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and Rule of Law**



**League of Women with Disabilities
“Ishtirok”**



United Nations Entity for Gender Equality
and the Empowerment of Women

**“Respect of the Rights and Freedoms of Persons at
Risk of Statelessness and Undocumented Persons in
Isfara, Ganchi and B.Gafurov districts
of Sugd Province”**

REPORT ON FINDINGS OF RAPID ASSESSMENT

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Abbreviations

BIA	Bodies of Internal Affairs
BLSG	Bodies of Local Self-Government
EBSP	Executive Body of State Power
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KR	Kyrgyz Republic
MIA	Ministry of Internal Affairs of the Republic of Tajikistan
MFA	Ministry of Foreign Affairs of the Republic of Tajikistan
RP	Residence Permit
RT	The Republic of Tajikistan
RU	The Republic of Uzbekistan
RF	Russian Federation
RP	Residence Permit
SCNS of the RT	State Committee of National Security of the Republic of Tajikistan
USSR	Union of Soviet Socialist Republics

Introduction

Tajikistan is one of the pilot countries of the Global Programme of the UN Women “Gender and Democratic Governance in Development – Delivering Basic Services for Women”. Overall goal of this Programme in Tajikistan is to support and facilitate state reforms aimed at improvement of delivery of services on social protection and civil registration of vulnerable groups of population at the district level. One of the priority directions of the programme is to improve policy and legal frameworks in the field of civil registration and social protection of vulnerable group and categories of population in the county with particular focus on women with disabilities, big families, migrant workers and members of their families etc.

During implementation of the project, groups of observers comprised of women identified residents of project target districts without identification documents or whose identification documents were expired or not valid, facts of lack of identification documents of children, individuals with identification documents that belong to the state (USSR) which does not exist for more than 20 years. Many of these individuals applied to local bodies of self-government and other public bodies for assistance, but with no results. Certain group of residents of target districts continues to live in the country and do not bother about legitimacy of their documents and at risk of expulsion for violation of residence rules.

It was decided to conduct a rapid assessment in target districts to study the nature of this problem and its impact on lives of these groups of people as well as develop recommendations. This report is a result of this rapid assessment.

Executive summary

In 1991 Tajikistan proclaimed its independence and became a successor of the USSR. During 1992-1997 Tajikistan went through civil war. In November 1994 independent state adopted its first Constitution by means of referenda. New political and legal status acquired by the state together with sovereignty resulted in renunciation of citizenship of the former USSR and acquisition of citizenship of the new independent state of Tajikistan. Difficult process of establishment of statehood, return of population upon signature of peace agreement in 1997 already after adoption of new Constitution in 1994, demarcation of borders, migration and other factors contributed to appearance of new category of individuals – “stateless persons” and persons at risk statelessness.

The definition “risk of statelessness” is rather rarely used in legal practice and its relevance is often questioned by the public bodies. The 1954 Convention relating to the Status of Stateless Persons establishes that *“stateless persons means a person who is not considered as a national by any State under the operation of its law.”*¹ The Constitutional Law of the Republic of Tajikistan “On Nationality of the Republic of Tajikistan” established that *“Stateless person is a person who is not a national of the Republic of Tajikistan and has no evidences of being a national of other state”*.

Research group is not aware of any research aimed at identification of number and distribution of population at risk of statelessness in Tajikistan. Today we can only use the data of the 2010 Census of Population and Housing fund of the Republic of Tajikistan. Statistics Agency under the President of the Republic of Tajikistan says about 1364 stateless persons including 649 women: 400 of them are above 18 years of age.²

These are the persons who were not able to identify their nationality during population census. However, these data are not personalized, because collection of data during population census is conducted through survey without use of identification documents of a person to the date of population census. In the future, these data cannot be updated and used to analyse the number

¹ The Convention relating to the Status of Stateless Persons, article 1(1)

² The 2010 Census of the Population and Housing Fund of the Republic of Tajikistan. Statistics Agency under the President of Tajikistan.

of stateless persons, causes of statelessness, socio-economic profile of stateless persons or protection issues that they face.

Official statistics demonstrate that currently in the Republic of Tajikistan 312 stateless persons, who have a permit to reside in the Republic of Tajikistan, are registered³. These are citizens who are officially registered as stateless persons in public bodies. It was not possible to obtain information on number of women - stateless persons.⁴

This study focuses on persons – residents of three target districts, who are not officially registered as stateless persons, but who due to their actual situation are at high risk of entering the number of stateless persons. These persons, in fact, are not able to exercise rights provided to stateless persons by minimum standards of international law due to various factors such as lack of valid documents, illegal entry and residence and so on.

Goal, methodology

Goal of this rapid assessment is to analyse situation of persons at risk of statelessness residing in B. Gafurov, Isfara and Ganchi districts of Sogd province from perspective of public, civil, political and economic situations and determine main provisions of the legislation on access to nationality for purpose of identification of constraints of its acquisition.

This study was conducted in the framework of the Programme of the UN Women “Gender and Democratic Governance in Development – Delivering Basic Services for Women” and included the following:

- ✓ Analysis of the legislation on access to nationality;
- ✓ Analysis of the institutional basis on access to nationality;
- ✓ Review of findings of studies conducted previously;
- ✓ Semi-structured interviews with target groups.

Study was conducted from 21 August to 25 September 2013 in Isfara district (four djamoats), Ganchi (4 djamoats) and B. Gafurov. Research group consisted of personnel of the Bureau on Human Rights and Rule of Law and public organisations «Khurshedi Zindagi», «Nakhli Umed» and «Madad».

As the problem is sensitive research group did not conduct large-scale interviewing among all the population of target districts. Sampling of respondents was defined based on preliminary data derived from household round. Observers from among monitors have identified earlier these djamoats as most susceptible to the phenomenon “risk of statelessness”. Thus, according to data provided by monitors 69 persons including 49 women were surveyed. During survey research group faced facts of refusal of respondents to provide interview.

Research group did not aim to conduct interviews with public servants and representatives of law enforcement bodies responsible for registration of population to examine their opinion on this situation.

CHAPTER I. ANALYSIS OF THE LEGISLATION

Purpose of the analysis of the international provisions and national legislation of the Republic of Tajikistan on nationality is to identify legal foundation of the right to nationality, grounds for acquisition and loss of nationality, procedure of acquisition of nationality, responsibility for violation of the legislation.

1.1. Right to nationality

Article 15 of the Universal Declaration of Human Rights of 1948 states that: “*Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or the right to change*”

³ Data of the passport and registration service of the Ministry of Internal Affairs of the Republic of Tajikistan

⁴ N. Shirinbekova, “Risks of Statelessness in the Republic of Tajikistan”, Analytical brief, 2013.

his nationality.”

Article 15 of the Constitution of the Republic of Tajikistan establishes that procedure of acquisition and loss of nationality is determined by the Constitutional Law of the RT “On Nationality of the RT”.

Article 1 of the Constitutional Law of the RT “On Nationality of the Republic of Tajikistan” specifies: *“Right to nationality is an inalienable right of a human being. No one shall be deprived of nationality or right to change nationality”*.

In the Republic of Tajikistan nationality of the Republic of Tajikistan is established. The Republic of Tajikistan encourages acquisition of the nationality of the Republic of Tajikistan by stateless persons⁵, and does not prevent them to acquire other nationality⁶. Individuals who reside in the territory of the RT, but are not the nationals of the RT enjoy all the rights and freedoms as well as bear all duties established by the Constitution, laws and intergovernmental treaties of the Republic of Tajikistan except for restrictions posed by the Constitution, laws and intergovernmental treaties of the Republic of Tajikistan.⁷

1.2. Grounds for acquisition of the nationality of the Republic of Tajikistan

The Constitution of the Republic of Tajikistan establishes principal provisions on acquisition of nationality of the RT. According to the article 15 of the Constitution of the RT: *“National of Tajikistan is an individual who is a national of the Republic of Tajikistan on the day of adoption of the Constitution. Allegiance of the nationals of Tajikistan to nationality of other states is prohibited except for cases provided by the law and intergovernmental treaties of Tajikistan”*.

Documents confirming nationality of the Republic of Tajikistan are passport of the Republic of Tajikistan and birth certificate prior to its receipt or any other document indicating nationality of an individual⁸.

Grounds, conditions and procedure of acquisition and termination of nationality of the Republic of Tajikistan are governed by the Constitutional Law of the RT “On nationality”, Law of the Republic of Tajikistan “On Foreign Nationals”, Regulation “On procedure of consideration of issues on nationality of the Republic of Tajikistan” and other legislation.

