

Overall Score:

53 - Very Weak

Legal Framework Score:

74 - Moderate

Actual Implementation Score:

33 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁰Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The law mentions the right to form Civil Society Organizations (CSO), but it does not specify whether the CSOs will be allowed to focus on anti-corruption or good governance.

References:

Article 1

Law on Civil Society Organizations

<http://untj.eastera.net/files/legislations/HumanRights/LawPublicAssociationsRus.pdf>

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

It specifies the right of any Civil Society Organization (CSO) to take part in international competitions and to accept support, grants, scholarships, et al. The law does not specify whether it applies to CSOs working on anti-corruption or good governance issues.

References:

Chapter III, Article 24/1
Law on Civil Society Organizations

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

It declares the right of the Tax Office to control the resources of the civil society organizations, the amount of their finances and the taxes they are required to pay according to the Tax Code of the Republic of Tajikistan. But public disclosure of funding sources is not mandatory.

References:

Article 34/3
Law on Civil Society Organizations

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

58

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The first source states that civil society organizations (CSOs) are not satisfied with many things in the adopted Law, as it violates the international standards regarding freedom of association. Before forming or becoming a member of any CSO, foreigners must get an accreditation from the Ministry of Foreign Affairs, a process that duplicates the registration of the formed CSO by the same person.

The second source discusses alleged violation of the European Convention on Human Rights and the ICCPR, and also violation of the Constitution of the Republic of Tajikistan itself regarding the rights of noncitizens living in Tajikistan to participate in CSO activity, form CSOs or to join them as a member. The reasons for closing the organizations are also broadened to include, for example, failure of the CSO to respect the normative acts," but it is too broad, undefined and vague a standard. Additional rights are allegedly given to the governmental structures to control the activities of the CSOs. The time allotted (with a current deadline of Jan. 1, 2008) for CSO reregistration is alleged to be insufficient for the needs of both nongovernmental organizations and for the Justice Department, but currently remains obligatory.

References:

Article in www, N. Bukhari-zadeh, Feb. 16, 2007

Deputies of the Parliament Adopted the Law on Civil Society Organizations (CSO)

<http://www.c-asia.org/post/index.php?cont=long&id=9316&year=2007&today=16&month=02>

Professional study, International Center of Non-For-Profit Law, June 7, 2007

Analysis of the Law on CSOs of the Republic of Tajikistan

http://www.icnl.org/knowledge/news/2007/6-15_Tajik_Analysis_Rus.pdf

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

References:

1) Article, Abdullaev K., March 4, 2006, Tajik NGOs. What are They – Agents of Western Influence or Builders of Civil Society?,

<http://www.centrasia.ru/newsA.php4?st=1141420560>

2) Interview, Kadirov A., Director, Center of Democratic Transformations, Aug. 11, 2007, Khujand (phone interview)

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

The source indicates that there are no nongovernmental organizations (NGO) working on issues of anti-corruption and good governance in Tajikistan. Those groups that define themselves as promoting democracy” or “good governance” are allegedly only permitted to do what the Center of Democratic Transformations (CDT) was allowed to do – participate passively in the process by translating and distributing the relevant literature among the policy-makers. So far, none of the groups have been shut down.

References:

Central Asia NGO Network, August 2007
<http://win.cango.net.kg/db/tj/>

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO’s work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

In recent years, no civil society organization (CSO) activists appear to have been imprisoned, but that may be because no information about these imprisonments has been released. However, in recent years, a number of political opponents to President Rahmonov have been imprisoned, on charges of corruption. While these charges may be true in all cases, it is important to take into account the current political situation and alleged authoritarianism of this regime – these arrests may also serve as an attempt to remove President Rahmonov’s political opponents.

References:

Radio Free Liberty, News, Apr. 26, 2005

<http://svoboda.org/hotnews/2005/04/26/28.asp?newstopic=>

BBC report, Sarkorova A., Aug. 6, /2006: General Mirzoev has been Arrested in Dushanbe,

http://news.bbc.co.uk/hi/russian/news/newsid_3542000/3542472.stm

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person’s work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

There is no civil society organization (CSO), nongovernmental organization (NGO) and social union in Tajikistan that specifies itself as working on issues of anti-corruption and good governance. The purposes of these groups are more general and common – working toward promotion of democratic reforms and other similar goals. As of this date, no CSO activist has been killed.

References:

Central Asia NGO Network, August,2007

<http://www.cango.net.kg/db/tj/>

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist’s work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

There is no civil society organization (CSO), nongovernmental organization (NGO) and social union in Tajikistan that specifies itself as working on issues of anti-corruption and good governance. The purposes of these groups are more general and common – working toward promotion of democratic reforms and other similar goals. As of this date, no CSO activist has been killed.

References:

Central Asia NGO Network, August 2007.

<http://www.cango.net.kg/db/tj/>

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The first source states that all working people and persons who study at institutions of higher education have a right to form a trade union on a voluntary basis without informing authorities and without any fear of discrimination; and that they have a right to become a member of already-existing trade unions if no other laws are broken. It further states that any law-abiding person employed in any type of job, including a private or individual type of business, has an equal right to form a trade union or become a member of one.

The constitution of the Republic of Tajikistan states that every citizen has a right to join, form or leave a trade union.

References:

Law of the Republic of Tajikistan (RT) on Trade Unions, Rights and Guarantees of Their Activity

<http://www.base.spininform.ru/show.fwx?Regnom=2286>

Constitution of the RT, Article 28

<http://www.president.tj/rus/konstitutsiya.htm>

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

The brief report discusses the possibility of forming a regional trade union between Kazakhstan and Tajikistan. These discussions are taking place between the existing Kazakh and Tajik Central Committees (CC) of Trade Unions. This may lead to the formation of a new branch of the trade unions system for people working in construction and the building materials industry. The same type of agreement has already been reached between Tajikistan and Russian trade unions. But realization of the agreement between Tajikistan and Kazakhstan depends on financing support. For now, the agreement, which aims to protect the rights of laborers and citizens of Tajikistan abroad, exists only on paper.

SS's comment: In the case of Tajikistan, the CC is highly loyal to the existing government.

References:

Report, Osipyan, K., Feb. 12/, 2007, Realisation of the Agreement between Trade Unions of Constructors of Kazakhstan and Tajikistan Costs (US)\$18,000 (62,280 somoni).
<http://www.avesta.tj/articles/17/5805.html>

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Constitution of the Republic of Tajikistan (RT); Article 30
<http://foi.missouri.edu/internationalfoi/tajikistan.html>

The Law of the RT on the Press and Other Mass Media
<http://foi.missouri.edu/internationalfoi/tajikistanmedialaw.html>

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Materials of the Faculty of Journalism, Colorado University, USA
Quotations from the Reporters without Borders
<http://www.colorado.edu/journalism/courses/2011/International.htm>

Constitution of the Republic of Tajikistan, Article 30
<http://www.osi.hu/ipf/fellows/Zaripova/Constitution.htm>

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

50

6a. In practice, the government does not create barriers to form a print media entity.

Comments:

According to the author, the government creates barriers to register new mass media agencies (MMA); article covers the period of 2004-2005 when for more than a year not one MMA had been registered. Some officials think that it has nothing to do with political issues, but that the problem arises from judicial misunderstandings; for example, arguments between the Ministry of Culture and the Ministry of Justice over which of them should take credit for the work that was done. Besides, some officials say that if journalists think they are right, why don't they address their complaints to the court? But the journalists claim that the Tajik court is not reliable in comparison to other international or European courts. Instead of solving the problems, the court allegedly once threatened them with a warning.

Another source speaks about the repression of the print media, such as the opposition print weeklies Nerui Sokhan, Ruzi Nav and Odamu Olan, which were forced out of circulation in the past two years on alleged tax and technical violations. They have remained out of print as of 2006.

References:

Article, Mamadshoev M., May 2005, Legal Barriers Don't Give Opportunities to Create New Mass Media Agencies in Tajikistan <http://www.ca-oasis.info/oasis/?jrn=7&id=45>

Article, Committee to Protect Journalists, Nov. 3, 2006, Government Controls on News Compromise Vote in Tajikistan <http://www.cpj.org/news/2006/europe/tajik03nov06na.html>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The article discusses the appeal mechanism for when the license application for a mass media agency (MMA) registration is denied, or the terms for reviewing the application for the registration when it is delayed by the state institution, or if the activity of an MMA is stopped. In all these cases, the MMA has a right to address its complaint to the court, according to the Civil Process Code of the Republic of Tajikistan.

References:

Law of the Republic of Tajikistan on Press and Other Mass Media, Article 15 <http://www.mfa.tj/index.php?node=article&id=124>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

SS's comment: While the source is quite old, it may reflect the real situation, which has been hardly changed because the organs responsible for the registration and licensing of the mass media units are still part of the same government. One example from the source discusses problems with radio station licensing by Asia Plus. But the situation is allegedly the same for any type of mass media, whether it is radio, TV, or printed or electronic media. The issue regarding the reasonable time period for licensing in practice does not matter much. It depends on individual cases. The source article also discusses how journalists allegedly prefer to solve their problems by paying bribes to the relevant people or agencies. The solutions to journalists' problems differ from case to case.

The source above discusses different situations at courts with cases dealing with journalists. In Tajikistan most of cases are allegedly solved in a way that profits the politicians. Even in a pretrial session it is apparently easily understood that there is a special relationship between the court and a politician. The author thinks that mass media in Tajikistan has not had any serious problems with licensing, but all of them are under state control. For example, media group Asia Plus had to wait to get their radio license for 4 years, even though they already had a newspaper and TV station.

References:

Article, Allison, O., May 5, 2004, Tendencies in Laws on Mass Media in the Countries of Central Asia and Their Performance" <http://www.varorud.org/old/analytics/massmedia/mass050504a.html>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

SS's comment: The source has been used to answer the previous question 6C. While the source is quite old, it may reflect the current real situation, which has hardly changed in the meantime because the organs responsible for the registration and licensing of the mass media units are still part of the same government. The source discusses problems with radio station licensing by Asia Plus. But the situation is the same for any type of mass media – whether it is radio, TV, or printed or electronic media. The SS wants to show that issues regarding the reasonable cost for licensing in practice depends on the individual case or person.

It is hardly possible to find any source of information that conclusively proves that someone paid off someone else in order to get a license, because both sides are interested in keeping silence. But the SS alleges that if licensing depends on high state organizations like Ministries and if the issue deals with media licensing, no state official is likely to get himself into trouble by taking money in exchange for licensing a media organization. Getting a license requires traveling to the Ministry itself at the capital.

