justified when there is information sufficient to indicate that a certain premises or place or a person may be harbouring the instruments of a crime or objects, documents or valuables that may be of importance to the case. Searches may also be performed to find wanted persons or missing bodies (art. 190). The search and seizure is carried out by detectives, investigators or procurators acting under a reasoned decision, warranted by a court or a judge. Searches are performed under a warrant issued by a procurator only in exceptional circumstances, when there is a real risk that the object sought and subject to seizure may be lost, damaged or used for criminal purposes or that a wanted person may be able to go into hiding owing to a delay in the search. In such cases the search may be performed without a court's or a judge's warrant, provided that a court is notified in writing of the search within 24 hours. Before beginning the search, the detective, investigator or procurator informs the persons concerned that a search warrant has been issued. The search and seizure take place with the participation of official witnesses, and if necessary, with the participation of a specialist and an interpreter. When undertaking the search, the detective or investigator proposes that the objects and documents of importance to the case and that are subject to seizure be handed over voluntarily. If they are handed over voluntarily and there is no reason to think that objects and documents subject to seizure will be hidden, no further search is conducted. The detectives or investigators are obliged to ensure that the private circumstances of persons at the premises and of others that may be revealed during the search are not disclosed. During search and seizure, detectives and investigators must strictly limit their requisitioning to objects and documents related to the case. Objects and documents that are prohibited by law are subject to requisition regardless of whether they are related to the case. Any seized objects and documents are shown to the official witnesses and other

persons present, and if necessary are packed and sealed on site and certified by the signature of the investigator and official witnesses (art. 192).

115. The seizure and confiscation of postal and telegraphic correspondence and the inspection and removal of such correspondence are allowed when there are sufficient grounds to believe that letters, telegrams, radiograms, printed matter, packages or other postal or telegraphic correspondence may contain information, documents or objects of importance to the proceedings, in which case they may be confiscated. Postal and telegraphic correspondence are seized, confiscated or removed from postal and telegraphic establishments with the authorization of a judge or a court (art. 195). When confiscated postal or telegraphic correspondence is inspected, removed or copied, this is done by an investigator at the premises of the administration in question, with the participation of official witnesses selected from the administration's staff. When necessary, the investigator has the right to call upon specialists or translators to take part in the search and seizure of such correspondence. In all cases where postal and telegraphic correspondence is searched, a report is drawn up indicating who carried out the search, what correspondence was searched, and whether it was copied and forwarded to the addressee or seized. Postal and telegraphic correspondence may no longer be held once such measures are no longer required, and in any event such correspondence is released once the case is closed or referred to a court.

116. Similarly, conversations are subject to eavesdropping and recording only with the authorization of a court or a judge and in cases involving serious or exceptionally serious crimes, provided there is a sufficient basis to suspect that telephone or other conversations involving a suspect, an accused person or another person having information about the crime may include information pertinent to the case. Under article 196, when victims, witnesses or their family members are threatened with violence, extortion or other criminal acts, conversations on their telephones or other means of communication may be monitored and recorded if they request this in writing or, if no such request is filed, in accordance with an application filed by an investigator, with the permission of a judge or a court. The eavesdropping and recording of such conversations may be authorized for up to six months, and may continue no longer than such measures are required. In any event they must be halted once the case is closed or referred to a court.

117. The right to property is guaranteed by the Constitution. Article 32 states that no one is entitled to deny or restrict a citizen's property rights. Acquisition of personal property by the State for social needs is permitted only as provided by law and with the consent of the owner, full compensation being payable for the value of the property.

118. In accordance with the law, individuals are compensated for material or moral injury suffered owing to unlawful action by State bodies, NGOs, political parties or individuals, at the expense of those responsible.

119. The Constitution includes provisions for the confiscation of property. Confiscation is defined as the compulsory, unremunerated requisitioning into State ownership of property belonging to a convicted person. Confiscation is carried out in cases of serious or exceptionally serious crimes committed for material gain, and may be ordered by a court only in the cases listed in the corresponding articles of the Special Part of the Criminal Code. The Penal Enforcement Code includes a list of belongings considered to be required by convicted persons or their dependents and that are thus not subject to confiscation.

120. Criminal liability may be incurred by the following: infringement of the inviolability of the home or the confidentiality of correspondence, telephone conversations or postal, telegraphic or other communications; the unlawful collection or dissemination of information about a person's private life or the refusal of an official to provide a person with collected information that directly affects his or her rights and freedoms; violation of

the confidentiality of adoption; attacks on a person's honour and dignity through the dissemination of false information that besmirches his or her honour, dignity or reputation; or acts of humiliation and degradation (Criminal Code, arts. 135, 136, 144, 146, 147, 148 and 173).

Articles 16, 17 and 24

Right to liberty and security of person; safeguards against arbitrary arrest and detention; recognition as a person before the law

121. National law guarantees foreign nationals the inviolability of the person. Article 5 of the Militia Act of 3 May 2004 states that "In all situations where the rights and freedoms of a citizen, a foreign national or a stateless person are restricted, militia officers shall explain to the person the basis and reason for such restriction, and also the person's rights and obligations in this connection."

122. Administrative detention. With the exception of foreigners enjoying diplomatic immunity, foreign nationals, stateless persons and foreign legal persons (or their representative offices, subsidiaries, etc.) in Tajikistan bear administrative liability for administrative offences on the same basis as anyone else. Administrative detention, or the short-term restriction of liberty of a physical person, may be applied in exceptional cases if this is necessary to ensure that the case is heard in a proper and timely manner and that decisions relating to the administrative offence are implemented. At the detainee's request, the person's family members, the administration of the person's place of employment or study and a defence counsel are informed as soon as possible of the person's whereabouts. When minors are subjected to administrative detention, their parents or other legal representatives must be informed as soon as possible. Detainees are informed of their rights and obligations, and this is duly noted in the record of arrest. The procurator has the right to order the release of a person who is illegally detained, and the release is carried out immediately. When a person who has committed an administrative offence is subject to administrative detention, a record of arrest is drawn up indicating the date and place issued, the position and full name of the person drawing up the record, information on the detainee and the time, place and reasons for detention. The record of administrative detention is signed by the authorized official who draws it up and by the detainee. If the detainee refuses to sign, this is duly noted in the record. A copy of the record of administrative detention is provided to the detainee upon request. Persons who commit administrative offences may not be detained for more than three hours. In exceptional cases, with the permission of the procurator, and when there are specific requirements, homeless persons may be subject to other terms of administrative detention, lasting up to 30 days. When a person is held for an administrative offence involving a violation of the established border regime, of the procedures for staying in the country or of border regulations, regulations for border crossings or customs laws, and if that person is not in possession of papers establishing his or her identity, then in order to establish that person's identity or determine the circumstances of the administrative offence, he or she may be held in administrative detention for up to 72 hours (provided a procurator is notified with 24 hours of the arrest) or up to 10 days if a procurator authorizes such detention. A person who is the subject of administrative proceedings possibly incurring a penalty of administrative detention may be held until his or her case is heard by a judge, provided the procurator is informed of this in writing within 24 hours of arrest. In such cases, the administrative detention is counted from the moment of arrest of the offender or, for persons who are inebriated, from the time when they become sober.

123. Detainees are held in specifically designated premises or in special facilities appropriately established by the authorities for this purpose. Such facilities must meet

health requirements while at the same time excluding any possibility for escape. The conditions of detention and standards for nutrition and medical services are set out by the Government. Minors subject to administrative detention are held separately from adults and male and female detainees are held separately.

124. The arrest and detention procedures for persons suspected of crimes are governed by the Code of Criminal Procedure. Arrest consists in delivering a person into the custody of a criminal prosecution body and in the short-term custody of the person in pretrial detention at special premises, as defined by law. A person is considered to be a suspect of a crime if arrested on the following grounds:

- (a) The person is caught committing a crime or immediately after committing a crime;
- (b) Witnesses, including the victim, directly identify the person as having committed a crime covered by the criminal legislation;
- (c) Clear signs incriminating the person have been found on the person or in his or her clothes, possessions or personal items, at the person's home or place of employment, or in his or her vehicle;
- (d) Other grounds exist sufficient to suspect that the person has committed a crime and the person has fled from the scene of the crime or from the criminal prosecution body, or has no permanent place of residence, or lives at a different location, or the person's identity has not been established.

