

**Human Rights in Rights Opposing Environments**

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## Human Rights in Rights Opposing Environments

*What value is there in international organizations working to improve human rights in countries where governments successfully and persistently resist human rights change?*

The rush of international organisations into Afghanistan after the fall of the Taliban in 2001, or the current run into Myanmar shows the popularity of work on countries in transition, where opportunities flourish, willing donors and partners are easily found and results can be quickly chalked up. But what about the countries where authoritarian rule has been and remains the norm? And where expectations of results are limited and the outlook remains bleak for compliance with international human rights standards?

Quantitative human rights research has shown that countries with authoritarian governments are unlikely to make human rights improvements, while transition countries are the most likely to progress.<sup>1</sup> If authoritarian governments are unlikely to show rights improvements, what is the value of human rights work in such countries? The abuses call out for change, while the reality is that the conditions are not there for it. This opposition has practical implications for human rights organisations in deciding where to put their resources and how to work on issues across the world.

In recognising the need for human rights improvements in rights-opposing environments, Thomas Risse and Katheryn Sikkink argue:

“There are some countries and issues where it will be harder to bring about change than in others and thus more persistence will be required. Because they are harder cases also does not mean they should not be chosen as targets for advocacy. It simply suggests that advocates, both internal and external, should have realistic assumptions about the speed and likelihood of change.”<sup>2</sup>

However, from a practical perspective, if we believe that either progress will not be made, or that it will be slow, it raises again the question of the value of an international organization working in such a country. Unless that value can be articulated and justified, organisations may move away from the chronic “harder cases” and be pulled to other targets with a higher chance of effecting improvement. In the context of increasing donor requirements for results based programming, the question is significant.

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<sup>1</sup> Risse, Thomas, and Stephen C. Ropp. "Introduction and Overview." In Risse, T., Ropp, C. and Sikkink, K. Eds. *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge: Cambridge UP, 2013. 3-25. Print, p. 15; Risse, Thomas, and Tanya A. Börzel. "Human Rights: The New Agenda." *Transworld*, Dec. 2012. Web, p. 7; Simmons, Beth A. "From Ratification to Compliance: Quantitative Evidence on the Spiral Model." In Risse, T., Ropp, C. and Sikkink, K. Eds. *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge: Cambridge UP, 2013. 43-60. Print, p. 19; Simmons, Beth A. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge: Cambridge UP, 2009. Print, p. 151-152

<sup>2</sup> Risse, Thomas, and Kathryn Sikkink. "Conclusions." In Risse, T., Ropp, C. and Sikkink, K. Eds. *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge: Cambridge UP, 2013. Print, p. 294

This paper examines these questions further in the context of a case study on Tajikistan.

### **Why does it matter?**

Human rights work is concrete in what it seeks to achieve. It seeks compliance by states with international human rights standards, whether those ratified in the core treaties, or those which are considered applicable to all, such as the Universal Declaration for Human Rights. In this context, it is clear that results and impact are sought in terms of improving human rights practices as they affect all people and particularly those that are vulnerable to abuse. However, effecting improvements is usually not simple and in some contexts may be near to impossible, at least within a specified timeframe.

While acknowledging the difficulty of working on human rights in certain environments, and particularly the poor outlook for achieving impact, it would be hard for those who wish to promote human rights to argue that such work should not continue. Arguments for working in countries where there is a poor outlook for achieving human rights improvements are often based on grounds of morals, principles or a broader human rights vision.<sup>3</sup> At the same time, from a practical perspective, such work needs to be justified not only in terms of ideals, but with concrete arguments that will convince donors and other stakeholders that it is worthwhile to invest money and effort.

As Gready says, “[r]esponses to violations... cannot be purely driven by moral or legal justifications; they need to be defended in terms of effectiveness and evidence.”<sup>4</sup>

Gready recognises the real world interaction between donors and human rights organisations and the increasing demand to show results.<sup>5</sup> A tension exists here between the recognition of the need to work on serious human rights situations with a poor outlook for change and the need to defend such work in terms of results achieved. While human rights defenders work for concrete change and results, they may find value in certain work, even if there is no change in the base indicators that relate to the rights they are working on. This value, the value of work that does not effect change in these indicators, although often acknowledged, does not seem to have been explored in human rights literature.<sup>6</sup>

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<sup>3</sup> Hafner-Burton, Emilie M., and James Ron. "Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes." *World Politics* 61.02 (2009): 360. Web, p. 17; Gorvin, I. "Producing the Evidence That Human Rights Advocacy Works: First Steps towards Systematized Evaluation at Human Rights Watch." *Journal of Human Rights Practice* 1.3 (2009): 477-87. Web, p. 483; Archer, R. "Introduction to the Special Issue: Where Is the Evidence?" *Journal of Human Rights Practice* 1.3 (2009): 333-38. Web, p. 333; International Council on Human Rights Policy. *No Perfect Measure: Rethinking Evaluation and Assessment of Human Rights Work*. Rep. Jan. 2012. Web., p. 4; Gready, Paul. "Reasons to Be Cautious about Evidence and Evaluation: Rights-based Approaches to Development and the Emerging Culture of Evaluation." *Journal of Human Rights Practice* 1.3 (2009): 380-401. Web, p. 386;

<sup>4</sup> Gready, p382.

<sup>5</sup> Gready, p383.

<sup>6</sup> If we look at the works cited above, for example, we find that there are a few lines on the need for such work, or the moral value of such work, but this is not fleshed out further. For example, Gorvin states that “there is an element of moral imperative behind parts of our work— we cannot simply commit to do just what is ‘profitable’ in terms of impact,” p483.

Human rights literature has looked, however, at some related concerns from the perspective of the application of results based management to human rights work and it is worth briefly looking at these. The concerns raised in this context indicate that the value of human rights work is not being captured by results based management and that there are broader values in working on human rights work, whether immediate results are measured or not. Some of the concerns raised here are mirrored later in the paper by stakeholders within the Tajikistan case study. It is important to remember that some of the concerns reflect the way results based management is applied in practice or as shaped by donor requirements and are not necessarily fundamental to a results based approach.

One of the major concerns raised in the literature is the paradox of achieving “results” but having no impact. Results based management, it is argued, tends to lead organisations to work on short-term projects where they can achieve results, as per their log-frames, but no longer engage with broader political processes or take risks as a part of a broader movement of social change. They are encouraged towards picking ‘low hanging fruit’, and therefore achieving minor results, but no longer taking a more strategic, longer-term and creative path towards impact.<sup>7</sup>

Another concern is that aspects of the work may be important or meaningful, but not measurable and therefore not valued.<sup>8</sup> Or as stated in “No Perfect Measure”, “that which is measured by indicators is no replacement for a qualitative and political engagement with process and context.”<sup>9</sup> The limitation of needing measurement is particularly felt when important processes may be happening that are not able to be captured in results frameworks.<sup>10</sup> Here context also matters, for something that is able to happen in one country may be meaningful, while in another it may not. For example, “in contexts that are severely repressive, merely managing to keep a human rights organisation alive, however skeletal and limited its work, should count as a significant success.”<sup>11</sup> The measurement of results may not take into account the differing meaning in various contexts.

The advocacy in human rights work is also highlighted as something that is particularly unsuited to judgement through a results-based management lens. Advocacy is seen as something that is long-term and should not be assessed through short-term indicators. It seems that some form of value is ascribed to certain types of advocacy, whether or not it has a measurable impact. “In some cases, “just making the claim” in steadily more assertive ways over a long period could be seen as a valid goal.”<sup>12</sup>

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<sup>7</sup> International Council on Human Rights Policy, 2012, p. 9-10; International Council on Human Rights Policy. *Assessing the Impact of Human Rights Work: Challenges and Choices*. Working paper. July 2011. Web, p. 11; Gready, p 4.

<sup>8</sup> International Council on Human Rights Policy, 2011, p. 1; International Council on Human Rights Policy, 2012, p. 4.

<sup>9</sup> International Council on Human Rights Policy, 2012, p. 4.

<sup>10</sup> Archer, p. 2, International Council on Human Rights Policy, 2011, p. 20.

<sup>11</sup> International Council on Human Rights Policy, 2012, p7

<sup>12</sup> International Council on Human Rights Policy, 2012, p8.

Some have argued that human rights research and advocacy should not be determined on the basis of likely impact.<sup>13</sup> Although the arguments are not explicitly elaborated as to why such work should not be justified on the basis of likely success in achieving goals, it is implicit that the goal remains in place and there is a hope that the work will, at least one day, have an impact. The argument against submitting advocacy and research work to measurements of success also seem to be implicitly based on an acknowledgement of the complexity of social change processes, and the impossibility of being able to predict the future.<sup>14</sup> At the same time, there is a belief based on previous examples that opportunities will arise, and one must be ready to use them by sustaining efforts through periods of no opportunity in order to take it up more actively at an appropriate moment in the future.<sup>15</sup>

### **Where is it hard to achieve human rights improvements?**

Every country and every region is complex in its own way, including through its cultural, historical, political and economic specificities and so it isn't easy to predict likely patterns of change. However, human rights research over the past decades has begun to unfurl some of the conditions under which human rights change is more likely than others. Both qualitative and quantitative research has begun to converge towards certain findings.

As summed up by Risse and Sikkink when looking at conditions for human rights compliance: "The single most important factor for sustained state willingness to comply with human rights norms is regime type."<sup>16</sup>

Research suggests that the regimes most likely to uphold international human rights standards are democratic regimes or those in transition to democracy.<sup>17</sup> Studies on the effectiveness of treaty ratification have found that the countries in which treaties achieve the most improvement towards compliance are those in transition towards democracy, while such improvement in authoritarian states almost always happened through a change in regime, rather than during the period of authoritarian rule.<sup>18</sup> Quantitative research has confirmed previously made assumptions that human rights are unlikely to improve in authoritarian regimes unless there is a significant political change towards liberalisation.<sup>19</sup> If change is to occur, it is unlikely to happen within a short time frame.<sup>20</sup>

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<sup>13</sup> International Council on Human Rights Policy, 2011, p11

<sup>14</sup> Gready, p384

<sup>15</sup> International Council on Human Rights Policy, 2012, p 8,

<sup>16</sup> Risse and Sikkink, p. 287

<sup>17</sup> Hafner-Burton, E. M., and K. Tsutsui. "Justice Lost! The Failure of International Human Rights Law To Matter Where Needed Most." *Journal of Peace Research* 44.4 (2007): 407-25. Web, p. 407; Risse and Ropp, p16;

<sup>18</sup> Simmons, 2009, p. 151 and p. 305; Risse and Ropp, p. 16.

<sup>19</sup> Simmons, 2013, p43. Quantitative studies on determining scope conditions have relied on a number of indexes that rate different aspects of human rights in countries. In the area of personal integrity rights, the two most commonly used are the Political Terror Scale (PTS), <http://www.politicalterroryscale.org/> and the Cingranelli and Richards Index (CIRI) <http://www.humanrightsdata.com/>. These indexes are put together

Some research suggests that it is important to disaggregate the data, depending on the treaty itself, since findings on personal integrity rights, those that involve extrajudicial killings, torture, disappearances and arbitrary arrest and detention, appear to confirm the above findings, while compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) seems greater even within authoritarian regimes.<sup>21</sup> Most research, however, has focussed on personal integrity rights and the findings in this area converge to a negative outlook for human rights change in authoritarian states.

The literature puts forward some explanations for a bleak outlook for improvement in human rights in authoritarian states. There is recognition that authoritarian states use human rights abuses, against personal integrity rights, to keep control of the population, financial interests and political power.<sup>22</sup> In other words, those in power in authoritarian states have strong interests in maintaining an abusive system in place. Once such a system of repression is in place, it tends to have the ability to maintain itself.<sup>23</sup>

Further, in authoritarian states many of the mechanisms for change are short-circuited, unable to develop or simply not in place. The strongest of these, according to both qualitative and quantitative research, is an active civil society.<sup>24</sup> In *The Persistent Power of Human Rights: From Commitment to Compliance*, Risse and Sikkink argue, as they did in earlier works, that the interaction between domestic and international civil society networks is vital to effect change. However, they acknowledge that the core requirement is the work of civil society at the domestic level and that the protection of human rights “ultimately depends on the willingness and capability of domestic actors to demand and sustain these rights”.<sup>25</sup> They go on to argue that “[e]xactly because domestic mobilization is so essential for human rights change, such change can only occur in countries that are sufficiently liberalized to permit domestic mobilization.”<sup>26</sup> In other words, in authoritarian states civil society’s activity is controlled and limited to such an extent that it is unable to mobilise sufficiently to effect change. Under such conditions, the population is also dissuaded from even trying to demand their rights, when they know that the result will likely be further repression and there is little chance of success.<sup>27</sup>

Other mechanisms that can effect change in transitional and democratic societies, but which are usually ineffective in authoritarian countries include the legislature to provide oversight and pass human rights compliant laws and the judiciary for human rights

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by scholars who use the annual human rights country reports of Amnesty International and the U.S. State Department as their base information.

<sup>20</sup> “Where states are deeply unwilling to bring about change both because they are authoritarian and lack social and material vulnerability, rapid change is unlikely to occur.” Risse and Sikkink, p. 294

<sup>21</sup> Hill, Daniel W. "Estimating the Effects of Human Rights Treaties on State Behavior." *The Journal of Politics* 72.04 (2010): 1161-174. Web.

<sup>22</sup> Simmons, 2009, p. 256; Hafner-Burton and Tsutsui, 2007, p. 414; Hill, p. 1172

<sup>23</sup> Hafner-Burton and Tsutsui, 2005, p. 1399

<sup>24</sup> Risse and Sikkink, p. 288; Simmons, 2009, p137; Hafner-Burton and Tsutsui, 2007 p. 422-423.