References:

Article, Allison, O., May 5, 2004, Tendencies in Laws on Mass Media in the Countries of Central Asia and Their Performance <http://www.varorud.org/old/analitics/massmedia/mass050504a.html>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

50

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | **25** | 0

References:

<http://www.rferl.org/featuresarticle/2006/08/575C54EB-746E-42CA-AFCD-028D7B8463C4.html>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The Article discusses the appeal mechanism if the license for a mass media agency (MMA) registration is denied, or the terms for reviewing the application for their registration is stopped by the state institution, or if the activity of an MMA is stopped. In all these cases, the MMA has a right to address its complaint to the court, according to the Civil Process Code of the Republic of Tajikistan. It does not specify what type of media is meant, but covers all of them.

References:

Law of the Republic of Tajikistan on Press and Other Mass Media, Article 15

<http://www.mfa.tj/index.php?node=article&id=124>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

1) Media group Asia Plus had to wait for their license for radio for 4 years, even though they already were operating a newspaper and TV station.

2) 4 TV and RV companies received licenses, but 11 others were rejected out of those 15 applications submitted to the License Commission. The reasons given for the rejections were for not preparing the relevant documents and the non-professionalism of the human resources.

SS's comment: For political reasons and because of the upcoming presidential elections, the Ministries allegedly gave licenses only to the most apolitical broadcasting media. Two of the applicants needed just to extend their licenses. The SS herself is from Sughd province where these two particular media work from. They allegedly provided coverage only of the current incumbent president during his election and afterward.

References:

1) Article, Allison O., May 5, 2004, Tendencies in Laws on Mass Media in the Countries of Central Asia and Their Performance <http://www.varorud.org/old/analytics/massmedia/mass050504a.html>

2) Article, Avesta, Autumn 2006, Licenses to the E-Media Have Become Available Again after Long Time <http://www.avesta.tj/articles/1/77763.html>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Article, Avesta, Dec. 1, 2006, Licenses Became Available Long Time After for E-Media,
<http://www.avesta.tj/articles/1/77763.html>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

75

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

First source reports that the government has some concerns about uncontrolled use of the Internet. Internet is still a source and means of information of different types. People can use it for downloading all sorts of pirated records, movies, books etc.

Second source's reports a similar situation, but adds that if the Internet is not controlled by the government, it is only because it has no professional staff to do it and no ideas on how. The only aim of those laws dealing with controlling the Internet is political: to strengthen the absolute power of the president (because even Khizb-ut-Tahrir could freely disseminate their information through the Internet). The Internet may also be one more reason to take bribes for corrupted officials from the owners of cafes, users, etc.

References:

Ms Karimova M., Deputy Major of Khujand Khukumat (municipality), March 7, 2006, Khujand Tajik-n

Ms Gafurova U., Project assistant, Network of Political Parties of Tajikistan, July 21, 2007, Khujand (phone interview)

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

First source thinks in similar fashion to the first source discussed in 8A, but adds that if the Internet is not controlled by the government, it is only because it has no professionals trained to do it and no ideas on how to. The only aim of those laws dealing with control of Internet is political; that is, to strengthen the absolute power of the president (because even Khizb-ut-Tahrir could freely disseminate their information through the Internet) and also one more reason to take bribes for corrupted officials from the owners of cafe, users, etc.

SS's comment regarding the second source:

New changes were made by the Chamber of Representatives: criminal punishment for dissemination of illegal, false information. Jargon was adopted for adding to Part 1 of the Article 144 of the Criminal Code and some other articles of the same Code. So, we can not score it as 100 – we score it as 75.

References:

Ms Gafurova, U., Project Assistant, Network of Political Parties of Tajikistan, July 21, 2007, Khujand (phone interview)

Report, NIAT Khovar, July 19, 2007

<http://www.khovar.tj/index.php?newsid=613>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

67

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

Press and other mass media are free in the Republic of Tajikistan. Every citizen of the Republic has a right to express his or her thoughts and opinions freely and disseminate them through any type of press and mass media. State censorship and persecutions for criticism are prohibited.

References:

Law on Press and Other Mass Media, Article 2, Freedom of Press <http://www.mfa.tj/index.php?node=article&id=124>

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The source thinks that the fault of the mass media in Tajikistan is avoiding of speaking about corruption-related issues. The fact is that the mass media does not initiate any investigation/talks/discussions about practically related cases of corruption. It is explained by mistrust to the governmental fight against corruption". Most cases of corruption-related issues are post-factum, means they speak about the cases which have already been officially admitted as corruption and about which the government speaks too.

References:

Ikromov B., freelance, worked for information agency Varorud" in past, 21/Jul/2007, Khujand (phone interview)

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

Reportedly, there is a difference between governmental and independent mass media, where the governmental mass media needs prior governmental official approval (meaning approval from the editor and others loyal to the government). Independent mass media is not subjected to this type of censorship.

References:

Mr. Ikromov, B., freelance journalist, worked for the information agency Varorud, interview July 21, 2007, Khujand

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

45

10a. In law, print media companies are required to disclose their ownership.

YES | NO

References:

<http://www.mediaschool.tj/smizak2.htm#16>

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:

The articles do not speak about the requirements to disclose the ownership of a media agency, but it is important that it be mentioned in the documents submitted for registration.

References:

Law of the Republic of Tajikistan on Press and Other Mass Media, Articles 8,9 and 10

<http://www.mediaschool.tj/smizak2.htm#16>

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

According to both sources, the majority of journalists abide by a strict code and are unwilling to alter their coverage in exchange for money, gifts, etc. The second source's comments relate to the independent mass media. However, there are allegedly some cases of exchanges of money and gifts involving nongovernmental organizations or individuals.

But, in the case of the information editors and journalists at the major media outlets, they abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts or other favors or remuneration.

References:

Ms. Gafurova, U., Project Specialist, Network of Political Parties, July 21, 2007, Khujand

Mr. Ikromov, B., freelance, worked for information agency Varorud in past, July 21, /2007, Khujand

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | **25** | 0

Comments:

The source regards the media's performance during the most recent election of the president in November 2006 as being on the negative side. The campaign was virtually invisible because of the lack of a real challenger to the president and Rahmonov's choice to not participate in the campaign. The media was slow, allegedly because of self-censorship.

References:

OSCE Report, Kenneth de Figueiredo, Nov 2006

<http://www.humanrights.uio.no/forskning/publ/nr/2006/1906.pdf>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

Comments:

The source regards the media's performance during the most recent election of the president in November 2006 as being on the negative side. The campaign was virtually invisible because of the lack of a real challenger to the president and Rahmonov's choice to not participate in the campaign. The media was slow, allegedly because of self-censorship.

References:

OSCE Report, Kenneth de Figueiredo, Nov. 2006

<http://www.humanrights.uio.no/forskning/publ/nr/2006/1906.pdf>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

1) In 2004 NANSMIT registered 204 serious instances of violations of journalists' and mass media's rights.

2) A judge in northern Tajikistan sentenced independent journalist Jumaboy Tolibov to two years in a prison colony on charges of hooliganism, illegally entering a residence, and abusing his office as a local government administrator, according to local and international reports. The defense said it intended to appeal the verdict.

References:

1) Report, Committee to Protect Journalists, July 28, 2005, Imprisoned

http://www.cpj.org/cases05/europe_cases05/tajik.html

2) OSCE Report, Kenneth de Figueiredo, Tajikistan: Presidential Elections – 2006,

<http://www.humanrights.uio.no/forskning/publ/nr/2006/1906.pdf>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

In 2004 NANSMIT registered 204 serious instances of violations of journalists' and mass media's rights. There is no difference between journalists investigating corruption or writing about elections. There is no evidence that any corruption-related case has been investigated independently. The report discusses journalists writing about the post-factum stories of corruption.

References:

OSCE Report, Kenneth de Figueiredo, Tajikistan: Presidential Elections – 2006,
<http://www.humanrights.uio.no/forskning/publ/nr/2006/1906.pdf>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

In 2004 NANSMIT registered 204 serious instances of violations of journalists' and mass media's rights. However, there is no evidence that journalists were imprisoned during the study period. There is no difference between journalists investigating corruption or writing about elections because there is no evidence that any corruption-related case has been investigated independently. The report discusses journalists writing about the post-factum stories of corruption.

References:

OSCE Report, Kenneth de Figueiredo, Tajikistan: Presidential Elections – 2006,
<http://www.humanrights.uio.no/forskning/publ/nr/2006/1906.pdf>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

65
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The law provides right of access to official documents to be taken from the state bodies by citizens.

References:

The Law on Information, Article 2 and 8

http://www.hrjn.tj/images/pdf_downloads/nationallaw_pdf_downloads/7info_law.pdf

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

The law states that appeals must have the name of the official and the reasons for denials. They can be submitted: first, to the highest body in the organization that issues the denial, then the ministry of that organization, and, finally, the court. There are sanctions for unjustified denials, releasing incorrect information, untimely delays, deliberate hiding of information, and destroying information.

References:

Law on Information, Article 2 and 8

http://www.hrjn.tj/images/pdf_downloads/nationallaw_pdf_downloads/7info_law.pdf

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Citizens, state bodies, organizations and associations can ask for access to information on the activities of legislative, executive and judicial authorities and their officials. The request must be in writing and bodies have thirty days to respond. The requestor must pay the costs for the searching, collection, preparation and providing of requests.

References:

Law on Information

<http://www.freedominfo.org/countries/tajikistan.htm>

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

40

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Access to information, which is also guaranteed under Tajik law, is not protected in practice. In fact, the most common infringement of journalists' rights is the restriction of access to information. Violations may take the form of direct denial of access to information or barring journalists from events. In 75 cases, journalists were denied information of public interest. The Law of the Republic of Tajikistan on Information was signed by President Rahmonov in May 2002. The law provides for a right of access to official documents by citizens to state bodies. Citizens, state bodies, organizations and associations can ask for access to information on the activities of legislative, executive and judicial authorities and their officials. The request must be in writing and bodies have 30 days to respond. The requestor must pay the costs for the searching, collection, preparation and providing of requests.

SS's comment: Taking into account allegations that the right of access to information is violated by state officials on whom access is dependent, these officials are allegedly able to regulate the time it takes to provide citizens with the requested information. Allegedly, denials are not reviewed and officials are not punished for giving them. The time it takes to respond to information requests is said to depend entirely on the official.

References:

Report, NANSMIT, Feb. 11, 2005, Report on Free Expression in Tajikistan Shows Situation Worsened for Media in 2004
<http://www.ifex.org/en/content/view/full/64429>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The Law of the Republic of Tajikistan on Information was signed by President Rahmonov in May 2002. The law provides for a right of access to official documents by citizens to state bodies. Citizens, state bodies, organizations and associations can ask for access to information on the activities of legislative, executive and judicial authorities and their officials. The request must be in writing and bodies have 30 days to respond. The requestor must pay the costs for the searching, collection, preparation and providing of requests.