A person may be arrested on the above grounds prior to the initiation of the criminal case. In such cases, the question of whether to initiate criminal proceedings must be decided by a criminal prosecution body within 12 hours of the arrest. If within that time a decision is taken not to prosecute, or if no decision is taken to initiate criminal proceedings, the detainee must be released. Detention on these grounds may not continue for more than 72 hours after the arrest. At the end of this period, either the arrested person must be released from pretrial detention or another preventive measure must be applied in accordance with article 92 of the Code of Criminal Procedure. Detectives and investigators are obliged to report arrests in writing to a procurator within 24 hours. Within 12 hours of the actual arrest, the body conducting the criminal proceedings and detaining the person must inform an adult member of the detainee's family or a close relative of the arrest and of the place of detention, or must allow the detainee to do so. In the following cases the detainee must be released by a decision or ruling issued by the body conducting the criminal proceedings: if the suspicion that the person has committed the crime cannot be confirmed; if the grounds for continuing pretrial detention are no longer valid; if it is established that the person has been detained in violation of the legal requirements, or if the period of detention has lapsed (art. 99).

125. Under article 111 of the Code of Criminal Procedure, remand in custody may be imposed as a preventive measure by decision of a court or a judge only for persons suspected or accused of or standing trial for offences that under criminal law incur penalties of more than two years of deprivation of liberty. Persons suspected or accused of or standing trial for serious and exceptionally serious crimes may be subject to remand in custody as a preventive measure on the sole grounds of the serious nature of the offence. In exceptional cases, this preventive measure may be used for crimes incurring penalties of less than 2 years of deprivation of liberty if those involved do not have a permanent place of residence in Tajikistan or their identity has not been established, or if they have hidden from criminal prosecution bodies or a court, or if they have violated a preventive measure. If it is necessary to select remand in custody as a preventive measure, the procurator, or the detective or investigator with the consent of the procurator, may send a request to the court in the form of a decision. The decision sets out the grounds for remanding the suspect or the

accused person in custody and the reasons why another preventive measure cannot be used. The decision and grounds for the request must be presented to a judge. Remand in custody as a preventive measure is subject to individual review by a judge of the municipal or district court, with participation by the suspect or the accused person and by the procurator and defence counsel.

Once the application has been considered, the judge may:

- (a) Decide that the suspect or accused person should be remanded in custody as a preventive measure;
- (b) Deny the request;
- (c) Extend the period for taking a decision on the request for up to 72 hours so that a justification of the detention can be submitted. In such cases, the judge's decision must stipulate how long the period of detention is extended.

The judge's decision to remand the person in custody as a preventive measure or to deny the request may be appealed or challenged at a higher court in cassation within three days after it is issued. Within three days of receiving the case file, the cassation court then takes a decision on the complaint or challenge.

126. To ensure the rights of foreign nationals who are detained, article 100 of the Code of Criminal Procedure establishes that bodies conducting criminal proceedings involving detained foreign nationals must inform the Ministry of Foreign Affairs of Tajikistan within 12 hours of the person's arrest so that the Ministry can inform the embassy or consulate of the State in question. Arrested and detained foreigners have the opportunity to correspond with and meet the consular and diplomatic representatives of their country of origin or of a State representing its interests and to agree with them on legal representation.

127. Under the rules established by the Code of Criminal Procedure, persons detained as criminal suspects are held in detention cells or in premises specially fitted out for this purpose. The following rules apply to remand prisoners:

- (a) Men are held separately from women;
- (b) Minors are held separately from adults;
- (c) Convicted persons are held separately from remand prisoners;
- (d) Foreigners and stateless persons are generally held separately from others in detention;
- (e) Persons who have previously served sentences in prisons are held separately from others.

128. Migrant workers and members of their families who are victims of illegal arrest or detention are entitled to compensation. Under article 461 of the Code of Criminal Procedure, the State pays full compensation for prejudice caused by illegal arrest, remand in custody, house arrest, temporary removal from employment, placement at a medical institution or conviction or the imposition of coercive measures of a medical nature, regardless of whether the detective of the body conducting the initial inquiry, the investigator, the procurator or the court are to blame. Entitlement to compensation arises when arrested or detained persons are released because the suspicion that they have carried out a crime is not justified, as follows:

- (a) When a criminal case is terminated in accordance with article 27, paragraph 1, and article 234, paragraph 1, of the Code of Criminal Procedure;
- (b) When a verdict of not guilty is pronounced;

(c) When the article of the law is changed so that the act committed is legally classified as a less serious crime, with a new and less severe penalty under the article, or the exclusion of part of the accusation from the sentence, thus resulting in a less severe penalty;

(d) When a court order of coercive measures of a medical nature is revoked because it was illegally issued.

The prejudice is not subject to compensation if during the initial inquiry, the preliminary investigation or the judicial proceedings the person in question facilitated the corresponding findings by filing a false confession. However, false confessions coerced through violence, threats or other illegal means used on the person in question cannot be invoked to block compensation for prejudice. The use of illegal means must be established by investigative bodies, the procurator or a court. Once a decision has been taken to fully or partially rehabilitate a person, the court, procurator, investigator or the body conducting the initial inquiry must recognize the resulting entitlement to compensation for prejudice. A copy of the verdict of not guilty or of the finding or ruling terminating the criminal case, or of the revocation or alteration of other illegal decisions, is either handed or sent by post to the interested party. At the same time, in accordance with article 463 of the Code of Criminal Procedure, the person is sent a notification explaining the procedures for compensation of material damages and the restoration of the person's other rights.

129. Legal action for monetary compensation for moral prejudice is taken in the form of a civil suit. Under article 466 of the Code of Criminal Procedure, if information has been published in the press or broadcast by radio, television or some other media on an illegal arrest, remand in custody, temporary removal from employment, placement at a medical institution or conviction of a person or on other illegal acts committed against the person, then at the person's request, or if the person has died, at the request of his or her survivors or by order of a court, a procurator, an investigator or a body conducting the initial inquiry, the corresponding media are obliged within one month to issue a communication correcting the record.

130. The Penal Enforcement Code of Tajikistan was drafted and adopted in 2001 with due regard for the standards of international law governing the observance and protection of prisoners' rights. The Code contains a large number of provisions protecting the rights of persons deprived of their liberty and broadens the opportunities for contact between convicts and the outside world in terms of visits, correspondence, telephone conversations and receipt of parcels and packets. The aim of the Penal Enforcement Code is to ensure the enforcement of criminal penalties in such a way that they not only penalize crimes, but also encourage the reform and social rehabilitation of convicts (art. 3). Under the Code, detainees are entitled to humane treatment and respect for their dignity, inherent human identity and culture. During their time in remand centres or prisons, foreigners and stateless persons have the same rights as citizens, including the right to family visits. Article 95 of the Penal Enforcement Code stipulates that convicts are permitted to send and receive letters and telegrams at their own expense without restriction. Under article 92, convicts have the right to make telephone calls. Convicts in punishment cells, disciplinary units, special cells and solitary confinement cells are permitted to make telephone calls only in exceptional personal circumstances.

131. The table below shows the number of migrant workers convicted in Tajikistan and serving their sentences at places of detention.

<i>Country</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>January–June 2010</i>
Afghanistan	49	35	61	45	266	47
Armenia	1	-	-	8	1	1

<i>Country</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>January–June 2010</i>
Azerbaijan	-	1	1	1	1	1
China	-	-	1	-	1	1
Estonia	-	-	1	-	1	1
Islamic Republic of Iran	-	1	-	-	2	15
Kazakhstan	1	-	-	3	5	5
Kyrgyzstan	1	3	1	5	14	15
Lithuania	-	-	-	-	-	1
Nigeria	-	-	-	-	1	1
Pakistan	3	1	-	-	4	1
Philippines	-	-	-	-	6	1
Russian Federation	1	5	-	13	36	31
South Africa	-	-	-	-	2	1
Turkey	-	-	-	-	2	1
Turkmenistan	-	1	1	2	3	3
Ukraine	1	-	-	1	3	3
Uzbekistan	12	11	8	24	81	77
Total	69	58	74	102	430	209

132. Article 16 of the Constitution establishes the right to legal personality and states that “foreign nationals and stateless persons benefit from declared rights and freedoms and have the same rights and duties as Tajik citizens, except in the cases prescribed by law”.

Articles 18 and 19

Right to procedural guarantees

133. Under article 16 of the Code of Criminal Procedure, all are equal before the law and the courts, regardless of ethnic origin, race, sex, language, religion, political opinions, education, social status or wealth. Under article 8, foreign nationals and stateless persons are guaranteed judicial protection and the right to have their cases heard by a competent, independent and impartial court established in accordance with the law.