<sup>25</sup> Risse and Sikkink, p. 288

<sup>26</sup> Risse and Sikkink, p. 288

<sup>27</sup> Simmons, 2009, p. 136



litigation and fair trial processes. Since the independence of these institutions is usually highly compromised in authoritarian states, they cannot act as mechanisms for human rights change.<sup>28</sup> Lack of freedom of the press is another factor in maintaining poor personal integrity rights in authoritarian states.<sup>29</sup>

Moving away from regime type in determining state willingness to comply with international human rights standards, another increasingly recognised condition for state compliance is effective governance, in the sense of full control over the territory and institutions of the state. A significant barrier to compliance is “weak or limited statehood”.<sup>30</sup> If a state does not have control over a part of its territory, or limited control over institutions, even if it has the will, it cannot enforce human rights compliance in these areas. As pointed out by Börzel and Risse, the majority of developing countries have areas of limited statehood.<sup>31</sup> In countries that are both authoritarian and have limited statehood, it can be difficult to determine the cause of the failure to comply with international human rights standards. It could on the one hand be due to the state’s lack of will, and on the other it could be the state’s inability to control and enforce its decisions on a part of the territory or an institution. The two situations would require different solutions, one involving efforts to change the mind of decision makers, while the other would require building the capacity of the state to enforce its decisions.<sup>32</sup> In terms of the latter, there can be serious risks associated with building the capacity of authoritarian states. These will be discussed further below in the context of the case study.

Overall, human rights literature on state compliance with international human rights norms indicates that improvements in human rights within authoritarian states is unlikely to happen quickly and unlikely to happen without a profound move towards democracy. While the acceptance of international law, through treaty ratification does not appear to increase the chance of compliance of authoritarian states, there remains a question as to whether it can prevent “slippage into worse violations”.<sup>33</sup>

Below, Tajikistan is taken as a case study to look at the value of international organisations working on human rights in a context of resistance to rights compliance and an authoritarian state, where there would appear to be little chance of making significant improvements in the human rights situation. The case study begins with a general introduction to the context in Tajikistan and then goes on to explore the types of human rights work carried out there and the possible value that it has.

## **Tajikistan context**

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<sup>28</sup> Simmons, 2009, p. 149-150 and p. 264

<sup>29</sup> Simmons, 2009, p281.

<sup>30</sup> Risse and Ropp, p. 3; Risse, Thomas and Tanya A. Börzel. "Human Rights in Areas of Limited Statehood: The New Agenda." In Risse, T., Ropp, C. and Sikkink, K. Eds. *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge: Cambridge UP, 2013. 63-84. Print, p. 63

<sup>31</sup> Risse and Börzel, 2013, p. 63

<sup>32</sup> Risse and Börzel, 2013, p. 69, 81-83.

<sup>33</sup> Hafner-Burton and Tsutsui, 2007, p. 420-421

Tajikistan is a former Soviet republic of the Soviet Union that became an independent country in 1991. It suffered from civil war from 1991 until a peace agreement was signed in 1997. Over 50,000 people were killed during the war.<sup>34</sup> After 1997 periodic violence continued to break out, but began to stabilise by 2000, when parliamentary elections were held.<sup>35</sup> From 1995 until 2000, the United Nations endeavoured to support a resolution to the conflict through a peace keeping operation, the United Nations Mission of Observers in Tajikistan, which was followed by the United Nations Tajikistan Office of Peace Building from 2000 until 2007.<sup>36</sup>

Since the end of the civil war, President Emomali Rahman has succeeded in consolidating his hold on power. Political opponents have been removed through a variety of pressure and persecution.<sup>37</sup> The Tajik regional elite of Kulob, to which President Rahman belongs, control most key positions within the executive, judiciary and other institutions of government.<sup>38</sup> Although international election observers have been present at all parliamentary and presidential elections since 2000, no elections have been found to be free and fair.<sup>39</sup>

Tajikistan is amongst the poorest countries of the former Soviet Union and has Least Developed Country status.<sup>40</sup> UNDP's Human Development Index (HDI) indicates that in 2013, Tajikistan was ranked at 125 out of 187 countries, putting it in the medium human development category and on a par with its neighbour Kyrgyzstan. Although it is in the medium range, the Multi-Dimensional Poverty Index indicates that there is significant inequality in Tajikistan, making the numbers of people vulnerable to poverty greater than those at a similar ranking in the HDI index, such as Kyrgyzstan. It is clear from the trends that the civil war had a significantly negative effect on development indicators,

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<sup>34</sup> "Tajikistan: UN Closes Peacebuilding Office at End of Mission." *UN News Centre*. United Nations, 1 Aug. 2007. Web. 9 June 2014.

<http://www.un.org/apps/news/story.asp?NewsID=23393&Cr=tajik&Cr1=#.U5VefXaE6pA>

<sup>35</sup> Office for Democratic Institutions and Human Rights. *The Republic of Tajikistan, Elections to the Parliament 27 February 2000, Final Report*. Rep. Organization for Security and Co-operation in Europe, 17 May 2000. Web.

<sup>36</sup> United Nations Department of Public Information. "Tajikistan Background- UNMOT." *UN News Center*. UN, 2000. Web. 09 June 2014. <http://www.un.org/depts/DPKO/Missions/unmot/UnmotB.htm>

<sup>37</sup> Office for Democratic Institutions and Human Rights. *Republic of Tajikistan, Presidential Elections 6 November 2013, OSCE/ODIHR Election Observation Mission Final Report*. Rep. Organization for Security and Co-operation in Europe, 5 Feb. 2014. Web, p. 2-5; United Nations Development Programme Evaluation Office. *Case Study Tajikistan: Evaluation of UNDP Assistance to Conflict-Affected Countries*. Rep. United Nations Development Programme, 2006. Web, p. 8

<sup>38</sup> United Nations Development Programme Evaluation Office, p. 9

<sup>39</sup> "OSCE/ODHIR Tajikistan." *Tajikistan*. Organization for Security and Co-operation in Europe. Web. 08 July 2014. <http://www.osce.org/odihr/elections/tajikistan>

<sup>40</sup> Landlocked Developing Countries and Small Island Developing States, July 2013. Web. 9 July 2014, <http://unohrrls.org/meetings-conferences-and-special-events/tajikistan/>

something that Tajikistan now appears to be overcoming.<sup>41</sup> Other United Nations estimates indicate that the poverty rate is at more than fifty per cent of the population.<sup>42</sup>

Due to high unemployment rates in Tajikistan, an estimated one million people out of a population of approximately 7.8 million work abroad.<sup>43</sup> The vast majority work in Russia and send back remittances that make up approximately half of the country's GDP.<sup>44</sup> Migrants in Russia are regularly subjected to discrimination and attacks and there are regular news stories of the bodies of Tajik migrant workers being brought back to Tajikistan for burial.<sup>45</sup>

Corruption is an endemic problem that appears rife at all levels of government. It impacts access to basic services, small, medium and large business development and the delivery of development assistance.<sup>46</sup> Transparency International ranked Tajikistan on its Corruptions Perception Index at 154 out of 175 countries, where 175 indicates the most corrupt. Tajikistan's ranking has remained at a similar level for over a decade.<sup>47</sup>

The Government pursues a foreign policy of balance, with friendly relations with Russia, China, the United States, European Union and other European donors. Russia remains a key partner, maintaining the biggest military base out of its own territory in Tajikistan and having been key in providing support for the government during the civil war.<sup>48</sup> China has provided significant development loans for infrastructure projects, while the US and European countries are among the largest donors.<sup>49</sup> Russia, Europe and the US cooperate with Tajikistan to strengthen border controls on the long border with Afghanistan in attempts to control the flow of militants and narcotic drugs. The impact on

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<sup>41</sup> United Nations Development Programme. The Rise of the South: Human Progress in a Diverse World, Tajikistan HDI Values and Rank Changes in the 2013 Human Development Report. Tech. 2013. Web.

<sup>42</sup> Landlocked Developing Countries and Small Island Developing States (LDCSIDS), July 2013. Web. 9 July 2014, <http://unohrrls.org/meetings-conferences-and-special-events/tajikistan/> It is sensible to be cautious regarding statistics on poverty and development in Tajikistan, since there is a lack of reliable data. Interviews with national NGOs.

<sup>43</sup> LDCSIDS, July 2013

<sup>44</sup> ILO Subregional Office for Eastern Europe and Central Asia. Migrant Remittances to Tajikistan: The Potential for Savings, Economic Investment and Existing Financial Products to Attract Remittances. Rep. International Labour Organization, 2010. Web. According to Bertelsmann Stiftung's Transformation Index (BTI) narrative report on Tajikistan, Tajikistan is the most remittance dependent country in the world, <http://www.bti-project.org/reports/country-reports/pse/tjk/index.nc>

<sup>45</sup> "Tajikistan: Migrant Laborers Dying to Work in Russia." *EurasiaNet.org*. 25 Feb. 2013. Web. 07 June 2014. <http://www.eurasianet.org/node/66602> "Two Tajik Migrant Workers Found Dead In Russia." *RadioFreeEurope/RadioLiberty*. 13 Nov. 2013. Web. 07 June 2014. <http://www.rferl.org/content/tajik-workers-russia-/25167093.html>

<sup>46</sup> "Tajikistan: On the Road to Failure." - *International Crisis Group*. 12 Feb. 2009. Web. 09 June 2014. <http://www.crisisgroup.org/en/regions/asia/central-asia/tajikistan/162-tajikistan-on-the-road-to-failure.aspx>; "2014 Investment Climate Statement - Tajikistan." *U.S. Department of State*. U.S. Department of State, June 2014. Web. 9 July 2014. <http://www.state.gov/e/eb/rls/othr/ics/2014/228606.htm>, p. 8

<sup>47</sup> "Corruption Perceptions Index Overview." Transparency International. Web. 10 June 2014. <http://www.transparency.org/research/cpi/overview>

<sup>48</sup> "Afghan Neighbor Tajikistan Ratifies Base Deal with Russia." Reuters, 1 Oct. 2013. Web. 10 June 2014. <http://www.reuters.com/article/2013/10/01/us-tajikistan-russia-idUSBRE9900CZ20131001>

<sup>49</sup> LDCSIDS, July 2013

drug trafficking, however, appears to have been little. Tajikistan has effectively used other countries' strategic interest in its proximity to Afghanistan to secure cooperation, resources and aid.<sup>50</sup> Links to former Soviet Union countries remains strong economically, politically, socially and culturally and significantly influence life at many levels. The security services of these countries cooperate closely and effectively.<sup>51</sup>

### *Human Rights*

Tajikistan acceded to the major human rights treaties in the 1990s, including the Convention against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR) and the individual complaints procedure under the ICCPR.<sup>52</sup>

The annual human rights reports of Amnesty International, Human Rights Watch and the US State Department highlight problems of persecution of opposition and critics of government, impunity, criminal justice such as arbitrary arrest and denial of fair trial, torture and ill-treatment, harsh prison conditions and lack of independent monitors of places of detention, lack of freedom of expression and access to information, restrictions on freedom of religion, closures of NGOs, violence against women and children, discrimination against women and lesbian, gay, bisexual and transsexuals.<sup>53</sup>

The Cingranelli and Richards Index (CIRI) on physical integrity scores Tajikistan at 4 points for 2011, where 0 points indicates that all four forms of physical integrity abuses (disappearances, extrajudicial killings, political imprisonment and torture) are practiced frequently and 8 indicates that none of these abuses occur.<sup>54</sup> Looking back over the scores for Tajikistan since 1992, the earliest data for Tajikistan, it can be seen that the period of the civil war indicated the worst periods of abuse, with the physical integrity score at 0 from 1993 to 1996. From 1997 to 2000, the period of stabilization, the ratings were 1, except in 1999 where it reached 2. However, during the post-conflict period, from 2001 onwards, the ratings vary from 3 to 5, stabilizing at 4 from 2006 onwards. If we break down the scores, we see that torture has remained at 0 (practiced frequently) from 1993 to 2011. Political imprisonment varies from 0 to 1 (practiced occasionally),

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<sup>50</sup> <http://www.bti-project.org/reports/country-reports/pse/tjk/index.nc> accessed 11 June 2014.

<sup>51</sup> Amnesty International. *Return to Torture: Extradition, Forcible Returns and Removals to Central Asia*. Rep. no. EUR 04/001/2013. July 2013. Web. 8 June 2014.

<sup>52</sup> In 1993, it acceded to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (CRC); in 1995 to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination; in 1999, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights; in 2002, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the two optional protocols to the CRC. [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=171&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=171&Lang=EN) accessed 10 June 2014

<sup>53</sup> "Annual Report 2013: The State of the World's Human Rights." *Tajikistan*. Amnesty International. Web. 9 June 2014. [www.amnesty.org/en/region/tajikistan/report-2013](http://www.amnesty.org/en/region/tajikistan/report-2013) ; "World Report 2014: Tajikistan." Human Rights Watch. Web. 9 June 2014. <http://www.hrw.org/world-report/2014/country-chapters/tajikistan> ; "Country Reports on Human Rights Practices for 2013: Tajikistan." *U.S. Department of State*. U.S. Department of State. Web. 9 June 2014. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

<sup>54</sup> <http://www.humanrightsdata.com> accessed 10 April 2014

stabilizing at 1 since 2003. Extrajudicial killings range from 0 to 2, stabilizing at 1 since 2006, whereas disappearances, while prevalent during the civil war have been registered as not occurring since 2001.

