



UNDP GENDER JUSTICE  
PLATFORM



## ***Policy brief - 1.***

### **Grounds, Procedure and Practice of Implementing Protective Orders as a Preventive Measure against Domestic Violence**

#### **1. Introduction**

More than eleven years have elapsed since the adoption of the Law of the Republic of Tajikistan on Prevention of Violence in the Family, but Tajik women still suffer regular physical and psychological abuse in their homes. Domestic violence remains one of the most acute problems in Tajik society. Certain problems, including in legislation, have been identified in the protection of victims of domestic violence that hinder the application of protective measures at both theoretical and practical levels.

Despite the strong decisions taken by the President of the Republic of Tajikistan, His Excellency Emomali Rahmon and the Government of the Republic of Tajikistan to protect women's rights, women and children continue being the most vulnerable to domestic violence. According to the World Health Organization (WHO), every third woman is subjected to beating, rape, or violence during her lifetime.

Unfortunately, there are also various forms of domestic violence in our country. Domestic violence involves the use of force, coercion, domination, oppression, and suppression, and is used in various situations.

The Government of Tajikistan has significant experience in developing policies and legislation aimed at promoting gender equality and empowering women, as well as eliminating violence against women.

Tajikistan is a member state to several key human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which commits Tajikistan and all other participating states to fight against discrimination and violence against women by creating competent national institutions aimed at ensuring that the prohibition of discrimination is implemented in practice. In addition, on July 22, 2014, the Republic of Tajikistan ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women dated October 6, 1999. The Protocol provides for a procedural mechanism for appealing to the Committee on the Elimination of Discrimination against Women. The procedures set out in the Protocol make it possible to use international legal mechanisms to protect women's rights.

## **2. Human rights issues**

The Law of the Republic of Tajikistan on Prevention of Violence in the Family adopted in 2013 recognizes local self-government authorities and public self-government authorities, along with state authorities, as entities responsible for preventing domestic violence. In practice, Article 93(1) of the Code of Administrative Offenses of the Republic of Tajikistan, Violation of the Requirements of the Legislation of the Republic of Tajikistan on the Prevention of Violence in the Family, is applied in most cases. It is worth mentioning that as a result of the adoption of these laws, a new tool for fighting domestic violence was introduced for post-Soviet countries, and this document is called a protective order. In accordance with Article 21 of this Law, a protective order is defined as a document issued by internal affairs authorities to a person who has committed domestic violence or a person who threatens to commit it to restrain the conduct of that person. The issuance of a protective order is considered one of the preventive measures aimed primarily at protecting the rights, freedoms, and legitimate interests of individuals and citizens within family relationships, preventing domestic violence, and identifying and eliminating the causes and conditions of domestic violence. The basis for issuing a protective order is a report of an act of domestic violence or a threat of such violence.

A protective order shall be issued by the head or deputy heads of the Departments of the Ministry of Internal Affairs (DMIA) at the place where the domestic violence occurred and shall be issued within 24 hours from the moment of committing domestic violence, or from the moment of filing a report on the fact of committing domestic violence, or the threat of violent behavior against a person who has committed violence against a family member. A person who has received a protective order must comply with the requirements specified therein. In case of failure to comply with these requirements, this person will be brought to administrative responsibility in accordance with the procedure established by the legislation of the Republic of Tajikistan under Articles 21 and 22 of the Law on Prevention of Violence in the Family.

However, in practice, the aforementioned articles are completely ineffective at meeting the safety needs of victims. The first failure is with the immediate need for safety. For example, if domestic violence occurs at night and only a district inspector arrives at the scene, who does not have the right to issue a protective order there is no immediate remedy. In this case, the victim has to wait until the next morning to apply for a protective order against the aggressor to the head of the DMIA. And there is no guarantee that domestic violence will not happen again in the meanwhile. Because the law requires a victim to apply to the head of the DMIA for a protective order and reaching that individual can take a lot of time for an average victim, the law in fact does not guarantee that they will not be subjected to domestic violence while seeking state protection.

Second, there does not seem to be any standards with law enforcement in granting an application for a protective order. While providing legal assistance to victims of domestic violence through the

Fellowship program, lawyers noted that Departments of the Ministry of Internal Affairs often refuse to issue protective orders without justification or reason, regardless of whether the victim has a forensic medical examination report that shows there was violence. Refusals to issue protective orders are a serious systemic problem that leaves victims of domestic violence in a vulnerable position. Police officers often view domestic violence as a "family matter." Victims may be urged to withdraw their complaints or "be patient for the sake of the children," rather than immediately issue a protective order.