134. One of the basic principles of criminal proceedings in Tajikistan is that the language of the proceedings must be accessible to participants. Article 18 of the Code of Criminal Procedure establishes that participants in criminal proceedings who do not have a command of the language used in the proceedings have the right to submit statements, issue instructions, file petitions and study the entire case file in a language in which they are proficient. Any procedural documentation that must be submitted to a person who is accused, standing trial or convicted or to other participants in criminal proceedings is handed over to such persons by the bodies issuing such documentation in the State language or in a version translated into a language in which they are proficient.

135. The right to be presumed innocent is recognized, which means that no one is considered guilty of a crime until a court’s sentence enters into effect. The burden of proof of an accusation rests with the prosecution. The accused is not obliged to prove his or her innocence. Any doubts about the guilt of the defendant that cannot be dispelled in accordance with the procedures established by the Criminal Code are construed to the

benefit of the accused. As stipulated in article 15, convictions may not be based on conjecture.

136. The Code of Criminal Procedure makes it possible for suspects, accused persons and persons standing trial to defend themselves using all available means. Specifically, article 46 provides suspects with the following rights: to give or refrain from giving explanations or testimony and to be informed prior to interrogation of that right; to know what offence they are suspected of; to receive a copy of the record of arrest or the decision to enforce preventive measures; to testify in their native language or a language in which they are proficient; to use the services of a translator free of charge; to submit evidence; to file petitions; to see the records of investigations conducted with their participation and also the case file sent to the court to justify the use of remand in custody as a preventive measure; to raise objections; and to appeal against the actions and decisions of the court, the procurator, the investigator and persons conducting the initial inquiry. Accused persons can defend their rights and legal interests by all ways and means that are in keeping with the law and the Code, and are entitled to have sufficient time and opportunity to prepare their defence. Article 47 gives the accused the following rights: to give or refrain from giving testimony and to be informed prior to interrogation of that right; to know what offence they are accused of and to receive copies of decisions formally bringing criminal charges against them and enforcing preventive measures, and a copy of the bill of indictment; to give testimony relating to the charges against them; to submit evidence; to file petitions and objections; to testify in their native language or a language in which they are proficient; to use the services of a translator free of charge; to have a defence attorney from the moment of arrest, including one provided free of charge in the cases and in accordance with the procedures established in the Code; to have the opportunity to hold meetings unhindered and in private with their defence counsel from the moment of arrest; to take part in investigation activities conducted at their request or at the request of their defence counsel; to see the records of investigation activities and to enter comments in them; to see decisions ordering expert examinations and to see experts' conclusions; at the end of the investigation, to see the entire case file and to copy any necessary information; to appeal against the actions and decisions of the person conducting the initial inquiry, the investigator, the procurator, the court and the judge; to raise objections against a termination of the proceedings; and to take part in judicial proceedings aimed at determining if preventive measures are to be used against them. The following rights are recognized for persons standing trial (defendants): to take part in judicial proceedings at courts of first instance and courts of cassation; to have the last word; to see the record of proceedings and to comment on it; to appeal against the actions and decisions of the court and the judge; to receive a copy of the decisions against which appeals have been filed; to receive a copy of complaints and submissions in the criminal case and to raise objections against them; to take part in the consideration of issues related to execution of the sentence; and to exercise the other rights provided under the Code.

137. Criminal cases are heard in adversarial proceedings, with equality of the parties. The court is not a criminal prosecution body, and does not act on behalf of the prosecution or the defence; it ensures the conditions for the parties to assert their rights and carry out their obligations in the trial. The prosecution and defence operate on an equal footing in the criminal proceedings and are given equal opportunities to defend their positions.

138. Every person, from the moment of arrest, is entitled to the services of a defence counsel. Detainees, suspects, accused persons, defendants and convicts are entitled to make use of their right to defend themselves as described above both personally and also through their defence counsel or legal representative. The courts, judges, procurators, investigators and detectives are all obliged to explain to suspects, accused persons, defendants and convicts their rights, and to ensure that they have the opportunity both to defend themselves using the ways and means established by law and to protect their personal and property

rights. Under article 22 of the Code of Criminal Procedure, in cases specified by law, those who are assigned to conduct criminal proceedings must ensure that a defence counsel representing the suspect, accused person, defendant or convict takes part. Under article 49, paragraph 2, of the Code of Criminal Procedure, defence counsels are allowed to take part in criminal cases from the moment of the suspect's actual arrest. Defence counsels are engaged by the suspects, accused persons or defendants or by others on their instructions or with their consent. The body conducting the criminal proceedings is not entitled to recommend any specific defence counsel to anyone. Detectives, investigators, procurators and courts or judges must ensure participation by the defence counsel at the request of the suspects, accused persons and defendants or their representatives. Under article 50 of the Code of Criminal Procedure, if it is not possible for the selected or designated defence counsel to participate within five days, the detective, investigator or procurator is entitled to propose that the detainee, suspect or accused person engage another; if that is refused the detective, investigator or procurator may designate a defence counsel. The detective, investigator, procurator or court or judge has the right to exempt the detainee, suspect, accused person or defendant from paying for the legal assistance either in part or in full. In such circumstances, the work of the defence counsel is paid for by the State. According to article 51 of the Code of Criminal Procedure, participation by a defence counsel is mandatory in criminal proceedings if the suspect, accused person or defendant: requests it; is a minor; cannot exercise his or her right to a defence owing to physical or mental disabilities; or is not proficient in the language used during the proceedings; and also if the person is accused of committing a crime punishable by the death penalty or a life sentence. If in such situations a defence counsel is not engaged by the detainee, suspect, accused person or defendant directly or by their legal representatives or by others with their consent, the detective, investigator, procurator, court or judge is obliged to ensure the participation of a defence counsel in the handling of the case.

139. The Code of Criminal Procedure sets out the time limits for initial inquiries and pretrial investigations (arts. 155 and 325), for remand in custody (art. 303) and for the hearing of a case once it has been referred to a court (art. 271); it also specifies the procedures for extending such time limits. The law has thus established a situation in which all accused persons are tried without unjustified delay.

140. Convicted persons and those who have been acquitted have the right to request a review of their verdicts by a higher court in accordance with the procedure set out in article 23 of the Code of Criminal Procedure.

141. Illegally convicted migrant workers and members of their families are entitled to compensation.

142. Under the Code of Criminal Procedure, a person may not be convicted or penalized a second time for a crime for which he or she has already been convicted or acquitted. Under article 27, if a legally valid guilty verdict or acquittal has already been reached, then no further proceedings may take place on the case.

143. Under article 12 of the Criminal Code, the criminal nature of an act and the associated criminal liability are determined by the law in force at the time the act is committed. The time of commission of a crime is the time when an act of danger to society takes place, regardless of when the consequences manifest themselves. Therefore, migrant workers or members of their families cannot be found guilty of any crimes as a result of any act or failure to act which was not by law a crime when it was committed. Under article 13 of the Criminal Code, a criminal law revoking the criminality of an act, imposing a less severe penalty or otherwise improving the position of a person who has committed the act has retroactive effect, meaning that it applies to persons who committed the act in question before the new law entered into force, including persons serving a sentence and those who have already served a sentence, but who still have a criminal record. As soon as a law

enters into effect revoking the criminality of an act, that act committed prior to the law's entry into force ceases to be considered a crime. If the new criminal law imposes a less severe penalty and a sentence is being served, the penalty is reduced to the highest possible penalty established under the new criminal law entering into force. A criminal law that first establishes the criminal nature of an act or one that makes penalties more severe or otherwise worsens the situation of a person who has committed such an act has no retroactive effect.

Article 20

Prohibition of imprisonment, deprivation of authorization of residence or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation

144. Under chapter 24 of the Civil Code, failure to fulfil contractual obligations (breach of obligations) entails the civil (material) liability of the debtor. Disputes relating to a breach of contractual obligations are resolved by way of civil action. A person who is not in a position to fulfil a contractual obligation incurs only material liability; unless there is evidence of a crime, no one may be prosecuted and deprived of their liberty. In accordance with current law and practice, failure to act upon the decision of a court regarding fulfilment of a contractual obligation does not give rise to deprivation of liberty.