SS's comment: It is too dangerous for a state official to risk his or her career and get access to information at a reasonable cost.

References:

Freedominfo.org,
<http://freedominfo.org/countries/tajikistan.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The monitoring service registered 189 direct violations of journalists' and media outlets' rights. 36 of these cases involved criminal offenses and were allegedly intended to threaten journalists and obstruct them from carrying out their professional activities. To date, law enforcement agencies have not brought a single action against the alleged offenders. Journalists have also been allegedly reluctant to press charges.

SS's comment: Allegedly, cases of appeal resolutions taking place within a reasonable time are not occurring. As of now, no cases have been found regarding any appeal against state officials regarding denial of access to information.

References:

Report on Free Expression in Tajikistan Shows Situation Worsened for Media in 2004, NANSMIT Feb. 11, 2005
<http://www.ifex.org/en/content/view/full/64429>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The monitoring service registered 189 direct violations of journalists' and media outlets' rights. 36 of these cases involved criminal offenses that were intended to threaten journalists and obstruct them from carrying out their professional activities. To date, law enforcement agencies have not brought a single action against the alleged offenders. Journalists have also been reluctant to press charges.

SS's comment: Allegedly, cases of appeal resolutions taking place within a reasonable time are not occurring. As of now, no cases have been found regarding any appeal against state officials regarding denial of access to information.

References:

Report on Free Expression in Tajikistan Shows Situation Worsened for Media in 2004, NANSMIT, Feb. 11, 2005
<http://www.ifex.org/en/content/view/full/64429>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

... Most of the information gathered at the state statistical agencies is classified as secret and impossible for the public to obtain. In any case government agencies massage their data to head off possible criticisms of their operations or results."

Media organizations report that there are continuing serious problems with access to information. A review by the National Association of Independent Media of Tajikistan (NANSMIT) of media freedom from 1999 to 2004 found that denial of access by the media to official information was the most common form of denial of media rights. NANSMIT said the reasons were a low professionalism and competence of officials, fear of officials in giving information, a lack of adequate sanctions in the legislation, the low professional level of journalists who do not want to clash with officials, and mistrust of journalists by officials. A monitoring project in 2005 found many denials of basic information including the number of persons sick from typhoid fever, anthrax, brucellosis and flu, statistics of divorce cases, the number of suicides, funds spent for events on Day of the Youth, the total amount of drugs seized by the police, bathing deaths, and natural disasters. The government itself admitted problems in a report to the UNECE stating that access to environmental information was limited "due to the legal illiteracy of the public itself and the exploitation of the situation by officials."

References:

Freedom House, Countries at the Crossroads, 2005
<http://freedominfo.org/countries/tajikistan.htm>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. ⁵⁷Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Constitution of the Republic of Tajikistan, Article 27
<http://www.asiaplus.tj/en/area/24.html>

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Last corrections or additions to the Constitution were made in 2003.

References:

Constitution of the Republic of Tajikistan, Article 65
<http://www.asiaplus.tj/en/area/24.html>

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

According to the Central Electoral Committee, last elections of the president was held with 90% of citizens voting, but the opposition criticized such an unusual high level of activity.

References:

Report, Nov. 6, 2006, Presidential Election Has Been Finished in Tajikistan
http://www.polit.ru/news/2006/11/06/taj_ch.html

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

The source speaks about cases of violations of rules of elections and voting. The leading party representatives use blank ballots.

References:

Article, Bukharizade, N. & Mirsaidov, Kh., Feb. 27, 2005, Tajikistan Has Made Its Choice <http://www.centrasia.ru/newsA.php4?st=1109587560>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

There is a regular schedule , according to which the elections are held regularly. But there was a referendum and some changes have been made to the constitution in favor of the present president. Now that he has ensured that he will be in charge until 2020, we think the elections will be held on a regular basis.

References:

Ms. Gafurova, U., Project Specialist, Network of Political Parties, July 21, /2007, Khujand

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

55

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Constitution, Article 27

<http://www.asiaplus.tj/en/area/24.html>

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Constitution, Article 27 & 28

<http://www.asiaplus.tj/en/area/24.html>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

In practice, all citizens can form political parties. One party was functioning, but it was not able to register due to the barriers created by state organs. Two other new parties – Agrarian and Economic Reforms – are both loyal to the president and were registered in order to create a false sense of democratic elections.

References:

Ms. Gafurova, .U., Project Specialist, Network of Political Parties, July 21, 2007, Khujand

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

Article, SNG News, We are Not Extremists, We are Political Party

<http://www.sngnews.ru/articles-print/5/40131.html>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The legislature includes the opposition, too, but the number of them has decreased since the last parliamentary elections of 2005.

References:

Article, SNGNews, Coalition Decision: Opposition Parties Are Not Going to Accept the Results of the Parliamentary Elections

<http://www.sngnews.ru/articles-print/5/46263.html>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The agency is the Central Commission on Elections & Referendums.

References:

The Constitutional Law of the Republic of Tajikistan, On Elections to the Majlisi Oli of the Republic of Tajikistan, Article 8
<http://www.legislationline.org/legislation.php?tid=57&lid=3705>

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

55

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

The Constitutional Law of the Republic of Tajikistan, On Elections to the Majlisi Oli of the Republic of Tajikistan, Article 10
<http://www.legislationline.org/legislation.php?tid=57&lid=3705>

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

OSCE Mission of Observers reported that the process of elections had not met the international standards. They mentioned that the formation of electoral commissions did not reflect the interests of all parties, local officials belonging to the leading party took leading positions in elect.com-ns, ideas of transparency were under serious threat and the process of elections was manipulated more by the local governmental officials than by elect.com-n.

References:

Article, Bukharizade, N., 2005, Elections in Tajikistan: Observers Have Got Different Opinions,
<http://www.eastbazar.info/articles.php?article=1109676079&page=0301&lang=rus>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The most important requirement for becoming one of the staff of the agency is to be loyal to the government or be one of the local government officials (which means being loyal to the leading party anyway). But taking into account that for many years the same principle idea played an important role, these people who are in electoral commissions became more or less professional due to the practical experience, though they are still politically dependent.

References:

Article, Bukharizade, N., 2005, Elections in Tajikistan: Observers Have Got Different Opinions, <http://www.eastbazar.info/articles.php?article=1109676079&page=0301&lang=rus>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The reports became available in the mass media following an election cycle, but in most cases they do not speak on negative issues and do not have critical comments.

References:

Report, OSCE/ODIHR Final Report on Elections in Tajikistan on 27 February and 13 March 2005 <http://www.osce.org/ogjhr-elections/14655.html>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The source speaks about actions of the SDPT to hold a demonstration/ meeting in Sughd province of Tajikistan. The leader of the Party is sure it is a legitimate action in Tajikistan, but demonstrators were arrested and imprisoned anyway.

SS's comment: There are one or two cases where governmental officials have been dismissed because of false elections, but in most cases those parties who appealed to the Court were given a negative decision. The offenders – from the leading party – receive no penalty.

References:

Article, AVESTA, March 14, 2005, What SDPT Wants – Revolution or Legitimate Actions?
<http://www.avesta.tj/articles/15/6612.html>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

46

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

there is no central voter register in Tajikistan... The voter registration process is passive; the law does not specifically mention that voters have to provide proof of residence in a particular polling station area. This lead to fears that voters lists might be inflated on election day..."

SS's comment: In the case with last elections of 2006 (presidential) there was no need to falsify as much as before because there were no opponents, in fact, to the present president. Other candidates are in fact loyal to the president and their parties were formed specially for these purposes. Other acting parties refused to take part in the elections.

References:

Report, OSCE/ODIHR Final Report on Elections in Tajikistan on 27 February and 13 March 2005
<http://www.osce.org/ogihr-elections/14655.html>

Article, Bukharizade, N., 2005, Elections in Tajikistan: Observers Have Got Different Opinions,
<http://www.eastbazar.info/articles.php?article=1109676079&page=0301&lang=rus>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

The Constitutional Law of the Republic of Tajikistan, On Elections to the Majlisi Oli of the Republic of Tajikistan, Article 8 (1)
<http://www.legislationline.org/legislation.php?tid=57&lid=3705>

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Leader of SDPT appealed to the Supreme Court: Rahmonov did not have any right to participate in elections again.

References:

Article, Nov. 21, 2006, The Oppositionist Doubts Victory of Rahmonov
<http://www.russianlondon.ru/newspaper/news/32204/>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The source speaks about actions of the SDPT to hold a demonstration/meeting in Sughd province of Tajikistan. The leader of the Party is sure it is a legitimate action in Tajikistan but demonstrators were arrested and imprisoned anyway.

Neither prior to elections, nor during and even after them, were security and military forces neutral. The heads of these structures are loyal to the president and all are members of the NDPT.

References:

Article, AVESTA, March 14, 2005, What SDPT Wants – Revolution or Legitimate Actions?
<http://www.avesta.tj/articles/15/6612.html>

Ms Gafurova U., Project specialist, Network of Political Parties, 21/Jul/2007, Khujand

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

The Constitutional Law of the Republic of Tajikistan, On Elections to the Majlisi Oli of the Republic of Tajikistan, Article 8(2)
<http://www.legislationline.org/legislation.php?tid=57&lid=3705>

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

They generally have access to effectively monitor elections, but their decision, in fact, is not very significant for the leading party of Tajikistan and its leader.

References:

Report, OSCE/ODIHR Final Report on Elections in Tajikistan on 27 February and 13 March 2005,
<http://www.osce.org/odihr-elections/14655.html>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

20. Are there regulations governing political financing?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

Law on Political Parties, Article 12, 13, 20

<http://www.icnl.org/car/laws/TJ-PolParties.doc>

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

Article 12 says that funds of the political party can be raised from the membership fees (if approved by the Order), voluntary help, income from lecturing, exhibitions, and other events, income from publishing and other type of activity allowed by the Law. Article 13 says that material help for the needs of political parties can consist of property and money coming from physical persons, industries, organizations and civil society organizations, foundations and other judicial units. It is prohibited to take any help from charity and religious organizations, state institutions and organizations, and other type of organizations where the state is a participant. Also foreign states, including citizens, industries, organizations and agencies where foreign capital is involved.

References:

Law on Political Parties, Article 13

<http://www.icnl.org/car/laws/TJ-PolParties.doc>

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

Article 16 says that each party has to publish financial reports about the sources, sizes and expenditures of incoming funds during one year. Article 12 says that funds of the political party can be raised from the membership fees (if approved by the Order), voluntary help, income from lecturing, exhibitions, and other events, income from publishing and other type of activity allowed by the Law. Article 13 says that material help for the needs of political parties can consist of property and money coming from physical persons, industries, organizations and civil society organizations, foundations and other judicial units. They are prohibited to take any help from charity and religious organizations, state institutions and organizations, and other type of organizations where the state is a participant. Also foreign states, including citizens, industries, organizations and agencies where foreign capital is involved.