The Political Terror Scale does not break down the components of the score into the different abuses and so is less useful for understanding the changing human rights environment. For 2012, the most recent data, it scores Tajikistan as a 3, where a score of 1 is for countries that effectively protect personal integrity rights and 5 for those where the most physical integrity abuses are experienced. Since 1997 the scores have ranged from 2 to 4.<sup>55</sup>

In terms of press freedoms and freedom of expression, the CIRI index has scored Tajikistan at either 1 or 0 from 1992 to 2011, where 0 is complete censorship and 1 is some censorship. Since 2006, it has twice received a score of 1 (in 2006 and 2011) and four times received a score of 0 (2007-2010).<sup>56</sup> For 2014, Reporters without Borders ranked Tajikistan on its Press Freedom Index at 115 out of 180 countries, where the higher the number the worse the record on press freedom.<sup>57</sup> In 2013, it ranked 123 out of 179 countries. It has consistently maintained similar rankings over the last decade, with a couple of rankings at a slightly lower position in the mid-2000s.<sup>58</sup> Freedom House has consistently rated Tajikistan as “not free” and has scored its political rights at 6 and civil rights at 5 or 6 since 1999, where 1 is the highest enjoyment of rights and 7 is the worst. In 2014, it ranked both political and civil rights at 6.<sup>59</sup>

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<sup>55</sup> <http://www.politicalterroryscale.org/countries.php?region=Eurasia&country=Tajikistan> accessed 10 June 2014. A score of 3 is generically described as: “There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted.”

<sup>56</sup> <http://www.humanrightsdata.com> accessed 10 April 2014

<sup>57</sup> “World Press Freedom Index 2014.” *Reporters Without Borders*. Web. 10 Apr. 2014.

<http://rsf.org/index2014/en-index2014.php>

<sup>58</sup> See <http://en.rsf.org/> accessed 10 April 2014. The best ranking was 95 out of 167 in 2004. Local human rights defenders disputed that 2014 should have showed an improved ranking from 2013, since they argued that the press freedom environment had not improved at all during this period. Interviews, Dushanbe, April 2014.

<sup>59</sup> “2014 Freedom in the World.” *Freedom in the World*. Freedom House. Web. 11 Apr. 2014.

<http://www.freedomhouse.org/report/freedom-world/freedom-world-2014#.U7EFpUCE6pA>

The political rights score uses indicators related to rights in the electoral process, political pluralism and participation, and the functioning of government. The civil rights score uses indicators related to rights of freedom of expression and belief, association and organizational rights, rule of law and personal autonomy and individual rights. A rating of 6 for political rights is described as “6 – Countries and territories with a rating of 6 have very restricted political rights. They are ruled by one-party or military dictatorships, religious hierarchies, or autocrats. They may allow a few political rights, such as some representation or autonomy for minority groups, and a few are traditional monarchies that tolerate political discussion and accept public petitions.” A rating of 6 for civil rights is described as “6 – Countries and territories with a rating of 6 have very restricted civil liberties. They strongly limit the rights of expression and association and frequently hold political prisoners. They may allow a few civil liberties, such as some religious and social freedoms, some highly restricted private business activity, and some open and free private discussion.” See <http://www.freedomhouse.org/report/freedom-world-2014/methodology#.U5fuknaE6pB> accessed 11 June 2014.

The United States Commission on International Religious Freedom (US CIRF) carries out a global survey annually of countries that do not comply with international human rights standards on religious freedom. From 2008, it placed Tajikistan on its watch list, indicating that there had been deterioration in religious freedom in the country. In 2012, it placed Tajikistan on its tier 1 list of countries of “particular concern”, its worst ranking.<sup>60</sup>

From the indexes and annual surveys outlined above, it can be summarised that during the civil war period personal integrity rights were at a low and have since stabilised to a position where there is frequent torture, some political arrests, some extrajudicial killings and practically no disappearances. Freedom of expression has remained relatively stable over the last decade, with a significant degree of censorship, while religious freedoms appear to have deteriorated.

### *Regime Type and Statehood*

In determining the “regime type” of a state, scholars use a variety of definitions for democratic and authoritarian states. The narrowest definitions focus on the “degree of competition for executive office” and levels of citizen participation in “electing their governments”.<sup>61</sup> Broader definitions are used to create indices such as the Bertelsmann Stiftung’s Transformation Index (BTI) polity scale.<sup>62</sup> The BTI assesses “whether and how developing countries and countries in transition are steering social change toward democracy and a market economy”.<sup>63</sup> Under the BTI political transformation index, in 2014 Tajikistan was considered a “failed transformation” and ranked at 108 out of 129 countries, where 1 is the most democratic and 129 the least.<sup>64</sup> The narrative country reports characterised Tajikistan as an authoritarian state.<sup>65</sup> Under the narrower definitions, Tajikistan can also be identified as an authoritarian state, having had no elections that were considered free and fair.<sup>66</sup>

The BTI index also allocates a rating up to 10 on the degree of statehood, where 10 indicates full control over the territory and institutions. In 2014, Tajikistan rated at 7.3 on

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<sup>60</sup> "Tajikistan." *United States Commission on International Religious Freedom*. Web. 16 Apr. 2014. <http://www.uscirf.gov/countries/tajikistan> In 2014, the US CIRF had listed 16 countries in its tier 1 list of countries of particular concern, and 10 countries on its tier 2 watch list. The tier 1 list includes two other countries of Central Asia, Turkmenistan and Uzbekistan. The tier 2 list includes Kazakhstan.

<sup>61</sup> Risse and Ropp, p. 17. The narrow definition is designed to avoid overlap with broader human rights concepts and therefore ensure a credible exploration of the connection between democracy and human rights, rather than a connection that is ensured already by definition.

<sup>62</sup> <http://www.bti-project.org/index> accessed 11 June 2014.

<sup>63</sup> <http://www.bti-project.org/index/methodology/> accessed 11 June 2014. Specifically, it assesses the political transformation to democracy, economic transformation to a just market economy and just and effective management of transformation. The criteria used to determine political transformation include the state’s monopoly on the use of force, separation of powers, prosecution of abuse, how well the democratic system represents the interest of a broad spectrum of society, and the political culture.

<sup>64</sup> <http://www.bti-project.org/index/status-index/> accessed on 11 June 2014.

<sup>65</sup> <http://www.bti-project.org/reports/country-reports/pse/tjk/index.nc> accessed on 11 June 2014.

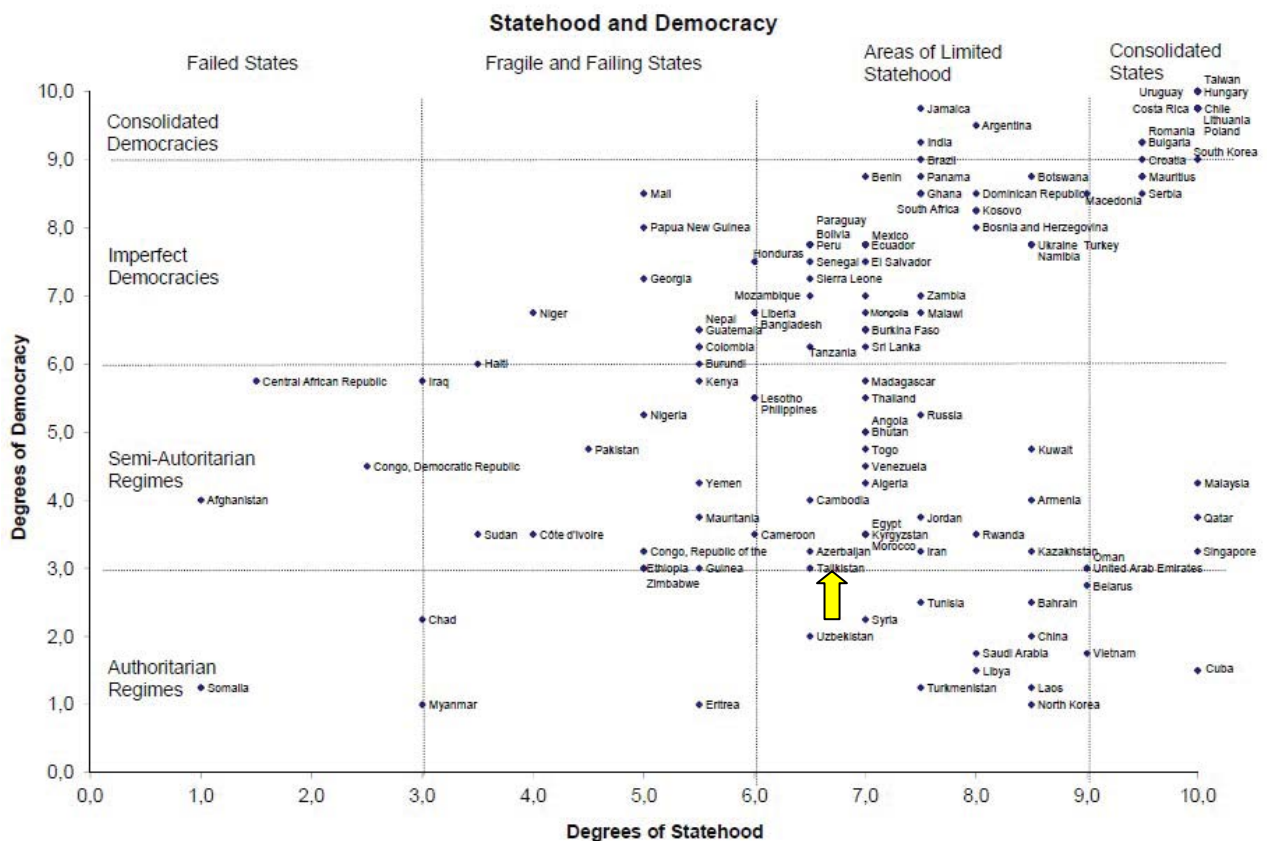
<sup>66</sup> <http://www.osce.org/odihr/elections/tajikistan>, accessed 9 June 2014. [op cit footnote 39]. The reports indicate that OSCE did not find any elections since 2000 to be free and fair. Elections held prior to this were not considered to be multi-party elections.



statehood, indicating a reasonably high level of control.<sup>67</sup> Since the civil war, Tajikistan has had regular incidents of armed violence in the country, including more recently armed clashes in Rasht in 2010 and in Gorno-Badakhshan in 2012.<sup>68</sup> However, the government has consistently been able to quell such violence. While it would appear that there are many potential opponents in the country, the current President and his supporters have so far been adept at holding onto power and short-circuiting active dissent. This is not to say that things couldn't change quickly, if economic or other factors changed in the country.

The table below, taken from Risse and Börzel, brings together the BTI indices on democracy and statehood and places Tajikistan (see yellow arrow) on the border of semi-authoritarian and authoritarian regimes and as having areas of limited statehood.

Figure 1: Statehood and Democracy<sup>69</sup>



<sup>67</sup> <http://www.bti-project.org/index/status-index/> accessed on 11 June 2014.

<sup>68</sup> "Tajikistan: The Changing Insurgent Threat." International Crisis Group, 24 May 2011. Web. 11 June 2014. <http://www.crisisgroup.org/en/regions/asia/central-asia/tajikistan/205-tajikistan-the-changing-insurgent-threats.aspx> ; "Tajikistan Chapters, Human Rights Watch World Reports 2013." Human Rights Watch. Web. 17 June 2014. <http://www.hrw.org/by-issue/essential-background/217>

<sup>69</sup> Risse and Börzel, 2012, p12, yellow arrow added.

### **Value of human rights work in ‘Rights Opposing’ countries- Tajikistan case study**

This case study focuses mainly on personal integrity rights, and particularly on torture prevention, the most widespread and best documented of the violations in this category in Tajikistan. This choice was made since the literature and indexes relied upon are more developed in the area of personal integrity rights, rather than in other areas such as economic, social and cultural rights, and therefore can be applied and tested directly in the case study.

#### *Rights Opposing?*

In posing the question of the value of human rights work in rights opposing countries and using Tajikistan as a case study, there is a strong assumption that Tajikistan is a ‘rights opposing’ country. As can be seen from the indices outlined above, since stabilising after the civil war, Tajikistan has not shown overall progress in improving its human rights compliance with international human rights standards and in certain areas may even be moving further away from these standards. However, this fact alone is not sufficient to show that the country is ‘rights opposing’. There may be other reasons for its failure to improve. The failure could be because of a lack of state will, which would show it to be ‘rights opposing’, or because of its lack of ability, due to limited statehood or insufficient control to implement its decisions.

One could also challenge the finding that no progress is made. Although the indices do not show progress, they are not fine tools that can gauge smaller gradients of change and therefore perhaps overlook significant, but real change that may be taking place.

In interviews with representatives of international and local organisations working on human rights in Tajikistan, some arguments were made explicitly or implicitly that the state did have the will to make improvements and that Tajikistan was making progress and so, may not be ‘rights opposing’.

#### *State Will or Limited Statehood*

In terms of the state’s will to improve human rights, there were two prevailing views supporting the notion that there is such a will in Tajikistan. One was that the will exists at the higher levels of government, but that it takes time to “trickle down” to be properly implemented.<sup>70</sup> Evidence to support this view could be found in certain high level government statements in support of human rights reform, as well as in dialogues or other fora with the diplomatic community. While others considered that there were many at the working level who wanted to see human rights reform, but that the messages needed to be better communicated to those at the top, in order to see increased traction.<sup>71</sup> This view was used to explain why Tajikistan was not making more progress and yet appeared to be cooperating with reform agendas, for example attending seminars and workshops and saying “the right things”.<sup>72</sup> At the same time, these interviewees provided a good number

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<sup>70</sup> Interview no. 5, Dushanbe, April 2014.

<sup>71</sup> Interview nos. 10, Dushanbe, May 2014.