Articles 21, 22 and 23

Protection from confiscation or destruction of identity and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection

145. Under article 496 of the Code of Administrative Offences, the illegal seizure of citizens' passports and the taking of their passports as security guarantees incur fines ranging from 10 to 15 times the accounts indicator.³

146. Property and documents that have been used directly in the commission of an administrative offence or are objects of such an offence and that are found during an arrest, body search or inspection of property are either confiscated or are seized against compensation, with the sole purpose of ensuring that the case is examined objectively and that the administrative penalty is implemented. Items used in the commission of administrative offences or objects of the act in question and documentary evidence of the offence found where the offence was committed during body searches, in the physical person's possession or in the person's means of transport are seized by duly authorized officials. Until the case is heard, the seized property and documents are held in premises designated by the bodies authorized to carry out the seizure. Once the case has been heard, depending on the outcome, they are either confiscated or returned to their owner, or they are destroyed, or if confiscated with the purpose of compensation, they are sold off.

147. When an administrative offence is committed which under the Code is punishable by an administrative penalty of a fine or deprivation of the right to operate a given means of transport, the corresponding driver's, tractor driver's or pilot's licence is withdrawn until the case is resolved and a decision enters into force, and a temporary authorization is issued for the means of transport in question. The withdrawal of drivers' licences and of violation records is done in accordance with procedures established by the Ministry of Internal

³ Accounts Indicator Act.

Affairs. If it is decided to revoke the person's right to operate the means of transport in question and such a decision enters into force, the licence is not returned and the violation record and the temporary authorization to operate the means of transport are withdrawn. If it is decided to impose a fine and the decision enters into force, the licence and its violation record are returned to the person in question once the fine has been paid. If the driver of a vehicle does not have a licence to operate the vehicle in question, the violation record, the waybill or running schedule or the vehicle documents, or has operated the vehicle while inebriated, or has operated a vehicle with tinted windows or licence plates not corresponding to the established State standard or a vehicle bearing the licence plates of another vehicle, the vehicle in question is impounded until the problem in question is remedied. When necessary, if property or documents are confiscated, photographs, movies, videos or other means are used to record material evidence. When objects and documents are confiscated, a record is issued or a corresponding entry is made in the transfer record or the record of the administrative offence. The confiscation of drivers', tractor drivers', boat masters' or pilots' licences is recorded in the record of the administrative offence. When property or documents are confiscated, the record includes information on the type and properties of the documents and on the type, quantity and other identifying characteristics of the confiscated items, including the type, model, make, calibre, series, production number and other identifying characteristics of weapons and cartridge types and quantities. An entry is made in the record of confiscation for property and documents when photographs, movies, videos or other means are used to record material evidence. The evidence gathered from the confiscation of property and documents by such means is appended to the appropriate record. The record of confiscation is signed by the official who draws it up, by the person whose property and documents have been confiscated and by official witnesses. If the person whose property and documents have been confiscated refuses to sign the record, this is noted in the record. A copy of the record is given to the person in question or to his or her legal representative. If necessary, the confiscated property and documents may be packed and sealed where confiscated. Property and documents confiscated prior to the consideration of a case involving an administrative offence are kept at a place designated by the official who carries out the confiscation in accordance with a procedure established by law.

148. Under article 46, paragraph 3, of the Code of Administrative Offences, administrative deportation of foreign nationals and stateless persons is an administrative penalty that may be applied to such persons and is imposed by judges, or, if the foreign national or stateless person has committed an administrative offence upon entry into the country, by an authorized State body or official. There is no provision for "collective expulsions" in Tajik law.

149. In 2007, 74 persons were deported from the country in accordance with article 31 of the Legal Status of Foreign Nationals Act. For each person the decision to deport was taken individually. In 2008 the Migration Service of the Ministry of Internal Affairs and the State National Security Committee deported 139 persons on the basis of article 499 of the new version of the Code of Administrative Offences. In 2009, 113 persons were deported from the country.

150. Tajikistan has ratified the two major conventions governing the activities of diplomatic representatives and consular institutions in the country, the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963. On the basis of these international instruments, any foreign nationals in Tajikistan have the right to freely call upon the diplomatic and consular services of their countries of citizenship for diplomatic and consular assistance. This does not, however, restrict their right to call upon national institutions to defend their rights and freedoms.

151. Tajikistan has a duty to Tajik migrant workers to ensure their rights to receive protection and assistance from Tajik consular and diplomatic institutions. To that end, the Ministry of Internal Affairs of Tajikistan has opened an office for migration in the Russian Federation. The Office functions under the administrative umbrella of the Ministry of Internal Affairs of Tajikistan, but its activities are also coordinated with the Government and the Ministry of Foreign Affairs of Tajikistan. Its main function is to assist Tajik migrant workers in various areas related to their stay in the Russian Federation, for example the renewal of documents, establishing the identity of undocumented persons, providing certificates of the existence or absence of a criminal record, or providing legal aid. In addition, the Office assists Tajik companies in matters related to the hiring of Tajik migrant workers and cooperates with the Ministry of Internal Affairs of the Russian Federation and with other State and non-State organizations.

Articles 25, 27, 28 and 53

Principle of equality of treatment in respect of: remuneration and other conditions of work and terms of employment; social security; and the right to receive urgent medical care; right freely to choose a remunerated activity for members of a migrant worker's family

152. Articles 35, 37, 38 and 39 of the Constitution establish the principle of equality of treatment in respect of remuneration, occupational health and safety and social protection, working hours, days of rest and medical assistance and social insurance, etc.

153. Article 12 of the Labour Code stipulates that foreign nationals and stateless persons residing in Tajikistan may take employment as workers or employees at enterprises, institutions or organizations or engage in other employment on the same basis and using the same procedures as citizens of Tajikistan, unless otherwise provided by the laws of Tajikistan. Under article 102 of the Code, employers are obliged, regardless of their financial situation, to pay workers the established wage for the work done. Discrimination in the payment of wages is prohibited. Employers are obliged to pay their employees the same wage for work of equal value. Any change in conditions of work detrimental to the worker is prohibited. The amount of wages specified in a contract may not be lower than that established by a collective contract or agreement.

154. The world financial crisis has had repercussions for migrant workers from Tajikistan. In November and December 2008 and January 2009 remittances from migrant workers declined by 15 to 20 per cent. To mitigate the negative impact on Tajik migrant workers, the Government devised and implemented special programmes to promote employment. In accordance with these programmes, new posts were established in Tajikistan. By Presidential order, job fairs were held weekly in 2009. In the first quarter of 2009 alone the overall number of such fairs was 119, which allowed 3,058 people to find work and 1,827 to receive advice on vocational training. A total of 7,300 citizens found work in the first half of 2009 thanks to the direct assistance of the employment service.⁴

155. About 80 per cent of all the migrant workers leaving the country to find work every year lack the professions or qualifications required by employers in other countries. In addition, over 100,000 new workers arrive on the labour market every year having completed general education day schools or schools offering a partial secondary education.⁵

⁴ Statement by Deputy Prime Minister R. Kurbanova at the round table entitled "Impact of the world financial crisis on labour migration from Tajikistan".

⁵ Statement by Mr. A. Boboev, First Deputy Director of the State Agency for Social Protection, Employment and Migration of the Ministry of Labour and Social Protection, at a round table entitled

This group of young people absolutely must be trained and placed in jobs. The Government has therefore paid special attention to the provision of vocational training by developing centres for adult education and vocational training institutes. In March 2008, to strengthen the resource base for continuous training and ensure further development of the system, including for unemployed people and migrant workers, the Government decided to establish a State institution known as the Tajikistan Centre for Adult Education under the State Agency for Social Protection, Employment and Migration of the Ministry of Labour and Social Protection. The Centre is located in Dushanbe and has branches in Kulob, Qurghonteppa, Konibodom, and Tojikobod. It teaches Tajik and foreign nationals 39 trades that are in demand on the domestic and international labour markets. Since its establishment, the Centre and its branches have trained and issued State certification to 2,930 unemployed people, migrant workers and other interested persons, including the following: 428 electrical and gas welders; 46 automobile mechanics; 73 carpenters; 20 plasterer-painters; 105 masons; 213 electricians; 274 electrical welders; 14 specialists in precious and semi-precious stones; and 120 English teachers. The Centre and its branches have 103 computers that are used for training. Six more classrooms are being renovated and prepared for the introduction of an economic management specialty. The Ministry of Labour and Social Protection is currently working on a programme for the development of an adult education system for 2011 to 2016, which once approved by the relevant ministries and departments will be submitted for adoption by the Government. In 2008, 8,080 persons received instruction and qualification, and 8,400 followed suit in 2009. A joint order was issued by the Ministry of Internal Affairs and the Ministry of Education on 8 October 2007 establishing short-term courses for the training of migrant workers at specialized vocational training institutes of the Ministry of Education. In 2010, more than 8,379 migrant workers received training at 65 such establishments and at secondary schools focusing on science. There are 10 basic vocational training institutes operating in the country training migrant workers in various occupations in demand in other countries. Thanks to an initiative by the Migration Service of the Ministry of Internal Affairs working through companies, during a six-month period in 2010, 226 students were sent to the United States for job placements during the summer holidays.

