



Executive Summary of the Report Gender Analysis of Tajikistan's Social Policies and Social Protection Laws

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The publication is dedicated to the study of government in the social protection of women's rights in the Republic of Tajikistan on the basis of relevant legal documents and a statistical analysis. The issue of women's rights is analyzed by taking into account factors such as labour and employment, pensions, maternity protection and labour migration. Special consideration is given to the study of the most vulnerable groups of women, such as female migrant workers, wives of migrant workers, disabled women, mothers raising children with disabilities, female heads of single-parent families, young girls, female victims of violence, women working in the informal sector, etc.

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1. The gender dimension in the social welfare sphere. One of the most important objectives in the social welfare sphere for Tajikistan is developing a social policy based on gender equality principles. Taking account of gender aspects in national social policy is justified by the serious gender issues related to social and economic development in Tajikistan: namely, massive poverty, the low level of female employment (resulting in their low level of inclusion in social life), massive labour migration (divided along gender lines), and the traditionalism of family and gender relations. All these factors, combined with the government's limited economic capacities and the huge informal sector of the economy, leave little room for introducing social welfare policies.

The social reforms implemented in Tajikistan are aimed at consolidating government guarantees of equality between men and women in national laws. This is demonstrated by the National Strategy on Enhancing the Role of Women in the Tajikistan for 2011-2020 (approved by government resolution № 269 on 29 May 2010), the main purpose of which is to create the prerequisites and conditions necessary for the fullest realization of the natural abilities of women in all spheres of social life in order to ensure sustainable development.

However, in Tajikistan widespread traditional perceptions of gender roles and gender stereotypes regarding behavioral norms and the patriarchal division of labour persist, particularly in rural areas.

2. Legislative acts of higher legal force in the field of social protection and social security. At the level of legal documents of higher force (the Constitution of Tajikistan, international legal instruments on the advancement of women and the protection of their economic and social rights) in Tajikistan fixed principle of the equality of men and women,, and fixed the principle of the equality of women and men. It declared that all major socio-economic rights correspond to the modern conception of the social state. The Constitution also accords a special regime for the protection of the family, motherhood and children, and upholds the principles of equal parental responsibility for the upbringing of children, and of children's responsibility in providing the necessary care to their parents.

Thus, in general, Tajikistan created the basic legal framework for the construction of a social policy in the interests of all citizens, taking into account the principle of equality between men and women.

3. Social protection of women in the sphere of pensions. An analysis of pension legislation shows that the rules of appointment and payment of pensions are formulated as either gender-neutral or as providing benefits to women.

However, the unequal status of women and men in employment and the labour market creates a significant gender gap in pensions (penalizing women). The gender gap in pensions is much lower than the pay gap. This points to a built-in mechanism within the existing pension system to

reallocate the funds between different socio-demographic groups, which contributes to the relative betterment of retired women.

The law on insurance and public pensions, according to which pension reform is supposed to be implemented in Tajikistan, combines both gender-neutral standards and rules for certain benefits and advantages for women.

The transition to a new pension system, which combines a state pension and the use of a cumulative form of pension, aims at strengthening the interrelationship between the contribution of the employee and the amount of his pension. While this approach is feasible in practice, in Tajikistan it can lead to an increase in the gender gap in the pension provision due to the high gender asymmetry in employment and the labour market.

4. Social protection of motherhood. The social rights of mothers are protected by a whole range of legislative acts, including the Law of Tajikistan on State Social Insurance, pension legislation, the Labour Code, etc. In general provisions in national legislation, which prescribe social protection for mothers, do not contain any discriminative provisions vis a vis women. Most provisions are gender-neutral and are in line with the international notion of gender equality. Some of the legal norms establish special guarantees and benefits for women due to their family obligations. However, the absence of de jure discriminatory norms does

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not exclude the existence of gender asymmetry in terms of participation in social insurance.

The Law of Tajikistan on State Social Insurance is in line with the criteria established for gender-neutral documents. Specifically, this law does not contain direct discriminatory provisions related to women, and provides them formally with equal rights and possibilities in this sphere. However, doubts exist as to the possibility of a gender-neutral law being implemented in practice, as there is no direct prohibition on discrimination for officials, nor does the law provide complaint mechanisms against such discriminatory practices.