<sup>72</sup> Interview no. 11, Dushanbe, May 2014.



of examples of specific actions deliberately taken by the state that undermined human rights reform.<sup>73</sup>

Other interviewees indicated that after consistent work by international and local organisations there was now a will in government to work with them on human rights.<sup>74</sup> This should not be confused with a will to implement human rights reforms, but was generally seen as a step in the right direction. It was felt that the government has a will to show that it is doing something, for example, through a large number of action plans and the creation of working groups to implement human rights recommendations.<sup>75</sup> Although this showed a positive movement, most warned that the proliferation of working groups and action plans was worrying and indicated their concern that reforms would not be adequately implemented in practice.<sup>76</sup>

Most stated or implied that the state does not have the will to make human rights reforms in a number of areas. They indicated that there was not even an openness to work with the international community or local groups in such areas as freedom of religion, political rights for opposition groups, aspects of elections, freedom of expression and hazing in the army.<sup>77</sup>

At least one interviewee considered that the government was now less open to human rights reforms than during the immediate post-war period, having now consolidated its hold on power rather than being in a period of transition.<sup>78</sup> A number of interviewees indicated that the government did not have an interest in serious human rights reforms, although may allow a minor level of reform up to a point where it will not impact its other interests.<sup>79</sup> When questioned on the limits of reform in the area of torture prevention, interviewees agreed that more serious reform of justice institutions, such as that which has happened in Georgia or Poland, would not happen in Tajikistan, short of a revolutionary change in government.<sup>80</sup>

From the above it becomes clear that it is not simple to determine “the will of the state” to implement human rights reforms. The state is composed of different parts and some may be more inclined to change than others. Similarly, there may be some areas of a human rights reform agenda that are more acceptable to the state than others. What appears to be the case, though, is that the state is not interested in reform of some areas of human rights and is not prepared to cooperate with the international community on these.

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<sup>73</sup> These included retribution for human rights work, implementing new laws and policies that bolster police abuses and ensuring the lack of independence of human rights protection mechanisms.

<sup>74</sup> Interview nos. 1, 9, 14, Dushanbe, May 2014; interview nos. 20, 21, 27, Kurgan Tepe, May 2014.

<sup>75</sup> Interview nos. 15, Dushanbe, May 2014.

<sup>76</sup> Interview nos. 4, 10 and 15, Dushanbe, April and May 2014.

<sup>77</sup> Interview nos. 1, 2, 5 and 6, Dushanbe, April 2014.

<sup>78</sup> Interview no. 1, Dushanbe, April 2014. This view is supported by the indices of Freedom House in its report *Nations in Transition 2014: Eurasia's Rupture with Democracy*, p12-19.

<sup>79</sup> Interview nos. 2, 11, 16, 31 Dushanbe, April and May 2014; interviews no. 25, 28, Kurgan Tepe, May 2014.

<sup>80</sup> Interview nos. 4, 31, Dushanbe, April 2014. In Georgia and Poland, the police and judiciary underwent serious reforms, including through a process of lustration in which a high percentage of judges and police were fired and new personnel taken on.

In other areas, it keeps tight control over the reform agenda and meaningful implementation is restricted. Overall, there are serious limitations in the will of the state to comply with international human rights standards.

In terms of limited statehood, there were references to the periodic outbreaks of armed conflict that have happened since the civil war. However, for the most part, interviewees seemed to indicate that the government had effectively, at least for the short term, repressed the attempts at taking control away from the government.<sup>81</sup> Others mentioned limited control over institutions, but only within the context of either corruption or torture prevention.<sup>82</sup> In both cases, it was felt that the incentive structures, over which the government does have control, lead to uncontrolled corruption and torture, indicating an lack of government will to deal with the issues. Overall, there was a sense that there are threats to government statehood, but that for now at least, government statehood is on the whole sufficient for it to determine its own policy directions, a finding more or less in line with the BMI index outlined above.

### *Progress?*

Progress was noted in a number of areas. In terms of personal integrity rights, the clearest was in the area of torture prevention, where all interlocutors agreed that the work of international and local organisations had delivered some positive changes. The government had now acknowledged that torture existed and that it was a problem, as compared to four or five years ago when it was denied, and the media was now able to report on cases of torture. The international definition of torture from the Convention against Torture was included in the criminal law, along with a range of other legislative changes that brought criminal and procedural laws closer to international standards.<sup>83</sup> In three cases, courts ruled that the victims of torture or their relatives were entitled to compensation and authorities prosecuted law enforcement officials for the crime of torture in four cases.<sup>84</sup> At the same time, it was acknowledged that torture remained a systemic, routine and widespread problem and that the steps taken so far would have been unlikely to impact on the numbers of cases.<sup>85</sup> It was also reported that active intimidation was being directed towards victims and their families who had spoken out about torture, with the aim of silencing them and having them withdraw complaints.<sup>86</sup>

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<sup>81</sup> Interview nos. 6, 17, Dushanbe, April and May 2014.

<sup>82</sup> Interview nos. 4, 13, Dushanbe, April and May 2014.

<sup>83</sup> United Nations. Concluding Observations on the Second Periodic Report of Tajikistan, Adopted by the Committee at Its Forty-ninth Session (29 October - 23 November 2012). CAT/C/TJK/CO/2. Committee against Torture, 21 Jan. 2013. Web.

<sup>84</sup> Interview no. 15, Dushanbe, May 2014; Tajikistan Joint Follow-up Submission to the Concluding Observations of the United Nations Committee against Torture, Amnesty International and Notorture.tj. Rep. Amnesty International, Apr. 2014. Web. 17 June 2014.

<<http://www.amnesty.org/en/library/asset/EUR60/002/2014/en/834a5ba8-24e4-49cf-a73b-2428c2fb95ab/eur600022014en.pdf>>; Tajikistan Chapters, Human Rights Watch World Reports 2012, 2013, 2014, <http://www.hrw.org/by-issue/essential-background/217>

<sup>85</sup> Interview nos. 2, 3, 15 and 31, Dushanbe, April and May 2014.

<sup>86</sup> Interview no.17, Dushanbe, May 2014; Interview no. 28, Kurgan Tepe, May 2014

Other areas of progress were pointed out, such as passing of a new law on violence against women in 2013 that women's groups had long lobbied for; the moratorium on the death penalty since 2004; creation of action plans to implement human rights recommendations and improved reporting before the United Nations human rights mechanisms (under treaties and the Universal Periodic Review).<sup>87</sup> Although an ombudsman office, a form of national human rights institution, was created in 2009, all agreed that it was not independent and was yet to show results.<sup>88</sup>

It was generally agreed that the government was more willing to engage with civil society than in the past, at least when requested by international organisations during dialogues, seminars and workshops.<sup>89</sup> Some organisations also reported successes in individual cases where they had intervened.<sup>90</sup>

Many felt that it was possible to make progress on discreet issues where other interests would not be threatened. In general, this meant that it was easier to make progress in areas such as children's and women's rights, and in some areas of civil law.<sup>91</sup> In terms of programming on economic, social and cultural rights, particularly in the areas of education and health, the picture was more complex, since issues of corruption and the failure of the state to deal with it effectively continuously intervened.<sup>92</sup> It was clear that in choosing programming areas, many international organisations had chosen areas where they felt they could make some progress and so had avoided the difficult and sensitive issues that they believed the government would oppose; at the same time local organisations felt constrained from working on these difficult issues because of protection concerns for themselves.<sup>93</sup> One interviewee also pointed out that progress depended somewhat on the political agenda at hand, so when the country was facing an election or a large regional meeting was due to be held in the country, the government became less open to working on human rights issues.

In an evaluation commissioned by the European Parliament of the policies and engagement of the European Union (E.U.) on human rights in Central Asia, the evaluators found that despite increased engagement of the E.U. on human rights in the region, the results had been minor. They found that in general the human rights record in countries of the region was going backwards.<sup>94</sup>

Overall, the assessment appeared to be that there were quite small, but real areas of progress within a much larger difficult context. The positives were that the government

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<sup>87</sup> Interview nos.1, 4, 5, 9, 11, 12

<sup>88</sup> Interview nos. 1, 3, 4 and 5, Dushanbe, April 2014.

<sup>89</sup> Interview nos. 5, 6 and 9, Dushanbe, April 2014; interview nos. 21 and 22, Kurgan Tepe, May 2014.

<sup>90</sup> Interview nos. 9 and 15 Dushanbe, April and May 2014; interview nos. 22 and 28, Kurgan Tepe, May 2014.

<sup>91</sup> Interview nos. 5, 11, 15 and 16, Dushanbe, April and May 2014.

<sup>92</sup> Interview no. 29, Dushanbe, April 2014, and NGO consultation meeting, Dushanbe, June 2014

<sup>93</sup> Interviews nos. 5, 6, 7, 12, 15 and 16, Dushanbe, April and May 2014.

<sup>94</sup> Boonstra, Jos, Tika Tsertsvadze, and Vera Axyonova. *Evaluation of the EU's Human Rights Policies and Engagement In Central Asia*. EXPO/B/DROI/2013/21. Directorate-General for External Policies of the Union, European Union, Mar. 2014. Web, p. 6

was willing to engage on a range of issues and within these areas it was often prepared to follow certain process demands of the international community, such as engagement with civil society, participation in dialogues and other fora; but that overall there was substantially limited progress.

### *Rights Opposing?*

Although there are some areas in which the state does not have full control in Tajikistan, it seems that its control is sufficient to determine the overarching policy direction of the country. It is limited by resources, but could make significant improvements in the sphere of human rights if it chose to do so. While there are some specific areas of improvement, the improvements are restricted to areas where there appears to be less of a “threat” to the current interests of those in power— for example children’s rights— or to formalistic improvements which have little impact on the situation on the ground without further implementation. This leads to the conclusion that it is valid to consider Tajikistan as “rights opposing” for the purposes of this paper. It also aligns to the findings for Tajikistan as an “authoritarian state” within the context of the academic works outlined above on compliance of states with international human rights standards.

According to the spiral model of human rights change, put forward fifteen years ago by Risse, Ropp and Sikink, and then re-tested and up-dated in *The Persistent Power of Human Rights: From Commitment to Compliance*,<sup>95</sup> Tajikistan would appear to be stuck and hovering between denial and tactical concessions, depending on the issue at hand and the current political moment. The spiral model argues that socialisation processes to push non-compliant states to comply with international human rights standards can go through five progressive stages- repression, denial, tactical concessions, prescriptive status and finally rule-consistent behaviour. The progression may not be smoothly flowing from one stage to the next, but the stages outline distinct state responses to attempts to socialise it towards human rights standards.<sup>96</sup> The denial stage is when international and national groups have been able to bring enough attention to violations that the state feels the need to respond, but responds with denial. Domestic groups are not strong enough to “seriously challenge” the state, but at least the state feels the need to engage at some level on the issue.<sup>97</sup> The tactical concessions stage is when the state begins to admit to human rights problems and starts to make concessions in order to reduce the pressure on it, while not yet moving to a stage of significant reform. This stage can lead to further concessions that could move the state towards increasingly recognising human rights standards within its domestic framework (prescriptive status) or could result in further backlash of the state in terms of increasing episodes of repression. States as active players in this process may successfully resist movement to the next stages and become stuck at a certain point, at which human rights indicators would not show further progress, or perhaps regression.

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<sup>95</sup> Risse, Ropp and Sikink (eds.), *The Persistent Power of Human Rights: From Commitment to Compliance*, Cambridge University Press, 2013.

<sup>96</sup> For a good summary of the spiral model, see Risse and Ropp, Introduction and overview, *ibid*.

<sup>97</sup> *Ibid*, p6.

Tajikistan appears to have successfully resisted further human rights change, implementing some tactical concessions- changes to some laws, creation of action plans and working groups,<sup>98</sup> allowing a certain level of criticism, engaging in some consultations with civil society- on certain issues, and maintaining a level of denial and lack of openness on other issues- for example freedom of religion or political rights of opposition groups. It would therefore seem that international attempts to bring Tajikistan to a human rights compliant state have floundered. Below the influences and attempts to improve Tajikistan's human rights record are examined in more detail.

### *International and Regional Rights Influences*

In updating the spiral model, scholars have come up with a useful set of “scope conditions for compliance” with international human rights standards which are worth examining in the context of Tajikistan.<sup>99</sup> The first two, regime type (democratic or authoritarian) and statehood, have been examined above. The third is “centralized vs. decentralized rule implementation” which looks at how much control central authorities have over the implementation of specific reforms by specific actors, whether state or non-state. The fourth and fifth conditions relate to the “material vulnerability” and “social vulnerability” of a state to external pressures to comply with (or refrain from complying with) international human rights norms.

In terms of material vulnerability, as a small Least Developed Country and one of the poorest countries of the former Soviet Union region, Tajikistan would certainly seem to be materially vulnerable. According to the theory of scope conditions for compliance, this should mean that the country is susceptible to pressures to improve its human rights record. As explained by Risse and Börzel:

“On average, rule targets commanding powerful economic and/or military resources are expected to be less vulnerable to external pressures toward compliance than materially weak targets... Everything else being equal, great powers can fight off external network mobilization more easily than small states.”<sup>100</sup>

However, as the authors point out for social vulnerability, it is not unidirectional. I would argue that similarly material vulnerability is not unidirectional in the direction of human rights improvements. A materially vulnerable state, such as Tajikistan, can be put under pressures or, if viewed from a different angle, supported by materially stronger states, such as those within its own region, Russia and China, to maintain the status quo, not liberalize nor make significant human rights reforms.

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<sup>98</sup> Although changes to laws, the creation of action plans and working groups could also be seen as falling under the stage of “prescriptive status”, I place them under the “tactical concessions” stage in the context of Tajikistan, since there does not appear to be a serious intent towards respect and implementation. This does not mean that these efforts are not important, as would be argued under the spiral model, since they give those lobbying for human rights change more legitimacy and tools to work with. However, these steps as such appear to be at the level of tactical concessions which are not leading to improvements in the human rights situation.