156. In 2009 the Ministry of Internal Affairs and the Ministry of Education issued a joint order on the training of Tajik migrant workers at vocational training institutes. The aim of the order was to improve the qualifications, legal knowledge and language skills of migrant workers. In accordance with paragraph 1 of the order, short-term courses of one to three months were organized for migrant workers at all vocational training institutes, with the aim of training them in specialties in demand on the labour markets of countries of destination. Furthermore, paragraph 10 of the order establishes that migrant workers are obliged to study Russian and acquire a basic knowledge of the law. In accordance with an opinion issued by the State certification commission, persons who have completed the short-term courses must be issued with certificates or certification from the Ministry of Education. In accordance with paragraph 14 of the order, the Migration Service of the Ministry of Internal Affairs, together with companies involved in sending migrant workers to other countries, must assist in training migrant workers in such short-term courses.

157. With the help of donor organizations, some of the institutes have been renovated and have received the necessary equipment, but the Government still faces the problem of how to improve the resource base of others.

158. There are two forms of social insurance for workers: State and voluntary. State social insurance covers all persons without exception who work under a labour contract. It

“Impact of the world financial crisis on labour migration from Tajikistan”.

is financed from contributions paid by employers, State funding and other sources, as specified by law. Workers make insurance contributions in amounts and according to procedures prescribed by law. Voluntary social insurance is provided through non-State insurance funds which may be set up by organizations, groups of citizens or voluntary associations (art. 215).

159. In accordance with article 38 of the Constitution, everyone has the right to health care. Within the limits established by the law, everyone is entitled to free medical care at State health-care institutions. The State takes measures to ensure a clean environment and to promote popular sports, physical fitness and tourism. Other forms of medical care are provided as determined by law. Under article 32 of the Public Health Act, in the field of health, foreign nationals, stateless persons and refugees have rights and bear obligations in accordance with the country's legislation and other enactments. The Government has taken a number of positive steps to ensure the right to health of migrant workers from Tajikistan. For example, under an intergovernmental agreement between Tajikistan and the Russian Federation concluded on 16 October 2004, migrant workers must receive a medical certificate issued by the travel advisory clinic responsible for their place of residence. To ensure the implementation of this provision, in December 2007 a joint order was issued by the Ministry of Internal Affairs and the Ministry of Health on the establishment of travel advisory clinics where migrant workers would be obliged to receive opinions on their health status prior to departure to work in other countries. Such a procedure would greatly facilitate the situation of Tajik migrant workers in the Russian Federation, as they are often unable to receive medical certification within the time limits set by law owing to administrative and other obstacles. However, a problem arose, as the State institutions of the Russian Federation failed to recognize medical certificates issued by the Tajik travel advisory clinics. In December 2009 this problem was raised at the fourth joint Russian-Tajik group on implementation of the agreement between the Governments of the Russian Federation and Tajikistan on labour activities and the protection of the rights of Russian citizens in Tajikistan and of Tajik citizens in the Russian Federation (the agreement concluded on 16 October 2004). Representatives of the Ministry of Health pointed out that the Tajik party had fulfilled all its duties under the agreement and that advisory commissions for issuing medical certificates to migrant workers had opened and were in operation in Tajikistan. The representatives of the Russian Federation stated that, for its part, the Russian Federation planned to set up medical centres for the issuance of certificates to migrant workers, and that the issue would be settled by the parties in the future.

Articles 29, 30, 31 and 45

Right of each child of a migrant worker to a name, registration of birth and a nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families; equality of treatment for members of the families of migrant workers in relation to the points indicated and measures taken to guarantee the integration of children of migrant workers in the local school system

160. Article 34 of the Constitution states that mothers and children are provided special protection by the State. Every child of a migrant worker has the right to a name, registration of birth and a nationality. Under article 20 of the State Civil Registration Act, when a birth is registered with the State, the family name of the parents is given to the child. When the parents have different family names, the family name of the child's father or mother is used, or by agreement of the parents, the given name of the father may be used. The child's

given name is registered by agreement between the parents. If the parents cannot agree on a name, the child's given name and/or family name (when the parents have different family names) is registered on the birth certificate as per the instructions of the agency of tutorship or guardianship. In accordance with article 23 of the Act, State registration of the birth of a child aged 1 year or older is done upon application by the parents (or one of the parents) or another interested person if there is documentation of the birth in a specified format, issued by a medical establishment or a physician working in private practice. When a child aged 1 year or older is registered by the State, a certificate attesting to the absence of a birth certificate must be presented. Such a certificate is issued by the records section of the civil register office. State registration of the birth of a child aged 1 year or older is carried out only by municipal or district civil register offices. For those who have reached the age of majority, State registration of the person's birth is carried out upon application by the person himself or herself. If the documentation is not available in the format required for the State registration of the birth of a child aged 1 year or older, the registration is carried out on the basis of a court ruling recognizing the birth.

161. A child whose parents are Tajik citizens at the time of his or her birth is a Tajik citizen regardless of the place of birth.⁶ When the parents are of different nationalities and at the time of birth one is a citizen of Tajikistan, the child is a citizen of Tajikistan: (a) if born in Tajikistan; or (b) if born outside Tajikistan, but if the parents, or one of the parents, permanently resides in Tajikistan at the time of the birth. Where the parents are of different nationalities, but one of the parents is a Tajik citizen at the time of the child's birth, and both parents are permanent residents outside Tajikistan, the citizenship of a child born outside Tajikistan is determined by written agreement of the parents. Parents with different nationalities who choose a nationality for their child submit a copy of the birth certificate and their written agreement on the choice of nationality before the child is 1 year old to the internal affairs authorities or consular authorities responsible for their place of residence.⁷

162. Under article 41 of the Constitution, everyone has the right to education. Education is recognized as one of the country's main priorities.

163. Restrictions on citizens' rights to occupational training on the basis of sex, age, health status, criminal record or other factors are allowed solely on the basis of requirements established by law. The Ministry of Education currently has about 70 vocational training institutes and secondary schools focusing on science, with some 10,000 students passing through every year. These educational establishments also hold short-term courses focusing on occupations and specialties in demand on the labour market.

164. The State provides universal, basic, compulsory education free of charge at State schools.

165. Within the framework of State education standards, schooling in secondary vocational training, higher vocational training and postgraduate training is given free of charge on a competitive basis at State schools, provided the student is studying at the corresponding level of education for the first time.

166. The State provides special support to people with exceptional strengths. It helps them to obtain an education, including through the provision of special State scholarships and, when necessary, by sending them to study in other countries.

167. The language of instruction at schools in Tajikistan is determined in accordance with the country's laws. The State, which guarantees that citizens can choose the language of

⁶ Constitutional Act on Citizenship, art. 16.

⁷ Paragraph 12 of Presidential Decree No. 611 of 21 November 1996 on the procedure for considering matters relating to Tajik nationality.

instruction, ensures general education in the State language. In areas where there are concentrations of different ethnic groups it provides schooling in their native languages, to the extent that the education system is able to do so. The freedom to choose the language of instruction at general education schools is ensured by setting up the required number of classes and groups and by ensuring the conditions exist for them to function.

168. At all schools, regardless of their organizational or legal status or form of ownership, studies of the State language are governed by the country's laws on language and State educational standards.

169. Educational establishments in Tajikistan provide teaching, further training and skills improvement for foreign nationals on the basis of agreements concluded between institutions and organizations, educational administrations, associations, groups of educational institutions and other physical and legal persons, in accordance with the international treaties to which Tajikistan is a party (art. 53).

170. The representatives of any national or ethnic group living in Tajikistan have the right to preserve, develop and protect their cultural distinctiveness, to organize cultural enterprises and institutions and to form ethnocultural centres and associations. Tajikistan supports Tajik ethnocultural centres, societies and associations, academic and other organizations outside the country. It also takes steps to conclude agreements with other States in this field and defends the rights of Tajiks abroad.