According to the article 15 of the Constitutional Law of the RT “On Nationality of the RT”, nationality of the Republic of Tajikistan is acquired, as follows:

- a. by birth;
- b. by procedure of its registration;
- c. by granting nationality;
- d. by reinstatement in nationality of the Republic of Tajikistan;
- e. by means of selection of nationality (option) at the moment of change of state affiliation or other grounds established by the international treaties of the Republic of Tajikistan;
- f. On other grounds established by present law.

Regulation “On Procedure of consideration of issues on nationality of the Republic of Tajikistan” also provided that nationality can be acquired upon recognition⁹.

a. Acquisition of the nationality by birth

If both parents have different nationalities and one of them at the moment of birth of a child is a national of the Republic of Tajikistan then child is a national of the Republic of Tajikistan:

- ✓ if he was born on the territory of the Republic of Tajikistan;

⁵ Paragraph d) of the article 14 of the Law: stateless person is a person who is not a national of the Republic of Tajikistan and does not possess any evidences of nationality of other state;

⁶ The Constitutional Law of the RT “On Nationality of the Republic of Tajikistan”, article 9

⁷ Ibid, article 11

⁸ Ibid, article 13

⁹ Regulation “On Procedure of consideration of issues on nationality of the Republic of Tajikistan” adopted on 21 November 1996. № 611, p.11

- ✓ if he was born outside the Republic of Tajikistan, but parents or one of them at this moment had permanent residence in the territory of the Republic of Tajikistan.

Nationality of a child born outside the Republic of Tajikistan is defined by written consent of parents if both parents have different nationalities and one of them at the moment of birth had a nationality of the RT, but if both parents had permanent residence outside the Republic of Tajikistan¹⁰. Parents that have different nationalities upon selection of nationality of a child shall submit copy of birth certificate and written consent on selection of nationality to the bodies of internal affairs or consular office until child reaches 1 year of age.¹¹.

Child is a national of the Republic of Tajikistan regardless of place of birth if one of his parents at the moment of birth was a national of the Republic of Tajikistan and another parent was a stateless person or was not known.

Child is a national of the Republic of Tajikistan regardless of place of birth in case of establishment of paternity of a child when mother is a stateless persons and father is a national of the Republic of Tajikistan.

Child is a national of the Republic of Tajikistan if he was born in the territory of the Republic of Tajikistan when both parents are stateless persons¹².

Child is a national of the Republic of Tajikistan if he is located at the territory of the Republic of Tajikistan and his both parents are not known¹³.

b. Acquisition of the nationality by means of registration

Nationality of Tajikistan by means of registration is acquired by the following:

- a) individuals whose spouses are nationals of the Republic of Tajikistan;
- b) individuals whose at least one parent was a national of the Republic of Tajikistan at the moment of birth, but who acquired other nationality by birth within five years after reaching the age of eighteen;
- c) children of former nationals of the Republic of Tajikistan born after termination of the nationality of the Republic of Tajikistan of their parents within five years after reaching the age of eighteen¹⁴;

When acquiring nationality of the Republic of Tajikistan by means of registration the following documents shall be submitted depending on every specific case to the bodies of internal affairs or consular offices located in place of residence:

- application;
- copy of birth certificate;
- document or duly executed testimony confirming link of a spouse or relative in the direct ascending line to the nationality of the Republic of Tajikistan;
- document confirming link of parents to the nationality of the Republic of Tajikistan in the past.

If there are minor children, depending on the circumstances provided by law, the following shall also be submitted:

- copies of certificates of marriage, birth of children, a copy of the court decision on termination of parental rights;
- written consent of persons in question to change the nationality of the child, including the consent of children of 14 to 18 years of age¹⁵.

¹⁰ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 17

¹¹ Regulation "On Procedure of consideration of issues on nationality of the Republic of Tajikistan" adopted on 21 November 1996. № 611, p. 12

¹² The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 18

¹³ Ibid, article 19

¹⁴ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 21

¹⁵ Regulation "On Procedure of consideration of issues on nationality of the Republic of Tajikistan" adopted on 21 November 1996. № 611, para 13

c. Acquisition of the nationality by granting a nationality

Upon their request nationals of other countries and stateless persons may be granted nationality of the Republic of Tajikistan in accordance with the Constitutional Law of the RT "On Nationality of the RT". Decision on request of granting a nationality of the Republic of Tajikistan is adopted by the President of the Republic of Tajikistan¹⁶.

Legally capable person below eighteen years of age and not a national of the Republic of Tajikistan may request granting of the nationality of the Republic of Tajikistan, regardless of nationality, race, sex, language, religion, political beliefs, education, social status or wealth.

Common condition of granting a nationality of the Republic of Tajikistan is a permanent residence in the territory of the Republic of Tajikistan of foreign nationals and stateless persons within five continuous years immediately before application with request. For refugees, recognised thereof by the law of the Republic of Tajikistan and treaty of the Republic of Tajikistan, mentioned term can be cut by half. Period of residence in the territory of the Republic of Tajikistan shall be considered continuous if the person left the Republic of Tajikistan for study or treatment for not more than three months.

Circumstances that facilitate granting of a nationality of the Republic of Tajikistan, i.e. giving the right to reduce up to lifting requirements of the part two of this article are the following:

- a) nationality of the former USSR;
- b) adoption of a child a national of the Republic of Tajikistan;
- c) advanced achievements in the field of science, technology and culture as well as possession of a profession or qualification that are of interest of the Republic of Tajikistan;
- d) merits for the people of the Republic of Tajikistan, for the revival of the Republic of Tajikistan, for exercise of the universal values and ideals;
- e) granting of asylum in the territory of the Republic of Tajikistan;
- f) nationality of the Republic of Tajikistan acquired by birth in the past;
- j) marriage with the national of the Republic of Tajikistan for *at least three years*¹⁷.

To acquire nationality by means of granting the following documents shall be submitted:

- ✓ request addressed to the President of the Republic of Tajikistan;
- ✓ document confirming a period of residence in the territory of the Republic of Tajikistan defined by the law;
- ✓ when there are circumstances that give the right to reduce up to lifting a requirement of permanent residence documents confirming facts that facilitate granting of a nationality of the Republic of Tajikistan;
- ✓ certificate from the place of residence on composition of a family;
- ✓ pictures.

If there are minor children the following shall also be submitted:

- ✓ copies of marriage certificate, birth certificates, copy of judicial decision on withdrawal of parental rights;
- ✓ written consent of persons in questions on change of a nationality of a child including consent of children of 14 to 18 years of age.

Individuals who possess the passport of the national of the USSR and who permanently reside outside of the USSR, but not nationals of the Republic of Tajikistan shall acquire a nationality of the Republic of Tajikistan by means of granting¹⁸.

*d. Acquisition of the nationality by recognition*¹⁹

¹⁶ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 22

¹⁷ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 23

¹⁸ Regulation "On Procedure of consideration of issues on nationality of the Republic of Tajikistan" adopted on 21 November 1996. № 611, para 15

¹⁹ Ibid, para 11

Submission of application to the nationality of the RT is not required for those persons who permanently resided in the territory of the Republic of Tajikistan to the date of adoption of the Constitution of the RT and who had passport of a national of the USSR.

Passport of the Republic of Tajikistan is a document confirming nationality of the Republic of Tajikistan. The following documents confirm nationality of the Republic of Tajikistan before final date of exchange of the old passports (passport of a national of the USSR) to the passports of the national of the Republic of Tajikistan introduced by the Resolution of the Government of the Republic of Tajikistan on 05.09.96, №414 (*period of exchange is till 01 September 2001*):

- ✓ passport of a national of the USSR indicating nationality of the Republic of Tajikistan or birth certificate;
- ✓ identification card (military registration card) of the soldier indicating nationality of the Republic of Tajikistan.

Procedure of issuance of documents certifying nationality of the Republic of Tajikistan shall be established by the Ministry of Internal Affairs of the Republic of Tajikistan and Ministry of Foreign Affairs of the Republic of Tajikistan.

e. Reinstatement in the nationality of the Republic of Tajikistan

Nationality of the Republic of Tajikistan is reinstated by means of registration, as follows:

- a) individuals whose nationality of the Republic of Tajikistan was terminated due to adoption, guardianship or trusteeship;
- b) individuals whose nationality of the Republic of Tajikistan was terminated due to change of nationality of parents within five years upon reaching eighteen years of age.

Former nationals of the Republic of Tajikistan deprived of nationality or who lost it without their free will shall be considered reinstated in the nationality of the Republic of Tajikistan.