<sup>99</sup> Risse and Börzel, 2012

<sup>100</sup> Ibid, p. 7

In terms of social vulnerability, the state is more vulnerable the more it cares about its social standing within a group or community of states. As pointed out by Risse and Börzel, and elaborated on by Sikkink, this is not a unidirectional process and states can successfully defend against pressures for human rights improvements by creating their own counter-norms, if they can gain acceptance from others for them.<sup>101</sup> In the case of Tajikistan, with a foreign policy that aims for good working relations with the powerful states within its own region, Russia and China, and with the western group of Europe and the U.S., it seems to have found a careful balance that allows it to maintain the status quo.

It is not always easy to unravel material from social vulnerability, so the more detailed look at the Tajikistan context below deals with both. One clear area of material vulnerability stems from Tajikistan's reliance on remittances from Russia, making up approximately half of its GDP and over 90 per cent of Tajik migrant workers employed in Russia.<sup>102</sup> One interviewee raised concerns that if Russia were to bring in a visa regime for migrant workers, or put other restrictions on them, this could be enough to destabilise Tajikistan due to increased poverty and likely expressions of domestic discontent.<sup>103</sup>

Militarily, Russia has a base in Tajikistan and historically, those in power in the past and who continue in power presently have relied on Russian military support to help overcome opposition forces during the civil war. Russia has in the past and continues to provide support with guarding and strengthening the border with Afghanistan.

In terms of social vulnerability, interviewees consistently raised concerns regarding the negative human rights influence of former Soviet states that influence policies and discourse within Tajikistan.<sup>104</sup> As former Soviet states, Tajikistan shares with them many features such as legal frameworks, educational, administrative and incentive structures, security networks, cultural and administrative practices and so on. Concerns were raised that due to these ties, Tajikistan learns and copies bad human rights practices from its former Soviet neighbours. Experts and academics from these countries come to provide technical assistance, and promote model legislation that is not in line with international standards, but that is easily integrated into the current legal framework.<sup>105</sup>

Amnesty International has further documented proof of the negative influence of security services cooperation in former Soviet countries in its report, *Return to Torture: Amnesty International's concerns about extradition and forcible returns to Central Asia*. The

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<sup>101</sup> In the case of the U.S. during the Bush administration, counter-terrorism norms were actively invoked to justify policies of torture and were accepted by many. Sikkink, Kathryn. "The United States and Torture: Does the Spiral Model Work?" In Risse, T., Ropp, C. and Sikkink, K. Eds. *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge: Cambridge UP, 2013. 145-63. Print, p. 156

<sup>102</sup> ILO, 2010; Interview no. 11, Dushanbe, May 2014.

<sup>103</sup> Interview no. 2, Dushanbe, 2014.

<sup>104</sup> Interview nos. 6, 10, 14, 17, 29 and 31, Dushanbe, April and May 2014.

<sup>105</sup> Interview nos. 14 and 29, Dushanbe, May 2014. Such an influence can be seen through the example of a number of former Soviet states adopting legislation on the basis of a Russian NGO law, which violates international standards on freedom of association.

report outlines the cooperation between security, judicial and law enforcement arms of former Soviet countries in regular activities involving the movement of suspects from one country to another, using “abduction, disappearance, unlawful transfer and torture of wanted individuals” in clear violation of international human rights law.<sup>106</sup>

In this context, former Soviet countries and other neighbours have been able to group together to create counter influences to that of international human rights norms, thereby reducing the material and social vulnerability of Tajikistan to “external network mobilisation”. Some stakeholders in Tajikistan have recognised this and in part justify their continued support to the country, despite poor achievement of impact, on the basis of needing to provide a counter-balance to the powerful neighbours of Russia and China, and the country grouping of the Shanghai Cooperation Organisation.<sup>107</sup>

European and U.S. donors and organisations supported by them, along with some multi-lateral organisations, have assisted in supporting a discourse in favour of human rights norms in Tajikistan. However, these efforts have been hampered in a number of respects. Firstly, not surprisingly, it does not appear that promotion of human rights in Tajikistan is among the global priorities of these actors.<sup>108</sup> Other hot spots, such as those resulting from the Arab spring, have taken a lot of international interest and also economic belt tightening has reduced the resources available. At the same time, Tajikistan has become a relatively stable country and international interest and resources have focussed on border control with Afghanistan, despite Tajikistan’s poor human rights record.<sup>109</sup>

As argued by Simmons, it is not realistic to expect that foreign governments will “expend political, military, and economic resources systematically to enforce human rights treaties around the globe.”<sup>110</sup> Studies have found that for the most part aid has not been given by countries on the basis of human rights promotion, but rather on the basis of other national foreign policy interests.

In the case of Tajikistan, national interests appear to play a role in making donor countries less inclined to push hard on compliance with international human rights standards. Bilateral and multi-lateral donors have at times prioritised maintaining friendly working relations with the government over raising human rights issues.<sup>111</sup> An evaluation of the E.U.’s work on human rights in Central Asia, commissioned by the European Parliament, found that other issues were higher on the agenda of the E.U. in its engagement with Tajikistan than human rights. The evaluation stated:

“While energy and water issues have stood central in most EU high-level statements on Tajikistan, human rights, freedom of media, religion and association are only mentioned

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<sup>106</sup> Amnesty International. *Return to Torture: Extradition, Forcible Returns and Removals to Central Asia*. Rep. no. EUR 04/001/2013. July 2013. Web. 8 June 2014.

<sup>107</sup> Interview no. 6, Dushanbe, April 2014.

<sup>108</sup> Interview nos. 7, 9, 11, 15, 16, Dushanbe, April and May 2014.

<sup>109</sup> Interview nos. 3, 12, Dushanbe, April and May 2014.

<sup>110</sup> Simmons, 2009, p. 122

<sup>111</sup> Interview nos. 2, 4, 8, 12, 15, Dushanbe, April and May 2014.

in general terms. Traditional development aid issues and political and practical cooperation override a focus on human rights in Brussels' relationship with Dushanbe."<sup>112</sup>

A number of interviewees raised the concern that donors are not requiring much from the government and that donor programmes did not include any consequences for poor performance on human rights.<sup>113</sup> No incentives or conditionality were put in place to encourage the government to make changes and so when there are abuses, the money continues to flow.

A number of interviewees raised concerns regarding the quality of the work of donors on human rights, implying that human rights was not taken sufficiently seriously.<sup>114</sup> They said that the people assigned to work on human rights often had no expertise in the area, failed to follow the details of the content of projects with government and, due to the pressures of results-based management, over-reported successes, while not appearing to be really looking for results.

Another factor that was raised as impeding the work of "western" donors, and added to a counter-narrative against human rights norms, was the continuing legacy of the Bush administration's policies to carry out and justify the use of torture.<sup>115</sup> It was felt that this undermined the legitimacy of those governments that had supported Bush and who now argue for compliance with human rights standards, since they appeared to do so opportunistically; while at the same time it increased the legitimacy of anti-terrorism arguments that trump human rights norms.

From the above, it seems that Tajikistan has been able to maintain a balance in its foreign relations that has allowed it to maintain a political status quo of ensuring stability and making itself open to dialogue while quietly flouting international human rights norms in many areas. Russia and other neighbours have strong counter-narratives to human rights norms which Tajikistan can lean on, while bilateral donors whose foreign policies promote human rights have enough internal barriers in their way that they do not prioritise human rights promotion in Tajikistan. Below, I will examine whether in this context it is possible for international organisations to carry out meaningful human rights work in the country.

### *Defending Human Rights in a Rights Opposing Context*

#### 1. What works?

Among interviewees, the view that it will take time to see changes, and that short term projects would not be sufficient to get significant human rights improvement, was ubiquitous. It was felt that effective programming needed to include long term goals that

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<sup>112</sup> Boonstra, Jos, Tika Tsertsvadze, and Vera Axyonova., p. 17

<sup>113</sup> Interview nos. 4, 6, 11, Dushanbe, April and May 2014.

<sup>114</sup> Interview nos. 2, 3, 4, 15, Dushanbe, April and May 2014.

<sup>115</sup> Interviews nos. 12, 17, Dushanbe, May 2014.



took into account the full political context.<sup>116</sup> Programming needed to be flexible enough to exploit opportunities as they arise and to maintain an issue on the agenda in the long term, even if for now there was no chance of change.<sup>117</sup> As was pointed out by one interviewee, it may be that the reform you are working on will not be implemented for 10 years, but suddenly in year 11 there will be an opportunity to implement it, if you have managed to keep it on the agenda.

A number of interviewees emphasised that in a “rights opposing” context, protection was the most important function that international organisations could play.<sup>118</sup> They believed that making a difference in even one case was important and it could also have positive ripple effects.<sup>119</sup> They found that their intervention in specific cases could produce results, although certainly not in all cases. It also helped in creating a stronger human rights discourse on Tajikistan. If international organisations issued public statements, then it was possible that it had a direct positive effect, but even if not, it enabled others at the national and international levels to use it and amplify it. Protection usually meant intervening in individual cases, but other forms of protection and legitimisation of human rights defenders or civil society was also mentioned as useful, including through introducing civil society to the diplomatic community, and during high level diplomatic visits, and offering diplomatic premises for meetings.

Several interviewees indicated that having a human rights presence or working on human rights protection in a “right opposing” environment had parallels with humanitarian work, implying that there is not an expectation of forging change so much as trying to provide a level of reactive protection as far as is possible in the circumstances.<sup>120</sup> They indicated that victims of abuses and their relatives highly appreciated efforts to highlight their plight and have some form of public acknowledgement for the truth of what had happened to them.<sup>121</sup>

The value of international organisations promoting human rights civil society was also generally highlighted. It was felt that although rather weak, human rights non-governmental organisations (NGOs) had developed with the support of international organisations and could develop further to more effectively lobby for human rights change.<sup>122</sup> It was acknowledged that without international funding, human rights NGOs would quickly collapse.<sup>123</sup> These NGOs were seen as valuable in providing a monitoring role and providing a credible local voice on human rights.<sup>124</sup> NGOs were at times invited to participate in government working groups on human rights-related issues and given

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<sup>116</sup> Interview nos. 9, 30 Dushanbe, April 2014.

<sup>117</sup> Interview nos. 16, 31, Dushanbe, April and May 2014.

<sup>118</sup> Interview nos. 9, 17, 29, Dushanbe, April and May 2014.

<sup>119</sup> In this regard, Frontline has a campaign for the protection of human rights defenders called “Protect One, Empower a Thousand”, “Protect One. Empower a Thousand.” Front Line Defenders. Web. 23 June 2014. <http://www.frontlinedefenders.net/node/6345>

<sup>120</sup> Interview nos. 9, 10, Dushanbe, April and May 2014.

<sup>121</sup> Interview no. 17, Dushanbe, May 2014.

<sup>122</sup> Interview nos. 1, 4, Dushanbe, April 2014.

<sup>123</sup> Interview nos. 3, 11, Dushanbe, April and May 2014.

<sup>124</sup> Interview nos. 4, 11, Dushanbe, April and May 2014

some space to provide advice and input. NGOs were also regularly invited by international organisations and the diplomatic community to consultation meetings with government on human rights issues and given the space to air their concerns and suggestions.<sup>125</sup> However, some disquiet was also expressed that some forms of “consultation” with NGOs was done only on a pro forma basis and was not meaningful.<sup>126</sup> Concerns were also raised that NGOs tended to be donor driven and project funded, leaving them vulnerable to donor agendas and funding cycles.<sup>127</sup>

Academic literature on compliance with international human rights norms has found that an active civil society is a relevant factor for inducing compliance by the state.<sup>128</sup> However, at the same time, it has found that in “repressive” or “autocratic” states, civil society has little chance to bring about human rights change.<sup>129</sup> The base democratic conditions are not in place to allow civil society to effectively influence decision-making processes. In Tajikistan, therefore, it is prudent to be cautious regarding the impact that NGOs can have, and to recognise the limitations on its activism. Civil society itself and those supporting it expressed concerns regarding their safety if they were to step beyond the current apparently acceptable limits to their activities.<sup>130</sup> Many interviewees mentioned the government’s actions in closing NGOs that had been “too” active on sensitive issues.

In line with impacting the country’s “social vulnerability”, shaping the international narrative on human rights in Tajikistan was also seen as important. The traditional human rights work of issuing reports was seen as continuing to be valuable in Tajikistan in order to produce baseline information that a range of actors could use and to provide a basis for dialogue with government. It was felt, though, that follow-up work was necessary in order to make it effective.<sup>131</sup> Many representatives of local and international organisations highly praised international organisations or diplomatic missions that put out public statements when serious human rights violations had occurred. At the same time, they also complained that not enough statements or other forms of public expressions were being issued.<sup>132</sup>

Promoting forms of accountability was another area that was noted as particularly valuable. Accountability could be promoted through ensuring that duty bearers know and publicly acknowledge international human rights standards. Creating an awareness that certain actions were wrong, and were breaches of international standards, and that the international community was watching was also seen to be important, along with informing duty bearers of allegations of abuse and ensuring that this is on record (whether publicly or privately).<sup>133</sup> As with protection measures, outlined above, it was

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<sup>125</sup> Interview nos. 4, 5, 6, 9, Dushanbe, April 2014.

<sup>126</sup> Interview no. 4, Dushanbe April 2014, NGO consultation meeting, Dushanbe, June 2014.

<sup>127</sup> Interview no. 11, 12, Dushanbe, May 2014.

<sup>128</sup> Hafner-Burton and Tsutsui, 2005, p1402; Simmons, 2009.

<sup>129</sup> Hafner-Burton and Tsutsui, 2007, p422-423; Simmons, 2009, p151-153.

<sup>130</sup> Interview nos. 8, 15, Dushanbe, April and May 2014; interview nos. 27, 28, Kurgan Tepe, May 2014.