Articles 32, 33 and 37

Right to transfer earnings, savings and personal effects to the State of origin; right to be informed of the rights arising out of the Convention and dissemination of information; right to be informed before departure of the conditions of admission to the State of employment and of remunerated activities

171. The Migration Act stipulates that migrant workers engaged in remunerated work in Tajikistan may transfer their earnings and savings to their countries of origin in accordance with Tajik law and the treaties to which Tajikistan is a party (art. 9.2). For some time, the transfer of remittances by Tajik migrant workers was problematic. Migrant workers were forced to carry their wages with them or to send them with family members or acquaintances. This led to corruption and abuse in the customs and immigration services of countries of destination, transit and origin. Furthermore, the use by migrant workers of unofficial channels for the transfer of earnings led to the emergence of various criminal groups in the countries of destination and transit. These groups siphoned off most of the migrant workers' earnings. Official channels for funds transfers were unpopular with migrant workers because of the complexity of documentation procedures, the backwardness of bank services, a persistent mistrust of the banks and the imposition of a 30 per cent State tax on remittances. In 2001, a policy framework was adopted for labour migration of Tajik citizens to other countries, and it stated that "the need for labour migration to other countries to be legal and regulated is dictated first and foremost by a concern for the well-being of the migrant workers' families who benefit from the remittances". The policy framework recognized that the remittances were beneficial to the family members of migrant workers. To ensure the free flow of foreign currency into the country, Government Decision No. 445 of 25 September did away with the 30 per cent tax on remittances. Thereafter, the flow of remittances from migrant workers using official banking channels began to increase. With the banks competing to handle money transfers, the range of services grew, and transfer commissions became more affordable. Currently, Tajikistan's

banks have agreements with international money transfer systems such as MoneyGram, MIGOM, Western Union, CONTACT, UNISStream, VIP Money Transfers and others.

172. The world financial crisis had an obvious impact on the remittances sent by Tajik migrant workers. Beginning in the third quarter of 2008, the decline in remittances led to solvency problems in the banking system and to financial instability, seriously undermining income and increasing poverty. This was a serious cause for concern for the Government. In response, the National Bank of Tajikistan took the following measures:

(a) To improve money transfer services, the National Bank ensured the solvency of the banks;

(b) To make sure that migrants were able to travel on time, commercial banks offered short-term loans to cover transport costs;

(c) If problems with remittances did arise, helplines were set up to allow migrant workers to contact Tajik banks and receive specific advice;

(d) The number of offices handling money transfers in remote mountain areas was increased so that Tajik citizens would be able to receive services directly where they lived.⁸

173. The Press and Other Media Act and the Television and Radio Broadcasting Act establish and protect the right of every person freely to express his or her opinion and the freedom to seek, receive and impart information.

174. The Criminal Code imposes penalties for refusal to provide citizens with information (art. 148).

175. Tajikistan recognizes that informing migrant workers of their rights and providing them access to information are an obligation for the country, and that such actions prevent violations of their rights. Article 33 of the 2001 policy framework for Tajik migrant workers abroad calls for information and advisory assistance to be given to migrant workers.

176. The 2006–2010 programme for Tajik migrant workers abroad includes measures to be taken by the Government of Tajikistan in this field. It also calls for activities to “organize information and advisory assistance for migrant workers”. Under this programme the competent Tajik authorities are responsible for the following in order to raise awareness and clarify and shed light on migration policy: publication of the magazine *Migration*, placement of information in periodicals, development of outreach and advisory centres and the creation of a single database for information on labour migration, production of booklets, posters and other publications to support legal literacy and health education, and the cultural development of migrant workers. The programme also calls for outreach and advisory assistance to be given to migrant workers, for example by means of outreach and advisory centres in the regions, the production of booklets, presentations and publications in the media and the placement of information posters at border crossings and in public places. The same programme calls for enhancing the legal, cultural and medical awareness of migrant workers.

177. Many State bodies have been assigned the task of conducting outreach activities to increase migrant workers’ awareness of their rights and obligations and of the migration laws applicable in host countries. Article 9 of the Youth and Youth Policy Act sets out the obligation for the central State authorities responsible for youth policy to offer legal

⁸ “The world financial crisis and remittances”, Tashrifov, M. (Director of the Monetary and Statistical Policy Department of the National Bank of Tajikistan).

services to migrant workers and to provide them with legal, information and guidance materials. The regulations governing the Migration Service of the Ministry of Internal Affairs establish that the Service is obliged to provide information to organizations and citizens on questions related to labour migration. Keeping migrant workers informed is also one of the tasks of the Ministry of Internal Affairs Office for Migration in the Russian Federation, the statutes of which call for it, through the media, to keep migrant workers from Tajikistan abreast of their country's international labour migration policy, of priorities for the development of the internal labour market and of measures taken by the Government of Tajikistan to facilitate employment. The statutes of the State Agency for Social Protection, Employment and Migration assign that body the task of holding conferences, seminars and meetings and of providing information on migration issues, and also of publishing various types of printed information along the same lines and holding events with media participation. Under the regulations on aspects of licensing of designated activities, companies that have received licences to recruit workers are obliged to inform migrant workers about the rules in force for the hiring of foreign workers in the host country and about applicable immigration laws. The joint order of the Ministry of Internal Affairs and the Ministry of Education on education for migrant workers in vocational training institutes also stipulates that migrant workers are obliged to acquire a basic knowledge of Tajikistan's legislation.

178. NGOs and international organizations also carry out activities to keep migrant workers informed. In 2004, IOM, working with the OSCE office in Tajikistan and in cooperation with the Ministry of Labour and Social Protection, established the first Information Resource Centre for Migrant Workers in Dushanbe. Similar centres were set up with IOM and OSCE support using NGO structures in Khujand, Kulob, Qurghonteppa and Shahrtuz in 2006 and in 2008 in the towns and districts of Ayni, Tojikobod, Hisor and Khorugh. Such centres offer migrant workers free advice on the law in countries of destination, provide free legal aid, hold information sessions for migrant workers and their families and disseminate information on matters related to migration. At the time of writing of this report, four such centres were in operation in the northern and southern parts of the country. IOM plans in 2010 to resume work at the four others in Gorno-Badakhshan Autonomous Province and in the Zarafshon and Rasht valleys.

179. The United Nations General Assembly has of course recommended that Member States, intergovernmental organizations and NGOs mark International Migrants Day by disseminating information on migrants' human rights and basic freedoms, exchanging experiences and devising measures to protect them. Bearing in mind this United Nations recommendation, the Migration Service of the Ministry of Internal Affairs responsible for Soghd province, working with the Human Rights Centre (a voluntary association), holds a major event every year on 18 December to inform migrant workers of their rights, in particular of those stemming from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On 18 December 2009, the Migration Service of the Ministry of Internal Affairs held a conference with the participation of State and international organizations and NGOs to discuss labour migration with the aim of drawing up measures to ensure the rights of migrant workers.

V. Other rights of migrant workers and members of their families who are documented or in a regular situation

Articles 38 and 39

Right to be temporarily absent without effect upon authorization to stay or work; right to liberty of movement and to choose one's residence in the territory of the State of employment

180. The authorization for migrant workers to be temporarily absent without effect on their stay or work, and the right to liberty of movement and to choose their place of residence in the territory of the State of employment are supported by articles 37 and 41 of the Constitution, which address paid leave and vocational training. Furthermore, the Legal Status of Foreign Nationals Act, in its articles 8 and 19, stipulates the rights of foreign nationals to rest, to movement and to choose their place of residence in the country in accordance with established procedure.

181. The Migration Act lays out the following basic principles for the regulation of migration:

- (a) Guarantee of the human rights to free choice of place of residence, freedom of labour, free choice of occupation or profession, freedom to leave and liberty of movement;
- (b) Prohibition of any discrimination based on ethnic origin, race, sex, language, religion, political conviction, education, social status or wealth;
- (c) Participation of relevant State bodies in organizing the regulation of migration processes;
- (d) Prohibition of deportation or forced return of migrants to their countries of origin;
- (e) Cooperation with other countries (art. 2).

182. Restrictions on movement and choice of place of residence are permitted when so dictated by considerations of national security or the defence of public order, health and morals, or to protect the rights and legitimate interests of Tajik citizens and other persons (Legal Status of Foreign Nationals Act, art.19).

Articles 40, 41 and 42

Right to form associations and trade unions; right to participate in public affairs of their State of origin and to vote and be elected at elections of that State; procedures and institutions taking account of the needs of migrant workers and possible enjoyment of political rights in the State of employment

183. Under article 17 of the Voluntary Associations Act, foreign nationals and stateless persons may, on an equal footing with Tajik citizens, be founders, members or participants of voluntary associations, on the condition that their permanent place of residence is in Tajikistan, or that they have a residence permit for Tajikistan.