Further, law enforcement and the Code of Administrative Offenses are the only options for victims seeking safety, as "domestic violence" is not considered a criminal offense, and victims cannot immediately appeal to the court to protect their rights. Additionally, in practice the authorities demand evidence that can be impossible to obtain when applying for an immediate stop to the violence, and considering domestic violence often occurs behind closed doors. Although the law requires a prompt response, in practice, victims are often required to provide evidence such as doctor's certificates and witness statements, which is not always possible to obtain immediately after the incident. Advocates for women who have suffered domestic violence also note that when seeking justice and restoring their rights, they often encounter either the indifference of certain officials or support for the actions of the aggressor.

It's also worth noting that law enforcement agencies do not track the number of applications for protective orders submitted by victims of domestic violence. Recording the number of applications specifically for protection orders is a more specific and focused indicator than general crime statistics. It reflects not simply the fact of violence, but the readiness of the system and the victims to take preventative measures. The number of applications for protection orders is a "trust indicator." Unlike a typical assault report, a request for a protection order indicates that the victim of domestic violence is seeking long-term protection and believes the law can restrain the aggressor (prohibit approaching, calling, staying in the same apartment, etc.). Statistics allow us to compare two figures: how many orders were requested and how many were issued.

Although the law On Prevention of Violence in the Family allows for administrative detention if there is a violation of the protective order, there is no data to indicate that this administrative penalty in fact ends the violence. Ensuring the victims' safety is a standard provided for in international legislation on combating violence against women, which Tajikistan has ratified.

**Comparative analysis:** In Ukraine and the Republic of Kazakhstan, a protective order is issued immediately by any responding police officer who determines that there is a need to issue a protective order. The purpose of a protective order is to protect the legitimate interests of a victim who has been harmed as a result of domestic violence.

### **3. Legal Analysis: Legislation and Practice**

Since the family performs functions that are important from the point of view of the country, the state has to protect this unit. Article 33 of the Constitution declares that "the family, as the foundation of society, is protected by the state." Also, in accordance with Article 34 of the Constitution of the RT, "mothers and children are under special protection and patronage of the state". The reputation of any modern state is determined by how well it ensures the social security of individuals and their families.

According to part 3 of Article 10 of the Constitution of the Republic of Tajikistan: "International legal acts recognized by Tajikistan are an integral part of the legal system of the Republic."

The fundamental documents are the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Tajikistan in 1993, and the Declaration on the Elimination of Violence against Women. General comments adopted by the UN Committee on the Elimination of Discrimination against Women and resolutions of the UN General Assembly are interpretative acts and are binding on Member-States that have ratified UN international legal instruments.

By ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Tajikistan has undertaken a number of obligations, including suppressing all forms of violence against women, taking measures to combat violence against women and providing support to victims of violence against women.

Preventing all forms of violence against women and girls is one of the priorities of the National Development Strategy of the Republic of Tajikistan for the period up to 2030.

According to Articles 1 and 3 of the Universal Declaration of Human Rights, "All human beings are born free and equal in dignity and rights. Everyone has the right to life, liberty and security of person."

According to Article 21 of the Law of the Republic of Tajikistan on Prevention of Violence in the Family, the basis for issuing a protective order is a report of an act of domestic violence or a threat of such violence. A protective order shall be issued by the head or deputy heads of the department of internal affairs at the place where the domestic violence occurred and shall be issued within 24 hours from the moment of committing domestic violence, or from the moment of filing a report on the fact of committing domestic violence, or the threat of violent behavior against a person who has committed violence against a family member.

According to Part 5 of this Article, a protective order is issued for a period of up to 30 days. Based on a statement of the victim or his legal representative, the term of the protective order may be extended

to 60 days at the request of the head of the internal affairs authority and with the prosecutor's approval (*as amended by Law of the Republic of Tajikistan dated 20.06.2024 No. 2064*).

The prescription of protective order is an ordinary paper, but for violation of this prescription according to Article 93 (2) of the Code of Administrative Offenses of the Republic of Tajikistan Violation of the requirements of a protective order, Individuals may be punished with a fine of five to ten indicators for settlements or administrative arrest for a period of five to fifteen days. The lack of adequate proportionate punishment unties the hands of rapists. And, when he knows that he will not be seriously responsible for the acts committed, then hence the constant recidivism. At the same time, there is no criminal liability for repeated violation of the protective order.