<sup>131</sup> Interview nos. 17, 30, Dushanbe, April and May 2014.

<sup>132</sup> Interview nos. 8, 15, 17, 30, 32, Dushanbe, April and May 2014.

<sup>133</sup> Interview nos. 6, 8, 10 Dushanbe, April 2014.

also felt that it was important for international organisations to support the voices of victims to be heard and forms of public acknowledgement.<sup>134</sup> Allowing victims voices to be heard and their stories to be told was also felt to be a form of ‘alternative justice’ that could be provided, since the formal justice systems were not providing the justice needed.<sup>135</sup> Similarly, it can be important to record this evidence into an accurate record to ensure that the truth has been acknowledged and to prevent a cover-up or revisionist versions of history.<sup>136</sup> The accountability work can also impact on the country’s social vulnerability, helping to shape the human rights narrative of the country through monitoring, advocacy and raising the voices of victims.

At the same time, others felt that it was important to provide full and accurate briefings to other international actors on the human rights situation in the country.<sup>137</sup> Such briefings could contribute to influence the actions of other important actors, and thereby possibly shape the social vulnerability of the country. However, irrespective of the actions that may be finally taken by those who are briefed, such briefings could be also seen as a way of holding international actors to account for the decisions that they make with regard to Tajikistan. Briefings ensure that such actors have the relevant human rights information before taking their decisions on how to engage with the country.

Capacity building of state officials was seen somewhat as a double edged sword. There were hesitations in regard to some forms of capacity building (see more below) and it was felt that capacity building should only be done with sufficient follow-up and monitoring to ensure that the new capacity was subsequently implemented in some meaningful form.<sup>138</sup> Many acknowledged that capacity building of state officials had produced few results; however, some argued that there is a value in continuing to put efforts into building new cultures and identifying change-makers that may not be able to implement human rights standards today, but may be able to act in the future, using the knowledge gained.<sup>139</sup>

Maintaining the contacts and information sources, even in times when no change is going to happen, was also seen as vital for ensuring that when opportunities arise, they can be used. Such contact will help to provide the information needed to assess when opportunities can be exploited. This position is supported by the findings of *Influence on the Ground*, a study of the protection impact of United Nations human rights field presences, which found that “getting out and getting close” to the communities where rights violations are taking place was essential for providing any sort of protection

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<sup>134</sup> Interview no. 17, Dushanbe, May 2014.

<sup>135</sup> Interview no. 17, Dushanbe, May 2014.

<sup>136</sup> United Nations. *Impunity Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher Addendum Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*. Rep. no. E/CN.4/2005/102/Add.1. Office of the United Nations High Commissioner for Human Rights, 8 Feb. 2005. Web, principles 2-4; Penrose, Mary M. "Impunity- Intertia, Inaction, and Invalidity: A Literature Review." *Boston University International Law Journal* 17 (1999): 269-310. HeinOnline. Web, p. 305

<sup>137</sup> Interview nos. 4, 9, Dushanbe, April 2014.

<sup>138</sup> Interview nos. 15, 16, Dushanbe, May 2014.

<sup>139</sup> Interview nos. 6, 16, Dushanbe, April and May 2014.

response. “Each contact is a protection opportunity, and the process contributes to... relationship building and complex strategies...”<sup>140</sup> Maintaining contacts and information sources, therefore, can help with both current protection work, as well as ensuring a readiness to take up opportunities during periods of change in the future.

## 2. Prevention: *If we were not here, it would be worse*

The hypothesis that if international organisations withdraw from working on human rights in Tajikistan (or more broadly in “rights-opposing” countries), then human rights compliance would be worse is a counterfactual proposition that has resonance with many who work on human rights in Tajikistan (see below). However, the argument, that if there was no longer an international presence engaging on and monitoring human rights, the government would reduce its human rights compliance is a complex counterfactual proposition that is not simple to verify. Some interviewees expressed a hesitation to the hypothesis on the basis of how one would measure or prove this preventive impact of presence.<sup>141</sup>

This same hesitation is found in some human rights literature, which posits that human rights compliance could be worse, for example, without the current international human rights regime, but does not go onto measure or prove it, or otherwise states that it is almost impossible to put such complex counterfactual arguments “beyond question or doubt”.<sup>142</sup> At the same time, Hafner-Burton and Ron argue that more research needs to be done to examine the success of human rights promotion through counterfactual reasoning.<sup>143</sup>

In his article on *Counterfactuals and Hypothesis Testing in Political Science*, Fearon outlines three possible approaches to testing a counterfactual hypothesis- through large-N statistical studies, small-N comparative studies or a single case counterfactual strategy using logical arguments about what would have happened in the counterfactual situation.<sup>144</sup> Some researchers have used statistical methods in large-N studies in order to demonstrate counterfactual hypothesis in relation to state behaviour on human rights compliance.<sup>145</sup> In the present case, looking at the preventive value of international organisations through examining the counterfactual of “if international organisations withdrew from working on human rights in rights opposing countries then human rights compliance would be worse”, it may be possible to set up relevant large-N studies and may be something for quantitative researchers to look into in more detail. However, a small-N study or single case counterfactual strategy may be simpler. In the present case, comparisons could be made with countries within Central Asia, countries that have the closest other conditions for making a comparison. It would be easy to single out

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<sup>140</sup> Mahony and Nash, 2012.

<sup>141</sup> Interview nos. 11, 16, Dushanbe, May 2014.

<sup>142</sup> Hafner-Burton and Tsutsui, 2007, p420-421; International Council on Human Rights Policy, 2012, p. 9

<sup>143</sup> Hafner-Burton and Ron, 2009, p377.

<sup>144</sup> Fearon, James D. "Counterfactuals and Hypothesis Testing in Political Science." *World Politics* 43.02 (1991): 169-95. Web, p. 171-176. “N” indicates the number of cases studies. So a large-N study is usually a more quantitative study making comparisons between many cases, while a small-N study is usually a more qualitative comparison of a small number of cases.

<sup>145</sup> See for example Hill.

Turkmenistan and Uzbekistan, both countries that rate worse on international indexes (and to which international human rights organisations have very little access), for comparison. If one looks more broadly, one could use indexes, such as that of Freedom House, which has a list of ten countries that rank lower than Tajikistan on civil and political rights in 2014.<sup>146</sup> One would need to examine the countries in more detail to see whether the “rights opposing” description is relevant for them in order to make a valid comparison.<sup>147</sup> Again, this may be something for other researchers to look into in more detail, but goes beyond the scope of the present paper.<sup>148</sup>

In terms of a single case study, Fearon argues that logical arguments based on “general principles, theories, laws or regularities” as well as detailed knowledge of the facts “relevant to a counterfactual scenario” are a valid means of coming to a conclusion.<sup>149</sup> So, despite the fact that a counterfactual situation does not exist, one can validly infer conclusions about real situations by carefully imagining what the counterfactual one would look like. Below, I use the views of interviewees and other background information to preliminarily apply this approach in the context of Tajikistan.

The view that if international organisations were to withdraw from working on human rights in Tajikistan, then human rights compliance would be worse was endorsed by many, although not all, of the interviewees. Those endorsing it said things such as: “At least now they have to make a show. It would be a lot worse if they didn’t even have to pay lip-service”; and “the government would feel that no one is watching what they are doing. It would get much worse”.

More specifically, it was argued that civil society would collapse, due to no more funding; consultations with civil society, whatever the quality, would cease; reporting quality to the United Nations human rights mechanisms would decrease; the “rights-opposing” influence of Russia and China would increase; protection through case work would not happen or would decrease; the improvements made so far through technical cooperation or capacity building, even if not major, would stop and may go backwards since the same level of international monitoring and support would not be in place.<sup>150</sup>

One major argument in the above-described views relies on the notion that the state of Tajikistan behaves better if they know that others who care about human rights compliance are watching or monitoring the situation. This proposition is supported by the spiral model of human rights change, which argues that the repression stage, the stage furthest from compliance, relies on an information vacuum. With an already weak civil

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<sup>146</sup> These countries are Central African Republic, Equatorial Guinea, Eritrea, North Korea, Saudi Arabia, Somalia, Sudan, Syria, Turkmenistan and Uzbekistan. <http://www.freedomhouse.org/report/freedom-world/freedom-world-2014#.U7EFpUCE6pA>, accessed 30 June 2014.

<sup>147</sup> It may be, for example, that if the human rights compliance of the countries is so low because of significant lack of statehood, as would be the case in the situation of armed conflict, rather than due to the political will, the comparison may not be relevant.

<sup>148</sup> Fearon argues that even in small-N studies counterfactual propositions are necessarily used, although often implicitly, in the common situation of “too many variables and too few cases”. Fearon, p. 194

<sup>149</sup> Ibid, p. 176

<sup>150</sup> Interview nos. 3, 4, 6, 9, 11, 16, 31 Dushanbe, April and May 2014.

society and the withdrawal of support to them to monitor, as well as the withdrawal of monitoring (whether formal or informal) by international organisations, the country would lose information sources and documentation on human rights, bringing it closer to the repression stage and further from compliance.

More broadly, global human rights networks rely on “watching” or monitoring human rights situations in order to build up various pressures for prevention and promotion of international human rights compliance.<sup>151</sup> Whether it is monitoring individual cases, places or broader human rights situations, it is only through having the information and then bringing attention to the cases that pressure can be built to move intransigent governments to make improvements. There are many mechanisms to bring attention to violations and to influence others to build pressure on the non-compliant country. As outlined above, providing information, whether formally documented in reports or whether less formally communicated through networks, helps other actors to make decisions about their engagement with Tajikistan. These processes can help to shape Tajikistan’s social and possibly material vulnerability, which in turn can impact on the state’s human rights-related decisions.

It is also plausible to argue that with reduced monitoring and therefore reduced pressures, the influence of counter-norms opposed to human rights, such as those which are used by some of Tajikistan’s neighbours, would grow. This would be a logical outcome of counter-norms becoming the more prominent narrative heard and less information being available on the human rights situation.

The argument that national-level civil society human rights organisations that rely exclusively on international funding would collapse if the funding were withdrawn is straightforward and can be logically accepted. This would further reduce monitoring of the human rights situation in the country, again increasing an information vacuum and move the country further away from compliance. It would also likely reduce the number of people within the country who are prepared to speak out publicly on human rights issues and therefore impact the likelihood of domestic mobilisation. Although mobilisation is currently limited by the state’s repressive activities the limited space would likely decrease further.

The collapse of national civil society human rights organisations along with the withdrawal of international organisations would also reduce protection through individual case work that both carry out currently. This would likely reduce further positive outcomes in individual cases. Although there have not been many so far, the reduced work on protection would also make it unlikely that there would be new legal human rights precedents.

Interviewees also mentioned the reduction in a number of measures that fall within the scope of tactical concessions- government consultations with civil society would stop, the quality of reporting to UN mechanisms would reduce and technical improvements made so far with international support would stop or reverse. In the spiral model, the use of

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<sup>151</sup> Hafner-Burton and Ron, 2009, p366.

tactical concession is still seen as valuable, since they can be used to help move the state on towards improved compliance. At the same time, it is admitted that the value of tactical concessions within a context of restricted civil society space is less. For tactical concessions to be utilised well, civil society needs to have the space to be able to mobilise. So while these concessions may be of limited value, they do signify small improvements that came about in part as a result of assistance or pressure from international organisations. It is therefore plausible to argue that if international organisations were to withdraw, such tactical concessions would stop.

In order to prove the case more decisively, one would need to look in much more detail at each of the arguments and possible counter-arguments to the above. However, it does seem that *prima facie* there is a case to be made that things would be worse without the work of international organisations to advance human rights compliance, or in other words, there is a preventive value in international organisations work on human rights. It would seem that such a withdrawal would lead the country towards increased repression, as per the spiral model, or perhaps in other words, the country could move from a “soft” authoritarian to a harder authoritarian regime. Probably, the same human rights concerns would remain, but would likely happen more often and remedies would be even harder to obtain.

At the same time, it would seem that although international organisations may play a role in keeping authoritarianism “soft”, something that gives real value in prevention of more excessive abuses, it is unlikely that this will be sufficient to tip the country into rights compliance. As pointed out by Simmons, without fundamental changes in the “institutions of governance and democracy”, there are unlikely to be lasting improvements in human rights.<sup>152</sup> ““Show-case” democracies tend to experience only brief and reversible improvements in the basic human rights of their opponents.”<sup>153</sup>

### 3. What doesn't work? Risks?

In the evaluation of the E.U.'s work on human rights in Central Asia, beyond issues related to different interests impacting the consistency of its work (referred to above) and the particular need to consistently raise individual cases, the evaluators also found that financial assistance for democracy and human rights “frequently aimed at achieving quantifiable results rather than deep rooted democratic transformations.”<sup>154</sup> The implication being that results achieved were not achieving impact towards rights compliance. Such concerns related to the use of results based management were further elaborated by a number of interviewees who concurred with the E.U. evaluators and indicated the need to have longer term deeper or “political” goals. In some cases, a results based management approach combined with donor requirements of short-term results had led to organisations specifically refraining from aiming for deeper goals, such as the promotion of the independence of the judiciary within the context of justice programming, since it was seen as not feasible to achieve that within the project

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<sup>152</sup> Simmons, 2013, p. 44

<sup>153</sup> Ibid, p. 45

<sup>154</sup> Boonstra, Jos, Tika Tsertsvadze, and Vera Axyonova, p. 7

timeframe.<sup>155</sup> Many international organisations had moved away from working on difficult human rights issues that the government was not keen to cooperate on since they were not achieving results in these areas, although some continued to raise them during dialogues.<sup>156</sup> While it is a justifiable approach to move away from work that apparently produces no results, it is concerning that the government can therefore to a large extent determine the human rights agenda in the country and ensure that resources and attention are only focused on areas which it deems to be of interest. The results based management approach combined with donor requirements for short-term results (usually within the context of a project approach to funding) perhaps also discourages international organisations from designing longer term more complex strategies to deal with these harder issues.