184. The following national voluntary organizations currently operate in the country:

- Turkmen Society of Tajikistan

- Satvistimo Iberia Georgian Cultural Society
- Iriston (Ossetian organization)
- Association of Small Indigenous Peoples of the Caucasus
- Baiterek (Kazakh organization)
- Association of Uighurs of Tajikistan
- Dustlyk Tartar-Bashkir Ethnic Cultural Centre
- Kyrgyz Society
- Russian Foundation for Spiritual, Intellectual and Ethnic Development
- Council of People of Russian Descent of Tajikistan
- Korean Centre in Tajikistan for Cultural Links with Koreans throughout the World
- Association of Soviet Koreans of Tajikistan
- Uzbek Society of Tajikistan, and others

185. Additional information on the right of migrant workers to associate and to form trade unions can be found in the present report in respect of article 26 of the Convention.

186. Under article 22 of the Legal Status of Foreign Nationals Act, foreign nationals in the country are not allowed to vote, to be elected to legislative bodies, to be appointed to executive authorities, or to take part in nationwide polls or referendums.

Articles 43, 54 and 55

Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated; equality of treatment in respect of protection against dismissal, unemployment benefits and access to public work schemes and alternative employment; equality of treatment in the exercise of a remunerated activity

187. Under article 35 of the Constitution, everyone has the right to work and to choose his or her profession or occupation, and the right to occupational safety and social protection against unemployment. Wages may be no lower than the minimum wage. Restrictions of any kind in employment relations are forbidden. Equal pay must be given for equal work. No one may be subjected to forced labour, except in cases provided for by law.

188. Under article 6 of the Employment Promotion Act, State policy is to promote the realization of the right to full, productive and freely chosen employment. This is based both on the principle of international collaboration in addressing employment issues, including the employment of Tajik citizens abroad and of foreign nationals and stateless persons in Tajikistan, and on respect for international labour laws. Furthermore, under article 24 of the Act, in the event of loss of work, the State guarantees: provision of benefits and compensation to employees dismissed from enterprises, institutions and organizations; payment of grants to unemployed persons during vocational training, further training or retraining offered through State employment services; payment of unemployment benefit; and the opportunity to take part in paid public work.

189. Employees dismissed from enterprises, institutions and organizations as a result of winding-up, downsizing or termination of their employment contract are provided with benefits and compensation in accordance with labour legislation.

190. Any period during which a citizen receives unemployment benefit or grants, or participates in paid public work, in accordance with the relevant legislation, does not interrupt the employment record and counts towards the recorded period of employment. The employment services decide on the allocation of unemployment benefits 11 days after registration, at the same time as the citizen is recognized as unemployed. Unemployment benefit is paid for 6 calendar months per year, for a period of no more than 12 months. Payment is made once per month, on condition of re-registration within the period prescribed by the employment service.

191. Together with the employment services, local authorities, enterprises, institutions and organizations, irrespective of the form of ownership, organize paid public work, on a contractual basis. Participation of citizens in this work may take place only with their agreement. The individual's state of health, age, vocational skills and other characteristics are taken into account when allocating them to public work. Under article 22 of the Employment Promotion Act, fixed-term contracts for public work may be terminated ahead of schedule if the person concerned finds permanent or temporary employment.

192. Under article 4 of the Labour Code, the State guarantees every worker the right to fair and timely remuneration for labour and protection from unemployment; furthermore, article 7 states that all citizens have equal opportunities in terms of labour relations.

Articles 44 and 50

Protection of the unity of the families of migrant workers and family reunification; consequences of death or dissolution of marriage

193. Under article 33 of the Constitution, the State protects the family as the foundation of society. Foreign nationals in Tajikistan have the same rights and obligations in marriage and family relations as citizens (art. 17). Under article 169 of the Family Code, marriages between Tajik citizens and foreign nationals or stateless persons contracted outside the territory of Tajikistan in accordance with the legislation of the State where they are contracted are recognized as valid in Tajikistan. Marriages between foreign nationals contracted outside the territory of Tajikistan in accordance with the legislation of the State where they are contracted are recognized as valid in Tajikistan.

194. Acts of civil status are registered by being recorded by civil register offices, which then issue certificates of registration.

195. Under the State Civil Registration Act, State registration applies to births, deaths, marriages, divorces, adoption, declarations of paternity, changes of name, renewal or cancellation of certificates of registration.

196. In the case of divorce by mutual consent, where there are no minor children of the marriage, divorce may be granted by a civil register office. Divorces and their State registration shall take place in the presence of at least one of the spouses one month after the spouses submit a joint application for divorce.

Articles 46, 47 and 48

Exemption from import and export duties and taxes in respect of certain personal effects; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and measures to avoid double taxation

197. The Migration Act provides for migrant workers engaged in paid employment in Tajikistan to be able to transfer their earnings and savings to the State of origin, in

accordance with Tajik legislation and international agreements to which Tajikistan is party (art. 9.2).

198. Under article 4 of the Tax Code, all physical and legal persons are obliged to pay all taxes.

199. The provisions of international agreements on avoiding double taxation and preventing non-payment of taxes on income and property (capital) to which Tajikistan is a party apply to individuals resident in one or both States party to such agreements (art. 169).

Articles 49 and 56

Authorization of residence and authorization to engage in remunerated activity; general prohibition and conditions of expulsion

200. Under article 5 of the Legal Status of Foreign Nationals Act, foreign nationals may reside permanently in Tajikistan if they are so authorized and have a residence permit. Foreign nationals present in Tajikistan on other legal grounds are considered temporary residents. They must register their national passports or equivalent documents in accordance with the proper procedure and leave the country on the expiration of the given period of residence. Tajikistan has a system of registration of foreign passports in the place of temporary residence.

201. To regulate the employment of foreign nationals and stateless persons, Government Decree No. 529 of 31 October 2008 approved the regulations for issuing work permits to foreign nationals and stateless persons working in Tajikistan. A work permit department was set up within the Ministry of Internal Affairs Migration Service in March 2009. In 2009, foreign nationals from 47 countries received confirmation of their right to work in Tajikistan. A total of 4,523 work permits were issued to foreign nationals engaged in the following sectors of the economy:

- Industry: 1,466 or 32.4 per cent
- Trade and catering: 1,318 or 29.1 per cent
- Construction: 997 or 22 per cent
- Domestic employment: 188 or 4.2 per cent
- Transport: 181 or 4 per cent
- Communications: 82 or 1.8 per cent
- Health care, physical education and sport: 66 or 1.5 per cent
- Agriculture: 18 or 0.4 per cent
- Teaching: 11 or 0.2 per cent
- Other economic activities: 196 or 4.3 per cent

202. Article 28 of the Legal Status of Foreign Nationals Act states that foreign nationals who commit criminal, administrative or other offences in Tajikistan are held liable on the same basis as citizens of the country.

203. Information on a general ban on expulsion and the conditions of expulsion can be found in the present report in respect of articles 21, 22 and 23 of the Convention.

VI. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

Article 65

Establishment of appropriate services to deal with questions concerning international migration of workers and members of their families

204. In order to address issues in the area of migration, including international migration of workers and members of their families, the State Migration Service was set up in 1997 under the Ministry of Labour, with four main areas of activity:

- (a) Labour migration;
- (b) Environmental migration;
- (c) Voluntary (internal) migration;
- (d) Work with refugees and asylum-seekers.

205. To further the State administrative reforms and ensure economic and social development in the country, Presidential Decree No. 9 on restructuring the central executive bodies was adopted on 30 November 2006, transferring the Ministry of Labour and Social Protection's responsibilities for labour migration, and subsequently those for work with refugees and asylum-seekers, to the Ministry of Internal Affairs. The main responsibilities in terms of State protection for migrant workers outside of Tajikistan lie with the country's diplomatic and consular representations abroad. Under Presidential Decree No. 165 of 23 January 1995, the main responsibilities of Tajikistan's embassies abroad include protecting the country's interests, organizations, representatives, and legal and physical persons in the host country to the extent permitted under international law (para. 2). Under Tajikistan's consular regulations, approved by Government Decree No. 275 of 30 July 1998, the consul is required to take measures to allow physical and legal persons from Tajikistan full enjoyment of all the rights provided for in the legislation of the host country and in international standards and customs, as well as the rights laid down in international documents to which Tajikistan and the host country are parties (art. 23). Pursuant to that article, the Policy Framework on Labour Migration of Tajik Citizens to Other Countries states that diplomatic and consular representations defend and protect the interests of, and provide help and assistance in the host State to, migrant workers and members of their families who are Tajik citizens.