References:

Law on Political Parties, Article 16
<http://www.icnl.org/car/laws/TJ-PolParties.doc>

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

Law on Political Parties, Article 16
<http://www.icnl.org/car/laws/TJ-PolParties.doc>

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

Article says that each party has to publish financial reports about the sources, sizes and expenditures of incoming funds during the year.

References:

Law on Political Parties, Article 16

<http://www.icnl.org/car/laws/TJ-PolParties.doc>

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

Financial reports of the parties are checked by relevant tax institutions.

References:

Law on Political Parties, Article 16

<http://www.icnl.org/car/laws/TJ-PolParties.doc>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

The Law mentions only the requirements about requiring tax offices to check the financial reports of the parties.

References:

Law on Political Parties

<http://www.icnl.org/car/laws/TJ-PolParties.doc>

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

0

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

There is little information regarding the question. There are no serious opponents to the current president Rahmonov. Each party can receive financing from the state budget when participating in elections.

References:

News report, SNGNews, 2006, Presidential Elections Must be Held on the Basis of a New Law

<http://sngnews.ru/articles-print/5/56148.html>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

References:

No information could be found about alternatives to state budget financing.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

SS's comment: Everything in Tajikistan depends on one person's wish only – President Rahmonov's. He does not need to spend additional money and nobody can oppose him in practice because only one party is leading and it will be leading for the next 14 years. Things will stay the same if no changes happen.

References:

No information could be found about alternatives to state budget financing.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Investigations are not effective because they are allegedly conducted by those who belong to the ruling party.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Penalties do not appear to be effective because offenders are representatives of the ruling party, and the structures to penalize offenders are also allegedly run by the ruling party.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

References:

There is no evidence that auditing has ever occurred.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

8

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All candidates had provided property and income statements.

References:

Article, OSCE/ODIHR Final Report on Elections in Tajikistan on 27 February and 13 March 2005
http://www.osce.org/documents/odihr/2005/05/14852_en.pdf

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Financial records of the parties and candidates are available in a reasonable time before elections to the relevant organizations. I have not seen any information about accessibility to this type of information by citizens because it appears that no common citizens, or even mass media agencies, have shown interest in it.

References:

Article, OSCE/ODIHR Final Report on Elections in Tajikistan on 27 February and 13 March 2005
http://www.osce.org/documents/odihr/2005/05/14852_en.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

Financial records of the parties and candidates are available to the relevant organizations before elections. I have not seen any information about accessibility to this type of information by citizens because it appears that no common citizens, or even mass media agencies, have shown interest in it.

References:

Article, OSCE/ODIHR final report on elections in Tajikistan on 27 February and 13 March 2005
http://www.osce.org/documents/odihr/2005/05/14852_en.pdf

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Constitution of the Republic of Tajikistan, Article 19, 20 & 21

<http://www.president.tj/rus/konstitutsiya.htm>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

38

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

In most cases the chief executive gives reasons for their policies, but they are not responsive to any recommendations from the opposition or the media or other groups.

References:

Report, Zakirova, N. & Others, 2005, Monitoring of Violations of Freedom of Speech in Tajikistan,
<http://www.medialaw.kz/forprint.php?r=1&c=1186>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Constitution of the Republic of Tajikistan, Article 17
http://www.president.tj/rus/sanadho_rus.htm

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary reviews the actions of executive regarding the case of General Mirzoev.

SS's comment: These cases are allegedly mostly aimed at opponents to the president.

References:

Article, RIAN, Nov. 1, 2006, In Tajikistan the Trial of Mirzoev Will Begin, www.rian.ru/politics/court/20060111/42932192.html

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

In Tajikistan executive orders seem to be the norm as it seems we are living in an authoritarian regime where one person holds power.

References:

Mr. Farrukh Turaev, President, Association for Scientific and Technical Intelligence, July 20, 2007, Khujand

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

0

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

The law doesn't discuss prosecution. It discusses special conditions to ensure the security of a number of heads of state and governmental officials and their families. It says that officials can be dismissed by the president. No other details are given.

References:

Constitutional Law on the Government of the Republic of Tajikistan, Article 35 (1)
<http://www.president.tj/rus/pravitelstvo2.htm>

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

Comments:

The Law does not discuss prosecution. It discusses the special conditions for creating security for a number of heads of state and governmental officials and their families. It says that officials can be dismissed by the president. No other details are given

References:

Constitutional Law on the Government of the Republic of Tajikistan, Article 35 (1)
<http://www.president.tj/rus/pravitelstvo2.htm>

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

38

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The Law discusses asset disclosure form filing, but it does not say whether filing should be done on a regularly scheduled basis or only done once.

References:

Constitutional Law on the Government, Article 11

<http://www.president.tj/rus/pravitelstvo2.htm>

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

The Law discusses asset disclosure form filing, but it does not say whether it should be done on a regularly scheduled basis or done only once.

References:

Constitutional Law on the Government, Article 11

<http://www.president.tj/rus/pravitelstvo2.htm>

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

References:

No restrictions governing gifts and hospitality exist in the law. The new anti-corruption law is vague on this point.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

No requirements for independent auditing of executive branch asset disclosure forms exist in law. However, the new anti-corruption law does call for auditing of asset disclosures but is unclear on whether that auditing is to be independent.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

References:

No restrictions regarding this issue exists in the law.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

SS's comment: Considering that present officials allegedly have hidden private businesses, it is senseless to speak about post-governmental officials. The president allegedly makes all decisions regarding human resources at government level.

References:

There are no known cases where such restrictions have been shown to be effective.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

No such law exists, and there are no known cases where such regulations have been shown to be effective.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

Although the new anti-corruption law makes reference to this, there is no history of auditing being carried out in any sort of systematic manner.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Discusses the punishment for denying citizens access to information. It is not specified whether this covers requests for the records of heads of government.

References:

Criminal Code, Article 148

<http://www.legislationline.org/upload/legislations/32/2e/207b8150765af2c85ad6f5bb8a44.htm>

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No case is known.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No case is known.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Most of the local officials, who are ruling party members, took the head positions in electoral committees. Political campaigning was allegedly controlled by local governments.

References:

Article, Bukharizade, N., 2005, Elections in Tajikistan: Observers Opinions Are Different
<http://www.eastbazar.info/articles.php?article=1109676079&page=0301&lang=rus>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The right to introduce draft legislation belongs to people's deputies, the President, the Government, the Constitutional Court, the Supreme Court, the High Economic Court, and the Parliament of People's Deputies of Gorno-Badakhshan Autonomous Region . . . Laws of Tajikistan are presented to the President for her or his signature. "

References:

Constitution of the Republic of Tajikistan, Article 60, 61 & 62

<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan003670.htm>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the courts are extremely passive and are reluctant to review cases, take decisions, laws or orders regarding any constitutional laws.

References:

Article, Imomov, A., On Problems of Interpretation of the Constitution and Laws of Tajikistan

http://www.ca-c.org/journal/13-1998/st_06_imomov.shtml

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | **NO**

Comments:

She or he may not be subjected to any kind of arrest (or) administrative penalty imposed through judicial proceedings, or criminal trial without the consent of Parliament. Without the consent of Parliament, a people's deputy may not be detained, except when apprehended at the scene of a crime.”

References:

Constitution of the Republic of Tajikistan, Article 59

<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan003670.htm>

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

0

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | **NO**

References:

No relevant info has been found.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

The law discusses restrictions regarding entering the private sector for current parliamentarians, not for those leaving the government.

References:

<http://www.tajikistan.tajnet.com/state.html>

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

References:

No information has been found.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

Parliament may, when necessary, form investigatory, audit, and other temporary commissions. "

SS's comment: Audits and investigations can only be initiated when the Parliament itself thinks it is necessary.

References:

Constitution of the Republic of Tajikistan, Article 56

<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan003670.htm>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

We know many cases when former national legislators, as well as former executives, prefer not to enter the educational or scientific sector for work. They, as a rule, start their work in private sector when they are working for the government. After leaving their governmental work they just continue working in their own private business.

References:

Mr. Turaev, F., President, Association of Scientific and Technical Intelligence, July 20, 2007, Khujand (phone)

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

No information has been found.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

No information about national legislative branch auditing has been found.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

No information has been found.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The only information available is that the officials are not open to disclosing records or any other information. The most common reason given is that the information is a state secret.

References:

Article, Zakirova N., Access to the Information in Tajikistan

<http://www.svobodainfo.org/info/page?tid=633200007&page=12&nd=458200896>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The only information available is that the officials are not open to disclosing records or any other information. The most common reason given is that the information is a state secret.

References:

No specific info has been found.

Article, Zakirova, N., Access to the Information in Tajikistan,

<http://www.svobodainfo.org/info/page?tid=633200007&page=12&nd=458200896>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

33

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Each person is guaranteed . . . the right to use information media . . . A list of information considered secrets of the state is determined by law.”

References:

Constitution of the Republic of Tajikistan, Article 30

<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan003670.htm>

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

It is extremely difficult for the average citizen to access any the records of legislative proceedings.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Within the Law on Press and Other Mass Media, Articles 5, 6 and 27 requires the political, governmental and civil society organizations to provide mass media with information, except for information that is regarded as a state secret. In practice, the officials are not cooperating with the mass media. In most cases, the reason for refusal is that the requested information is a state secret. They also ask journalists to bring a written agreement letter from the Ministry, which is, in most cases, impossible to get.

Common citizens are not interested in knowing about records of the legislative process. Even those who are interested in accessing this information do not have any guarantees that they will be provided this information by any governmental, legislative or organizational person.

References:

Article, Zakirova, N., Access to the Information in Tajikistan
<http://www.svobodainfo.org/info/page?tid=633200007&page=12&nd=458200896>

Ms Gafurova, U., Project Specialist, Network of Political Parties, July 21, 2007, Khujand

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

33. Are judges appointed fairly?

50

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | **NO**

Comments:

The president submits judicial candidates to the parliament.

References:

Constitution of the Republic of Tajikistan, Article 69 (8)

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | **50** | 25 | 0

Comments:

The first source originates from the governmental office. It discusses Rahmonov's meeting with judges who were newly appointed by him. It says that with the suggestion of a Justice Council, and according to the recommendations and orders of the president, judgeships would be available to those who had had solid experience working in the upper positions of the judicial system. During their years of work with professional judges, these candidates were gaining experience.