Former nationals of the Republic of Tajikistan, i.e. nationals of the former USSR residing in the territory of the Republic of Tajikistan immediately before departure for permanent residence outside the former USSR and before adoption of the Constitutional Law of the RT "On Nationality of the RT" shall be reinstated in nationality of the Republic of Tajikistan and submit to the bodies of internal affairs and consular offices located in the place of residence the following to receive the passport:

- ✓ application that explains circumstances leading to denationalisation or loss of nationality known to applicant;
- ✓ document confirming permanent residence in the territory of the Republic of Tajikistan immediately before departure outside the former USSR, notarised copy of the certificate confirming birth on the territory of the republic.

If deemed necessary, information on deprivation of nationality or loss of nationality by applicants without their free will may be requested in the Ministry of Foreign Affairs of the Republic of Tajikistan, Ministry of Internal Affairs of the Republic of Tajikistan or Ministry of Security of the Republic of Tajikistan²⁰.

1.3. Grounds for denial of nationality of the Republic of Tajikistan²¹

Request on granting a nationality of the Republic of Tajikistan shall be declined if an individual requesting it:

- a) advocated for a violent change of the constitutional order of the Republic of Tajikistan;
- B) is a member of parties and other organisations which activity is not compatible with constitutional principles of the Republic of Tajikistan;

²⁰ Regulation "On Procedure of consideration of issues on nationality of the Republic of Tajikistan" adopted on 21 November 1996. № 611, para 17

²¹ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 24

- c) is convicted and imprisoned for actions prosecuted under the laws of the Republic of Tajikistan;
- d) is a national of other state in the absence of interstate agreement on dual nationality.

1.4. Termination and loss of nationality of the Republic of Tajikistan

Nationality of the Republic of Tajikistan is terminated due to the following:

- a) renunciation of nationality;
- b) loss of nationality;
- c) annulment of a decision on granting nationality;
- d) revocation of nationality;
- e) selection of nationality (option) when state affiliation of the territory changed and on other grounds established by the international treaty of the Republic of Tajikistan;
- f) on other grounds established by the Constitutional Law of the RT "On Nationality of the RT".

1.5. Renunciation of nationality of the Republic of Tajikistan

Renunciation of nationality of the Republic of Tajikistan may take place:

- a) upon request in accordance with the procedure established by the law;
- b) upon registration if individuals willing to denationalise have at least one of the parents, spouses or child with other nationality or if individual left to other state for permanent residence according to procedure established by the law.

Request on renunciation of nationality of the Republic of Tajikistan may be declined if individual resides or plans to reside in country which is not connected with the Republic of Tajikistan by treaty obligations on legal assistance, but has property obligations towards individuals or legal entities of the Republic of Tajikistan or fails to fulfill duties towards the state.

Renunciation of the nationality of the Republic of Tajikistan prohibited:

- a) after receipt of the notice on conscription and before its end;
- b) if national requesting renunciation of nationality of the Republic of Tajikistan is brought to a criminal case as accused or in relation to him sentence entered in force and shall be enforced or if renunciation of an individual from nationality of the Republic of Tajikistan contradicts to interests of state security of the Republic of Tajikistan.

Rejection of request on renunciation of nationality of the Republic of Tajikistan or refusals to register renunciation of nationality of the Republic of Tajikistan shall be reasoned by the competent authorities²².

1.6. Loss of nationality of the Republic of Tajikistan

Nationality of the Republic of Tajikistan shall be lost, as follows:

- a) upon entry to military service, intelligence service, police, justice bodies or other bodies of state power and government of foreign state;
- b) if individuals permanently residing abroad did not register in consular office without appropriate reasons during five years.

Loss of nationality of the Republic of Tajikistan commences from the moment of registration of this fact by competent public bodies²³.

²² The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 28

²³ Ibid, article 29

1.7. Public bodies of the Republic of Tajikistan responsible for nationality matters

The following public bodies are responsible for nationality matters:

- a. The President of the Republic of Tajikistan;
- b. The Commission on Nationality under the President of the Republic of Tajikistan;
- c. The Ministry of Internal Affairs of the Republic of Tajikistan;
- d. The Ministry of Foreign Affairs of the Republic of Tajikistan, diplomatic representations and consular offices of the Republic of Tajikistan.

a. Authorities of the President of the Republic of Tajikistan on nationality matters

The President of the Republic of Tajikistan makes decisions on the following matters:

- a) granting nationality of the Republic of Tajikistan to foreign nationals, nationals of the former USSR and stateless persons;
- b) reinstatement in nationality of the Republic of Tajikistan;
- c) permission to renunciation of nationality of the Republic of Tajikistan;
- d) permission to nationals of the Republic of Tajikistan to have nationality of other state simultaneously;
- e) annulment of the decision on granting of nationality of the Republic of Tajikistan;
- f) granting honourable nationality of the Republic of Tajikistan.

The President of the Republic of Tajikistan establishes a Commission on nationality matters for preliminary consideration of nationality matters. To perform his authorities the President of the Republic of Tajikistan issues decrees²⁴.

b. Authorities of the Commission on Nationality Matters under the President of the Republic of Tajikistan²⁵

The Commission submits for consideration of the President of the Republic of Tajikistan proposals on every request and recommendation on nationality matters. Proposals of the Commission are noted down in the protocol which is signed by all members who attended the meeting.

When considering requests and recommendations on nationality matters the Commission comprehensively evaluates arguments of the applicant, substance of the recommendation, conclusion of state bodies and public organisations on requests, other documents and duly documented testimonies. The Commission has a right to request other documents and materials of state bodies on the matter under its consideration.

c. Authorities of the Ministry of Internal Affairs of the Republic of Tajikistan

The Ministry of internal affairs of the Republic of Tajikistan and its subordinate bodies in the framework of the competence provided to them:

- a) receive applications and requests on nationality of the Republic of Tajikistan from individuals residing in the territory of the RT;
- b) verify facts and documents provided for reasoning applications and requires on matters nationality of the Republic of Tajikistan;
- c) submit requests on nationality together with respective documents to the Commission on Nationality Matters under the President of the Republic of Tajikistan;
- d) identify affiliation of persons residing in the territory of the RT to the nationality of the Republic of Tajikistan;
- e) upon applications of interested persons residing in the territory of the Republic of Tajikistan register acquisition or termination of nationality of the Republic of Tajikistan in accordance with cases established by the law.

²⁴ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 39

²⁵ Ibid, article 40

Distribution of authorities on nationality of the Republic of Tajikistan within the system of the bodies of internal affairs of the Republic of Tajikistan is established by the Resolution of the Government of the Republic of Tajikistan²⁶.

d. Authorities of the Ministry of Foreign Affairs of the Republic of Tajikistan, diplomatic representations and consular offices of the Republic of Tajikistan

The Ministry of Foreign Affairs of the Republic of Tajikistan, diplomatic representations and consular offices of the Republic of Tajikistan:

- a) receive applications and requests on nationality of the Republic of Tajikistan from individuals residing outside the Republic of Tajikistan;
- b) verify facts and documents submitted for reasoning of applications and requests on nationality of the Republic of Tajikistan;
- c) submit requests on nationality together with respective documents to the Commission on nationality matters under the President of the Republic of Tajikistan;
- d) identify affiliation of individuals residing outside the Republic of Tajikistan to the nationality of the Republic of Tajikistan;
- e) register nationals of the Republic of Tajikistan residing permanently outside the Republic of Tajikistan;
- f) upon applications of interested persons residing outside the Republic of Tajikistan register acquisition or termination of nationality of the Republic of Tajikistan.

These authorities may also be executed by the diplomatic representations and consular offices of other state upon agreement between the Republic of Tajikistan and this state²⁷.

1.8. Procedure on nationality matters in the Republic of Tajikistan

Applications and requests on nationality matters are submitted by legally capable individuals.²⁸ Processing of acquisition or termination of the nationality of the Republic of Tajikistan starts from the place of residence of the applicant for individuals residing in the territory of the Republic of Tajikistan in the bodies of internal affairs of the Republic of Tajikistan (BIA) and for individuals residing outside Tajikistan in respective diplomatic representations or consular offices of the Republic of Tajikistan.

Application is submitted when acquisition or termination of nationality of the Republic of Tajikistan is processed by means of registration (simplified procedure). **Request** is submitted in all cases which do not fall under procedure of registration. Application or request is accepted for consideration from the date of submission of all required and duly prepared documents as prescribed by the legislation of the Republic of Tajikistan²⁹. Templates of application and requests are established by the MIA of the RT and MFA of the RT.

Requests of individuals residing in the territory of the Republic of Tajikistan and other required documents along with conclusions of territorial bodies of the SCNS, BIA at the local level are submitted by the departments of internal affairs of GBAO, provinces, Dushanbe city to the MIA of the RT which submits all the materials along with its conclusion to the Commission and SCNS of the RT which provides its conclusion directly to the Commission.³⁰

Period of review of applications and requests by the bodies of internal affairs at the local levels and territorial bodies of the SCNS of the RT, MIA of the RT, consular offices and NFA of the RT shall not exceed one month in every of these bodies³¹.