206. Given that the largest migration flow is into the Russian Federation, an agreement has been reached on the activities of the Tajik Ministry of Internal Affairs Office for Migration in the Russian Federation, in Moscow. Its statutes make the Office responsible for protecting the rights and interests of migrant workers where these are infringed by employers or officials of the Federal Migration Service, the Ministry of Internal Affairs or other relevant bodies in the Russian Federation. Despite the very specific nature of the Office's activities, it has become clear that staff of the diplomatic representations and consular bodies of the Ministry of Foreign Affairs are more able to protect the legal and practical rights of migrant workers. The Office's activities could be better described as assisting the consul in his or her duties and establishing cooperation with the different structures in the area of migration. This can be seen in Table 3, which shows the functional responsibilities of the two structures in protecting and assisting Tajik citizens in the host country.

*Responsibilities of the Consul of Tajikistan**Responsibilities of the Ministry of Internal Affairs
Office for Migration in the Russian Federation**Protection of migrant workers' rights*

(a) The Consul is required to take measures to ensure that physical and legal persons from Tajikistan are fully able to enjoy all the rights provided for in the law of the host State and in international standards and customs, as well as the rights laid down in international documents to which Tajikistan and the host country are parties (Consular regulations, art. 23);

(b) Diplomatic and consular representations defend and protect the interests of, and provide help and assistance in the host State to, migrant workers and members of their families who are Tajik citizens (Policy Framework on Labour Migration of Tajik Citizens to Other Countries);

(c) The establishment of a mechanism for representatives, diplomats and consuls to assist and defend the interests of migrant workers and members of their families working outside of the country.

(Programme of International Labour Migration for Tajik Citizens, 2006–2010.)

(a) To protect the rights and interests of migrants where these are infringed by employers or officials of the Federal Migration Service, the Ministry of Internal Affairs or other relevant bodies in the Russian Federation (Statutes of the Ministry of Internal Affairs Office for Migration, art. 7, para. g);

(b) To receive complaints concerning offences committed against Tajik citizens or search requests for Tajik citizens missing in the Russian Federation (Statutes of the Ministry of Internal Affairs Office for Migration, art. 7, para. e);

(c) To interact and cooperate with the migration and employment services, regional administrations and other stakeholders in the Russian Federation, including in ensuring respect for the rights of migrant workers in line with current legislation in the Russian Federation and the intergovernmental agreement between Tajikistan and the Russian Federation of 16 October 2004 (Statutes of the Ministry of Internal Affairs Office for Migration, art. 7, para. 11);

(d) To establish links with voluntary organizations and the Tajik diaspora in the Russian Federation, as well as with regional representatives of IOM and ILO in the Russian Federation to combine forces in protecting the rights of migrants from Tajikistan (Statutes of the Ministry of Internal Affairs Office for Migration, art. 7, para. 19).

Representation of migrant workers' interests in State bodies in the host countries

The Consul has the right to represent Tajik citizens in institutions of the host State if those citizens are not present and have not appointed a representative to handle the case or are not in a position to defend their interests for other reasons. This

<i>Responsibilities of the Consul of Tajikistan</i>	<i>Responsibilities of the Ministry of Internal Affairs Office for Migration in the Russian Federation</i>
<p>representation continues until such time as the persons concerned appoint their own representatives or undertake to defend their own rights and interests (Consular regulations, art. 28).</p>	
<p><i>Advice to migrant workers</i></p>	
<p>The Consul informs all Tajik citizens in his or her consular district of laws and other legislation of the host State and of local customs (Consular regulations, art. 26).</p>	<p>(a) To provide legal advice of all categories to Tajik citizens temporarily in the territory of the Russian Federation (Statutes of the Ministry of Internal Affairs Office for Migration, art. 7, section 5);</p> <p>(b) To provide information through the media to migrant workers from Tajikistan on Tajikistan's policy on international labour migration, its priorities in developing the internal labour market and Government measures to promote employment (Statutes of the Ministry of Internal Affairs Office for Migration, art. 7, section 16).</p>
<p><i>Assistance with issuing of documents</i></p>	
<p>(a) The Consul has the right, in exceptional cases and with the agreement of the Consular Services of the Ministry of Foreign Affairs of Tajikistan, to issue a passport to a Tajik citizen, to extend the validity of passports and to add necessary information to them (Consular regulations, art. 36);</p>	<p>(a) To provide supporting documents to the Embassy of Tajikistan in the Russian Federation to confirm Tajik citizenship;</p>
<p>(b) Diplomatic representations and consulates of Tajikistan in other countries issue standard passports to Tajik citizens residing permanently or temporarily in the same country as the representation or consulate or within its consular district (Rules for issue of passports with electronic identification chips and (emergency) travel documents for Tajik citizens, art. 2, para. 7);</p>	<p>(b) To assist in the compilation of documents to allow migrant workers to receive temporary travel documents for return travel to Tajikistan from the Embassy of Tajikistan in the Russian Federation;</p>
<p>(c) Emergency travel documents are issued by diplomatic representations and consulates of Tajikistan or, where there is no diplomatic representation in a given State, by the Ministry of Foreign Affairs of Tajikistan</p>	<p>(c) Within the scope of their powers, to assist with the replacement of a lost passport or a lost birth certificate of a child of migrant workers by submitting requests to the appropriate bodies in Tajikistan;</p> <p>(d) To provide migrant workers with the necessary certificates of the existence or absence of a criminal record for registration and employment (Statutes of the Ministry of Internal Affairs Office for Migration, art. 7, paras. b, c, d and e).</p>

Responsibilities of the Consul of Tajikistan

*Responsibilities of the Ministry of Internal Affairs
Office for Migration in the Russian Federation*

(Rules for issue of passports with electronic identification chips and (emergency) travel documents for Tajik citizens, art. 10, para. 88).

Article 66

Authorized operations with a view to the recruitment of workers for employment in another State

207. To encourage the employment of workers in another State on the basis of an agreement, Tajikistan has signed such agreements with Kyrgyzstan (1998), the Russian Federation (2004) and Kazakhstan (2006).

208. A bilateral working group, consisting of senior officials of the relevant ministries and departments, has been set up for the purposes of the agreement between Tajikistan and the Russian Federation and to develop an agreement implementation mechanism.

209. Moreover, to protect the domestic labour market and provide employment for Tajik citizens in the country, as of 1 July 2008, the State Agency for Social Protection, Employment and Migration has set up a division to work with companies that recruit foreign workers to Tajikistan and to issue decisions in respect of their activities. It issues positive decisions where the employment services do not have any unemployed citizens on their list who are in the same job category as the foreign migrant workers. If they do, the number of foreign workers invited is reduced to 70 per cent of the total number of individuals invited from abroad. To ensure that the issue is given proper consideration, the needs for highly qualified specialists of the party issuing the invitation are taken into account, with the further training of Tajik citizens in these professions. Only the issuing body, i.e. the Migration Service of the Ministry of Internal Affairs, may carry out monitoring and verification of the activities of companies that recruit foreign workers to Tajikistan and, in the case of unlawful activities or non-fulfilment of the conditions of the agreement, suspend or rescind the licence.

Article 68

Measures aimed at the prevention and elimination of illegal or clandestine movements and employment of migrant workers in an irregular situation

210. Presidential Decree No. 544 on strengthening the campaign against illegal immigration into Tajikistan was adopted on 2 April 2001 and somewhat later, on 2 December 2008, Government Decision No. 599 approving the regulations for the immigration control mechanism gave a number of ministries and departments the authority to take action against illegal or clandestine movements of migrant workers and members of their families.

211. In 2008, the Criminal Code was amended to include liability for organizing the illegal movement of foreign nationals or stateless persons into the country or their illegal transit through the country (art. 335, para. 1); as well as criminal liability for the organization of illegal migration (art. 335, para. 2). The article established criminal liability not only for organizing the illegal transfer and employment of Tajik citizens abroad, but

also for the employment of migrants by a person without the necessary permits for the given type of activity.

Article 71

Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to the death

212. Issues concerning the repatriation of the bodies of migrant workers and compensation relating to death are included in the following bilateral agreements signed by Tajikistan:

(a) Agreement between the Government of Tajikistan and the Government of the Russian Federation on labour migration signed in October 2004 (art. 15);

(b) Agreement between the Government of Tajikistan and the Government of Kazakhstan signed in May 2006 (art. 12).

Since 2001, the Ministry of Internal Affairs has collected, compiled and analysed the causes and circumstances of deaths of Tajik citizens in neighbouring and other countries. A total of 356 bodies of Tajik citizens were repatriated from the Russian Federation in 2007, 508 in 2008, 784 in 2009, and 396 in the first six months of 2010. The main causes of death were murder, serious bodily injury, accidents, road traffic accidents and poisoning.