The duration of maternity leave and leave for child birth stipulated, by the Law on State Social Insurance, exceeds the minimum standards defined in the ILO Convention № 103 on the Protection of Motherhood, which was ratified by Tajikistan. However, Convention No.103 (1952) applies only to women employees and workers at industrial, non-industrial concerns and to agricultural activities, including home workers. Given the nature of the scope of women's work in Tajikistan, it is appropriate to begin work on ratification of the updated version of this Convention (ILO Convention no.183 (2000), which covers all women employees.

The system of family benefits operating in Tajikistan, includes a lump sum payable at childbirth and monthly allowances for child care. Given the realities of Tajikistan, one can conclude that the universal nature of a lump sum for the birth of a child is a real breakthrough in terms of gender

equality. It seems that one of the possible directions of development of the system of family allowances in the future may be the provision of universal benefits (i.e. provided regardless of the wealth or other characteristics of the mother, and only in connection with the birth of a child) and monthly allowances for child care. This would broaden the space for gender equality and non-working women students and enhance their economic independence in a difficult period of life.

Entitlements to temporary disability benefits and the algorithm to calculate its size in the Law on State Social Insurance is also formulated in a gender-neutral manner. However, due to the fact that women in Tajikistan are less economically-active and often have long breaks in employment, unemployment benefits are assigned less often than to men.

5. Social protection of women in employment. According to a labour force survey (2004, 2009), women in Tajikistan are in a fairly disadvantaged position in the field of labour and employment.

This is primarily due to the low level of economic activity caused by the need to raise children and because of national traditions. At the same time, the level of economic activity of women varies depending upon the economic situation, i.e. it is growing there are less unemployed women, in times of economic crisis women lose their positions first and find themselves out of the workforce.

Secondly, women who are employed in the economy remain in the labour market as obvious outsiders. This conclusion can be confirmed by numerous facts, notably lower professional qualifications compared to men, the high-level of professional and sectoral segregation for women, and far lower wages for women.

Thirdly, women are actively involved in the informal employment sphere, which has no social security system.

Fourthly, women have less chances to find work on their own if they become unemployed, forcing them more often than men to register with employment agencies as unemployed, and in order to receive benefits and to search for a job.

Labour Code. Summing up the analysis of the Labour Code of Tajikistan, it should be noted that in section 12 of this document additional safeguards for women and persons with family responsibilities fully meet modern international standards in this field. However, the main problem of the special safeguards for single mothers (like most guarantees for workers with family responsibilities) is the low level of their practical application.

The Labour Code does not differentiate between benefits for men and women who combine work with study. On the one hand, this situation can be seen as gender-neutral, because the labour laws do not contain any norms of open discrimination against women in the workplace. On the other hand, the

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additional guarantees for young people, combining work and education, is a form of indirect discrimination against young married women, because after marriage the large amount of housework rests on their shoulders. This calls into question both their ability to continue their work, and, to an even greater degree, to combine work with study.

Given the continued sharp asymmetry in the distribution of household labour between men and women, such as formal equality of treatment contained in the Labour Code, this inevitably creates conditions for indirect discrimination against women and young girls in the workplace and in education.

This problem is all the more urgent because Tajikistan still has a very high marriage rate and a tradition of early marriage. In these circumstances, one might consider expanding the scope of benefits for girls and young women, because such measures would lead to the next step of achieving real (not just declarative) equality of opportunity between men and women in education and employment.

The Law on Employment Promotion. According to this law, the algorithm to calculate unemployment benefits does not formally have a "built-in" gender asymmetry. Active measures of social protection against unemployment, implemented by the State Employment Service, are also gender-neutral as a rule. The exceptions are the rules for granting vocational training, skills development and re-training, which provide some benefits for certain categories of

women and men. Statistics show that active measures of social protection against unemployment are extensively used by women, and are an effective method to improve the level of employment.

An important means of social protection for the unemployed in the labour market is to set quotas for hiring certain groups that are unable to compete in the labour market. Despite the fact that the rules of job quotas are formally gender-neutral, quotas affect mostly women. However, quotas established in law are not fully implemented in practice.

