

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to privacy; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
TJK 1/2016:

19 February 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to privacy; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/6, 28/16, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **amendments to the "Family Code of the Republic of Tajikistan" and the "Law on State Registration of Acts of Civil Status", which allegedly contain a number of provisions that unduly restrict the rights to health and privacy in Tajikistan.**

According to the information received:

On 13 January 2015, the lower house of the Tajik parliament has reportedly approved amendments to the "Family Code of the Republic of Tajikistan" and the "Law on State Registration of Acts of Civil Status". A consideration of the amendments by the upper house of parliament is required before they can be passed and signed into law by the President of Tajikistan. If passed, the amendments will reportedly enter into force on 1 July 2016.

Unfortunately, the amendment process has not been transparent and relevant information has only been made public over the past few days which, in itself, are a source of concern. According to the information available, proposed amendments to articles 14 and 15 of the Family Code, and to article 39 of the Law on State Registration of acts of Civil Status, will require couples to undergo a mandatory medical examination and to present a medical certificate about their health conditions, including HIV and blood test results, prior to registering their marriage.

According to your Excellency's Government, the amendments aim to address increasing numbers of HIV infections as well as to reduce the rate of birth anomalies by preventing close relatives from marrying. Couples can reportedly decide themselves whether they would like to get married after the test results of the medical examinations have been disclosed to both partners.

In connection to the amendments, it is reported that the Ministry of Health will now develop specific regulations or protocols on medical testing indicating how to conduct such examinations as well as identifying the responsible health care staff for this.

However, civil society and international organisations have raised concerns about the potential adverse impacts of the amendments on the rights to health and privacy in Tajikistan. Compulsory HIV testing, if it is done without respecting consent, confidentiality and necessity requirements, may constitute degrading treatment.

Moreover, persons who discover their status on as the result of involuntary testing often face stigma and can be deterred from accessing appropriate services, undermining long-term prevention and treatment efforts from a public health perspective.

The implications of such measures could seriously compromise the protection of persons living with HIV/AIDS from discrimination and violence linked to health status.

While we do not wish to prejudge the accuracy of these allegations, we would like to express serious concerns about the compulsory nature of the medical examinations, which undermine the principle of informed consent as an integral part of the right the highest attainable standard of physical and mental health. If done on a discriminatory basis and without due regard to consent, confidentiality and necessity requirements, we are concerned that compulsory HIV testing may amount to degrading treatment. Further serious concern is expressed that the amendments compromise the right to privacy by allowing the disclosure of private health information. All of this could potentially lead to the discrimination of persons living with HIV/AIDS based on their health status.

In view of these concerns, we would like to call on your Excellency's Government to take all steps necessary to conduct a comprehensive review of the proposed amendments and medical testing related protocols, including by seeking the assistance of the United Nations specialized agencies in the country, in order to ensure their compliance with international human rights standards.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above mentioned allegations.
2. Please provide detailed information on measures taken to ensure the compliance of the proposed amendments, and the medical testing related protocols, with Tajikistan's obligation under international human rights law and standards.
3. In particular, please provide details of any actions taken with a view to ensuring the protection of privacy and confidentiality of persons living with HIV/Aids.
4. Please provide information on any measures undertaken to include civil society and other relevant stakeholders in meaningful consultations on the amendments prior to their adoption in the Parliament.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that the proposed amendments comply with international human rights standards and obligations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Joseph Cannataci
Special Rapporteur on the right to privacy

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as set forth in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Tajikistan in 1999. In General Comment No. 14, the Committee on Economic, Social and Cultural Rights stressed that the right to health implies the right to have personal health data treated with confidentiality. According to the Committee, this right should not be impaired by the right to information accessibility concerning health issues (GC 14, para.12(b)).

With respect to concerns regarding the confidentiality of test results, we would also like to refer your Excellency's Government to article 17 of the the International Covenant on Civil and Political Rights (ICCPR), acceded to by Tajikistan in 1999, which states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. In General Comment No. 16, the Human Rights Committee emphasised that States Parties are obliged to take effective measures to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.

In this context, we would like to recall that in its Concluding Observations of 2006, the Committee on Economic, Social and Cultural Rights has expressed concern that breaches of confidentiality relating to medical information contribute to the significant stigma and discrimination sounding HIV/AIDS in Tajikistan (E/2007/22, para. 478). In General Comment No. 20, the Committee further stressed that States should address widespread stigmatization and ensure that a person's actual or perceived health status is not a barrier to realizing the rights under the Covenant(GC 20, para. 33).

With regards to the compulsory nature of HIV testing, we would like to bring to your Excellency's Government attention report A/64/272 on the right to health and informed consent, where the previous Special Rapporteur stated that successful HIV/AIDS testing is underpinned by conditions of counselling, informed consent and confidentiality. International guidelines recommend that public health legislation demand that HIV/AIDS testing be performed only on the basis of individual informed consent and grounded in an approach protecting human rights. Compulsory testing, unless justified by public health requirements, must never be used as a means of policing private behaviour. Any limitations of informed consent must be critically examined to ensure that they: (a) are fully respectful of individual rights and liberties; and (b) pay the utmost attention to supporting a continuous process of counselling, testing and treatment.

We would also like to refer your Excellency's Government to report A/HRC/10/44 by the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, in which he noted that compulsory HIV testing is a

common abuse that may constitute degrading treatment if it is done on a discriminatory basis without respecting consent, confidentiality and necessity requirements (para. 65).

In this connection, [the International Guidelines on HIV/AIDS and Human Rights](#) (2006) recommend that States enact laws and public health legislation to ensure that HIV testing of individuals should only be performed with the specific informed consent of that individual. Exceptions to voluntary testing would need specific judicial authorization, granted only after due evaluation of the important considerations involved in terms of privacy and liberty. Public health legislation should ensure, whenever possible, that pre- and post-test counselling be provided in all cases (Guideline 3).

Moreover, the mentioned Guidelines also establish that general confidentiality and privacy laws should be enacted, that HIV-related information on individuals should be included within definitions of personal/medical data subject to protection and that the unauthorized use and/or publication of HIV-related information on individuals should be prohibited. Privacy legislation should enable an individual to see his or her own records and to request amendments to ensure that such information is accurate, relevant, complete and up to date. Provisions should be made for professional bodies to discipline cases of breaches of confidentiality as professional misconduct under codes of conduct (Guideline 5). Finally, public health, criminal and anti-discrimination legislation should prohibit mandatory HIV-testing of targeted groups, including key populations and groups in vulnerable situations (Guideline 5).