²⁶ Ibid, article 41

²⁷ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 42

²⁸ Regulation "On Procedure of consideration of issues on nationality of the Republic of Tajikistan" adopted on 21 November 1996. № 611, para 1

²⁹ Ibid, para 6

³⁰ Ibid, para 8

³¹ Ibid, para 9

1.9. Procedure of applications and petitions to nationality of the Republic of Tajikistan

Application on registration of change in nationality is submitted to the bodies of internal affairs of the Republic of Tajikistan located at the place of residence of the application and to the respective diplomatic representations and consular offices of the Republic of Tajikistan by individuals residing outside the Republic of Tajikistan.

Requests on nationality matters addressed to the President of the Republic of Tajikistan are submitted via bodies of internal affairs located at the place of residence by the applicant and diplomatic representations and consular offices of the Republic of Tajikistan by individuals residing outside the Republic of Tajikistan³².

1.10. Template of applications and petitions on matters of nationality of the Republic of Tajikistan

Applications and requests on nationality matters shall be submitted in writing. Consent of interested individuals on acquisition, termination, retention or change of nationality shall be in writing. Signature under this document shall be notarised. Signatures of nationals of the Republic of Tajikistan residing abroad may be notarised by diplomatic representations or consular offices of the Republic of Tajikistan.

If applicant is not able to sign application or request due to illiteracy or his physical disabilities, it is signed by other person upon request of applicant. Respective notary record is made about this. Outside the Republic of Tajikistan this signature in application or request is done by diplomatic representations or consular offices of the Republic of Tajikistan³³.

1.11. Procedure of processing of applications and petitions on nationality of the Republic of Tajikistan

Processing of application or request on nationality of the Republic of Tajikistan is conducted by the bodies of internal affairs of the Republic of Tajikistan located at the place of resident upon personal application of application and by diplomatic representations or consular offices of the Republic of Tajikistan if applicant resides outside the Republic of Tajikistan.

When there are duly prepared documents certifying that personal application of applicant is not possible bodies of internal affairs, diplomatic representation or consular office of the Republic of Tajikistan have to process materials on nationality upon application or request submitted by other persons or by post. In this case signature of application or request shall be notarised.

Duty shall be paid at the moment of submission of application or request on nationality of the Republic of Tajikistan. Amount of duty is established by the law of the Republic of Tajikistan. *Poor individuals are fully or partially exempt of duty in accordance with the procedure established by the law of the Republic of Tajikistan*³⁴.

1.12. Dual nationality

Holding nationality of other state by the national of Tajikistan is prohibited except for cases established by the law and interstate treaties of Tajikistan.

Issues of dual nationality are governed by special agreements. Article 4 of the Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan" establishes that: *"Holding of nationality of other state by nationals of Tajikistan is prohibited except for cases established by the law and interstate treaties of Tajikistan"*.

³² The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 43

³³ Ibid, para 44

³⁴ Ibid, article 45

Tajikistan has an agreement on dual nationality only with Russian Federation³⁵. Tajikistan and Russian Federation recognise the right of their nationals to acquire nationality of the other country and retain their own nationality. Nationality of Russian Federation by a national of Tajikistan is acquired by free will of a national in accordance with conditions and procedure established by the legislation of the country which nationality shall be acquired.

Agreement on simplified procedure of acquisition of nationality was concluded between the Republic of Tajikistan and Kyrgyz Republic on 26 May 2006. According to the provisions of this Agreement each country shall provide to the nationals of the other country arriving for permanent residence a right to acquire nationality in simplified manner when applicant's at least one of the close relatives: spouses, one of the parents (adopters), child (including adopted child), sister, brother, grandparents, grandchildren permanently resides on lawful basis in the territory of the country which nationality is acquired and is a national of this country.

Individuals applied for acquisition of nationality retain previous nationality before adoption of positive decision on granting nationality of the other country.

There is no agreement on dual nationality or agreement on simplified procedure of acquisition of nationality between the Republic of Tajikistan and Republic of Uzbekistan.

1.13. Identification documents

Passport of the national of the Republic of Tajikistan is a document confirming nationality of the Republic of Tajikistan. Before its receipt it is a birth certificate or other document indicating nationality of an individual³⁶. Passport of a national of the Republic of Tajikistan is a principle document confirming identify of a national of the Republic of Tajikistan. It is valid for entry, exit and movement in the territory of the countries of Commonwealth of Independent States. All nationals of the Republic of Tajikistan who reached 16 years of age shall have a passport of a national of the Republic of Tajikistan.

Nationals of the Republic of Tajikistan shall deliver passports to the bodies of internal affairs upon renunciation of nationality and loss of nationality of the Republic of Tajikistan³⁷.

State registration of birth³⁸ is conducted by the body of civil registration located in the place of residence of parents (one of the parents) upon which birth certificate is issued.

Residence permit and certificate of stateless person are the documents identifying legal status of stateless persons and granting a right to reside in the Republic of Tajikistan. Residence permits of foreign nationals, stateless persons and certificate of stateless persons are issued by the passport and registration service of the Ministry of Internal Affairs of the Republic of Tajikistan and its departments at the local level.

Permit on residence in the Republic of Tajikistan is a document of strict reporting confirming identity of a foreign national or a stateless person and granting a right for permanent residence in the Republic of Tajikistan. It is valid only in the territory of the Republic of Tajikistan. Certificate of stateless person (hereafter, certificate) is a document of strict reporting confirming identity of its owner outside the Republic of Tajikistan. It is issued to a stateless person who has residence permit in the Republic of Tajikistan for exit from the Republic of Tajikistan.

Residence permits and certificates are issued to individuals above 16 years of age. Information about members of families below 16 years of age if they are not nationals of the Republic of Tajikistan is introduced to the residence permit of both parents and certificate of stateless person of one of the parents. Residence permit is issued to foreign nationals and stateless persons who received in accordance with established procedure a permit for permanent

³⁵ Agreement between the Russian Federation and the Republic of Tajikistan on regulation of dual nationality adopted on 7 September 1995

³⁶ The Constitutional Law of the Republic of Tajikistan "On Nationality of the Republic of Tajikistan", article 13

³⁷ Regulation on passport system of the Republic of Tajikistan adopted on 15 July 1997 № 302 as amended by the Resolution of the Government of the RT on or 16.10.1998 № 414;

³⁸ The Law of the RT "On state registration of civil status" adopted on 31.12.2008 №483

residence, i.e. to individuals who returned to the Republic of Tajikistan and their nationality in accordance with the legislation was terminated.

CHAPTER II. FINDINGS OF THE ASSESSMENT

2.1. General information on respondents

60 individuals – residents of the B. Gafurov, Isfara and Ganchi districts of Sogd province were surveyed during rapid assessment. There were 20 men and 49 women.

Majority of respondents were people who lived in cross-border djamoats of target districts. IN majority of cases respondents and members of their families have nationality of the Republic of Tajikistan. There were respondents who due to various reasons in 90-es acquired nationality of the Republic of Uzbekistan, but lived and continue living in the Republic of Tajikistan with their families.

«...Respondent A. went to the RU to work, acquired residence permit of the RU, after dismissal he returned to his family to Ganchi district ...».

Place of birth of respondents: the Republic of Tajikistan, the Republic of Uzbekistan, Kyrgyz Republic and the Republic of Turkmenistan (See. diagram):