6. Social protection of the poor. Over the last decade, Tajik and international experts have repeatedly emphasized that one of the priorities for poverty monitoring was to develop and introduce a mechanism for its assessment, such as the establishment of a subsistence rate. The lack of such a tool explains the fact that over the past decade, research in the area of poverty was based either on the international criteria for inclusion the poor (PPP income, equal to US\$2.15), or to an absolute standard, calculated on the basis of food consumption. Both approaches have obvious shortcomings that can be overcome in shifting to a poverty measurement based on the subsistence minimum.

The Law of Tajikistan on the Living Wage was adopted on 19 May 2009 and was to enter into force after its publication. However, work on calculating this figure and a specific agreement on the amount of the subsistence minimum, has not been completed, which greatly limits the possibility of

implementing a modern social policy based on the principles addressed

The Law of the Republic of Tajikistan on the Subsistence Rate was adopted on 19 May 2009, and was to enter into force after it had been published. However, the work related to calculating and agreeing on the amount of the subsistence rate is still not finished, which limits possibilities to implement a modern social policy based on specific values.

One of the obvious shortcomings of this law is the exclusion of women from social and demographic categories, which are taken into consideration when carrying out a differentiated calculation of the subsistence rate, or the consumption basket.

The same applies to the Law on State Social Standards, which does not take gender issues into account.

An underestimation of the special needs of women as a socio-demographic group in the calculation of the cost of living, and the development of social standards, can lead to the consolidation, and even deterioration of the existing gender asymmetry, especially among the poor.

7. Social protection for labour migrants and members of their families. In modern Tajikistan external labour migration is one of the most important factors for social economic development, which has its pros and cons. On the one hand, migration to earn money leads to a rise in income for certain households, thus decreasing unemployment and tensions on

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the labour market. It mitigates the problem of social disaggregation and poverty, promotes the level of professionalism among labour migrants themselves and broadens their social skills. On the other hand, massive labour migration mainly involves the most active age groups -- 20 to 45 years -- thereby leading to losses in human capital and a decrease in the value of diplomas and qualifications studied for earlier, and increases the risks related to labour exploitation and work in unsuitable conditions. Finally, in recent years the large-scale labour migration of young men is a factor in the break-up of families and the increase in the number of single mothers, who often do not have any means of survival.

Almost 85% of migrants travel to the Russian Federation to work, 10.8% travel to the Ukraine and other CIS countries, and 4.8% -- outside the CIS.

About 80% of migrant workers have no vocational training, about a third have problems with Russian. These factors, as well as low material aspirations and willingness to accept a position where they would be exploited, are responsible for a significant concentration of male migrant workers in the construction industry, where they are among the most disenfranchised workers.

External labour migration from Tajikistan has a strong gender and age profile. According to official data, in 2009, the proportion of women among labour migrants are less than 6% (5.7%), although experts point to the constant increase in the

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share of women in this category of workers. The low percentage of women among labour migrants explains the fact that gender issues so far have hardly been reflected in the legal documents relating to the protection of social and economic rights of migrants.

The results of numerous studies indicate that labour migrants from Tajikistan are regarded as outsiders on the labour markets of hosting countries, performing unskilled and low-paid jobs and forced to accept exploitative conditions of employment. This is because low wages and poor working conditions are their main competitive advantages among migrant workers .

The financial crisis of 2008-2009 significantly worsened the situation of migrant workers, many of whom have been laid off, or their earnings fell substantively.

The legislation of Tajikistan and Russia (as the main host countries) are radically different in terms of ratification of the basic international instruments on migration, and, above all, of the International Convention on the Protection of the Rights of Migrant Workers and the ILO core conventions on migration.

Tajikistan has ratified these international acts, and their provisions are part of the national legislation on migration. In contrast, the Russian legislation currently provides almost no legal provisions that protect the civil, social and economic rights of migrant workers engaged in labour activities in

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Russia. Existing social protection provided for migrants relies heavily on a network of bilateral intergovernmental agreements, and, to a lesser extent, on multilateral agreements concluded between the CIS states.

The experience related to migration regulation and protection of rights of migrants developed in other countries is practically not taken into consideration today. The main direction in the development of legislation in this area is the gradual inclusion of the social protection laws in national legislation, and in bilateral and multilateral agreements. However, experience in the elaboration and signing of the Convention on the Legal Status of Migrant Workers and Members of their Families from Member Countries of the Commonwealth of Independent States (entered into force in 2010) shows that the parties to the Convention face serious difficulties in harmonizing national legislation with the laws in the Convention.