#### **4. Recommendations**

We propose the following possible solutions to the problem, in particular:

- ✓ Amendment to Article 21 of the Law of the Republic of Tajikistan on Prevention of Violence in the Family with the aim of enabling any police officer responding to a call to issue a protective order immediately on the spot.
- ✓ Criminal liability should be provided for repeated violations of protective orders.
- ✓ Introduction of best practices from other countries in preventing domestic violence using protective orders.
- ✓ Classifying gender-based violence, including domestic violence, as a crime. At the same time, such crimes must be publicly prosecuted.
- ✓ Raising public awareness about the prevention of domestic violence (through mass media: television, radio and in jamoats in remote areas).

#### **5. Conclusion**

Although protective orders can generally be an effective legal tool for preventing domestic violence, the current protective order system is not protecting vulnerable victims and changes to the law are necessary to protect families and eliminated violence against women and girls.

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**Policy brief - 2.**

**Improvement of the Social Housing System in the Republic of Tajikistan:  
Problem, Analysis and Solutions**

**1. Introduction**

The right to housing is one of the fundamental social rights established in international documents and the national legislation of the Republic of Tajikistan. The adoption of the Housing Code of the Republic of Tajikistan, as amended in 2022, is an important step towards the formation and development of social housing, that is free housing for vulnerable people.

The introduction of Chapters 11 and 12 into the Housing Code provided the procedure for the formation, distribution, and use of social housing, and to adopt a number of legal norms.<sup>1</sup> However, practical experience in implementing these standards shows that there is a discrepancy between the formal requirements of the legislation and the social reality of vulnerable groups.

**2. Issues**

In practice, a number of citizens in need are provided with housing under social lease agreements, however the documentation requirements can make it impossible for the most vulnerable to exercise this right. Under the law the following citizens are eligible for social housing:

- 1) veterans of the Great Patriotic War and individuals with similar status.
- 2) citizens whose housing has been deemed unfit for habitation as a result of a natural disaster in accordance with the procedure established by the legislation of the Republic of Tajikistan, and the repair and restoration of which is impossible.
- 3) orphans who have come of full age and have no permanent place of residence.
- 4) military personnel and family members of military personnel who died while performing their duties.

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<sup>1</sup> The procedure for state registration of the housing stock was approved by Decree No. 208 of the Government of the Republic of Tajikistan dated May 29, 2023. <https://mmih.adlia.tj/Search/DocumentView?DocumentId=145303>  
The procedure for replacing residential premises provided under a social lease agreement was approved by Decree No. 210 of the Government of the Republic of Tajikistan dated May 29, 2023.

<https://mmih.tj/SEARCH/DocumentView?DocumentId=145300>  
The procedure for establishing the state social housing fund was approved by Decree No. 209 of the Government of the Republic of Tajikistan dated May 29, 2023. <https://mmih.tj/SEARCH/DocumentView?DocumentId=145308>  
The rules and standards for the maintenance, operation, and repair of the housing stock were approved by Decree No. 212 of the Government of the Republic of Tajikistan dated May 29, 2023

<https://mmih.tj/SEARCH/DocumentView?DocumentId=145314&compareid=145314>  
The list and form of documents required for the registration of citizens in need of housing provided under a social lease agreement were approved by Decree No. 213 of the Government of the Republic of Tajikistan dated May 29, 2023.  
<https://mmih.tj/SEARCH/DocumentView?DocumentId=145317>

5) citizens who have been unlawfully convicted and subsequently acquitted, when it is impossible to return to their previous place of residence.

6) mothers who have given birth to three or more children at once.

7) families raising children with disabilities.

8) other individuals defined by the legislation of the Republic of Tajikistan.

In accordance with clause 8, section 2 of the Rules for issuing national identification cards (ID cards) to citizens of the Republic of Tajikistan, ID cards are issued only on the basis of registration of place of residence or temporary stay. At the same time, based on clauses 41 and 42 of section 5 of the Rules for issuing ID cards to citizens of the Republic of Tajikistan, the competent authorities require individuals to be registered at their place of residence. Only after this can a national ID card be issued.