Diagram № 1. Ethnicity of respondents

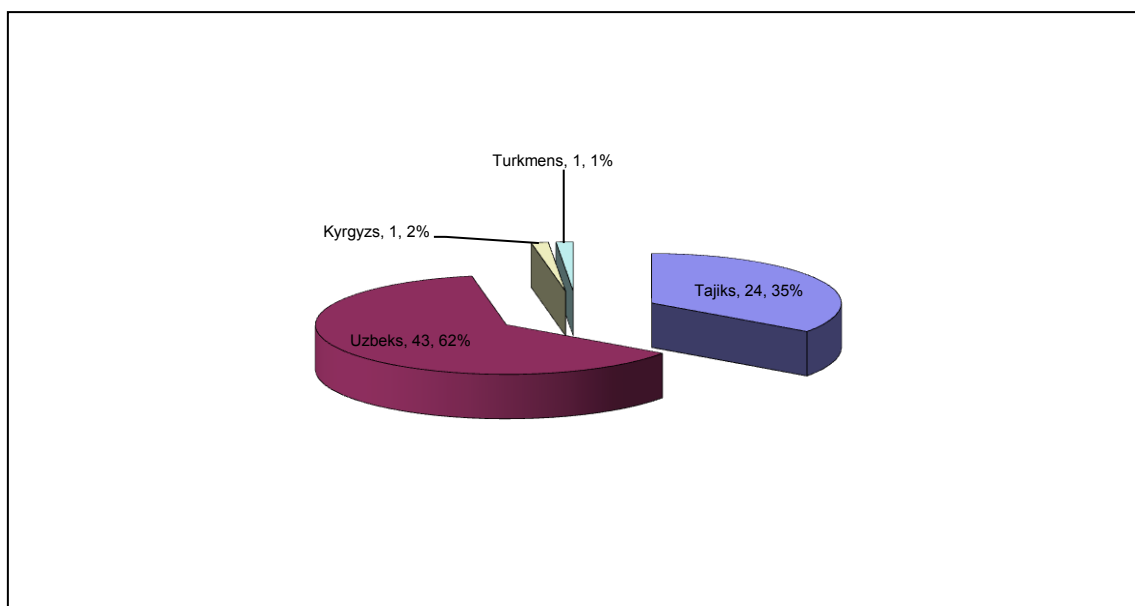
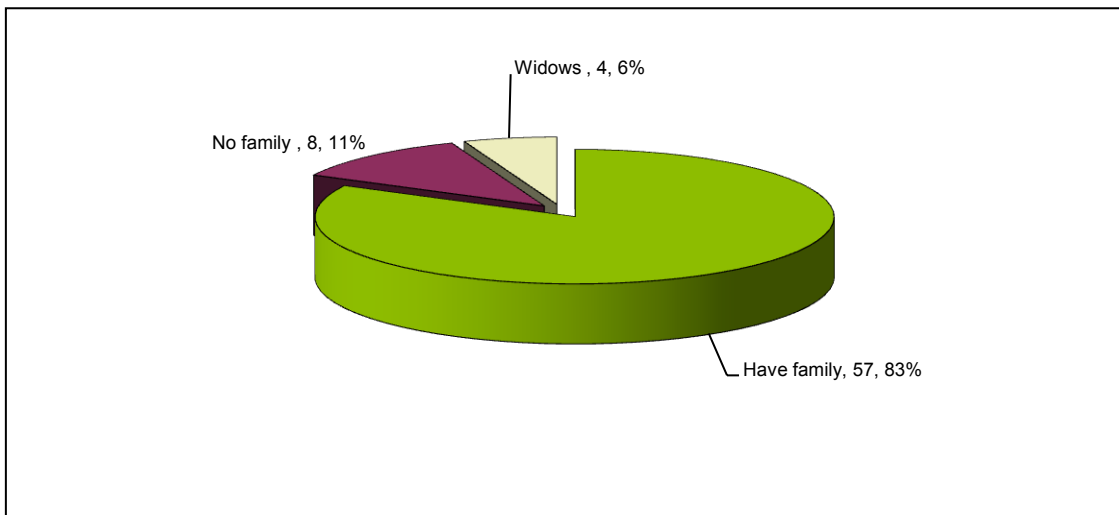


Diagram № 2. Family status of respondents



In 56 cases out of 57 respondents marriage was registered in the office of registration of civil status (ORCS). In 38 cases marriage was registered in the Republic of Tajikistan. In five cases marriage was registered in the Republic of Uzbekistan. Other respondents (13 respondents) did not name place of registration of marriage.

In 56 cases spouses were nationals of the RT, in 4 cases spouses were nationals of the RU and in 1 case spouse was a national of the KR. In 42 cases children in these families were born in the RT, in 8 cases children were born in the RU and respectively had birth certificates issued in the RU.

During interviews several respondents did not provide responses on certain questions aimed at identification of their legal status, nationality, grounds and procedure of entry to the Republic of Tajikistan and so on. The data which existed demonstrated that majority of respondents were nationals of the Republic of Uzbekistan. These are the individuals who due to various reasons reside in assessed districts in contradiction with rules of crossing the border and residence rules in Tajikistan.³⁹

Thus, according to analysis of questionnaires the following groups of population were revealed:

- *Cross-border wives and husbands.* This category of respondents who before collapse of the USSE and after independence of the RT concluded marriage with nationals of the RT and for many years live with their families in target districts. These individuals due to various reasons (which will be described below) do not have a nationality of the RT. Some of them were deported to the RU for violation of rules of residence;
- *Nationals – owners of passports of the USSR,* who did not yet exchange Soviet passport to national passports of the RT;
- *Nationals of the RT whose identity documents are birth certificates.* Since 1992 to 1994 passports were not issued due to lack of blanks. These individuals have currently birth certificates;
- *Individuals with unidentified nationality.* Born in Tajikistan these individuals left to the RU due to a number of reasons (work, study, temporary residence). Expired residence permit in the RT is their identification document;
- *Nationals,* who didn't receive passports upon reaching majority age. Mainly, these are children of individuals who do not have required identification documents;
- *Children,* who do not have birth certificates;
- *Foreign nationals, mainly nationals of the Republic of Uzbekistan,* whose families reside in Tajikistan. This category of nationals would like to acquire nationality of Tajikistan for the purpose of family reunification.

³⁹ Rules of residence, procedure of application to nationality are described in details in the chapter "Analysis of the legislation"

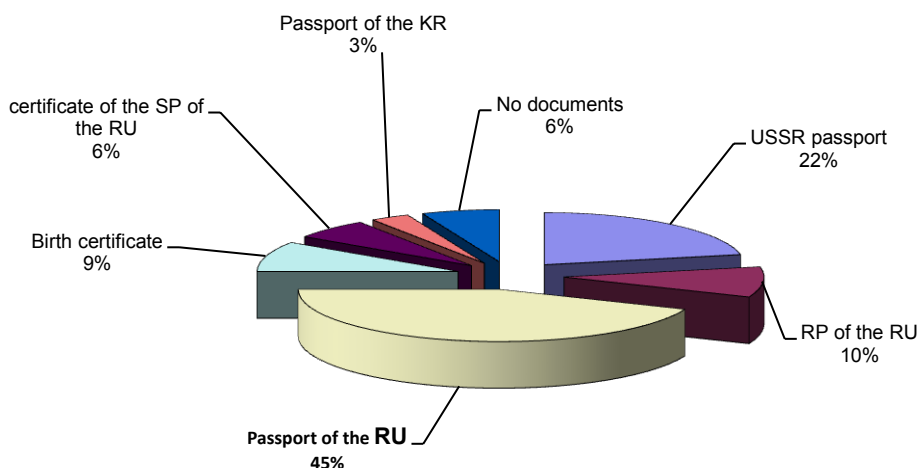
Mentioned groups lived for many years in Ganchi, Isfara and B. Gafurov districts and their access to nationality of Tajikistan is unequal. It depends on to which category of population they belong, their legal status and length of residence in the RT.

2.2. Legal status

Nationals of Tajikistan who were able to prove their civil identity with the RT had to exchange their passports of the USSR to passports of the national of the Republic of Tajikistan until 1 September 2001⁴⁰. Documents confirming nationality of the Republic of Tajikistan were passports of national of the USSR indicating nationality of the Republic of Tajikistan or birth certificate, certificate (military certificate) of soldier indicating nationality of the Republic of Tajikistan.

Nevertheless, during survey individuals who owned Soviet passport were identified. Respondents explained that Soviet passports were taken by the district militia officers and instead new passports of the Republic of Tajikistan were promised, but afterwards it was not done. Thus, they remained with identification documents.

Diagram № 3. Availability of identification of documents



A) Resident of the Ganchi district submitted her passport by sample of 1974 (USSR) to district militia officer in 1996. In that time passports of all nationals were collected. A new passport to replace the old has not been issued, and thus she remained with no identification documents. She was fined several times for lack of documents. Therefore she fears to apply to state bodies for assistance. Currently, she has only birth certificate issued in the RU as the identification document.

B) Resident of Isfara, born in 1976, received a certificate (form 9 attached to paragraph 33 of the Instruction) instead of passport due to lack of blanks in 1995. This certificate is of unlimited validity. Besides, stamp confirming registration of marriage was put into this certificate.

From interview: I would really like to receive passport of the Republic of Tajikistan. Thus far we were unaware that passport is required for life of every person, therefore we didn't apply. When I faced life obstacles due to lack of passport I collected required documents and applied to passport office. This is only my lack of responsibility.

B) Respondent B. worked in the plant in the Republic of Uzbekistan. When plant was closed, he returned to Tajikistan where he still can't receive a passport of the national of the Republic of Tajikistan. According to respondent, his family does not have financial means for receipt of visa

⁴⁰ Resolution of the RT adopted on 05.09.96., №414

and processing of registration in the place of residence. For many respondents these costs resulted in their illegal residence in the RT.