While a number of interviewees were concerned that results based management encouraged over-reporting of false successes, which could lead to a distortion of analysis and facts, others tended to assume progress would happen, whether there was evidence of it or not.<sup>157</sup> Sentiments such as it is “just a matter of slow development” were expressed. Critics have suggested that the spiral model of human rights change itself has a “linear teleological bent to the analysis”, meaning that it tends to assume progress will happen in human rights compliance. The authors refute this and state that they only argue that progress will happen **if** the relevant conditions are in place. They do admit, however, that they didn’t always take into account sufficiently in their original work the active role of the state in pushing back against human rights norms.<sup>158</sup> The risk with both approaches—skewing the picture to show false progress and assuming progress—is the failure to seriously take into account the real barriers that exist and to analyse what sort of work indeed makes a valuable contribution to compliance.

Whilst certain types of technical cooperation can have value, as outlined above, it also carries risks. As pointed out for Uzbekistan in the E.U. evaluation, some areas of work, in this case judicial and parliamentary reform, are just “tick of the box” exercises.<sup>159</sup> The same is true for Tajikistan, where interviewees indicated that certain areas of technical cooperation had used significant donor resources but had produced little result and it was hard to find the value in terms of human rights promotion, beyond the government interest in them. They also raised risks associated with technical assistance, such as 1) supporting state officials who may actively work against human rights compliance or may themselves be violators; 2) facilitating the sharing of negative practices with neighbouring countries; and 3) using resources for ineffective work that could be directed to other more valuable areas.<sup>160</sup>

The first raises reputational risks for the donor or international organisation carrying out the work, substantive risks for the quality of the programme and, even more concerning,

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<sup>155</sup> Interview nos. 7, 9, Dushanbe, April 2014.

<sup>156</sup> Interview nos. 5, 6, 7, 11, 16, Dushanbe, April and May 2014.

<sup>157</sup> Interview nos. 4, 8, 31 Dushanbe, April 2014.

<sup>158</sup> Risse and Ropp, p. 8-12; Simmons, 2013, p. 44-45

<sup>159</sup> Boonstra, Jos, Tika Tsertsvadze, and Vera Axyonova, p. 26

<sup>160</sup> Interview nos. 3, 6, 15, Dushanbe, April and May 2014.



the risk of consolidating rights opposing systems. It can lead to questions of due diligence in ensuring that the work is in fact intended to improve human rights, rather than support abusive practices or people. This can be mitigated by putting in place systems to monitor and support programmatic accountability, including taking steps to disengage from such technical cooperation programmes when they are not promoting human rights.<sup>161</sup> The unintended risk of consolidating rights opposing systems needs to be particularly taken into account and may in fact be very difficult to overcome, since, as elaborated by Börzel and Pamuk, the state can intentionally “instrumentalise” the use of foreign aid, using it to “gain and consolidate political power”.<sup>162</sup> As they point out in their analysis of anti-corruption programming carried out by the European Union in the South Caucasus countries, certain parts of the state gain resources and legitimisation through working with donors, while reforms either do not progress or progress in such a way that compliance does not improve. The end result is consolidation of current systems and power structures that are not leading to improved human rights compliance.

As with technical cooperation, bilateral or multi-lateral dialogues on human rights with Tajikistan also raise reputational risks for the bilateral or multi-lateral partner and risks of consolidating rights opposing systems within the target country. Feedback from interviews indicated that sometimes dialogues could be important processes and used as valuable tools for protection, promoting accountability and influencing social vulnerability.<sup>163</sup> This required a consistent approach throughout the relationship and the willingness to raise both difficult issues and individual cases and to maintain follow-up on them. However, a lack of consistency and a failure to follow-up risks state instrumentalisation and strengthening state legitimacy without concurrently improving compliance. The public messaging following dialogues is particularly important in this regard and can be easily used to legitimise a state approach of whitewashing the issues, rather than promoting transparency and discussion.

### **Practical Implications- Conclusion**

As both quantitative and qualitative research has shown, it is unlikely that an authoritarian state will move towards substantive improvements in human rights compliance without “fundamental changes in the domestic institutions of accountability and governance”, usually meaning “regime change”.<sup>164</sup> So working in authoritarian

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<sup>161</sup> The United Nations has gone some way towards doing this in implementing its “Due Diligence Policy”. It applies only, however, to United Nations support to non-UN security forces and not to other parts of the state. United Nations support “cannot be provided where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of humanitarian, human rights or refugee law and where the authorities fail to take the necessary corrective or mitigating measures.” United Nations. *Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces*. A/67/775-S/2013/110. 5 Mar. 2013. Web. [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/110&referer=http://www.un.org/en/sc/documents/letters/2013.shtml&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/110&referer=http://www.un.org/en/sc/documents/letters/2013.shtml&Lang=E)

<sup>162</sup> Börzel, Tanja A., and Yasemin Pamuk. "Pathologies of Europeanisation: Fighting Corruption in the Southern Caucasus." *West European Politics* 35.1 (2012): 79-97. Web, p. 79

<sup>163</sup> Interview nos. 6, 7, Dushanbe, April 2014.

<sup>164</sup> Simmons, 2013, p. 44-45, Risse and Ropp, p. 16

countries to improve human rights compliance “will be harder... and more persistence will be required”.<sup>165</sup> It is therefore important to come up with strategies that take into account the realities and constraints of the situation and will have value within that restrictive context. I would argue that the work should have either current value within the context of limited possibilities for change or hold value that can be used in the future during any period of transition.

In terms of current value, international organisations need to explicitly recognise that capacity building and technical assistance for state reform are unlikely to lead to significant change in the human rights situation. Their strategies need to take this into account and focus more on other areas of value.

In terms of future value, the work of human rights organisations is not to create political transitions, but should be to shape agendas towards human rights compliance in case of opportunities for change. While political transition may be necessary in most cases, it is not sufficient to ensure improved human rights compliance.<sup>166</sup> As shown in other cases, transition has not been sufficient to overcome a culture of impunity and abuse.<sup>167</sup> For a transition to lead to improved human rights compliance, it needs to be ready to react quickly to shape the human rights discourse in the country, needs to promote reflection on the truth of the abuses that have happened and promote a balance between formal and informal justice mechanisms to address accountability for those abuses.<sup>168</sup> It is therefore valuable to do work that could assist in putting human rights compliance high on the agenda in any future periods of change.

### *Protection*

Within the context of an authoritarian state, human rights protection work forms a meaningful basis for other human rights work in the country and deserves to be highlighted.<sup>169</sup> Here I suggest the use of a narrow understanding of protection that is intended to provide a direct impact in specific cases, along the lines outlined by Mahony

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<sup>165</sup> Risse and Sikkink, p. 294

<sup>166</sup> Sikkink, 2013, p. 160

<sup>167</sup> Lessa, F. "Beyond Transitional Justice: Exploring Continuities in Human Rights Abuses in Argentina between 1976 and 2010." *Journal of Human Rights Practice* 3.1 (2011): 25-48. Web.

<sup>168</sup> Olsen, T. D., L. A. Payne, A. G. Reiter, and E. Wiebelhaus-Brahm. "When Truth Commissions Improve Human Rights." *International Journal of Transitional Justice* 4.3 (2010): 457-76. Web.

Association for the Prevention of Torture. APT's 8 Building Blocks for a Torture-free Future: The Prevention of Torture and Other Ill-treatment in times of Transition. May 2012. Web. 12 May 2014.

<sup>169</sup> In the *OHCHR Plan of Action: Protection and Empowerment*, 2005, OHCHR describes protection as “ensuring respect for human rights in concrete ways for individuals. Human rights protection is not a specific tool or approach, but rather refers to a desired outcome – where rights are acknowledged, respected and fulfilled by those under a duty to do so, and as a result of which dignity and freedom is enhanced. Human rights protection results when, through specific actions, individuals who otherwise would be at risk or subject to deprivation of their rights, are able to fully exercise them. It is based on international law, and necessarily focuses on both immediate responses where people are threatened, and on longer-term work to build and strengthen laws and institutions that protect rights – within States and on the global level”. Office of the United Nations High Commissioner for Human Rights. *The OHCHR Plan of Action: Protection and Empowerment*. May 2005. Web, p. 12

and Nash.<sup>170</sup> Applications of broader protection, including capacity building with longer term objectives of protection, would likely have very limited outcomes in the context, as addressed above. Rather, the focus is on the provision of protection in individual cases or situations. This approach is important in upholding the human rights concept, different to development work, that even one violation is unacceptable.<sup>171</sup>

In a context where it is difficult to promote meaningful change, the protection of individuals and groups, as far as is possible, is a valuable area of work on a number of levels. The protection of one person is enough to justify the work. At the same time, a consistent approach to protection promotes a broader agenda of accountability and prevention, and can impact on the social vulnerability of the country. It shows those responsible that others will not be quiet and accept abuses and reminds the authorities on a very practical level of their obligations and accountability.

The level of work that an international organisation will be able to do on protection will depend on its mandate and capacity. However, at a minimum it would be important to ensure a strategy that builds a consistent approach to protection, using the voice of the organisation to suggest protection solutions based on credible information and continuous engagement with the authorities and other relevant actors.

### *Substitution*

While the idea of “substitution”, of providing some form of relief or remedy in a situation where the state either cannot or will not do so, is common in humanitarian situations, the concept is not usually applied to human rights work.<sup>172</sup> Substitution in humanitarian situations usually means the provision of food, shelter and other physical needs that the state has not provided. Human rights work usually does not involve the direct provision of material needs or services, beyond perhaps advice or legal services. However, if approached from another angle, substitution in human rights could mean the provision or partial provision of an enjoyment of a right to rights holders who would otherwise not be able to enjoy the right.

In an authoritarian state, the state is often unwilling to allow the enjoyment of certain rights to those who reside within its borders. When it is not possible to change the will of the state, international organisations can look at how to strategically substitute for the state and provide an environment, a voice, or knowledge and resources to enable some victims, families, human rights defenders or parts of society to enjoy rights that would otherwise not be possible. Of course it may be very difficult to carry out such work during a period of repressive rule when violations are taking place. The state is unlikely

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<sup>170</sup> The study of Mahony and Nash focussed on “on activities intended to have more *direct* impact, those with a closer and more specific intended outcome. These will often be strategies based on having an impact in the short term. The causal links to the indirect or longer-term impacts are much more difficult to trace”, p. 7-8

<sup>171</sup> This concept in human rights is relevant to those rights which create immediate obligations on states, such as the prohibition of torture, rather than those that can be progressively discharged.

<sup>172</sup> Cotterrell, Lin. *Human Rights and Poverty Reduction: Approaches to Human Rights in Humanitarian Crises*. Rep. Overseas Development Institute, Oct. 2005. Web. 24 Apr. 2014, p. 2-3

to be supportive and may put many barriers in the way. However, international organisations have found many creative ways to do such work and their status as external actors gives them some level of protection. The provision of a right has value in itself, regardless of further results or outcomes.

The right to truth deserves to be highlighted in this context.<sup>173</sup> It is a right that international organisations are particularly well suited to enable others to enjoy. They can provide credible documentation of violations taking place in the country. They can put such information on the public record and disseminate it for current and future use. They can, for example, provide forums in which the voices of victims or their representatives are heard, in which they tell their stories and express their concerns. Although the right to truth is often only raised once a country is in a transition period, it is worthwhile exploring the possibilities of enabling the right as early as possible.

Parts of the right to a remedy can also be provided by international organisations, some of which may also overlap with the right to truth. International organisations can contribute to medical and psychological rehabilitation; verification and public disclosure of facts; and commemorations and tributes to the victims.<sup>174</sup>

International organisations can also substitute for the lack of state provision to enjoy a range of other rights. They could, for example, support the enjoyment of freedom of expression through providing an environment in which a rights holder can freely express her or his opinion, which would not have been possible otherwise, or support access to information by ensuring that information obtained is shared with rights holders. Substituting for the state provision of rights provides both current value in the enjoyment of the right, while also helping to shape social vulnerability and build an agenda for accountability, prevention and human rights compliance.

### *Shaping Social Vulnerability, Accountability and Prevention*<sup>175</sup>

In an authoritarian state, there are limited possibilities to formally hold the different arms of the state accountable for human rights violations at the national level. In addition, the international human rights system does not have enforceable systems for holding the state

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<sup>173</sup> United Nations. *Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights*. Rep. no. E/CN.4/2006/91. Office of the United Nations High Commissioner for Human Rights, 8 Feb. 2006. Web, paras. 23-26; United Nations. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. A/RES/60/147. Resolution Adopted by the General Assembly on 16 December 2005, 21 Mar. 2006. Web, para. 24.

<sup>174</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, articles 21 and 22.

<sup>175</sup> The role international organisations play in impunity is eloquently pointed out by Paz Rojas Baeza: “Also part of impunity... are the actions of regional or universal human rights institutions. What they do or fail to do, say or fail to say, what they reject or accept in the face of various impunity mechanisms... also play a part in the hopes, wishes, frustrations and despair of the persons and families affected.” Quoted in Penrose, p. 275.

to account. However, influencing the global and national level discourse on human rights in the country can act as a form of accountability, contribute to prevention (at a minimum stopping the situation from deteriorating further) and influence the social vulnerability of the country.

International organisations have access to a plethora of international mechanisms, formal and informal, which remind states of their international human rights obligations and levy some form of cost on the state for failing to abide by them. If used consistently enough, these can impact the social vulnerability of a country and bring about positive results that, although likely to be limited, are directly valuable. It will also help to build a stronger international understanding of the need for accountability, which can help to shape the agenda at any point of transition in the future.