According to the law<sup>2</sup> for recognizing citizens as in need of housing provided under a social lease agreement, the specified Procedure is established by local executive authorities, self-government bodies of settlements and villages, as well as the place of work on the basis of an application, to which a national ID card or other identity document must be attached. In accordance with the provisions of Article 7 of the Law of the Republic of Tajikistan on Appeals of Individuals and Legal Entities, individuals and legal entities have the right to appeal to the relevant authorities and organizations in person or jointly with other persons and (or) through their authorized representatives in oral, written, and electronic form.

Although the legislation of the Republic of Tajikistan allows citizens to apply to authorities and organizations, applications are often not accepted without an identity document, such as a national ID card. In particular, the Ministry of Labor, Migration, and Employment of the Republic of Tajikistan, in its response to the question of whether it is mandatory to obtain a statement of employment registration in connection with being unemployed and to provide identification documents, including a passport of a citizen of the Republic of Tajikistan, etc., replied: “In accordance with Article 4, paragraph 1 of the Law of the Republic of Tajikistan On Promotion of Employment of the Population No. 44 dated August 1, 2023, citizens are registered as unemployed with the employment and labor authorities at their place of residence.”

When submitting an application for registration, in accordance with Decree No. 170 of the Government of the Republic of Tajikistan dated April 30, 2004 On the Procedure for Registering Unemployed Citizens, a citizen must provide a copy of their national ID card t, employment record book, or documents replacing them, documents confirming their professional qualifications, and information on their average salary for the last two months from their most recent place of employment.

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<sup>2</sup> The procedure for recognizing citizens as in need of housing provided under a social lease agreement was approved by Decree [No. 211](#) of the Government of the Republic of Tajikistan dated May 29, 2023. <https://mmih.tj/SEARCH/DocumentView?DocumentId=145302>

Thus, the law provides for the right to access social housing, but the requirement of the national ID card document, including proof of permanent residence and/or official place of work or proof of unemployment, can result in a person being deprived of the opportunity to be recognized as being in need of social housing, even though their actual social status fully meets the criteria of the Housing Code for recognition as being in need of housing. Consequently, mandatory administrative procedural requirements can be a significant obstacle to exercising the right to housing.

### **3. Gaps in Law - Gaps in Practice**

Currently, according to the registration rules, citizens are obliged to register at the place of permanent residence or stay, but when the citizen does not have a specific place of residence, this becomes practically impossible. However, under Articles 469 and 495 of the Code of Administrative Offenses a person may be fined if they provide a residence or employment to an individual who does not have a national ID card. The right to housing and social security for citizens of the Republic of Tajikistan is not only an international norm, but also a directly applicable national right. In particular, the main international instruments — the Universal Declaration of Human Rights (Articles 22 and 25), the International Covenant on Economic, Social and Cultural Rights (Article 11) and the International Covenant on Civil and Political Rights (Articles 12 and 17) — recognize and guarantee the right to social security, an adequate standard of living, housing and free choice of place of residence. Article 5 of the Constitution of the Republic of Tajikistan recognizes the person and his rights and freedoms as the highest value and obliges the state to protect them. Civil legislation (Articles 21 and 252 of the Civil Code) determines the place of residence and the right to it. Thus, the lack of housing leads to deprivation of registration, and administrative penalties not only do not solve the problem but also worsen the social situation of such people.

### **4. Policy implications**

It is necessary to improve the legislation to replace the mandatory requirement to provide a passport with an alternative approach when ensuring the right to housing for those in need. Providing alternative mechanisms for confirming identification, applying the principle of interpretation of rights in favor of the individual, and collecting accurate data on homeless people will allow for expanding access to social housing and effectively implementing the constitutional and international obligations of the state in the field of human rights.

## 5. Recommendations

With the consistent support of the Head of State and the Government, the social and legal sectors have expanded significantly in recent years. Within the framework of the strategic objective on the protection of human rights, it is becoming increasingly important to ensure basic guarantees of the rights to adequate housing, the provision of adequate housing and shelter<sup>3</sup>, as well as the implementation of measures in the process of resettlement in connection with the expropriation of housing and ensuring a decent life for citizens<sup>4</sup>, as well as preventing homelessness<sup>5</sup> and further increasing public confidence. One of such ways is the introduction of amendments to the current legislation, including:

1) Given that Tajikistan's national laws only use the term “registration” and that most legal acts are in the official language, using the terms "прописка" and “регистрация” in the Russian version of the Rules<sup>6</sup> for Issuing National ID cards to Citizens of the Republic of Tajikistan causes a conceptual conflict. In this regard, with a view to harmonizing terminology and improving legal norms, it is proposed to replace the word “прописка” in the Russian text with the word “регистрация” and to simplify the registration procedure.