Findings of survey demonstrate that in almost all cases identification documents of respondents expired and were void. Majority of respondents have passports of other state mostly of the Republic of Uzbekistan.

2.3. Reasons leading to appearance of the group of persons at risk of statelessness and undocumented persons.

The main reasons of this situation are the following:

- Residents of cross-border target districts often worked in cities and districts of Uzbekistan. After collapse of the USSR working and permanently residing nationals of the USSR (in this case in Tajikistan) received “residence permit” in the Republic of Uzbekistan. Upon completion of work/dismissal they returned to their families in the Republic of Tajikistan, but didn’t terminate registration in the Republic of Uzbekistan. Thus, they were not registered in the BIA of the Republic of Tajikistan on their main place of residence and their identification document was “residence permit in the RU” which often was expired.
- Visa regime between the RT and the RU establishes special procedure of crossing the border. However, many residents of cross-border districts do not respect these procedures because for many years they lived as one community without borders using communications between villages. After independence and introduction of visa regime between the RU and the RT the definition of illegal border crossing emerged. But population for many years continued to live with their families in cross-border districts of the Republic of Tajikistan due to legal illiteracy, nihilism, lack of financial means to apply for visa, complicated system of registration and acquisition of nationality.
- Legal illiteracy and connivance of nationals and public bodies is one of the reasons of this situation. This issue is particularly acute for population of remote districts, djamoats and villages. Residents do not have access to legislation, they are not informed about procedure of acquisition of nationality, they do not have access to consulting information. People didn’t understand and accept emerged borders and visa systems which divide two countries as they lived for many years in cross-border districts of two countries and established families. Special nature of affinity within community which was divided by state borders shall be noted.
- Lack of agreement and good neighbourhood relations between the Republic of Uzbekistan and the Republic of Tajikistan has led to the fact that on both sides of the border a category of the population resides with no status, nationality and they are forced to live illegally under threat of prosecution.
- Tajikistan prohibits dual nationality. However, the practice of receipt of evidences from other state that national is not its national is very complicated for a number of reasons (lack of representations of states, state does not respond on inquiries and so on). Besides, there is no guarantee that a person who denied his nationality will acquire Tajik nationality.

2.4. Application to public bodies to acquire nationality of the Republic of Tajikistan.

Several respondents noted cases of application to public bodies to acquire nationality. However, afterwards individuals were expelled from the territory of Tajikistan as a result of their application. The facts that they lived in the Republic of Tajikistan for last 15-20 years, had families, family ties, housing, were not taken into account.

A) Respondent A. lives with his family in one of the djamoats of the Ganchi district of Sogd province since nineties. He worked in the plant in Uzbekistan for certain time and after collapse of the USSR he received the passport of the RU at the main place of residence. After closure of plant he returned to his family in Tajikistan. Currently he lives in one of the villages of the Ganchi district.

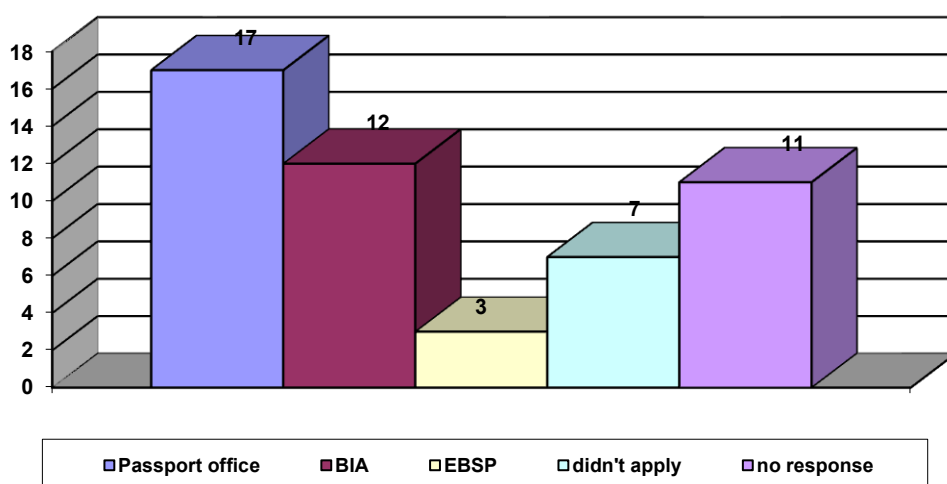
He can't apply to public bodies because he resides in the territory of the RY illegally (illegal border crossing and expired passport) and he can't returned to the RU for the same reasons. According to respondents he can't be an entrepreneur, work in public bodies, leave to labour migration and so on. He lives with constant fear of criminal and administrative prosecution and separation with family.

B) Respondent B. was born in the RT. Since 1996 to 2010 he resided in the RU where he received residence permit in the RU. Since 2011 he resides in the RT in Ganchi district of Sogd province. Respondent was arrested by officials of law enforcement bodies, however, after payment of money he was released. According to respondent after this arrest his health has deteriorated significantly, he had stroke.

C) Parents of respondent V. are nationals of the RT. Since 2005 he resides with them in the RT. As to identification documents he has birth certificate issued in the RU. Upon reached the age when he had to receive passport he did not apply to respective public bodies in fear of expulsion or fine.

51 out of 69 respondents said that they would like to acquire nationality of the Republic of Tajikistan. However, 31 respondents noted that they inquired verbally about acquisition of nationality. 17 respondents applied to Passport office located in the place of residence, 12 respondents applied to BIA, three respondents applied to executive body of state power (EBSP). 7 respondents said that they did not apply as they feared of being expelled and separated from family or prosecuted. 11 respondents did not respond to this question.

Diagram 4. Application to public bodies to acquire nationality



At the same time 18 respondents mentioned that they were denied to acquire nationality, four respondents were brought to administrative responsibility. In one case respondent was expelled from the territory of the Republic of Tajikistan. In two cases, respondents indicated that based on their application a request has been submitted to the Republic of Uzbekistan. Verbal

applications of respondents were left without consideration by local self-government bodies and public bodies.

The Constitutional Law of the Republic of Tajikistan “On Nationality of the Republic of Tajikistan” requires submission of written applications and requests on nationality⁴¹. None of the respondents submitted a written application and all set of documents as prescribed by the Regulation “On procedure of consideration of nationality matters in the Republic of Tajikistan” adopted on 21 November 1996 № 611. Failure to comply with established procedure results in refusal of receipt of applications for review.

2.5. Entry from and exit to the Republic of Tajikistan

According to survey in 8 cases respondents entered the Republic of Tajikistan on the basis of visa. In 24 cases out of 69 surveyed entry was done without visa. In 20 cases respondents mentioned that entry was done during times of the USSR, but 8 respondents noted that visa system was not yet in place. In 29 cases respondents mentioned that family reunification, establishment of family and other family circumstances were the reasons of entry to the Republic of Tajikistan.

In 4 cases respondents mentioned expulsion from the Republic of Uzbekistan as a reason of entry to the Republic of Tajikistan. On 1 case acquisition of nationality of the RT was the reason of entry.

A) Respondent A. Is a national of the RU. In 2009 she married and moved to house of husband in the RT, however, entry was done without visa. Each time representatives of militia demanded money from family arguing that she resides in the RT illegally. Due to these problems her family split and woman now lives with her relatives in Tajikistan. She lives with constant fear of prosecution or expulsion.

B) Respondent V. is a national of the RU. Since 1984 she resides in Isfara of Sogd province together with her family. Every six months she extends her visa and for this purpose she applies to the Embassy of the RU in the RT. Every six months she registers in the BIA of Isfara. This requires significant financial resources. Collection of documents raises particular difficulties. Her application for nationality is under consideration for more than three years. According to respondent, she is in desperate situation. Her only home is to address the President of the RT directly.

Foreign nationals having foreign passports or documents that replace them may enter to the Republic of Tajikistan upon receipt of entry visa issued by the MFA of the RT, diplomatic representations or consular offices of the Republic of Tajikistan abroad unless otherwise established by an international agreement of the Republic of Tajikistan⁴².

Foreign nationals residing in the Republic of Tajikistan reside temporarily. They have to register their foreign passports or documents replacing them within 3 days upon entry in accordance with established procedure and leave the Republic of Tajikistan upon expiration of certain period⁴³.

Foreign nationals having foreign passports or documents replacing them and exit visas issued by the Ministry of Foreign Affairs of the Republic of Tajikistan exit the Republic of Tajikistan unless otherwise established by an international agreement of the Republic of Tajikistan⁴⁴.

In almost all cases respondents who had passports of the Republic of Uzbekistan violated rules of entry/exit and residence in the Republic of Tajikistan for various reasons. Administrative and criminal measures may be imposed on foreign nationals for violation of residence rules in the

⁴¹ More details on format and procedure of application for acquisition of nationality can be found in the chapter “Analysis of the legislation”.