Monitoring, whether formal or informal, will be the base for any work to influence social vulnerability and promote accountability and prevention. The basis of prevention is letting the state know that it is being watched and that there will be a cost attached to further abuses. The vacuum of information that is necessary for repression needs to be filled with credible information that is then used to hold the state to account. It is therefore vitally important that national and international actors monitor and document the human rights situation and then use it to remind the state publicly and privately of its obligations and inform other actors who have the ability to influence the state.

Private advocacy with the government can be an important way of pursuing prevention and encouraging accountability, particularly in individual cases. At the same time, ensuring that information goes on the public record is also essential. Apart from the right to truth for victims, their relatives and society as a whole, supporting a culture of accountability requires the promotion of freedom of expression around the abuses that are happening.<sup>176</sup> Of course, within an authoritarian state, the space for such debate will be limited, but opening the space as much as is possible, whether within the country or outside, will add to bringing human rights higher on the national and international agendas.<sup>177</sup>

Support for civil society to have its voice heard, whether at home or abroad, and to pursue accountability through national mechanisms also assists in prevention and creating a culture of accountability. International organisations are well placed to assist civil society to publicise the outcomes of accountability work. If they are positive, then they can be shared as precedents. If negative, then the failures of national systems to hold violators to account should be brought to the attention of all relevant actors.

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<sup>176</sup> As Penrose points out, silence is “the most effective means by which dictators and torturers secure the success of their endeavours.” Penrose, p. 290

<sup>177</sup> International organisations are particularly well equipped to assist civil society or directly use the full range of international mechanisms, whether formal ones such as the United Nations human rights mechanisms or informal networks, briefings, lobbying and so on, to bring international attention to violations.

Prevention and accountability also includes ensuring that duty bearers are aware of their obligations and of gaps in implementation of these obligations. Capacity building of the state that informs duty bearers of their obligations and supports implementation of these obligations needs to emphasise monitoring and feedback on implementation, ensuring that accountability and prevention are strongly built into the programming. Technical assistance that puts lasting human rights compliant building blocks in place for accountability, such as legal reform, may have little present value since it will unlikely be implemented effectively in the present environment, but arguably has a value that can be applied in any future period of transition.

Finally, ensuring that other international actors that engage with Tajikistan are fully briefed and aware of the human rights situation in the country will help to influence the country's social vulnerability. It will also contribute to ensuring that the international actors are themselves accountable for the decision they make.

#### *Implications for Results Based Management*

At various points this paper has touched upon concerns related to results based management. While it is clear that human rights work must achieve something if it is to be valuable, it is not so clear that results based frameworks in their current forms account for the full range of value of human rights work, particularly work in difficult "rights opposing" environments.

It is important, even essential, to ensure that human rights work is being done effectively and money and resources are being well spent. Clearly forms of oversight are needed to ensure this. The difficulty can be in finding forms of oversight that are flexible and sufficiently take into account the specific context to be enabling, rather than restrictive, and that do not push implementation in the wrong direction. Serious risks associated with current implementation of results based management can lead to producing meaningless results and failing to take on difficult areas of work for fear of not being able to report on results.

Working on human rights requires a clear analysis, strategy, direction and priorities that are justified and explain the value of the work. From this base, monitoring of progress can proceed. If standardised results are a required part of a monitoring system, it would be important to ensure that the results encompass the areas of work outlined in this paper- protection, substitution, influencing social vulnerability, accountability and prevention (stopping things deteriorating).

Finally, it would be worthwhile to further explore evidence of the preventive impact of human rights work. This paper was only able to preliminarily address the subject, but in doing so hopefully demonstrated the need for more in-depth work. Quantitative and comparative studies would shed further light on the topic. From a practical perspective it would be important to develop increasingly refined indicators of prevention, thereby ensuring that the value of the work done in these fields is recognised and supported.

## Annex 1

### **Methodology**

The research for this paper was carried out during sabbatical leave in Tajikistan from 4 April until 1 August 2014. The research began with a desk review of relevant literature on human rights change in 'rights opposing' countries and on the value of human rights programming in such countries. The researcher also reviewed results records of OHCHR, and annual reports in relation to Tajikistan of the Organisation for Security and Co-operation in Europe, Open Society Institute, Helvetas and the Swiss Development Cooperation. The researcher was not able to access records of the human rights component of the peace keeping mission (UNMOT) or the peace-building mission (UNTOP) on the results of human rights work carried out; however, this was explored in interviews.

The researcher interviewed 41 people in 33 interviews. Those interviewed were representatives of local and international organisations that carry out human rights work in Tajikistan, lawyers, journalists and individual human rights activists. The majority were based in Tajikistan, but a few were based elsewhere and carry out regular missions to the country. The researcher also observed two consultation events at which human rights were discussed between representatives of the state (executive and judiciary) and local and international organisations. The researcher also received detailed notes and feedback from two other consultations on human rights that took place during the period of research between representatives of international and local organisations. The researcher decided not to formally interview victims of abuses, since it could raise expectations of assistance that would not be possible within the context of the research and thereby may not be beneficial to such victims.

In interviews with representatives of international and local organisations, the researcher addressed questions relating to:

- the different types of human rights work currently occurring in Tajikistan by international organizations, or funded by them;
- how the stakeholders measured or understood the value of their work;
- the possible value of human rights work beyond short to medium term change.

The researcher decided to hold semi-structured interviews to collect information on the value of human rights work beyond short to medium terms change rather than an electronic or paper questionnaire because 1) the topic can be sensitive and it is unlikely that those that work on human rights would put in writing their honest thoughts and concerns on these issues, 2) more in-depth interviews allows the researcher to probe particular issues of concern that are different for different stakeholders, and 3) technically, with low levels of use of the internet by many and the three possible languages (English, Russian and Tajik), it was more reliable to carry out interviews to ensure that the information was collected. The interviews were carried out directly in English or in Russian. On one occasion, the interviewee felt more comfortable to do the

interview in Tajik and requested assistance from a fellow NGO worker to translate into Russian.

The semi-structured interviews included the following issues:

- request to outline the type of human rights work carried out;
- if a local stakeholder, how was the work supported by international organisations;
- what results and challenges did the stakeholder face in carrying out the work;
- how did the stakeholder assess the results;
- were these results valuable;
- beyond the results outlined, were there other values to the work that was being carried out;
- in the areas that were challenging and there didn't appear to be results, was there some sort of value in any case in the work that had been done;
- did the stakeholder have any other views on the work of international organisations on human rights in the country.

In terms of the study on the impact on one set of rights of human rights programming in one region of Tajikistan with the situation in relation to the same set of rights in a region of the country where there is no such human rights programming, please see Annex 2 below.



## Annex 2

### **Comparison: Situation of Torture in Dushanbe and Kurgan Tepe**

One aspect of the sabbatical research proposal undertook to “compare the impact on one set of rights of human rights programming in one region of Tajikistan with the situation in relation to the same set of rights in a region of the country where there is no such human rights programming.” The aim was to see whether a preventive effect of human rights work may be visible through such a comparison.

In choosing the set of rights, I decided to choose torture prevention. Much of the literature relied on in this paper relates to personal integrity rights, thereby making them the most relevant.<sup>178</sup> In choosing one of these areas of rights, torture seemed the most relevant as it is the most consistently practiced. In addition, local and international organisations have programming work dedicated to torture prevention, torture abuses have been documented in more depth than many other areas of rights (including two visits of the Special Rapporteur on torture) and some progress has been recognised on torture prevention.

In terms of regions for comparison, I decided to compare Dushanbe, the capital, with Kurgan Tepe, the fourth largest city in Tajikistan. Most organisations that carry out human rights work in Tajikistan are based in Dushanbe, the capital, therefore making it the choice for the area in which there is human rights programming on torture prevention. Apart from areas to the north, around Khujand, there is little human rights programming in the rest of the country. The NGO Coalition against Torture and Impunity has about thirteen active members, ten of which are based in Dushanbe, two in Sogd and one in Khorog. Some of the Dushanbe members have small branches based in other cities around the country. I was advised that the areas to the far east, in Gorno-Badakhshan Autonomous Province (capital- Khorog), may be harder to compare, since there are significant differences in culture and political development than the rest of the country. Therefore, for practical and logistical reasons, I choose Kurgan Tepe, south of Dushanbe in the Khatlon region, as the region where there is less human rights programming on torture prevention.

As outlined in the proposal, the methodology was of a qualitative nature, based on interviews with key informants. In both Dushanbe and Kurgan Tepe, I interviewed representatives of local and international organisations, lawyers, journalists and activists that work on human rights or torture prevention.

As is usually the case in countries where torture is a significant problem, although the documentation on torture in Tajikistan has found that torture is widespread, it has not been able to estimate prevalence. The documentation and interviews with stakeholders confirmed that it would not have been realistic to try to determine torture prevalence. Torture, by its nature, is a crime that is covered up and kept secret. It is also a practice

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<sup>178</sup> As outlined in the paper above, personal integrity rights are those that relate to torture, political arrests, extrajudicial killings and disappearance.

that is decentralised in nature, happening in police stations, prisons and in other places of detention throughout the country. Given these constraints, a more realistic comparison was to look at how torture is practiced and the reaction of the state in both regions once complaints were made and see how well they comply with international standards.

Overall, no significant differences were found between the way torture is practiced and the responses to complaints in Dushanbe and Kurgan Tepe. The nation-wide picture, presented in the documentation- such as the report and initial findings of the Special Rapporteur on torture, the INGO reports, such as those from Amnesty International, and the local NGO reports, such as those to treaty bodies- seemed to apply to both Dushanbe and Kurgan Tepe. In both places, torture was reported as the primary means for obtaining a confession in order to build a case against a defendant. The lack of safeguards in practice- lack of independence of the judiciary and medical personnel, failure to register the arrest within the first hours of detention and anonymity of arresting officers, delay in access to legal counsel- were consistently reported in both regions. Corruption, incommunicado detention, failure to carry out prompt, impartial and effective investigations and intimidation of witnesses and defendants who make complaints were also reported in both areas, in line with the documentation.

The cases against perpetrators of torture that have been successfully investigated and brought to the courts, indicating a higher degree of compliance with international torture prevention standards, have been too few to draw significant conclusions regarding whether such compliance is found more in one region than in others. There have been four cases (from 2012-2014) in which individuals have been prosecuted for the recently created crime of torture (article 143.1 of the Criminal Code). None of them were from Dushanbe, one was from Kurgan Tepe, and the others were from other regions of the country (Khujand, Isfara, Khatlon region). There were also three cases of the courts ordering compensation for torture (in 2012 and 2013), all of which were in Dushanbe.<sup>179</sup> Taken together (prosecutions and compensation), it would seem that there is no clear pattern of improved responses to complaints in Dushanbe or other regions of the country.

The issue of the lack of the independence of the judiciary was raised strongly in both Dushanbe and Kurgan Tepe, with a sense that the courts in the regions were supported on appeal by the courts in Dushanbe. In Kurgan Tepe, extremely low acquittal rates were quoted during interviews, which corresponded with nationally low rates.<sup>180</sup> In addition, interviews indicated that there was a strong level of control from Dushanbe over Kurgan

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<sup>179</sup> *Tajikistan Joint Follow-up Submission to the Concluding Observations of the United Nations Committee against Torture, Amnesty International and Notorture.tj*. Rep. Amnesty International, Apr. 2014. Web. 17 June 2014. <http://www.amnesty.org/en/library/asset/EUR60/002/2014/en/834a5ba8-24e4-49cf-a73b-2428c2fb95ab/eur600022014en.pdf>, p. 11-13

<sup>180</sup> The Coalition of NGOs of Tajikistan. *NGO Report on the Republic of Tajikistan's Implementation of the International Covenant on Civil and Political Rights*. Rep. 2013. Web. [http://www.fidh.org/IMG/pdf/ngoscoalition\\_tajikistan\\_en.pdf](http://www.fidh.org/IMG/pdf/ngoscoalition_tajikistan_en.pdf). Report to the United Nations Human Rights Committee, p. 6

Tepe. Instructions from the executive branch of government in Dushanbe appeared to influence the behaviour of local officials on many levels.

When questioned on the differences in human rights more broadly between Dushanbe and Kurgan Tepe, all stakeholders emphasised that the main difference was in the level of education and knowledge of rights-holders. It was felt that people in Kurgan Tepe had much lower levels of education and knowledge about their legal rights than people in Dushanbe and this affected their ability to defend themselves. This was felt to apply particularly to women, especially in relation to family issues. Another difference was the level of poverty and lack of access to resources. However, people felt that corruption levels were similar, just the prices asked for in Dushanbe were higher.

The lack of a clear difference between Dushanbe and Kurgan Tepe leaves unclear results. It could be that the preventive effect of human rights work against torture has either not impacted significantly in Dushanbe, or that if it has impacted, then the impact has been spread across the country, rather than just in Dushanbe. Certainly, from interviews with stakeholders, most agreed that although there had been some positive developments (as outlined in the main paper) these were not enough to reduce actual cases of torture. There have only be a handful of cases in which the state prosecuted perpetrators or gave victims compensation, which are unlikely, as yet, to impact on the practice of torture that is happening on a daily basis. A number of representatives of international and local organisations also pointed out that as soon as NGOs are successful in a few cases, they realise that they just don't have the capacity to deal with the huge numbers of other cases that begin to surface. So the impact is limited.

At the same time, the improvements that have been put in place as a result of torture prevention work apply nationally. The changes in law (including adding the international standard definition of torture as a crime), the President's public announcement against torture, and the ability of the media to report on torture cases are all national level changes, apparently having no more or less impact in Dushanbe than in other parts of the country.

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