In general, one can assert that the system of legal support in social protection of migrant workers in the CIS countries (including Russia) is in its infancy.

As for the gender dimension of social protection of migrant workers, it is absent in the existing legislation.

The current system of social insurance in Tajikistan does not cover labour migrants and members of their families. With regards to the scope of external labour migration, the development of government mechanisms to provide social

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insurance for labour migrants and members of their families is of utmost importance.

One of the key documents of recent years in the field of labour migration is the National Strategy on Labour Migration, developed in 2010. This paper proposes a holistic and systematic approach to the problem of temporary labour migration, but is limited to generalizations, without specifying the mechanisms for the implementation of certain proposals.

However, in relation to issues of social protection of migrant workers and their families, the strategy is so concise that it does not allow one to judge what is meant by an "economically attractive" principle of social insurance, and what kind of assistance can be given to family members of worker migrants. In fact, all the concepts for social protection of migrant workers put forward are mostly declarative in nature, and do not disclose the specific mechanisms for implementing the proposed measures.

Thus, even in the most recent document elaborated on the social protection of migrants, the issues in question have not yet been adequately addressed in Tajikistan.

One solution to the problem could be compulsory medical insurance for migrant workers, which would provide an effective mechanism for the protection of health and life of workers and social assistance to their families. The development of the insurance market in Tajikistan allows for compulsory health insurance for all Tajik citizens travelling

abroad. However, the mechanism of social insurance can be effective only if there is government control over the Tajik insurance companies offering health insurance to Tajik citizens travelling to work in other countries, and similar control over the payment of sums to insured workers and their families.

8. Social protection of the most vulnerable women. The analysis revealed the existence of social legislation, a specific set of benefits and preferences, the effect of which is aimed at reducing vulnerability of a number of groups of women. However, these measures are not enough. At the same time, the social vulnerability of women belonging to the category in question is often associated not only with the lack of specific legislation to protect them, but with the failure to implement the law.

Women with disabilities. In Tajikistan people with disabilities are one group of the population, for whom a quite detailed system of tools to protect their interests in all areas of social legislation (social insurance, social security and social protection) has been developed. A substantial part of the provisions of this social legislation is gender-neutral, but some rules contain special "benefits" for women.

Thus, the analysis of the law governing the allocation of pensions for the disabled shows there is no gender component in most of its concepts, but the algorithm for calculating a disability pension includes a visible gender-asymmetric option -- differentiated by gender work experience required for a

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pension at the retirement age." Using this option leads to the fact that for women it is somewhat "easier" to get a disability pension equal to an old-age pension age (due to lower requirements in the seniority age). In the designation of social disability pensions, rules for assigning them are gender asymmetric, because the retirement age, needed to have the right to a pension, differs by 5 years between men and women.

Proposed by Law of Tajikistan on Social Protection of Persons with Disabilities statutory measures for the social protection of disabled people, providing medical and social assistance and rehabilitation , guaranteeing their ability to live, functioning of public organizations of disabled persons are gender-neutral. For the first time this law prohibits discrimination against people with disabilities. It has special import for women with disabilities, who often have to cope with the double burden of discrimination, both as women and as disabled persons.

An analysis of legislation has also shown that at the present time in Tajikistan, there are a number of established guarantees of employment for the disabled, the implementation of which gives a return. We are talking primarily about employment quotas for persons with disabilities, and according them priority in vocational training, skills development and retraining.

The social legislation of Tajikistan provides a number of benefits for mothers raising children with disabilities. Most of

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these benefits are concentrated in the legislation regulating labour relations. Pension legislation also addresses the special situation of women raising children with disabilities. However, government statistics contain very little data that would assess the real effectiveness of these regulations.

One of the serious omissions of social legislation is that the situation of women raising children with disabilities under the law does not fall within the definition of "difficult situation." This makes it difficult for these women to access the necessary psychological and legal assistance.

Furthermore, women who are bringing up a disabled child are not currently entitled to preferential admissions to a nursery or to the nearest preschool.

Young girls. Although young girls (15-18 years) have a higher social vulnerability in education and the labour market, legislation regulating relations in those areas does not contain any legal norms that discriminate against women in their access to education and professional employment. Current limitations in employment relating to the prohibition of women working in hazardous and particularly hazardous conditions cannot be deemed discriminatory.