The second source says that in recent years (though now the situation is a little better) regionalism also played an important role. Most of the appointees made up an "invasion" of half-educated Kulyabi and some allegedly even bought their judicial diploma. Some of these people belonged to the president's family, or were from his own district.

References:

Press release, June 2, 2006

<http://www.hhdt.tj/russian/habarsered/5.htm>

Ms. Mohira Usmanova, Lawyer, Council of Lawyers of Sughd Area, July 16, 2007, Khujand

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Constitution of the Republic of Tajikistan, Article 69 (8)

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

50

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

This article states that everybody is guaranteed judicial protection, and that everyone has a right to request a independent, competent and objective trial.

References:

Constitution of the Republic of Tajikistan, Article 19

http://www.president.tj/rus/sanadho_rus.htm

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | **50** | 25 | 0

Comments:

In practice, the national-level judiciary gives explanations to its decisions, though in some cases they are politically motivated.

References:

Press release, SNGNews, 2006, Supreme Court of Tajikistan Confesses Actions of Central Election Committee Were Legal
http://sngnews.ru/frame_article/5/68585.html

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The president appoints and dismisses the judges after the names of candidates are submitted by a Council of Justice.

Judges benefit from immunity as well.

References:

The Council of Justice
see Constitution of the Republic of Tajikistan, Article 86 & 91
http://www.president.tj/rus/sanadho_rus.htm

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | **NO**

Comments:

Judges cannot be members of a political party. But apart from this the executive exercises control over the council.

References:

Constitution of the Republic of Tajikistan, Article 90

http://www.president.tj/rus/sanadho_rus.htm

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

According to the first source, there is already a trial taking place in the case of General Mirzoev, a former friend of the president and one of the first officials of the state. This case was initiated by the General Prosecutor.

In most cases all investigations are conducted by prosecutors or police. When the investigation is completed, the case is passed on to the court. The Council is very limited in its effectiveness.

References:

Article, SNGNews, Jan. 17, 2006, The Head of the Supreme Court Informed about the Reasons of the Close Trial Process over Mirzoev

<http://sngnews.ru/archive/2006/01/17/56771.html>

Ms Mohira Usmanova, Lawyer, Council of Lawyers of Sughd Province, July 16, 2007, Khujand

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

According to the first source, there is already a trial taking place in the case of General Mirzoev, a former friend of the president and one of the first officials of the state. This case was initiated by the General Prosecutor.

In most cases all investigations are conducted by prosecutors or police. When the investigation is completed, the case is passed on to the court. The Council itself is very limited in its effectiveness.

References:

Article, SNGNews, Jan. 17, 2006, The Head of the Supreme Court Informed about the Reasons of the Closed Trial Process over Mirzoev, <http://sngnews.ru/archive/2006/01/17/56771.html>

Ms. Mohira Usmanova, Lawyer, Council of Lawyers of Sughd Province, July 16, 2007, Khujand

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

0

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

References:

No information has been found regarding this question.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

References:

No laws regarding these regulations have been found.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

References:

No laws regarding these regulations have been found.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

No laws regarding these restrictions have been found.

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

References:

No information regarding these regulations has been found.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

No laws regarding these regulations have been found.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

No information regarding these audits has been found.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

Comments:

The Law on Information discusses the rights of citizens to appeal against refusals by officials, the government and others to provide information. Citizens can bring their appeals to the court, but the law does not say if the court itself can provide citizens with information.

References:

Law on Information, Articles 31 & 38

http://www.hrjn.tj/images/pdf_downloads/nationallaw_pdf_downloads/7info_law.pdf

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

No information regarding this issue has been found.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

References:

No information regarding this has been found.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

75

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

Laws regarding the budget and regarding the establishment and abolishing of taxes are brought to the Majlisi Oli (parliament) by the government.

References:

Constitution of the Republic of Tajikistan, Article 59
http://www.president.tj/rus/sanadho_rus.htm

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Article, AVESTA, Nov. 21, 2006, Parliament Committees Have Completed Reviewing of the Budget of Tajikistan for 2007
<http://www.avesta.tj/articles/4/7915.html>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

SS's comment: In comparison to last year, the answer to this question can be scored a bit higher. IA Khovar is a state media company. The source reports the progress they have made in their abilities to deal with some important problems like corruption (though it may be only on paper and not in practice).

The first source, from 2006, reports on the general schedule of the work of the parliament, including questions about the budget.

The second source reports on the approval of the 2008 budget by the parliament. This year, parliament is paying attention to corruption issues, as well as the president.

References:

News, IA Khovar, Oct. 25, 2006, Third Session of the Majlisi Namoyandagon (Chamber of Representatives)
http://www.pbussr.ru/index.php?razdel=8&condition=show_news&page=19&id=18434

News, UPMonitor, Aug. 1, 2007, Tajikistan Government Has Approved the Budget of the Country for 2008
<http://www.upmonitor.ru/news/world/183113a/0/print/>

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

25

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

SS's comments: Each decision of the parliament is dictated by the president. TV coverage shows the process very clearly: nobody dares to speak or argue in front of the president. After last year's elections (2006), the president's power seems to be ensured, and his ability to manipulate the parliament and government seems to be stronger.

References:

No information on this issue has been found.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

No information on this issue has been found.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Journalists can access this information through state officials.

References:

News, AVESTA, Nov. 21, 2007, Parliament Committees Have Finished Reviewing the Project of the Budget of Tajikistan for 2007 <http://www.avesta.tj/articles/4/7915.html>

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

The Committee on Economy, Finance and Taxes

<http://tjus.org/parliament.htm>

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

19

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Article, AVESTA, Nov. 21, 2006, Parliament Committees Have Completed Reviewing of the Budget of Tajikistan for 2007

<http://www.avesta.tj/articles/4/7915.html>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

References:

Article, AVESTA, Nov. 21, 2006, Parliament Committees Have Completed Reviewing of the Budget of Tajikistan for 2007
<http://www.avesta.tj/articles/4/7915.html>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

References:

Article, AVESTA, Nov. 21, 2006, Parliament Committees Have Completed Reviewing of the Budget of Tajikistan for 2007
<http://www.avesta.tj/articles/4/7915.html>

<http://www.tajik-gateway.org/index.phtml?lang=en&id=31>

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Although the committee exists, there is little evidence of it functioning.

References:

<http://www.tajik-gateway.org/index.phtml?lang=en&id=31>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁴¹Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Constitution of the Republic of Tajikistan, Law on Local Public Administration, Law on Local Self-Government

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Constitution of the Republic of Tajikistan, Law on Local Public Administration, Law on Local Self-Government

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

No such dedicated mechanism exists at the national level.

References:

Law on Local Public Administration

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Law on Fight against Corruption, Law on Local Public Administration

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

39

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Local government bodies, though legally being the main link of the local self-government system, continue to remain only executive structures of the central public administration bodies. This duality determines that their functions and competency remain at the same level. Furthermore, participation and decision-making are often contingent on business, political and ethno-regional connections, with many decisions made in a non-transparent manner.

References:

Info sheet, Open Society Institute, 2005, Country Datasheet – Tajikistan, Local Government
http://lgi.osi.hu/country_datasheet.php?id=170

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

Comments:

Tajikistan remains in the hands of a largely authoritarian government, although it has established some nominally democratic structures. The government's narrow base of support limits its ability to control the entire territory of the country. The government of President Emomali Rahmonov, which consists largely of natives of the Kulyab/Kulob region, continues to dominate the state, even though some Kulobis were removed from senior positions in 1998 and opposition members were taken into the government. Some regions of the country remain effectively outside the government's control, and government control in other areas exists only by day, or at the sufferance of local opposition commanders.

References:

Article, GlobalSecurity.Org, April 2005, Tajikistan Civil War,
<http://www.globalsecurity.org/military/world/war/tajikistan.htm>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

Comments:

Tajikistan remains in the hands of a largely authoritarian government, although it has established some nominally democratic structures. The government's narrow base of support limits its ability to control the entire territory of the country. The government of President Emomali Rahmonov, which consists largely of natives of the Kulyab/Kulob region, continues to dominate the state, even though some Kulobis were removed from senior positions in 1998 and opposition members were taken into the government. Some regions of the country remain effectively outside the government's control, and government control in other areas exists only by day, or at the sufferance of local opposition commanders.

References:

Article, GlobalSecurity.Org, April /2005, Tajikistan Civil War,
<http://www.globalsecurity.org/military/world/war/tajikistan.htm>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

SS's comments: Every official is responsible for his own sector of activity, but in some situations, like during the elections for president, all of them were evacuated" away from their main duties and all worked for the referendum for the benefit of the president, both before and during the elections. This information was received during the referendum from one state official who asked that her name not be mentioned.

References:

Law, Nov. 13, 1998, Law on Civil Service
<http://tabiat.narod.ru/LAWDB/ZAKON74.htm>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

SS's comments: Source does not say anything about benefits.

References:

Decree, Rahmonov, Point 1, March 16, 2007, Decree on Increase of Salaries of the State Budget Institutions and Sizes of Social Pensions
http://www.president.tj/rus/farmon/march_maosh.htm

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

No information can be found on this topic.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

A special department of local governmental units conducts regular investigations. Some of these actions are planned and some are in response to the complaints of citizens. Some investigations are allegedly politically motivated. Despite this there is no dedicated national-level mechanism.

References:

Regional Risk Profile, F. Ahmedova, Swiss Peace Foundation, July 2005

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

SS's comments: As far as we know, all civil servants are getting their salaries on time, as is understood from an official who spoke to some of them.

References:

No information has been found regarding the past year.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Law on Fight against Corruption, Article 10
Law on Public Administration

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

21

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law on Local Public Administration

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

No information on these restrictions has been found.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | **NO**

References:

No information has been found.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

References:

No information has been found.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

No information has been found.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

No information has been found.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Constitution of the Republic of Tajikistan, Law on Public Administration

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In most cases, citizens can access the records, but it depends on a servant's status.

References:

Regional Risk Profile, F. Ahmedova, Swiss Peace Foundation, July 2005

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

Comments:

It can cost nothing because of the fear and self-censorship of the officials. In some cases, civil servants ask citizens to bring a paper from a higher institution, which means, in most cases, from the Ministries. Travel to the capital is required for a citizen who does not live in Dushanbe.

References:

Regional Risk Profile, F.Ahmedova, Swiss Peace Foundation, July 2005

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

88

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Law on Fight Against Corruption, Articles 4 and 6

http://untj.eastera.net/files/legislations/anticorruption/Anti_corruption_Law_Rus.pdf

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants in this department are protected from recrimination. They are only allowed to contact the chief of the department of information.

Comment regarding the second source: The fact that 51 percent of the respondents believe that whistle-blowing is justified indicates that society will co-operate in the fight against corruption.