⁴² The Law of the RT “On Legal Status of Foreign Nationals of the Republic of Tajikistan” adopted on 1 February 1996, article 24

⁴³ Ibid., article 5

⁴⁴ Ibid., article 25

Republic of Tajikistan, i.e. residence without residence permit in the Republic of Tajikistan or residence on void documents, failure to respect established procedure of registration or propiska, or movement and selection of place of residence, failure to exit upon expiration of certain period of their stay as well as failure to comply with the rules of transit via territory of the Republic of Tajikistan⁴⁵.

2.6. Right to housing

According to findings of the survey 21 respondents faced difficulties with access to housing and in 14 cases lack of nationality of the Republic of Tajikistan was mentioned as a reason of difficulty. As a rule, individuals who did not have documents are recorded in housing books of djamoats, thus, provide them with access to some services. This situation mitigates their conditions.

According to legislation of the Republic of Tajikistan contracts shall be concluded and transaction shall be registered when buying property and registering right to use dwelling. Besides, when applying to public bodies to access housing the document certifying identity of a applicant shall be submitted. After the independence of the country respondents who are nationals of the RU and who didn't receive passport of the RT can't apply to respective bodies, organisations and institutions to get house. In any case, issue of legitimacy of their residence in the territory of the RT will be raised during application regardless of the length of their residence in Tajikistan. Lack of passport of the RT and their illegal residence in the territory of the RT in accordance with the law hinder exercise of this right.

2.7. Right to health

In 68 cases out of 69 respondents mentioned that they have access to state primary health care and preventive assistance, emergency health care, reproductive health services and family planning, vaccination and treatment of chronic diseases. In 5 cases respondents mentioned that they were disabled, but due to lack of passport they are not able to apply officially to identify the degree of disability and receive pension.

A) Respondent A. has a passport of the USSR. According to her, she did not attach any importance to obtaining a passport of Tajikistan. She is sick with epilepsy, but lack of passport does not give her an opportunity to register disability and receive pension. She cannot work due to her illness.

B) Respondent V. was born in the RU, she married and moved to her husband to Tajikistan. Thus, she resides in the RT since 1964 and has 6 children. She has no any identification documents. Actually she is a disabled person, but she can't register her disability and receive pension due to lack of documents.

Foreign nationals and stateless persons residing in the Republic of Tajikistan have a right to health. Foreign nationals permanently residing in the Republic of Tajikistan use health care on equal basis with nationals of the Republic of Tajikistan.

The Constitution of the Republic of Tajikistan guarantee right of everyone (nationals, foreign nationals, stateless persons) to health. In the framework of certain laws everyone uses free health care in public health care institutions.

International Covenant on social, economic and cultural rights provides: *Международный Пакт о социальных, экономических и культурных правах закрепляет: "Parties to the present Covenant recognize the right of everyone to the highest attainable standard of physical and mental health."*

⁴⁵ Ibid., article 29

Measures that should be taken by the States Parties to the full realization of this right shall include those necessary for:

- a) ensure the reduction of the stillbirth and infant mortality and healthy development of the child;
- b) The improvement of all aspects of environmental health and industrial hygiene;
- c) The prevention and treatment of epidemic, endemic, occupational and other diseases with them;
- d) The creation of conditions which would assure to all medical service and medical attention in the event of illness⁴⁶.

The Law of the Republic of Tajikistan “On Protection of Health of Population” establishes: “Foreign nationals, stateless persons and refugees in the territory of the Republic of Tajikistan in the field of protection of health enjoy rights and bear responsibilities in accordance with the legislation of the Republic of Tajikistan” (article 32).

The Law of the Republic of Tajikistan on fight with Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome covers nationals of the Republic of Tajikistan, foreign nationals, refugees, displaced persons and stateless persons.

2.8. Right to education

59 respondents said that their children had access to free primary education in general schools. Only in one case respondent said that child did not have access to primary education due to lack of birth certificate.

In 8 cases respondents noted that they did not have access to higher education and in 6 cases it was linked with lack of nationality.

The state guarantees general principal compulsory free education in public educational institutions⁴⁷. In accordance with Article 13 of the ICESCR States shall recognise right of every human being to education.

Foreign nationals in the Republic of Tajikistan have a right to education on equal basis with nationals of the Republic of Tajikistan in accordance with procedure established by the legislation of the Republic of Tajikistan⁴⁸.

2.9. Right to application and information

In 21 cases respondents mentioned that they faces difficulties during application to public/private bodies and organisations due to lack of nationality.

According to respondent A. due to lack of nationality it was difficult to solve problems in public bodies: “...if you don't have passport no one listens and helps...”

According to the Constitution of the Republic of Tajikistan, nationals have the right individually or together with others, or through their authorised representatives in the prescribed manner, to apply to public authorities, local government authorities, local self-governments and public officials, public associations, enterprises, institutions and organisations, regardless of ownership, competent to solve issues⁴⁹.

In practice certain representatives of public bodies establish artificial barriers when nationals apply to them.

In 30 cases respondents were provided with information on their rights and responsibilities, 33 respondents said that they were not provided with information. In 14 cases information was

⁴⁶ Covenant on economic, social and cultural rights. Adopted by the General Assembly Resolution 2200 A (XXI) on 16 December 1966, article 12.

⁴⁷ The Constitution of the Republic of Tajikistan, article 41

⁴⁸ The Law of the RT “On Legal Status of Foreign Nationals in the RT”, adopted on 1..02.1966., article 13

⁴⁹ The Law of the Republic of Tajikistan “On Applications of Citizens” adopted on 14.12.1996., article 1

provided by observers of the project of the PA “Khurshedi Zindagi”. In 11 cases responses of respondents mentioned that information on their rights and responsibilities was provided to them by the BIA and district militia officers.

2.10. Right to participation in public life

In 47 cases respondents mentioned that they did not participate in public life, that is to say that they did not participate in resolution of important issues of mahalla, djamoat, city through meetings, discussions.

22 respondents thought that they are involved in public life of their village, mahalla, djamoats. In two cases respondents noted that they are afraid to participate in meetings of mahalla or djamoats.

2.11. Right to work

In 58 cases respondents told that they did not have an opportunity to engage in entrepreneurial activities on the basis of patent/certificate. In 22 cases they noted lack of nationality of the Republic of Tajikistan as a main reason that affected their access to entrepreneurial activity.

47 of 69 respondents said that they did not have access to work in public and private institutions/organisations. In 14 cases this lack of access was linked to nationality.

Respondent A. since USSR times lived with his family in the RT. He is afraid to apply to respective bodies to acquire nationality of the RT, because absence of passport can be the reason of deportation or administrative fine. He worked in the past, but now he said that without passport he can't get job. Simply, in order to receive bank card to which salary is transfed he should have a passport.

Six respondents mentioned that their families are poor and are in need of income. In order to sustain the family, they have to work. However, lack of passport prevents their departure to labour migrations outside the RT and employment within in the RT.

According to article 6 of the International Covenant on Economic, Social and Cultural Rights parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or which he freely accepts, and will take appropriate steps to safeguard this right.

According to the Constitution of the Republic of Tajikistan ““Everyone has the right to work, choice of occupation, employment, labour protection and social protection against unemployment. Wages should not be less than the minimum wage. Any labour restrictions are prohibited. The work of equal value is paid equally”.

Foreign nationals and stateless persons residing in the Republic of Tajikistan may work as workers and servants in the enterprises, institutions and organisations or perform any other labour activity in accordance with conditions and procedure established for nationals of the Republic of Tajikistan except for cases established by the legislation of the Republic of Tajikistan⁵⁰. According to current legislation, foreign nationals who reside permanently in the territory of the Republic of Tajikistan have a right to work and protection of labour.⁵¹

2.12. Property rights

In 8 cases out of 15 respondents faced difficulties with purchase, registration and ownership of property due to lack of nationality. Foreign nationals in the Republic of Tajikistan may have a personal property, inherit and devise property, have a copyright on scientific works, literature

⁵⁰ Labour Code of the Republic of Tajikistan, article 12

⁵¹ The Law of the RT “On Legal Status of Foreign Nationals in the RT” adopted on 1.02.1966, article 7

and artistic works, discoveries, inventions, industrial sample as well as other property and non-property rights unless otherwise is established by the legislation of the Republic of Tajikistan. *Everyone has a right to property and inheritance*⁵².

