



## Human Rights Center

### Legal Relations in the Area of Family and Marital Matters in Tajikistan: Problems and Perspectives

June 2010

#### *Summary of Report*

*The report highlights and analyzes problems and perspectives relating to legal aspects of family-marital relations in Tajikistan. It is based on information about concerns raised by women who, in the course of 2009, turned to one of six free legal aid clinics operated by the Human Rights Center and other Tajik NGOs in different parts of Tajikistan.<sup>1</sup> This document summarizes major issues that are covered by the report, all of which would benefit from further investigation and analysis with a view to elaborating measures needed to address existing problems.*

#### ***Domestic Violence***

Domestic violence is a serious problem in the area of family-marital relations in Tajikistan.

Lawyers working at the legal aid clinics often receive women who have been systematically subjected to physical violence by their husbands or to mental abuse by relatives of their husbands, especially in cases when their husbands have been away from home due to labor migration. These women have typically tolerated their situation for a long time out of a sense of obligation to preserve their families for the sake of their children. They are unwilling to turn to law enforcement authorities and do not have access to psychological assistance, which many of them would need.

The United Nations Committee on the Elimination of Discrimination against Women has linked the problem of domestic violence to the low status of women in Tajik society. It has therefore called on Tajik authorities to take measures, especially in the countryside, to influence and change prevailing attitudes regarding the subordinate role of women, in addition to adopting specialized legislation on the legal and social protection from domestic violence.

An effective response to the problem of domestic violence is also currently obstructed by the lack of specialized law enforcement staff to register complaints and work with victims of domestic violence and the lack of psychological support services for victims.

#### ***Polygamy***

Another problem in the area of family and marital matters that deserves serious attention in Tajikistan is men marrying two or more women.

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<sup>1</sup> The other NGO partners in this initiative, which is supported by the Swiss organization Helvetas, are the Bureau on Human Rights and the Rule of Law, the League of Women Lawyers, Madadgor and Inis. An analytical center of the Human Rights Center has been tasked with compiling and analyzing information concerning the activities of the legal aid clinics.

Factors that facilitate polygamy include social factors (such as poverty and labor migration of men), as well as prevailing cultural and religious customs. A growing number of marriages in Tajikistan are conducted according to Muslim religious rules. Although these marriages do not have any legal force, they enjoy wide acceptance among residents, especially in the countryside. The experience from the legal aid clinics shows that many women in rural areas do not see any alternative but to agree to their husbands entering into new marriages under Islamic rules.

Tajik legislation prohibits polygamy and establishes criminal liability for polygamy (article 170 of the Criminal Code). However, in practice, the existing legal provisions are not effective in preventing polygamy and do not adequately protect the rights of second and subsequent wives.

There is no set court practice for the implementation of Criminal Code article 170 and different judges interpret and apply it in different ways. This article also does not foresee any penalty for repeated offenses, meaning that a man who has been found guilty of polygamy and ordered to pay a fine in practice can continue to live together with all his wives. In cases when implementation of Criminal Code article 170 does result in the termination of illegal marriages, second or subsequent wives often find themselves in a difficult situation with respect to issues such as housing and property and care and support of common children since they do not have the legal rights of wives or former wives.

The UN Committee on the Elimination of Discrimination against Women has called on Tajik authorities to elaborate a strategy to prevent polygamy oriented at parents and religious actors and to take measures to address the vulnerable situation of second and subsequent wives in existing polygamic relationships. The UN Special Rapporteur on Violence against Women has emphasized the need to instruct religious leaders only to conduct religious wedding ceremonies if they are presented with certificates demonstrating that marriages have already been officially registered.

### ***Practices that run contrary to the best interests of children***

The experience of the legal aid clinics shows that some practices applied by Tajik authorities in the area of family-marital relations are not consistent with their obligation to safeguard the best interests of children.

In cases when men work as labor migrants abroad, some courts have refused to consider legal suits concerning divorce and child alimony on the grounds that the respondents dwell outside the territory of Tajikistan. By law it is not a requirement for the consideration of legal suits that the respondents are present at their permanent addresses. Moreover, in cases relating to alimony of minors, courts are obliged – on their own initiative – to take measures to locate the respondents if necessary.

In a current practice applied by border officials, a parent who is traveling abroad with one or several under-age children is required to present a notarized approval from the other parent. The rationale behind this practice, which can continue to exist due to vague wording of relevant legislation, is to protect children from being deprived of contact to one parent, trafficking etc. However, in reality, it gives rise to problematic situations that run counter to the interests of children. For example, in cases when fathers are working abroad as labor migrants and it is impossible to obtain the required approval from them, children cannot travel abroad with their mothers.

While noting that the principle of the best interest of the child has been partly integrated into Tajik legislation, the UN Committee on the Rights of the Child has called on the Tajik authorities take measures to ensure that this principle is reflected in all legislation relating to children and that it is upheld in practice in administrative and court decisions.

### ***Family courts and the importance of mediation***

As part of an ongoing judicial reform in Tajikistan, steps have been taken toward the introduction of specialized courts to deal with family matters. This is a welcome development, which is likely to improve the protection of rights in this area. However, it would be important that such courts were established at all levels and that a broad approach be adopted with regard to their work as different issues often intersect when it comes to family-marital relations (e.g. divorce issues are closely related to issues relating to the division of property, care and support of children etc.).

It would also be essential that mediation was used as an alternative tool in family-marital matters. The work of the legal aid clinics show that many family conflicts of the kind that are brought to their attention could be solved through mediation and would not need to end up in court, as is now often the case.

The legal aid clinics have successfully made use of mediation in different family conflict situations and this experience proves that it would be important to develop the availability of such services in the country. In many European countries, mediation is broadly used in family disputes, either by courts themselves or on their recommendation. A wider use of mediation in Tajikistan could help prevent the break-up of families (in particular in young families – most of those who approach the legal aid clinics on divorce issues are young people aged 19-23 who have been married less than a year) and improve relations between spouses, parents and other family members (including after a divorce). It could also help reduce the case load of courts in the area of family matters, as fewer cases of a fairly uncomplicated legal character would require court consideration. Tajik NGOs would be willing to continue to offer mediation services for free during the first phase of developing the use of mediation.

**The Human Rights Center is a non-governmental organization that was registered with the Ministry of Justice of the Republic of Tajikistan in 1997. Its mission is to contribute to the establishment of a rule of law society in Tajikistan by increasing the awareness and protection of the rights of the population in accordance with national legislation and international standards in the area of human rights. It has offices in Dushanbe, Khujand and Isfara. Its work is currently carried out within the framework of two major programs; access to justice and labor migration.**

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