References:

Mr. Kholiki, Chief of Department of Information, Anti Monopoly and Drug Control Agency, Aug. 21, 2007, Khujand

Article, IA VARORUD, Feb. 6, 2007, What Society Says about the Corruption in Tajikistan
<http://www.c-asia.org/post/index.php?cont=long&id=9251&year=2007&today=06&month=02>

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Law on Fight Against Corruption, Article 4 and 6
http://untj.eastera.net/files/legislations/anticorruption/Anti_corruption_Law_Rus.pdf

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

These civil servants are protected from recrimination. They must directly contact the chief of the Information department only, whether or not they belong to private or other sectors.

References:

Mr Kholiki, Chief of Department of Information, Anti Monopoly and Drug Control Agency, Aug. 21, 2007, Khujand

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

Prosecutors are the first organizations that are responsible for investigating cases of corruption. Internal reporting mechanisms are ad hoc or non-existent.

References:

Law on Fight against Corruption, Article 5

http://untj.eastera.net/files/legislations/anticorruption/Anti_corruption_Law_Rus.pdf

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

25

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Some of their staff have been with them for several years and certainly have experience and professionalism. However, some of the other staff are just volunteers.

References:

Mr Kholiki, Chief of Department of Information, Anti Monopoly and Drug Control Agency, Aug. 21, 2007, Khujand

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

A permanent salaried staff performs this job regularly. However, there are people who work voluntary (i.e., without any payment). The complaints mechanism is extremely ad hoc.

References:

Mr Kholiki, Chief of Department of Information, Anti Monopoly and Drug Control Agency, Aug. 21, 2007, Khujand

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

During the last year, the president and the government have been trying to pay special attention to the anti-corruption fight. While they might have not worked so hard at it before, they are now under special attention of the government offices. The complaints mechanism itself is extremely ad hoc.

References:

Mr. Karimov, T., Chief of Department of Complaints and Information, Local Khukumat, Aug. 21, 2007, Khujand

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Comments:

We deal with common people most of all. We react to their complaints, conduct preliminary investigations, and try to react on time. All cases of "positive" corruption are investigated by prosecutors to whom we pass the information." That said, the complaints mechanism is extremely ad hoc.

References:

Mr Karimov, T., Chief of Department of Complaints and Information, Local Khukumat, Aug. 21, .2007, Khujand

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

38 IV-3. Procurement

48. Is the public procurement process effective?

20

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | **NO**

References:

Law on Property

<http://www.tajik-gateway.org/index.phtml?id=426&lang=ru>

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all

civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

References:

No information has been found.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | **0**

References:

No information has been found.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

No information has been found.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | **NO**

References:

No information has been found.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | **NO**

References:

No information has been found.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Law on Property

<http://www.tajik-gateway.org/index.phtml?id=426&lang=ru>

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law on Property

<http://www.tajik-gateway.org/index.phtml?id=426&lang=ru>

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Could not find relevant information.

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

No information has been found.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

42

49a. In law, citizens can access public procurement regulations.

YES | NO

References:

Law on Property

<http://www.tajik-gateway.org/index.phtml?id=426&lang=ru>

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

No information has been found.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No information has been found.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No information has been found.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Article, Kazakhstan Today, Sep. 21, /2003, In Tajikistan 62 factories Have Been Sold Since 2003

<http://www.spy.kz/Econom/V-Tadzhikistane-s-2003-goda-na-tendernyh-torgah-prodany-62-predpriyatija-pjat-iz-kotoryh-priobreteny-zarubezhnymi-investorami/>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

Article, Kazakhstan Today, Sep. 21, 2003, In Tajikistan 62 Factories Have Been Sold Since 2003,

<http://www.spy.kz/Econom/V-Tadzhikistane-s-2003-goda-na-tendernyh-torgah-prodany-62-predpriyatija-pjat-iz-kotoryh-priobreteny-zarubezhnymi-investorami/>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

33

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law of the Republic of Tajikistan on Privatization of the State Property, Article 8

<http://www.business-club.tj/index.php?lng=ru&id=333&PHPSESSID=7e8d66ef7bcff96b8a0422ab1b8ad4a4>

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

References:

Law of the Republic of Tajikistan on Privatization of State Property

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

The source says that the common people were not allowed to privatize anything, but suddenly the number of people who became rich increased. In its wish to sell every object in 2003, officials sold them at 2003 prices, but if nobody bought them, they would offer the objects at 1998 prices. But for those who had real power and money officials offered the objects at even more soft conditions. One of the officials themselves confessed that one of the objects was sold twice, despite the fact that the first owner had already equipped it.

SS's comment:

As a researcher working in Tajikistan province, I know personally that most of the serious or expensive objects are privatized by state officials secretly and are then registered under the names of their relatives. After losing their state jobs, or after retiring, these officials work on their privatized objects openly.

References:

Article, Internet-Magazine OASIS, Fradchuk Artyom, Liquidate Privatization, Nov. 2005
<http://www.ca-oasis.info/oasis/?jrn=19&id=134>

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

60

51a. In law, citizens can access privatization regulations.

YES | NO

References:

Law of the Republic of Tajikistan on Privatization of the State Property, Article 4

<http://www.business-club.tj/index.php?lng=ru&id=333&PHPSESSID=7e8d66ef7bcff96b8a0422ab1b8ad4a4>

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | **50** | 25 | 0

Comments:

SS's comment: Privatization is a quite open process, but as far as it depends on the local governmental units, some objects are hidden or privatized by officials themselves, secretly.

References:

Article, www.zakon.kz, Nov. 25, 2003, In Tajikistan There are Preparations for a Large-Scale Privatization

<http://www.zakon.kz/our/news/print.asp?id=18392>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The law states that the process must be open.

References:

Law of the Republic of Tajikistan on Privatization of the State Property, Article 4

<http://www.business-club.tj/index.php?lng=ru&id=333&PHPSESSID=7e8d66ef7bcff96b8a0422ab1b8ad4a4>

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The source reports on the increased possibilities for some privileged” citizens, and fewer possibilities for common citizens.

SS` s comment: Time depends on what the officials wish and the danger of losing their jobs as a result of their openness.

References:

Article, Internet-Magazine OASIS, Fradchuk Artyom, Liquidate Privatization, Nov. 2005

<http://www.ca-oasis.info/oasis/?jrn=19&id=134>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The source reports on information on privatization received from one of the officials on the secret base.

SS's comment: I know that local governments can sometimes hide the information from public because they are afraid of the consequences and losing their positions. So, people might have been travelling to the capital.

References:

Article, Internet-Magazine OASIS, Fradchuk Artyom, Liquidate Privatization, Nov. 2005
<http://www.ca-oasis.info/oasis/?jrn=19&id=134>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁵¹National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

References:

No ombudsman exists.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

0

53a. In law, the ombudsman is protected from political interference.

YES | **NO**

References:

No ombudsman exists.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | **0**

References:

No ombudsman exists.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

0

54a. In law, citizens can access reports of the ombudsman(s).

YES | **NO**

References:

No ombudsman exists.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

No ombudsman exists.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

No ombudsman exists.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

There is a national supreme audit institution, which, until January 2007, was called the State Financial Control Committee. This current body was created in January 2007 and called the Agency on State Financial Control and Fight Against Corruption (SFCC). The former SFCC has been abolished.

References:

Soyuz Pravo Inform, Law on Audit Activity
<http://www.base.spininform.ru/show.fwx?Regnom=12249>

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

34

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

Audits are performed by independent individuals.

References:

Law on Audit Activity, Article 2
<http://www.business-club.tj/index.php?lng=ru&id=344&PHPSESSID=7e8d66ef7bcff96b8a0422ab1b8ad4a4>

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

On January 10, 2007, the president signed a decree creating the Agency of State Control and Anti-Corruption. This agency is created to extend the fight against illegal actions and criminality regarding corruption (without duplicating the functions and scope

of the work of the other state agencies), provide transparency and improve control and revision activity. This agency replaces three abolished state committees: Financial Control, the Chief Board of Tax Police, and the Ministry of State Income, Outcome and Tax.

SS's comment: There is no information about people who lost their jobs due to the abolishment of these 3 institutions. They give no reasons for removing the head of the organization who is working on an audit. To speak about the non-state audit agency is senseless because there are no local audit agencies known in Tajikistan that review their activity.

References:

Press release for Mass Media, Ministry of Foreign Affairs, Jan. 13, 2007
<http://www.mfa.tj/index.php?node=news&dt=1168646400&id=177>

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | **25** | 0

Comments:

First source says that State Unitar TajikGas invited audit group from Kyrgyzstan to conduct the audit.

Second source says that OriyonBank invited International Audit Company Deloitte and Touche Ltd. to conduct audit.

Third source discusses the activity of the State Financial Committee regarding the finding of cases of illegal use of state money. The state organizations have more or less professional staffs, but this sphere is still underdeveloped.

Auditing is quite a new phenomenon in Tajikistan. Because the need for audit services is increasing year by year, there are some special departments in the universities for students to study auditing and become professionals. However, the professionalism of the teaching staff is under question.

References:

Article, Audit of TajikGas Has Been Completed
<http://sngnews.ru/articles-print/5/44062.html>

Article, IA REGNUM, July 12, 2006, The Tajik Committee of Financial Control Discovered Facts of Illegal Use of State Budget Money
<http://www.regnum.ru/news/672346.html>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

SS's comment: Since no serious audit agency is known to exist in Tajikistan, we can speak about those which are working on financial issues, including audit activity, at a state level. Both appointments as well as dismissals are purely dependent on the president's decision.

References:

Press release for mass media, Ministry of Foreign Affairs, Jan. 13, 2007
<http://www.mfa.tj/index.php?node=news&dt=1168646400&id=177>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The source reports that according to the decree of the president, the financial provision for the new agency on financial control and anti-corruption is to be allotted from the state budget. The funds that were earlier allotted to the now-abolished ministries and agencies have to be transferred to the new agency.

SS's comment: The very fact that the agency that performs audits and other activity is under government control and whose members are appointed and dismissed by the president, likely means, in practice, that the agency is politically dependent.

References:

Press release, Ministry of Foreign Affairs, Jan. 13, 2007

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | **50** | 25 | 0

Comments:

The source reports about the activity of the financial control committee.

SS`'s comment: These type of reports from the state organizations are not regularly seen in the media and the press. I suppose that this last report was done in agony before the office was abolished by the president. I suppose that, in the future, the work of the state organizations working on audits will be more open to the public through reporting. As for the independent non-state audit agencies, there is no evidence of their reports. Those organizations that are making their audit results public on a regular basis can publish them on on the World Wide Web or in the press, but it is not necessary. The audit agencies conducting audits for them are not local and therefore, those reports won't be open to the public of Tajikistan.