2) Administrative liability under Articles 469 — Settlement without a passport or registration, and 495 — Employment without a passport or registration at the place of residence should be excluded from the Code of Administrative Offenses<sup>7</sup> of the Republic of Tajikistan.

3) The new clauses with the following content should be added to Article 4 of the Housing Code<sup>8</sup> of the Republic of Tajikistan:

- "Social housing – referring to houses at a relatively low price and a way to provide housing to citizens who are unable to buy and rent housing at market prices.

- "A homeless person” is defined as someone who does not have a permanent place of residence and is characterized by isolation from society due to poverty, lack of meaningful and productive employment, decent work, and access to infrastructure, including people living on the streets and other open spaces or in buildings unfit for habitation, without the guarantee of a permanent place of residence and access to basic

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<sup>3</sup> National Strategy of the Republic of Tajikistan on Human Rights Protection for the Period up to 2038 (clause 12) <https://khabarikhush.tj/tg/2023/08/11/tojikiston-strategiyai-hifzi-huquqi-insonro-qabulkard/?ysclid=mdlwlcqi3s871967387>

<sup>4</sup> Strategy for the development of social protection of the population of the Republic of Tajikistan for the period up to 2040 (clause 46) <https://moh.tj/ifzi-i-timo/>

<sup>5</sup> The Action Plan for 2023-2025 to the National Strategy of the Republic of Tajikistan in the field of legal protection of a person for the period up to 2038 (clause 9) [https://andoz.tj/docs/farmoishho/Farmoish\\_4\\_2024\\_TJ.pdf](https://andoz.tj/docs/farmoishho/Farmoish_4_2024_TJ.pdf)

<sup>6</sup> Rules for issuing a passport of a citizen of the Republic of Tajikistan. <https://mmih.adlia.tj/SEARCH/DocumentView?DocumentId=136446>

<sup>7</sup> Code of Administrative Offences of the Republic of Tajikistan. <https://khkt.tj/tj/fehris/kitob/item/kodeksi-u-u-vajronkunii-mamurii-um-urii-to-ikiston.html>

<sup>8</sup> Housing Code of the Republic of Tajikistan <https://mmih.adlia.tj/SEARCH/DocumentView?DocumentId=141674>

services. The main goal of the concept of “homeless” is to define the subject of social relations based on respect for human rights and striving to ensure that the needs of homeless people are met.

4) To clause 1 of the Procedure<sup>9</sup> for recognizing citizens as being in need of housing provided under a social lease agreement, approved by Decree No. 211 of the Government of the Republic of Tajikistan dated May 29, 2023, the following shall be added: “1) a citizen's passport or other identity document; in the absence of identity documents, the citizen's application must be accompanied by a temporary registration statement issued by the internal affairs department at the place of residence, with a photograph of the citizen, or a statement of temporary residence of the citizen with a photograph, certified by the chairmen of the district or the chiefs of housing and utility institutions”.

5) The Action Plan for 2026-2028 to the National Strategy<sup>10</sup> of the Republic of Tajikistan on Human Rights Protection for the period up to 2038 should be supplemented with the following: “it is necessary to adopt and implement a mechanism for collecting and processing statistical data on homeless people, considering a human rights-based approach. To enhance the capacity of state authorities with regard to the right to adequate housing, a training session should be organized using a human rights-based approach.”

## **6. Conclusion**

The Housing Code of the Republic of Tajikistan provides the necessary legal framework for the development of the social housing institution. However, in order to ensure the practical implementation of the right to housing, especially for vulnerable groups, existing legislation and procedures need to be adapted to social realities.

Implementing these recommendations can contribute to the development of an inclusive, equitable, and sustainable social housing system in the Republic of Tajikistan.

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<sup>9</sup> The procedure for recognizing citizens as being in need of housing provided under a social housing lease agreement was approved by

Decree No. 211 of the Government of the Republic of Tajikistan dated May 29, 2023.

<https://mmih.tj/SEARCH/DocumentView?DocumentId=145302>

<sup>10</sup> The National Strategy of the Republic of Tajikistan on Human Rights Protection for the Period up to 2038.

<https://mmih.tj/SEARCH/DocumentView?DocumentId=145864>