The analysis indicated that legislative regulation of labour relations does not contain any provisions of direct discrimination of girls. However, there is a whole system of guarantees and benefits aimed at social protection of their employment (within the legislation regulating employment of

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youngsters below 18 which is formulated as gender-neutral). Appropriate statistical data on implementation of special measures aimed at protection of employed youngsters below 18 and further gender differentiation of such practices is missing at the moment.

The analysis showed that in the legislative regulation of labour relations in general, no explicit provisions exist discriminating against women, but there is a whole system of guarantees and benefits aimed at social protection of their employment (in the legislation governing the work of young people under 18, which is formulated as gender-neutral). Statistics on measures overseeing the social protection of the professional employment of young people aged up to 18 years, as well as data on gender differentiation of this practice, are not currently available.

It seems that the most important obstacle to reducing vulnerability of girls in education and employment are the traditional gender roles, poverty and lack of pre-school education for children.

Female heads of single-parent families. The analysis showed that female-headed single-parent families in Tajikistan are socially vulnerable categories of the population, but have state social support, which is not quite adequate given the degree of risk of falling into poverty. State support of these women focused on the protection of their labour rights (under the protection of labour rights of single parents, which, in fact, means the protection of the labour rights of

women from single-parent families).

Moreover, since the very category of "female heads of single-parent families" are very heterogeneous, in terms of the causes that led to the formation of an incomplete family, providing any special privileges, benefits and compensation to women heads of household, on the basis of categories, could hardly be socially and economically efficient.

Female victims of violence. Women who are victims of violence are another socially-vulnerable group of women, requiring the organization of social protection by the government. We emphasize that the problem of abused women, largely latent, does not receive adequate coverage in official statistics. However, in recent years, both society and the government are paying much more attention to this problem. Still, it is premature to talk about real solutions for the social protection of this group.

At the moment the laws of Tajikistan are not in line with the acute situation. The current legislation in Tajikistan on issues related to violence is not focused on domestic violence. It is focused primarily on its criminal components, while the problem of social assistance to the victim of violence still has no proper legal support.

The Law of Tajikistan on Social Services, -- among the other aims of social services, --includes the following: "providing opportunities to lead a decent, secure life," and

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"prevention of difficult life situations," but the definition of a "difficult life situation" includes only the problem of violence as a "stable psychological dependence, consequences of violence or situations associated with a risk to life." Thus persons, who are victims of domestic violence, are not included as a separate item in the list of categories of people who should be provided with social protection by the government. This is clearly not enough to create an effective mechanism to combat the spread of violence against women in the family, to create an effective system of social assistance to victims of domestic violence, and for their physical and psychological rehabilitation.

Women working informally. Another group facing high social risk is women working informally. For women, especially younger ones, -- due to their biological features related to reproduction and motherhood, -- informal employment poses more risks and dangers than for men. Due to motherhood, young women, who did not properly register their employment, face serious needs in benefits related to pregnancy, birth and breast feeding. These benefits are contained in the legislation for employed women. However, the status of being informally-employed excludes these women from the social security system. Decreasing their social vulnerability is possible only when they shift to formal employment, which the government should provide via specific measures in the tax system, workplace organization, etc.

Abandoned wives of migrant workers. Finally, abandoned wives of labour migrants have every right to be classified as a vulnerable group of the population. It can be argued that the social vulnerability of this group is the result of their low educational and employment levels, as well as low wages received, and the consequence of an adherence to traditional gender roles and a patriarchal model in the division of labour. This is a common trait applicable to the vast majority of women in Tajikistan.

Thus, a gender analysis of the provisions of modern social legislation and policy documents of Tajikistan allows one to conclude that, in general, they do not contain any direct discriminatory provisions; nor do they limit women's opportunities to take advantage of government social insurance, welfare and care; moreover, they are largely gender-neutral and correspond to the concept of gender equality. However, on a more pessimistic note, one detrimental to the advancement of women in Tajikistan, most of the provisions remain only declarative in character. They are not aimed either at reducing gender inequality in society, eliminating gender-based discrimination, nor does their implementation involve the introduction of gender mainstreaming into the social welfare system, or for support and social protection of women.