References:

News report, IA REGNUM, July 12, /2007, Tajik Committee of Financial Control Discovered Cases of Illegal Use of State Budget Money

<http://www.regnum.ru/news/672346.html>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

Comments:

According to the second source, the government acts on findings of the state financial control committee only through the prosecutor's office and police. The committee usually hands the results of its reviews to these organizations. However, the committee does not influence policy, but rather it is the government that decides what and why an action should be done, and what can and cannot be touched for revision. The findings of the committee mentioned in the source are minor when compared to overall amount of the corruption in the government. They try to catch only those who do not play a significant role, and have no support in the governmental structures, etc.

References:

News,IA REGNUM, Jul. 12, 2007, Tajik State Committee of Financial Control Discovered Cases of Illegal Use of State Budget Money

<http://www.regnum.ru/news/672346.html>

Ms. Gafurova. U., Project Specialist, Network of Political Parties, July 21, 2007, Khujand

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

Comments:

Because an audit is conducted by the State Committee of Financial Control, it is fully controlled by the government, so the committee can not initiate any investigation without executive or legislative approval. An audit is politically sensitive and revision is performed against opponents of the president. Among those who were imprisoned during the last year for financial crimes and corruption were political opponents of the president such as Ghaffor Mirzoev, Mahmadali Ruziev and others.

References:

News, Jan. 17. /2006, Head of the Supreme Court Explained the Reasons of the Close from Public Trial of Mirzoev

<http://sngnews.ru/archive/2006/01/17/56771.html>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

0

57a. In law, citizens can access reports of the audit agency.

YES | **NO**

Comments:

Auditors have no right to disseminate information containing commercial secrets, except in cases where this information is transmitted to the owner or organization who invited the auditor to make a report.

References:

Law on Audit Activity, Article 15

<http://www.business-club.tj/index.php?lng=ru&id=504>

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

According to the law, nobody can access the audit reports. It is crucial for an auditor to keep the results secret. Only the the organization who asked for audit service can have the right to access it. There is no evidence, in practice, of citizens asking for the results of an audit.

However, there are some reports on completed audits in the media.

References:

Mr. Farrukh Turaev, President, Association of Scientific and Technological Intellegencia, March 22,/2007, Khujand (by phone)

Article, Audit of the Tajik Gas Has Been Completed

<http://sngnews.ru/articles-print/5/44062.html>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, nobody can access the audit reports. It is crucial for an auditor to keep the results secret. Only the organization who asked for audit service can have the right to access it. There is no evidence, in practice, of citizens asking for the results of an audit.

However, there are some reports on completed audits in the media.

References:

Mr Farrukh Turaev, President, Association of Scientific and Technological Intellegencia, March 22, 2007, Khujand (by phone)

Article, Audit of the Tajik Gas Has Been Completed

<http://sngnews.ru/articles-print/5/44062.html>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

100

58. In law, is there a national tax collection agency?

YES | NO

Comments:

Tax Committee under the Republic of Tajikistan's government includes smaller provincial and district tax committees and tax police.

References:

<http://zakon.tj/index.cgi?lid=4909>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

88

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

SS's comment: the Tax Office has a professional staff, but it is limited because of the corruption inside the office itself. Job applicants to this office have to have strong relationships with or, allegedly, pay bribes to the chief of the office. But even those who obtain jobs in such a way eventually become more-or-less professional. And it is full-time employment for all.

The Second source discusses a particular case of corruption: One of the tax office staff members in southern Tajikistan (Khatlon area) informed the traders that they had to pay a larger bribe, which had been increased. But the traders in the bazaar organized a strike at the doors of the local government. The case is currently under investigation.

References:

Article, SNGNews, In the Southern Tajikistan a Strike Has Taken Place, <http://sngnews.ru/articles-print/5/56995.html>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Committee has a state status. It depends on financial support from the state budget, so, as in the case with any other state agency, the committee's funding comes from a predictable source.

References:

Web site of the State Tax Committee
<http://www.andoz.tj/statistics.htm>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

25

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In the opinion of the interviewee, tax and customs committees avoid asking government officials about their taxes. Usually they take taxes and fares from common people, but no government official, no judge and no prosecutor is asked about his or her tax payments.

References:

Mr. Kasimov. B., ex-chief of the economic and social department of the local government, July 18, 2007, Khujand

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:

Nothing in the law about it could be found, only information that the agency exists.

References:

List of Goods for Tajik Customs Committee from Russia
http://www.businesspravo.ru/Docum/DocumShow_DocumID_18365.html

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is no much information about customs, but they have semi-professional staff. As in the case described in the source, Tajik customs behaved in a non-professional manner and provoked scandal and conflict between two countries.

References:

Article, REGNUM, May 2, 2006, A Dialogue Between Representatives of Bordering Countries and Local Authorities of Kyrgyzstan and Tajikistan Will Take Place,

<http://www.regnum.ru/news/638623.html>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Since this is one more committee of the state, the source of funding of the State Customs Committee is quite predictable.

References:

State Customs Committee

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

Comments:

In the opinion of the interviewee, tax and customs committees avoid asking government officials about their taxes. Usually they take taxes and fares from common people but no government official, no judge and no prosecutor is asked about his or her tax payments.

The author in the third source tells his story of crossing the Tajik border, when he was forced to leave the delicacies at the customs.

References:

Mr. Kasimov. B., ex-chief of the economic and social department of the local government, July 18, 2007, Khujand

Report, Tour Club IRBIS,

<http://tkirbis.narod.ru/fany98/report.htm>

Article, Raitshuster B., Sept. 7, 2007, Goose Skin when Registration Takes

Place, <http://www.inopressa.ru/focus/2005/06/16/14:30:19/ela>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

On November 30, 2006, the committees mentioned in the source were created by the decree of the president of the Republic of

References:

State Committee on Investments and Ruling State Property of the Republic of Tajikistan and/or Ministry of Energy and Industries and Ministry of Finances

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

50

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The law about political non-interference does not exist.

References:

The Ministry is part of the government.

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

References:

All ministers are relatives of the president or those who are from his region or /district in southern Tajikistan. The same situation occurs with ministries generally – usually you have to have strong” relative contacts. There is some unofficial information about the staffing of various ministries, which is not brought to light in the mass media.

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Reports the distribution of the national budget, including the development of all industries.

References:

Article, AVESTA/Pisaredjeva, N., Nov. 20, 2006, Parliament Has Completed Review of National Budget of Tajikistan for 2007
<http://www.avesta.tj/articles/4/7915.html%20->

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Agency of State Financial Control and Fight against Corruption report about cases of misuse of state budget money by various organizations, including state-owned enterprises.

As the state-owned enterprises are required to send their reports on production to the Ministry of Industry and reports on the financial/logistical part to the Ministry of Finances, it means these ministries have the rights to control and check the activity of the enterprises. In addition, prosecutors and police for economic crimes and the Agency of State Financial Control can start investigations. But some political factors can also play an important role. Such a case happened to a political opponent of President Rahmonov – a former head of Tajik Gas, who was leading a democratic opposition party.

References:

Article, IA Ferghana.Ru, June 29, 2007, In State Agencies of Tajikistan the Cases of Improper Use of Budget Money Have Been Revealed

<http://www.ferghana.ru/news.php?id=6396&print=1&PHPSESSID=9bd393d617ef123ad4d171d4f7779ab0>

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

Agency of State Financial Control and Fight against Corruption report about cases of misuse of state budget money by various organizations, including state-owned enterprises.

As the state-owned enterprises are required to send their reports on production to the Ministry of Industry and reports on the financial/logistical part to the Ministry of Finances, it means these ministries have the rights to control and check the activity of the enterprises. In addition, prosecutors and police for economic crimes and the Agency of State Financial Control can start investigations. But some political factors can also play an important role. Such a case happened to a political opponent of President Rahmonov – a former head of Tajik Gas, who was leading a democratic opposition party.

References:

Article, IA Ferghana.Ru, June 29, 2007, In State Agencies of Tajikistan the Cases of Improper Use of Budget Money Have Been Revealed,

<http://www.ferghana.ru/news.php?id=6396&print=1&PHPSESSID=9bd393d617ef123ad4d171d4f7779ab0>

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments

against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

50

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Law on Foreign Investments

Law on Information, Article 8

<http://www.MEDIALAW.ru/exussrlaw/l/tg/inform.htm>

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

They are regularly updated by the Ministry of Industry and Ministry of Finances. (State-owned companies disclose through their annual reports their income and taxes, etc.)

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The Kyrgyz company speaks about its experience in auditing different types of organizations according to the international standards, including two Tajik state-owned organizations,.

References:

News, Experience of Audit Running for 5-year Period

<http://www.jacobs.elcat.kg/rus/klienti.htm>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The author says that the table's composition is based on the questionnaires and annual reports of the industries themselves. It means that instead of finding an easy way to submit her request to one agency – Ministry of Finances or Ministry of Industry and Energy – she chose another, more complicated, way. The reason for this is either unavailability of resources or government bureaucracy; either way her experience points toward the difficulty of accessing such records in practice.

References:

Dissertation, Nizomova, T., 2007, Restructuring Industrial Companies of Tajikistan in the Conditions of Transitional Economy, Table 1/Economic Results of Privatization of a Number of Industries in Tajikistan, page 14

<http://vak.ed.gov.ru/announcements/economich/NizomovaTD.doc>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The author says that the table's composition is based on the questionnaires and annual reports of the industries themselves. It means that instead of finding an easy way to submit her request to one agency – Ministry of Finances or Ministry of Industry and Energy – she chose another, more complicated, way. The reason for this is either unavailability of resources or government bureaucracy; either way her experience points toward the difficulty of accessing such records in practice.

References:

Dissertation, Nizomova, T., 2007, Restructuring Industrial Companies of Tajikistan in the Conditions of Transitional Economy, Table 1/Economic Results of Privatization of a Number of Industries in Tajikistan, page 14
<http://vak.ed.gov.ru/announcements/economich/NizomovaTD.doc>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67

V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

69

67a. In law, anyone may apply for a business license.

YES | NO

References:

Law on State Protection and Support of Enterprises

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law on State Protection and Support of Enterprises

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The source says that the businessman allegedly prefers to start paying bribes from the very beginning, as during the registration of the business. The amount of time it takes allegedly depends on the amount of the bribes too.