A) *Respondent A. was not able to register plot of land on this name after death of father-in-law.*

B) *Due to lack of nationality of the RT respondent B. was not able to register a car on her name upon death of husband.*

C) *Respondent V. is waiting for acquisition of nationality of the RT for many years. He can't register property due to lack of nationality of the RT.*

Subjects of the right to property in the Republic of Tajikistan are state, nationals of the Republic of Tajikistan, public and religious organisations, other associations of nationals and collectives, administrative and territorial divisions, foreign states, international organisations, other foreign legal entities and individuals. The Republic of Tajikistan ensures immunity of property and an opportunity to exercise the property right of each owner⁵³.

2.13. Gender aspect of risk of statelessness

Problems related to lack of valid identification documents significantly affect women from rural areas⁵⁴ Women are particularly vulnerable when no state recognises them as their nationals. Risk of statelessness means for them not only residence without documents, but restricted access to health care services including reproductive rights, education, property rights, free movement and so on. There remain unregistered facts of births and death. As a result women who are not duly documented become "invisible" from the point of view of law: though exist in reality these people are not legally recognised. This contributes to their marginalisation and discrimination.

During survey women mentioned difficulties on communication with representatives of public bodies which included fear of arrest and further expulsion due to lack of nationality or expired documents. It must be noted that access to required information, unawareness about access to nationality are very low among women or often do not exist at all.⁵⁵ A number of respondents out of women told that due to financial reasons assistance of lawyer is not accessible for them, although urgently needed.

A) *M.K. was born in the KR and is ethnic Tajik. She came to Tajikistan in 2008 upon marriage with national of the RT. Upon her arrival to Tajikistan M.K. did not register in the place of residence. During last two years she does not live with husband (divorce) and tries in vain to acquire nationality of the RT. M.K. several times applied for assistance to Passport office and djamoat where she resided. Lack of current identification documents prevents her from collection and submission of set of documents required by law for acquisition of nationality.*

B) *A.A. is in cohabitation relations (second wife) during 10 years and has 5 children. Her problem is that two children were born in RF where she went to earn income since 2008. According to her she was not provided with certificate on birth of children upon delivery of children in RF. Currently, she can't obtain birth certificate in Tajikistan. A.A. applied to EBSP and office of registration of civil status, but with no results. Currently, she is seriously sick and can't "attend public bodies". Due to lack of documents children have restricted access to education.*

⁵² The Constitution of the Republic of Tajikistan, article 32

⁵³ Civil Code of the Republic of Tajikistan, article 235

⁵⁴ Report of the governmental delegation at the Regional Conference on prevention and reduction of statelessness and protection of stateless persons in Central Asia, Ashkhabad, 9-10 December 2009

⁵⁵ Statelessness in the Republic of Tajikistan: prevention, reduction and protection, UNHCR, 2010

Women respondents mentioned that application to acquire nationality is linked to many problems. In the public bodies they face a treatment which they characterised as hostile and not emphatic. Majority of respondents linked lack of access to nationality with high financial costs which were not provided by the legislation. Women which reside on the basis of visa noted that receipt of visa is linked not only with financial problem, but with bureaucracy and red tape. As a result they can rarely travel to visit their relatives in Uzbekistan.

Obtaining documents for children if their place of resident is not the Republic of Tajikistan is sometimes difficult.

It is encouraging that basis services of health care and education are accessible for both children and adults. However, not all women with profession are able to have access to employment and income. Women noted that it is not possible to get jobs when there are no documents.

C) U.Z. was born and grew up in Uzbekistan, she has a passport of a national of the RU. Since 2008 she resides in one of the target djamoats and cohabits with national of the RT. In this cohabitation she has two children. U.Z. is a health care worker. But due to lack of passport of the national of the RT she was not able to get job, despite there is a shortage of health care workers in the djamoat where she resides. U.Z. as a foreign national will be able to receive work permit in accordance with established procedure, but due to financial difficulties she will not be able to pay for work permit. Moreover, it is temporary.

Particularly vulnerable is a situation of women who came to the RT due to marriage with the national of the RT (most often it is cohabitation) and who after certain time divorced their cohabitants and stayed with children and without identification documents and registration. These women have restricted freedom of movement and do not have an opportunity to get support from relatives residing in other country as their freedom of movement is limited within djamoat.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Although the sampling was small (69 respondents) problem of undocumented persons at risk of statelessness delineated very sharply.

Analysis of questionnaires demonstrates that there is obvious incoherence or complete lack of coordination of activities of bodies of internal affairs which are responsible for registration of nationals and bodies of local self-government where undocumented persons reside. On the other hand, authorities can't adequately respond to numerous situations when undocumented persons or persons at risk of statelessness become vulnerable due to lack of protection by the country of residence. There are number of reasons of this situation. So, public bodies solve the problems taking into account requirements of current legislation which is not adequate for current situation. At another point, problems of this group are concealed. Though they actually exist with all their problems, these people are not legally recognised while these people are most often are known to both local district militia officers and representatives of BLSG where they live and other public bodies to which they apply for assistance. The other situation is when these people are subject to prosecution and abuse by law enforcement bodies. This was mentioned by many respondents in their responses.

Lack of documents hinders enjoyment of rights which are highly required for life, particularly for women and children. During meetings these persons mentioned difficulties which they face due to their unidentified status and which relate to the following main areas of their life:

- ✓ Legal status (identification status, property right, right to apply to court)

- ✓ Income generating activities including paid work and entrepreneurial activities, access to professions
- ✓ Welfare including rationing, housing and education from the state, state benefits, labour rights, social protection
- ✓ Administrative measures including expulsion from the country, freedom of movement, identification documents, taxation, bank loans, naturalisation

One of the solutions to the problems of these persons will be transformation of their illegal residence to legal. For this purpose it is first of all required to implement a set of measures including exemption from criminal and administrative jurisdictions for certain categories. Solution of problems of mentioned groups of population does not require significant financial means from the state. Costs can be compensated by additional burden for implementation of other administrative procedures. For example, problems of the category of population which was born in the RT and never crossed international borders can be partially solved by the BLSG in terms of receipt and referral to competent body responsible for adoption of decision. Thus, part of naturalisation campaign or confirmation of nationality can be targeted and would not require special procedure applicable for status of stateless person⁵⁶.

It is also important to disseminate information in the framework of targeted informational campaigns and consultations to facilitate access. Free legal aid for persons with lack of financial means and access to procedure of appeal of decisions and so on can't be thrown off the balance.

Recommendations

To the Government of the Republic of Tajikistan

- Declare amnesty for persons – violators of rules of residence based on such criteria as length of stay, family status including family relations between persons living in unregistered marital relations, children born in these relations and so on.
- Conduct comprehensive analysis of reasons and consequences of statelessness upon evaluation conducted based on participation of de-facto stateless persons including study peculiarities of all groups.
- Ensure through embassies of countries of origin of persons at risk of statelessness provision of information on status of nationality of applicants residing in Tajikistan.

To the Ministry of Internal Affairs of the Republic of Tajikistan

- Identify extent of statelessness through nationwide campaign with participation of nongovernmental organisations taking into account disaggregation of statistics by sex, ethnicity, status in country of stay, family status.
- Introduce to job descriptions of staff of public bodies on nationality matters changes that will describe in details and logically principles, procedure and conditions of work with stateless persons and persons at risk of statelessness.
- Develop procedure of documentation of these persons and provide them with valid identification documents.
- Develop mechanism of work of competent bodies on provisions of transparency on procedures, duration, adopted decisions, provision of access to information and free legal aid.
- Conduct large-scale informational campaign on raising awareness of population on principles of naturalisation and legalisation in the RT.

To the Committee on Women under the Government of the Republic of Tajikistan in cooperation with bodies of local self-government and other competent bodies

- Continue work of mobile groups on exchange of passport of Soviet style on passports of the RT to undocumented persons. To particularly control availability of passport among women and girls..
- In rural areas conduct regular walking rounds of households to register women who had home deliveries to identify unregistered children.

⁵⁶ N. Shirinbekova, "Risks of Statelessness in the Republic of Tajikistan", Analytical brief, 2013.

Lobby the issues of introduction of electronic databases on birth of children in cooperation with State Statistics Agency and Ministry of Justice, i.e. to replace old method of registration system which is done manually. Think about the system of registration of children both outside health care institutions.

- Conduct large-scale informational campaign on raising awareness of population (especially women) on principles of legalisation and naturalisation in the RT.
- Conduct orientation seminars for responsible bodies and services on problems of stateless persons especially on particular situation of women in registered and unregistered marriages.

To national and international public organisations

- Conduct large-scale informational campaign on raising awareness of population (on principles of legalisation and naturalisation in the RT.
- Conduct orientation seminars for responsible bodies and services on problems of stateless persons especially on particular situation of women in registered and unregistered marriages.
- Assist with information and provision of free legal aid to persons at risk of statelessness and stateless persons through project especially in cross-border districts.