References:

Article, Bukharizade, N., July 31, 2007, Volume of the Shadow Economy Is More than 60 Percent of the Official GDP
<http://www.centrasia.ru/newsA.php4?st=1185865140>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

Article, Bukharizade N., July 31, 2007, Volume of the Shadow Economy Is More than 60 Percent of the Official GDP, <http://www.centrasia.ru/newsA.php4?st=1185865140>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Law on State Protection and Support of Enterprises

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Law on State Protection and Support of Enterprises

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Law on State Protection and Support of Enterprises

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Article, AVESTA, 2006, Cotton Oil is Produced in Anti-Sanitary Conditions in Tajikistan
http://sngnews.ru/frame_article/5/58290.html

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Article, AVESTA, 2006, Cotton Oil is Produced in Anti-Sanitary Conditions in Tajikistan
http://sngnews.ru/frame_article/5/58290.html

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

SS` s comment: Some of the government officials belonging to the specified departments like sanitation, epidemiology, or fire have uniforms; others officials do not.

References:

Article, AVESTA, 2006, Cotton Oil is Produced in Anti-Sanitary Conditions in Tajikistan
http://sngnews.ru/frame_article/5/58290.html

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁶Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

References:

Law on the Fight Against Corruption

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Law on the Fight Against Corruption, Article 2

<https://www.imolin.org/amlid/showLaw.do?law=6130&language=ENG&country=TAJ>

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Criminal Code, Article 36 (4)

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Criminal Code, Article 319

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Law on the Fight Against Corruption

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

The following activities of persons authorized to perform official public functions and of persons of equivalent status shall constitute corruption offences: . . .

(b) Acceptance of gifts or other services for the performance of official public functions or equivalent functions from persons accountable to them with respect to service, with the exception of symbolic tokens of esteem or souvenirs in connection with ceremonial or other official events;

The total value of gifts and services received in one year shall be no more than 50 times the minimum wage. . . .”

References:

Law on the Fight Against Corruption, Chapter 3, Article 13

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

e) Use for personal or collective interests of information obtained in the performance of public official functions if such information is not for official circulation.”

References:

Law on the Fight Against Corruption, Article 12

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:

Criminal Code, Article 262

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code, Article 273

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Committee on State Financial Control and Fight against Corruption

http://www.kpk.org.ua/2007/01/11/v_tadzhikistane_sozdano_antikorrupcionnoe_agentstvo.html

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

17

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

There is information that such an agency was created in January 2007 by order of the president. That it was by the president's order implies that it can not be protected from political interference.

References:

No information has been found.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There is information that such an agency was created in January 2007 by order of the president. That it was by the president's order implies that it can not be protected from political interference.

References:

No information has been found.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The source shows that the director of the newly created agency is from the same region as the president, as it allegedly is in many other cases where the heads of the highest governmental structures also come from the president's region. Salimov took his position by order of the President and he will be dismissed by him, if necessary.

References:

News: IA KHOVAR, Jan. 11, 2007, Salimov Sherkhon Odinaevich
<http://www.khovar.tj/old/index.php?id=4453&page=24>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Regionalism in the government is quite strong and most of the important positions are taken by people loyal to the president.

References:

News: IA KHOVAR, Jan. 11, 2007, Salimov Sherkhon Odinaevich,
<http://www.khovar.tj/old/index.php?id=4453&page=24>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency is more concerned about loyalty to the president than about professionalism. But since the agency was created some months ago, we do not have much information about its activity and staff.

References:

News: IA KHOVAR, Jan. 11, 2007, Salimov Sherkhon Odinaevich,
<http://www.khovar.tj/old/index.php?id=4453&page=24>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

As a normal state structure, it will receive financing from the state budget.

References:

Article, Asia Plus, Jan. 11, 2007, New Agency on State Financial Control and Fight Against Corruption is headed by Deputy Salimov
<http://www.centrasia.ru/newsA.php4?st=1168504020>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Agency is a newly created organization.

References:

No information has been found.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

No information has been found for the newly created agency.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This agency has a function similar to the prosecutor's office, meaning it has a right to investigate corruption cases. But we have not heard about its activities in practice yet.

References:

Article, Asia Plus, Jan. 11, 2007, New Agency on State Financial Control and Fight Against Corruption is headed by Deputy

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

38

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No information has been found.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

In practice, citizens can complain without fear of recrimination. In most cases, they are supported due to the specific sphere of work for the Agency.

There are some different rules for complaining, depending on the organization to whom the complaint is made. If, for example, at the prosecutor's office citizens have to give their names as the complainants. If the complaint involves a national security issue, it will probably be suggested that citizens not give their names. It depends. But according to the law, citizens can ask permission to not give their names.

References:

Mr. Djalolov O., Deputy Chief, Agency on Control Over Drugs, July 17, 2007, Khujand

http://www.toptj.com/ShowNews.aspx?news_id=9571E304-3050-4A53-A762-4DA5D4363D38&is_redirected=true

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

51
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

75

74a. In law, there is a general right of appeal.

YES | NO

References:

Criminal Code of the Republic of Tajikistan, Article 163

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All appeal letters and complaints are reviewed within specific time limits and the answer is usually given on time. Sometimes some cases need special attention and time.

References:

Mr. Gulomdjanov, I., advocate, Notarius Office #1, Aug. 12, 2007, Khujand

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the case. Usually people hire an advocate for writing appeals to the higher institution. They pay the advocate for the services. There are a number of other ways to solve the problem, like paying a mediator – a person, who has financial relations with the official. It is alleged that the person pays for the mediator service and then, with the case mediator, brings money to the official.

References:

Mr. Gulomdjanov, I., advocate, Notarius Office #1, Aug. 12, 2007, Khujand

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

100

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Yes, it is a strict rule that they are to follow the laws. But a judge can use this law to make a person innocent or that law to make him guilty. But as a rule, all judgments are based on laws.

References:

Mr. Gulomdjanov, I., advocate, Notarius Office #1, Aug. 12, 2007, Khujand

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

Comments:

It depends on the scale of case – if it has political context, then it can be enforced by the state, as in the cases of Mahmadrusi Iskandarov, Gaffor Mirzoev, etc.

References:

Mr. Gulomdjanov, I., advocate, Notarius Office #1, Aug. 12, 2007, Khujand

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

56

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitutional Law on Courts

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

Comments:

None of those who belong to legislative, executive or judicial branches can be said to be politically indifferent. National-level judges are allegedly corrupted people, most of whom have family ties to the government.

References:

Mr. Gulomdjanov, I., advocate, Notarius Office #1, Aug. 12, 2007, Khujand

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

No information has been found in the Law on Courts.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Law on Courts, Article 18

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

No information has been found.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

No information has been found.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work

on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

54

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

In some rare cases, maybe yes. But it is more because ethnic minorities (like the Russians in Tajik-n) are mostly poor. It appears that judges have some prejudice, but in fact, people are judged in a proper way because they cannot pay bribes.

References:

Mr. Gulomdjanov. I., advocate, Notarius Office #1, Aug. 12, 2007, Khujand

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Women are equal with the men.

References:

Mr. Gulomdjanov, I., advocate, Notarius Office #1, 12/08/2007, Khujand

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that

confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Law on Courts

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

Comments:

Yes, defense is provided for each accused criminal. If he or she can not afford to pay for their defense, then a public lawyer can be provided by state.

References:

Mr. Gulomdjanov, I., advocate, Notarius Office #1, Aug. 12, 2007, Khujand

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

No information

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the business itself.

References:

Mr. Ikrom Khamidov, Judge, Gafurov District Court, of Sughd Province, Aug. 21, 2007, Gafurov

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Each region, province, town and district has its own court.

References:

Mr. Ikrom Khamidov, Judge, Gafuov District Court of Sughd Province, Aug. 21, 2007, Gafurov

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

33

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

As of now, we have two types of employees in all law enforcement and judicial institutions: Half of them are allegedly non-professionals who have relatives who helped them to get their positions. But the other half are those who, after entering the institution, decide to become professional and study at the relevant universities.

References:

Mr. Ikrom Khamidov, Judge, Gafurov District Court of Sughd Province, Aug. 21, 2007, Gafurov

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Yes, as a part of the state machine, the law enforcement agencies regularly receive funds from state budget though there are constant complaints of a lack of funds.

References:

Mr. Ikrom Khamidov, Judge, Gafurov District Court of Sughd Province, Aug. 21, 2007, Gafurov

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

We cannot speak about anyone having an apolitical attitude who works at the state-sponsored positions. They may all be manipulated by the government. Sometimes local government has more power over the law enforcement agencies. National

security and the courts have more power than is desirable. It is old Soviet habit – when one party controlled the functions of all the state machinery as one centralized thing.

References:

Mr. Ikrom Khamidov, Judge, Gafurov District Court of Sughd Province, Aug. 21, 2007, Gafurov

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

50

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | **NO**

Comments:

First, the Constitution (Article 21) says that the rights of the victims (who has a reason to complain) are guaranteed by the state, which provides court protection.

Second, the Law on Prosecutor`s Office (Article 23) says that the prosecutor has to check how law enforcement deals with citizens` complaints, and get information about violations of these laws.

Third, Criminal Code (Article 391) speaks about the abuse of power. The court, the prosecutor, Investigator and other organs of investigation have to initiate the investigation within the framework of their legal mission to punish those who are guilty (Article 3, Criminal Processing Law).

Apart from these very general mechanisms, there is no dedicated complaints mechanism accessible to citizens.

References:

Criminal Processing Law

See also http://www.hrt.tj/downloads/tj_un/11.pdf

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-

corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Yes, usually the complaints are answered on time. But sometimes because of the volume of complaints or specific character of the complaint, there can be a delay in answering. When I say specific, it means that investigation can be stopped by someone from the upper level of the government right at the beginning.

That said, there is no independent complaint mechanism accessible to citizens apart from seeking redress from the courts and public prosecutors.

References:

Mr. Ikrom Khamidov, Judge, Gafurov District Court of Sughd Province, Aug. 21, 2007, Gafurov

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

Prosecutors and national security officials can investigate and prosecute corruption committed by law enforcement officials, like in the case described in the second source: An l/e official was caught red-handed by prosecutors when taking a bribe.

References:

Law on Milicia

<http://sngnews.ru/articles-print/5/55417.html>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

Comments:

Yes, when there are suspicions about corrupted l/e officials, the relevant agencies can initiate investigations. In some cases, they target poor people for pretending that they have an important job. They do not target top officials, but those who are in the criminal network.

References:

Mr. Ikrom Khamidov, Judge, Gafuov District Court of Sughd Province, Aug. 21, 2007, Gafurov

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Law on Milicia

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

As a rule, law enforcement officials are not immune from criminal proceedings. For example, recently a group of policemen has been tried for expropriating narcotics and selling them illegally. But there are cases when law enforcement officials can avoid punishment if they have VIP relatives.

If they wear the uniform while treating the common people badly, the punishment for this offense is much severer than that for the same crime committed by the same person when he is not in uniform.

References:

Mr. Ikrom Khamidov, Judge, Gafuov District Court of Sughd Province, Aug. 21, 2007, Gafurov

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.